INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING
CERTAIN IRANIAN ASSETS

(ISLAMIC REPUBLIC OF IRAN V. UNITED STATES OF AMERICA)

ATTACHMENTS AND ANNEXES TO THE MEMORIAL
OF THE ISLAMIC REPUBLIC OF IRAN

VOLUME III

01 February 2017

IN THE NAME OF GOD

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***Valore et al. v. The Islamic Republic of Iran et al*., U.S. District Court, District of Columbia, 31 March 2010, 700 F. Supp. 2d 52 5 (D.D.C. 2010)**

Excerpts: p. 1, pp. 13-17 and p. 56

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TERANCE J. VALORE, et al.,	)	
	)	Consolidated Actions:
Plaintiffs,	)	03-cv-1959 (RCL)
	)	06-cv-516 (RCL)
v.	)	06-cv-750 (RCL)
	)	08-cv-1273 (RCL)
ISLAMIC REPUBLIC OF IRAN, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

I. Introduction.

This memorandum opinion accompanies the final judgments in the recently consolidated cases of *Valore v. Islamic Republic of Iran*, No. 03-cv-1959, *Arnold v. Islamic Republic of Iran*, No. 06-cv-516, *Spencer v. Islamic Republic of Iran*, No. 06-cv-750, and *Bonk v. Islamic Republic of Iran*, No. 08-cv-1273. These cases all arise out of the October 23, 1983, bombing of the United States Marine barracks in Beirut Lebanon ("the Beirut bombing"), where a suicide bomber murdered 241 American military servicemen in the most deadly state-sponsored terrorist attack upon Americans until the tragic attacks on September 11, 2001.

The Court will first discuss the complicated background of these cases: the relationship between these cases and the previously decided consolidated cases of *Peterson v. Islamic Republic of Iran* and *Boulos v. Islamic Republic of Iran* (collectively, "*Peterson*"), recent changes made to the Foreign Sovereign Immunities Act (FSIA), the procedural approach by which recently amended FSIA provisions apply, the judicial notice taken of findings and conclusions made in *Peterson* and the subsequent entry of default judgments in each case, and a summary of the claims made in each case. Second, the Court will make findings of fact for

IV. Jurisdiction.

The FSIA "is the sole basis of jurisdiction over foreign states in our courts." *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 39. The FSIA concerns both subject-matter jurisdiction and personal jurisdiction. The Court has both.

A. Subject-Matter Jurisdiction.

Several sections of the FSIA and related statutes set forth several specific requisites that must be satisfied for the Court to have jurisdiction over the subject matter of this case. These requisites may be broken down into four categories: grant of original jurisdiction, waiver of sovereign immunity, requirement that a claim be heard, and limitations. Plaintiffs have satisfied all subject-matter jurisdictional requisites.

1. Grant of Original Jurisdiction.

The FSIA grants U.S. district courts "original jurisdiction without regard to amount in controversy of any [(1)] nonjury civil action [(2)] against a foreign state . . . [(3)] as to any claim for relief in personam [(4)] with respect to which the foreign state is not entitled to immunity." § 1330(a). The FSIA defines a foreign state to include any "political subdivision" or "agency or instrumentality" thereof, § 1603(a), and further defines an agency or instrumentality as "any entity (1) which is a separate legal person, corporate or otherwise[,] . . . (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof[;] and (3) which is neither a citizen of a State of the United States . . . nor created under the laws of any third country," § 1603(b). In interpreting and applying these statutory definitions, this Circuit employs a core-functions test, under which "an entity that is an 'integral part of a foreign state's political structure' is to be treated as the foreign state itself" while an "entity the structure and core function of which are commercial is to be treated as an 'agency or instrumentality' of the state."

TMR Energy Ltd. v. State Property Fund of Ukraine, 411 F.3d 296, 300 (D.C. Cir. 2005) (quoting *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 151 (D.C. Cir. 1994)).

First, no party has sought a jury trial, nor are they entitled to one under the Seventh Amendment in this type of case, *Croesus EMTR Master Fund L.P. v. Federative Republic of Brazil*, 212 F. Supp. 2d 30, 40 (D.D.C. 2002) ("[C]laims under the FSIA are not eligible for resolution by a jury . . . ."). Therefore, this is a nonjury civil action.

Second, plaintiffs have instituted this action against Iran and MOIS, both of which are considered to be a foreign state. Iran, of course, is the foreign state itself. "MOIS is considered to be a division of state of Iran, and is treated as a member of the state of Iran itself." *Bennett v. Islamic Republic of Iran*, 507 F. Supp. 2d 117, 125 (citing *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 234 (D.C. Cir. 2003); *Salazar v. Islamic Republic of Iran*, 370 F. Supp. 2d 105, 116 (D.D.C. 2005)) (Lamberth, J.). In other words, MOIS is a political subdivision of Iran. Therefore, this action is against a foreign state as defined by the FSIA.

Third, as discussed *infra* Part IV.B, the Court has personal jurisdiction over the defendants as legal persons, rather than property. Therefore, this is an action in personam, rather than in rem.

Fourth and finally, as discussed *infra* Part IV.A.2., Iran and MOIS are not entitled to immunity from this suit.

Accordingly, because this is a nonjury civil action against a foreign state for relief in personam to which the defendants are not immune, the Court has original jurisdiction over these cases.

2. Waiver of Sovereign Immunity.

Under the FSIA, "a foreign state is presumptively immune from the jurisdiction of United States courts; unless a specified exception applies, a federal court lacks subject-matter

jurisdiction over a claim against a foreign state." *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993). Because "subject-matter jurisdiction turns on the existence of an exception to foreign sovereign immunity, . . . even if the foreign state does not enter an appearance to assert an immunity defense, a District Court still must determine that immunity is unavailable under the Act." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 495 n.20 (1983). (As discussed *supra* Part II.B., defendants have indeed failed to enter an appearance.) Under the FSIA terrorism exception, sovereign immunity is waived when plaintiffs allege (1) that a foreign state (2) committed "an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or [provided] material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency," (3) which "caused" (4) "personal injury or death" (5) for which "money damages are sought." § 1605A(1).

First, plaintiffs have brought suit against Iran and MOIS, both of which are considered to be a foreign state. *See* discussion *supra* Part IV.A.2.

Second, plaintiffs, in their respective complaints, allege that defendants committed torture, extrajudicial killing, and the provision of material support and resources therefor, providing operational control over and financial and technical assistance to Iranian agents of Hezbollah who constructed, deployed, and exploded the truck bomb, injuring and killing hundreds. Plaintiffs therefore have sufficiently alleged the commission of acts of torture and extrajudicial killing and the provision of material support and resources therefor by defendants.

Third, concerning causation, "there is no 'but-for' causation requirement" for claims made under the FSIA. *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp 2d at 42. In *Kilburn v. Socialist People's Libyan Arab Jamahiriya*, a case which interpreted the substantially similar § 1605(a)(7) that is now § 1605A, this Circuit noted that in the FSIA, "the words 'but for'

simply do not appear; only 'caused by' do." 376 F.3d 1123, 1128 (D.C. Cir. 2004). Adopting the Supreme Court's approach to a different but similarly worded jurisdictional statute, the Circuit interpreted the causation element "to require only a showing of 'proximate cause.'" *Id.* (citing *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 536–38 (1995)). "Proximate cause exists so long as there is 'some reasonable connection between the act or omission of the defendant and the damages which the plaintiff has suffered.'" *Brewer*, 664 F. Supp. 2d at 54 (construing causation element in § 1605A by reference to cases decided under § 1605(a)(7)) (quoting *Kilburn*, 376 F.3d at 1128). Here, there are several reasonable alleged connections between the acts of defendants and the deaths of 241 servicemen and physical and emotional injuries suffered by military servicemen and plaintiffs: plaintiffs allege that Iran's high-level technical participation facilitated the construction and deployment of the bomb so as to maximize its destructive effect, that defendants ordered the attack and oversaw its operation, and that Iran financially supported Hezbollah. Plaintiffs therefore have sufficiently alleged causation.

Fourth and fifth, plaintiffs allege several instances of personal injury and death for which money damages have been sought. The FSIA does not restrict the personal injury or death element to injury or death suffered directly by the claimant; instead, such injury or death must merely be the bases of a claim for which money damages are sought. § 1605A(1). In these cases, plaintiffs alleged, of course, the deaths of 241 servicemen and numerous other physical injuries suffered by those who survived the attack, but also emotional and financial injury to survivors, decedents, decedent's estates, and decedent's family members, for which plaintiffs seek millions of dollars in money damages. Plaintiffs have therefore alleged personal injury or death for which money damages have been sought.

Accordingly, because plaintiffs have brought suit against a foreign state for acts of torture and extrajudicial killing and the provision of material resources for the same which caused personal injury and death for which money damages have been sought, defendants are not entitled to sovereign immunity.

3. Requirement That a Claim Be Heard.

A federal district court "shall hear a claim" under the FSIA terrorism exception when certain conditions are met. § 1605A(2). One such set of conditions applies where (1) "the foreign state was designated as a state sponsor of terrorism at the time the act" giving rise to the claim occurred "or was so designated as a result of such act," § 1605A(a)(2)(A)(i)(I), and, in a case related to a related action, "was designated as a state sponsor of terrorism when the . . . related action under section 1605(a)(7) . . . was filed," § 1605A(a)(2)(A)(i)(II)[8]; (2) "the claimant or the victim was, at the time the act" giving rise to the claim, "a national of the United States[,] a member of the armed forces[,] or otherwise an employee of the Government of the United States[] or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment," § 1605A(a)(2)(A)(ii); and (3) "in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration," § 1605A(a)(2)(A)(iii). The FSIA elaborates on the first element by defining "state sponsor of terrorism" to mean "a country the government of which the Secretary of State has determined . . . is a government that has repeatedly provided support for acts of international terrorism," § 1605A(h)(6), and the second by defining "national of the United States" to mean "a citizen of the United States[]

[8] This element applies only to cases related to related actions. For different requirements for cases related to prior actions, see § 1605A(a)(2)(A)(i)(II). For stand-alone cases, see § 1605A(a)(2)(A)(i)(I).

"seems likely to have a deterrent effect." *Id.* at 31 (multiplying $100 million by three); *Brewer*, 664 F. Supp. 2d at 59 (same). Although this level of punitive damages is significantly higher than any previously rendered against Iran, the award is justified by the continuing need to punish and deter Iran from its increasing support of terrorism, and is further justified as the product of well settled case law on the methodology by which punitive-damages awards in FSIA cases are calculated. Accordingly, this $1 billion punitive-damages award shall be apportioned among the plaintiffs in proportion to their relative compensatory-damages awards.

VIII. Conclusion.

Iran and MOIS are responsible for the deaths and injuries of hundreds of American servicemen, are liable for the emotional injuries their family members have suffered as a result, and deserve to be punished to the fullest legal extent possible. World-renowned Iranian poet Simin Behbahani, in her "Stop Throwing my Country to the Wind," recently implored her nation to "Stop this screaming, mayhem, and bloodshed. Stop doing what makes God's creatures mourn with tears." Posting of Mark Memmott to The Two-Way: NPR's News Blog, http://www.npr.org/blogs/thetwo-way (June 26, 2009, 16:30 EST). The Court sincerely hopes that the compensatory damages awarded today help to alleviate plaintiffs' physical, emotional, and financial injury and that the punitive damages also awarded inspire Iran to heed Ms. Behbahani's words.

A separate Order and Judgment consistent with these findings shall issue this date.

Signed by Royce C. Lamberth, Chief Judge, on March 31, 2010.

Annex 47

***Weinstein et al. v. Islamic Republic of Iran et al.*, U.S. Court of Appeals, Second Circuit, 15 June 2010, 609 F.3d 43 (2d Cir. 2010)**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2009

(Argued: February 17, 2010 Decided: June 15, 2010)

Docket No. 09-3034-cv

- X

SUSAN WEINSTEIN, individually as Co-Administrator of the Estate of IRA WILLIAM WEINSTEIN, and as Natural Guardian of plaintiff DAVID WEINSTEIN, JEFFREY A. MILLER, as Co-Administrator of the Estate of IRA WILLIAM WEINSTEIN, JOSEPH WEINSTEIN, JENNIFER WEINSTEIN, HAZI & DAVID WEINSTEIN, JENNIFER WEINSTEIN HAZI,

Plaintiffs-Appellees,

BANK OF NEW YORK,

Plaintiff

- against -

ISLAMIC REPUBLIC OF IRAN, IRANIAN MINISTRY OF INFORMATION AND SECURITY, AYATOLLAH ALI HOSEINI KHAMENEI, ALI AKBAR HASHEMI-RAFSANJANI, ALI FALLAHIAN-KHUZESTANI,

Defendants,

BANK MELLI IRAN NEW YORK REPRESENTATIVE OFFICE,

Respondent-Appellant,

BANK SADERAT IRAN, NEW YORK REPRESENTATIVE OFFICE, BANK SEPAH IRAN, NEW YORK REPRESENTATIVE OFFICE

Respondents,

- X

Before: KEARSE and HALL, Circuit Judges, and RAKOFF, District Judge.*

Appeal by respondent Bank Melli Iran from a ruling of the United States District Court for the Eastern District of New York (Leonard D. Wexler, Judge) granting plaintiff's motion for appointment of receiver to attach respondent's property in satisfaction of a prior judgment.

Affirmed.

LAINA C. LOPEZ, Berliner, Corcoran & Rowe, LLP, Washington, DC (Thomas G. Corcoran, Jr., Berliner, Corcoran & Rowe, LLP, Washington, DC, John N. Romans, Law Office of John N. Romans, Mamaroneck, NY, on the brief), for Respondent-Appellant.

ROBERT J. TOLCHIN, Jaroslawicz & Jaros, New York, NY, for Plaintiff-Appellee.

RAKOFF, District Judge:

On February 25, 1996, Ira Weinstein, a United States citizen and resident of New York, was severely injured during a suicide bombing in Jerusalem organized by the terrorist organization Hamas. On April 13, 1996, Weinstein died from those injuries. See Weinstein v. Islamic Rep. of Iran, 184 F. Supp. 2d 13, 16-17 (D.D.C. 2002). On October 27, 2000, his widow, another administrator of his estate, and his children brought suit for wrongful death and other torts against the Islamic Republic of Iran ("Iran"), the Iranian Ministry of Information and Security, and three Iranian officials, alleging that these defendants had

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*The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

provided substantial monetary support for Hamas's terrorist attacks. See id. at 21-22. After defendants failed to appear, the district court determined that the plaintiffs had established their "claim or right to relief by evidence satisfactory to the court," 28 U.S.C. § 1608(e), and entered default judgment for plaintiffs in the amount of approximately $183,200,000. See id. at 16, 22-26.

Plaintiffs registered the judgment in the U.S. District Court for the Eastern District of New York on October 8, 2002, and served an information subpoena on Bank of New York that eventually led to the identification of respondent Bank Melli Iran ("Bank Melli") as a possible instrumentality of the Iranian state. See Weinstein v. Islamic Rep. of Iran, 299 F. Supp. 2d 63, 64-65 (E.D.N.Y. 2004). The district court found it unnecessary to determine whether Bank Belli was an "agency or instrumentality" for purposes of the TRIA because the court determined that Bank Melli's accounts at the Bank of New York were unattachable. Id. at 74-76. However, on October 31, 2007, one of the plaintiff-judgment creditors, Jennifer Weinstein Hazi ("Hazi"), filed a motion in the Eastern District proceeding, seeking appointment of a receiver (pursuant to Rule 69 of the Federal Rules of Civil Procedure and Section 5228(a) of the New York Civil Practice Law and Rules), to sell real property owned by respondent Bank Melli in Forest Hills, Queens, which plaintiff

sought to attach and sell in partial satisfaction of the judgment against the defendants. Hazi argued that the Forest Hills property was now subject to attachment pursuant to the Terrorism Risk Insurance Act of 2002 ("TRIA"), § 201(a), Pub. L. No. 107-297, 116 Stat. 2322, 2337, codified at 28 U.S.C. § 1610 note, because on October 25, 2007, Bank Melli had been designated by the United States Department of Treasury, Office of Foreign Assets Control ("OFAC") as a "proliferat[or] of weapons of mass destruction," and its assets had been frozen. See Executive Order 13,382, 70 Fed. Reg. 38,567 (June 28, 2005).[1]

On February 21, 2008, Bank Melli moved to dismiss the proceeding against it and to stay the appointment of a receiver pending resolution of its motion to dismiss. In its motion to dismiss, Bank Melli argued, inter alia, that attachment and sale of the Forest Hills property would violate the Treaty of Amity between the United States and Iran, that attachment and sale would constitute a taking not for a public purpose and without just compensation in violation of the Takings Clause of both the Fifth Amendment of the United States Constitution and Article

[1] Executive Order 13,382 was issued by the President pursuant to the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, 1702, and provided that all property and interests in property in the United States of persons and entities listed in the order or subsequently listed "are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in." Exec. Order 13,382, 70 Fed. Reg. 38,567 (June 28, 2005). Bank Melli was added to the list on October 25, 2007.

IV.2 of the Treaty of Amity, and that the blocking of its assets violated the so-called "Algiers Accords" and thus attachment and sale would constitute a further violation of the Accords. On June 5, 2009, after receiving submissions from both Hazi and Bank Melli,[2] the district court (Wexler, Judge) denied Bank Melli's motion to dismiss and granted Hazi's motion to appoint a receiver, but stayed the proceedings pending this appeal.

DISCUSSION

A. JURISDICTION

On this appeal, Bank Melli argues for the first time that the district court lacked ancillary jurisdiction to entertain Hazi's motion to appoint a receiver. According to Bank Melli, Hazi's motion was not simply a proceeding to collect on a debtor's assets, but rather "an independent controversy with a new party in an effort to shift liability," Epperson v. Entm't Express, Inc., 242 F.3d 100, 106 (2d Cir. 2001); see also Peacock v. Thomas, 516 U.S. 349, 357 (1996), for which TRIA § 201(a) did not provide an independent source of jurisdiction. Although not raised below, subject matter jurisdiction may be raised at any point, Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567, 576 (2004); Cave v. E. Meadow Union Free Sch. Dist., 514 F.3d

[2] Although the district court also invited the United States to file its own submission to address the issues in the case, the Government declined to do so.

240, 250 (2d Cir. 2008), and so the Court must address this threshold matter.[3]

The Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602 et seq., provides the exclusive basis for subject matter jurisdiction over all civil actions against foreign state defendants, and therefore for a court to exercise subject matter jurisdiction over a defendant the action must fall within one of the FSIA's exceptions to foreign sovereign immunity. See, e.g., Saudi Arabia v. Nelson, 507 U.S. 349, 351 (1993); Argentine Rep. v. Amerada Hess Shipping Corp., 488 U.S. 428, 434-35 (1989); Verlinden B.V. v. Cent. Bank of Nig., 461 U.S. 480, 493 (1983). In the underlying action that gave rise to the judgment on which plaintiff now seeks to collect, the district court exercised subject matter jurisdiction over Iran and the other defendants under 28 U.S.C. § 1605(a)(7), which abrogates immunity for those foreign states officially designated as state sponsors of terrorism by the Department of State where the foreign state commits a terrorist act or provides material support for the commission of a terrorist act and the act results in the death or

[3] The district court did, however, cite for other purposes to a lower court decision that also considered the jurisdiction issue. See Weininger v. Castro, 462 F. Supp. 2d 457, 490 (S.D.N.Y. 2006) (holding that the TRIA "provides [an] independent basis of subject matter jurisdiction in this enforcement proceeding against these [foreign sovereign] entities").

personal injury of a United States citizen.[4] See Weinstein, 184 F. Supp. 2d at 20-21. When such an exception applies, "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances . . . ." 28 U.S.C. § 1606; see also Verlinden, 461 U.S. at 488-89.

Bank Melli was not itself a defendant in the underlying action. However, the FSIA has a separate section, Section 1609, that provides that where a valid judgment has been entered against a foreign sovereign, property of that foreign state is immune from attachment and execution except as provided in the subsequent sections, Sections 1610 and 1611. 28 U.S.C. § 1609. Section 201(a) of the TRIA, codified as a note to Section 1610 of the FSIA, provides as follows:

> Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based on an act of terrorism, or for which a terrorist party is not immune under [28 U.S.C. § 1605(a)(7)], the blocked assets of that terrorist party (including the blocked assets of any agency or

[4] In 2008, Congress repealed § 1605(a)(7) and created a new section specifically devoted to the terrorism exception to the jurisdictional immunity of a foreign state. See Pub. L. 110-181, Div. A, § 1803, Jan. 28, 2008, 122 Stat. 341 (repealing 28 U.S.C. § 1605(a)(7) and creating 28 U.S.C. § 1605A). To the extent relevant to this case, § 1605A provides for the same exceptions to foreign sovereign immunity as the repealed section.

instrumentality of that terrorist party) shall be subject to execution or attachment in the aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a), 116 Stat. at 2337 (emphasis supplied).

The parties do not dispute that each of the elements of Section 201(a) is satisfied here. Iran has been designated a terrorist party pursuant to section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), beginning January 19, 1984, see Weinstein, 184 F. Supp. 2d at 20, and therefore is a "terrorist party" as defined by TRIA § 201(d)(4), 116 Stat. at 2340. The district court in the underlying action found jurisdiction under 28 U.S.C. § 1605(a)(7), and thus Iran was not immune from jurisdiction in the original proceeding. See id. at 20-21. Bank Melli's assets were "blocked" as of October 2007, designated as such pursuant to Executive Order 13,382 and 50 U.S.C. §§ 1701, 1702. Finally, Bank Melli concedes that it is an instrumentality of Iran.

Bank Melli contends, however, that the above-quoted language of the TRIA does not provide an independent basis for jurisdiction over an instrumentality of a sovereign state when the instrumentality was not itself a party to the underlying tort action that gave rise to judgment on which plaintiff now seeks to

recover. Rather, Bank Melli argues, Section 201(a) of the TRIA simply provides an additional ground for abrogating immunity from attachment for a party that has been the subject of a valid judgment, but does not provide jurisdiction for a court to permit attachment against a party that was not itself the subject of the underlying judgment.

Although novel,[5] Bank Melli's argument is belied by the plain language of Section 201(a), as well as by its history and purpose. Section 201(a) clearly states that "in every case in which a person has obtained a judgment against a terrorist party . . ., the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment . . . ." TRIA § 201(a), 116 Stat. at 2337 (emphasis supplied). Under Bank Melli's interpretation, the parenthetical language in Section 201(a) of the TRIA that permits attachment of funds from agencies and instrumentalities would be rendered superfluous, since the agency or instrumentality would itself have been a "terrorist party" against which the underlying judgment had been obtained. See, e.g., Corley v. United States, 129 S. Ct. 1558, 1566 (2009)

[5] To date, no appellate court has addressed this issue, although several district courts have found that the TRIA grants subject matter jurisdiction for execution and attachment proceedings over parties against whom there exist underlying judgments. See, e.g., Weininger, 462 F. Supp. 2d at 477-89; Rubin v. Islamic Rep. of Iran, 456 F. Supp. 2d 228 (D. Mass. 2006).

("'[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . .'" (quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004)). Instead, however, the statute clearly differentiates between the party that is the subject of the underlying judgment itself, which can be any terrorist party (here, Iran), and parties whose blocked assets are subject to execution or attachment, which can include not only the terrorist party but also "any agency or instrumentality of that terrorist party." If this did not constitute an independent grant of jurisdiction over the agencies and instrumentalities, the parenthetical would be a nullity.

Although Bank Melli points out that Section 201(a) of the TRIA has been codified as a note to Section 1610 rather than in the sections of the FSIA more directly addressed to exceptions to jurisdictional immunity, the plain language of the statute cannot be overcome by its placement in the statutory scheme. See Padilla v. Rumsfeld, 352 F.3d 695, 721 (2d Cir. 2003) ("No accepted canon of statutory interpretation permits 'placement' to trump text, especially where, as here, the text is clear and our reading of it is fully supported by the legislative history."), rev'd on other grounds by Rumsfeld v. Padilla, 542 U.S. 426 (2004); see also Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 128 S. Ct. 2326, 2336 (2008) (noting that a statutory

provision's placement in a particular section "cannot substitute for the operative text of the statute"). This is even more clearly true in this case where the operative language begins with the phrase "[n]otwithstanding any other provision of law," thus making plain that the force of the section extends everywhere.

Any inquiry into the meaning of a statute generally "ceases 'if the statutory language is unambiguous and the statutory scheme is coherent and consistent.'" Barnhart v. Sigmon Coal Co., 534 U.S. 438, 450 (2002) (quoting Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997) (other internal quotation marks omitted)); see also Universal Church v. Geltzer, 463 F.3d 218, 223 (2d Cir. 2006). But even if, contrary to fact, there were an ambiguity here, it would be resolved in plaintiff's favor by the legislative history. According to Senator Harkin, one of TRIA's sponsors:

> The purpose of title II is to deal comprehensively with the problem of enforcement of judgments issued to victims of terrorism in any U.S. court by enabling them to satisfy such judgments from the frozen assets of terrorist parties. . . . Title II operates to strip a terrorist state of its immunity from execution or attachment in aid of execution by making the blocked assets of that terrorist state, including the blocked assets of any of its agencies or instrumentalities,

available for attachment and/or execution of a judgment issued against that terrorist state. Thus, for purposes of enforcing a judgment against a terrorist state, title II does not recognize any juridical distinction between a terrorist state and its agencies or instrumentalities.

148 Cong. Rec. S11524, at S11528 (Nov. 19, 2002) (statement of Sen. Harkin). Senator Harkin further stated that TRIA "establishes once and for all, that such judgments are to be enforced against any assets available in the U.S., and that the executive branch has no statutory authority to defeat such enforcement under standard judicial processes, except as expressly provided in this act." Id.

Accordingly, we find it clear beyond cavil that Section 201(a) of the TRIA provides courts with subject matter jurisdiction over post-judgment execution and attachment proceedings against property held in the hands of an instrumentality of the judgment-debtor, even if the instrumentality is not itself named in the judgment.

B. CONSTITUTIONALITY OF TRIA

The underlying judgment which plaintiff seeks to satisfy was obtained in February 2002, but the TRIA was not enacted until November 2002 and Bank Melli was not designated a "proliferat[or] of weapons of mass destruction" until 2007. In another argument raised for the first time on appeal, Bank Melli argues that the

TRIA, as here applied, is unconstitutional because it "mandates the reopening of a final judgment in violation of the separation of powers doctrine of Article III of the U.S. Constitution." Thus, to avoid any constitutional problem, Bank Melli urges this Court to read the TRIA as applying, prospectively, only to judgments rendered final after the TRIA's enactment, and thus not to apply here.

Although plaintiff contends, with some force, that the constitutional challenge has been waived for failure to raise it below, a claim that a legislative enactment intrudes on the courts' powers is the kind of claim that appropriately may be considered here, even if for the first time. See, e.g., Freytag v. Comm'r, 501 U.S. 868, 879 (1991) (rejecting waiver and addressing constitutional challenge because of "the strong interest of the federal judiciary in maintaining the constitutional plan of separation of powers") (internal quotation marks omitted).

Bank Melli's constitutional challenge is largely derived from Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995), in which the Supreme Court held that a section of the Securities Exchange Act of 1934 violated separation of powers because it required federal courts retroactively to reopen final money judgments that had been dismissed as barred under the statute of limitations. See id. at 219. "[R]etroactive legislation [that]

requires its own application in a case already finally adjudicated . . . does no more and no less than 'reverse a determination once made, in a particular case' [and thus] exceeds the powers of Congress." Id. at 225 (quoting The Federalist No. 81, at 545 (J. Cooke, ed., 1961)).

Here, however, no such revision of the 2002 judgment is effectuated by the attachment of Bank Melli's property pursuant to the TRIA. Indeed, the judgment itself is unaffected. What the TRIA did, instead, was to override the Supreme Court's reading in First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611, 627-28 (1983) ("Bancec"), that "duly created instrumentalities of a foreign state are to be accorded a presumption of independent status." Id. at 627. This presumption related to enforceability of judgments against state instrumentalities, but it had not nothing to do with the rendering of the judgment itself. Moreover, even under Bancec, the presumption could be overcome. Id. at 629. The effect of the TRIA, therefore, was simply to render a judgment more readily enforceable against a related third party. The judgment itself was in no way tampered with, and separation of powers was thus in no way offended.[6]

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[6] It should be noted that Hazi seeks attachment of property in partial satisfaction only of the portion of the underlying judgment that awarded compensatory damages in her favor. See Rein v. Socialist People's Libyan Arab Jamahiriya, 162 F.3d 748, 762 (2d Cir. 1998) ("Where a retroactive law is civil rather than

Bank Melli also argues that the delegation of authority to the Treasury Department to determine which entities' assets would be "blocked" is, as applied here, tantamount to an unconstitutional vesting of "review of the decisions of Article III courts in officials of the Executive Branch." Plaut, 514 U.S. at 218; see Hayburn's Case, 2 U.S. (2 Dall.) 409 (1792). Here, however, it is clear that no official from the Executive Branch stands in direct review of the district court's decision regarding execution and attachment of assets pursuant to the TRIA. OFAC simply made a factual determination that Bank Melli was a proliferator of weapons of mass destruction, pursuant to which Bank Melli's assets were "blocked." In so doing, OFAC did not in any way review or alter the district court's original entry of the default judgment.

Nor does the district court's reliance on OFAC's determination for its exercise of subject matter jurisdiction run afoul of separation of powers. In Jones v. United States, 137 U.S. 202 (1890), the Supreme Court held that the district court had subject matter jurisdiction over a murder trial where the crime occurred on an island that the State Department had deemed

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criminal, it is only the imposition of punitive damages that might, in particular circumstances, raise a constitutional problem."). Of the total judgment of approximately $183,200,000, approximately $33,200,000 was compensatory damages, of which $5,000,000 was allocated to Hazi. Weinstein, 184 F. Supp. 2d at 22-25.

was "appertaining to the United States." Id. at 224. In that case, the exercise of subject matter jurisdiction based on an Executive Branch determination did not exceed the bounds of Article III. Similarly, in Matimak Trading Co. v. Khalily, 118 F.3d 76, 83-84 (2d Cir. 1997), overruled in part on other grounds by JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd., 536 U.S. 88 (2002), this Court found that alienage jurisdiction could depend on whether the Executive Branch had deemed a given foreign entity a "state," and because the foreign entity in question had not been recognized as a "state," jurisdiction was deemed lacking.

It is true that, in Rein, 162 F.3d at 763, this Court, in dicta, raised the question of whether after the passage of the FSIA, designation of a foreign state as a sponsor of terrorism by a branch other than Congress raised a potential issue of separation of powers. Specifically, in Rein, we rejected Libya's argument that the State Department's designation of Libya as a state sponsor of terrorism violated separation of powers, since Libya had already been designated as such when section 1605(a)(7) was added to the FSIA; but we queried whether a different "issue of delegation might be presented if another foreign sovereign -- one not identified as a state sponsor of terrorism when § 1605(a)(7) was passed -- was placed on the relevant list by the State Department and, on being sued in federal court, interposed

the defense that Libya now raises." 162 F.3d at 764; see also Miller v. FCC, 66 F.3d 1140, 1144 (11th Cir. 1995) (noting that Congress cannot delegate the power of any federal agency to "oust state courts and federal district courts of subject matter jurisdiction"); United States v. Mitchell, 18 F.3d 1355, 1360 n.7 (7th Cir. 1994) (raising doubts about whether Congress could delegate its control over federal court jurisdiction to any agency or commission).

In effect, Bank Melli now raises, albeit obliquely, the kind of issue left unaddressed in Rein. Like Libya, Iran was already deemed a state sponsor of terrorism when the relevant provision of the FSIA was applied to abrogate foreign sovereign immunity in the district court. However, here, the district court's jurisdiction over a proceeding to attach Bank Melli's assets depended, at least in part, on OFAC's subsequent determination that Bank Melli was a proliferator of weapons of mass destruction. Reaching only the instant variation on the issue alluded to in the dicta in Rein, we hold that Congress, by virtue of providing subject matter jurisdiction over execution and attachment proceedings based in part on OFAC's determination of what assets are blocked, has not unconstitutionally delegated its authority to the Executive Branch.

The TRIA provides jurisdiction for execution and attachment proceedings to satisfy a judgment for which there was original

jurisdiction under the FSIA (which is not challenged here) if certain statutory elements are satisfied. The fact that satisfaction of one of those statutory elements -- that Bank Melli's assets were blocked -- was based on the factual determination by a coordinate branch that Bank Melli supported terrorist activity is not, on its own, a delegation of Congress's authority over the courts' subject matter jurisdiction that exceeds the boundaries of Article III. The TRIA only delegates to the Executive the authority to make a factual finding upon which jurisdiction turns in part. See, e.g., Owens v. Rep. of the Sudan, 531 F.3d 884, 891 (D.C. Cir. 2008) (rejecting Sudan's argument that the FSIA unconstitutionally delegated subject matter jurisdiction to Executive Branch because the FSIA only granted "authority to make a factfinding upon which jurisdiction partially rests"). That factfinding, moreover, is one peculiarly within the expertise of the Executive, a fact Congress itself implicitly recognized in creating the TRIA.

In short, none of Bank Melli's belatedly-raised constitutional arguments persuades the Court that there has been any defect in the application of the TRIA in this case.

C. TRIA & TREATY OF AMITY

We next turn to the arguments that Bank Melli did raise in the district court, the first of which concerns the Treaty of Amity (the "Treaty") that the United States and Iran (then

governed by the Shah) signed in 1955, which took effect in 1957 and still remains in place. Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, Aug. 15, 1955, 8 U.S.T. 899. Article III.1 of the Treaty provides that "[c]ompanies constituted under the applicable laws of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party." Id., art. III.1. Article IV.2 adds that "[p]roperty of nationals and companies of either High Contracting Party, including interest in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law." Id., art. IV.2.

Bank Melli asserts that these provisions, read together, require that Iranian companies be treated as distinct and independent entities from their sovereign. But this is not correct. As the district court noted, the key provision, Article III.1., is "substantively identical" to a provision in a number of Friendship, Commerce, and Navigation ("FCN") treaties negotiated by the U.S. following World War II. In Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176 (1982), the Supreme Court held that these provisions are designed, not to give separate juridical status to instrumentalities of the sovereign entity, but simply "to give corporations of each signatory legal

status in the territory of the other party, and to allow them to conduct business in the other country on a comparable basis with domestic firms." Id. at 185-86.

Bank Melli argues that Sumitomo only addressed the language in the provision of the U.S.-Japan FCN Treaty that a company "constituted under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof," but did not address the rest of the provision, "and shall have their juridical status recognized within the territories of the other Party." While it is true that the Court focused its analysis on the phrase "shall be deemed companies thereof," it went on to explain that the intent behind the FCN treaties as a whole was simply to grant legal status to corporations of each of the signatory countries in the territory of the other, thus putting the foreign corporations on equal footing with domestic corporations. 457 U.S. at 185-86. There is, therefore, no conflict between the TRIA and the Treaty.

Moreover, even assuming, arguendo, that there were a conflict between the two, the TRIA would have to be read to abrogate that portion of the Treaty. Although a "'treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed,'" Trans World Airlines, Inc. v. Franklin Mint Corp., 466 U.S. 243, 252 (1984) (quoting Cook v. United States,

288 U.S. 102, 120 (1933)), Section 201(a) of the TRIA expressly states that it permits attachment of the assets of a foreign sovereign's instrumentalities in satisfaction of a terrorism-related judgment against the foreign sovereign "[n]otwithstanding any other provision of law" (emphasis supplied). See Cisneros v. Alpine Ridge Group, 508 U.S. 10, 18 (1993) (noting that the Courts of Appeals have regularly interpreted such "notwithstanding" provisions "to supersede all other laws"); see also Ministry of Defense and Support for the Armed Forces of the Islamic Rep. of Iran v. Elahi, 129 S. Ct. 1732 (2009); Hill v. Rep. of Iraq, No. 99 CV 03346TP, 2003 WL 21057173, at *2, 2003 U.S. Dist. LEXIS 3725, at *10-11 (D.D.C. Mar. 11, 2003) (holding that the "notwithstanding provision" is "unambiguous and effectively supersedes all previous laws").

D. TAKINGS CLAUSE

In the next of the arguments raised below, Bank Melli argues that the attachment here in issue constitutes a per se taking of physical property, not for a public purpose and without just compensation, and therefore offends the Takings Clause of the Fifth Amendment of the U.S. Constitution, as well as Article IV.2 of the Treaty of Amity. See U.S. Const., amend V ("nor shall private property be taken for public use, without just compensation"); Treaty, art. IV.2 (property of Iranian companies

"shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation").

The argument is without merit. Bank Melli was added to the OFAC list because of its unlawful actions in support of terrorism. In so doing, it had clear notice from the TRIA, enacted five years earlier, that such actions could result in the designation and blocking of its assets under the TRIA, which could in turn subject them to attachment. See Paradissiotis v. United States, 304 F.3d 1271, 1275-76 (Fed. Cir. 2002) (rejecting a takings clause claim that OFAC's freezing of the plaintiff's stock options, which eventually became valueless, constituted a taking without just compensation); see also Branch v. United States, 69 F.3d 1571, 1576 (Fed. Cir. 1995) (noting that seizure of assets to offset tax liability or pay a civil penalty would not constitute a taking).

Here, where the underlying judgment against Iran has not been challenged, seizure of Bank Melli's property, as an instrumentality of Iran, in satisfaction of that liability does not constitute a "taking" under the Takings Clause. See Branch, 69 F.3d at 1577 (noting absence of "any principle of takings law under which an imposition of liability is deemed a per se taking as to any party that cannot pay it"). Instead, Bank Melli's own conduct as a funder of weapons of mass destruction opened it to liability for judgments already entered against Iran. See, e.g.,

Meriden Trust and Safe Deposit Co. v. FDIC, 62 F.3d 449, 455 (2d Cir. 1995) (citing cases holding that deprivation of property resulting from voluntary conduct cannot constitute a "taking").

As the Supreme Court has noted, the Takings Clause is designed "to prevent the government 'from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" E. Enters. v. Apfel, 524 U.S. 498, 522 (1998) (quoting Armstrong v. United States, 364 U.S. 40, 49 (1960)). Here, where Bank Melli's assets are subject to attachment to satisfy a judgment against its foreign sovereign, the underlying purpose of the Takings Clause is in no way violated by attachment of Bank Melli's assets.

Finally, Bank Melli does not advance any argument to find that the Takings Clause in the Treaty of Amity would require a different analysis. Cf. Kahn Lucas Lancaster v. Lark Int'l, 186 F.3d 210, 215 (2d Cir. 1999) (treaties are construed in much the same manner as statutes and district court interpretations are subject to de novo review).

E. ALGIERS ACCORDS

In the last of the arguments it raised below, Bank Melli argues that the attachment here in issue violates the so-called Algiers Accords (the "Accords"). In 1980, the United States and Iran, under the auspices of the Government of Algeria, entered into the Accords to settle a number of a disputes between the two

countries, in particular, matters arising out of the hostage crisis that occurred on November 4, 1979 in Tehran in which the Iranian Government seized the U.S. Embassy and held captive 52 U.S. citizens.[7] Previously, in response to the hostage crisis, President Carter had issued Executive Order 12,170, which "blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States . . . ." Exec. Order 12,170, 44 Fed. Reg. 65,729 (Nov. 14, 1979). As part of the Accords, the United States agreed to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979," and to "commit[] itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction." 20 I.L.M. at 224. The United States also agreed, subject to some exceptions to "arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran

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[7] The Accords are comprised primarily of two documents: the Declaration of the Government of the Democratic and Popular Republic of Algeria (Jan. 19, 1981), and The Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Jan. 19, 1981), reprinted in 20 I.L.M. 223 (1981); 81 Dep't of State Bull. No. 2047, Feb. 1981 at 1. See Iran Aircraft Industries v. Avco Corp., 980 F.2d 141, 143 (2d Cir. 1992).

of all Iranian properties which are located in the United States and abroad." Id. at 227.

Bank Melli argues that, because the obligations of the United States under the Accords are ongoing, and the Forest Hills property at issue was owned by Bank Melli prior to November 14, 1979 (making it a blocked asset under Executive Order 12,170) the property is subject to these ongoing Accords and therefore the subsequent "blocking" of the asset under Executive Order 13,382 violated the Accords.

This argument confuses the United States's obligation to unblock assets that had been blocked based on pre-Accords violations with post-Accords blocking based on post-Accords violations. As the district court noted in an earlier decision, after the United States and Iran entered into the Accords most Iranian assets were automatically unblocked. See Weinstein, 299 F. Supp. 2d at 67-68. Since the Forest Hills property was no longer blocked after the Accords, Bank Melli was entitled to exercise any and all rights of ownership, including sale of the property, until it was subsequently blocked on October 25, 2007. Although Bank Melli argues that no specific expiration date was given in the Accords, and therefore the obligations of the U.S. are ongoing, nothing in the Accords suggests that the United States is precluded from blocking Iranian assets based on subsequent events unrelated to the hostage crisis. Indeed, the

United States has implemented several sanctions programs against Iran, subsequent to the Accords, that have had the effect of limiting the mobility of Iranian property. See, e.g., Executive Order 12,613, 52 Fed. Reg. 41940 (Oct. 29, 1987) (prohibiting, pursuant to 3 U.S.C. § 301 and Section 505 of the International Security and Development Cooperation Act of 1985, 22 U.S.C. § 2349aa-9, certain Iranian imports); see also Weinstein, 299 F. Supp. 2d at 68 (providing overview of executive orders imposing sanctions that affected property controlled or owned by Iran).

Nor is Roeder v. Islamic Rep. of Iran, 333 F.3d 228 (D.C. Cir. 2003), upon which Bank Melli heavily relies, to the contrary. In Roeder, the D.C. Circuit found that, despite a Congressional amendment to the FSIA specifically intended to abrogate Iran's sovereign immunity for that particular case, plaintiff's action was still nevertheless barred because it was based on the events of the November 4, 1979 hostage crisis and the Accords "bar[red] and preclude[d] the prosecution against Iran of any pending or future claim of . . . a United States national arising out of the events" of the seizure and detention of the 52 U.S. citizens. Id. at 236 (internal quotation marks omitted). It concluded that the specific amendment to the FSIA in no way addressed the Accords and, given the express statement in the Accords barring such actions, refused to interpret the amendment to the FSIA, despite its being passed specifically to

permit plaintiffs to go forward with their case, as abrogating or modifying that agreement without an express statement from Congress to that effect. Id. at 237-38. While the Accords prevent suits arising out the hostage crisis, the language regarding Iranian assets in no way suggests that Iranian assets would be immunized from blocking for all time. The blocking of assets undertaken by President Carter in his Executive Order was done in response to the particular events of November 1979, and the Accords unblocked those assets. Since nothing in the Accords suggests that the United States has a limitless obligation to ensure that Iranian assets remain free from attachment based on events unrelated to the 1979 hostage crisis, Bank Melli's arguments that blocking its assets and subsequent attachment of those assets would violate the Accords are simply unavailing.

CONCLUSION

The Court has considered Bank Melli's other arguments and finds them without merit. Accordingly, for the foregoing reasons, the Court affirms the district court's decision to grant plaintiff's motion and appoint a receiver to attach Bank Melli's property in partial satisfaction of the judgment against Iran and to deny Bank Melli's motion to dismiss.

Annex 48

***Levin et al. v. Bank of New York et al.*, U.S. District Court, Southern District of New York, 28 January 2011, 2011 WL 337358 (S.D.N.Y. 2011)**

Excerpts: p. 1 and pp. 37-38

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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MR. JEREMY LEVIN and DR. LUCILLE LEVIN,

Plaintiffs

- against -

BANK OF NEW YORK, JP MORGAN CHASE, SOCIÉTÉ GÉNÉRALE and CITIBANK,

Defendants.

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BANK OF NEW YORK MELLON, JP MORGAN CHASE, SOCIÉTÉ GÉNÉRALE and CITIBANK,

Third-Party Plaintiffs

- against -

STEVEN M. GREENBAUM, et al.

Third-Party Defendants.

----------X

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OPINION AND ORDER

or instrumentality." Weininger, 462 F.Supp. 2d at 498. In support of this finding, Dr. Clawson cites the OFAC-SDN List, as well as a Treasury Department Press Release [redacted] available [redacted]. (Clawson Aff. at ¶ 22.)

The third account is held in the name of [redacted] Dr. Clawson states that it is common knowledge and is his expert opinion that [redacted] is wholly owned by the Islamic Republic of Iran. (Clawson Aff. at ¶ 23.) In support of this statement, Dr. Clawson cites the OFAC-SDN list as well as several Iranian sources. [redacted] has been specifically designated in Executive Order 13882 in October 2007 as a supporter of the proliferation of Weapons of Mass Destruction on behalf of the government of Iran.

In light of this Court's finding that TRIA subjects all of these Blocked Assets to attachment, and that the record demonstrates that the judgment creditor, Iran, or its agencies or instrumentalities have an interest in these assets, the deposit accounts held in the names of [redacted] at Citibank are subject to attachment.

It has been demonstrated that there is no triable issue of fact as to the Greenbaum and Acosta Judgment Creditors' entitlement to turnover of the Phase One Assets held at Citibank and JP Morgan, they are awarded such judgment as a matter of law. Citibank and JP Morgan are ordered to turnover the above identified assets of [redacted] to the Greenbaum and Acosta creditors in partial satisfaction of their judgment, and are hereby released from claims as to those assets asserted by other parties.

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CONCLUSION

Due to their failure to obtain a court order under 28 U.S.C. § 1610(c) prior to serving the writs of execution on the New York Banks, the Levins writs are invalid. In addition, the Heisers' writ is not capable of attaching the Bank of New York assets located in New York state because it was issued by a Maryland court and served on the Bank of New York in Maryland. The Greenbaum and Acosta Judgment Creditors have established that there is no issue of material fact that they hold a priority interest in the Phase One Assets which they have attached at Citibank and JP Morgan, and these assets are subject to attachment. The Greenbaum and Acosta Judgment Creditors are entitled as a matter of law to a grant of partial summary judgment as to these assets.

IT IS SO ORDERED.

Dated: New York, New York
January 28, 2011

Robert P. Patterson, Jr.
U.S.D.J.

Annex 49

***Beer et al. v. Islamic Republic of Iran, et al.*, U.S. District Court, District of Columbia, 19 May 2011, 789 F.Supp.2d 14, (D.D.C. 2011)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HARRY BEER, *et al.*,	)	
Plaintiffs,	)	
v.	)	08-cv-1807 (RCL)
ISLAMIC REPUBLIC OF IRAN, *et al.*,	)	
Defendants.	)	

MEMORANDUM OPINION

I. INTRODUCTION AND BACKGROUND

This action arises out of the June 11, 2003 suicide bombing of a bus in Jerusalem, Israel by members of the terrorist organization Hamas.[1] The attack killed 17 individuals, including Alan Beer, a United States citizen living in Israel at the time. Plaintiffs, who include Mr. Beer's estate, his mother and his siblings, brought suit under the state-sponsored terrorism exception to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605A, alleging that defendants Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS") provided financial and material support to Hamas, and are thus liable for the death of Mr. Beer. They seek $150 million in compensatory damages and $300 million in punitive damages. Complaint 8, Oct. 17, 2008 [3]. The Court has already determined that defendants are "liable for the death of Alan Beer, which resulted from the tragic suicide bombing of Egged bus 14A in Jerusalem on June 11, 2003." *Beer v. Islamic Republic of Iran*, ___ F. Supp. 2d __, __, No. 08 Civ. 1807, 2010 U.S. Dist. LEXIS 129953, at * 43 (D.D.C. Dec. 9, 2010) ("*Beer II*").

[1] References to "Hamas" are to "Harakat al-Muqawama al-Islamiyya, the jihadist Palestinian militia" generally known by that name. *Sisso v. Islamic Republic of Iran*, 448 F. Supp. 2d 76, 79 (D.D.C. 2006).

This is not the first action brought by plaintiffs against these defendants. In *Beer v. Islamic Republic of Iran*, 574 F. Supp. 2d 1 (D.D.C. 2008) ("*Beer I*"), these same plaintiffs successfully pursued claims against Iran and MOIS under the former state-sponsored terrorism exception, which was codified at 28 U.S.C. § 1605(a)(7). In that case, this Court held that defendants were liable under state-law theories of wrongful death, infliction of conscious pain and suffering, and intentional infliction of emotional distress. *Beer I*, 574 F. Supp. 2d at 11–12. The *Beer I* Court awarded plaintiffs compensatory damages totaling $13 million, *id.* at 13–14, and denied plaintiffs' request for a punitive award. *Id.* at 14.[2]

Because plaintiffs previously received compensatory damages, this Court has already rejected plaintiffs' request for such an award in this case, holding that

> [p]laintiffs who obtained compensatory damages from a suit brought pursuant to former § 1605(a)(7)—including those before the Court in this case—may not obtain additional compensatory relief as a remedy to the federal cause of action in § 1605A where that subsequent suit arises out of the same terrorist act.

Beer II, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *43–46. However, punitive damages are available under the current state-sponsored terrorism exception, 28 U.S.C. § 1605A(c), and thus plaintiffs may recover such damages here.[3] Though a procedure for the calculation of punitive damages is well-established in FSIA jurisprudence, the Court in *Beer II* expressed, for the first time, concern as to whether this traditional method remains appropriate in light of recent Supreme Court decisions calling for increased restraint and heightened review of punitive damages. ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *46–53. After articulating these concerns, the *Beer II* Court announced that it would "await[] plaintiffs' view as

[2] Under the prior state-sponsored terrorism exception, "punitive damages were not available against foreign states." *Beer I*, 574 F. Supp. 2d at 14.

[3] Principles of finality would normally bar a second suit against defendants for the same events. However, when Congress passed the current state-sponsored terrorism exception it also created a provision that permits plaintiffs with existing suits to bring subsequent actions under the new exception. *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 65 (D.D.C. 2009).

to the appropriate punitive measures" in this case. *Id.* In response, plaintiffs submitted a brief in which they argue that "the amount of punitive damages requested . . . passes Constitutional muster," because defendants' conduct was "without a doubt highly reprehensible." Memorandum Regarding Punitive Damages 4, Jan. 10, 2011 [28] ("Ps.' Br."). Plaintiffs also emphasize that their request "is based on a specific methodology formulated by an expert . . . and adopted by this Court" that is "carefully designed to deter Iran from future misconduct." *Id.* at 5. For the reasons set forth below, the Court holds that the long-standing method for calculating punitive damages in terrorism-related suits under the FSIA should continue to govern suits under § 1605A, and awards punitive damages as appropriate under that framework.

II. LEGAL STANDARD

A. The Standard Method for Calculating Punitive Damages in FSIA Cases

When Congress passed the FSIA, it was clear that the state-sponsored terrorism exception rendered foreign states subject to suit in the United States for acts of terrorism. However, the original Act left several questions, including what sorts of damages were available to plaintiffs, unanswered. *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 43 (D.D.C. 2009) ("*In re Terrorism Litig.*"). In an effort to resolve these issues, Congress enacted Pub. L. 104-208, § 589, 110, 110 Stat. 3009-1, 3007-172 (1996) (codified at § 1605 note), which is commonly known as the "Flatow Amendment." This provision, among other things, specified that "money damages [in FSIA suits] may include economic damages, solatium, pain, and suffering, and *punitive damages*," *id.* (emphasis added), and thus provided the basis for the earliest judgments awarding punitive damages under the FSIA.

In *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1 (D.D.C. 1998), this Court issued the first opinion finding Iran liable under the state-sponsored terrorism exception. *In re Terrorism*

Litig., 659 F. Supp. 2d at 44. That opinion included a substantial discussion on the best method for calculating punitive damages in state-sponsored terrorism cases. *See generally Flatow*, 999 F. Supp. at 32–34. Relying on "traditional principles of tort law and analogous opinions under the Alien Tort Claims Act . . . and the Torture Victim Protection Act . . . for guidance," *id.* at 32, this Court identified four factors relevant to the assessment of punitive damages: "(1) the nature of the [defendant's] act . . .; (2) the circumstances of its planning; (3) defendants' economic status with regard to the ability of defendants to pay; and (4) the basis upon which a court might determine the amount of an award reasonably sufficient to deter like conduct in the future." *Id.* at 33. The Court also received testimony from Dr. Patrick Clawson, a well-known expert on international terrorism and Iranian affairs,[4] who explained that Iran's annual expenditures on international terrorism were approximately $75 million and opined that "a factor of three times [Iran's] annual expenditure for terrorist activities would be the minimum amount which would affect the conduct of . . . Iran." *Id.* at 34. Drawing from the four-factor test and Dr. Clawson's expert testimony, the *Flatow* Court adopted a process for calculating punitive damages in which a FSIA court multiplies a defendant's financial support for international terrorism (then $75 million) by a pre-determined multiplier (generally between 3 and 5) (the "*Flatow* Method"). *Id.* This Court explained that the resulting award—$225 million in *Flatow*—best serves the societal interests in punishment and deterrence that warrant imposition of punitive sanctions. *Id.*

While a number of FSIA courts subsequently assessed punitive damages using the *Flatow* Method, such awards were brought to a screeching halt by the D.C. Circuit in *Cicippio-Puleo v. Islamic Republic of Iran*, in which it held that "neither section 1605(a)(7) nor the Flatow Amendment, separately or together, establishes a cause of action against foreign state sponsors

[4] *See Beer II*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *4 (collecting cases in which Dr. Clawson is described as "an expert on Iranian affairs and international terrorism").

of terrorism." 353 F.3d 1024, 1027 (D.C. Cir. 2004). The *Cicippio-Puleo* decision thus reduced the prior state-sponsored terrorism exception to a jurisdictional "pass-through" and forced future plaintiffs to look to other sources of law—primarily state tort law—to identify legal bases for their suits. *See, e.g.*, *Rimkus v. Islamic Republic of Iran*, 575 F. Supp. 2d 181, 197–98 (D.D.C. 2008) (awarding damages for intentional infliction of emotional distress under Missouri law) ("*Rimkus I*"); *Beer I*, 574 F. Supp. 2d at 11–14 (awarding damages for wrongful death and conscious pain and suffering under Ohio law); *Haim v. Islamic Republic of Iran*, 425 F. Supp. 2d 56, 69–75 (D.D.C. 2006) (awarding damages for assault and battery under D.C. law). "Another consequence of the *Cicippio-Puleo* decision was that the Flatow Amendment could not serve as an independent basis for punitive damage awards" against foreign states. *In re Terrorism Litig.*, 659 F. Supp. 2d at 48. Thus, while courts continued to award substantial compensatory relief to plaintiffs, they had to repeatedly deny those plaintiffs' requests for punitive damages. *See, e.g.*, *Rimkus I*, 575 F. Supp. 2d at 198 ("As a general rule, punitive damages are not available against foreign states."); *Beer I*, 574 F. Supp. 2d at 14 (holding punitive damages unavailable under § 1605(a)(7)); *Haim*, 425 F. Supp. 2d at 71 (same).

In early 2008, Congress moved to reverse this trend through amendments to the FSIA enacted as part of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083, 122 Stat. 3. 338–44 (2008) ("NDAA"). These Amendments struck § 1605(a)(7) and replaced it with the current state-sponsored terrorism exception, which is codified at 28 U.S.C. § 1605A. Among numerous changes to the law, § 1605A now "provides for the recovery of punitive damages in suits based on acts of terrorism." *Rimkus v. Islamic Republic of Iran*, 750 F. Supp. 2d 163, 167 (D.D.C. 2010) (citing 28 U.S.C. § 1605A(c)). Over the past three years, FSIA courts have resumed awarding punitive damages pursuant to this statute—a trend aided by

the NDAA's provision for retroactive application of § 1605A. *See* NDAA § 1083(c)(2)–(3) (permitting retroactive application of § 1605A to cases concluded under prior exception).

In awarding damages following passage of the NDAA, courts have generally identified the *Flatow* Method as the procedure that best serves the retribution and deterrence interests that Congress sought to promote in enacting the 2008 Amendments. *See In re Terrorism Litig.*, 659 F. Supp. 2d at 61 (holding that, post-NDAA, courts "reaffirm[] the principles first articulated in *Flatow* with respect to awards of punitive damages" under FSIA). Just as it was prior to *Cicippio-Puleo*, current judicial assessments of punitive damages in state-sponsored terrorism cases involve two figures: the amount that a foreign state annually provides in support of terrorist activities, known as the multiplicand, and the multiplier that FSIA courts deem necessary to deter future conduct. As seen in one recent case: "[T]he Court chooses to take the mean of the range's two extremes ($50 million and $150 million) and multiply it ($100 million) by three. The result, as an award of $300 million, appears fitting." *Heiser v. Islamic Republic of Iran*, 659 F. Supp. 2d 20, 30 (D.D.C. 2009) ("*Heiser II*"); *see also, e.g.*, *Brewer v. Islamic Republic of Iran*, 664 F. Supp. 2d 43, 58–59 (D.D.C. 2009) (multiplying $100 million times 3 to award $300 million in punitive damages). Thus, today the *Flatow* Method is "well settled case law on the methodology by which punitive-damage awards in FSIA cases are calculated." *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 90 (D.D.C. 2010).

B. Recent Supreme Court Jurisprudence on Punitive Damages

Outside the limited arena covered by federal statutes, development of the law of punitive damages has historically been left to the States, whose legislatures and courts have passed laws and developed principles concerning such sanctions. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568 (1998) ("States necessarily have considerable flexibility in determining the level of

punitive damages that they will allow in different classes of cases and in any particular case.") ("*Gore*"). Recently, however, the Supreme Court has begun to scrutinize punitive awards with increasing intensity, and has articulated several principles derived from both the Due Process Clause—which forbids awards that are "grossly excessive," *id.*—and general notions of fairness. As the *Gore* Court explained: "Elementary notions of fairness . . . dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also the severity of the penalty that" may be imposed. *Id.* at 574. The Supreme Court has identified three "guideposts" for analyzing whether these basic requirements are met: (1) "the degree of reprehensibility of the" defendant's act; (2) "the disparity between the harm or potential harm suffered . . . and [the] punitive award;" and (3) the difference between the punitive award and "the civil penalties authorized or imposed in comparable cases." *Id.* at 574–75.

The concerns expressed in *Gore* are not merely problems of a constitutional dimension, however, as the Supreme Court recently made clear in *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008). That case presented the Court with a challenge to a punitive award that "differ[ed] from due process review because the case ar[ose] under federal maritime jurisdiction." *Id.* at 501. As the *Exxon* Court explained, the objections to the purportedly excessive punitive damage awards in that case "go[] to our understanding of the place of punishment in modern civil law and reasonable standards of process in administering punitive law." *Id.* at 490. In response, the Supreme Court imported into the field of maritime law many of the principles concerning punitive damages that it originally developed as matters of Due Process. *See generally id.* at 508–13. Together with its Due Process formulations, the Supreme Court's recent jurisprudence has produced a method for evaluating punitive damage awards in which reviewing courts examine the ratio between punitive damages and compensatory damages to determine whether

the sanctions are improperly excessive or arbitrary. *Beer II*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *47–48.

C. The *Flatow* Method in Light of Recent Jurisprudence

As the foregoing discussion highlights, an examination of the continuing viability of the established process for calculating punitive damages first set forth in *Flatow* requires the Court to confront two issues: whether the bases for the Supreme Court's decisions are applicable in FSIA suits and, if so, whether the *Flatow* Method complies with the constraints implemented by this recent jurisprudence. This first issue in turn raises two distinct questions. First, do the limitations on punitive damage awards articulated by the Supreme Court under the Due Process Clause of the Fourteenth Amendment apply with equal force in this context? Second, does the extension of these constraints to general maritime law by the *Exxon* Court necessitate further extension of these same principles to FSIA suits? For the reasons set forth below, the Court answers both questions in the negative and holds that recent Supreme Court decisions play no role in terrorism-related FSIA suits. The Court thus concludes that the *Flatow* Method remains controlling in actions brought pursuant to the state-sponsored terrorism exception.[5]

1. Defendants in FSIA State-Sponsored Terrorism Cases May Not Rely Upon Principles of Due Process to Shield Themselves from Punitive Damage Awards

With the exception of *Exxon*, which is discussed *infra*, the Supreme Court's recent jurisprudence concerning punitive damages finds its genesis in individual liberty interests inherent to notions of Due Process embodied in the Constitution. In *Gore*—the case in which the Supreme Court first elevated the review of state court punitive damage awards to a constitutional dimension—the opinion begins with one fundamental tenet: "The Due Process Clause of the

[5] Because the Court concludes that the Supreme Court's punitive damage jurisprudence has no effect on the procedures employed by the FSIA courts, it does not reach the issue of whether the *Flatow* Method itself would comply with the principles articulated in those recent decisions.

Fourteenth Amendment prohibits a State from imposing a 'grossly excessive' punishment on a tortfeasor." 517 U.S. at 562. From this central principle, the Court derives its three guideposts for the review of punitive damage awards. *Id.* at 574–86. In this same vein, several punitive damage principles the Supreme Court has subsequently articulated—including its concerns with excessive or arbitrary awards, *see State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003) ("The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor."), its focus on the importance of damage ratios to the proper evaluation of punitive damage awards, *see id.* at 425 ("[F]ew awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process."), and its concern with the adjudication of harm to non-parties through the imposition of excessive penalties in a single case, *see Philip Morris USA v. Williams*, 549 U.S. 346, 353 (2007) ("[T]he Constitution's Due Process Clause forbids a State to use a punitive damage award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, *i.e.*, injury that it inflicts upon those who are, essentially, strangers to the litigation.")—are all explicitly drawn from the Due Process Clause.

These constitutional concerns, however, are inapplicable here. As an initial matter, FSIA litigation arises under a federal statute and does not involve the exercise of State authority against the defendant; as a result, the Fourteenth Amendment—upon which the Supreme Court's recent line of decisions all rely—is not implicated here. *See SEC v. Lines Overseas Mgmt., Ltd.*, No. 04 Misc. 302, 2007 U.S. Dist. LEXIS 11753, at *8 (D.D.C. Feb. 21, 2007) ("'It is well established that when, as here, a federal statute provides the basis for jurisdiction, the constitutional limits of due process derive from the Fifth, rather than the Fourteenth, Amendment.'") (quoting *Rep. of Panama v. BCCI Holdings*, 119 F.3d 935, 942 (11th Cir.

1997)). This is not the end of the matter, however, as suits—such as this one—brought pursuant to the federal statute remain subject to the Fifth Amendment's Due Process Clause, *id.*, and it is generally accepted that the same prohibitions against grossly excessive punitive damage awards articulated by the Supreme Court under the Fourteenth Amendment operate with equal force under the Fifth. *See, e.g.*, *Kunz v. DeFelice*, 538 F.3d 667, 678–79 (7th Cir. 2008) (applying *Gore* guideposts to punitive damage award under § 1983).

Though the Fifth Amendment supplies equal limitations on punitive damages in cases brought under federal statutes, defendants here, as foreign sovereigns, cannot use these constitutional constraints to shield themselves. In *Price v. Socialist People's Libyan Arab Jamahiriya*, the D.C. Circuit squarely held that "foreign states are not 'persons' protected by the Fifth Amendment," and thus cannot assert protections afforded to U.S. citizens by the Due Process Clause. 294 F.3d 82, 96 (D.C. Cir. 2002). In that opinion, the Circuit Court articulated several justifications in support of this conclusion. First, as a simple matter as statutory interpretation, the *Price* Court observed that "in common usage, the term 'person' does not include the sovereign, and statutes employing the word are ordinarily construed to exclude it." *Id.* Second, the D.C. Circuit stressed the incongruence that would arise if courts were to extend basic Due Process protections to foreign sovereigns when the States of the Union themselves are forbidden from asserting such rights under the Fifth Amendment. *Id.* It also reasoned that because the Constitution explicitly places limits upon the power that the States can exert against the federal government, were it to extend Due Process protections to foreign states it would be granting powers to sovereign entities that go beyond those possessed by the States. *Id.* at 97. Finally, the D.C. Circuit explained that "[r]elations between nations in the international community are seldom governed by the domestic law of one state or the other," noting that

"legal disputes between the United States and foreign governments are not mediated through the Constitution." *Id.* For all these reasons, the Circuit Court concluded that foreign state defendants in terrorism-related suits under the FSIA may not raise objections grounded in the Due Process Clause of the Fifth Amendment.

Though *Price* addressed foreign states and not other foreign entities, *see* 294 F.3d at 99–100 ("We express no view as to whether other entities that fall within the FSIA's definition of 'foreign state' . . . could yet be considered persons under the Due Process Clause."), the D.C. Circuit returned to the issue in *TMR Energy Ltd. v. St. Prop. Fund of Ukraine*, in which it held that where a foreign state "exert[s] sufficient control over [an entity] to make it an agent of the State, then there is no reason to extend to [that entity] a constitutional right that is denied to the sovereign itself." 411 F.3d 296, 301 (D.C. Cir. 2005); *see GSS Grp., Ltd. v. Nat'l Port Auth.*, No. 09 Civ. 1322, 2011 U.S. Dist. LEXIS 33617, at *9 (D.D.C. Mar. 30, 2011) ("[A] foreign instrumentality . . . may nevertheless be so closely associated with the foreign sovereign that the two are legally indistinguishable, with the result that the instrumentality, as part of the foreign government, is not a 'person' entitled to due process protections"). To determine if an entity is sufficiently intertwined so as to be considered the sovereign, the *TMR Energy* Court drew a distinction between entities that perform "classic government functions" and those that operate "in the field of commerce," explaining that only the former are considered the foreign state for constitutional purposes. 411 F.3d at 300–02. Courts subsequently applying this test have consistently found that MOIS constitutes the foreign state and is thus unworthy of Due Process protections. *See Murphy v. Islamic Republic of Iran*, 740 F. Supp. 2d 51, 68 (D.D.C. 2010) (holding that "[i]t is clear . . . that Iran has plenary control of MOIS" and thus MOIS is "not a person entitled to Fifth Amendment" protections); *see also Valore*, 700 F. Supp. 2d at 71 (same).

The opinions in *Price*, *TMR Energy* and their progeny focus on questions of Due Process inherent to a court's assertion of jurisdiction; however, the rationales for denying constitutional safeguards to foreign entities set forth in those decisions are equally applicable to any Due Process problems raised by the imposition of punitive damage awards. Whether the issue is the assertion of jurisdiction or potentially-excessive punitive damages, the key concern implicated is the right to personal liberty enshrined in the Due Process Clause. *See Gore*, 517 U.S. at 587 (explaining that constitutional problems posed by excessive punitive damage awards "arise[] out of the basic unfairness of depriving citizens of life, liberty, or property, through the application . . . of arbitrary coercion"); *Price*, 294 F.3d at 95 ("[T]he liberty interest protected by the Due Process Clause shields the defendant from the burden of litigating in [a distant] forum."). And in weighing this liberty interest in *Price*, the D.C. Circuit concluded that "foreign nations are external to the constitutional compact" and thus incapable of asserting that interest, which is reserved for citizens of the United States. *Id.* at 97. The D.C. Circuit's holding thus leads the Court to the same conclusion as the Circuit Court with respect to personal jurisdiction—any constraints on punitive damages that may be found in the Fifth Amendment cannot be relied upon by a foreign sovereign. As in *Price*, foreign states need not be granted *constitutional* protections to shield them from the imposition of harsh or unsound financial sanctions—"[i]f they believe that they have suffered harm by virtue of [imposition of such an award], foreign states have available to them a panoply of mechanisms in the international arena through which to seek vindication or redress." *Id.* at 98. The Court will not cross the constitutional Rubicon to extend Due Process protections against punitive damage awards to foreign states here, as such an act would undermine both international and domestic law by extending citizen's safeguards to foreign powers in the face of a clear determination by the Legislative and Executive branches

that foreign sovereigns and their instrumentalities—where engaged in terrorism—*should* be subject to such punitive sanctions. *See id.* at 98–99 ("Conferring on [the foreign state] the due process trump that it seeks against the authority of the United States is thus not only textually and structurally unsound, but it would distort the very notion of 'liberty' that underlies the Due Process Clause."). Quite simply, "a foreign State lies outside the structure of the Union," *id.* at 96, and the Court sees no justification for extending the protections for "persons" provided by that structure to foreign powers such as Iran and MOIS.

2. *Exxon* Does Not Require Alteration of the *Flatow* Method

The second question relevant to this inquiry is whether the Supreme Court's extension of its articulated framework for evaluating punitive damages from Due Process to general maritime law requires FSIA courts to reevaluate the established *Flatow* Method in cases brought under the state-sponsored terrorism exception. Based on the discussion below, the Court holds, for three reasons, that the *Exxon* decision does not undermine the traditional procedure.

a. The Holding in *Exxon* is Limited

While the Supreme Court in *Exxon* first ventured out of the constitutional realm in reviewing punitive damage assessments, it did so in limited fashion and over an area of law which has been specially committed to the discretion of the judiciary. The legal landscape in which the *Exxon* Court operated—maritime law—"falls within a federal court's jurisdiction to decide in the manner of a common law court, subject to the authority of Congress to legislate otherwise if it disagrees." *Exxon*, 554 U.S. at 490. The federal judiciary's special role as the overseers of maritime law is deeply rooted and traces its origins to the beginning of our constitutional republic: "Article III, § 2, cl. 1 (3d provision) of the Constitution and section 9 of the Act of September 24, 1789, have from the beginning been the sources of jurisdiction in

litigation based upon federal maritime law." *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 360 (1959). Historically, the federal courts have been called upon to fashion rules of law *sui generis* to govern admiralty disputes, *see Fitzgerald v. U.S Lines Co.*, 374 U.S. 16, 20–21 (1963) ("This Court has long recognized its power and responsibility in this area [of admiralty law] and has exercised that power where necessary to do so."), and thus maritime has been an area of law in which the judiciary has operated almost exclusively. *Romero*, 358 U.S. at 369. In this unique legal context, the Supreme Court in *Exxon* was left without any legislative or executive guidance through statute or regulation, and thus was obligated to fashion governing principles without consideration of other legal contexts. *See id.* at 502 ("[W]e are examining the verdict in the exercise of federal maritime common law authority, which precedes and should obviate any application [of other sources of law.]").

Rules articulated in the context of maritime law are not necessarily applicable to non-admiralty proceedings. The Supreme Court has observed that the implications of changes or evolution in maritime law are generally limited to Article III and do not require equivalent adjustments to the federal common law. *Romero*, 358 U.S. at 373. And this inherent limitation to admiralty-law decisions is of even greater importance when interpreting and applying federal statutes—in the face of legislation enacted by Congress, the federal judiciary is simply not imbued with the same authority it possesses in its unique role as the purveyor of maritime law. *See Exxon*, 554 U.S. at 502 (emphasizing courts' special authority "as a source of judge-made law in the absence of statute"). Indeed, the *Exxon* Court itself acknowledged the crucial distinction between its specialized function in the creation of rules governing admiralty disputes and its traditional role in applying many federal statutes. *See id.* at 511 ("Federal treble-damages statutes govern areas far afield from maritime concerns . . . ; the relevance of the governing rules

in patent or trademark cases, say, is doubtful at best."). And at least one federal court, relying on this distinction, has declined to extend the holding of *Exxon* to cases brought under the federal Title VII statute. *Pickett v. Sheridan Health Care Ctr.*, 610 F.3d 434, 447 (7th Cir. 2010). Thus, mindful of the special context in which *Exxon* was articulated, the Court is not prepared to affect a sea-change in the law governing the assessment of punitive damages under federal statutes or federal common law generally. *See Valore*, 700 F. Supp. 2d at 90 n.17 (noting that Supreme Court in *Exxon* "explicitly limited its holding" to facts and context of that case).

b. Congress Re-Affirmed the Established Procedure

An independent justification for adhering to the *Flatow* Method is that Congress did not see fit to alter or otherwise question that procedure when enacting the NDAA. At the time the 2008 Amendments were passed, the Supreme Court had issued its highly-publicized opinions in *Gore*, *State Farm*, and *Philip Morris*, and was hearing arguments in *Exxon* to much fanfare. At the same time, the method for calculating punitive damages under the state-sponsored terrorism exception had been long-settled. Shortly after the decision in *Flatow*, numerous courts in this district came to rely upon the procedure established in that case. In *Anderson v. Islamic Republic of Iran*, for example, Judge Jackson, after observing that "[i]t is never a simple task to calibrate an award of punitive damages," turned to the *Flatow* Method and the testimony of Dr. Clawson to conclude that "an award of thrice the . . . maximum annual budget for terrorist activities, or $300 million, is the closest approximation that [the Court] can make to an appropriate award." 90 F. Supp. 2d 107, 114 (D.D.C. 2000). In a similar manner, the district court in *Eisenfeld v. Islamic Republic of Iran* relied explicitly on *Flatow* to determine that "a total award of punitive damages equal to three times Iran's annual expenditure in 1996 on terrorism—$300 million—will serve to deter future attacks." 172 F. Supp. 2d 1, 9 (D.D.C. 2000). Indeed, a litany of cases

throughout this period applied the *Flatow* Method. *See Mousa v. Islamic Republic of Iran*, 238 F. Supp. 2d 1, 13 (D.D.C. 2001) (awarding $120 million); *Weinstein v. Islamic Republic of Iran*, 184 F. Supp. 2d 13, 25–26 (D.D.C. 2002) (awarding $150 million); *Hill v. Republic of Iraq*, 175 F. Supp. 2d 36, 48 (D.D.C. 2001) (awarding $300 million); *Wagner v. Islamic Republic of Iran*, 172 F. Supp. 2d 128 (D.D.C. 2001) (awarding $300 million); *Jenco v. Islamic Republic of Iran*, 154 F. Supp. 2d 27, 39–40 (D.D.C. 2001) (awarding $300 million); *Sutherland v. Islamic Republic of Iran*, 151 F. Supp. 2d 27, 53 (D.D.C. 2001) (awarding $300 million); *Elahi v. Islamic Republic of Iran*, 124 F. Supp. 2d 97, 114 (D.D.C. 2000) (awarding $300 million).

"Courts 'generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts.'" *Ark. Dairy Coop. Ass'n v. Dep't of Agriculture*, 573 F.3d 815, 829 (D.C. Cir. 2009) (quoting *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184–85 (1988)). For example, in *Partolo v. Johanns*, the district court held that Congress, in reenacting a law creating an aid program for farmers with lost crops using language identical to that in the original statute, implicitly adopted the manner in which the program had been run by the managing agency. No. 04 Civ. 1462, 2010 U.S. Dist. LEXIS 43071, at *103–04 (D.D.C. June 11, 2006); *see also id.* ("[W]hen Congress enacted the 2001/2002 CLDAP, explicitly in identical form to the 2000 CLDAP statute and without any indication of disapproval of the Secretary's earlier law . . . it effectively endorsed the Secretary's existing administration and interpretation."). In reaching this conclusion, the *Partolo* Court noted that "it is well established that Congress is presumed to have knowledge of judicial and administrative interpretations when it re-enacts the earlier laws without change." *Id.* at *102–03 (citing *Barhart v. Walton*, 535 U.S. 212, 220 (2002)).

Here, the decisions of this Court and many others adopting the *Flatow* Method were based on the Flatow Amendment, which provided that money damages in state-sponsored

terrorism suits could "include economic damages, solatium, pain and suffering, and punitive damages." Flatow Amendment § 589. Had Congress been concerned that this established procedure was in conflict with the Supreme Court's recently-articulated constraints on punitive damage awards, it could easily have easily imposed statutory protections against excessive awards in § 1605A by, *inter alia*, directing punitive sanctions to take the form of treble damages—as it often has—or instructing that any punitive damage award must be consistent with the guideposts articulated by the Supreme Court in *Gore* and its progeny. Instead, Congress chose to once again permit an award of punitive damages in state-sponsored terrorism suits by employing *the very same language* that it had used in the Flatow Amendment. *See* 28 U.S.C. § 1605A ("[D]amages may include economic damages, solatium, pain and suffering, and punitive damages."). This choice of language in § 1605A is a clear indication that Congress sought to return FSIA proceedings—at least with respect to punitive damages—to the period prior to the *Cicippio-Puleo* decision, when courts generally adhered to the *Flatow* Method.

Indeed, the presumption that Congress acted with knowledge of the *Flatow* framework is even stronger here, as there is no question that, in passing the NDAA, it was made aware of the history of punitive damages in terrorism-related FSIA cases. This Court has previously observed that when considering the 2008 Amendments, members of Congress were provided with a Congressional Research Service report informing them that, to date, judgments totaling nearly $10 billion had accumulated against Iran and its instrumentalities for involvement in terrorist atrocities. *In re Terrorism Litig.*, 659 F. Supp. 2d 31, 58 (D.D.C. 2009). And armed with this information, one of the explicit purposes in passing the NDAA was to abrogate the D.C. Circuit's decision in *Cicippio-Puleo* and reinstitute FSIA plaintiffs' ability to seek punitive damages in actions against foreign states brought pursuant to the state-sponsored terrorism

exception. *See Heiser II*, 659 F. Supp. 2d at 23 (observing that "§ 1605A abrogates *Cicippio-Puleo* . . . and provides that punitive damages may be awarded in [FSIA] actions"). This goal included the replacement of the regime relying on 50 states' laws to govern FSIA actions with a uniform set of rules—such as those concerning punitive damages developed in *Flatow*—under § 1605A. *Id.* at 24–25. Based on this history, the Court holds that Congress, by drawing directly upon the language of the Flatow Amendment while well-aware of the established *Flatow* Method, implicitly approved the reinstitution of that traditional procedure after concluding that it best serves societal interests in punishment and deterrence.

c. Terrorism-Related FSIA Cases Involve Unique Circumstances

Finally, beyond the distinguishable legal contexts in which recent Supreme Court jurisprudence arises and the legislative history of the NDAA, there are important policy justifications for adhering to the *Flatow* Method. Terrorism, along with atrocities such as genocide, occupies a unique place in the pantheon of human conduct as an activity devoid of value that observes no respect for life and no hint of compassion. It is an "insidious and murderous evil," *In re Terrorism Litig.*, 659 F. Supp. 2d at 136, that embraces "cruel and inhuman activities," *Nikbin v. Islamic Republic of Iran*, 517 F. Supp. 2d 416, 425 (D.D.C. 2007), and results in harms "among the most heinous the Court can fathom." *Valore*, 700 F. Supp. 2d at 88. In the context of punitive damages, this Court has previously explained that the particularly malicious and evil nature of state-sponsored terrorism obviates the need for strict attention to the punitive-to-compensatory ratio that recent Supreme Court guidance might otherwise require. *See id.* at 90 n.17 ("Those harboring a deep-seeded and malicious hatred of the United States who intentionally commit terroristic murder of American[s] . . . deserve to be punished at . . . ratio[s] significantly higher [than discussed in *Exxon* and the like]."). And this Court has expressed

concern that significant deviations from the *Flatow* Method in these cases could have the disastrous and perverse consequence of undermining prior efforts at deterrence. *See Heiser II*, 659 F. Supp. 2d at 30–31 ("Were the Court to award an amount [of punitive damages] less than any of those declared in prior cases, the U.S. . . . would risk seeming to Iran less concerned about Iranian terrorism.") (quotations omitted).

By contrast, the Supreme Court in *Exxon* addressed excessive punitive sanctions out of concern that such awards "exceed[] the bounds justified by the punitive damages goal of deterring reckless (or worse) behavior." 554 U.S. at 490. And in importing Due Process principles into maritime law, the *Exxon* Court emphasized that "[r]eckless conduct is not intentional or malicious, nor is it necessarily callous toward the risk of harming others, as opposed to unheedful of it." *Id.* at 493. In light of this context, the Court finds it beyond the pale that the Supreme Court would countenance similar restrictions on the institution of punitive sanctions in response to acts of terrorism that impose a sentence of death or horrific physical and psychological injury on victims, a lifetime of unimaginable grief on loved ones, and immeasurable sorrow on the whole of humanity.

* * *

For all the reasons set forth above, the Court holds that the *Flatow* Method for the calculation of punitive damage awards in FSIA cases should continue to govern cases arising from the atrocities of state-sponsored terrorism.

III. APPLICATION

Having determined that the *Flatow* Method remains in force under § 1605A, the Court now turns to the application of this established procedure to calculate punitive damages in this case. As set forth above, *see supra* Section II.A, this process requires the Court to identify two

numbers: the annual amount of money provided by defendants in support of international terrorism, and an appropriate multiplier. As to the former input, plaintiffs make no attempt to provide any new evidence concerning defendants' support for terrorism, and instead point the Court to the "typically adopted . . . figure[] of $100 million in annual expenditures" found in earlier cases. Ps.' Br. at 3. Given the lack of new evidence, the Court will take judicial notice of Dr. Clawson's expert testimony in *Heiser II* that Iran's support for terrorism is somewhere between $50 and $150 million annually, and will adopt the mid-range estimate—$100 million. As to the appropriate multiplier, plaintiffs urge the Court to adhere to its standard choice of 3, *id*., and the Court sees no reason to abandon this traditional magnitude. Thus, in the interest of deterring future terrorist attacks, and consistent with established procedures, the Court will award $300 million in punitive damages, to be dispersed in proportion to each plaintiff's share of the compensatory award.

IV. CONCLUSION

Punitive damages serve a societal interest in punishing wrongdoers and preventing similar heinous conduct in the future. In recent cases, however, the Supreme Court has recognized that these justifications are often countered—and thus constrained—by other interests, such as an individual's right to expect consistent and non-excessive punishments (embodied by the Supreme Court's Due Process jurisprudence), or the Court's responsibility to fill the gaps in an area of law in which it is the sole authority (embodied by the *Exxon* decision in the field of maritime law.) These interests, however, are not implicated in the FSIA context, and courts therefore should continue to adhere to methods designed to impose optimal sanctions when faced with actors deliberately undertaking some of the most evil and inhuman acts imaginable. The Court thus holds that its established approach to assessing punitive awards in

state-sponsored terrorism cases under the FSIA should remain in place, and expresses hope that the sanction it issues today will play a measurable role in changing the conduct of Iran—and other supporters of international terrorism—in the future.

A separate Order and Judgment consistent with these findings shall issue this date.

Signed by Royce C. Lamberth, Chief Judge, on May 19, 2011.

Annex 50

***Estate of Michael Heiser v. Islamic Republic of Iran*, U.S. District Court, District of Columbia, 10 August 2011, 807 F. Supp. 2d 9**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ESTATE OF MICHAEL HEISER, *et al.*,	)	
Plaintiffs,	)	
v.	)	00-cv-2329 (RCL)
ISLAMIC REPUBLIC OF IRAN, *et al.*,	)	
Defendants.	)	
	)	Consolidated With
ESTATE OF MILLARD D. CAMPBELL, *et al.*,	)	
Plaintiffs,	)	
v.	)	01-cv-2104 (RCL)
ISLAMIC REPUBLIC OF IRAN, *et al.*,	)	
Defendants.	)	

MEMORANDUM OPINION

I. INTRODUCTION

On the night of June 25, 1996, a tanker truck crept quietly along the streets of Dhahran, coming to rest alongside a fence surrounding the Khobar Towers complex, a residential facility housing United States Air Force personnel stationed in Saudi Arabia. A few minutes later, the truck exploded in a massive fireball that was, at the time, the largest non-nuclear explosion ever recorded on Earth. The devastating blast, which was felt up to 20 miles away, sheared the face off Building 131 of the Khobar Towers complex and left a crater more than 85 feet wide and 35 feet deep in its wake. The bombing killed 19 U.S. military personnel and wounded more than 100. Subsequent investigations revealed that members of Hezbollah carried out the attack.

A few years after the bombing, plaintiffs—who are former service members injured in the attack, their families, and estates and family members of those killed—brought suit under the "state-sponsored terrorism" exception to the Foreign Sovereign Immunities Act ("FSIA" or the "Act"), then codified at 28 U.S.C. § 1605(a)(7). Plaintiffs allege that the Islamic Republic of Iran ("Iran"), the Iranian Ministry of Information and Security, and the Iranian Islamic Revolutionary Guard Corps provided material support and assistance to Hezbollah to carry out the heinous attack. Following Iran's failure to appear and plaintiffs' presentation of evidence to substantiate their claims, the Court found that "the Khobar Towers bombing was planned, funded, and sponsored by senior leadership in the government of the Islamic Republic of Iran; the IRGC had the responsibility and worked with Saudi Hizbollah to execute the plan; and the MOIS participated in the planning and funding of the attack." *Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229, 265 (D.D.C. 2006) ("*Heiser I*").[1] The Court subsequently entered judgment against all defendants for $250 million in compensatory damages. *Id.* at 356. A few years later, Congress passed the National Defense Authorization Act for Fiscal Year 2008 ("NDAA" or the "2008 Amendments"), which replaced § 1605(a)(7) with a new state-sponsored terrorism exception codified at § 1605A, permitted recovery of punitive damages, and added a new provision concerning the enforcement of judgments. Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338-44 (2008). Invoking the NDAA's procedures for retroactive application, in 2009 the Court entered an amended judgment, holding defendants jointly and severally liable for an additional $36 million in compensatory damages and $300 million in punitive damages. *Heiser v. Islamic Republic of Iran*, 659 F. Supp. 2d 20, 31 (D.D.C. 2009).

[1] Hezbollah is synonymous with "Hizbollah," which is merely a "variant transliteration[] of the same name." *Oveissi v. Islamic Republic of Iran*, 498 F. Supp. 2d 268, 273 n.3 (D.D.C. 2007), *rev'd on other grounds*, 573 F.3d 835 (D.C. Cir. 2009).

Following entry of final judgment, plaintiffs began their journey down the often-frustrating and always-arduous path shared by countless victims of state-sponsored terrorism attempting to enforce FSIA judgments. The matter before the Court today requires exploration of the latest in a series of attempts by Congress to aid these victims. In this instance, plaintiffs—relying on a new provision added to the FSIA as part of the 2008 Amendments—assert that the Telecommunication Infrastructure Company of Iran ("TIC") is an instrumentality of Iran, and ask the Court to direct Sprint Communications Company LP ("Sprint") to turn over funds it owes to TIC. Sprint responds that plaintiff has failed to prove that TIC is an instrumentality as defined by the FSIA, seeks leave to interplead TIC as a defendant, and raises several other legal defenses to attachment of the funds. The Court first reviews the regime of legal and regulatory provisions governing execution of FSIA judgments, and then turns to the parties' dispute.

II. BACKGROUND

A. Statutory and Regulatory Framework

1. Iran-Specific Regulations

Relations between the United States and Iran deteriorated following the 1979 revolution in which Iran's monarchy was displaced by an Islamic republic, ruled by the Ayatollahs, that remains in power today. Following the regime change and fueled by the Iran hostage crisis, President Carter—exercising the authority granted to him under the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*—blocked the flow of assets between the United States and Iran, and seized Iranian property located within the United States. Executive Order 12170, 44 Fed. Reg. 65,729 (Nov. 14, 1979). Over the next two years, Presidents Carter and Reagan issued numerous Executive Orders seizing additional assets, while the Office of Foreign Assets Control ("OFAC")—a component of the Department of the Treasury that administers and

enforces economic and trade sanctions—promulgated regulations concerning transactions between persons in the United States and Iran. In 1981, the United States and Iran reached an agreement, known as the Algiers Accords, which led to the release of the hostages and the unfreezing of most Iranian assets. Over the following decades, sanctions regimes instituted by Executive Orders and rules promulgated by OFAC evolved into the complex web of regulations governing Iranian assets in the United States, as well as transactions with Iran.[2]

Today, the basic framework for the treatment of Iranian property and trade with Iran is set forth in two complementary sets of provisions promulgated by OFAC that generally bar all transactions either with Iran or involving Iranian interests and then carve out limited exceptions to that embargo. The first, known as the Iranian Assets Control Regulations ("IACR") and codified at 31 C.F.R. Part 535, was implemented in 1980 during the Iran Hostage Crisis, 45 Fed. Reg. 24,432 (Apr. 9, 1980), and "broadly prohibits unauthorized transactions involving property in which Iran has any interest," while granting specific licenses for certain transactions. *Flatow v. Islamic Republic of Iran*, 305 F.3d 1249, 1255 (D.C. Cir. 2002). The second, known as the Iranian Transactions Regulations ("ITR") and codified at 31 C.F.R. Part 560, "confirms the broad reach of OFAC's Iranian sanctions programs by establishing controls on Iranian trade, investments, and services. . . . As under the IACR, there is a general prohibition under the ITR of unauthorized transactions, coupled with specific licenses permitting certain kinds of transactions." *Flatow*, 305 F.3d at 1255; *see also Weinstein v. Islamic Republic of Iran*, 299 F. Supp. 2d 63, 68 (E.D.N.Y. 2004) ("The ITR prohibited, *inter alia*, the importation of goods and services from Iran, and the exportation, reexportation, and sale or supply of goods, technology or services to Iran.").

[2] The Court here only briefly recounts the relevant background to place the current regulatory framework in proper context. For an extensive history of regulations and Executive Orders concerning Iran, see Judge Wexler's excellent summary in *Weinstein v. Islamic Republic of Iran*, 299 F. Supp. 2d 63, 65–68 (E.D.N.Y. 2004).

2. Attachment and Execution under the FSIA

"It is a well-established rule of international law that the public property of a foreign sovereign is immune from legal process without the consent of that sovereign." *Loomis v. Rogers*, 254 F.2d 941, 943 (D.C. Cir. 1958); *see also Weinstein v. Islamic Republic of Iran*, 274 F. Supp. 2d 53, 56 (D.D.C. 2003) ("[T]he principles of sovereign immunity 'apply with equal force to attachments and garnishments.'") (quoting *Flatow*, 74 F. Supp. 2d at 21). To promote this general principle, the FSIA broadly designates all foreign-owned property as immune, and then articulates limited exceptions to that immunity. *See* 28 U.S.C. § 1609 ("[T]he property in the United States of a foreign state shall be immune from attachment, arrest and execution except as provided in sections 1610 and 1611 of this chapter."). These exceptions include, *inter alia*, property (1) located in the United States that is (2) used for commercial activity and (3) controlled by a foreign state or its instrumentalities. *Id.* at § 1610(a)–(b); *see also Bennett v. Islamic Republic of Iran*, 604 F. Supp. 2d 152, 161 (D.D.C. 2009) ("[The FSIA] provides that the property of a foreign state is *not* immune from attachment or execution if the property at issue is used for a commercial activity by the foreign state") (emphasis in original). Though providing a workable framework in theory, the past decade of litigation under the Act has proved, for victims of state-sponsored terrorism, to be a journey down a never-ending road littered with barriers and often obstructed entirely. Two particular roadblocks merit greater discussion.

The first difficulty plaintiffs holding judgments against Iran often faced was the limited number of Iranian assets remaining in the United States. Attempting to overcome this shortfall, plaintiffs targeted property in which an Iranian entity—often a financial institution owned or controlled by Iran—had an interest. Though expressly sanctioned by § 1610(b), this strategy was undercut by the Supreme Court's decision in *First Nat'l City Bank v. Banco Para El Comercio*

Exterior de Cuba, which involved a U.S. financial institution's attempt to collect money owed to it by the Cuban government through the seizure of funds deposited in the institution by a Cuban bank. 462 U.S. 611, 613 (1983). In its opinion, the Supreme Court observed that "government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such," and determined that Congress "clearly expressed its intention that duly created instrumentalities of a foreign state are to be accorded a presumption of independent status." *Id.* at 626–27. According to the *First Nat'l* Court, this presumption may be overridden *only* where the plaintiff demonstrates that the foreign entity is exclusively controlled by the foreign state or where recognizing the separateness of that entity and the foreign state "would work fraud or injustice." *Id.* at 629–30. The practical effect of this holding was to shield the property of instrumentalities of foreign states from attachment or execution absent evidence of a connection between the instrumentality and the foreign state so strong as to render any distinction irrelevant. And by placing the burden of proof on this issue squarely on plaintiffs, the *First Nat'l* holding became a substantial obstacle to FSIA plaintiffs' attempts to satisfy judgments. *See, e.g.*, *Oster v. Republic of S. Afr.*, 530 F. Supp. 2d 92, 97–100 (D.D.C. 2007); *Bayer & Willis Inc. v. Republic of the Gam.*, 283 F. Supp. 2d 1, 4–5 (D.D.C. 2003).

The second hurdle facing FSIA plaintiffs involved assets that once belonged to Iran or its agencies but had been seized and retained by the United States. As a legal matter, "assets held within United State Treasury accounts that might otherwise be attributed to Iran are the property of the United States and are therefore exempt from attachment or execution by virtue of the federal government's sovereign immunity." *In re Islamic Republic of Terrorism Litig.*, 659 F. Supp. 2d 31, 53 (D.D.C. 2009) (citing *Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255 (1999)). Victims of state-sponsored terrorism attempting to seize such assets were thus put in the perverse

position of litigating against their own government, *see Weinstein*, 274 F. Supp. 2d at 56 ("[I]f a litigant seeks to attach funds held in the U.S. Treasury, he or she must demonstrate that the United States has waived its sovereign immunity with respect to those funds.") which strongly opposed attempts to attach such assets. As one commentator explains:

> As a matter of foreign policy, the President regards frozen assets as a powerful bargaining chip to induce behavior desirable to the United States; accordingly, allowing private plaintiffs to file civil lawsuits and tap into the frozen assets located in the United States may weaken the executive branch's negotiating position with other countries. For this reason, several U.S. presidents have opposed giving victims access to these funds.

Debra M. Strauss, *Reaching Out to the International Community: Civil Lawsuits as the Common Ground in the Battle against Terrorism*, 19 Duke J. Comp. & Int'l L. 307, 322 (2009). The Executive Branch has consistently succeeded in arguing that the FSIA does not waive the United States' immunity with respect to seized Iranian assets. *See, e.g.*, *Flatow*, 74 F. Supp. 2d 18.

Eventually Congress enacted the Terrorism Risk Insurance Act ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322 (2002), "to 'deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties.'" *Weininger v. Castro*, 462 F. Supp. 2d 457, 483 (S.D.N.Y. 2006) (quoting H.R. Conf. Rep. 107-779, at 27 (2002)). The TRIA declares that

> [n]otwithstanding any other provision of law, . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, . . . the blocked assets of the terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a). In other words, the TRIA "subjects the assets of state sponsors of terrorism to attachment and execution in satisfaction of judgments under § 1605(a)(7)," *In re Terrorism Litig.*, 659 F. Supp. 2d at 57, by "authoriz[ing] holders of terrorism-related judgments against Iran . . . to attach Iranian assets that the United States has *blocked*." *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Elahi*, 129 S. Ct. 1732, 1735 (2009) (quotations omitted; emphasis in original).

The TRIA was designed to remedy many of the problems that previously plagued victims of state-sponsored terrorism; in practice, however, it led to very few successes. But while the TRIA did abrogate the *First Nat'l* holding with respect to "blocked assets," *Weininger*, 462 F. Supp. 2d at 485–87, that victory proved hollow once victims discovered that, at least with respect to Iran, "very few blocked assets exist." *In re Terrorism Litig.*, 659 F. Supp. 2d at 58. And the barren landscape facing these FSIA plaintiffs was only further depleted by the exclusion of diplomatic properties from the TRIA's reach. *See Bennett*, 604 F. Supp. 2d at 161 ("[The TRIA] expressly excludes 'property subject to Vienna Convention on Diplomatic relations, or that enjoys equivalent privileges and immunities under the law of the United States, being used for exclusively for diplomatic or consular purposes.'") (quoting TRIA § 201(d)(2)(B)(ii)).

Against this desolate backdrop, Congress enacted the NDAA, which added paragraph (g) to the execution section of the FSIA. This new provision, in its entirety, declares:

> (g) Property in Certain Actions.—
>
> > (1) In general.— Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

> (A) the level of economic control over the property by the government of the foreign state;
>
> (B) whether the profits of the property go to that government;
>
> (C) the degree to which officials of that government manage the property or otherwise control its daily affairs;
>
> (D) whether that government is the sole beneficiary in interest of the property; or
>
> (E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.
>
> (2) United states sovereign immunity inapplicable.— Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the [TWEA] or the [IEEPA].
>
> (3) Third-party joint property holders.— Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

28 U.S.C. § 1610(g). Courts have had little opportunity to explore the full implications of § 1610(g), though at least one has observed that the NDAA will have a significant impact on plaintiffs' attempts to enforce FSIA judgments. *See Calderon-Cardona v. Dem. Rep. Congo*, 723 F. Supp. 2d 441, 458 (D.D.C. 2009) ("Section 1083 adds a new subsection, section 1610(g)(1), which significantly eases enforcement of judgments entered under section 1605A.").

B. Procedural History

Having obtained judgment against defendants and properly served them with copies of that judgment as required under the FSIA, Order, May 10, 2010 [158], plaintiffs issued several

writs to a number of telecommunications companies asking, *inter alia*, whether the particular company does any business with, or is indebted to, defendants or the Telecommunications Company of Iran ("TCI").[3] Plaintiffs targeted such companies in light of an ITR license authorizing "[a]ll transactions of common carriers incident to the receipt or transmission of telecommunications and mail between the United States and Iran." 31 C.F.R. § 560.508. In its response, Sprint explained that it does no business with TCI, but stated:

> Consistent with the authority granted by the United States Department of Treasury, Office of Foreign Assets Control, 31 C.F.R. § 560.508, Sprint does exchange telecommunications traffic directly with the Telecommunication Infrastructure Company of Iran, which was not a defendant in the underlying action and was not identified in the plaintiffs' Writ as an 'agency' or 'instrumentality' of one or more of defendants.
>
> The Sprint/TIC relationship is a bilateral telecommunications carrier relationship that results in a periodic settlement and offset process to determine the net payer and payee. So far as is known, during 2010, Sprint has been a net payer, which will result in quarterly payments to TIC. Because telecommunications services are commoditized, the amounts of payments are directly related to the volume of calls Sprint sends to TIC in a given month for termination in Iran. At present, Sprint owes to TIC the sum of $358,708.76 based on amounts which have been declared by the parties for the months of January, February and March, 2010. Sprint may owe TIC amounts for traffic conducted in April and May, 2010, but those amounts have not yet been determined or invoiced and thus no debt is currently due.

Answer and Defenses of Garnishee Sprint Communications Company LP ¶¶ 4–5, June 21, 2010 [165] ("Answer"). Relying on this response, plaintiffs requested that the Court traverse Sprint's Answer and order the company to turn over the funds that it owed to TIC, asserting that Sprint admitted that it owes money to an instrumentality of Iran and that § 1610(g) permits attachment of these funds. Motion for Traverse of Answer ¶¶ 7–13, July 1, 2010 [166]. In response, Sprint

[3] Because a review of the history of these consolidated actions before the present motions is not necessary for resolution of the matter before the Court, this opinion recounts only the relevant post-judgment history. For a full recap of the liability proceedings, see *Heiser I*, 466 F. Supp. 2d at 248–51.

pointed to unresolved issues of fact and sought trial on various matters, Request for Trial Setting by Garnishee Sprint Communications Company, LP, Sep. 22, 2010 [168]—a request that the Court denied soon thereafter. Order, Sep. 23, 2010 [169]. In that same Order, the Court also invited the United States to weigh in on whether plaintiffs can garnish payments from a U.S. company to an instrumentality of Iran in satisfaction of a judgment under § 1605A. *Id.*[4] Before any response was submitted by the United States, plaintiffs moved for judgment on the writ and an order directing Sprint to turn over funds owed to TIC. Motion for Judgment against Garnishee Sprint Communications Company LP and for Turnover of Funds, Feb. 8, 2011 [172].

After plaintiffs' motions were fully briefed, the Court previously denied plaintiffs' motion for traverse, finding that nothing in Sprint's Answer could satisfy plaintiffs' burden to demonstrate that the funds owed to TIC are not immune from execution—which requires proof that TIC is in fact an agency or instrumentality of Iran. Order 3–4, Mar. 31, 2011 [180]. And as for plaintiffs' motion for judgment, the Court observed that plaintiffs' submission of evidence on reply denied Sprint "a full and fair opportunity to respond," and thus deferred ruling until Sprint was given an adequate chance to counter. *Id.* at 5–6. The Court then directed Sprint to respond to plaintiffs' evidence or "seek any other relief it deems necessary." *Id.* at 6.

Sprint subsequently sought leave to both amend its Answer and interplead TIC, arguing that TIC is a necessary party to these proceedings. Motion for Leave to Amend Answer, May 2, 2011 [183] ("Leave Mtn."). At the same time, Sprint submitted a proposed complaint against TIC, Counterclaim for Interpleader, May 3, 2011 [184-1], and an amended answer in which it states that it presently owes TIC $613,587.38 and raises a number of defenses previously asserted in its original Answer and opposition to plaintiffs' motion for judgment. Answer & Defenses, June 10, 2011 [187] ("Second Answer"). Plaintiffs opposed Sprint's request for leave

[4] To date, the United States has declined to offer any opinion on these proceedings.

to amend and interplead TIC, Opposition to Motion for Leave, May 19, 2011 [185], and subsequently moved again for judgment on the writ. Second Motion for Judgment of Condemnation, July 6, 2011 [189]. For the reasons set forth below, the Court grants plaintiffs' motion for judgment, grants in part and denies in part Sprint's request for leave, and directs Sprint to turn over to plaintiffs the funds owed to TIC.

III. DISCUSSION

A. Plaintiffs' Entitlement to Funds Held by Sprint and Owed to TIC

Plaintiffs invoke § 1610(g) of the FSIA in their attempt to garnish funds held by Sprint and owed to TIC.[5] This provision is designed to "clarify the circumstances under which the property of a foreign state sponsor of terrorism is subject to attachment and execution." *Bennett*, 604 F. Supp. 2d at 162. Under § 1610(g), the property "of a foreign state" or "of an agency or instrumentality of a foreign state" is subject to execution, even where that property "is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity." 28 U.S.C. § 1610(g)(1).[6] This provision "expand[s] the category of foreign sovereign property that can be attached; judgment creditors can now reach any U.S. property in which Iran has any interest . . . whereas before they could only reach property belonging to Iran." *Peterson v.*

[5] Though this new provision is codified as part of the general immunity exceptions in the FSIA, the subsection only applies to "property of a foreign state against which a judgment is entered under section 1605A," 28 U.S.C. § 1610(g)(1); thus, the benefits provided accrue only to victims of state-sponsored terrorism who obtained judgments under § 1605A, and not its predecessor, § 1605(a)(7). *In re Terrorism Litig.*, 659 F. Supp. 2d at 115.

[6] The TRIA is inapplicable in this instance, as that statute applies only to "blocked assets," which it defines as "any asset seized or frozen by the United States." TRIA § 201(d)(2)(A). Here, the payments owed from Sprint to TIC are neither seized nor frozen; instead, they are made under a general license permitting payments incident to telecommunications traffic. 31 C.F.R. § 560.508. Money transferred between Sprint and TIC is thus "regulated," which is "[t]he act of controlling by rule or restriction." *Black's Law Dictionary* 1311 (8th ed. 2004). Moreover, the TRIA defines "blocked assets" by reference to OFAC regulations, *Levin v. Bank of N.Y.*, No. 09 Civ. 5900, 2011 U.S. Dist. LEXIS 23779, at *64 (S.D.N.Y. Mar. 4, 2011); *see also Hausler v. JPMorgan Chase Bank, N.A.*, No. 09-cv-10289, 2010 U.S. Dist. LEXIS 96611, at *22 (S.D.N.Y. Sep. 13, 2010) ("TRIA explicitly indicates that 'blocked assets' are to be determined in reference to the [OFAC regulations]."), which provide that a "license authorizing a transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions." 31 C.F.R. § 535.502(c). Thus, because transactions between Sprint and TIC are undertaken under an OFAC licensing scheme, they are unblocked and not subject to attachment. *See Bank of N.Y. v. Rubin*, 484 F.3d 149, 150 (2d Cir. 2007) (holding "that assets blocked pursuant to Executive Order 12170 . . . and its accompanying regulations, *see* 31 C.F.R. Part 535, that are also subject to license of 31 C.F.R. § 535.579, are not blocked assets under the TRIA").

Islamic Republic of Iran, 627 F.3d 1117, 1123 n.2 (9th Cir. 2010). Sprint does not contest that the funds it owes to TIC are potentially subject to §1610(g), but instead argues that (1) plaintiffs have not demonstrated that TIC is an agency or instrumentality of Iran as defined by the FSIA, (2) the amount potentially owed was frozen at the time the writ was issued, and (3) attachment of the funds would subject Sprint to the risk of double liability in violation of the Act's plain terms. Opposition to Motion for Judgment 4–7, Mar. 7, 2010 [176] ("Jdgmt. Opp."). The Court discusses each of these objections in turn.

1. TIC is an Agency or Instrumentality of Iran

To attach the funds held by Sprint, plaintiffs need only establish that TIC is an agency or instrumentality of Iran. 28 U.S.C. § 1610(g). Prior attempts to execute against assets held by foreign instrumentalities had to be made under § 1610(b), which requires—in addition to proof of an instrumentality relationship—that "the judgment relates to a claim *for which the agency or instrumentality is not immune* by virtue" of the FSIA liability exceptions. *Id.* § 1610(b)(2) (emphasis added). Combined with the presumption of independent status articulated by the Supreme Court in *First Nat'l*, the practical effect of this provision is to ensure that "an agency or instrumentality of a foreign state could not automatically be liable for the debts of its associated foreign state." *Weininger*, 462 F. Supp. 2d at 483; *see also id.* at 482 ("[A]gencies and instrumentalities also enjoy immunity from suit and execution unless an exception applies."). Further complicating matters under §1610(b)(2), the Supreme Court—relying on the principle of U.S. corporate law that "[a]n individual shareholder, by virtue of his ownership of shares, does not own the corporation's assets and, as a result, does not own subsidiary corporations in which the corporation holds an interest"—held that mere ownership of a foreign entities' stock does not render assets held by that entity subject to execution under § 1610(b). *Dole Food Co. v.*

Patrickson, 538 U.S. 468, 474–76 (2003). Section 1610(g) unwinds these limitations, however, by excluding any requirement that the foreign instrumentality be subject to the underlying claim and thus not otherwise immune from liability, *see generally* 28 U.S.C. § 1610(g),[7] and by expressly declaring that property held by an instrumentality is subject to execution "regardless of the level of economic control over the property by the government of the foreign state." *Id.* § 1610(g)(1)(A).[8] Thus, the only requirement for attachment or execution of property is evidence that the property in question is held by a foreign entity that is in fact an agency or instrumentality of the foreign state against which the Court has entered judgment.

The FSIA defines "instrumentality" as any entity that (1) is "a separate legal person, corporate or otherwise," (2) is "an organ of a foreign state" or "whose shares or other ownership interest is owned by a foreign state," and that (3) is "neither a citizen of a State of the United States . . . nor created under the laws of any third country." 28 U.S.C. § 1603(b)(1)–(3). To show that TIC is an instrumentality of Iran, plaintiffs submit an affidavit from Dr. Patrick Clawson,[9] who reviewed several documents concerning TIC's status. Affidavit of Patrick L. Clawson, Ex. 1 to Reply in Support of Motion for Judgment, Mar. 28, 2011 [178-1] ("Clawson Aff."). Dr. Clawson reviews TIC's Articles of Association, explaining that its shares are 100% government-owned and that there is "no ambiguity that TIC is under the direct control of the [Iranian] Ministry of Information and Communications Technology." *Id.* at ¶¶ 12–13. He also

[7] One exception to this expansion of available assets for execution of § 1605A judgments is the ability of FSIA plaintiffs to attach diplomatic properties. *See Bennett*, 604 F. Supp. 2d at 162 ("[Section] 1610(g) is silent with respect to diplomatic properties; . . . even if the full scope or application of § 1610(g) is not entirely clear, a plain reading of the new enactment in no way provides a sufficient basis for stripping away the immunity long afforded to diplomatic property."); *see also id*. (noting that legislative history "strongly suggests that Congress did not intend for § 1610(g) to allow for attachment or execution of diplomatic properties").

[8] Though not at issue here, it also bears mention that § 1610(g) does not limit attachment to property used in "commercial activity"—unlike the execution provisions found in § 1610(a) & (b)—and thus the Act "removes from the victims the burden of specifying commercial targets . . . to help them receive justice and recover damages." Strauss, *Reaching Out*, *supra* at 332–33.

[9] This Court has previously observed that Dr. Clawson is "a 'widely-renowned expert on Iranian affairs.'" *Anderson v. Islamic Republic of Iran*, 753 F. Supp. 68, 78 (D.D.C. 2010) (quoting *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46, 51 (D.D.C. 2003)).

explains that TIC was created "in accordance with Iran's constitution and with Islamic Law," and that "the decision to create TIC was taken by the government." *Id.* at ¶ 14; *see also id.* at ¶ 15 (quoting Articles of Association explaining that Iranian Cabinet approved creation of TIC). Finally, Dr. Clawson states that "Mohammad Ali Forghani, the Deputy Minister of Information and Communications Technology, was appointed the chairman of the TIC Board of Directors, which under the Articles of Association is responsible for controlling TIC." *Id.* at ¶ 17.[10]

Based on this evidence, the Court has no trouble finding that TIC is an instrumentality of Iran. First, the evidence shows that TIC is distinct from, though wholly owned by, Iran. Second, Dr. Clawson's review of TIC's Articles of Association establishes that it is an "organ" of an Iranian cabinet-level Ministry, and that Iran possesses an "ownership interest" in TIC. Finally, the testimony demonstrates that TIC is established under the laws of Iran, and not those of the United States or a third country. This is sufficient to establish that TIC is an instrumentality of Iran. *See Auster v. Ghana Airways, Ltd.*, 514 F.3d 44, 46 (D.C. Cir. 2008) (finding that Ghana Airways is instrumentality of Ghana based on evidence that it "was incorporated under the laws of Ghana and wholly owned by Ghana"); *Peterson v. Islamic Republic of Iran*, 563 F. Supp. 2d 268, 273 (D.D.C. 2008) (observing "no doubt" that Japan Bank for International Cooperation is instrumentality of Japan because it "was established by Japanese statute," its capital "is wholly owned by the Japanese government" and it "is under the direct control of the Japanese Minister of Finance and the Japanese Minister of Foreign Affairs").

2. Total Amount Subject to the Writ

Having found that TIC is an instrumentality of Iran and thus the funds owed to it by Sprint are subject to execution under § 1610(g), the Court now turns to the total amount of money at issue. Under the FSIA, local law on attachment and execution control any dispute.

[10] Sprint does not contest the veracity of Dr. Clawson's affidavit. Leave Mtn. at 2.

Levin v. Bank of N.Y., No. 09 Civ. 5900, 2011 U.S. Dist. LEXIS 23779, at *35–*36 (S.D.N.Y. Mar. 4, 2011). DC law specifies that funds held by third parties are subject to attachment and execution only where they are "actually due and ascertainable in amount," *Cummings Gen. Tire Co. v. Volpe Constr. Co.*, 230 A.2d 712, 714 (D.C. 1967), and no amount may be garnished that includes future payments which are contingent upon performance or are otherwise uncertain in amount. *See id.* at 713 ("[M]oney payable upon a contingency or condition is not subject to garnishment until the contingency has happened or the condition has been filled."). Thus, "[i]f the amount of the debt becomes fixed . . . only upon acceptance of performance satisfactory to the obligee, or upon the exercise of judgment, discretion, or opinion, as distinguished from mere calculation or computation, then the amount of the debt is not sufficiently certain to permit garnishment." *Spritz v. Dist. of Columbia*, 393 A.2d 68, 70 (D.C. 1978) (citations omitted).

The funds owed to TIC by Sprint result from "a bilateral telecommunications carrier relationship" that relies on "a periodic settlement and offset process to determine the net payer and payee." Second Answer ¶ 5. This is not a case, therefore, where Sprint "unconditionally owes" TIC a definite sum at the time Sprint answered plaintiffs' interrogatories. *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1356 n.34 (D.C. 1994) (citing *Cummings*, 230 A.2d at 713). Accordingly, Sprint is only required to turn over those amounts that have been officially declared by Sprint and TIC. As a general rule, the amount of money subject to garnishment is set at the time a writ is executed. DC law, however, provides that a party seeking attachment or execution may submit interrogatories to the third party holding the funds in order to ascertain any changes to the amounts owed between the time the writ is served and the time the third party files an answer to the writ. D.C. Code § 16-521(a). At the time Sprint filed its Second Answer to plaintiffs' writ and accompanying interrogatories, Sprint represented that $613,587.38 is the

sum that it owes TIC that the company and TIC have agreed upon, and that other amounts accruing after March 2011 "have not yet been determined." Second Answer ¶ 5. Because the process by which these amounts are calculated is not readily ascertainable, the Court will use this representation in Sprint's Second Answer as the final sum. D.C. Code § 16-521(a).

3. Double Liability

Finally, Sprint correctly notes that, as an innocent third party to the underlying action concerning the Khobar Towers bombing, it is afforded certain protections under both the FSIA and DC law. The FSIA contains the following provision: "Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment." 28 U.S.C. § 1610(g)(3). In commenting on this provision, the House Report to the 2008 Amendments explains that "[w]hile [§ 1610(g)] is written to subject any property interest in which the foreign state enjoys a beneficial ownership to attachment and execution, the provision would not supersede the court's authority to appropriately prevent impairment of interests in property held by other persons who are not liable to the claimants in connection with the terrorist act." H.R. Conf. Rep. No. 110-477, at 1001–02 (2007); *see also id*. at 1002 ("The conferees encourage the courts to protect the property interests of such innocent third parties by using their inherent authority, on a case-by-case basis, under the applicable procedures governing execution on judgment."). Thus, § 1610(g)(3) "expressly protects the rights of third parties in actions to levy or execute upon a judgment entered against Iran." *In re Terrorism Litig.*, 659 F. Supp. 2d at 122.

In invoking this provision to defend against garnishment, Sprint points to a particular bedrock principle of the law concerning post-judgment proceedings: "It ought to be and it is the

object of the courts to prevent the payment of any debt twice." *Harris v. Balk*, 198 U.S. 215, 226 (1905). The District of Columbia law on attachment and execution codifies this general principle; specifically, the relevant provision declares:

> A judgment of condemnation against a garnishee, and execution thereon, or payment by the garnishee in obedience to the judgment or an order of the court, is a sufficient defense to any action brought against him by the defendant in the action in which the attachment is issued, for or concerning the property or credits so condemned.

D.C. Code § 16-528. Under normal circumstances involving parties located in the United States, courts are generally assured that garnishees will be protected by the Full Faith and Credit Clause of the Constitution, which requires other courts to recognize liability and garnishment Orders as full defenses to subsequent litigation. Here, however, Sprint argues that Iranian courts would fail to recognize the legitimacy of plaintiffs' default FSIA judgment, and thus Sprint could be exposed to double-liability in litigation with TIC over the funds. Jdgmt. Opp. at 4–5.

The Court is unaware of any DC caselaw applying § 16-528 to litigation involving Iran or other foreign states. But in *JPMorgan Chase Bank, N.A. v. Motorola, Inc.*, the First Department of the Appellate Division in New York was confronted with a bank's attempt to satisfy a default judgment against Iridium India Telecom Ltd. ("IITL") by attaching funds owed by defendant Motorola, Inc. to IITL as a result of an unrelated lawsuit in India. 47 A.D.3d 293, 294–95 (2007). In response, Motorola argued that the proposed attachment subjected it to double-liability, as "the Indian court is unlikely to deem Motorola's liability to IITL to be reduced by any payment it makes to Chase." *Id.* at 300. The *Motorola* Court agreed, relying on a "policy to protect garnishees from double liability" under both applicable precedent, *id.* at 306 (citing *Harris*, 198 U.S. at 226), and New York law. In closing, the First Department observed that "Chase . . . will realize a 'windfall' if we sustain a garnishment that, given the demonstrated state

of Indian law, will force Motorola to bear the cost of Chase's inability to collect its collateral from IITL," and thus held that "[t]he avoidance of this injustice constitutes sufficient reason to exercise our power . . . to deny a garnishment, even assuming that the garnishment would otherwise be proper." *Id.* at 312.

The posture of this case is in stark contrast to that of *Motorola*, in which the third party presented "unrebutted evidence"—including a statement by an Indian law expert—that the courts in India would not recognize the validity of the default judgment, and thus would not offset the third party's liability to IITL as a result of its payment to Chase. 47 A.D.3d at 304–05; *see also id.* at 307 (finding that "the record evidence indicates that the Indian courts will not give the judgment appealed from the effect to which it is entitled under New York law"). Here, Sprint does no more than casually assert that "[i]t does not require elaborate argument or citation to conclude that this defense will be unavailing to Sprint in the event of future litigation between Sprint and TIC in an Iranian court." Jdgmt. Opp. at 4. This unsupported statement fails for several reasons. As an initial matter, unlike *Motorola*—which involved an ongoing suit already proceeding in Indian courts—here Sprint points to no proceeding in which it could be subject to liability to TIC. In a similar vein, Sprint does not explain how it could possibly be subject to the jurisdiction of any Iranian court, nor does it identify any assets that could be in jeopardy were a tribunal located in Iran to rule against it. And to the extent that TIC might pursue an action in a U.S. court against Sprint, DC law expressly protects Sprint from any future judgment. D.C. Code § 16-528 ("A judgment of condemnation against a garnishee . . . is a sufficient defense to any action brought against him . . . for or concerning the property or credits so condemned."). Absent additional evidence of a genuine risk, the Court holds that Sprint is adequately protected from any possibility of exposure to double liability, as required by § 1610(g).

B. Sprint's Remaining Objections

In addition to objections based on § 1610(g), Sprint advances several independent legal arguments as to why the Court should not enter judgment on the writ in favor of plaintiffs. The Court dismisses these objections for the reasons that follow.

1. Request for Interpleader

The position most forcefully taken by Sprint is that it should be permitted to interplead TIC into this proceeding. In support of this request, Sprint argues that TIC is a necessary party and that its presence is required to resolve the factual question of whether it is an agency or instrumentality of Iran. Reply in Support of Motion for Leave 1–3, May 26, 2011 [186] ("Leave Reply"). The Court will deny Sprint's motion.

As an initial matter, the Court has determined that TIC is in fact an agency or instrumentality of Iran—a conclusion that Sprint does not contest[11]—and the FSIA does not require any provision of special notice to TIC. Specifically, the FSIA requires *only* that a copy of any default judgment be served on defendants, 28 U.S.C. § 1608(e)—a task which has already been accomplished—and does not demand service of additional post-judgment motions. *Peterson*, 627 F.3d at 1129–30 & n.5.[12] Moreover, even if notice requirements found in the FSIA could be read to require service of post-judgment motions, the provisions concerning notice apply only to attachment and execution under §§ 1610(a) & (b) and say nothing about § 1610(g). *See* 28 U.S.C. § 1610(c) ("No attachment or execution referred to in subsections (a) and (b) of this section . . . ."). The explicit exclusion of attachments and executions under §

[11] TIC does object that Dr. Clawson's affidavit is hearsay. Leave Reply at 3 n.1. However, Dr. Clawson's own affidavit verifies the authenticity of the Articles of Association and their consistency with standard legal documents in Iran, and thus this public record may be relied upon. *United States v. Ragano*, 530 F.2d 1191, 1200 (5th Cir. 1975); *see also* Fed. R. Evid. 807.

[12] Sprint attempts to create a conflict on this issue by citing *Autotech Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737 (7th Cir. 2007). That case, however, involved post-judgment *contempt* motions and expressly relied on local and federal rules mandating service of such motions. *Id.* at 747.

1610(g) from the notice requirement is further evidence that Congress did not intent to require service of garnishment writs on agencies or instrumentalities of foreign states responsible for acts of state-sponsored terrorism under § 1605A—a conclusion in keeping with the underlying justifications for the 2008 Amendments. *See In re Terrorism Litig.*, 659 F. Supp. 2d at 64 (explaining "broad remedial purposes Congress sought to achieve through the enactment of the [NDAA]"). Accordingly, TIC is not a necessary party to this action under applicable law.[13]

Moreover, there is no need for interpleader in this action. "[A] prerequisite for interpleader is that the party requesting interpleader demonstrate that he has been or may be subjected to adverse claims." *Hollister v. Soetoro*, 258 F.R.D. 1, 3 (D.D.C. 2009). As set forth above, Sprint has not sufficiently established *any* risk of being subjected to double liability over the funds it currently holds. *Supra*. "[I]nterpleader requires real claims, or at least the threat of real claims—not theoretical, polemical, speculative, or I'm-afraid-it-might-happen-someday claims." *Id.* This requirement is not satisfied in this instance.

Nor does DC law provide for interpleader in garnishment proceedings—in contrast to other jurisdictions. *See, e.g.* Miss. Code Ann. § 11-35-41 (2011). Instead, DC law permits any person with a claim to property subject to attachment to appear and demand a trial of any issues necessary to determine the appropriate action with respect to the property in question. D.C. Code § 16-554. According to Sprint, amounts due to TIC have been accruing and held by the company since January 2010. Second Answer ¶ 5 n.1. TIC is surely on notice of the hold-up, and if it wishes to challenge the garnishment of funds owed to it by Sprint, DC law provides a clear mechanism for it to register any objection. The Court sees no reason to aid TIC by prolonging this dispute in response to TIC's silence.

[13] Sprint's reliance on *Butler v. Polk* to argue that this procedure is a new action requiring service under the FSIA, Leave Reply at 3, is misplaced, as the *Butler* court evaluated whether a *separate* enforcement action is *removable*, 592 F.2d 1293, 1295–96 (5th Cir. 1979), and did not address any of the questions before this Court.

Finally, this action has been proceeding for more than a decade, and yet in all this time Iran has not appeared to account for its role in the horrific bombing of the Khobar Towers residential complex. This choice was made despite both exposure to more than $500 million in damages and evidence that Iran is perfectly capable of appearing when it wishes. *See, e.g.*, *Rubin v. Islamic Republic of Iran*, No. 03 Civ. 9370, 2008 U.S. Dist. LEXIS 4651, at *1–*2 (Jan. 18, 2008). Though Sprint correctly points out that the excessive delay in these proceedings is not the company's fault, it is equally true that the funds to be turned over in this matter are not the company's proceeds. And to the extent interpleader might minimize any risk Sprint may face after the close of these proceedings, that risk came into existence at the precise moment the company decided to engage in commercial transactions with an instrumentality of Iran—OFAC license or not. In this instance, Congress has announced a broad new policy to aid terrorist victims, and has passed a law that permits those victims to seize funds headed for any agency or instrumentality of Iran. The Court will not stand as a roadblock on the path to justice by imposing new requirements or permitting supplementary procedures that Congress itself did not deem necessary. As an action in equity, acceptance of an interpleader action is not mandatory, and may be denied for equitable reasons. *Star Ins. Co. v. Cedar Valley Express, LLC*, 273 F. Supp. 2d 38, 41–42 (D.D.C. 2002). In this instance, given the heinous nature of the attack on Khobar Towers, Iran's deliberate choice not to participate in these proceedings despite repeated notice, s*ee In re Terrorism Litig.*, 659 F. Supp. 2d 31, 85 (observing that "the notion" that Iran might appear "is almost laughable because that nation has never appeared in any of the terrorism actions that have been litigated against it in this Court"), and the extensive delay in justice for victims of state-sponsored terrorism, the Court sees no reason to postpone action. Accordingly, Sprint's request for interpleader will be denied.

2. Preemption by OFAC Regulations

The Court now turns to whether the OFAC license that permits Sprint's exchange of telecommunications traffic with TIC preempts enforcement of plaintiffs' judgment. Sprint argues that application of the FSIA and the District of Columbia's enforcement provisions is preempted by the existence of a regulatory regime maintained by OFAC which "implement[s] the foreign policy judgments of the Executive Branch." Jdgmt. Opp. at 3–4. In support of this position, Sprint argues that were the Court to permit execution, "the general license set forth in 31 C.F.R. § 560.508 is rendered a nullity." *Id.* at 3. The Court disagrees.

As an initial matter, the Court rejects any assertion that today's holding could render the general license provided by OFAC a "nullity." The purpose of the general license found in § 560.508 is to permit U.S. companies—such as Sprint—to conduct telecommunications business without being barred by the general prohibitions of the ITR, and nothing in either the OFAC regulations or the letter from OFAC to Sprint, submitted in support of Sprint's opposition, indicates that § 560.508 is designed to have any other effect. Moreover, permitting execution of Sprint's indebtedness to TIC in satisfaction of a valid § 1605A judgment in no way undermines the license, as Sprint remains authorized to exchange telecommunications traffic with TIC or any other Iranian entity under the OFAC regulations.[14]

[14] Sprint cites *ABC Charters, Inc. v. Bronson*, 591 F. Supp. 2d 1272 (S.D. Fla. 2008), but that case is of little help. In *ABC Charters*, the district court was evaluating whether recent amendments to the Florida Sellers of Travel Act were void under the doctrine of conflict preemption. *See generally id.* at 1301–03. In holding that those amendments were preempted, the court observed that federal law "already places restrictions on sellers of travel, including regulations as to who can travel to Cuba, when they can travel, how often they can travel, who can arrange travel to Cuba, and how those transportation arrangements are to be made." *Id.* at 1302–03. The Florida law, the court explained, "seeks to regulate all of these matters," and held that to "place additional restrictions on these sellers of travel, which would regulate the exact same conduct, would create inherent conflicts." *Id.* at 1303. Here, by contrast, *Congress* expressly authorized the use of local procedures for attachment and execution in satisfaction of FSIA judgments—awards entered under a *federal act*—and it did so while well-aware of OFAC's existing licensing scheme. Under these circumstances, the Court does not find that the general provisions of DC law concerning post-judgment procedures present an irreconcilable conflict with federal regulations concerning exchanges of telecommunications traffic with Iranian entities.

Having dismissed Sprint's attempt to construct mountains from molehills, the Court turns to the question of preemption. "[I]n every preemption case, 'the purpose of Congress is the ultimate touchstone.'" *Geier v. Am. Honda Motor Co.*, 166 F.3d 1236, 1237 (D.C. Cir. 1999) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). The matter before the Court, however, is not a typical preemption case. While it is true that DC law provides the process by which plaintiffs may enforce their judgment, the substantive basis for their right to execution is not found in DC law, but in § 1610(g) of the FSIA—a federal statute. Thus, the fundamental question at the heart of Sprint's argument is whether the scope of § 1610(g) is limited by OFAC regulations. The Court rejects this proposition, for three reasons.

First, nothing in the text of the FSIA supports Sprint's position. Congress passed the 2008 Amendments—including § 1610(g)—well-aware of the complex regime of Executive Orders, regulations and statutes which permitted—and, unfortunately, more often prevented—FSIA plaintiffs from enforcing judgments under the Act. *See Ark. Dairy Coop. Ass'n v. Dep't of Agriculture*, 573 F.3d 815, 829 (D.C. Cir. 2009) ("Courts 'generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts.'") (quoting *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184–85 (1988)). Yet, in crafting the broad remedial language of § 1610(g), Congress made no exceptions to its reach, despite the fact that the plain language of the Act undeniably reaches transactions otherwise authorized by OFAC regulations. This omission is telling, particularly where Congress has demonstrated its ability to exempt particular property from execution by—for example—explicitly exempting diplomatic property from the reach of the TRIA. TRIA § 210(b)(2)(A).

Second, the language of the OFAC regulations does not give any hint of any intended preemptive effect. The specific provision allowing Sprint to exchange telecommunications

traffic with TIC reads, in its entirety: "All transactions of common carriers incident to the receipt or transmission of telecommunications and mail between the United States and Iran are authorized." 31 C.F.R. § 560.508. Nothing in this regulatory provision indicates that it somehow immunizes the activity undertaken under the "general license" from all other statutes—including from execution of legitimate judgments. Indeed, OFAC's letter to Sprint suggests precisely the opposite. In that letter, OFAC explains that payments to TIC are authorized by § 560.508, but then goes on to express the caveat that payments to certain Iranian banks are prohibited by other federal laws, and thus may not be made *regardless* of the general license. Ltr. from OFAC to Sprint, dated Jan. 13, 2009 at 1–2, attached as Ex. 1 to Sprint Opp., Mar. 7, 2011 [176-1]. The fact that certain federal laws can override the legitimacy of payments made in connection with transactions authorized by § 560.508 undermines any notion that this provision has the immunizing quality urged by Sprint.

Finally, mindful of the central role that Congressional intent plays in preemption analysis, the Court cannot ignore that a core purpose of the NDAA is to significantly expand the number of assets available for attachment in satisfaction of terrorism-related judgments under the FSIA. As already set forth above, the language of § 1610(g) is broad and without reservation; indeed, this Court has explored the "broad remedial purposes" of the NDAA, explaining that § 1610(g) "demonstrate[s] that Congress remains focused on eliminating these barriers that have made it nearly impossible for plaintiffs in these actions to enforce civil judgments against Iran or other state-sponsors of terrorism." *In re Terrorism Litig.*, 659 F. Supp. 2d at 62–64. In light of these strong remedial purposes, the Court will not now read a significant exception into § 1610(g) that is not otherwise found in the text and that would severely undercut the unmistakable goals of Congress.

3. Necessity of a Regulatory License

Finally, Sprint argues that plaintiffs must obtain a specific license to garnish funds held by the company and owed to TIC. Jdgmt. Opp. at 8. In support of this position, Sprint cites an OFAC regulation declaring that

> [e]xcept as otherwise authorized, specific licenses may be issued on a case-by-case basis to authorize transactions in connection with award, decisions or orders of the Iran-United States Claims Tribunal in The Hague, the International Court of Justice, or other international tribunals (collectively 'tribunals'); agreements settling claims brought before tribunals; and awards, orders, or decisions of an administrative, judicial or arbitral proceeding in the United States or abroad, where the proceeding involves the enforcement of awards, decisions or orders of tribunals, or is contemplated under an international agreement, or involves claims arising before 12:01 a.m. EDT, May 7, 1995, that resolve disputes between the government of Iran and the United States or United States nationals.

31 C.F.R. § 560.510. The plain language of this provision refutes Sprint's position. By its own terms, § 560.510 applies only to transactions concerning (1) awards of international tribunals, (2) settlements of disputes in international tribunals, and (3) awards of U.S. courts in connection with either enforcement of awards of international tribunals or claims arising *before* May 7, 1995. *See generally id.* The underlying action in these proceedings does not involve the ruling of any international tribunal as envisioned in this regulatory provision, and thus § 560.510 is applicable *only* if this action involved claims "arising before 12:01 a.m. EDT, May 7, 1995." *Id.* The Khobar Towers bombing occurred more than a year after this date, *supra*, however, and even if it had not, the "claim" in this proceeding is the right to funds held by Sprint, which arose only two years ago when the Court entered judgment on behalf of plaintiffs. *Ministry of Def. & Support for the Armed Forces v. Cubic Def. Sys.*, 385 F.3d 1206, 1224 (9th Cir. 2004), *rev'd on other grounds*, 546 U.S. 450 (2006). Moreover, as the Eleventh Circuit has explained, the primary purpose of this provision is to regulate any judgment leading to the transfer of funds or

assets from the United States to Iran, *See Dean Witter Reynolds, Inc. v. Fernandez*, 741 F.2d 355, 362–63 (11th Cir. 1984) (observing that license under §560.510 must be secured where U.S. citizen seeks to "transfer[] assets out of this country" to Iran)—which is obviously not the case here. The Court therefore holds that no OFAC license is necessary under relevant regulations.[15]

IV. CONCLUSION

The Court would like to conclude by noting that this decision represents renewed hope for long-suffering victims of state-sponsored terrorism. Would *like to*. But the bleak reality is that today's decision comes after more than a year of litigation and results in a turnover of funds amounting to less than one-tenth of one-percent of what plaintiffs are entitled to in these consolidated cases. And this infinitesimal sum is dwarfed by even greater magnitudes when compared to the endless agony and suffering befalling these victims. A step in the right direction, to be sure. But a very small one.

A separate Order and Judgment consistent with these findings shall issue this date.

Signed by Royce C. Lamberth, Chief Judge, on August 10, 2011.

[15] Sprint also points the Court to a statement of interest by the government in a case in which a plaintiff was attempting to garnish payments owned by several private charter companies to instrumentalities of the Cuban government in satisfaction of a FSIA judgment. In that instance, the government took the position that "garnishment is one among many forms of transfer subject to the licensing requirements under the [Cuban Asset Control Regulations]." U.S. Statement of Interest in *Martinez v. ABC Charters, Inc., et al.*, No. 10 Civ. 20611 at 13–14, Ex. 2 to Opp. to Mtn. for Jdgmt., Mar. 7, 2011 [176-2]. In doing so, however, the government relied on two provisions of the relevant regulations: the first bars any transfer of assets between the United States and Cuba without a license, 31 C.F.R. § 515.201, and the second defines transfers to expressly include all garnishments. *Id*. § 515.310. By contrast, the ITR—under which Sprint exchanges telecommunications traffic with TIC—does not include *any* discussion of garnishments.

Annex 51

***Bland et al. v. The Islamic Republic of Iran et al.*, U.S. District Court, District of Columbia, 21 December 2011, 831 F.Supp.2d 150 (D.D.C. 2011)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ESTATE OF STEVEN BLAND, *et al.*,	)	
Plaintiffs,	)	
v.	)	05-cv-2124 (RCL)
ISLAMIC REPUBLIC OF IRAN, *et al.*,	)	
Defendants.	)	

MEMORANDUM OPINION

I. Liability

This civil action was filed under 28 U.S.C. § 1605(a)(7) and arises out of the bombing of the United States Marine barracks in Beirut, Lebanon on October 23, 1983. *See Bland v. Islamic Republic of Iran*, No. 05-CV-2124-RCL (D.D.C. 2005) Dkt. # 2 (Complaint). There are nearly 100 plaintiffs in this action, which includes numerous estates of those service members killed in the terrorist attack and dozens of family members of those who were killed or injured during the terrorist incident. On December 6, 2006, this Court took judicial notice of the findings of fact and conclusions of law in *Peterson v. Islamic Republic of Iran*, which also concerns the Marine barracks bombing, *see* 264 F. Supp. 2d 47 (D.D.C. 2003), and entered judgment in favor of the plaintiffs and against Iran with respect to all issues of liability. *Bland*, Dkt. # 15. This Court then referred this action to a special master for consideration of plaintiffs' claims for damages *See id.* Dkt. ## 15–16.

On March 10, 2008, and while this action was still pending with the special master under § 1605(a)(7), plaintiffs timely filed a motion seeking to proceed under the new state sponsored

terrorism exception of the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605A. *See id.* Dkt. # 17. This Court granted plaintiffs' motion, holding that plaintiffs followed the proper procedures to qualify for retroactive treatment under the National Defense Authorization Act of 2008, Pub. L. No. 110-181 § 1083(c)(2). *Bland*, Dkt. # 19. This enabled plaintiffs to take advantage of the new state sponsored terrorism exception in their claims before the special master. *See id.* Since the issue of liability has been previously settled, this Court now turns to examine the damages recommended by the special master.

II. Damages

Damages available under the FSIA-created cause of action "include economic damages, solatium, pain and suffering, and punitive damages." 28 U.S.C. § 1605A(c). Accordingly, those who survived the attack may recover damages for their pain and suffering, as well as any other economic losses caused by their injuries; estates of those who did not survive can recover economic losses stemming from wrongful death of the decedent; family members can recover solatium for their emotional injury; and all plaintiffs can recover punitive damages. *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 82–83 (2010).

"To obtain damages against defendants in an FSIA action, the plaintiff must prove that the consequences of the defendants' conduct were 'reasonably certain (i.e., more likely than not) to occur, and must prove the amount of the damages by a reasonable estimate consistent with this [Circuit's] application of the American rule on damages.'" *Salazar v. Islamic Republic of Iran*, 370 F. Supp. 2d 105, 115–16 (quoting *Hill v. Republic of Iraq*, 328 F.3d 680, 681 (D.C. Cir. 2003) (internal quotations omitted)). As discussed in *Peterson II*, plaintiffs have proven that the defendants' commission of acts of extrajudicial killing and provision of material support and

resources for such killing was reasonably certain to—and indeed intended to—cause injury to plaintiffs. *Peterson v. Islamic Republic of Iran (Peterson II)*, 515 F. Supp. 2d 25, 37 (2007)

The Court hereby ADOPTS, just as it did in *Peterson* and *Valore*, all facts found by and recommendations made by the special master relating to the damages suffered by all plaintiffs in this case. *Id.* at 52–53; *Valore*, 700 F. Supp. at 84–87. However, where the special master has deviated from the damages framework that this Court has applied in previous cases, "those amounts shall be altered so as to conform with the respective award amounts set forth" in the framework. *Peterson II*, 515 F. Supp. 2d at 52–53. The final damages awarded to each plaintiff are contained in the table located within the separate Order and Judgment issued this date, and this Court discusses below any alterations it makes to the special master recommendations.

A. Pain and Suffering of Survivors

Assessing appropriate damages for physical injury or mental disability can depend upon a myriad of factors, such as "the severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life." *Peterson II*, 515 F. Supp. 2d 25, n.26 (D.D.C. 2007) (citing *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 59 (D.D.C. 2006)). In *Peterson*, this Court adopted a general procedure for the calculation of damages that begins with the baseline assumption that persons suffering substantial injuries in terrorist attacks are entitled to $5 million in compensatory damages. *Id.* at 54. In applying this general approach, this Court has explained that it will "depart upward from this baseline to $7–$12 million in more severe instances of physical and psychological pain, such as where victims suffered relatively more numerous and severe injuries, were rendered quadripeligic, partially lost vision and hearing, or were mistaken for dead," *Valore*, 700 F. Supp. 2d at 84, and will "depart downward to $2–$3 million where

victims suffered only minor shrapnel injuries or minor injury from small-arms fire," *id.* However, "i[f] death was instantaneous there can be no recovery . . . ." *Elahi v. Islamic Republic of Iran*, 124 F. Supp. 2d 97, 112 (D.C. 2000) (citation omitted). On the other hand, victims who survived a few minutes to a few hours after the bombing typically receive an award of $1 million. *Id.*

Again, this Court ADOPTS all of special master awards for pain and suffering unless otherwise discussed below. This Court also discusses below each situation where the special master departed upward or downward from the previously established damages framework.

1. Upward Departures.

The special master recommended an upward departure for two individuals. John Gibson suffered from singed lungs, "second degree burns on his face, upper body, torso, back buttocks and back of his legs; a left frontal fracture of his skull; an intracranial hematoma; a perforated eardrum; and a retinal occlusion" as a result of the explosion at the BLT. Special Master Rpt. Dkt # 65. Over a long period of time he underwent a number of painful procedures to treat his injuries, but he remains "essentially cross-eyed, has never regained sight in [one] eye, and suffers from double-vision and trouble with depth perception." He also lost a portion of his skull that was replaced with plastic. He presently has a Veterans Administration disability rating of 90% and still suffers from nightmares, intense headaches, double-vision, short-term memory loss, and ringing in his ears. In light of his disability rating and the exceptional severity of Mr. Gibson's injuries, the Court agrees with the special master and will depart upward from $5,000,000 to $8,000,000.

Emmanuel Simmons suffered from "a collapsed lung, second and third-degree burns on his face, chest, arms and thigh, burst ear drums and shrapnel embedded in his arms and legs."

Special Master Rpt. Dkt. # 49. Mr. Simmons had a skin graft attached to his face among other surgeries, and for a long time remained "extremely self-conscious that other people were staring at him." He received a 100% disability rating from the Veterans Administration upon discharge. He continues to have flashbacks of the bombing. In light of his disability rating and the exceptional severity of Mr. Simmons' injuries, the Court agrees with the special master and will depart upward from $5,000,000 to $7,000,000.

2. Downward Departures

The special master recommended a downward departure for seven individuals. Alan Anderson witnessed the "mushroom cloud" over the BLT and "fe[lt] the ground moving." Special Master Rpt. Dkt. # 63. He did not suffer any physical injury in the attack. The Veterans Administration rated Mr. Anderson 50% disabled from Post-Traumatic Stress Disorder ("PTSD") he acquired as a result of the bombing. The Court concludes that Mr. Anderson suffered severe emotional injuries, but considering his lack of physical injuries, the Court will heed the special master's recommendation to depart down from $5,000,000 to $1,500,000.

John Hendrickson was knocked unconscious as a result of the blast but later assisted in the rescue efforts at the scene of the explosion. Special Master Rpt. Dkt. # 68. He died on April 13, 1990 from multiple sclerosis. After examining extensive expert reports, the special master concluded that there was no nexus between the onset of Mr. Hendrickson's multiple sclerosis and the bombing. This Court concurs, but nonetheless notes that Mr. Hendrickson did suffer from PTSD for a number of years upon returning to the United States. In light of the PTSD suffered by Mr. Hendrickson but lack of other severe physical injuries, the Court will agree with the special master that a downward departure from $5,000,000 to $1,500,000 is required.

Renard Manley was sleeping on the third floor of the BLT when the blast buried him in rubble. Special Master Rpt. Dkt. # 47. He received contusions and lacerations covering most of his body. He was confined to a wheelchair for a few weeks and then remained on crutches for a year. He received a 50% Veterans Administration disability rating for PTSD. The Court concludes that Mr. Manley suffered severe emotional injuries, but considering the nature of his physical injuries the Court will agree with the special master that a downward departure from $5,000,000 to $4,000,000 is required.

Samuel Palmer was sleeping in the basement of the BLT when he was buried by the blast. Special Master Rpt. Dkt. # 35. He suffered an unspecified head injury, a hole in his eardrum, and a broken foot. To this day he continues to suffer pain and swelling in that foot, as well as sleep, and mood disorders. He currently holds a 10% Veterans Administration disability rating for his hearing loss, 50% for his PTSD, and 30% for his foot, for a combined disability rating of 80%. The special master concluded that a downward departure from $5,000,000 to $3,000,000 was necessary. However, given the severity of Mr. Palmer's Veterans Administration disability rating coupled with the lifelong pain his foot has caused him, the Court finds that the special master's downward departure was excessive, and accordingly, awards Mr. Palmer $4,500,000 for his pain and suffering.

Robert Rucker was shaving in a facility 80 meters away from the BLT when the explosion caused "lacerations on his left arm, bruising, blurred vision, impaired hearing and a sore head from being hit by concrete." Special Master Rpt. Dkt. #59. He does not yet have a Veterans Administration disability rating, but his medical records demonstrate that he has been diagnosed with PTSD. The Court agrees with the special master that a downward departure from $5,000,000 to $2,000,000 is required because of the nature of Mr. Rucker's injuries.

Ronald Walker was patrolling about 150 yards away from the BLT when the explosion occurred. Special Master Rpt. Dkt. # 35. He suffered lacerations to his thigh and rib cage. *Id.* Years later, he received a 70% disability rating from the Veterans Administration as a result of PTSD. Because of the less severe nature of his physical injuries, while not discounting the severe psychological and emotional toll he suffered, this Court agrees with the special master that a downward departure from $5,000,000 to $2,000,000 is required.

Galen Weber was immediately outside the BLT sleeping in a tent when the explosion occurred. Special Master Rpt. Dkt. # 29. He suffered a leg injury and received treatment for 7 or 8 days after the attack. He received a Veterans Administration disability rating of 10% for the leg injury and 10% for degenerative discs in his back, but only the leg injury was attributable to the Beirut bombing. In light of these circumstances, this Court agrees with the special master that a downward departure from $5,000,000 to $2,000,000 is required.

B. Economic Loss

In addition to pain and suffering, several plaintiffs who survived the attack and the estates of several survivors have proven to the satisfaction of the special master, and thus to the satisfaction of the Court, lost wages resulting from permanent and debilitating injuries suffered in the attack or loss of accretions to the estate resulting from the wrongful death of decedents in the attack. *See Valore*, 700 F. Supp. 2d at 85. The Court therefore ADOPTS without modification the damages awarded for economic loss recommended by the special master.

C. Solatium

This Court developed a standardized approach for FSIA intentional infliction of emotional distress, or solatium, claims in *Heiser v. Islamic Republic of Iran*, where it surveyed past awards in the context of deceased victims of terrorism to determine that, based on averages,

"[s]pouses typically receive greater damage awards than parents [or children], who, in turn, typically receive greater awards than siblings." 466 F. Supp. 2d 229, 269 (2006). Relying upon the average awards, the *Heiser* Court articulated a framework in which spouses of deceased victims were awarded approximately $8 million, while parents received $5 million and siblings received $2.5 million. *Id.*; *see also Valore*, 700 F. Supp. 2d at 85 (observing that courts have "adopted the framework set forth in *Heiser* as 'an appropriate measure of damages for the family members of victims'") (quoting *Peterson II*, 515 F. Supp. 2d at 51). As this Court recently explained, in the context of distress resulting from injury to loved ones—rather than death—courts have applied a framework where "awards are 'valued at half of the awards to family members of the deceased'—$4 million, $2.5 million and $1.25 million to spouses, parents, and siblings, respectively." *Oveissi v. Islamic Republic of Iran*, 768 F. Supp. 2d 16, 26 n.10 (D.D.C. 2011) (quoting *Valore*, 700 F. Supp. 2d at 85). Children of a deceased victim typically receive an award of $3 million, while children of a surviving victim receive $1.5 million. *Stern v. Islamic Republic of Iran*, 271 F. Supp. 2d 286, 301 (D.D.C. 2003). "[C]urrent spouses who were not yet married to an injured serviceman at the time of the attack . . . are among the group of plaintiffs who cannot recover damages . . . ." *Peterson II*, 515 F. Supp. 2d at 45 n.21.

In applying this framework, however, courts must be wary that "[t]hese numbers . . . are not set in stone," *Murphy v. Islamic Republic of Iran*, 740 F. Supp. 2d 51, 79 (2010), and that deviations may be warranted when, *inter alia*, "evidence establish[es] an especially close relationship between the plaintiff and decedent, particularly in comparison to the normal interactions to be expected given the familial relationship; medical proof of severe pain, grief or suffering on behalf of the claimant [is presented]; and circumstances surrounding the terrorist

attack [rendered] the suffering particularly more acute or agonizing." *Oveissi*, 768 F. Supp. 2d at 26–27.

This Court ADOPTS all of special master awards for solatium unless otherwise discussed below. This Court also discusses below each situation where the special master departed upward or downward from the previously established damages framework.

1. Upward Departures.

The special master did not recommend—nor does the Court think it appropriate—granting upward departures for any of the solatium claims in this case. Inadvertently, the special master appears to have granted upward departures to two plaintiffs.

Tena Walker-Jones's brother Eric Walker was killed instantaneously by the explosion. Special Master Rpt. Dkt. # 31. As previously discussed, a sibling of a deceased servicemember typically receives a $2.5 million solatium award under the *Heiser* framework. 466 F. Supp. 2d at 269. The special master concluded that "no evidence has been put forward" warranting a departure from the baseline. *Id.* However, the special master nonetheless awarded Ms. Walker-Jones solatium damages of $3 million. Therefore, this Court will correct the award to Ms. Walker-Jones and reduce it to $2.5 million.

Ronnie Walker's father Ronald Walker survived the attack, albeit suffering severe PTSD as a result. Special Master Rpt. Dkt. # 33. As previously discussed, a child of a surviving servicemember typically receives a $1.5 million solatium award. *See Stern*, 271 F. Supp. 2d at 301. The special master explained that "nothing in the record" compelled a deviation from the established framework. However, the special master nonetheless awarded Ronnie Walker $2.5 million in solatium damages. Therefore, this Court will correct the award to Ronnie Walker and reduce it to $1.5 million.

2. Downward Departures

The special master recommended downward departures for four individuals. Thelma Anderson was, understandably, "very very scared" before discovering that her son, Alan Anderson, was alive and unharmed by the explosion. Special Master Rpt. Dkt. # 63. Alan later suffered from PTSD. While the Court concludes that Ms. Anderson suffered emotional injury, considering her son's lack of physical injuries the Court will heed the special master's recommendation to depart down from $5,000,000 to $1,000,000.

John David Hendrickson and Tyson Hendrickson, the sons of John Hendrickson, as well as his wife Deborah Ryan, also suffered emotional trauma as a result of Mr. Hendrickson's injuries in Beirut. Special Master Rpt. Dkt. #68. However, as previously discussed, there was no convincing evidence that Mr. Hendrickson's multiple sclerosis, leading to his death, was caused by the Beirut bombing. In light of the $1,500,000 award Mr. Hendrickson received for his pain and suffering related to the bombing, the Court does not think it appropriate for the children and spouse to recover more than the victim. Therefore, the Court agrees with the special master that John David and Tyson should receive solatium awards of $750,000 and Deborah Ryan should receive a solatium award of $1,000,000.

D. Punitive Damages

In assessing punitive damages, this Court has observed that any award must balance the concern that "[r]ecurrent awards in case after case arising out of the same facts can financially cripple a defendant, over-punishing the same conduct through repeated awards with little deterrent effect . . . ." *Murphy*, 740 F. Supp. 2d at 75, against the need to continue to deter "the brutal actions of defendants in planning, supporting and aiding the execution of [terrorist attacks]," *Rimkus v. Islamic Republic of Iran*, 750 F. Supp. 2d at 163, 184 (D.D.C. 2010). To

accomplish this goal, this Court—relying on the Supreme Court's opinion in *Philip Morris USA v. Williams*, 549 U.S. 346 (2007)—held that the calculation of punitive damages in subsequent related actions should be directly tied to the ratio of punitive to compensatory damages set forth in earlier cases. *Murphy*, 740 F. Supp. 2d at 76. Thus, in *Murphy* this Court applied the ratio of $3.44 established in *Valore*—an earlier FSIA case arising out of the Beirut bombing. *Id.* at 82-83 (citing *Valore*, 700 F. Supp. 2d at 52). Here, the Court will again apply this same $3.44 ratio, which has been established as the standard ratio applicable to cases arising out of the Beirut bombing. Application of this ratio results in a total punitive damages award of $955,652,324.

III. CONCLUSION

In closing, the Court appreciates plaintiffs' selfless sacrifice and their persistent efforts to hold Iran and MOIS accountable for their support of terrorism. The Court concludes that defendants Iran and MOIS must be punished to the fullest extent legally possible for the bombing in Beirut on October 23, 1983. This horrific act impacted countless individuals and their families, nearly one hundred of whom are parties to this lawsuit. This Court hopes that the victims and their families may find some measure of solace from this Court's final judgment. For the reasons set forth above, the Court finds that defendants are responsible for plaintiffs' injuries and thus liable under the FSIA's state-sponsored terrorism exception for $277,805,908 in compensatory damages and $955,652,324 in punitive damages, for a total award of $1,233,458,232.

A separate Order and Judgment consistent with these findings shall be entered this date.

SO ORDERED.

Signed by Royce C. Lamberth, Chief Judge, on December 21, 2011.

Annex 52

***Havlish et al. v. Bin Laden et al.*, U.S. District Court, Southern District of New York, 22 December 2011, No. 03 MD 1570 (S.D.N.Y 2011)**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001

Civil Action No. 03 MDL 1570 (GBD)

FIONA HAVLISH, in her own right and as Executrix of the ESTATE OF DONALD G. HAVLISH, JR., Deceased, *et al.*,

Plaintiffs,

v.

USAMA BIN LADEN,

AL-QAEDA/ISLAMIC ARMY,

THE TALIBAN, a.k.a. the Islamic Emirate of Afghanistan,

MUHAMMAD OMAR,

THE ISLAMIC REPUBLIC OF IRAN,

AYATOLLAH ALI HOSEINI KHAMENEI,

ALI AKBAR HASHEMI RAFSANJANI,

INFORMATION AND SECURITY,

THE ISLAMIC REVOLUTIONARY GUARD CORPS,

HEZBOLLAH,

THE IRANIAN MINISTRY OF PETROLEUM,

THE NATIONAL IRANIAN TANKER CORPORATION,

THE NATIONAL IRANIAN

CIVIL ACTION NO. 03-CV-9848 –GBD

FINDINGS OF FACT AND CONCLUSIONS OF LAW

OIL CORPORATION,	:
	:
THE NATIONAL IRANIAN GAS COMPANY,	:
	:
IRAN AIRLINES,	:
	:
THE NATIONAL IRANIAN PETROCHEMICAL COMPANY,	:
	:
IRANIAN MINISTRY OF ECONOMIC AFFAIRS AND FINANCE,	:
	:
IRANIAN MINISTRY OF COMMERCE,	:
	:
IRANIAN MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS,	:
	:
THE CENTRAL BANK OF THE ISLAMIC REPUBLIC OF IRAN, *et al.*,	:
	:
Defendants.	:

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

BACKGROUND AND PROCEDURAL HISTORY

On September 11, 2001, nineteen (19) members of the al Qaeda terrorist network hijacked four (4) United States passenger airplanes and flew them into the twin towers of the World Trade Center in New York City, the Pentagon in Arlington, Virginia, and, due to passengers' efforts to foil the hijackers, an open field near Shanksville, Pennsylvania. Thousands of people on the planes and in the buildings, including first responders at the New York crash site, were killed in those attacks. Countless others were injured, and property worth billions of dollars was destroyed. *In Re Terrorist Attacks on September 11, 2001*, 349 F.Supp.2d 765, 779 (S.D.N.Y. 2005, Casey, J.).

Plaintiffs in this action are family members and legal representatives of victims of the 9/11 attacks who seek to hold accountable the persons, entities, and foreign sovereigns that directly and materially supported al Qaeda. In particular, plaintiffs seek entry of a judgment against the Islamic Republic of Iran, two (2) of its top leaders, and a number of Iran's political and military subdivisions, agencies, and instrumentalities based on Iran's provision of material support to al Qaeda and direct support for, and sponsorship of, the September 11, 2001 terrorist attacks.[1] The officials, subdivisions, and agencies and instrumentalities of Iran named as defendants (collectively referred to as the "agency and instrumentality Defendants") are Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi Rafsanjani, Hezbollah (a./k./a. Hizballah), the Iranian Ministry of Information and Security ("MOIS"), the Islamic Revolutionary Guard Corps ("IRGC"), the Iranian Ministry of Petroleum, the Iranian Ministry of Economic Affairs and Finance, the Iranian Ministry of Commerce, the Iranian Ministry of Defense and Armed Forces Logistics, the National Iranian Tanker Corporation, the National Iranian Oil Corporation, the National Iranian Gas Company, Iran Airlines, the National Iranian Petrochemical Company, and the Central Bank of the Islamic Republic of Iran.

The Court's jurisdiction over Iran and the agency and instrumentality Defendants is grounded in the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §1602, *et seq*. Section 1605A of the FSIA also serves as the basis for liability claims asserted by plaintiffs who are United States nationals.

This action was initiated in the United States District Court for the District of Columbia

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[1] Plaintiffs have also asserted claims against non-sovereign defendants Usama (or Osama) bin Laden, the Taliban, Muhammad Omar, and the al Qaeda/Islamic Army, for wrongful death, survival, intentional infliction of emotional distress, and conspiracy. The non-sovereign defendants were served with the Amended Complaint pursuant to Fed. R. Civ. P. 4 and the alternative forms of service approved by the Court, including service by publication in prominent periodicals in the Middle East. Plaintiffs seek entry of default judgments against these defendants in a separate Motion for Judgment by Default Against Non-Sovereign Defendants (MDL Docket Document No. 2125).

on February 19, 2002. Plaintiffs served Iran and the agency and instrumentality Defendants with summonses and copies of the Amended Complaint pursuant to 28 U.S.C. §1608.[2] On November 1, 2002, plaintiffs' counsel filed an Affidavit of Service of Original Process Upon All Defendants, providing the Court with a detailed description of how the Amended Complaint and Summons were served upon each Defendant. No Defendant answered or responded to the Amended Complaint, nor did any person enter an appearance on behalf of any Defendant. The Clerk of the U.S. District Court for the District of Columbia then entered a Rule 55(a) Default against each of the Defendants.[3] Fed. R. Civ. P. 55(a).

After the case was consolidated into the present MDL proceedings, this Court granted plaintiffs' Motion for Leave to File a Second Amended Complaint, which plaintiffs filed on September 7, 2006 (*Havlish* Docket no. 214).[4] Although plaintiffs had already served Defendants with the Amended Complaint and obtained Rule 55(a) defaults against them, plaintiffs again served Iran and the agency and instrumentality Defendants with the Second Amended Complaint. Such service was again made pursuant to 28 U.S.C. §1608. On August 24, 2007, plaintiffs' counsel filed an Affidavit of Service of the Second Amended Complaint (MDL Docket Document No. 2033). Still, none of the defendants made an appearance or otherwise responded to the Second Amended Complaint. On December 27, 2007, the Clerk of

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2 Service under the FSIA is governed by 28 U.S.C. §1608. Subsection (a) provides for service on foreign states, while subsection (b) provides for service on an agency or instrumentality of a foreign state. To determine whether a foreign entity should be treated as the state itself or as an agency or instrumentality, courts apply the "core functions" test: if the core functions of the entity are governmental, it is treated as the state itself; and if the core functions are commercial, it is treated as an agency or instrumentality. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 232 (D.C. Cir. 2003).

3 For details of the steps taken to effectuate service on the defaulting defendants, *see* Plaintiffs' memorandum and supporting documents submitted to the Court via letter dated October 27, 2009.

4 Plaintiffs' Second Amended Complaint amended the prior Complaint in three areas: 1) it added certain named plaintiffs; 2) it removed certain plaintiffs represented by other counsel in other cases; and 3) it substituted certain instrumentality defendants for defendants previously designated as "Unidentified Terrorist Defendants."

Court entered a Clerk's Certificate for Default as to each Defendant. (*See also* n. 3, *supra.*)

In order to revise their pleading to conform to the new provisions of the FSIA enacted in section 1083 of the National Defense Authorization Act for Fiscal Year 2008 (the "NDAA"), Pub.L. No. 110–181, § 1083, 122 Stat. 341 (2008) (codified at 28 U.S.C. § 1605A (2009)), plaintiffs filed a motion for leave to file a Third Amended Complaint, which was granted by the Court. (*Havlish* docket no. 262.) The Third Amended Complaint (*Havlish* docket no. 363) asserts a claim by U.S. citizen plaintiffs against Iran and the agency and instrumentality defendants under §1605A and a claim by non-U.S. citizens against those defendants under the Alien Tort Claims Act, 28 U.S.C. §1350 (the "ATCA").[5]

This matter now comes before the Court upon plaintiffs' motion for entry of judgment by default against defendant Islamic Republic of Iran and the agency and instrumentality defendants. Before plaintiffs can be awarded any relief, this Court must determine whether they have established their claims "by evidence satisfactory to the court." 28 U.S.C. § 1608(e); *see also Roeder v. Islamic Republic of Iran,* 333 F.3d 228, 232 (D.C.Cir. 2003). This "satisfactory to the court" standard is identical to the standard for entry of default judgments against the United States in Federal Rule of Civil Procedure 55(e). *Hill v. Republic of Iraq,* 328 F.3d 680, 684 (D.C.Cir. 2003). In evaluating the Plaintiffs' proof, the Court may "accept as true the plaintiffs' uncontroverted evidence." *Elahi v. Islamic Republic of Iran,* 124 F.Supp.2d 97, 100 (D.D.C. 2000); *Campuzano v. Islamic Republic of Iran,* 281 F.Supp.2d 258, 268 (D.D.C. 2003). In FSIA default judgment proceedings, the plaintiffs may establish proof by affidavit. *Weinstein v. Islamic Republic of Iran,* 184 F.Supp.2d 13, 19 (D. D.C. 2002).

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[5] While plaintiffs' Third Amended Complaint includes a claim under the ATCA, plaintiffs have presented evidence that every plaintiff is either a national of the United States or has asserted a claim that derives from a victim who was a national of the United States at the time of the 9/11 attacks. Accordingly, all plaintiffs meet the requirements established in 28 U.S.C. § 1605A(a)(2)(A)(ii) for recovery under the FSIA.

In support of their motion, plaintiffs have submitted to the Court expert affidavits, fact affidavits, videotaped witness testimony and other exhibits. Such proofs were the subject of an evidentiary hearing on December 15, 2011. Based on the established record, plaintiffs propose the following findings of fact and conclusions of law:

FINDINGS OF FACT

Defendants

1. The Islamic Republic of Iran (hereinafter, unless otherwise noted, "Iran") has engaged in, and supported, terrorism as an instrument of foreign policy, virtually from the inception of its existence after the Iranian Revolution in 1979. Ex. 3, Byman Affid. ¶¶19-22, 25; Ex. 8, Clawson Affid. Conclusion, p. 35; Ex. 6, Lopez-Tefft Affid. ¶¶62-63, 67-95; Ex. 13, State Department Country Reports on Terrorism, Patterns of Global Terrorism [excerpts regarding Iran]; Ex. 2, Timmerman 2nd Affid. ¶2; *see also* Ex. 11, Testimony of Abolhassan Banisadr, p. 16. Plaintiffs' First Memorandum Of Law In Support Of Motion For Entry Of Judgment By Default Against Sovereign Defendants ("First Memo") at pp. 37-42, 44-52, 59-68.

2. Iran has been waging virtually an undeclared war against both the United States and Israel for thirty years. Ex. 7, Bergman Affid. ¶24; Ex. 6, Lopez-Tefft Affid. ¶60.

3. Iran wages this undeclared war through asymmetrical, or unconventional strategies and terrorism, often through proxies such as Hizballah, HAMAS, al Qaeda, and others. Ex. 7, Bergman Affid. ¶¶19-21.

4. The U.S. State Department has designated Iran as a foreign state sponsor of terror every year since 1984. Ex. 3, Byman Affid. ¶15; Ex. 8, Clawson Affid. ¶40; *see Estate of Heiser v. Islamic Republic of Iran*, 466 F.Supp.2d 229 (D.D.C. 2006).

5. Since 1980, each of the State Department's annual reports on terrorism describes the Iranian state's consistent involvement in acts of terror. Ex. 13, State Department *Country Reports on Terrorism*, *Patterns of Global Terrorism* [excerpts regarding Iran] 1980-2009; Appendix F [selected excerpts]; Ex. 6, Lopez-Tefft Affid. ¶¶66-95.

6. Defendants Ali Hoseini Khamenei and Ali Akbar Hashemi Rafsanjani are two of the most important and powerful officials in Iran. Ex. 41, Clawson 2nd Affid. ¶9. Both Khamenei and Rafsanjani occupy positions at the very highest echelon of the Iranian government. Ex. 8, Clawson Affid. ¶18-21;-23-28; Ex. 41, Clawson 2nd Affid. ¶¶9-14.

7. Ayatollah Ali Hoseini Khamenei is, and has been since 1989, the Supreme Leader of the Islamic Republic of Iran. Ex. 41, Clawson 2nd Affid. ¶10; Ex. 35, Iran: U.S. Concerns and Policy Responses, Congressional Research Service.

8. Ayatollah Ali Hoseini Khamenei is the commander-in-chief of the armed forces, appoints the head of each military service, declares war and peace, appoints the head of the judiciary, and may dismiss the elected president of Iran, among many other powers outlined in Article 110 of the Iranian Constitution. He is, as his title suggests, supreme. He is the head of state, and, for all intents and purposes, Khamenei *is* the Iranian government. Khamenei is certainly – by far – the most powerful person in the Iranian government. His term of office is unlimited. Ex. 41, Clawson 2nd Affid. ¶11; Ex. 35, "Iran: U.S. Concerns and Policy Responses," Congressional Research Service (March 4, 2011), pp. 2-3.

9. Defendant Ali Akbar Hashemi Rafsanjani, one of the wealthiest individuals in Iran, has held a number of top positions in Iran's government: from 1989 to 1997, he was the president of Iran; from 1981 to 1989, he was the speaker of the Iranian parliament. Currently, Rafsanjani heads two important bodies established by the Iranian Constitution: the Assembly of Experts and the Expediency Council. Ex. 41, Clawson 2nd Affid. ¶12; Ex. 35, "Iran: U.S. Concerns and Policy Responses," Congressional Research Service (March 4, 2011), pp. 2-4.

10. The Assembly of Experts selects a new Supreme Leader when that position becomes vacant. Ex. 41, Clawson 2nd Affid. ¶12; Ex. 35, "Iran: U.S. Concerns and Policy Responses," Congressional Research Service (March 4, 2011), p. 3.

11. The Expediency Council is a uniquely Iranian institution; its members are appointed by the Supreme Leader, and it is charged with responsibility for resolving deadlocks between the parliament and the Guardian Council. Ex. 41, Clawson 2nd Affid. ¶12; Ex. 35, "Iran: U.S. Concerns and Policy Responses," Congressional Research Service (March 4, 2011), p. 3.

12. The Guardian Council is a body charged with vetting legislation to ensure that it is consistent with Islam and the Iranian Constitution, and which deals with other issues "forwarded to them by the [Supreme] Leader." Ex. 41, Clawson 2nd Affid. ¶12; Ex. 35, "Iran: U.S. Concerns and Policy Responses," Congressional Research Service (March 4, 2011), pp. 2-3.

13. Until Rafsanjani lost a bid for a new presidential term in 2005, he was widely considered to be the second most powerful figure in the Iranian government. Certainly, he was the second most powerful figure from 1989 to 2005. Ex. 41, Clawson 2nd Affid. ¶13.

14. Khamenei and Rafsanjani both have long records of direct involvement in Iran's material support for terrorism, and both have been cited as key figures in numerous U.S. court cases finding Iranian state support for terrorism. Ex. 41, Clawson 2nd Affid. ¶13; regarding Rafsanjani, *see Owens, et al. v. Republic of Sudan, et al.*, Civ. Action No. 01-2244 (JDB), 2011 U.S. Dist. LEXIS 135961.

15. As ruled by a German court in the "*Mykonos*" case, both Khamenei and Rafsanjani were

named as having been responsible for ordering the assassination of Iranian dissidents in Berlin. Ex. 41, Clawson 2nd Affid. ¶14.

16. Executive power in Iran is held not by the elected head of the government, Iran's president, but rather by the unelected Supreme Leader. *Id.*, pp. 55, 66; 127; Ex. 6, Lopez-Tefft Affid. ¶19; Ex. 8, Clawson Affid. ¶18.

17. Iran's Supreme Leader has the authority to make any decision – religious or political. Ex. 8, Clawson Affid. ¶¶19-20.

18. The political structure of Iran is divided conceptually: there is a formal governmental structure and a revolutionary structure. The Supreme Leader oversees both. Ex. 8, Clawson Affid. ¶25.

19. Iran's Supreme Leader holds power to dismiss the president, overrule the parliament and the courts, and overturn any secular law. Ex. 8, Clawson Affid. ¶21.

20. Iran's Supreme Leader wields sole authority to command, appoint, and dismiss every major leadership figure of any importance in the Iranian government system and the military. Ex. 6, Lopez-Tefft Affid. ¶20.

21. Defendants Iranian Ministry of Information and Security ("MOIS"), the Islamic Revolutionary Guard Corps ("IRGC"), the Iranian Ministry of Petroleum, the Iranian Ministry of Economic Affairs and Finance, the Iranian Ministry of Commerce, and the Iranian Ministry of Defense and Armed Forces Logistics are all political or military subdivisions of the nation-state the Islamic Republic of Iran. Each of these agencies has core functions which are governmental, not commercial, in nature. Ex. 41, Clawson 2nd Affid. ¶¶15-17, 23-28; Plaintiffs' Third Memorandum at pp. 9-14.

22. Except for the IRGC, these governmental ministries in Iran bear much the same relationship to Iran's government as do the cabinet departments in the United States government: they are established by law, their heads are appointed by the president subject to confirmation by the parliament, their budgets are proposed by the president and approved by the parliament, and their funding comes almost entirely from general tax revenues. Their core functions are governmental, and they are agencies within the government of the Islamic Republic of Iran. Ex. 41, Clawson 2nd Affid. ¶15.

23. The IRGC is a military force parallel to the regular Iranian military and to the formal governmental structure; although it is not subject to supervision by the Iranian parliament, it operates as an agent and instrumentality of the Supreme Leader himself. Ex. 8, Clawson Affid. ¶¶29-35; Ex. 41, Clawson 2nd Affid. ¶16; Plaintiffs' First Memorandum at pp. 43-45; Plaintiffs' Third Memorandum at pp. 9-13, 19.

24. The IRGC's responsibilities and powers are described in the Iranian Constitution, and the IRGC reports directly to Iran's Supreme Leader rather than to its president. Ex. 41, Clawson 2nd Affid. ¶16.

25. The IRGC, also known as the *Sepah Pasdaran*, is both the guardian and the striking arm of the Islamic Revolution. Ex. 8, Clawson Affid. ¶¶29-35. The IRGC strongly asserts its constitutional role as defender of the Islamic Revolution. Ex. 41, Clawson 2nd Affid. ¶ 16; Plaintiffs' First Memorandum at pp. 43-45 and Ex. 8, Clawson Affid. ¶¶29-35.

26. The IRGC is a governmental agency whose core functions are governmental. Ex. 41, Clawson 2nd Affid. ¶ 16; Plaintiffs' First Memorandum at pp. 43-45 and Ex. 8, Clawson Affid. ¶¶29-35.

27. The IRGC is a major factor in the Iranian economy: it owns and controls hundreds of companies and commercial interests, particularly in the oil and gas sector, engineering, telecommunications and infrastructure, and it holds billions of dollars in military, business, and other assets and government contracts. One of the IRGC's companies has been awarded contracts worth billions of dollars by government agencies and the National Iranian Oil Company. The IRGC also engages in widespread smuggling, including, but not limited to, drugs and alcohol. Ex. 8, Clawson Affid. ¶37; Ex. 2, Timmerman 2nd Affid. ¶202; *see also* Ex. 11, Testimony of Abolhassan Banisadr, pp. 19-20.

28. The IRGC has a special foreign division, known as the *Qods* (or *Quds* or "Jerusalem") Force, which is the arm of the IRGC that works with militant organizations abroad and promotes terrorism overseas. The *Qods* Force has a long history of engaging in coups, insurgencies, assassinations, kidnappings, bombings, and arms dealing, and it is one of the most organized, disciplined, and violent terrorist organizations in the world. Ex. 3, Byman Affid. ¶62; *see also* Ex. 6, Lopez-Tefft ¶25; Ex. 11, Testimony of Abolhassan Banisadr, p. 19.

29. For more than two decades, the IRGC has provided funding and/or training for terrorism operations targeting American citizens, including support for Hizballah and al Qaeda. In doing so, the IRGC is acting as an official agency whose activities are controlled by the Supreme Leader. Ex. 8, Clawson Affid. ¶36. Terrorism training provided to Hizbollah and al Qaeda by the IRGC is an official policy of the Iranian government. Ex. 8, Clawson Affid. ¶36.

30. The U.S. Treasury Department has designated the IRGC-*Qods* Force as a "terrorist organization" for providing material support to the Taliban and other terrorist organizations, and the U.S. State Department has designated the IRGC as a "foreign terrorist organization." Ex. 6, Lopez-Tefft Affid. ¶65. Plaintiffs' First Memorandum at pp. 43. U.S. Government officials regularly state that the IRGC is considered an active supporter of terrorism. Ex. 41, Clawson 2nd Affid. ¶26.

31. Iran's Ministry of Information and Security ("MOIS") is a well-funded and skilled intelligence agency with an annual budget between $100 million and $400 million. Ex. 8, Clawson Affid. ¶38.

32. MOIS has been involved in kidnappings, assassinations, and terrorism since its inception in 1985 after the ouster of president Abolhassan Banisadr, the Islamic Republic of Iran's first elected president. Ex. 8, Clawson Affid. ¶38; Ex. 11, Testimony of Abolhassan Banisadr, p. 12.

33. The predecessor of MOIS was not the Shah's intelligence agency, SAVAK, which was dissolved, but rather the Supreme Leader's own intelligence service, which had no name. This special intelligence service reported directly to the Supreme Leader, who was, at that time, Ayatollah Khomeini, and it was engaged in the business of assassinations. Ex. 11, Testimony of Abolhassan Banisadr, pp. 11-12.

34. Many of the U.S. State Department reports on global terrorism over the past twenty-five (25) years refer to MOIS as Iran's key facilitator and director of terrorist attacks. *See* Ex. 8, Clawson Affid. ¶39; Ex. 13. Witnesses X testifies to MOIS' role (as well as its successor, the Leader's special intelligence apparatus) in conducting and directing acts of international terrorism. Ex. S-3, Testimony of Abolghasem Mesbahi (March 1, 2008), pp. 56-72; Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 56-64.

35. After discovery of the involvement of MOIS in a series of assassinations and murders of intellectuals, writers, and dissidents in Iran in the late 1990s, known as the "Chain Murders," led to some reforms in MOIS, Iran's Supreme Leader, Ayatollah Khamenei, again formed a special intelligence apparatus that reported directly to him and worked under his direct control. The Supreme Leaders' special intelligence apparatus was engaged in the planning, support, and direction of terrorism. Ex. S-3, Testimony of Abolghasem Mesbahi (March 1, 2008), pp. 24-41and Abolghasem Mesbahi Dep. Ex. 14; Ex. S-6, Testimony of Witness Y (February 25, 2008), pp. 6, 14-18, 53-54.; *see also* Lopez-Tefft Affid. ¶206 and p. 83, n. 41; Bergman Affid. ¶¶75-76.

36. As federal courts have found in several cases, MOIS as been a key instrument of the government of Iran for its material support of terrorist groups like Hizballah and as a terrorist agency of the Iranian government. Ex. 41, Clawson 2nd Affid. ¶24. *See, e.g.*, *Dammarell v. Islamic Republic of Iran*, 404 F.Supp.2d 261, 271-72 (D.D.C. 2005) ("through MOIS, Iran materially supported Hizbollah by providing assistance such as money, military arms, training, and recruitment."); *see also Flatow v. Islamic Republic of Iran,* 999 F.Supp. 1 (D.D.C. 1998); *Anderson v. Islamic Republic of Iran,* 90 F.Supp.2d 107, 112-13 (D.D.C. 2000); *Peterson v. Islamic Republic of Iran*, 264 F. Supp.2d 46 (D.D.C. 2002); *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d 105 (D.D.C. 2005); *Haim v. Islamic Republic of Iran*, 425 F.Supp.2d 56 (D.D.C. 2006); *Blais v. Islamic Republic of Iran*, 459 F.Supp.2d 40 (D.D.C. 2006); *Valore v. Islamic Republic of Iran*, 478 F.Supp.2d 101 (D.D.C. 2007). *See* Plaintiffs' First Memorandum at pp. 45-46.

37. As federal courts have held in several cases, the IRGC and the MOIS are parts of the Iranian state itself. *See Rimkus v. Islamic Republic of Iran*, 575 F.Supp.2d 181, 198–200 (D.D.C. 2008) (Lamberth, C.J.); *Blais v. Islamic Republic of Iran*, 459 F.Supp.2d 40, 60–61 (D.D.C. 2006) (Lamberth, J.) (both MOIS and IRGC must be treated as the state of Iran itself for purposes of liability); *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d

105, 115–16 (D.D.C. 2005) (Bates, J.) (same).

38. The entire apparatus of the Iranian state and government, and many parts of Iran's private sector, including corporations (*e.g.*, National Iranian Oil Company, Iran Air, Iran Shipping Lines); banks (*e.g.*, Central Bank, Bank *Sepah*); state-run media (*e.g.*, IRIB television, the Islamic Revolution News Agency ("IRNA"), KAYHAN, and other daily newspapers); private individuals; and even charities are at the service of the Supreme Leader, the IRGC, and the MOIS when it comes to support of terrorism. Ex. 11, Testimony of Abolhassan Banisadr, pp. 19-20; Ex. 2, Timmerman 2nd Affid. ¶¶91-96, 190-212; Ex. S-3, Testimony of Abolghasem Mesbahi (March 1, 2008), pp. 60-81; Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 4-14.

39. In addition to the MOIS and the IRGC, the Iranian Ministry of Petroleum, the Iranian Ministry of Economic Affairs and Finance, the Iranian Ministry of Commerce, and the Iranian Ministry of Defense and Armed Forces Logistics are all divisions of the Iranian government, and are all part and parcel of the Iranian state. They are all agencies whose core functions are governmental, not commercial, in nature. Ex. 41, Clawson 2nd Affid. ¶¶15-17, 23-28.

40. Iranian government ministries are responsible for carrying out the policies of the Iranian government, and the Iranian government's policies include state support for terrorism. Although much of that state support is done through clandestine means, the government ministries have also been involved in state support for terrorism, generally, and in support for al Qaeda and Hezbollah, in particular. Ex. 41, Clawson 2nd Affid. ¶17; S-4, Testimony of Abolghasem Mesbahi.

41. The Iranian Ministry of Economic Affairs and Finance administers the state budget, which means that it has a key role in transferring state funds to many organizations and in verifying that state funds were properly used; thus, that Ministry had to have been involved in Iran's extensive financial support for terrorists generally and in support for al Qaeda and Hezbollah, in particular. Ex. 41, Clawson 2nd Affid. ¶17.

42. The Iranian Ministry of Commerce and the Iranian Ministry of Petroleum are closely involved in Iran's export/import trade and the shipping used for such trade. On numerous occasions, what has purported to be normal commerce from Iran has been found instead to include shipments of weapons bound for terrorist groups. The Ministries of Commerce and Petroleum must have been aware of the planning and logistics for such disguised shipments. Ex. 41, Clawson 2nd Affid. ¶17; Ex. S-3, Testimony of Abolghasem Mesbahi (March 1, 2008), pp. 68-77; Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 4-5, 10-12.

43. The Iranian government, including MOIS and individual defendants Rafsanjani and Khamenei in particular, used Iranian ministries such as the defendant Ministry of Petroleum, to funnel money to terrorist proxy groups through the procurement process, phony banking, and the use of shell companies registered in Nigeria and Cyprus that were fronts for terrorist organizations. Ex. S-3, Testimony of Abolghasem Mesbahi (March 1,

2008), pp. 67-81.

44. Defendants National Iranian Tanker Corporation, the National Iranian Oil Corporation, the National Iranian Gas Company, Iran Airlines, the National Iranian Petrochemical Company, and the Central Bank of the Islamic Republic of Iran are all agencies and instrumentalities of the state of Iran. Each of these corporate defendants has a legal corporate existence outside the government and core functions which are commercial, not governmental, in nature. Each of these corporate defendants is, however, tightly connected to the government of Iran, and each is an organ of the government and/or has been owned, directed, and controlled by the Iranian state. Ex. 41, Clawson 2nd Affid. ¶¶18-22; 29-36.

45. At all material times, each of these agencies/instrumentalities of Iran was "wholly owned and controlled by the government of Iran." Ex. 41, Clawson 2nd Affid. ¶30.

46. Although Iran indicated in 2004 that it would "privatize" many corporations that had been started, operated, and controlled, by the Iranian government, including all of the above-mentioned corporate agency and instrumentality defendants, for the most part, such privatization has not, in fact, occurred, and, on the contrary, the privatization has been a sham. Ex. 41, Clawson 2nd Affid. ¶¶30-31. Shares in the companies have been sold to other companies, such as pension plans of state-controlled firms and state-controlled banks, which themselves are tightly controlled by the government or sold to politically well-connected people. Ex. 41, Clawson 2nd Affid. ¶31. The record of such transfers to date has been that they do not change the reality of Iranian government control. Ex. 41, Clawson 2nd Affid. ¶31. Key decisions about operations of the firms continued to be made by Iranian government officials. The nation-state of Iran continues to own, operate, and control these defendant companies, and they remain agencies and instrumentalities of Iran. Ex. 41, Clawson 2nd Affid. ¶31.

47. The defendant National Iranian Tanker Corporation is, and has been since 1974, controlled by the Islamic Republic of Iran. Ex. 41, Clawson 2nd Affid. ¶32.

48. As stated by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the National Iranian Oil Company is owned, controlled, and managed by the Government of Iran. Ex. 41, Clawson 2nd Affid. ¶33; Ex. S-3, Testimony of Abolghasem Mesbahi (March 1, 2008), p. 75. A large cash flow of money was funneled to terrorist organizations through the NIOC. Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 6-7.

49. Because of NIOC's role in material support of terrorism, OFAC has placed NIOC on its List of Specially Designated National and Blocked Persons ("OFAC SDN List"). As of September 11, 2001, the National Iranian Oil Corporation was wholly owned or controlled by the government of Iran. Ex. 41, Clawson 2nd Affid. ¶33.

50. Defendant Iranian Ministry of Petroleum established the defendant National Iranian Gas Company in 1965, initially capitalizing it with Iranian government money. Ex. 41,

Clawson 2nd Affid. ¶34.

51. In 2010, Iran's Oil Minister appointed a new managing director of the defendant National Iranian Gas Company, which equates to a continuing ownership and/or controlling interest by the state. Ex. 41, Clawson 2nd Affid. ¶34. Terrorists received monetary commissions from NIGC for operating as go-betweens for arrangements involving long-term payments. Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), p. 7.

52. The defendant National Petrochemical Company ("NPC") is a subsidiary of the Iranian Petroleum Ministry and is now, and as of September 2001, wholly-owned or controlled by the Government of Iran. Further, because of NPC's material support of terrorism, the OFAC placed NPC on the U.S. Treasury Department's OFAC SDN List. As of September, 2001, the defendant National Iranian Petrochemical Company was wholly owned or controlled by the government of Iran. Ex. 41, Clawson 2nd Affid. ¶35. Terrorists acted as go-betweens for arrangements with NPC involving long-term payment promises – that are never kept – and the terrorists receive monetary commissions for the bogus transactions. Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 10-11.

53. Defendant Iran Airlines was, for many years, wholly owned by the government of Iran, and, whether or not the government of Iran ever sold its shares in the airline company, and there is no evidence that it ever did, it remained under *de facto* government control. Iranian agents who carried out acts of terrorism left the country in which the act was perpetrated on Iran Air flights which were specially held on the ground until the alleged perpetrator(s) could board the flight. Ex. 41, Clawson 2nd Affid. ¶36.

54. Defendant Iran Air acted as a facilitator for the transfer of cash to terrorists on missions abroad, including one specific incident in which the head of MOIS instructed Abolghasem Mesbahi to tell the head of Iran Air in a particular European country to transfer cash to a member of a Pakistani Shia terrorist organization, who was at that time in that European country on a terrorist operation and was in need of funds. Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 7-9.

55. Defendant Central Bank of Iran (in Farsi, Bank Merkazi Iran or "BMI"), has core functions that are quasi-governmental, but it is a corporation rather than an agency within the government. Ex. 41, Clawson 2nd Affid. ¶18. Under Iranian law, BMI is owned by, and is tightly linked to, the Iranian government. Iran's Monetary and Banking Law ("MBL") provides that BMI is a joint-stock company whose capital is wholly owned by the Government. Ex. 41, Clawson 2nd Affid. ¶19. In practice, the Iranian government exercises tight control over BMI and ignores the law by issuing direct orders to the BMI. Ex. 41, Clawson 2nd Affid. ¶20. Although the BMI's governor has a five-year term specified in the MBL, in fact, he serves at the pleasure of Iran's president. In 2008, the BMI governor was dismissed by presidential decree when he refused to resign. Contrary to procedures set out in the MBL, the government cabinet regularly votes to order BMI to extend loans for specific purposes. Ex. 41, Clawson 2nd Affid. ¶20. From an economic perspective, "BMI has less independence from the Iranian government than do the central

banks in most developed countries." Ex. 41, Clawson 2nd Affid. ¶21.

56. The transfers of huge sums of Iranian money to terrorist organizations such as HAMAS and Hizballah, often millions of dollars of cash carried in suitcases, can only be accomplished with the complicity and/or knowledge and acquiescence of BMI. The same must be true in the case of banking transactions between Iranian agencies and instrumentalities and terrorist organizations. Ex. 41, Clawson 2nd Affid. ¶22. The Central Bank of Iran facilitates the transfer of money to terrorist groups. Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), p. 12.

57. In the early to mid-1980s, Iran created Hizballah (the "Party of God"), an unincorporated association, as an extension of the Iranian Revolution into Lebanon. Iran has been the sponsor of Hizballah since its inception, providing funding, training, and leadership and advice via Hizballah's leadership councils. Ex. 7, Bergman Affid. ¶25; Ex. 6, Lopez-Tefft Affid. ¶28; Ex. 2, Timmerman 2nd Affid. ¶¶12-14; Ex. 8, Clawson Affid. ¶36; Ex. 3, Byman Affid. ¶44; *see also* Ex. 8, Clawson Affid. ¶36; Ex. 7, Bergman Affid. ¶27.

58. For more than a quarter century since its creation, Hizballah has received from Iran $100 million to $500 million in direct financial support annually. Ex. 8, Clawson Affid. ¶66; Ex. 6, Lopez-Tefft Affid. ¶31; Ex. 7, Bergman Affid. ¶26; Ex. 11, Testimony of Abolhassan Banisadr, p. 31.

59. From the beginning, Hizballah served as a terrorist proxy organization for Iran, created specifically for the purpose of serving as a front for Iranian terrorism, in effect, a cover name for terrorist operations run by Iran's IRGC around the world. Ex. 3, Byman Affid. ¶20; Ex. 7, Bergman Affid. ¶¶19-20, 25-28.

60. The U.S. State Department designated Hizballah a "foreign terrorist organization" in 1997. Ex. 6, Lopez-Tefft Affid. ¶63; Ex. 7, Bergman Affid. ¶22.

61. At all relevant times, defendant Hizballah was tightly connected to the government of Iran, was directed and controlled by the Iranian state, and was an agency or instrumentality of the Islamic Republic of Iran. Ex. 2, Timmerman 2nd Affid. ¶¶12-14; Ex. 3, Byman Affid. ¶¶20, 44; Ex. 6, Lopez-Tefft Affid. ¶¶28, 31; Ex. 7, Bergman Affid. ¶¶19-20, 25-28; Ex. 8, Clawson Affid. ¶¶36, 66; Ex. 11, Testimony of Abolhassan Banisadr, p. 31.

62. Imad Fayez Mughniyah (a/k/a Hajj Radwan) was, for decades prior to his death in February 2008, the terrorist operations chief of Hizballah. Mughniyah played a critical role in a series of imaginative high-profile terrorist attacks across the globe, and his abilities as a terrorist coordinator, director, and operative was an order of magnitude beyond anything comparable on the scene between 1980-2008. Ex. 6, Lopez-Tefft Affid. ¶204; Ex. 2, Timmerman 2nd Affid. ¶¶14-46; Ex. 7, Bergman Affid. ¶¶29-32.

63. Mughniyah was, since the early 1980s, an agent of the Islamic Republic of Iran, where he lived for many years. Ex. 7, Bergman Affid. ¶¶31, 40-41.

64. Imad Mughniyah had a direct reporting relationship to Iranian intelligence and a direct role in Iran's sponsorship of terrorist activities. Ex. 6, Lopez-Tefft Affid. ¶205; Ex. 2, Timmerman 2nd Affid. ¶¶14-46; Ex. 7, Bergman Affid. ¶¶40-43; Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 61-67, 100-02; Ex. S-6, Testimony of Witness Y (February 25, 2008), pp. 30-31; 40-41; 35-52; *see also* Ex. 7, Affid. of Ronen Bergman, Ex. B (English translation).

65. Imad Mughniyah, as an agent of Iran, conducted and directed numerous terrorist operations against American citizens during the 1980s and 1990s, and he was on the FBI's "Most Wanted" list for twenty-one (21) years, until his assassination in Damascus, Syria, in February 2008. Ex. 7, Bergman Affid. ¶¶29-32; Ex. 2, Timmerman 2nd Affid. ¶¶14-46.

Bridging of the Sunni-Shia Divide

66. Both Iran and al Qaeda can be ruthlessly pragmatic, cutting deals with potential future adversaries to advance their causes in the short-term. Ex. 3, Byman Affid. ¶¶41-42; *see also* Ex. 2, Timmerman 2nd Affid. ¶4.

67. Members of the Shiite and Sunni sects – particularly at the leadership level – often work together on terrorist operations. The religious differences, to the extent they retain any vitality at the leadership level, are trumped by the leaders' desire to confront and oppose common enemies, particularly the U.S. and Israel. Ex. 7, Bergman Affid. ¶46; Ex. 6, Lopez-Tefft Affid. ¶¶57, 186; Ex. 3, Byman Affid. ¶¶41-44; Ex. 2, Timmerman 2nd Affid. ¶¶112-13; Ex. 11, Testimony of Abolhassan Banisadr at 23.

68. Iran, though Shiite, is willing to use, co-opt, and support Sunnis as proxies to carry out acts of terrorism. Ex. 7, Bergman Affid. ¶46; Ex. 6, Lopez-Tefft Affid. ¶58; Ex. 3 Byman Affid. ¶¶41-44; Ex. 8, Clawson Affid. ¶¶36, 66; Ex. 2, Timmerman 2nd Affid. ¶¶112-13.

69. The factual reality – as found by the 9/11 REPORT – is that "[t]he relationship between al Qaeda and Iran demonstrated that Sunni-Shia divisions did not necessarily pose an insurmountable barrier to cooperation in terrorist operations." 9/11 REPORT, p. 61.

70. During the mid-to-late 1980s, Iran began formulating contingency plans for anti-U.S. terrorist operations. Ex. 13 (U.S. Department of State Reports, *Patterns of Global Terrorism / Country Reports on Terrorism*, 1980-2009 (excerpts *re*: Iran)) at p. 56; *see* Ex. 6, Lopez-Tefft Affid. ¶74.

71. In 1991-92, Iran founded a new organization, *al Majma' al Alami lil-Taqrib bayna al Madhahib al Islamiyyah* (International Institute for Rapprochement Among the Islamic Legal Schools) to promote publicly a reconciliation of the rival Sunni and Shi'a sects of Islam. Ex. 2, Timmerman 2nd Affid. ¶47.

72. In the early 1990s, casting aside the historic bitterness between the Sunni and Shi'a sects of Islam, Sudanese religious-political leader Hassan al Turabi and Iran's political leadership and intelligence agencies established close ties, including paramilitary and intelligence connections, beginning a united Sunni-Shiite front against the United States and the West. Ex. 6, Lopez-Tefft Affid. ¶¶132-33; Ex. 2, Timmerman 2nd Affid. ¶48.

73. While Osama bin Laden and al Qaeda were headquartered in Sudan in the early 1990s, Hassan al Turabi fostered the creation of a foundation and alliance for combined Sunni and Shi'a opposition to the United States and the West, an effort that was agreed to and joined by Osama bin Laden and Ayman al Zawahiri, leaders of al Qaeda, and by the leadership of Iran. 9/11 REPORT, pp. 60-61; Ex. 6, Lopez-Tefft Affid. ¶132; Ex. 3, Byman Affid. ¶23; *see also* ¶¶18-22, 24-28.

74. In the 1990s, Hassan al Turabi and Ayman al Zawahiri became key links between the various radical Islamic terrorists, members of different Islamic sects, both Sunni and Shia, who were assembled in Sudan and Iran. Ex. 6, Lopez-Tefft Affid. ¶¶131-33; Ex. 7, Bergman Affid. ¶54.

75. In 1991, al Zawahiri paid a clandestine visit to Iran to ask for help in his campaign to overthrow the government of Egypt. There, and in subsequent visits in Iran and Sudan, al Zawahiri met with Imad Mughniyah, who convinced him of the power of suicide bombing, a significant event because suicide was prohibited by most Islamic clerics, both Sunni and Shi'a. Zawarhiri also developed close relations during visits to Iran with Ahmad Vahidi, the commander of the IRGC's *Qods* Force. Ex. 7, Bergman Affid. ¶51; Ex. 2, Timmerman 2nd Affid. ¶54-55.

76. In December 1991, Iran's President Ali Akbar Hashemi Rafsanjani, Intelligence Minister Ali Fallahian, IRGC Commander Mohsen Rezai, and Defense Minister Ali Akbar Torkan paid an official visit to Sudan where, in meetings also attended by Imad Mughniyah, they committed to send weapons shipments and as many as two thousand (2,000) Revolutionary Guards to Sudan. Ex. 6, Lopez-Tefft Affid. ¶136.

77. In 1991 or 1992, discussions in Sudan between al Qaeda and Iranian operatives led to an informal agreement to cooperate in providing support for actions carried out primarily against Israel and the United States. 9/11 REPORT, p. 61.

78. Thereafter, senior al Qaeda operatives and trainers traveled to Iran to receive training in explosives. Osama bin Laden also sent senior aides to Iran for training with the IRGC and to Lebanon for training with Hizballah. Ex. 1, 9/11 REPORT, p. 61; Ex. 7, Bergman Affid. ¶58; *see also* Ex. S-5 and S-6, Testimony of Witness Y; Ex. S-11, Timmerman 2nd Affid. ¶95.

79. In 1993, in a meeting in Khartoum, Sudan, arranged by Ali Mohamed, a confessed al Qaeda terrorist and trainer now in a U.S. prison, Ex. 31, Plea allocution, *USA v. Ali Mohamed*, S(7) 98 Cr. 1023 (LBS) (S.D.N.Y. October 20, 2000), Osama bin Laden and

Ayman al Zawahiri met directly with Iran's master terrorist Imad Mughniyah and Iranian officials, Ex. 7, Bergman Affid. ¶¶58-61; Ex. 6, Lopez-Tefft Affid. ¶¶137-38; Ex. 8, Clawson Affid. ¶58, including IRGC Brigadier General Mohammad Baqr Zolqadr, "a multipurpose member of the Iranian terrorist structure." Ex. 11, Testimony of Abolhassan Banisadr at 17; Ex. 2, Timmerman 2nd Affid. ¶¶49-51.

80. At the 1993 Khartoum conference, representatives of Iran, Hizballah, and al Qaeda worked out an alliance of joint cooperation and support on terrorism. Ex. 6, Lopez-Tefft Affid. ¶¶135, 137-39; Ex. 7, Bergman Affid. ¶58-61; Ex. 2, Timmerman 2nd Affid. ¶¶48-52.

81. Imad Mughniyah convinced Osama bin Laden of the effectiveness of suicide bombings in driving the U.S. out of Lebanon in the 1980s, and Mughniyah became a major connection point between Iran and al Qaeda. Ex. 7, Bergman Affid. ¶¶58-59; Ex. 6, Lopez-Tefft Affid. ¶187.

82. Osama bin Laden had been a guerilla fighter in Afghanistan and it was Mughniyah who made bin Laden into an accomplished terrorist. Ex. 6, Lopez-Tefft Affid. ¶187.

83. The 1993 meeting in Khartoum led to an ongoing series of communications, training arrangements, and operations among Iran and Hizballah and al Qaeda. Osama bin Laden sent more terrorist operatives, including Saef al Adel (who would become number 3 in al Qaeda and its top "military" commander), to Hizballah training camps operated by Mughniyah and the IRGC in Lebanon and Iran. Among other tactics, Hizballah taught bin Laden's al Qaeda operatives how to bomb large buildings, and Hizballah also gave the al Qaeda operatives training in intelligence and security. Ex. 6, Lopez-Tefft Affid. ¶¶151-52; Ex. 2, Timmerman 2nd Affid. ¶¶56-59.

84. Another al Qaeda group traveled to the Bekaa Valley in Lebanon to receive training in explosives from Hizballah, as well as training in intelligence and security. 9/11 REPORT, p. 61; *see also* Ex. 6, Lopez-Tefft Affid. ¶151.

85. Iran's *Charge d'Affaires* in Khartoum, Sudan, Majid Kamal, an IRGC commander, coordinated the training expeditions; Kamal had performed the same function in Beirut, Lebanon, in the early 1980s during the formation of Hizballah. Ex. 6, Lopez-Tefft Affid. ¶152.

86. The well-known historical religious division between Sunnis and Shi'a did not, in fact, pose an insurmountable barrier to cooperation in regard to terrorist operations by radical Islamic leaders and terrorists. Iran, which is largely Shiite, and its terrorist proxy organization, Hizballah, also Shiite, entered into an alliance with al Qaeda, which is Sunni, to work together to conduct terrorist operations against the United States during the 1990s and continuing through, and after, September 11, 2001. 9/11 REPORT, p. 61; Ex. 7, Bergman Affid. ¶54; Ex. 3, Byman Affid. ¶¶33-43; Ex. 8, Clawson Affid. ¶47; Ex. 6, Lopez-Tefft Affid. ¶¶39, 42, 56; Ex. 2, Timmerman 2nd Affid. ¶¶48, 52, 112-13.

87. As a result of the creation of this terrorist alliance, al Qaeda's Ayman al Zawahiri repeatedly visited Tehran during the 1990s and met with officers of MOIS, including chief Ali Fallahian, and *Qods* Force chief Ahmad Vahidi. Ex. 7, Bergman Affid. ¶67; Ex. 6, Lopez-Tefft Affid. ¶¶170-71; Ex. 2, Timmerman 2nd Affid. ¶55.

88. Throughout the 1990s, the al Qaeda-Iran-Hizballah terrorist training arrangement continued. Imad Mughniyah himself coordinated these training activities, including training of al Qaeda personnel, with Iranian government officials in Iran and with IRGC officers working undercover at the Iranian embassy in Beirut, Lebanon. At all times, Iran's Supreme Leader was fully aware that Hizballah was training such foreign terrorists. Ex. 6, Lopez-Tefft Affid. ¶¶50, 58, 104, 108-11, 135, 138, 151-52, 169, 179, 182-83, 194, 293, 341-42; Ex. 7, Bergman Affid. ¶¶53, 61, 68; Ex. 2, Timmerman 2nd Affid. ¶¶56-67; Ex. 11, Testimony of Abolhassan Banisadr, pp. 32-33; Ex. S-1, Testimony of Witness XAbolghasem Mesbahi and Ex. 8, 9; Ex. S-4, Testimony of Abolghasem Mesbahi and Ex. 18; Ex. S-5 and S-6, Testimony of Witness Y. *See also* Ex. 8, Clawson Affid. ¶36.

89. The IRGC maintained a separate terrorist training camp especially for Saudi nationals because of their distinct cultural habits and religious practices. This training camp was located in Iraqi Kurdistan and controlled first by Iranian intelligence and later by Abu Musab Zarqawi, later to be the notorious head of "al Qaeda in Iraq." Ex. 2, Timmerman 2nd Affid. ¶64.

Terrorist Attacks By the Iran-Hizballah-al Qaeda Terrorist Alliance

90. The creation of the Iran-Hizballah-al Qaeda terrorist alliance was followed by a string of terrorist strikes directly against the U.S. and its allies. 9/11 REPORT, p. 60 and n. 48, p. 68; Ex. 2, Timmerman 2nd Affid. ¶¶38-46, 78-86; Ex. 6, Lopez-Tefft Affid. ¶¶148-50, 162-68, 178-83, and p. 66, n. 29; Ex. 7, Bergman Affid. ¶¶42-44, 62-63, 74; Ex. 9, Bruguière Affid. ¶¶18-20; Ex. 10, Adamson Affid. ¶¶21-33; *Heiser v. Islamic Republic of Iran*, 466 F.Supp.2d 229 (D.D.C. 2006).

91. While in Sudan, Osama bin Laden founded and funded *al Shamal* Bank and Taba Investments, through which he financed, in part, various terrorist activities. Through *al Shamal* Bank, bin Laden worked with Iran to fund oil sales that channeled money into terrorist activities. Ex. 6, Lopez-Tefft Affid. ¶¶140-46; Ex. 2-S, Timmerman 1st Affid. ¶¶102-110; Ex. 2, Timmerman 2nd Affid. ¶¶91-96.

92. In March 1992, a Hizballah terrorist team operating under Mughniyah's command truck-bombed the Israeli embassy in Buenos Aires, Argentina, killing twenty-nine (29) people and wounding two hundred forty-two (242) others. Ex. 7, Bergman Affid. ¶42; Ex. 2, Timmerman 2nd Affid. ¶¶38-39.

93. National Security Administration ("NSA") intercepts of communications from the Iranian embassies in Buenos Aires and Brasilia, Brazil, to the Foreign Ministry in Iran proved

Iranian involvement in the 1992 attack on the Israeli embassy in Buenos Aires; the NSA provided Israel with "unequivocal proof – 'not a smoking gun, but a blazing cannon'" – that Imad Mughniyah and another senior Hizballah member, Talal Hamiaa, executed the terrorist operation. Ex. 7, Bergman Affid. ¶42; Ex. 2, Timmerman 2nd Affid. ¶39.

94. On February 26, 1993, the first World Trade Center bombing occurred, killing six (6) persons and injuring more than one thousand (1,000). A few months later, an al Qaeda conspiracy to bomb several New York City landmarks, including the Lincoln Tunnel and the Holland Tunnel, was disrupted. Egyptian cleric Omar Abdul Rahman, a/k/a the "Blind Sheikh," whose Egyptian radical group is linked to al Zawahiri and al Qaeda, was convicted of masterminding the plot to engage in urban warfare against the United States. Ex. 6, Lopez-Tefft Affid. ¶150; Ex. 22.

95. In July 1994, Mughniyah and his Hizballah cadres followed up the 1992 bombing of the Israeli embassy in Buenos Aires by again attacking Israeli interests there. A terrorist sleeper network was activated, again under Imad Mughniyah's command, and it detonated a truck bomb to destroy the *Asociación Mutual Israelita Argentina* ("AMIA"), the Jewish cultural center in Buenos Aires. The explosion that killed eighty-six (86) persons and injured two hundred fifty-two (252). "The U.S., Israel, and Argentina all concluded that Iran, Hizballah, and Imad Mughniyah were responsible for the AMIA bombing." Ex. 7, Bergman Affid. ¶43; Ex. 2, Timmerman 2nd Affid. ¶40.

96. Argentine investigators determined that the decision to bomb the AMIA center was taken at the highest levels of Iran's government, which directed Mughniyah and Hizballah to perform the operation. Specifically, this direction was made by Iran's Supreme Leader Khamenei, President Rafsanjani, Foreign Minister Velayati, and MOIS Minister Fallahian – the "*Omar-e Vijeh*" (or Special Matters Committee) – during an August 14, 1993 meeting in Mashad, Iran, also attended by Mohzen Rezai, Ahmad Vahidi, Mohsen Rabbani, and Ahmad Reza Asgari. Ex. 2, Timmerman 2nd Affid. ¶¶38-46.

97. The Argentinean investigation revealed that nine (9) Iranians (including the Iranian agent Mughniyah) were responsible for the AMIA bombing, and the Argentines sought the issuance of INTERPOL Red Notices on all nine (9). However, Iran took extraordinary measures to try to block the issuance of the Red Notices by INTERPOL, and Iran succeeded in part, as the General Assembly of INTERPOL upheld a decision by the Executive Committee to issue only six (6) Red Notices, instead of the nine sought by the Argentines. The six who were the subjects of Red Notices included Imad Mughniyah (Hizballah chief of terrorism), Ali Fallahian (MOIS minister), Mohsen Rabbani (Iranian cultural attaché), Ahmad Reza Asgari (senior MOIS official), Ahmad Vahidi (*Qods* Force commander), and Mohsen Rezai (IRGC commander). Ex. 10, Adamson Affid. ¶¶21-33; Ex. 2, Timmerman 2nd Affid. ¶¶40-45; Ex. 7, Bergman Affid. ¶¶43-44.

98. In December 1994, Algerian terrorists associated with al Qaeda hijacked a French airliner, intending to crash it into the Eiffel Tower in Paris, a precursor to 9/11. They were foiled by a French SWAT team. Ex. 9, Bruguière Declaration ¶¶18-20; Ex. 2, Timmerman 2nd Affid. ¶¶78-80.

99. On July 7, 1995, Ayman al Zawahiri's Egyptian gunmen, supported, trained, and funded by Iran, attempted to assassinate Egyptian President Hosni Mubarak near Addis Ababa, Ethiopia. The attempt failed. The IRGC extricated some of the assassins from Ethiopia and arranged for their protection in Lebanon by Hizballah, and, for the assassins' team leader, Mustafa Hamza, inside Iran itself. Ex. 7, Bergman Affid. ¶74.

100. U.S., Saudi, and Egyptian political pressure on the Sudanese eventually forced them to expel Osama bin Laden in May 1996. Radical Afghan Sunni warlord Gulbuddin Hekmatyar, a strong Iranian ally, invited bin Laden to join him in Afghanistan. Hekmatyar and bin Laden had known each other during the 1980s Afghan *mujaheddin*-Soviet war. Osama bin Laden then relocated to Afghanistan with the assistance of the Iranian intelligence services. Ex. 15, U.S. Embassy (Islamabad) Cable, November 12, 1996; Ex. 7, Bergman Affid. ¶64; Ex. 2, Timmerman 2nd Affid. ¶99; *see also* 9/11 REPORT at p. 65.

101. On June 25, 1996, terrorists struck the Khobar Towers housing complex in Dhahran, Saudi Arabia, with a powerful truck bomb, killing nineteen (19) U.S. servicemen and wounding some five hundred (500). Ex. 6, Lopez-Tefft Affid. ¶162; Ex. 2, Timmerman 2nd Affid. ¶84. FBI investigators concluded the operation was undertaken on direct orders from senior Iranian government leaders, the bombers had been trained and funded by the IRGC in Lebanon's Bekaa Valley, and senior members of the Iranian government, including Ministry of Defense, Ministry of Intelligence and Security and the Supreme Leader's office had selected Khobar as the target and commissioned the Saudi Hizballah to carry out the operation. Ex. 6, Lopez-Tefft Affid. ¶162.

102. The 9/11 Commission examined classified CIA documents establishing that IRGC-*Qods* Force commander Ahmad Vahidi planned the Khobar Towers attack with Ahmad al Mugassil, a Saudi-born al Qaeda operative. 9/11 REPORT, p. 60, n. 48. *See* Ex. 2, Timmerman 2nd Affid. ¶¶85-86.

103. A U.S. district court held that Iran was factually and legally responsible for the Khobar Towers bombing. *Heiser v. Islamic Republic of Iran*, 466 F.Supp.2d 229 (D.D.C. 2006).

104. Al Qaeda was involved in the planning and preparations for the Khobar Towers bombing. Osama bin Laden tried to facilitate a shipment of explosives to Saudi Arabia, and, on the day of the operation, bin Laden was, according to NSA intercepts, congratulated on the telephone. Ex. 6, Lopez-Tefft Affid. ¶¶163-68; 9/11 REPORT, p. 60.

105. Two months later, in August 1996, Osama bin Laden would cite the Khobar Towers bombing in his first *fatwa*, a "Declaration of War Against the Americans Occupying the Land of the Two Holy Places": "The crusader army became dust *when we detonated* al Khobar . . . ." Ex. 6, Lopez-Tefft Affid. ¶¶52, 166, p. 66, n. 29 (*emphasis added*).

106. In August 1996 – the same month bin Laden issued his first *fatwa* declaring war against the United States, Ex. 6, Lopez-Tefft Affid. ¶52 – one of the Iranian intelligence

operatives involved in the Khobar Towers attack (in June 1996) traveled to Jalalabad, Afghanistan, to meet with Osama bin Laden. The subject was continuing the secret strategic agreement to undertake a joint terrorism campaign against the U.S. *See* Ex. 6, Lopez-Tefft Affid. ¶172.

107. At this time, Iranian and Hizballah trainers traveled between Iran and Afghanistan, transferring to al Qaeda operatives such material as blueprints and drawings of bombs, manuals for wireless equipment, and instruction booklets for avoiding detection by unmanned aircraft. Ex. 7, Bergman Affid. ¶68.

108. On February 23, 1998, Osama bin Laden issued his second public *fatwa* in the name of a "World Islamic Front" against America, calling for the murder of Americans "as the individual duty for every Muslim who can do it in any country in which it is possible to do it." 9/11 REPORT, pp. 47-48, 69.

109. On August 7, 1998, two nearly simultaneous truck bombings destroyed the U.S. embassies in Nairobi, Kenya, and Dar-es-Salaam, Tanzania, killing more than three hundred (300) persons and wounding more than five thousand (5,000). Although known to have been committed by al Qaeda operatives (due to the confession of Ali Mohamed, who led the team that studied the embassy in Nairobi, beginning as early as December 1993, shortly after the Khartoum meeting, 9/11 REPORT, p. 68, Ex. 6, Lopez-Tefft Affid. ¶180), the twin East Africa U.S. embassy bombings also bore the unmistakable *modus operandi* of Imad Mughniyah, the Hizballah commander and agent of Iran: multiple, simultaneous, spectacular suicide bombings against American symbols. Ex. 6, Lopez-Tefft Affid. ¶¶178-83.

110. A U.S. district court in Washington, D.C. has held that Iran, the IRGC, and MOIS, as well as the Republic of Sudan and its Ministry of the Interior, were factually and legally responsible for the U.S. Embassy bombings in Kenya and Tanzania. "Support from Iran and Hezbollah was critical to al Qaeda's execution of the 1998 embassy bombings." *Owens, et al. v. Republic of Sudan, et al.*, Civ. Action No. 01-2244 (JDB), 2011 U.S. Dist. LEXIS 135961.

111. The U.S. District Court also found that the material support of Iran, the IRGC, and MOIS was supplied to al Qaeda through Iran's sponsorship of Hizballah. *Owens, et al. v. Republic of Sudan, et al.*, *supra*.

112. The al Qaeda operatives who carried out the U.S. embassy attacks in East Africa were trained by Hizballah in handling the sophisticated explosives used in those bombings, and "[t]he government of Iran was aware of and authorized this training and assistance." 9/11 REPORT, p. 68; Ex. 6, Lopez-Tefft Affid. ¶¶179; 182-83; *Owens, et al. v. Republic of Sudan, et al.*, *supra*.

113. One of the specific types of training Hizballah provided was in blowing up large buildings. Among those who trained at the Hizballah camps was Saef al Adel, the al Qaeda chief of terrorist operations, who was convicted *in absentia* in the U.S. for his role

in the twin embassy bombings, and who would spend the years after 9/11 in safe haven inside Iran. Ex. 6, Lopez-Tefft Affid. ¶¶194-95; Ex. 2, Timmerman 2nd Affid. ¶¶57-59 and Ex. B-4 thereto; *see also Owens, et al. v. Republic of Sudan, et al.*, *supra*.

114. On October 12, 2000, al Qaeda suicide bombers attacked the *U.S.S. Cole* in the harbor of Aden, Yemen, killing seventeen (17) sailors and injuring thirty-nine (39). At just that time, a U.S. Defense Intelligence Agency analyst was alerting his superiors to a web of connections he was finding between and among al Qaeda, the Iranian intelligence agencies controlled by Iran's Supreme Leader, Hizballah, and other active terrorist groups. *See* Ex. 6, Lopez-Tefft Affid. ¶¶188-192; 196-97.

115. As stated in the 9/11 REPORT, "Iran made a concerted effort to strengthen relations with al Qaeda after the October 2000 attack on the *USS Cole* . . . ." 9/11 REPORT, p. 240; Ex. 6, Lopez-Tefft Affid. ¶264. It was during this very same time frame that, as documented in the 9/11 REPORT, Iranian officials facilitated the travel of al Qaeda members – including some of the 9/11 hijackers – through Iran on their way to and from Afghanistan, where the hijackers trained at al Qaeda's terrorist training camps. 9/11 REPORT at pp. 240-41.

Iran and Terrorist Travel

116. Iran's facilitation of al Qaeda's operatives' travel, including at least eight (8) of the 9/11 hijackers, amounted to essential material support, indeed, direct support, for the 9/11 attacks. Ex. 4, Kephart Affid. ¶71.

117. The 9/11 terrorists engaged in a specific terrorist travel operation. Ex. 4, Kephart Affid. ¶37. As stated in the 9/11 Commission Report, "For terrorists, success is often dependent on travel. . . . For terrorists, travel documents are as important as weapons." 9/11 REPORT, p. 384.

118. There were two separate, but related, ways in which Iran furnished material and direct support for the 9/11 terrorists' specific terrorist travel operation, as set forth below. Ex. 4, Kephart Affid. ¶¶52-70.

119. Travel to training camps in Afghanistan by the future 9/11 hijackers was essential for the success of the 9/11 operation. Ex. 4, Kephart Affid. ¶53.

120. Operatives of al Qaeda knew that the Americans were well aware of the existence of al Qaeda training camps in Afghanistan. Ex. 4, Kephart Affid. ¶52.

121. Evidence reviewed by the 9/11 Commission demonstrated that Al Qaeda's travel planners believed that a terrorist operative trying to obtain a visa at an American embassy or consulate, or trying to enter the United States itself, faced a very serious risk if his passport showed travel to Afghanistan or Iran. Ex. 4, Kephart Affid. ¶52.

122. The first way in which the Iranian government materially and directly supported the 9/11

terrorist travel operation was by ordering its border inspectors not to place telltale stamps in the passports of these future hijackers traveling to and from Afghanistan via Iran. Several of the 9/11 hijackers transited Iran on their way to or from Afghanistan, taking advantage of the Iranian practice of not stamping Saudi passports. Thus, Iran facilitated the transit of al Qaeda members into and out of Afghanistan before 9/11. Some of these were future 9/11 hijackers. 9/11 REPORT at p. 241; Ex. 5, Snell Affid. ¶¶20-21.

123. National Security Administration intercepts, made available to the 9/11 Commission shortly before publication of the 9/11 REPORT, showed that Iranian border inspectors had been ordered not to put telltale stamps in the operatives' passports and that the Iranians were aware they were helping operatives who were part of an organization preparing attacks against the United States. Ex. 2, Timmerman 2nd Affid. ¶¶123-24.

124. Of three Saudi hijackers who were carrying passports with possible indicators of extremism, at least one went to Iran. Such indicators were probably al Qaeda "calling cards" used by terrorists to identify themselves covertly. It is likely that the Iranian border authorities were aware of this covert calling card system and, thus, knew when not to stamp Iranian travel stamps into Saudi al Qaeda passports. Ex. 4, Kephart Affid. ¶67.

125. The actions of Iranian border authorities in refraining from stamping the passports of the Saudi hijackers, vastly increased the likelihood of the operational success of the 9/11 plot. 9/11 REPORT, p. 240.

126. Shielding the passports of future hijackers, who were Saudi members of al Qaeda, from indicia of travel to Iran and Afghanistan, was perceived as essential not only to prevent potential confiscation of passports by Saudi authorities, but also to hide complicity of Iran in supporting al Qaeda. Ex. 4, Kephart Affid. ¶66.

127. In the mid-1990s, when the Iran-Hizballah-al Qaeda terror alliance was forming, al Qaeda operative Mustafa Hamid had "negotiated a secret relationship with Iran that allowed safe transit via Iran to Afghanistan." This safe Iran-Afghanistan passageway was managed by MOIS. Ex. 30, U.S. Treasury Department press release, January 16, 2009; Ex. 3, Byman Affid. ¶47; Ex. 2, Timmerman 2nd Affid. ¶¶115-19, 216.

128. Numerous admissions from lower level al Qaeda members who were interrogated at the detention facility at Guantanamo Bay confirm the existence of the clandestine Iran-Afghanistan passageway, managed by MOIS. *See* Ex. 2, Timmerman 2nd Affid. ¶¶115-19. Al Qaeda had "'total collaboration with the Iranians,' and had its own organization in Iran 'that takes care of helping the mujahedin brothers cross the border.'" *Id.* ¶119.

129. The 9/11 Commission obtained "evidence that 8 to 10 of the 14 Saudi 'muscle' operatives traveled into or out of Iran between October 2000 and February 2001." 9/11 REPORT at p. 240.

130. Although al Qaeda operatives Khalid Sheikh Mohammed and Ramzi Binalshibh (now Guantanamo detainees) denied any reason, other than the Iranian's refraining from

stamping passports, for the hijackers to have traveled through Iran or any relationship between the hijackers and Hizballah, *see* 9/11 REPORT at p. 241, their denials are not credible. Ex. 5, Snell Affid. ¶21; Ex. 6, Lopez-Tefft Affid. ¶119.

131. The actions of Iranian border authorities in refraining from stamping the passports of the Saudi hijackers vastly increased the likelihood of the operational success of the 9/11 plot. Ex. 4, Kephart Affid. ¶66.

132. Iran's willingness to permit the undocumented admission and passage of al Qaeda operatives and 9/11 hijackers provided key material support to al Qaeda. By not stamping the hijackers' passports, by providing safe passage through Iran and into Afghanistan, and by permitting Hezbollah to receive the traveling group … Iran, in essence, acted as a state sponsor of terrorist travel. Ex. 4, Kephart Affid. ¶70.

133. Iran's facilitation of the hijackers' "terrorist travel" operation, including that Iranian border inspectors were directed not to place telltale stamps in the passports of these future hijackers traveling to and from Afghanistan, and that Iran permitted the undocumented admission and passage of al Qaeda operatives and 9/11 hijackers, constituted direct support and material support for al Qaeda's 9/11 attacks. 9/11 REPORT, pp. 240-41; Ex. 4, Kephart Affid. *passim* and specifically ¶¶3-5, 66, 70, 78; Ex. 3, Byman Affid. ¶¶32; 46-47, 49-50; Ex. 6, Lopez-Tefft Affid. ¶¶104-07; 112-20; 264, 277; Ex. 2, Timmerman 2nd Affid. ¶¶118-19, 120-24; Ex. 7, Bergman Affid. ¶17; Ex. 8, Clawson Affid. ¶¶48-49, 59.

134. The second way in which Iran furnished material and direct support for the 9/11 attacks was that a terrorist agent of Iran and Hizballah helped coordinate travel by future Saudi hijackers. As found by the 9/11 Commission, "[i]n October 2000, a senior operative of Hezbollah visited Saudi Arabia to coordinate activities there. He also planned to assist individuals in Saudi Arabia in traveling to Iran during November. A top Hezbollah commander and Saudi Hezbollah contacts were involved." 9/11 REPORT at p. 240.

135. On their travels into and out of Iran, some of them through Beirut, some of the 9/11 hijackers were accompanied by senior Hizballah operatives. 9/11 REPORT at pp. 240-41.

136. The 9/11 Commission determined that, in November 2000, "muscle" hijacker Ahmed al Ghamdi "flew to Beirut – perhaps by coincidence – on the same flight as a senior Hezbollah operative." 9/11 REPORT at p. 240.

137. As found by the 9/11 Commission, in mid-November 2000, three muscle hijackers, having obtained U.S. visas, "traveled in a group from Saudi Arabia to Beirut and then onward to Iran. An associate of a senior Hezbollah operative was on the same flight that took the future hijackers to Iran." 9/11 REPORT at p. 240.

138. As found by the 9/11 Commission, "Hezbollah officials in Beirut and Iran were expecting the arrival of a group during the same time period. The travel of this group was important enough to merit the attention of senior figures of Hezbollah." 9/11 REPORT at

p. 240.

139. The "senior operative of Hizballah" (or "senior Hizballah operative") referenced in the 9/11 REPORT was the master terrorist and agent of Hizballah and Iran, Imad Mughniyah. Ex. 2, Timmerman 2nd Affid. ¶¶126-27; Ex. 6, Lopez-Tefft Affid. ¶114-17.

140. The "activities" that Mughniyah went to Saudi Arabia to "coordinate" revolved around the hijackers' travel, their obtaining new Saudi passports and/or U.S. visas for the 9/11 operation, the hijackers' security, and the operation's security. Ex. 4, Kephart Affid. ¶¶60-64 and Ex. A thereto; Ex. 6, Lopez-Tefft Affid. ¶114.

141. All the evidence now available demonstrates that there was no realistic possibility of a "coincidence," as suggested by the 9/11 REPORT: if a (1) "senior operative of Hizballah [Mughniyah] (2) planned (3) to assist individuals (4) in Saudi Arabia (5) in traveling (6) to Iran (7) in November 2000." Likewise, it could not have been by coincidence that Ahmed al Ghamdi (1) "in November" (2) "flew from Saudi Arabia" (3) "to Beirut" (4) "on the same flight" (5) "as a senior Hizballah operative." These travel arrangements were by design, not coincidence. Ex. 6, Lopez-Tefft Affid. ¶114.

142. The confluence of events described above, together with the fact that al Qaeda used travel facilitators and was extremely careful about all aspects of the terrorist travel operation, makes a coincidence of such magnitude in this situation prohibitively unlikely. Ex. 6, Lopez-Tefft Affid. ¶¶115, 117, 120.

143. Iran's agent Imad Mughniyah and other Hizballah officials in Lebanon and in Iran had actual foreknowledge of the 9/11 conspiracy. Ex. 6, Lopez-Tefft Affid. ¶¶117, 120; Ex. 2, Timmerman 2nd Affid. ¶¶123-24.

144. The actions of the "senior Hizballah operative," Imad Mughniyah, and his "associate" and a "top commander" of Hizballah, in escorting 9/11 hijackers on flights to and from Iran, and coordinating passport and visa acquisition activities in Saudi Arabia also constituted direct and material support for the 9/11 conspiracy. 9/11 REPORT, pp. 240-41; Ex. 4, Kephart Affid. *passim* and specifically ¶¶3-5, 66, 70, 78; Ex. 6, Lopez-Tefft Affid. ¶¶104-07, 112-20, 264, 277; Ex. 3, Byman Affid. ¶¶32; 46-47, 49-50; Ex. 2, Timmerman 2nd Affid. ¶¶118-24; Ex. 7, Bergman Affid. ¶17; Ex. 8, Clawson Affid. ¶¶48-49, 59.

145. Ramzi Binalshibh was unable to obtain a U.S. visa needed to participate directly as a hijacker in the 9/11 attacks, and instead served as a coordinator for the operation, particularly with regard to the members of the Hamburg, Germany-based cell of Mohammed Atta. 9/11 REPORT, pp. 161, 167-68; 225, 243-46, Ch. 5, note 46; *see also* Ch. 7, note 52 and Ex. 4, Kephart Affid. ¶¶72-73.

146. Eight (8) months before 9/11, Ramzi Binalshibh stopped in Tehran *en route* to meetings with al Qaeda leaders in Afghanistan. From the Iranian embassy in Berlin, Binalshibh obtained a four-week tourist visa to Iran on December 20, 2000. He flew to Iran on January 31, 2001, via Amsterdam on January 27-28, but Iran was not, contrary to his visa

application, his final destination. From Iran, Binalshibh traveled on to Afghanistan, where he delivered a progress report from the operations team to Osama bin Laden and Ayman al Zawahiri. Binalhshibh returned to Germany on February 28, 2001, to clear out the Hamburg cell's apartment. Ex. 18; Ex. 2, Timmerman 2nd Affid. ¶¶148-54 and Ex. B-13 thereto; Ex. 6, Lopez-Tefft Affid. ¶¶272-75.

Testimony of Abolghasem Mesbahi

147. Abolghasem Mesbahi was an Iranian regime "insider" who knew many of the Islamic regime's top leaders during the 1980s and early 1990s, including Ayatollah Ruhollah Khomeinei, the Supreme Leader of Iran until his death in 1989, defendant Ali Akbar Hashemi Rafsanjani, who is a former President of Iran and former Speaker of the Parliament of Iran, and Saeed Emami, who was a top official of MOIS, and many others. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 49-50, 85; Ex. S-3, Testimony of Abolghasem Mesbahi (March 1, 2008), pp. 15-18, 75-81; Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 84, 94-102.

148. Mesbahi held a number of prominent positions in the diplomatic and intelligence organs of the Iranian regime, including a position at the Iranian embassy in France. There, he was in charge of espionage for Iran in France until December 1983, when he was expelled by the French government. Mesbahi soon returned to Europe, where, based in Belgium, he ran Iran's espionage operations throughout Western Europe. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 51, 55-71; Ex. S-13, Bergman Affid. ¶¶72-73.

149. Subsequently, Mesbahi played a role in negotiations on behalf of Iran during the "Lebanon Hostage Crisis" of the 1980s. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 93-95, 102-03.

150. Mesbahi returned to Iran in 1984-85 to work on the creation and organization of the new intelligence service, MOIS. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 68-71.

151. During the mid-1980s, the Iranian government believed its best hope to defeat the United States, in case of war, was to engage in unconventional warfare strategies. Therefore, Iran's government formed a MOIS-IRGC task force that created contingency plans for asymmetrical, *i.e.*, unconventional, warfare against the United States. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 78-80, 84-86; 88-89. During the mid-to-late 1980s, Iran began formulating contingency plans for anti-U.S. terrorist operations. *Id.; see also* Ex. 13 (U.S. Department of State Reports, *Patterns of Global Terrorism / Country Reports on Terrorism*, 1980-2009 (excerpts *re*: Iran)) at p. 56.

152. During the period 1985-86 timeframe, Mesbahi worked on the MOIS-IRGC task force. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 78, 84-85.

153. The MOIS-IRGC task force devised contingency plans aimed at breaking the backbone of the American economy, crippling or disheartening the United States and its people, and disrupting the American economic, social, military, and political order, all without the risk of a head-to-head military confrontation, which Iran knew it would lose. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 77-89.

154. Among other things, this planning group devised a scheme to crash hijacked Boeing 747s into major American cities, principally, the World Trade Center in New York, and the White House and the Pentagon in Washington, D.C. The contingency plan's code name was "*Shaitan dar Atash*" (Farsi for "Satan in Fire" or "Satan in Hell"). Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 78-80; Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 77-89; Ex. S-3 (Mesbahi Tr. 3/1/08), p. 14.

155. The *Shaitan dar Atash* plan involved the use of tactics such as chemical weapons and radioactive "dirty" bombs; bombings of electrical power plants, gas stations, oil tankers by the hundreds, and railroads; and the use of passenger airliners as bombs to attack U.S. cities, primarily New York, Washington, and Chicago. Boeing 747s were the focus of the MOIS-IRGC task force for aircraft hijackings because their large fuel tanks made them suitable for high value targets such as the World Trade Center and the Empire State Building in New York City, and the White House and the Pentagon in Washington were specifically targeted. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 77-89.

156. After falling into disfavor with certain hardline elements of the Islamic regime, Mesbahi was arrested and imprisoned several times. After his release, he was banned from official government positions. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 103-05.

157. After setting up a private business, Mesbahi was called upon to perform continuing tasks for MOIS, using his business as cover. He worked with MOIS front companies involved in transactions such as Iraqi oil sales using reflagged (Iranian flag) coastal tankers, importation of supercomputers, and weapons procurement deals and other kinds of transactions. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 106-14.

158. Mesbahi left Iran in April 1996 after being informed by Saeed Emami, then the number two official in MOIS, that he was on a list of persons to be killed. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 114-16; Ex. S-3, Testimony of Abolghasem Mesbahi (March 1, 2008), pp. 20-23.

159. Mesbahi obtained a United Nations Refugee card and made his way to Germany, where he lived in hiding for a time. Mesbahi became an informant for the German *Bundeskriminalamt* ("BKA"), and he was placed in a German witness protection program. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 13-18; Mesbahi Ex. 1.

160. Mesbahi was an important witness, at the time anonymously, known as "Witness C" in a German prosecution of Iranian-backed killers who assassinated several Kurdish leaders at the *Mykonos* restaurant in Berlin in September 1992. He was introduced to the German court in the *Mykonos* case by Iran's former president, Abolhassan Banisadr, himself an exile, who was also a witness in this case. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 23-25; Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 58-60; Ex. S-10, Timmerman 1st Affid. ¶¶69-71; Ex. S-11, Timmerman 2nd Affid., ¶155 and p. 42, n.51.

161. The *Mykonos* trial resulted in the convictions of all the defendants and led to a German arrest warrant being issued for MOIS chief Ali Fallahian. The *Mykonos* trial exposed the inner workings of MOIS and the role of the Supreme Leader in matters of terrorism. Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 58-60; Ex. S-21, *Mykonos Urteil* (Mykonos Judgment), *Urteil des Kammergerichts Berlin vom* 10. April 1997 (Judgment of the Court of Appeal of Berlin, April 10, 1997), pp. 22-23; *see also* Ex. S-15-20, 22-23.

162. Mesbahi thereafter assisted other Western prosecutors in criminal matters exposing Iran's involvement in acts of terror, including assistance to Argentinean prosecutors in connection with the AMIA bombing in Buenos Aires in 1994, for which nine (9) Iranians, including high governmental officials, as well as Hizballah master terrorist Imad Mughniyah, were all indicted. Mesbahi named Imad Mughniyah as responsible for the AMIA bombing operation and the Supreme Leader Ayatollah Khamenei for the order authorizing the attack. Mesbahi also named others involved in the AMIA bombing and a subsequent cover-up. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 23, 25-26; March 2, 2008, pp. 61-64, 82-85.

163. The Argentines indicted nine (9) Iranian officials for the AMIA bombing, and INTERPOL issued Red Notices on six (6) of them. Only through a protracted campaign of resistance did Iran avoid three additional INTERPOL Red Notices naming three (3) very high Iranian officials which would have implicated the state directly in the AMIA bombing. Ex. 10, Adamson Affid. ¶¶21-33; Ex. 2, Timmerman 2nd Affid. ¶¶40-45; Ex. 7, Bergman Affid. ¶¶43-44.

164. Mesbahi has also assisted other Western prosecutors in criminal investigations and prosecutions exposing Iran's involvement in numerous heinous acts of terror. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 23-24, 26-29; Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 67-84; Timmerman 1st Affid. ¶72.

165. Mesbahi left the German witness protection program in 2000. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 16-18; Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 22-23.

166. Mesbahi remained in contact with two police officers of the German *Landeskriminant*

("LKA"), which handles domestic, non-federal criminal matters. Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 8-9.

167. Before he left Iran, Mesbahi had established a code methodology for communicating with trusted friends who worked in sensitive positions in the Iranian government and who he had known for years. Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 6-7; Ex. S-3, Testimony of Abolghasem Mesbahi (March 1, 2008), pp. 6-7; Ex. S-9, Sealed Affidavit of Abolghasem Mesbahi, ¶¶8, 17.

168. From all his experience in intelligence work, Mesbahi was well versed in sophisticated code methodologies. Knowing the volume of sensitive information he possessed, and having fled Iran on a tip from Saeed Emami that he was to be murdered by the regime, Mesbahi's original motivation for establishing a coded message system was so that his friends could alert him in case MOIS were to discover his location and send assassins his way. Ex. S-3, Testimony of Abolghasem Mesbahi (March 1, 2008), pp. 7, 12, 20-23; Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 6-7.

169. On July 23, 2001, Mesbahi received a coded message via an Iranian newspaper from one of these trusted friends inside the Iranian government. Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 5-8; Ex. S-9, Sealed Affidavit of Abolghasem Mesbahi, ¶¶17, 61.

170. The decoded message Mesbahi received was three words: "*Shaitan dar Atash*" which means "Satan in Hell" or "Satan in Fire." Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 5-8; Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 77-78; Ex. S-9, Sealed Affidavit of Abolghasem Mesbahi, ¶¶17, 61.

171. In Iran's military-intelligence community, including the MOIS, the IRGC, and the Bassij, the word "Satan" is understood to refer to the United States and its government. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 77-78; Ex. S-5, Testimony of Witness Y (February 24, 2008), pp. 71-72.

172. Mesbahi knew what this coded message meant because he had worked on the project code-named "*Shaitan dar Atash*" years before while he worked in MOIS. "*Shaitan dar Atash*" was the contingency plan for waging asymmetrical warfare against the United States. Ex. S-1, Testimony of Abolghasem Mesbahi (February 22, 2008), pp. 77-89.

173. Mesbahi understood that the coded message meant that Iran had activated the "*Shaitan dar Atash*" contingency plan. Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 7-8. He did not know which aspect of the contingency plan was being activated, or whether it was some combination of actions, because the "*Shaitan dar Atash*" contingency plan included the use of chemical bombs, "dirty" bombs, attacks on power plants, gas stations, and oil tankers, as well as the hijacking of civilian airliners to be crashed into New York, Washington, and Chicago. Ex. S-9, Sealed Affidavit of Abolghasem Mesbahi, ¶¶65-68.

174. Mesbahi knew the meaning of the message was serious, and he immediately contacted his former handlers in the German *Landeskriminalamt* (LKA). Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 8-9.

175. Mesbahi met the officers and told them that a big event was about to happen in America, a huge terrorist operation, and asked the officers to convey this information to relevant authorities. Ex. S-2 (Mesbahi Tr. 2/23/08), p. 11. The officers responded that they would convey the information to the higher authorities and would let him know if the authorities responded.

176. Three (3) weeks later, on August 13, 2001, Mesbahi received another coded message from his sources in Iran, clarifying that the *Shaitan dar Atash* contingency plan that had been activated was the plan to crash hijacked civilian airliners into American cities. Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 11-13; Ex. S-9, Sealed Affidavit of Abolghasem Mesbahi, ¶¶ 69-70.

177. Again, Mesbahi immediately contacted the two (2) LKA officers and told them about the message, pleading with them for action. They responded that they had conveyed the earlier message and if there were any developments, they would let him know. *Id.*, p. 14. Mesbahi emphasized to the LKA officers that many lives were at risk. Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 14-15.

178. Two (2) more weeks passed, and Mesbahi received a third coded message on August 27, 2001. The third message confirmed the activation of "*Shaitan dar Atash*," but added an unspecified reference to Germany. Ex. S-9, Sealed Affidavit of Abolghasem Mesbahi, ¶¶71-72.

179. The Mohammad Atta-Ramzi Binalshibh al Qaeda terrorist cell that headed the 9/11 attacks was based Hamburg, Germany. 9/11 REPORT, pp. 160-69.

180. On September 11, 2001, Mesbahi saw the reports of the 9/11 attacks on television, then he desperately tried to reach the LKA officers, as well as German *Bundeskriminalamt* (BKA) with whom he had previously worked, but he could reach no one. Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 15-17.

181. One of the LKA officers called Mesbahi on September 13, 2001, and arranged a meeting where Mesbahi was interviewed by a German regional security official. Mesbahi told the officer that the planning and logistics for the 9/11 attacks were done by Iran. Ex. S-2, Testimony of Abolghasem Mesbahi (February 23, 2008), pp. 17-20. The regional security officer appeared not to believe him. *Id.*, p. 20.

182. A few days later, Mesbahi tried again to convince the regional security officer; this time, the officer phoned the BKA, but he then told Mesbahi that the BKA was not interested in having a meeting. Mesbahi pleaded with the officer to contact American authorities, particularly the FBI or the CIA, but the regional security officer said he would not do it. *Id.*, pp. 23-24.

183. Mesbahi subsequently called the U.S. embassy in Germany, left a voice message identifying himself and noting that he is "Witness C" from the *Mykonos* case. He stated that he had information about the 9/11 attacks and left his phone number. No one called back. Ex. S-2 (Mesbahi Tr. 2/23/08), p. 26.

184. Mesbahi tried, through a German journalist, to reach Dr. Manouchehr Ganji, a former Education Minister under the Shah, who had become a noted dissident and who moved from Paris to Washington, D.C. *Id.*, pp. 25-28. Mesbahi wanted Dr. Ganji to put him in touch with the FBI or CIA. Dr. Ganji apparently tried, as he told Mesbahi that someone from the U.S. embassy would call him. But no one called, except one unidentified person who would not give Mesbahi any name or phone, who just wanted his code information. *Id.*, pp. 24-25, 29-30.

185. Mesbahi then traveled to Berlin and went to the U.S. embassy in person. He told the guard at the door that he is "Witness C of [the] *Mykonos* Court" and that he had important information for the ambassador. He showed his U.N. refugee card to prove his identity. However, Mesbahi was told that under no circumstances would any message be taken inside the embassy after September 11, 2001, as the practice had been banned. Seeing the closed circuit television camera, Mesbahi held up his refugee card in front of it so that there would be a record of his attempt. *Id.*, pp. 31-32.

186. A guard suggested Mesbahi write a letter, so Mesbahi took down the address of the embassy and spent several hours writing what he knew. He brought the letter back to the embassy, but the guards refused to take it. Mesbahi left and mailed the letter. *Id.*, pp. 32-35. Mesbahi never received any response to this letter. *Id.*, pp. 34-35.

187. Dr. Ganji gave Mesbahi the telephone number of a man in Washington, D.C., the investigative journalist Kenneth Timmerman. Mesbahi and Timmerman spoke over the telephone in late September 2001. *Id.*, pp. 29, 34; Ex. S-10, Timmerman 1st Affid. ¶68.

188. Mesbahi telephoned Kenneth Timmerman and told him about the *Shaitan dar Atash* messages he had received in the weeks before 9/11, meaning that an Iranian plan for attacking American cities using civilian airliners had been activated, and that he, Mesbahi, had tried to pass this information on to the U.S. Government, without success. Ex. S-11, Timmerman 2nd Affid. p. 157. Ex. S-2 (Mesbahi Tr. 2/23/08), p. 29-30; Ex. S-10, Timmerman 1st Affid. ¶68; Ex. S-11, Timmerman 2nd Affid. ¶¶155, 157-58, 162.

189. What Mesabahi told Timmerman in September 2001 regarding the *Shaitan dar Atash* messages was consistent with his testimony in *Havlish*. Ex. S-11, Timmerman 2nd Affid. ¶162.

190. In his videotaped testimony, Mesbahi stated that he received two (2) coded messages concerning "*Shaitan dar Atash*," one in August and the other in early September 2001. As he explained in his separate, sealed affidavit, Mesbahi actually received three (3) such coded messages: the first on July 23, the second on August 13, and the third on August

27, 2001. Ex. S-9, Sealed Affidavit of Abolghasem Mesbahi, ¶¶59-63. Mesbahi refreshed his recollection by finding reproductions of the coded messages from the newspapers. *Id.*, ¶¶13, 19, 69-70.

191. Through his sources inside the Iranian government, Mesbahi also learned that Iran purchased an aircraft flight simulator through a Chinese company called "*Fuktad*," based in Taiwan, with which MOIS had relations. *Fuktad* obtained the simulator from AVIC (Aviation Industries Corporation of China), a Chinese state-owned entity. The simulator was transported to Iran in 2000 by an IRGC front company called "*Safiran*" that was frequently used for clandestine procurement and transport operations. Computer software to program the module to simulate Boeing 757-767-777 aircraft was purchased by for MOIS through East China Airlines. The flight simulator was set up in a very secure, secret facility at *Doshen Tappeh* air base near Tehran. Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 15-35, 40, and Mesbahi Ex. 15, 16; Ex. S-11, Timmerman 2nd Affid. ¶¶159-60, and n.53.

192. Based on his source of information, and in light of his professional experience, Mesbahi believes that the simulator was probably used to train the 9/11 hijacker pilots. Ex. S-4 (Mesbahi Tr. 3/2/08), p. 40 and Mesbahi Ex. 16.

193. Iran has never owned any Boeing 757, 767, or 777 aircraft due to international sanctions against their sale to Iran. Ex. S-11, Timmerman 2nd Affid. ¶¶159-60, and n.53; Ex. S-4 (Mesbahi Tr. 3/2/08), p. 35.

194. Each of the four (4) airliners hijacked on September 11, 2001 and used in the 9/11 attacks was a Boeing 757 or 767 model. 9/11 REPORT, pp. 242, 248; Ex. S-11, Timmerman 2nd Affid. ¶161.

195. In late September, 2001, Mesbahi telephoned Kenneth Timmerman and told him about the information he had received about the flight simulator that was installed at *Doshen Tappeh* air base near Tehran. Ex. S-2 (Mesbahi Tr. 2/23/08), p. 29-30; Ex. S-10, Timmerman 1st Affid. ¶68; Ex. S-11, Timmerman 2nd Affid. ¶¶155, 157, 159, 162.

196. What Mesabahi told Timmerman in September 2001 regarding the flight simulator was consistent with his testimony in *Havlish*. Ex. S-11, Timmerman 2nd Affid. ¶162.

197. Mesbahi also learned from his sources inside the Iranian government that at least one of the 9/11 hijackers was present inside Iran before the 9/11 attacks. Majid Moqed, a muscle hijacker on American Airlines Flight 77 (North Tower WTC) was housed at the Hotel *Sepid*, an IRGC-MOIS safe house, on *Nejatolahi* Street in Tehran. Ex. S-4, Testimony of Abolghasem Mesbahi (March 2, 2008), pp. 37-40, and Mesbahi Dep. Ex. 17.

Iran's Provision of Safe Haven to al Qaeda

198. Iran provided material support to al Qaeda after the 9/11 attacks in several ways, most significantly by providing safe haven to al Qaeda leaders and operatives, keeping them safe from retaliation by U.S. forces, which invaded Afghanistan.

199. In the late 1990s, Mustafa Hamid passed communications between Osama bin Laden and the Government of Iran. In late 2001, while in Tehran, Hamid negotiated with the Iranians to relocate al Qaeda families to Iran after the 9/11 attacks. Ex. 30, U.S. Treasury Department press release, January 16, 2009; Ex. 8, Clawson Affid. ¶53; Ex. 2, Timmerman 2nd Affid. ¶¶213-15.

200. When the United States-led multi-national coalition attacked the Taliban regime in Afghanistan in the fall of 2001, Iran facilitated the exit from Afghanistan, into Iran, of numerous al Qaeda leaders, operatives, and their families. The Iran-Afghanistan safe passageway, established earlier to get al Qaeda recruits into and out of the training camps in Afghanistan, was utilized to evacuate hundreds of al Qaeda fighters and their families from Afghanistan into Iran for safe haven there. The IRGC knew of, and facilitated, the border crossings of these al Qaeda fighters and their families entering Iran. Ex. 6, Lopez-Tefft Affid. ¶¶278-79; 9/11 AND TERRORIST TRAVEL, p. 67; Ex. 2, Timmerman 2nd Affid. ¶¶171-73; *see also* Ex. 9, Bruguière Affid. ¶32.

201. Osama bin Laden's friend, Gulbuddin Hekmatyar, who was then in exile in Iran near the Afghan border, was instrumental in the evacuation of al Qaeda into Iran, as were Imad Mughniyah and Iran's *Qods* Force commander Ahmad Vahidi. Ex. 6, Lopez-Tefft Affid. ¶¶129, 280, 290.

202. Among the high-level al Qaeda officials who arrived in Iran from Afghanistan at this time were Saad bin Laden and the man who would soon lead "al Qaeda in Iraq," Abu Mussab Zarqawi. Ex. 2, Timmerman 2nd Affid. ¶171.

203. The number 2 official of al Qaeda, Ayman al Zawahiri, made particular arrangements for his own family's safe haven in Iran after 9/11, with the aid of his son-in-law Muhammad Rab'a al Sayid al Bahtiyti, an Egyptian-born al Qaeda operative. Ex. 2, Timmerman 2nd Affid. ¶217 and Ex. B-15 thereto; Ex. 8, Clawson Affid. ¶53.

204. In late 2001, Sa'ad bin Laden facilitated the travel of Osama bin Laden's family members from Afghanistan to Iran. Thereafter, Sa'ad bin Laden made key decisions for al Qaeda and was part of a small group of al Qaeda members involved in managing al Qaeda from Iran. Ex. 34; Ex. 2, Timmerman 2nd Affid. Ex. B-15; Clawson Affid ¶¶54, 62.

205. There have been numerous instances of al Qaeda operatives and leaders meeting, planning, and directing international terrorist operations from the safety of Iranian territory. Senior al Qaeda members continued to conduct terrorist operations from inside Iran. The U.S. intercepted communications from Saef al Adel, then in Mashad, Iran, to al Qaeda assassination teams in Saudi Arabia just before their May 12, 2003 assault on

three (3) housing compounds in Riyadh. Al Qaeda leaders in Iran planned and ordered the Riyadh bombing. Ex. 2, Timmerman 2nd Affid. ¶¶177, 179, 218-219, and Ex. B-15 thereto; Ex. 3, Byman Affid. ¶55; Ex. 6, Lopez-Tefft Affid. ¶¶292-94, 297-300; Ex. 8, Clawson Affid. ¶61.

Other Findings

206. A memorandum, dated May 14, 2001, demonstrates Iran's and Hizballah's awareness of, and involvement in, al Qaeda's plans for an impending terrorist strike against the U.S. The memorandum, which has been reviewed and found to be authentic by U.S. and Israeli intelligence, is from Ali Akbar Nateq-Nouri (overseer of the Supreme Leader's intelligence apparatus), speaking for the Supreme Leader, and is addressed to the head of Iran's intelligence operations Mustapha Pourkanad. The memorandum clearly demonstrates Iran's awareness of an upcoming major attack on the United States and directly connects Iran and Imad Mughniyah to al Qaeda and to the planned attack. The memorandum references Iran's "support for al-Qaeda's future plans," and cautions "to be alert to the [possible] negative future consequences of this cooperation [between Iran and al-Qaeda]." The memorandum also states that, while "expanding the collaboration with the fighters of al-Qaeda and Hizballah [Lebanon]," the Supreme Leader "emphasizes that, with regard to cooperation with al-Qaeda, no traces must be left [] that might have negative and irreversible consequences, and that [the activity] must be limited to the existing contacts with [Hizballah Operations Officer Imad] Mughniyeh and [bin Laden's deputy Ayman] al-Zawahiri." Ex. 7, Bergman Affid. ¶¶75-76, and Ex. B thereto.

207. Iran further assisted al Qaeda's preparations for the 9/11 attacks by assisting in the assassination of Ahmad Shah Massoud, the U.S.-allied leader of Afghanistan's Northern Alliance, two (2) days before September 11, 2001. The assassination of Massoud was critical because he would have would have become America's most important military ally in Afghanistan after 9/11 in any retaliatory counterstrike against al Qaeda in Afghanistan. 9/11 REPORT, pp. 214, 252; Ex. 6, Lopez-Tefft Affid. ¶276; Ex. 7, Bergman Affid. ¶71.

208. On July 28, 2011, the Obama Administration and the U.S. Treasury Department took actions indicating the U.S. Government's finding that Iran has materially assisted al Qaeda by facilitating the transport of money and terrorist recruits across Iran's territory. The U.S. Government concluded that there is "an agreement between al-Qaida and the Iranian government . . . demonstrat[ing] that Iran is a critical transit point for funding to support al-Qa'ida's activities in Afghanistan and Pakistan." "This network serves as the core pipeline through which al-Qa'ida moves money, facilitators and operatives from across the Middle East to South Asia . . . ." Ex. 38, U.S. Department of Treasury Press Release (July 28, 2011).

209. Obama Administration officials have stated that senior Iranian officials know about the money transfers and allow the movement of al-Qaeda foot soldiers through Iranian territory. Ex. 38, U.S. Department of Treasury Press Release (July 28, 2011).

Expert Testimony

210. **Dietrich L. Snell**, a highly experienced prosecutor, served as Senior Counsel on the staff of the *National Commission on Terrorist Attacks upon the United States* (commonly known as the "9/11 Commission") between May 2003 and July 2004. Mr. Snell was the Team Leader of the Commission staff assigned to investigate the plot culminated in the 9/11 attack. It was Mr. Snell's responsibility to design and coordinate the staff's investigation of the 9/11 plot ensuring that the Commission considered all relevant evidence gathered from myriad sources — both classified and public record — that were made available to the Commission. Mr. Snell's assignment involved reviewing countless documents and interviewing hundreds of witnesses including law enforcement and intelligence communities in the United States and overseas. Specifically, Mr. Snell supervised the preparation of the Staff Statement on the plot including the drafting and editing of those portions of the 9/11 COMMISSION REPORT that dealt with the plot. Ex. 5, Snell Affid. ¶7.

211. During Mr. Snell's work with the Commission, he became intimately familiar with the FBI's criminal investigation of the 9/11 attack (the "PENTTBOM investigation"), an investigation of unprecedented scope in the history of the FBI. Mr. Snell states the FBI emphasized its view that a substantial number of the nineteen (19) al Qaeda operatives who hijacked the four (4) targeted US airliners likely transited through Iran on their way to and from Pakistan and Afghanistan during and in furtherance of the conspiracy. Snell states that according to the PENTTBOM Team, the willingness of Iranian border officials to refrain from stamping passports of al Qaeda members help explain the absence of a clear document trail showing the travels of those members to and from Afghanistan, the center of al Qaeda training, starting in the late 1990s and leading up to September 11. Ex. 5, Snell Affid. ¶17.

212. Snell notes in his affidavit that senior 9/11 conspirators Ramzi Binalshibh and Khalid Sheikh Mohammed (KSM) provided information tending to corroborate the FBI's evidentiary support that already existed regarding the important role played by Iran in facilitating the 9/11 attack. Ex. 5, Snell Affid. ¶¶20 and 21.

213. In sum, Snell concludes, based on his experience as an investigator, prosecutor, and Senior Staff Member of the 9/11 Commission, that his fellow colleagues on the 9/11 Commission, Dr. Daniel L. Byman and Ms. Janice Kephart, are correct in their analysis that **there is clear and convincing evidence pointing to the involvement on the part of Hezbollah and Iran in the 9/11 attack, especially as it pertains to travel facilitation and safe haven**. Ex. 5, Snell Affid. ¶23.

214. **Dr. Daniel L. Byman** is a professor at Georgetown University and a member of the Brookings Institute. He is a regular consultant to the United States government on terrorism and national security-related matters. Previously, Dr. Byman's professional career involved the CIA and as Research Director of the RAND's Center for Middle East Public Policy. During his time at RAND, Dr. Byman worked closely with the U.S. Military, U.S. intelligence communities and other governmental agencies. Upon leaving

the RAND Corporation in 2002, Dr. Byman joined the House and Senate Intelligence Committees in a joint investigation regarding the 9/11 terrorist attack (the so-called "9/11 Inquiry"). Dr. Byman served as one of the main investigators for the 9/11 Inquiry spending considerable time on al Qaeda. Thereafter, Dr. Byman joined the *National Commission on Terrorist Attacks on the United States,* better known as the "9/11 Commission," with particular emphasis on al Qaeda operations. For both the 9/11 Inquiry and the 9/11 Commission, Dr. Byman travelled to the Middle East to interview many officials. Ex. 3, Byman Affid. ¶¶5-8.

215. It is Dr. Byman's professional judgment **there is clear and convincing evidence** that Iran has provided material support for al Qaeda in general as defined in 18 U.S.C. §2339A(b)(1). Dr. Byman notes in his affidavit the Iranian assistance predated the 9/11 attack and continued after it, and it had a profound implication on the 9/11 attack itself. Dr. Byman states that over the years the Iranian support included assistance with travel, unlimited safe haven, and some training at the very least. Byman further states that it is quite possible there was additional and far more considerable support but that Iran has deliberately kept its relationship with al Qaeda shrouded and ambiguous. Ex. 3, Byman Affid. ¶14.

216. Dr. Byman states that one reason for the cooperation between Iran and al Qaeda is that both see the "United States as its enemy . . . both believe the United States is an imperialistic power bent on subjugating Muslims and want to weaken its influence." Iran and al Qaeda also have other foes in common, including pro-Western Arab regimes like Saudi Arabia and Egypt. Iran's relationship towards these countries has vacillated from outright hostility and calls for such regimes to be overthrown to efforts toward conciliation, but the use of violence and the threat of force have been part of its foreign policy towards these states. In short, while Iran and al Qaeda often have wildly different goals regarding many issues, they both want to weaken and hurt many of the same adversaries. Ex. 3, Byman Affid. ¶25.

217. Dr. Byman notes that al Qaeda has admitted some relationship existed with Iran before 9/11 and al Qaeda justified this on the basis of strategic commonality. Al Qaeda leader, Ayman al-Zawahiri, admitted that before 9/11, Iran and al Qaeda worked together "on confronting the American-lead Zionist/Crusader alliance." Ex. 3, Byman Affid. ¶26.

218. Dr. Byman's affidavit notes that after 9/11, and before the U.S.-led invasion of Afghanistan, hundreds of al Qaeda members, including many key al Qaeda leaders, and their families, fled Afghanistan and were permitted to enter and stay in Iran. Ex. 3, Byman Affid. ¶29.

219. In many of its terror operations, Iran used Hizballah as a facilitator [Imad Mughniyah] for many reasons. First, Iran's involvement in Hizballah's creation, large-scale funding, constant provision of training, and role in Hizballah's leadership councils has given Iran an important role in the Lebanese organization. Iran trusts Hizballah and Hizballah trusts Iran – one of the closest relationships in history between a terrorist group and its sponsor. Second, although Hizballah is a Shi'a organization, it is an Arab group, while Iran is a

Persian state. As such, Hizballah has stature in the Arab community and can better bridge the Shi'a-Sunni divide because it is not also suspect due to a difference in ethnicity. Third, Hizballah is highly capable and has a high degree of independence in Lebanon. Thus the training offered at Hizballah camps is superb, and it can be done without having to hide it from the Lebanese government. Finally, working through Hizballah offers Iran some degree of deniability if it chooses, as it places one more degree of separation between the group in question and Iran. Ex. 3, Byman Affid. ¶44.

220. Perhaps the most important form of aid Iran gave al Qaeda prior to 9/11 (and continues to give today) involves the facilitation of travel. Keeping passports "clean" was vital to reducing the risk of discovery and arrest in Saudi Arabia and later the United States. In the mid-1990s, al Qaeda operative Mustafa Hamid negotiated a secret relationship with Iran that allowed safe transit via Iran to Afghanistan. In the years before 9/11, one of al Qaeda's key military commanders, Seif al-Adl, acknowledged transit through Iran to coordinate issues of mutual interest. Ex. 3, Byman Affid. ¶¶46-7.

221. Travel assistance "is invaluable," not only to avoid detection and arrest, but established lines of transit make recruitment and training easier, as individuals can travel to and from training camps without fear of interference. Also, travel facilitation enables better communication and coordination. Even before 9/11, al Qaeda was aware that the United States monitored phones and other forms of communication and recognized that many sensitive deliberations are best done face-to-face. Doing so requires individuals who can travel freely from one area to another. Ex. 3, Byman Affid. ¶50.

222. In the 1990s, individuals linked to al Qaeda received training in explosives in Iran itself. More al Qaeda individuals trained in Hizballah facilities in Lebanon – facilities that were set up by Iran and regularly hosted by Iranian paramilitary personnel. It is Iran's common approach to use both its own people and facilities and "outsourcing" to its close ally Hizballah. Such training included explosives training and on methods pertaining to the collection of intelligence and operational security. Ex. 3, Byman Affid. ¶60.

223. Dr. Byman summarizes his affidavit with a statement that in his judgment, there is strong support for the claim that Iran has provided important material support for al Qaeda including direct travel facilitation for the so-called muscle hijackers as noted in the 9/11 Commission Report. This support comes from a range of sources including U.S. government documents and even a statement by al Qaeda themselves. This Iranian support has helped make al Qaeda the formidable organization it was on 9/11 and remains today. Ex. 3, Byman Affid. ¶69.

224. **Janice L. Kephart** is a border control expert and is former counsel to the U.S. Senate Judiciary Subcommittee on Technology, Terrorism and Government Information. From 2003 to July 2004 Ms. Kephart served as counsel to the the 9/11 Commission. Ms. Kephart was assigned to the "Border Team" and was one of the principal authors of 9/11 AND TERRORIST TRAVEL: A STAFF REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES. Ex. 4, Kephart Affid. ¶13. Stated otherwise, Ms. Kephart was specifically responsible for all aspects of the 9/11

investigation regarding how and when the 9/11 hijackers attained entry into, and were able to stay in, the United States. Ex. 4, Kephart Affid. ¶26.

225. Ms. Kephart's analysis of the terrorists' "travel operation" or "terrorist travel" was based, in part, on the examination performed by her team of thousands of travel documents, including the six (6) hijackers' passports which were recovered, and approximately two hundred (200) interviews, including speaking with 26 border inspectors as to hijacker entries. Ex. 4, Kephart Affid. ¶¶31, 33, 37.

226. Ms. Kephart's affidavit concludes that: (1) facilitation of terrorist travel is crucial material support to terrorist operations; and (2) Iran's facilitation of al Qaeda operative travel, including at least eight (8) 9/11 hijackers, amounted to essential material support, indeed direct support, that further enabled al Qaeda to perpetrate the 9/11 attack successfully. Ex. 4, Kephart Affid. ¶3.

227. Iran itself, and through its surrogate, Hezbollah, gave direct support to the 9/11 conspirators by Iran's and Hezbollah's active facilitation of hijackers' travel into and out of Afghanistan and by actions of "a senior Hezbollah operative" [Imad Mughniyeh] and travel into Saudi Arabia "to coordinate activities there" and "to assist individuals in Saudi Arabia in traveling to Iran during November" 2001. Ex. 4, Kephart Affid. ¶3.

228. Ms. Kephart provides expert opinion that al Qaeda's complex and well-executed travel plan that, at a minimum, required complicity by Iranian government officials, including transit through Iran and Afghanistan and into Iran after acquisition of U.S. visas, contributed to the success of the 9/11 operations. Ex. 4, Kephart Affid. ¶3.

229. Ms. Kephart's sworn testimony states that Iran supported 9/11 hijacker travel into Iran and placed a "senior Hezbollah operative" [Imad Mughniyeh] on flights with slated 9/11 hijackers *immediately after* they had acquired U.S. visas in Saudi Arabia. Kephart continues that keeping those passports "clean" of Iranian or Afghani travel stamps was essential since the critical steps in acquiring U.S. visas were achieved. Ex. 4, Kephart Affid. ¶4.

230. Ms. Kephart notes that the 9/11 terrorists had engaged **in a specific terrorist travel operation. Kephart notes that not only did the four (4) nearly simultaneous hijackings of four commercial airplanes constituted a coordinated operation, but so did the hijackers' travel. For terrorists, success is often dependent on travel. "For terrorists, travel documents are as important as weapons."** 9/11 COMMISSION REPORT at p. 384. Ex. 4, Kephart Affid. ¶¶37-39 (emphasis added).

231. Ms. Kephart details that the twenty-six (26) al Qaeda terrorist operatives were whittled down to nineteen (19) hijackers mostly due to failure to obtain U.S. visas. Kephart states twenty-three (23) visas were applied for resulting in twenty-two (22) visas being obtained which involved thirty-four (34) hijackers entering into the United States over a period of twenty-one (21) months. Ex. 4, Kephart Affid. ¶¶35-36, 44.

232. Ms. Kephart notes that terrorists must travel clandestinely to meet, train, plan, case targets, and gain access to attack. To terrorists, international travel presents great danger, because the terrorist must surface to pass through regulated channels, present themselves to border security officials, or attempt to circumvent inspection points. Ex. 4, Kephart Affid. ¶41.

233. Ms. Kephart notes that her study of the nineteen (19) hijackers paints a picture of conspirators who put the ability to exploit U.S. border security high on their operational security concerns. *See* 9/11 AND TERRORIST TRAVEL STAFF REPORT at page 130. Ex. 4, Kephart Affid. ¶51.

234. Ms. Kephart states in her expert opinion the actions of Iranian border authorities in refraining from stamping the passports of Saudi hijackers vastly increased the likelihood of the operational success of the 9/11 plot. **"Thus, Iran's facilitation of the hijackers' terrorist travel operation constituted material support—indeed direct support—for al Qaeda 9/11 attacks,"** says Kephart. Ex. 4, Kephart Affid. ¶66 (emphasis added).

235. Shielding the Saudi passports from indicia of travel to Iran and Afghanistan was perceived as essential to prevent potential confiscation of passports by Saudi officials, in order to hide complicity of Iran in supporting al Qaeda, states Kephart. Ex. 4, Kephart Affid. ¶66.

236. Ms. Kephart notes that Iran's willingness to permit the undocumented admission and passage of al Qaeda operatives and 9/11 hijackers provided key material support to al Qaeda. By not stamping the hijackers' passports, by providing safe passage through Iran and into Afghanistan, and by permitting Hezbollah to receive the traveling group and, apparently, to actively support the human trafficking of the 9/11 hijackers, Iran, in essence, acted as a state sponsor of terrorist travel. Ex. 4, Kephart Affid. ¶70.

237. Agreeing with her 9/11 Commission Staff colleagues, Dr. Daniel L. Byman and Mr. Dietrich L. Snell, Ms. Janice Kephart concludes that, **"it is my expert opinion that there is clear and convincing evidence that Iran and Hezbollah provided material support to al Qaeda by actively facilitating the travel of eight to ten of the 9/11 hijackers to Iran or Beirut immediately after their acquisition of their U.S. visas and into and out of Afghanistan and that these U.S. visas were garnered specifically for the purpose of terrorist travel into the United States to carry out the 9/11 attacks."** Ex. 4, Kephart Affid. ¶78 (emphasis added).

238. **Dr. Patrick Clawson** is one of the country's foremost experts on all matters pertaining to Iran for the last thirty (30) years. Dr. Clawson has done consulting work for the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and the Defense Department, among other governmental agencies. Dr. Clawson has lectured worldwide on the subject matter of Iran and terrorism. Dr. Clawson has been qualified by federal courts as an expert witness on matters involving Iran approximately twenty-five (25) times. Notably, Dr. Clawson has written widely, including many books and scholarly publications on Iran and terrorism in several languages. Ex. 8, Clawson Affid.

¶¶1-11.

239. In Dr. Clawson's affidavit, he notes that in the State Department's Annual Reports, dating from 1981 through 2010, Iran is consistently cited as the primary state sponsor of terrorism throughout the world. Additionally, Dr. Clawson notes that the most authoritative U.S. government sources have issued repeated and detailed descriptions of Iranian material support to al Qaeda before, during and after the 9/11 attacks. **Noting the evidence is clear and convincing**, Dr. Clawson states, "there is simply no ambiguity or unclarity in U.S. government statements about this matter." Ex. 8, Clawson Affid. ¶43.

240. Dr. Clawson notes that Executive Order 13224 issued by the United States Treasury Department on January 16, 2009, states that Sa'ad bin Laden, one of Usama bin Laden's sons, made key decisions for al Qaeda and was a small group of al Qaeda members that was involved in managing the terrorist organization from Iran after September 11, 2001. Ex. 8, Clawson Affid. ¶54.

241. Dr. Clawson notes that "few if any noted terrorism experts would dispute that Iran provides material support to al Qaeda within the meaning of 18 U.S.C. § 2339A(b)(1)." Ex. 8, Clawson Affid. ¶56.

242. It is Dr. Clawson's expert opinion that Iran has provided material support for al Qaeda before, during and after the events of September 11, 2001. Iranian support of al Qaeda through its instrumentalities, the Revolutionary Guard, and MOIS, is consistent with its foreign policy of supporting terrorism against the United States. Dr. Clawson asserts that without the technical training, funding, cash incentives, and other material support provided to terrorist organizations by Iran through its instrumentalities, the IRGC and MOIS, it is accepted by most experts that those organizations, such as al Qaeda, would not be able to carry out many of their most spectacular terrorist actions. The central assistance for material support provided by Iran to al Qaeda regarding September 11, 2001 is on the present state of the record of travel facilitation and safe haven. Ex. 8, Clawson Affid. ¶73, *et seq*.

243. **Claire M. Lopez and Dr. Bruce D. Tefft** have been engaged by the CIA as undercover operations officers and supervisors for over twenty-five (25) years each. While currently retired, both are privately retained by various federal contractors engaged in intelligence gathering and security matters. Specifically, Bruce Tefft has been found to be certified as an expert in the United States District Courts in Washington, DC in approximately seven (7) different cases involving terrorism by Iran and Libya. Ex. 6, Lopez-Tefft Affid. ¶12.

244. Lopez and Tefft conclude in their affidavit that the material support provided by Iran/Hezbollah to al Qaeda both before and after September 11 involved, among other matters, planning, recruitment, training, financial services, expert advice and assistance, lodging and safe houses, false documentation and identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel and travel facilitation. Ex. 6, Lopez-Tefft Affid. ¶37.

245. Lopez and Tefft also conclude that with regard to the September 11 attacks, Iranian travel facilitation enabled eight (8) to fourteen (14) muscle hijackers to acquire needed Saudi passports and U.S. visas thus ensuring **their continued training** in Afghanistan and **access** to the United States. This travel facilitation to and from Iran, Saudi Arabia and Afghanistan was a vital link in the 9/11 conspiracy, and an indispensible aspect of the terrorist success. Ex. 6, Lopez-Tefft Affid. ¶38.

246. Lopez and Tefft conclude that the Iranian/al Qaeda joint terror attacks against the United States were preceded by the Khobar Towers bombing in 1996, the twin bombings of two (2) United States embassies in Africa in 1998, and the boat suicide bombings of the Destroyer *U.S.S. Cole* off the coast of Yemen in 2000. Lopez and Tefft further conclude that Hezbollah and its terror operations chief Imad Mughniyeh provided explosives, operational planning and training support for all of these al Qaeda attacks against America. Ex. 6, Lopez-Tefft Affid. ¶34.

247. Lopez and Tefft conclude their sworn affidavit by stating, "**we are convinced that the overwhelming evidence assembled in this affidavit leaves no doubt that al Qaeda and the official Iranian Regime at the highest levels have been acting in concert to plot and execute attacks against the United States since early 1990s.** The pan-Islamic alliance that was forged across the supposed Sunni-Shi'a divide has been directed by the Iranian Mullahs in close cooperation with Usama bin Laden, Ayman al-Zawahiri, and other top al Qaeda leaders." Ex. 6, Lopez-Tefft Affid. ¶352 (emphasis added).

248. Lopez and Tefft declare that the al Qaeda-Iran alliance was responsible for all of the most significant terrorist attacks against U.S. national interests from the 1990s up to and including the attacks of September 11. Ex. 6, Lopez-Tefft Affid. ¶353.

249. Lopez and Tefft conclude that the sworn testimony of former MOIS officer, Abolghasem Mesbahi, is generally credible, and, of particular significance is his testimony that the Ayatollah Ruhollah Khomeini initiated contingency plans in the mid-1980s for an operation against the United States Government and American cities, called *"Shaitan dar Atash"* ("Satan in the Fire"). This contingency plan for unconventional or asymmetrical warfare against the United States was the origin of subsequent terror attacks against the United States [Khobar Towers (1996), East African Embassy bombings (1998), U.S.S. Cole (2000)], up to and including the terrorist attacks of 9/11. Osama bin Laden and al Qaeda joined the Iranian operational planning in the early to mid-1990s. See Ex. S-12, Lopez-Tefft Affidavit. (unredacted) ¶45.

250. Lopez and Tefft conclude that Abolghasem Mesbahi's testimony concerning his communication sources inside Iran via coded, encrypted messages and the manner and method of such communications is credible. Also, it is consistent with, and indicative of, sophisticated intelligence trade craft, in particular, communication techniques and methodologies. Lopez and Tefft conclude and credit Mesbahi's testimony that he received from high level sources in Tehran advance notice of a major terrorist attack without specifics of time, date and place within two (2) months of September 11, 2001. See Ex. S-12, Lopez-Tefft Affidavit. (unredacted) ¶46.

251. Lopez and Tefft also conclude that Mesbahi's testimony that an MOIS front company

purchased and installed a flight simulator with Boeing aircraft software at the IRGC's Doshan-Tappeh Airbase inside Iran to train the 9/11 hijacker pilots on Boeing passenger aircraft is credible. Lopez and Tefft also conclude that the testimony provided to the court under seal regarding witnesses Y and Z is generally credible. See Ex. S-12, Lopez-Tefft Affidavit. (unredacted) ¶¶43-49.

252. Lopez and Tefft state it is their "**expert opinion to a reasonable degree of professional certainty** that the Iranian Regime's use of terror and, specifically, its material support of al Qaeda and terroristic attacks, including 9/11, is beyond question." See Ex. 6, Lopez-Tefft Affidavit. ¶50 (emphasis added).

253. **Dr. Ronen Bergman** is an Israeli expert on international intelligence, especially the Mossad and terrorism. Bergman has conducted extensive interviews with many former Iranian intelligence and military personnel, both high-ranking individuals and field operatives, as well as with former political figures of the Iranian Regime. See Ex. 7, Bergman Affidavit at. ¶7.

254. Dr. Bergman is considered one of the principal experts on the Israeli intelligence community's assessment of Iran. See Ex. 7, Bergman Affidavit. ¶9. Dr. Bergman states that his Affidavit is based on "intensive research, including review of thousands of documents, including intelligence material gathered by Israel, United States, France, the United Kingdom, Egypt, Jordan and Germany." See Ex. 7, Bergman Affidavit at. ¶10.

255. Dr. Bergman has lectured widely at universities throughout the world pertaining to issues involving terrorism and is extensively published on the subjects of military, intelligence, espionage, international affairs, law and history. Dr. Bergman has researched and published material about Abolghasem Mesbahi, an Iranian intelligence operative who defected to Germany and became an important intelligence "asset." Dr. Bergman states, "I have read Mesbahi's sworn testimony [in the *Havlish* case] taken February 22 and 23, 2008 in Frankfurt, German and March 1 and 2, 2008 in Paris, regarding his knowledge of an upcoming attack of the West which proved to be the September 11, 2001 attack." See Ex. S-13, Bergman Affidavit. (unredacted) ¶¶10-13.

256. Dr. Bergman notes that Mesbahi is the former head of Iran's entire European intelligence operation. Noting that he engaged "in extensive research of Mesbahi," Dr. Bergman attests that Mesbahi was known to be "an excellent intelligence operative." Dr. Bergman is also familiar with the French intelligence agency (DGSE) information on Mesbahi. As the leader of Iran's MOIS intelligence team in Europe in the 1980s, the Germans recruited Mesbahi as a source of information and evidence. See Ex. S-13, Bergman Affid. (unredacted) ¶72.

257. Dr. Bergman reveals that Mesbahi "became an important asset in the investigation of many assassinations and acts of terror by the Iranian regime and its proxies in several countries… **Mesbahi's testimony has been received with high reliability by the courts and by law enforcement and intelligence agencies worldwide**." See Ex. S-13, Bergman Affidavit. ¶73 (unredacted) (emphasis added).

258. Dr. Bergman notes the U.S. State Department asserts that Iran was involved in one hundred, thirty-three (133) terrorist operations in the nine (9) years between 1987 and 1995 alone; many other acts of terrorism involving hundreds of fatalities preceded and follows this eight-year period. See Ex. 7, Bergman Affidavit. ¶18.

259. Affirming that Hizballah was an Iranian organization from its inception, Bergman confirmed that Imad Fayez Mughniyah was its military leader. See Ex. 7, Bergman Affidavit. ¶¶25 and 29. Bergman asserts that the authorities in the Israeli and American intelligence services believe that Hizballah's Imad Mughniyah conceived, designed, planned, commanded, and/or carried out terrorist operations involving hundreds of deaths, more than any other single figure in the world before his death in Damascus, Syria in February, 2008. See Ex. 7, Bergman Affidavit. ¶¶29-38.

260. Bergman asserts that Mughniyah, as the leading figure in Hizballah's military/terrorism arm, and his top lieutenants, all trained in Iran. See Ex. 7, Bergman Affidavit. ¶¶38-39.

261. Bergman reveals that he has had access to two (2) top-secret, highly classified Israeli documents which disclose: "Iran is aided by Hizballah's operational infrastructure abroad… through… Imad Mughniyah, for the purpose of attacks." The documents also reveal Hizbollah's terrorist training in Iran and clearly states, "Iran usually refrains from carrying out attacks directly, and its involvement usually follows an indirect course." Bergman writes "**that indirect course went through Imad Mughniyah**." See Ex. 7, Bergman Affidavit. ¶¶40-41 (emphasis added).

262. Dr. Bergman confirms other sources that Imad Mughniyah came to Khartoum, Sudan, for a meeting with bin Laden in 1993. There, Mughniyah told bin Laden about the enormously effective tactic of suicide attacks and their role in driving the American and French out of Lebanon in the early 1980s. From this point on, Mughniyah became a major connection point between Iran and al Qaeda. See Ex. 7, Bergman Affidavit. ¶¶58-59.

263. As a result of the 1993 Khartoum meeting, Iran used Hizballah to supply al Qaeda with explosives instruction and to provide bin Laden with bombs. "Much of the al Qaeda training was carried out in camps in Iran run by MOIS," declares Dr. Bergman. See Ex. 7, Bergman Affidavit. ¶61.

264. In 1996 when Osama bin Laden and al Qaeda were forced to leave Sudan, the Iranian intelligence services assisted al Qaeda in moving their operation and members to Afghanistan, Iran, Pakistan, Yemen and Lebanon. See Ex. 7, Bergman Affidavit. ¶64.

265. Dr. Bergman discloses in February 1998, when the veterans of the Egyptian Islamic Jihad, headed by Ayman al Zawahiri, United with al Qaeda, the link between al Qaeda and Iran was strengthened. Dr. al Zawahiri became the chief go-between of al Qaeda and Iran. According to information gathered by the United States National Security Agency and Mossad, al Zawahiri travelled to Iran several times as the guest of MOIS Chief Ali Fallahian and the MOIS Chief of Iranian Operations Abroad, Ahmad Vahidi. See Ex. 7, Bergman Affidavit. ¶67.

266. Dr. Bergman states Iranian and Lebanese Hizbollah trainers travelled between Iran and Afghanistan, transferring to al Qaeda fighters such material as blueprints and drawings of bombs, manuals for wireless equipment, instruction booklets for avoiding detection by unmanned aircraft. See Ex. 7, Bergman Affid. ¶68.

267. Dr. Bergman reveals that after al Zawahiri's arrival in Afghanistan, Iranian authorities helped him on many occasions to pass weaponry and reinforcements to al Qaeda forces across the border from Iran to Afghanistan. Ayman al Zawahiri, who has been marked as the successor to Osama bin Laden, according to Israeli intelligence, was responsible for planning the attacks on 9/11. See Ex. 7, Bergman Affidavit. ¶69.

268. After 9/11, according to Dr. Bergman, Iran harbored and sheltered many al Qaeda members who fled Afghanistan to avoid the American invasion. In particular, Iran harbored Osama bin Laden's son, Saad bin Laden, and Saif al Adel, the number three man in al Qaeda and head of its military wing. See Ex. 7, Bergman Affidavit. ¶74.

269. Dr. Bergman states that both Israeli and American intelligence agents have examined the document dated May 14, 2001 from Ali Akbar Nateq Nouri, and concludes that it appears to be authentic. Nateq Nouri's document reveals both high-level links between the Iran Supreme Leader's intelligence apparatus and al Qaeda and involves knowledge and support of a major upcoming operation. See Ex. 7, Bergman Affidavit. ¶75. The document states it is the Iranian government's goal to damage America's and Israel's "economic systems, discrediting [their] institutions… . . . as part of political confrontation, and undermining [their] stability and security…" . . . ." The May 14, 2001 memo further states that with regard to cooperation with al Qaeda that no traces must be left and that future activity must be limited to the **"existing contacts"** between Mughniyah and al Zawahiri. See Ex. 7, Bergman Affidavit. ¶76.

270. Dr. Bergman summarizes his Affidavit by attesting that, based on all of his sources, materials, and interviews: """. . . it is my expert opinion that the Islamic Republic of Iran was, and is, a benefactor of, and provided material aid, resources and support to Osama bin Laden and al Qaeda both before and after the attacks of September 11, 2001 on the United States…. . . . Iran consistently supports terrorist operations against a number of targets throughout the world, including the United States." See Ex. 7, Bergman Affidavit at ¶16.

271. Dr. Bergman states that his opinions are consistent with the conclusion of the *9/11 Report* that Iran facilitated travel of hijackers between Iran, Saudi Arabia, and Afghanistan within a year before the attacks. Dr. Bergman further attests that travel facilitation enabled the acquisition of important travel documents, passports and visas and therefore entry into the United States. Finally, Dr. Bergman concurs with many other experts that Iran provided safe harbor to the members of the al Qaeda leadership shortly after the 9/11 attacks. See Ex. 7, Bergman Affidavit. ¶17.

272. **Kenneth Timmerman**, investigative journalist, author and noted Iran expert, provides an expert affidavit (his Second Affidavit) in addition to a fact affidavit (First Affidavit, which is sealed). Timmerman's Second Affidavit (Ex. 2, redacted; Ex. S-11,

unredacted), comprising two hundred, nineteen (219) paragraphs, lays out his expert analysis of the early connections between Ayatollah Khomeini and Yasser Arafat, Iran's creation of Hizballah in Lebanon, the emergence of Imad Mughniyah and his long terrorist history, connections between Iran, Hizballah, al Qaeda, and the Taliban, Iran as a travel facilitator for terrorists, and other details from the *Havlish* investigation. Ex. 2, Timmerman 2nd Affid. *passim.*

273. Timmerman's Second Affidavit states that the 9/11 Commission was given access to thousands of NSA documents, very shortly before the publication date of the 9/11 REPORT. Ex. 2, Timmerman 2nd Affid. ¶¶120-29. These NSA documents, which included electronic intercepts, were described to Timmerman by a member of the 9/11 Commission staff team that conducted the review as showing that Iran had facilitated the travel of the al Qaeda operatives and that Iranian border inspectors had been ordered not to place telltale stamps in the operatives' passports, thus keeping their travel documents clean. Ex. 2, Timmerman 2nd Affid. ¶¶120-24.

274. In his Second Affidavit, Timmerman states that he was told by the 9/11 Commission staff member that the Iranians were fully aware they were helping operatives who were part of an organization preparing attacks against the United States. Ex. 2, Timmerman 2nd Affid. ¶¶123-24. It was Timmerman who first published the story of the Commission's late discovery of the NSA material. Ex. 2, Timmerman 2nd Affid., ¶¶120-29.

275. In his Second Affidavit, Timmerman reveals information he received from a 9/11 Commission staff member who identified by name the "senior operative of Hezbollah" who, as well as the senior operative's associate, accompanied some of the 9/11 muscle hijackers on airline flights into and out of Iran and Beirut, Lebanon in the fall of 2000. That "senior Hezbollah operative," referenced cryptically, though not identified by name, in pages 240-241 of the 9/11 REPORT, was the master terrorist Imad Mughniyah – a known agent of Iran. Ex. 2, Timmerman 2nd Affid. ¶¶126-27. Mughniyah, too, was the "senior operative of Hezbollah" who, in October 2000, visited Saudi Arabia to coordinate activities there and who also planned to assist individuals in Saudi Arabia in traveling to Iran during November. Ex. 2, Timmerman 2nd Affid. ¶75.

276. In his Second Affidavit, Timmerman states: "[I]t is my expert opinion that senior al Qaeda operatives, including their top military planners, sought — and were provided — refuge in Iran after the 9/11 attacks and that they used Iran as a base for additional terrorist attacks after 9/11, with the knowledge, approval, and assistance of the highest levels of Iranian government." Ex. 2, Timmerman 2nd Affid. ¶179; see also ¶¶171-78.

CONCLUSIONS OF LAW

1. The Court finds the affidavits offered by plaintiffs' as expert testimony to be admissible pursuant to Fed. R. Evid. 702 and 703. Each of the proffered witnesses are qualified experts by their knowledge, skill, experience, training and/or education on the subject matters of terrorism, the Iran-Hizbollah-al Qaeda connection, and the 9/11 terrorist attacks.

A. The Court Has Jurisdiction Over All Defendants and All Claims

2. The Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602–1611, is the sole basis for obtaining jurisdiction over a foreign state in the United States. *Argentine Republic v. Amerada Hess Shipping Corp.,* 488 U.S. 428, 434 (1989); *Brewer v. Islamic Republic of Iran,* 664 F.Supp.2d 43, 50 (D.D.C. 2009).

3. Although the FSIA provides that foreign states are generally immune from jurisdiction in U.S. courts, *see* 28 U.S.C. § 1604, a federal district court can obtain personal and subject matter jurisdiction over a foreign entity in certain circumstances. A court can obtain personal jurisdiction over a defendant if the plaintiff properly serves the defendant in accordance with 28 U.S.C. § 1608. *See* 28 U.S.C. § 1330(b).

4. Subject matter jurisdiction exists if the defendant's conduct falls within one of the specific statutory exceptions to immunity. *See* 28 U.S.C. §§ 1330(a) and 1604. *Owens v. Republic of Sudan,* 2011 WL 5966900 (D.D.C. Nov. 28, 2011). Here, this Court has jurisdiction because service was proper and defendants' conduct falls within both the "state sponsor of terrorism" exception set forth in 28 U.S.C. § 1605A and the "noncommercial tort" exception of §1605(a)(5).

1. Jurisdiction Related to Claims of U.S. Citizens: The FSIA's State Sponsor of Terrorism Exception

5. The provisions relating to the waiver of immunity for claims against state-sponsors of terrorism are set forth at 28 U.S.C. § 1605A(a). Section 1605A(a)(1) provides that a foreign state shall not be immune from the jurisdiction of U.S. courts against claims such as those presented here where:

> money damages are sought against [it] for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

6. The FSIA refers to the Torture Victim Protection Act of 1991 ("TVPA") for the definition of "extrajudicial killing." See *28 U.S.C. § 1605A(h)(7).* The TVPA provides that:

> the term "extrajudicial killing" means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all of the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

28 U.S.C. § 1350 note; see also *Valore v. Islamic Republic of Iran,* 700 F. Supp. 2d 52, 74 (D.D.C. 2010) (adopting the TVPA definition of "extrajudicial killing" in bombing of

U.S. Marine barracks in Beirut, Lebanon).

7. Here, plaintiffs have established that their injuries were caused by the defendants' acts of "extrajudicial killing" and/or the provision of "material support" for such acts. *See Doe v. Bin Laden*, 2011 WL 5301586 (2nd Cir. Nov. 7, 2011).

8. For a claim to be heard under the immunity exception of § 1605A, the foreign state defendant must have been designated by the U.S. Department of State as a "state sponsor of terrorism" at the time the act complained of occurred.[6] *Id.*

9. The U.S. Secretary of State designated Iran as a state sponsor of terrorism on January 19, 1984, and Iran has been so designated ever since. *See* Ex. 8, Clawson Affid. ¶40; Ex. 7, Bergman Affid. ¶18; *see also Estate of Heiser v. Islamic Republic of Iran*, 466 F.Supp.2d 229 (D.D.C. 2006); *Flatow v. Islamic Republic of Iran,* 999 F.Supp. 1, 11. (D.D.C. 1998).[7]

10. Finally, subsection (a)(2)(A)(ii) requires that claims under the immunity exception of § 1605A may be brought where the "claimant or the victim was, at the time the act ... occurred -- (I) a national of the United States; (II) a member of the armed forces; or (III) otherwise an employee of the Government of the United States ... acting within the scope of the employee's employment...." 28 U.S.C. § 1605A(a)(2)(A)(ii)

11. Plaintiffs have presented evidence that they were either themselves nationals of the United States at the time of the September 11 attacks, or their claims are derived from injuries to victims who were U.S. nationals. Plaintiffs have satisfied the jurisdictional requirement of §1605A(a)(2)(A)(ii).

2. Plaintiffs Have Satisfied the Personal Jurisdiction Requirement of Providing Defendants Notice of the Lawsuit Through Proper Service of Process

12. Courts may exercise personal jurisdiction over a foreign state where the defendant is properly served in accordance with 28 U.S.C. § 1608. Plaintiffs satisfied the service requirements of § 1608 as follows:

a. Service of process was completed upon each defendant named in the First Amended Complaint: The Islamic Republic of Iran was served with process on October 9,

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6 The Secretary of State designates state sponsors of terrorism pursuant to three statutory authorities: §6(j) of the Export Administration Act of 1979, 50 U.S.C. app. § 2405(j); §620A of the Foreign Assistance Act, 22 U.S.C. §2371; and §40(d) of the Arms Export Control Act, 22 U.S.C. §2780(d).

7 In its August 2010 *Country Reports on Terrorism*, the State Department reported that "Iran remained the most active state sponsor of terrorism," and "Iran's financial, material, and logistic support for terrorist and militant groups throughout the Middle East and Central Asia had a direct impact on international efforts to promote peace, threatened economic stability in the Gulf and undermined the growth of democracy." Ex. 13, U.S. Department of State, *Country Reports on Terrorism 2009*, p. 182. *See* http://www.state.gov/s/ct/rls/crt/2009/index.htm. This report echoes similar State Department conclusions about Iran's material support for terrorism for three decades. *See* Ex. 13; Ex. 6, Lopez-Tefft Affid. ¶¶66-95; Ex. 8, Clawson Affid. ¶¶40-42.

2002, pursuant to 28 U.S.C. § 1608(a)(4) [U.S.D.C., District of Columbia Docket No. 1:02-cv-305 (JR) Entry 35 and Entry 36]; Ayatollah Ali Hoseini-Khamenei was served with process on September 30, 2002 and October 3, 2002 by alternative service pursuant to Fed.R.Civ.P. 4(f) and the Order of the Honorable James Robertson dated September 30, 2002 [U.S.D.C., District of Columbia Docket No. 1:02-cv-305 (JR) Entry 32 and Entry 35]; the Iranian Ministry of Information and Security was served with process on October 9, 2002, pursuant to 28 U.S.C. § 1608(a)(4) [U.S.D.C., District of Columbia Docket No. 1:02-cv-305 (JR) Entry 35 and Entry 36]; The Islamic Revolutionary Guard Corps. was served with process on October 9, 2002, pursuant to 28 U.S.C. § 1608(a)(4) [U.S.D.C., District of Columbia Docket No. 1:02-cv-305 (JR) Entry 35 and Entry 36]; Hezbollah was served with process on October 9, 2002, pursuant to 28 U.S.C. § 1608(a)(4) [U.S.D.C., District of Columbia Docket No. 1:02-cv-305 (JR) Entry 35 and Entry 36]; The Iranian Ministry of Petroleum was served with process on October 9, 2002, pursuant to 28 U.S.C. § 1608(a)(4) [U.S.D.C., District of Columbia Docket No. 1:02-cv-305 (JR) Entry 35 and Entry 36]; The Iranian Ministry of Economic Affairs and Finance was served with process on October 9, 2002, pursuant to 28 U.S.C. § 1608(a)(4) [U.S.D.C., District of Columbia Docket No. 1:02-cv-305 (JR) Entry 35 and Entry 36]; The Iranian Ministry of Commerce was served with process on October 9, 2002, pursuant to 28 U.S.C. § 1608(a)(4) [U.S.D.C., District of Columbia Docket No. 1:02-cv-305 (JR) Entry 35 and Entry 36]; the Iranian Ministry of Defense and Armed Forces Logistics was served with process on October 9, 2002, pursuant to 28 U.S.C. § 1608(a)(4) [U.S.D.C., District of Columbia Docket No. 1:02-cv-305 (JR) Entry 35 and Entry 36].

b. Service of process was completed upon each of the non-sovereign defendants named in the First Amended Complaint: Sheik Usamah bin-Muhammad bin-Laden, a/k/a Osama bin-Laden, The Taliban, a/k/a the Islamic Republic of Afghanistan, Muhammed Omar, Al Qaeda/Islamic Army and Unidentified Terrorist Defendants 1 – 500 were served by publication on September 4, 11, 18, 25 and October 2, 2002 pursuant to Fed.R.Civ.P. 4(f) and the Order of the Honorable James Robertson dated May 9, 2002 [U.S.D.C., District of Columbia Docket No. 1:02-cv-305 (JR) Entry 11, Minute Entry, dated May 9, 2002, granting Motion set forth in Entry 11 and Entry 35].

c. Service of Process was completed upon defendants newly identified in the Second Amended Complaint: The Central Bank of the Islamic Republic of Iran was served January 7, 2007 at 9:49 a.m. pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 2033]; the National Iranian Petrochemical Company was served January 8, 2007 at 9:32 a.m. pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 2033]; National Iranian Oil Company was served January 7, 2007 at 2:45 p.m. pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 2033]; National Iranian Tanker Corporation was served January 9, 2007 at 8:35 a.m. pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 2033]; Iran Air was served January 5, 2007 at 1:28 p.m. pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 2033]; National Iranian Gas Company was served January 20, 2007 at 11:09 a.m. pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 2033].

d. Plaintiffs made additional service of the Second Amended Complaint upon defendants that were previously served with the First Amended Complaint and determined to be in default by Judge Robertson: Iranian Ministry of Petroleum was re-served January 9, 2007 at 7:46 a.m. pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 2033]; Iran Ministry of Economic Affairs and Finance was re-served January 9, 2007 at 9:24 a.m. pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 2033]; Iran Ministry of Commerce was re-served January 7, 2007 at 2:45 p.m. pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 2033].

e. On December 23, 2002, Nancy M. Mayer-Whittington, Clerk of the United States District Court, District of Columbia, entered defaults, pursuant to Fed.R.Civ.P. 55(a) for failure to plead or otherwise defend this action, against the following defendants: The Islamic Republic of Iran; Iranian Ministry of Information and Security; The Islamic Revolutionary Guard Corps.; Hezbollah; Iranian Ministry of Petroleum; Iranian Ministry of Economic Affairs and Finance; Iranian Ministry of Commerce; Iranian Ministry of Defense and Armed Forces Logistics; Ayatollah Ali Hoseini Khamenei.

f. On December 27, 2007 J. Michael McMahon, Clerk of the Court, United States District Court, Southern District of New York, entered defaults, pursuant to Fed.R.Civ.P. 55(a) for failure to plead or otherwise defend this action against the following defendants: Central Bank of the Islamic Republic of Iran; National Iranian Petrochemical Company; National Iranian Oil Company; National Iranian Tanker Company; Iran Air; National Iranian Gas Company; Iran Ministry of Defense and Armed Forces Logistics; Iran Ministry of Petroleum; Iran Ministry of Economic Affairs and Finance; Iran Ministry of Commerce and acknowledged the earlier entry of defaults by the U.S.D.C., District of Columbia [Docket Entry 2124-9].

13. As described above, Plaintiffs properly effected service on all Defendants and Defendants did not respond or make an appearance within 60 days. As Defendants received notice through proper service in accordance with § 1608, this Court has personal jurisdiction over them.

B. Defendants Are Liable for Damages to U.S. National Plaintiffs Under FSIA § 1605A

14. Once jurisdiction has been established over Plaintiffs' FSIA claims, the entry of judgment against defendants is appropriate where plaintiffs have established their claim by evidence satisfactory to the Court. 28 U.S.C. § 1608(e). The Court finds that Plaintiffs have satisfied that burden here.

15. Plaintiffs who are U.S. nationals have asserted claims against Defendants under section 1605A(c) which authorizes claims against state sponsors of terrorism to recover compensatory and punitive damages for personal injury or death as follows:

> (c) Private right of action.--A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or

> agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to--
>
> (1) a national of the United States,
>
> (2) a member of the armed forces,
>
> (3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or
>
> (4) the legal representative of a person described in paragraph (1), (2), or (3), for personal injury or death caused by acts described in subsection (a) (1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

28 U.S.C. § 1605A(c).

16. The 9/11 terrorist attacks are contrary to the guarantees "recognized as indispensable by civilized peoples." 28 U.S.C. § 1350 note. Accordingly, the 9/11 attacks and the resulting deaths constitute "extrajudicial killings" that give rise to private right of action under 28 U.S.C. § 1605A(c).

17. The provision of "material support or resources" includes "any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, [and] personnel." *18 U.S.C. § 2339A(b)*. As described in detail above, defendants provided several kinds of material support to al Qaeda.

18. Plaintiffs have established by evidence satisfactory to the Court that the Islamic Republic of Iran provided material support and resources to al Qaeda for acts of terrorism, including the extrajudicial killing of the victims of the September 11, 2001 attacks. The Islamic Republic of Iran provided material support or resources, within the meaning of 28 U.S.C. § 1605A, to al Qaeda generally. Such material support or resources took the form of, *inter alia*, planning, funding, facilitation of the hijackers' travel and training, and logistics, and included the provision of services, money, lodging, training,[8] expert advice or assistance, safehouses, false documentation or identification, and/or transportation.

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[8] Plaintiffs established that the Iranian government both trained al Qaeda members and authorized the provision of training by Hizballah. This support qualifies as "training, expert advice or assistance" under *18 U.S.C. § 2339A(b)*. See *§ 2339A(b)(2)* and *(3)* (defining "training" as "instruction or teaching designed to impart a specific skill, as opposed to general knowledge" and "expert advice or assistance" as "advice or assistance derived from scientific, technical or other specialized knowledge").

19. Beyond the evidence that the Islamic Republic of Iran provided general material support or resources to al Qaeda, plaintiffs have established that Iran provided direct support to al Qaeda specifically for the attacks on the World Trade Center, the Pentagon, and Washington, DC (Shanksville, Pennsylvania), on September 11, 2001. Such material support or resources took the form of, *inter alia*, planning, funding, facilitation of the hijackers' travel and training, and logistics, and included the provision of services, money, lodging, training, expert advice or assistance, safehouses, false documentation or identification, and/or transportation.

20. Such provision of material support or resources by various Iranian officials, including, but not limited to, Iran's Supreme Leader the Ayatollah Ali Khamenei and his subordinates, by officers of the IRGC/Qods Force, by the MOIS, and by the intelligence apparatus of the Supreme Leader, was engaged in by Iranian officials, employees, or agents of Iran while acting within the scope of his or her office, employment, or agency.

21. Hizballah was created by Iran, is funded by, and serves as Iran's proxy and agent, particularly in matters of international terrorism, and was doing so before, contemporaneously with, and after, September 11, 2001.

22. Hizballah provided material support, within the meaning of 28 U.S.C. § 1605A, to al Qaeda generally. Such material support or resources took the form of, *inter alia*, planning, funding, facilitation of the hijackers' travel and training, and logistics. Such material support or resources included services, money, lodging, training, expert advice or assistance, safehouses, false documentation or identification, and/or transportation.

23. Beyond the evidence that Hizballah provided general material support or resources to al Queda, plaintiffs have established that Hizballah provided direct support to al Qaeda specifically for the attacks on the World Trade Center, the Pentagon, and Washington, D.C. (Shanksville, Pennsylvania), on September 11, 2001. Such material support or resources took the form of, *inter alia*, planning, funding, facilitation of the hijackers' travel and training, and logistics, and included the provision of money, lodging, training, expert advice or assistance, safehouses, false documentation or identification, and/or transportation.

24. Such provision of material support or resources by various Hizballah officials, including, but not limited to, Imad Fayez Mughniyah, was engaged in by such persons as agents of Iran while acting within the scope of their agency.

25. After the 9/11 attacks, Iran again gave material support or resources to al Qaeda by, *inter alia*, facilitating the escape of some of al Qaeda's leaders and many of its operatives from the U.S.-led invasion of Afghanistan in late 2001 and early 2002. Such material support or resources took the form of, *inter alia*, planning, funding, facilitation of the hijackers' travel and training, and logistics, and included the provision of services, money, lodging, training, expert advice or assistance, safehouses, false documentation or identification, and/or transportation.

26. After the 9/11 attacks, Hizballah continued to give material support or resources to al Qaeda by, *inter alia*, facilitating the escape of some of al Qaeda's leaders and many of its operatives from the U.S.-led invasion of Afghanistan in late 2001 and early 2002. Such material support or resources took the form of, *inter alia*, planning, funding, facilitation

of the hijackers' travel and training, and logistics, and included the provision of services, money, lodging, training, expert advice or assistance, safehouses, false documentation or identification, and/or transportation.

27. Since the 9/11 attacks, and continuing to the present day, Iran continues to provide material support and resources to al Qaeda in the form of safe haven for al Qaeda leadership and rank-and-file al Qaeda members.

28. Such provision of material support or resources since the 9/11 attacks by various Iranian officials, including, but not limited to, Iran's Supreme Leader the Ayatollah Ali Khamenei and his subordinates, by officers of the IRGC/Qods Force, by the MOIS, and by the intelligence apparatus of the Supreme Leader, has been engaged in by Iranian officials, employees, or agents of Iran while acting within the scope of his or her office, employment, or agency.

29. Such provision of material support or resources since the 9/11 attacks by various Hizballah officials, including, but not limited to, Imad Fayez Mughniyah, has been engaged in by such persons as agents of Iran while acting within the scope of their agency.

30. The FSIA also requires that the extrajudicial killings be "caused by" the provision of material support. The causation requirement under the statute is satisfied by a showing of proximate cause. Proximate causation may be established by a showing of a "reasonable connection" between the material support provided and the ultimate act of terrorism. *Valore*, 700 F. Supp. 2d at 66. "Proximate cause exists so long as there is 'some reasonable connection between the act or omission of the defendant and the damages which the plaintiff has suffered.'" *Id.* (quoting *Brewer*, 664 F. Supp. 2d at 54 (construing causation element in 28 U.S.C. § 1605A by reference to cases decided under 28 U.S.C. § 1605(a)(7))).

31. Plaintiffs have demonstrated several reasonable connections between the material support provided by defendants and the 9/11 attacks. Hence, plaintiffs have established that the 9/11 attacks were caused by Defendants' provision of material support to al Qaeda.

32. Under the FSIA, "a 'foreign state' . . . includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state" as defined in the FSIA. 28 U.S.C. §1603(a). The FSIA defines the term "agency or instrumentality of a foreign state" as any entity (1) which is a separate legal person, corporate or otherwise, and (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and (3) which is neither a citizen of . . . the United States . . . nor created under the laws of any third country. 28 U.S.C. §1603(b)(1)-(3); *see Estate of Heiser, et al. v. Islamic Republic of Iran*, No. 00-cv-2329 (RCL), Consolidated With No. 01-cv-2104 (RCL) (D.D.C. August 10, 2011). Accordingly, Iran's Ministry of Information and Security, the Islamic Revolutionary Guard Corps, Iran's Ministry of Petroleum, Iran's Ministry of Economic Affairs and Finance, Iran's Ministry of Commerce, and Iran's Ministry of Defense and Armed Forces Logistics, which are all political subdivisions of Defendant Iran, are all legally identical to Defendant Iran for purposes liability under the FSIA.

33. Further, Defendants Hizballah, the National Iranian Tanker Corporation, the National Iranian Oil Corporation, the National Iranian Gas Company, Iran Airlines, the National Iranian Petrochemical Company, and the Central Bank of the Islamic Republic of Iran, at all relevant times acted as agents or instrumentalities of defendant Iran. Each of these Defendants is subject to liability under as agents of Iran under §1606A(c) of the FSIA and as co-conspirators, aiders and abetters under the ATCA.

34. The two Iranian individuals, Defendant Ayatollah Ali-Hoseini Khamenei and Ali Akbar Hashemi Rafsanjani, each are an "official, employee, or agent of [Iran] . . . acting with the scope of his or her office, employment, or agency" and therefore, Khamenei and Rafsanjani are legal equivalent to defendant Iran for purposes of the FSIA which authorizes against a cause of action against them to the same extent as it does a cause of action against the "foreign state that is or was a state sponsor of terrorism" itself. 28 U.S.C. §1605A(c). Each of these Defendants is subject to liability under as agents and officials of Iran under §1606A(c) of the FSIA and as co-conspirators, aiders and abetters under the ATCA.

35. Iran is liable for damages caused by the acts of all agency and instrumentality Defendants because "[i]n any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents." *Id.* 28 U.S.C. §1605A(c). [9]

The above Findings of Fact and Conclusions of Law are hereby entered.

DATED DEC 21 2011

George B. Daniels
United States District Judge

[9] Plaintiffs have also asserted state law claims for wrongful death, survival, intentional infliction of emotional distress, and conspiracy. In circumstances where the federal cause of action is not available, courts must determine whether a cause of action is available under state or foreign law and engage in a choice of law analysis. *Owens v. Republic of Sudan*, 2011 WL 5966900 (D.D.C. 2011). Because the Court finds that defendants are liable under plaintiffs' federal claims, an analysis of liability under state law is unnecessary.

Annex 53

***The Estate of Michael Heiser et al. v. Mashreqbank*, U.S. District Court, Southern District of New York, 4 May 2012, No. 11 Civ. 01609 (S.D.N.Y. 2012)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE ESTATE OF MICHAEL HEISER, et al.,

Petitioners,

v.

MASHREQBANK, PSC,

Respondent.

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11-CV-1609 (SAS) (MHD)

[PROPOSED] JUDGMENT AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND TURNOVER ORDER PURSUANT TO N.Y. C.P.L.R. § 5225, 28 U.S.C. § 1610(g) AND TRIA § 201(a)

WHEREAS on February 27, 2012, the Petitioners the Estate of Michael Heiser, *et al.* (collectively, the "Petitioners") filed their Motion for Summary Judgment and Turnover Order Pursuant to N.Y. C.P.L.R. § 5225, 28 U.S.C. § 1610(g) and TRIA § 201 (the "Motion") (ECF Dkt. No. 26), which is currently before the Court.

WHEREAS this matter came before the Court on the Petitioners' Petition for Turnover Order Pursuant to Fed. R. Civ. P. 69 and N.Y. C.P.L.R. §§ 5225 & 5227 (the "Petition") filed on March 8, 2011, as amended on November 21, 2011.

WHEREAS on December 22, 2006, the United States District Court for the District of Columbia entered judgment in favor of the Petitioners and against the Islamic Republic of Iran, the Iranian Ministry of Information and Security, and the Iranian Islamic Revolutionary Guard Corps. (collectively, "Iran"), pursuant to 28 U.S.C. § 1605A, as amended pursuant to a judgment dated September 30, 2009 (collectively, the "Judgment").

WHEREAS the Judgment remains unsatisfied in the total amount of $591,089,966.00, plus post-judgment interest at the legal rate.

WHEREAS the Petitioners subsequently registered the Judgment with this Court pursuant to 28 U.S.C. § 1963 under case numbers M18-302 (judgment number 08,1562) and 10-MC-00005 (judgment number 10,2146).

WHEREAS on February 7, 2008 and May 10, 2010, the Petitioners obtained orders from the United States District Court for the District of Columbia: (1) finding that a reasonable period of time had elapsed following the entry of the Judgment and the giving of notice under 28 U.S.C. § 1608(e) and (2) authorizing the Petitioners to pursue attachment in aid of execution and execution of the Judgment. In addition, on August 25, 2011, the Petitioners obtained an order from this Court pursuant to 28 U.S.C. § 1610(c), *inter alia*, authorizing the issuance of writs of execution for service on, *inter alia*, the Respondent Mashreqbank PSC (the "Respondent").

WHEREAS on December 10, 2010 and August 27, 2011, the Petitioners delivered writs of execution upon the United States Marshal for the Southern District of New York for service on the Respondent and the U.S. Marshal then levied the writs on the Respondent.

WHEREAS on October 3, 2011, the Court entered an Order Concerning Notice to and Service on Third Parties (the "Service Order") (ECF Docket No. 19): (1) establishing a process for providing notice of the Petition to third parties (the "Third Parties" or a "Third Party") who the Respondent believed may assert a claim in assets held by the Respondent (upon information provided by the United States Department of Treasury's Office of Foreign Assets Control ("OFAC")) in which Iran and/or its agencies and instrumentalities may have an interest that were blocked pursuant to OFAC's sanctions programs, and (2) setting a time period within which such Third Parties must submit a claim to the blocked assets.

WHEREAS the Petitioners have provided notice in accordance with the Court's Service Order, and no Third Parties have appeared or otherwise asserted a claim in this proceeding.

WHEREAS on February 27, 2012, the Petitioners filed the Motion establishing that the blocked assets that are set forth in detail in section IV of the Motion filed under seal (the "Blocked Assets"), totaling $123,202.32 plus accrued interest, are subject to turnover pursuant to N.Y. C.P.L.R. § 5225, 28 U.S.C. § 1610(g) and the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322 (2002), codified at 28 U.S.C. § 1610 note, in partial satisfaction of the Judgment.

NOW, THEREFORE, it is:

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is **GRANTED**.

2. Summary judgment is hereby entered in favor of the Petitioners and against the Respondent.

3. Within five (5) days of the date of this Order, the Respondent shall pay and turn over to the Petitioners the Blocked Assets, plus any accrued interest.

4. Upon payment and turn over of the Blocked Assets to the Petitioners, the Respondent shall be discharged and released from all liability and obligations of any nature to the Petitioners, the Third Parties, and any other person or entity with respect to the Blocked Assets only.

IT IS SO ORDERED.

Dated: New York, New York
May 4, 2012

The Honorable Shira A. Scheindlin
United States District Judge

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Annex 54

***Weinstein et al. v. Islamic Republic of Iran et al.*, U.S. District Court, Eastern District of New York, 20 December 2012, No. 12 Civ. 3445, (E.D.N.Y. 2012)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WEINSTEIN, *et al.*,

Plaintiffs/Judgment-Creditors,

v.

ISLAMIC REPUBLIC OF IRAN, *et al.*,

Defendants/Judgment-Debtors.

Case No. 12-cv-3445 (LDW)

STIPULATION AND ~~PROPOSED~~ ORDER

Plaintiff Jennifer Weinstein Hazi, David Weinstein, Susan Weinstein, Joseph Weinstein, and Estate of Ira Weinstein (collectively, the "Weinsteins") and proposed intervenors the Estate of Michael Heiser, *et al.* (the "Heisers"), by their undersigned attorneys, hereby submit the following stipulation and proposed order:

WHEREAS, on March 25, 2010, the Court appointed Frederick M. Ausili as receiver (the "Receiver") for the real property and improvements located at 135 Puritan Avenue, Forest Hills, New York (Queens County Block 3286, Lot 58) (the "Property") (ECF Dkt. No. 93);

WHEREAS, the Property was owned by Bank Melli, an admitted agency and instrumentality of Iran;

WHEREAS, on December 22, 2010, the Receiver sold the Property for a sale price of $1,607,000, and, after deducting sale expenses, the sale realized net proceeds of $1,431,460.17 (as of 3/19/2011), which net proceeds were placed in a blocked deposit account at Citibank, N.A. (the "Blocked Account"). *See* ECF Dkt. No. 110;

WHEREAS, on November 10, 2011 the Court approved the Receiver's request for a five percent (5%) fee (ECF Dkt. No. 111);

WHEREAS, the Receiver has informed the parties that as of November 27, 2012, there is a total of $1,355,513.06 in the Blocked Account (the "Proceeds");

WHEREAS, the Proceeds constitute a "blocked asset" as defined in the Terrorism Risk Insurance Act of 2002, 28 U.S.C. § 1610 note, Pub. L. No. 107-297, 116 Stat. 2322 (2002);

WHEREAS, on July 6, 2012, the Weinsteins submitted a letter to the Court requesting that the Court's January 3, 2011 stay be lifted and that the Receiver be ordered to transfer the Proceeds to counsel for the Weinsteins (ECF Dkt. No. 112);

WHEREAS, on July 10, 2012, the Heisers submitted a letter objecting to the transfer of the Proceeds to the Weinsteins and asserting a priority lien interest in the Proceeds (ECF Dkt. No. 113);

WHEREAS, on July 12, 2012, the Court entered a scheduling order, as modified, setting forth a briefing schedule related to the claims and issues raised by the parties;

WHEREAS, on October 4, 2012, the parties submitted the fully briefed papers regarding their respective positions and claims to the Proceeds, including a Renewed Motion to Intervene filed by the Heisers (the "Motion to Intervene") (ECF Dkt. Nos. 121-128);

WHEREAS, counsel for the Weinsteins has advised that is has a one-third (1/3) percentage contingency fee with his client;

WHEREAS, the Weinsteins and the Heisers have resolved their dispute regarding each parties' claims to and rights in the Proceeds.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion to Intervene is GRANTED.

2. Within five (5) days of the date of the entry of this Stipulation and Order, the

Receiver shall distribute the proceeds to the parties as follows:

A. $333,776.67 to the Heisers, c/o Richard M. Kremen, Esq., DLA Piper LLP (US), 6225 Smith Avenue, Baltimore, Maryland 21209 via wire transfer to DLA Piper LLP (US)'s escrow account; and

B. $1,021,736.39 to the Weinsteins c/o Robert Tolchin, Esq., The Berkman Law Office, LLC, 111 Livingston Street, Suite 1928, Brooklyn, New York 11201, via wire transfer to that firm's escrow account or check payable to "The Berkman Law Office, LLC as attorneys."

C. Any residual funds remaining in the Blocked Account after making distributions (A) and (B) listed above shall be distributed by the Receiver 38% to the Heisers, and 62% to the Weinsteins, via wire transfer or check in the same manner as indicated in (A) and (B) above.

3. All other outstanding motions shall be denied as moot.

SO ORDERED:

The Honorable Leonard D. Wexler
United States District Judge
Central Islip, NY
12/20/12

STIPULATED AND AGREED TO:

Dated: December 19, 2012

Respectfully submitted,

/s/ Robert Tolchin
Robert Tolchin
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Suite 1928
Brooklyn, NY 11201

Counsel for the Weinsteins

and

/s/ Timothy Birnbaum
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Counsel for Estate of Michael Heiser et al. and Estate of Millard D. Campbell, et al.

Annex 55

***The Estate of Michael Heiser et al. v. The Bank of Tokyo Mitsubishi UFJ, New York Branch.*, U.S. District Court, Southern District of New York, 29 January 2013, 919 F.Supp.2d 411 (S.D.N.Y. 2013)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ESTATE OF MICHAEL HEISER, et al.,

Petitioners,

-against-

BANK OF TOKYO MISTUBISHI UFJ, NEW YORK BRANCH,

Respondent.

----------x

11 Civ. 1601 (PKC)

MEMORANDUM AND ORDER

P. KEVIN CASTEL, District Judge:

The petitioners are family members and the estates of seventeen U.S. Air Force servicemembers killed in the 1996 terrorist attacks on the Khobar Towers in Saudi Arabia. They seek to enforce a judgment against the Islamic Republic of Iran, the Iranian Ministry of Information and Security, and the Iranian Islamic Revolution Guard Corps, all of which were found by the United States District Court for the District of Columbia (Hon. Royce C. Lamberth, U.S.D.J.) (the "District of Columbia Court") to have provided support for the terrorist attacks.

Petitioners move for summary judgment and seek an order compelling respondent Bank of Tokyo Mitsubishi UFJ, New York Branch ("Bank of Tokyo") to turn over funds that they claim belong to Iran-based entities that function as mere instrumentalities of the Islamic Republic of Iran. The funds were initially electronic funds transfers ("EFTs") that were blocked pursuant to directives of the United States Department of Treasury, and now sit in interest-bearing accounts held by the Bank of Tokyo. The Bank of Tokyo does not oppose the motion.

The petitioners have come forward with evidence that the funds they seek to attach belong to instrumentalities of the Islamic Republic of Iran, and were lawfully blocked pursuant to presidential orders and Department of Treasury authority. For reasons that will be explained, such assets may be attached in satisfaction of a judgment. The petitioners' motion is therefore granted.

BACKGROUND

For the purpose of this motion, the following facts are undisputed, and the record is scrutinized in the light most favorable to the respondent. See, e.g., Costello v. City of Burlington, 632 F.3d 41, 45 (2d Cir. 2011).

The respondent does not dispute the facts set forth by the petitioners, and has submitted no counter-statement in opposition to the petitioners' statement of undisputed facts filed pursuant to Local Rule 56.1. In its memorandum of law, the respondent states that it "does not oppose the ultimate relief sought by Petitioners in the Motion, namely, the turnover of the Blocked Assets." (Response Mem. at 1.) It also describes itself as a "disinterested stakeholder" in the underlying assets. (Response Mem. at 3.)

A. Proceedings in the District of Columbia Court.

On June 25, 1996, an attack on the Khobar Towers complex in Saudi Arabia killed nineteen U.S. Air Force personnel. (Pet. 56.1 ¶ 1.) The petitioners in this case include representatives of the estates for seventeen of those victims. (Pet. 56.1 ¶¶ 2-4.)

Petitioners were plaintiffs in two actions filed in the District of Columbia Court. On September 29, 2000, certain of the petitioners filed an action pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1330, et seq. (the "FSIA"). See Heiser v. Iran, 00 Civ. 2329 (D.D.C.) (RCL). (Pet. 56.1 ¶ 3.) The FSIA establishes exclusive federal

jurisdiction over actions against foreign states, 28 U.S.C. § 1330, and includes a terrorism exemption for a foreign state's immunity, 28 U.S.C. § 1605A. Petitioners asserted that the Islamic Republic of Iran, the Iranian Ministry of Information & Security (the "MOIS") and the Iranian Revolutionary Guard Corps (the "IRGC") were liable to them for wrongful death and intentional infliction of emotional distress. (Pet. 56.1 ¶ 3.) Additional petitioners in this action brought similar claims against the same defendants in a second action filed on October 9, 2001, Campbell v. Iran, 01 Civ. 2104 (D.D.C.) (RCL). (Pet. 56.1 ¶ 4.) The District of Columbia Court consolidated the two cases. (Pet. 56.1 ¶ 5.)

On December 22, 2006, the District of Columbia Court entered default judgment against Iran, the MOIS and the IRGC. See Estate of Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229 (D.D.C. 2006). It concluded that the three defendants were jointly and severally liable for damages totaling $254,431,903. (Pet. 56.1 ¶ 6.)

On January 13, 2009, the District of Columbia Court retroactively applied the recently enacted section 1605A of the FSIA, 28 U.S.C. § 1605A,[1] and that the petitioners were entitled to proceed under the new statute. (Pet. 56.1 ¶ 7; Seniawski Dec. Ex. 2.) Thereafter, on September 30, 2009, that court entered a supplemental judgment under section 1605A of the FSIA, awarding additional damages for lost wages and future earnings totaling $336,658,063. (Pet. 56.1 ¶ 8; Seniawski Dec. Ex. 3.)

B. Orders Directed to Satisfying the Judgment.

The District of Columbia Court subsequently issued orders directed to the collection of the two judgments. On February 7, 2008, it concluded that, pursuant to 28 U.S.C. § 1610(c), a period had elapsed following entry of judgment sufficient to authorize an

[1] Section 1605A, like its predecessor 28 U.S.C. § 1605(a)(7), exempted from foreign immunity any state that engaged in terrorism-related activities or provided material support to such activities.

attachment in aid and execution of the December 2006 judgment. (Pet. 56.1 ¶ 9; Seniawski Dec. Ex. 4.) On May 10, 2010, it reached the same conclusion as to the September 2009 supplemental judgment. (Pet. 56.1 ¶ 10; Seniawski Dec. Ex. 5.)

On September 8, 2008, the petitioners registered the December 2006 judgment in this District, pursuant to 28 U.S.C. § 1963. (Pet. 56.1 ¶ 13; M18-302, judgment no. 08,1562; Seniawski Dec. Ex. 7.) Petitioners registered the September 2009 judgment in this District on December 6, 2010. (Amended Petition ("Pet.") 56.1 ¶ 14; 10 MC 00005, judgment no. 10,2146; Seniawski Dec. Ex. 8.) Thereafter, pursuant to Rule 69, Fed. R. Civ. P., and New York CPLR § 5230, the petitioners served writs of execution issued by the Clerk of this District on the U.S. Marshal. (Pet. 56.1 ¶ 15; Seniawski Dec. Ex. 9 & 10.) The U.S. Marshal then served the writs on the Bank of Tokyo. (Pet. 56.1 ¶ 16; Seniawski Dec. Ex. 10.)

C. Procedural History of the Present Action.

Petitioners commenced this action by filing a petition for a turnover order pursuant to Rule 69 and sections 5225 and 5227 of the CPLR. (Docket # 1.) Petitioners assert that the respondent Bank of Tokyo possesses assets belonging instrumentalities of the MOIS, the IRGC and the government of Iran. (Pet. ¶¶ 25-26.) The Petition states that the respondent is named as a defendant pursuant to CPLR § 5225(b), which permits a judgment creditor to commence a special proceeding against a person in possession or custody of money owed to a judgment creditor. (Pet. ¶ 6.) The respondent asserts no right to these assets. (Pet. 56.1 ¶ 27.)

Petitioners seek to recover funds that were blocked pursuant to Presidential Executive Orders and directives issued by the Office of Foreign Assets Control ("OFAC"), an agency of the United States Department of Treasury. These funds are held by entities that

OFAC has designated as Specially Designated Nationals ("SDNs"), and deemed "individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries."[2] Petitioners contend these funds are owned by mere instrumentalities of the Islamic Republic of Iran. They seek an order directing that the following blocked assets be turned over to them, in aid of the judgments entered by the District of Columbia Court: $90,268.80 from Bank Sepah, International, PLC ("BSI"); $4,740 from Azores Shipping Company LL FZE ("Azores"); $61,974 and $99,974 from IRISL Benelux NV; $97,767.50 from the Export Development Bank of Iran; and $2,181.88 from Bank Melli Iran ("Bank Melli") (collectively, the "Iran Entities"). (Seniawski Dec. ¶ 20.) These entities all have been served with notice of petitioners' claims, but have filed no responses and have not appeared in this action. (Seniawski Dec. ¶¶ 21-23.) Each of these entities is listed by OFAC as a "proliferator" of "weapons of mass destruction" or as a global terrorist. (Seniawski Dec. ¶ 24.)

It is undisputed that respondent Bank of Tokyo maintains bank accounts holding the blocked assets of the SDNs listed above. (Pet. 56.1 ¶ 25.) In its memorandum of law, Bank of Tokyo states that it has frozen these assets pursuant to OFAC directive. (Response Mem. at 2.) Under 31 C.F.R. § 595.203, Bank of Tokyo was required to maintain the funds in interest-bearing accounts.

On August 23, 2011, Magistrate Judge Dollinger, to whom this action was referred for general pretrial supervision, signed an order directing service of the Petition and other relevant documents to all third parties, with the documents translated into Farsi. (Docket # 25.) The respondent produced contact information for the Iran Entities. (Pet 56.1 ¶ 22.) Specifically, the service order stated: "Any Third Party who fails to assert a claim to the

[2] See http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx.

Blocked Assets or take any action within sixty (60) days of the date indicated on the Notice of Lawsuit shall be deemed to forever waive any claims that such Third Party may have against the Blocked Assets, or against Respondent or Petitioners with respect to the Blocked Assets." (Docket # 25 ¶ 9.) The deadline for any third party to appear in this matter or to assert a claim has since expired. (Pet. 56.1 ¶ 24.)

In its response to the present motion, Bank of Tokyo states that it "does not oppose the ultimate relief sought by Petitioners in the Motion, namely, the turnover of the Blocked Assets." (Response Mem. at 1.) The United States also has submitted letter-briefs setting forth its views on the petitioners' summary judgment motion. The United States has neither supported nor opposed the motion.

SUMMARY JUDGMENT STANDARD.

Summary judgment "shall" be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Rule 56(a), Fed. R. Civ. P. It is the burden of a movant on a summary judgment motion to come forward with evidence on each material element of his claim or defense, sufficient to demonstrate that he or she is entitled to relief as a matter of law. Vt. Teddy Bear Co. v. 1-800 Beargram Co., 373 F.3d 241, 244 (2d Cir. 2004). In raising a triable issue of fact, the non-movant carries only "a limited burden of production," but nevertheless "must 'demonstrate more than some metaphysical doubt as to the material facts,' and come forward with 'specific facts showing that there is a genuine issue for trial.'" Powell v. Nat'l Bd. of Med. Exam'rs, 364 F.3d 79, 84 (2d Cir. 2004) (quoting Aslanidis v. U.S. Lines, Inc., 7 F.3d 1067, 1072 (2d Cir. 1993)).

A fact is material if it "might affect the outcome of the suit under the governing law," meaning that "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in its favor, and may grant summary judgment only when no reasonable trier of fact could find in favor of the nonmoving party. Costello, 632 F.3d at 45; accord Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-88 (1986). In reviewing a motion for summary judgment, the court may scrutinize the record, and grant or deny summary judgment as the record warrants. Rule 56(c)(3). In the absence of any disputed material fact, summary judgment is appropriate. Rule 56(a).

Though the respondent does not oppose the motion, petitioners still must establish that they are entitled to judgment as a matter of law. "If the evidence submitted in support of the summary judgment motion does not meet the movant's burden of production, then 'summary judgment must be denied even if no opposing evidentiary matter is presented.'" Vt. Teddy Bear Co., 373 F.3d at 244 (emphasis in original) (quoting Amaker v. Foley, 274 F.3d 677, 681 (2d Cir. 2001)); see also Champion v. Artuz, 76 F.3d 483, 486 (2d Cir. 1996) (summary judgment "may properly be granted only if the facts as to which there is no genuine dispute show that the moving party is entitled to judgment as a matter of law.") (quotation marks and citation omitted).

DISCUSSION

The Court first reviews FSIA provisions that permit a successful plaintiff to attach funds that have been blocked pursuant to executive order and OFAC directives. Second, the Court examines presidential authority to block certain international financial

transactions and OFAC's implementation of its blocking regime. Finally, the Court examines the evidence submitted by petitioners that the entities from which petitioners seek recovery are instrumentalities of the Republic of Iran.

I. The FSIA Framework for Sovereign Liability and the Execution of Judgment.

The FSIA "provides the exclusive basis for subject matter jurisdiction over all civil actions against foreign state defendants, and therefore for a court to exercise subject matter jurisdiction over a defendant the action must fall within one of the FSIA's exceptions to foreign sovereign immunity." Weinstein v. Islamic Republic of Iran, 609 F.3d 43, 47 (2d Cir. 2010). Section 1605(a)(7), which has since been repealed with many of its terms incorporated into 28 U.S.C. § 1605A,[3] "abrogates immunity for those foreign states officially designated as state sponsors of terrorism by the Department of State where the foreign state commits a terrorist act or provides material support for the commission of a terrorist act and the act results in the death or personal injury of a United States citizen." Weinstein, 609 F.3d at 48; see also Levin v. Bank of New York, 2011 WL 812032, at *8-9 (S.D.N.Y. Mar. 4, 2011) (discussing relationship between sections 1605(a)(7) and 1605A). Iran has been designated as a state sponsor of terrorism since 1984, and is subject to jurisdiction under section 1605A and its predecessor statute, section 1605(a)(7). See Weinstein, 609 F.3d at 48.

The FSIA defines a "foreign state" to include "a political subdivision of a foreign state or an agency or instrumentality of a foreign state." 28 U.S.C. § 1603(a). It defines an "instrumentality" to include "a separate legal person, corporate or otherwise" that either is "an organ of a foreign state" or a person "whose shares or other ownership interest is owned by a foreign state or political subdivision thereof," provided that it is not a citizen of

[3] See Pub. L. 110-181, Div. A, § 1083(b)(1)(A)(iii), Jan. 28, 2008, 122 Stat. 341.

the United States or "created under the laws of any third country." 28 U.S.C. § 1603(b)(1-3). The District of Columbia Court concluded that the defendants in that action were subject to jurisdiction under the then-operative section 1605(a)(7), which provided a terrorism exemption from a foreign government's immunity against money damages claims in the United States. 466 F. Supp. 2d at 254-55. It also concluded that those defendants were liable to the plaintiffs. Id. at 271-356.

The Terrorism Risk Insurance Act of 2002 ("TRIA") provides for attachment in aid of execution of a judgment. Section 201(a) of TRIA, which is codified as a note to 28 U.S.C. § 1610, states:

> Notwithstanding any other provision of law, and except as provided in subsection (b) [of this note], in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

Pub. L. 107-297, Title II, § 201(a), (b), (d), Nov. 26, 2002, 116 Stat. 2337, as amended, Pub. L. 112-158, Title V, § 502(e)(2), Aug. 10, 2012, 126 Stat. 1260. According to the Second Circuit, it is "beyond cavil that Section 201(a) of the TRIA provides courts with subject matter jurisdiction over post-judgment execution and attachment proceedings against property held in the hands of an instrumentality of the judgment-debtor, even if the instrumentality is not itself named in the judgment." Weinstein, 609 F.3d at 50.

Separately, section 1610(g) permits attachment in aid of an execution of a judgment entered under section 1605A. It provides that "the property of a foreign state

against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of the level of economic control over the property by the government of the foreign state." 28 U.S.C. § 1610(g)(1)(A). The District of Columbia Court observed that the statute "'expand[s] the category of foreign sovereign property that can be attached; judgment creditors can now reach any U.S. property in which Iran has any interest . . . whereas before they could only reach property belonging to Iran.'" Estate of Heiser v. Islamic Republic of Iran, 807 F. Supp. 2d 9, 18 (D.D.C. 2011) (quoting Peterson v. Islamic Republic of Iran, 627 F.3d 1117, 1123 n.2 (9th Cir. 2010)). "Thus, the only requirement for attachment or execution of property is evidence that the property in question is held by a foreign entity that is in fact an agency or instrumentality of the foreign state against which the Court has entered judgment." Id. at 19.

II. Executive Branch Authority over Foreign Transactions and the Blocking Procedures of the Office of Foreign Asset Control ("OFAC").

The International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. ("IEEPA"), authorizes the President to regulate international economic transactions. Specifically, it permits the executive branch to "investigate, regulate or prohibit . . . transfers of credit or payments . . . by . . . any banking institution, to the extent that such transfers . . . involve any interest of any foreign country . . . [and any] transactions involving . . . any property in which any foreign country . . . has any interest." 50 U.S.C. § 1702(a)(1). Presidents have issued several executive orders under the IEEPA, including Executive Order No. 12947, 60 Fed. Reg. 5079 (Jan. 23, 1995) (Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process), Executive Order No. 13224, 66 Fed. Reg.

49079 (Sept. 23, 2001) (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), and Executive Order No. 13382, 70 Fed. Reg. 38567 (June 28, 2005) (Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters), and Executive Order No. 13599, 77 Fed. Reg. 6659 (Feb. 5, 2012) (Blocking Property of the Government of Iran and Iranian Financial Institutions).

OFAC describes itself as "act[ing] under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction."[4] OFAC has implemented numerous so-called "blocking" regimes, including the Weapons of Mass Destruction Proliferators Sanction, 31 C.F.R. § 544.101, et seq., and the Terrorism Sanctions Regulation, 31 C.F.R. § 595.101, et seq. OFAC requires the blocking of "all property and interests in property that are in the United States" belonging to SDNs. 31 C.F.R. § 544.201(a). OFAC defines "interest" as "an interest of any nature whatsoever, direct or indirect," 31 C.F.R. §§ 544.305, and property as any "property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent," id. § 544.308. OFAC publishes a list of SDNs at http://www.treasury.gov/sdn, which it frequently updates.

OFAC has designated the following entities as SDNs: Bank Sepah, Bank Sepah International, PLC ("BSI"); Iranohind Shipping Company ("Iranohind"); Azores Shipping Company LL FZE ("Azores"); IRISL Benelux NV; Export Development Bank of Iran ("EDBI"); Bank Melli; and the Islamic Republic of Iran Shipping Lines ("IRISL"). (Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List,

[4] http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx

January 24, 2013, at 97, 99, 100, 161, 221, 233.)[5] The petitioners seek to attach funds belonging to these entities. (Seniawski Dec. Ex. 14.) Respondent Bank of Tokyo has expressly stated that it blocked these entities' assets pursuant to OFAC directive. (Response Mem. at 2.) As previously noted, the TRIA provides that "the blocked assets" of a "terrorist party" "shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable." Note, 28 U.S.C. § 1610.

III. The Petitioners Have Come Forward with Evidence that the Eight Non-Party Iranian Entities Are Instrumentalities of Iran.

In support of its summary judgment motion, the petitioners have submitted the affidavit of Patrick L. Clawson, Ph.D, the Director of Research of the Washington Institute for Near East Policy. Clawson states that he has specialized knowledge concerning financial accounts, wire transfers and other transactions involving assets blocked by OFAC directives. (Clawson Aff't ¶ 10.) Clawson also asserts that he is knowledgeable as to bank charters and ownership, particularly as to Iran's national and state-owned banks. (Clawson Aff't ¶ 10.) He swears that he closely follows Iran's press and political system and has researched its economy and commercial enterprises. (Clawson Aff't ¶¶ 9-12.)

Clawson asserts that the following entities are owned at least in part by the government of the Islamic Republic of Iran:

A. Bank Melli.

According to Clawson, the Central Bank of Iran expressly recognizes Bank Melli Iran as a "commercial government-owned bank." (Clawson Aff't ¶ 13.) Bank Melli

[5] Available at http://www.treasury.gov/ofac/downloads/t11sdn.pdf.

states in a financial report available on its website that "[t]he capital is completely owned by the Government of the Islamic Republic of Iran." (Clawson Aff't ¶ 13.)[6]

Based on the express statements of Bank Melli, the petitioners have established that Bank Melli is an "instrumentality" of the government of Iran. 28 U.S.C. § 1603(b).

B. Bank Sepah.

Iran nationalized ownership of Bank Sepah in 1980. (Clawson Aff't ¶ 14.) On its website, the Central Bank of Iran describes Bank Sepah as a "commercial government-owned bank."[7] (Clawson Aff't ¶ 14.) Clawson states that he is aware of no evidence of any planned changes in ownership or plans to privatize Bank Sepah. (Clawson Aff't ¶ 14.)

Because the Central Bank of Iran identifies Bank Sepah as a "commercial government-owned bank," petitioners have established that Bank Sepah is an "instrumentality" of the government of Iran. 28 U.S.C. § 1603(b).

C. BSI.

On January 9, 2007, the Treasury Department concluded that BSI is owned and controlled by Bank Sepah. (Clawson Aff't ¶ 15.) BSI's company website states that it "is a wholly-owned subsidiary of Bank Sepah Iran."[8] (Clawson Aff't ¶ 15.) Its website also states that it was incorporate to "[take] over the assets, liabilities and business of the London Branch of Bank Sepah, Iran."[9] (Clawson Aff't ¶ 15.)

As noted, the Central Bank of Iran describes Bank Sepah as a "commercial government-owned bank." As a wholly-owned subsidiary of Bank Sepah operating in

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[6] See http://www.bmi.ir/Fa/uploadedFiles/FinanceReportFiles/2011_2_13/f97c06b161__2752675b48.pdf.
[7] See http://www.cbi.ir/simplelist/3088.aspx.
[8] See http://www.banksepah.co.uk/downloads/Annual_Report_and_Financial_Statements_31_03_05.pdf.
[9] See http://www.banksepah.co.uk/?page=13.

London, BSI, like its parent company, qualifies as an "instrumentality" of the government of Iran. 28 U.S.C. § 1603(b).

D. EDBI.

The website of the Central Bank of Iran lists EDBI as a "specialized government bank."[10] (Clawson Aff't ¶ 16.) Clawson asserts that EDBI is "widely known" as a "state owned, specialist export and import bank created to increase non-oil exports from Iran and develop international trade." (Clawson Aff't ¶ 16.) He states that it "is active in promoting Iran's non-oil exports and trade with Iran's neighbors." (Clawson Aff't ¶ 16.) On October 22, 2008, OFAC froze EDBI assets under U.S. jurisdiction. (Clawson Aff't ¶ 16.) OFAC identifies EDBI as "one of the leading intermediaries handling Bank Sepah's financing, including WMD-related payments."[11]

This Court affords little weight to Clawson's statements about what is "widely known" about EDBI's operations. These unsupported statements are not accompanied by any citation to the record or publicly available factual information. Nevertheless, the fact that the Central Bank of Iran lists EDBI as a "specialized government bank" and that OFAC has deemed EDBI an intermediary in Bank Sepah financing operations is sufficient evidence that EDBI functions as an instrumentality of the government of Iran. 28 U.S.C. § 1603(b).

E. IRISL.

OFAC recognizes IRISL as under control by the government of Iran, and acting as the country's "national maritime carrier . . . ."[12] (Clawson Aff't ¶ 17.) It has concluded that IRISL had placed its international network of ships and hubs into the service of the Iranian military, particularly the arm of its military overseeing ballistic missile

[10] http://www.cbi.ir/simplelist/2389.aspx.
[11] http://www.treasury.gov/press-center/press-releases/Pages/hp1231.aspx.
[12] http://www.treasury.gov/connect/blog/pages/No-Safe-Port-for-IRISL.aspx.

development. We imposed sanctions on IRISL, its corporate network, and its fleet, prohibiting U.S. persons from dealing with the company."[13] OFAC also has concluded that IRISL has created front companies in Panama to conceal the ownership of its vessels, and has repeatedly repainted, renamed and transferred nominal ownership of vessels. (Id.)

As Iran's "national maritime carrier," IRISL functions as an instrumentality of the government of Iran. 28 U.S.C. § 1603(b).

F. Azores, Iranohind and IRISL Benelux NV.

Petitioners assert that Azores, Iranohind and IRISL Benelux NV are all entities controlled by IRISL, citing to conclusions reached by the United States Treasury, as well as British and European Union Authorities.

The United States Treasury has frozen the assets of Azores and announced restrictions on transactions related to the company.[14] It identifies Azores as a front company for IRISL, based in the United Arab Emirates. Id. The European Union also has identified Azores as a "[f]ront company owned or controlled by IRISL or an IRISL affiliate. It is the registered owner of a vessel owned or controlled by IRISL."[15] The European Union concluded that Azores is controlled by Moghddami Fard, who is the company's director, and that Fard acts as IRISL's regional director in the United Arab Emirates. Id. The EU has stated that Fard has organized several companies in an attempt to circumvent restrictions on the IRISL. Id. The British government also has imposed restrictions on Azores, citing its relationship with Fard.[16] Clawson asserts that the prominent role played by Fard and the evidence of IRISL ownership suggest that the IRISL controls Azores. (Clawson Aff't ¶ 18.)

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[13] http://www.treasury.gov/connect/blog/pages/No-Safe-Port-for-IRISL.aspx .
[14] http://www.treasury.gov/press-center/press-releases/Pages/tg1212.aspx.
[15] http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:319:0011:0031:EN:PDF
[16] http://www.hm-treasury.gov.uk/d/finsanc_public_notice_reg1245_021211.pdf

The United States Treasury has designated Iranohind as engaging in proliferation activities. It has stated that the company was "found to be owned or controlled by or acting or purporting to act for or on behalf of, director or indirectly, IRISL."[17] The Clawson Affidavit summarizes similar findings by the United Nations and the British government, as well as reports by an Indian shipping company and press outlets concerning Iranohind's relationship to IRISL. (Clawson Aff't ¶ 19.)

The United States Treasury has designated IRISL Benelux NV as engaging in proliferation activities, stating that it was "found to be owned or controlled by or acting or purporting to act for or on behalf of, directly or indirectly, IRISL."[18] It stated that entities doing businesses with this and other IRISL entities "may be unwittingly helping the shipping line facilitate Iran's proliferation activities." Id.

Based on the foregoing, this Court concludes that Azores, Iranohind and IRISL Benelux NV functioned as instrumentalities of the government of Iran. 28 U.S.C. § 1603(b). Each is owned or controlled by, or acts on behalf of IRISL, which is Iran's national carrier.

IV. The Petitioners Are Entitled to Attach the Requested Funds.

Petitioners have come forward with evidence that the Iran Entities are agencies and instrumentalities of Iran. In addition, OFAC has listed each of these entities as SDNs. (Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List, January 24, 2013, at 97, 99, 100, 161, 221, 233.)[19] Under the FSIA, because the Iran entities are instrumentalities of Iran, the assets of these entities may be attached in aid of execution of judgment. 28 U.S.C. § 1610(g). Section 201 of the TRIA also states that these assets may be subject to attachment in aid of execution of judgment. Note, 28 U.S.C. § 1610.

[17] http://www.treasury.gov/press-center/press-releases/Pages/hp1130.aspx.
[18] http://www.treasury.gov/press-center/press-releases/Pages/hp1130.aspx.
[19] http://www.treasury.gov/ofac/downloads/t11sdn.pdf.

Petitioners have submitted a chart produced by the respondent reflecting the EFT transactions, including the transactions' dates, the sending banks and the transactions' originators and beneficiaries. (Seniawski Dec. Ex. 14.) Specifically, the chart reflects that BSI was the intended beneficiary of a $90,628.80 ETF of June 21, 2007; Azores originated a $4,740 EFT of September 29, 2008; IRISL Benelux NV was the intended beneficiary of two EFTs of January 21 and 22, 2009, the first in an amount of $61,974 and the second in an amount of $99,974; EDBI was intended beneficiary of a $97,767.50 EFT of April 24, 2009; and Bank Melli was issuing bank in a $2,181.88 EFT of July 26, 2010. (Seniawski Dec. Ex. 14.) The respondent participated in these transactions, either as the sending bank or the beneficiary's bank. (Seniawski Dec. Ex. 14.) This chart is evidence that the Iran Entities have an interest in the blocked assets that warrant them to attachment in aid of execution of judgment. In addition, the Iran Entities received notice of this action and have failed to appear and assert a claim as to any of the assets.

Pursuant to Rule 69(a), Fed. R. Civ. P., a money judgment is enforced by a writ of execution. "The procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Id. New York CPLR § 5225(b) governs the enforcement of a judgment as to property not in the possession of a judgment debtor. It states in part:

> Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it

> as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. . . . Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding.

Id. Petitioners have come forward with evidence that respondent Bank of Tokyo is "a person in possession or custody of money" that belongs to the Iran Entities, a fact that Bank of Tokyo does not dispute. The named judgment debtors are the Islamic Republic of Iran, the Iranian Ministry of Information and Security, and the Iranian Islamic Revolution Guard Corps, and petitioners have come forward with evidence that the Iran Entities function as instrumentalities of the Islamic Republic of Iran. Pursuant to section 201(a) of the TRIA, as instrumentalities of the Islamic Republic of Iran, "the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution." Note, 28 U.S.C. § 1610. Under CPLR § 5225(b), "the judgment debtor is entitled to the possession of such property . . . ."

Based on the foregoing, this Court concludes that the petitioners have established their entitlement to an order attaching the Iran Entities' funds that are possessed by the respondents and that they have satisfied the procedure set forth by New York CPLR § 5225(b).

V. This Court and the Parties Accept the Representations of the United States that No OFAC License Is Required to Authorize Release of the Blocked Assets.

While the respondent does not oppose the petitioners' motion, it notes concerns that OFAC must issue a license specific to the blocked assets before they can be made available for attachment. (Response Mem. at 2-3.) It states that if it were to turn over

the funds without an OFAC license, it could be subject to civil and criminal penalties. (Response Mem. at 3.) The IEEPA sets forth civil and criminal penalties for violating the statute and any related license, order, regulation or prohibition. 50 U.S.C. § 1705. As respondent notes, the Department of Treasury also has stated on its website that "[a] license is an authorization from OFAC to engage in a transaction that otherwise would be prohibited."[20] Respondent argues that the petitioners should bear any risks or expenses associated with releasing the blocked funds. (Resp. Mem. at 3.)

At the invitation of the Court and in response to the current motion, the United States submitted a Statement of Interest pursuant to 28 U.S.C. § 517. The Statement concludes that "in the event a court determines that blocked assets are subject to TRIA, those funds may be distributed without a license from OFAC." (Statement of Interest at 3.) The Statement attaches a January 6, 2006 letter addressed to Judge Marrero in Weininger v. Castro, 05 Civ. 7214 (VM), which asserted in identical terms that if the TRIA applied to the underlying funds, the funds can be distributed without a license from OFAC. (Statement of Interest Ex. E.) See also Weininger v. Castro, 462 F. Supp. 2d 457, 499 (S.D.N.Y. 2006) (quoting same). Petitioners also state that they have kept OFAC informed of this litigation and submitted a copy of the present motion to OFAC, as required by 31 C.F.R. § 501.605. (Seniawski Supp. Dec. ¶¶ 3-4 & Ex. 2.)

Following the submissions by the government and the petitioners, Bank of Tokyo now "accepts the representations of counsel for the Petitioners about its communications with OFAC and accepts the Government's stated position that a turnover order of this Court would be sufficient" to permit Bank of Tokyo "to disburse the Blocked

[20] http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#60.

Assets without the need for a separate OFAC license." (Response to Statement of Interest ¶ 3.)

This Court is aware of no contrary authority that would require an OFAC license in this instance. It accepts the Statement of Interest's assertion that no OFAC license is required.

CONCLUSION

The petitioners' motion for summary judgment is GRANTED. (Docket # 36.) The Clerk is directed to terminate the motion.

Petitioners are directed to submit a proposed order, on notice to the respondent, within 14 days of the date of this Memorandum and Order.

SO ORDERED.

P. Kevin Castel
United States District Judge

Dated: New York, New York
January 29, 2013

Annex 56

***The Estate of Michael Heiser et al. v. The Bank of Tokyo Mitsubishi UFJ, New York Branch.*, U.S. District Court, Southern District of New York, 13 February 2013, No. 11 Civ. 1601 (S.D.N.Y. 2013)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THE ESTATE OF MICHAEL HEISER, et al.,

Petitioners,

v.

THE BANK OF TOKYO MITSUBISHI UFJ, NEW YORK BRANCH,

Respondent.

----------x

11-CV-1601 (PKC) (MHD)

~~[PROPOSED]~~ JUDGMENT AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND TURNOVER ORDER PURSUANT TO N.Y. C.P.L.R. § 5225, 28 U.S.C. § 1610(g) AND TRIA § 201(a) AND DISCHARGING RESPONDENT

WHEREAS this matter originally came before the Court on the Petition for Turnover Order Pursuant to Fed. R. Civ. P. 69 and N.Y. C.P.L.R. §§ 5225 & 5227 (the "Petition") filed by the Petitioners the Estate of Michael Heiser, *et al.* (collectively, the "Petitioners") on March 8, 2011, as amended on November 18, 2011.

WHEREAS on August 10, 2012, the Petitioners filed the Motion for Summary Judgment and Turnover Order Pursuant to N.Y. C.P.L.R. § 5225, 28 U.S.C. § 1610(g) and TRIA § 201 (the "Motion") (ECF Dkt. No. 36) establishing that the following blocked assets (collectively, the "Blocked Assets") are subject to turnover pursuant to N.Y. C.P.L.R. § 5225, 28 U.S.C. § 1610(g) and the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322 (2002), codified at 28 U.S.C. § 1610 note, in partial satisfaction of the Petitioners' judgment:

A. $92,058.08 in which Bank Sepah International PLC has an ownership interest;

B. $4,740.00 in which Azores Shipping Company LL FZE and Iranohind Shipping Company have an ownership interest;

C. $62,216.80 in which IRISL Benelux NV has an ownership interest;

D. $100,365.63 in which IRISL Benelux NV has an ownership interest;

E. $98,127.36 in which the EDBI has an ownership interest; and

F. $2,181.88 in which Bank Melli Iran has an ownership interest.

WHEREAS on January 29, 2013, the Court entered its Memorandum and Order (the "Memorandum and Order") granting the Motion.

NOW, THEREFORE, in accordance with the Memorandum and Order it is:

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is **GRANTED**.

2. Summary judgment is hereby entered in favor of the Petitioners and against the Respondent.

3. Within five (5) days of the date of this Order, the Respondent shall pay and turn over to the Petitioners the Blocked Assets, plus any accrued interest.

4. Upon payment and the turning over of the Blocked Assets to the Petitioners, the Respondent shall be discharged and released from all liability and obligations of any nature whatsoever to the Petitioners, the Third Parties, and any other person or entity with respect to the Blocked Assets only. The case is closed. All motions are terminated.

IT IS SO ORDERED.

Dated: New York, New York
2-13, 2013

The Honorable P. Kevin Castel
United States District Judge

Annex 57

***The Estate of Michael Heiser et al. v. Bank of Baroda, New York Branch.*, U.S. District Court, Southern District of New York, 19 February 2013, No. 11 Civ. 1602 (S.D.N.Y. 2013)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THE ESTATE OF MICHAEL HEISER, et al.,

Petitioners,

v.

BANK OF BARODA, NEW YORK BRANCH,

Respondent.

----------x

11-CV-1602 (LTS) (MHD)

~~[PROPOSED]~~ **JUDGMENT AND ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT AND TURNOVER ORDER PURSUANT TO N.Y. C.P.L.R. § 5225, 28 U.S.C. § 1610(g) AND TRIA § 201(a) AND DISCHARGING RESPONDENT**

WHEREAS this matter originally came before the Court on the Petition for Turnover Order Pursuant to Fed. R. Civ. P. 69 and N.Y. C.P.L.R. §§ 5225 & 5227 (the "Petition") filed by the Petitioners the Estate of Michael Heiser, *et al.* (collectively, the "Petitioners") on March 8, 2011, as amended on November 17, 2011.

WHEREAS on April 20, 2012 and August 22, 2012, the Petitioners filed Motions for Summary Judgment and Turnover Order Pursuant to N.Y. C.P.L.R. § 5225, 28 U.S.C. § 1610(g) and TRIA § 201 (collectively, the "Motions") (ECF Dkt. Nos. 49 and 63) establishing that the following blocked assets (collectively, the "Blocked Assets") are subject to turnover pursuant to N.Y. C.P.L.R. § 5225, 28 U.S.C. § 1610(g) and the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322 (2002), codified at 28 U.S.C. § 1610 note, in partial satisfaction of the Petitioners' judgment:

A. $2,180.00 in which Bank Saderat has an interest;

B. $12,467.68.00 in which the Export Development Bank of Iran has an interest;

C. $13,000.00 in which the Export Development Bank of Iran has an interest;

D. $11,160.00 in which Bank Saderat Iran and Behran Oil Company have an interest;

E. $19,000.00 in which the Bank Melli has an interest;

F. $13,020.00 in which the Export Development Bank of Iran has an interest; and

G. $49,000.00 in which Siba Bank Melli has an interest.

NOW, THEREFORE, it is:

ORDERED, ADJUDGED AND DECREED that:

1. The Motions are **GRANTED**.

2. Summary judgment is hereby entered in favor of the Petitioners and against the Respondent Bank of Baroda, New York Branch (the "Respondent").

3. Within five (5) days of the date of this Order, the Respondent shall pay and turn over to the Petitioners the Blocked Assets, plus any accrued interest, less $20,000.00 from the Blocked Assets for attorney's fees and costs claimed by the Respondent and which the Petitioners dispute the Respondent is entitled. The Respondent shall continue to hold the $20,000 in a blocked account (the "Remaining Funds") pending further order of the Court.

4. Upon payment and turn over of the Blocked Assets to the Petitioners, the Respondent shall be discharged and released from all liability and obligations of any nature to the Petitioners, the Third Parties, and any other person or entity with respect to the Blocked Assets only.

5. The determination of the Respondent's request to have certain of its attorney's fees and costs paid from the Remaining Funds shall be subject to further order of the Court based

upon a motion submitted by the Respondent or stipulation submitted by the parties, said motion or stipulation shall be filed with the Court within fourteen (14) days from the date of entry of this Order. This Order resolves docket entries nos. 49 and 63.

IT IS SO ORDERED.

Dated: New York, New York
February 15, 2013

The Honorable Laura Taylor Swain
United States District Judge

Annex 58

***Peterson et al. v. Islamic Republic of Iran et al.*, U.S. District Court, Southern District of New York, 28 February 2013, 2013 U.S. Dist. LEXIS 40470 (S.D.N.Y. 2013)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), et al.,

Plaintiffs,

-v-

ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI a/k/a CENTRAL BANK OF IRAN, BANCA UBAE SpA, CITIBANK, N.A., and CLEARSTREAM BANKING, S.A.,

Defendants.

10 Civ. 4518 (KBF)
OPINION AND ORDER

KATHERINE B. FORREST, District Judge:

Before this Court are eighteen groups of judgment creditors, comprised of more than a thousand individuals, who seek assets of the Islamic Republic of Iran and related entities (collectively "Iran" unless stated otherwise).[1] Each group of

[1] The judgment creditor groups are defined as the plaintiffs in this action, as well as the third-party respondents named in defendant Citibank's interpleader petition. This includes the plaintiffs in the following actions: (1) Peterson v. Islamic Republic of Iran ("Peterson action"), No. 10 Civ. 4518 (KBF)(S.D.N.Y.); (2) Greenbaum et al. v. Islamic Republic of Iran, et al. ("Greenbaum action"), 02 Civ. 2148 (RCL)(D.D.C.); (3) Acosta, et al. v. Islamic Republic of Iran, et al. ("Acosta action"), 06 Civ. 745 (RCL)(D.D.C.); (4) Rubin, et al. v. Islamic Republic of Iran ("Rubin action"), 01 Civ. 1655 (RCL)(D.D.C.); (5) Estate of Heiser et al. v. Islamic Republic of Iran et al. ("Heiser action"), 00 Civ. 2329 and 01 Civ. 2104 (RCL)(D.D.C.); (6) Levin v. Islamic Republic of Iran ("Levin action"), 05 Civ. 2494 (GK)(D.D.C.); (7) Valore, et al. v. Islamic Republic of Iran, et al. ("Valore action"), 03 Civ. 1959 (RCL)(D.D.C.); (8) Bonk, et al. v. Islamic Republic of Iran et al. ("Bonk action"), 08 Civ. 1273 (RCL)(D.D.C.); (9) Estate of James Silvia, et al. ("Silvia action"), 06 Civ. 750 (RCL)(D.D.C.); (10) Estate of Anthony K. Brown, et al. v. Islamic Republic of Iran, et al. ("Brown action"), 08 Civ. 531 (RCL)(D.D.C.); (11) Estate of Stephen B. Bland v. Islamic Republic of Iran, et al., ("Bland action"), 05 Civ. 2124 (RCL)(D.D.C.); (12) Judith Abasi Mwila, et al. v. Islamic Republic of Iran, et al. ("Mwila action"), 08 Civ. 1377 (JDB)(D.DC.); (13) James Owens, et al. v. Republic of Sudan, et al. ("Owens action"), 01 Civ. 2244 (JDB)(D.D.C.); (14) Rizwan Khaliq, et al. v. Republic of Sudan, et al. ("Khaliq action"), 08 Civ. 1273 (JDB)(D.D.C.). By orders dated June 27, 2011 (ECF No. 22) and July 28, 2011 (ECF No. 32), these judgment creditors were added to the consolidated action 10 Civ. 4518. In June 2012, four additional actions by way of supplemental third-party respondents to the Citibank Interpleader were added: (15) Beer et al. v. Islamic Republic of Iran et al. ("Beer action"), 08 Civ.

victims or their estates has obtained judgments against Iran for injury or wrongful death arising from acts of terrorism Iran sponsored, led, or in which it participated. Together, plaintiffs have obtained billions of dollars in judgments against Iran, the vast majority of which remain unpaid. These judgments were – long ago – duly registered in this district. As amongst themselves, plaintiffs have informed the Court that they have reached agreement as to the priority and manner of distribution of any recovery. (See Tr. of Nov. 27, 2012, Status Conf. at 15:19-22, ECF No. 293.)

Each group of plaintiffs seeks turnover of assets currently held at Citibank, N.A. ("Citibank"), as part of efforts to satisfy these outstanding judgments. (Second Am. Compl., ECF No. 160.) Citibank is a stakeholder without interest in the ultimate outcome of this dispute. (Third Party Pet. in Nature of Interpleader ("Citibank Interpleader"), ECF No. 38.) Its interest is in resolution of ownership of funds held in the account so that it may, if and when requested, ensure that the funds are appropriately disbursed. (See Letter of Sharon L. Schneier to the Hon. Katherine B. Forrest, Dec. 14, 2012, ECF No. 300 (noting "Citibank is a neutral stakeholder in this proceeding")).

These actions have been litigated in fits and starts; some of the delays are certainly attributable to the fact that established procedures for obtaining writs of

1807 (RCL)(D.D.C.); (16) Kirschenbaum et al. v. Islamic Republic of Iran et al. ("Kirschenbaum action"), 03 Civ. 1708 (RCL)(D.D.C); (17) Arnold et al. v. Islamic Republic of Iran et al. ("Arnold action"), 06 Civ. 516 (RCL)(D.D.C.), and (18) Murphy et al. v. Islamic Republic of Iran et al. ("Murphy action"), 06 Civ. 596 (RCL)(D.D.C.). While these actions came to this Court originally in different procedural postures, they are all seeking collection of judgments with regard to the same assets as set forth herein, and are treated by the Court for ease of reference as "plaintiffs" herein.

attachment, restraining funds and executing judgments thereon are not well suited to large, complex actions such as this. For instance, for a number of years many of the actions were categorized as "miscellaneous" and were not assigned to any particular judge. Additionally, litigation against any sovereign inserts legal complexities. Finally, the basic fact that billions of dollars are at stake virtually insures vigorous litigation. And without a doubt these actions have been vigorously litigated. All matters as to each of the eighteen creditor groups have been collected together and proceeded before this Court since December 10, 2012.

Defendants do not dispute the validity of plaintiffs' judgments. They do, however, dispute that the assets held at Citibank are subject to turnover, and that this Court has jurisdiction over those assets or over certain defendants. Defendants Bank Markazi, UBAE and Clearstream have also raised issues of state, federal (including a number of constitutional arguments), and international law to oppose turnover.

Currently before this Court are five groups of motions:

First, defendants UBAE S.p.A. ("UBAE") and Clearstream Banking S.A. ("Clearstream") have separately moved to dismiss the claims against them for lack of personal jurisdiction. (ECF Nos. 295, 299, 301.) Plaintiffs have opposed these motions. (ECF Nos. 302, 306, 313, 323, 324.)

Second, Bank Markazi has moved to dismiss the claims against it for lack of subject matter jurisdiction. (ECF No. 205.) Plaintiffs have opposed that motion. (ECF No. 219.)

Third, defendant Clearstream has renewed its earlier motion to vacate restraints. (ECF No. 174.) Plaintiffs oppose this motion. (ECF No. 199.)

Fourth, all plaintiffs have moved (or joined in the motion) for partial summary judgment for turnover of the assets held at Citibank. (ECF Nos. 209, 307.) Defendants Bank Markazi, UBAE, and Clearstream oppose this motion; defendant Citibank takes no position beyond its reliance on the arguments raised by the other parties. (ECF Nos. 261, 282, 284, 286, 300, 328.)

Fifth, the Bland judgment creditors have moved to authorize execution and/or attachment against assets of Iran. (ECF No. 305.)

Altogether, these motions and supporting materials consume several thousands of pages. For the reasons set forth below, this Court denies each of the defendants' motions, grants plaintiffs' motion for partial summary judgment and turnover and grants the Bland plaintiffs' motion to execute.

I. FACTUAL BACKGROUND

The following facts are undisputed unless otherwise noted. Bank Markazi is the Central Bank of Iran, an agency of the Iranian Government. By 2008, Bank Markazi had over $2 billion in bonds (the "Markazi Bonds") denominated in U.S. dollars held in an account with defendant Clearstream S.A. Those bonds have subsequently been split into two groups relevant to this action: first, $1.75 billion in cash proceeds of the bonds are held in an account at Citigroup in New York; these proceeds are subject to restraints imposed by the Court, by Executive Order, and by statute. The proceeds are the subject of, inter alia, plaintiffs' motion for partial

summary judgment and turnover and Clearstream's motion to vacate the restraints. The second group consists of two securities—with a face value of $250 million—that were originally part of the Markazi Bonds. Following a June 2008 evidentiary hearing in which Judge Koeltl lifted the restraints as to those two securities, they were sold on the open market. The $250 million are relevant to several of plaintiffs' claims, but are not addressed by the pending turnover motion or the motion to vacate the restraints.

Prior to maturity, each Markazi Bond (from both groups) had been issued in physical form and was registered with either the Federal Reserve Bank of New York ("FRBNY") or the Depository Trust Company ("DTC"), also located in New York. Accordingly, prior to maturity, the FRBNY and the DTC were the custodians of the Markazi Bonds.

For a period of years, Bank Markazi maintained an account with Clearstream S.A. which, in turn, maintained a correspondent account on its behalf at Citibank to handle funds associated with the bonds, including interest and principal payments.

Clearstream Luxembourg is an "international service provider for the financial industry offering securities settlement and custody-safekeeping services." (See Clearstream Consolidated Mem. of L. in Support of its Renewed Mot. to Vacate Restraints at 1.) "Clearstream serves as an intermediary between financial institutions worldwide to ensure that transactions from one bank to another are efficiently and successfully completed." (Id. at 1-2.) "As a post trade services

provider currently covering the international and 52 domestic markets, Clearstream has over 2,500 financial institutions from all over the world among its customer base . . ." (Id. at 2.)

One of Clearstream's offices is in New York City. At all times relevant to these motions, the office that Clearstream maintained in New York engaged in sales, marketing and administrative activities relating to Clearstream's international financial services business. The New York office employed New York-based staff. Those New York employees had access to facilities supportive of sales and marketing efforts such as office space, telephones, email access and addresses and fax lines. Clearstream paid its New York staff out of bank accounts maintained in New York. Since 2002, Clearstream has been registered with New York State to maintain a representative office and conduct certain activities in New York. There is no evidence in the record that Clearstream's New York office was a depository institution. Nor is there evidence in the record that Clearstream's Luxembourg office attempted to maintain any corporate separation from its New York office. Indeed, based on Clearstream's submissions in this matter, its New York office was intended to act as a sales and marketing arm for its Luxembourg operations. Clearstream Luxembourg used its New York office to seek additional business for its Luxembourg-based financial organization and also used it to ensure seamless service to clients by maintaining points of contact in New York.

Over the years, Citibank has maintained an account in New York for Clearstream, to which the proceeds of the Markazi Bonds were posted. The parties

dispute the extent to which Clearstream's New York office was involved in activities relating to the account it maintained at Citibank in New York on behalf, first, of Bank Markazi and later on behalf of defendant UBAE—in connection with services provided with respect to the Markazi Bonds. However, as set forth below, the resolution of that factual dispute is unnecessary to resolution of the instant motions.

From time to time, interest was paid on the bonds and posted to Clearstream's account at Citibank. As the bonds matured, the proceeds were credited to that same account.

In 2008, UBAE, a bank located in Italy, opened a new account with Clearstream, its second such account.[2] The record evidence supports UBAE's position that this account was opened at Clearstream's Luxembourg office. Following the opening of that account, Clearstream recorded a transfer of the entirety of the Markazi Bonds from Bank Markazi to UBAE—plaintiffs point to evidence that this transfer was marked "free of payment".

According to UBAE, in 2008, Bank Markazi asked that UBAE close and sell two securities—with a face value of $250 million[3]—held in the new UBAE custodial account located at Clearstream Luxembourg. (Reply Decl. of Biagio Matranga to Pls.' Opp. to Def. UBAE's Mot. to Dismiss ("Matranga Reply Decl.") ¶ 7, ECF No.

[2] Plaintiffs urge that the timing of UBAE's actions with respect to opening its account with Clearstream and engagement in various transactions with Bank Markazi demonstrate that Bank Markazi was engaged in efforts to avoid the very turnover now at issue. In resolving these motions, this Court need not and does not refer to that timeline, or any inferences which a finder of fact might draw thereon.

[3] The bonds associated with these transactions were those as to which Judge Koeltl had lifted the restraints following the evidentiary proceeding held in June 2008. One of plaintiffs' claims for fraudulent conveyance relate to the proceeds from those bonds.

308.) UBAE negotiated a selling price and offered to buy the securities from Bank Markazi at a price slightly lower than the negotiated selling price, the difference representing its fee for the transaction. (Id. ¶ 8.) The sale to the third party customers occurred in Luxembourg and customers of Clearstream Luxembourg purchased both securities. (Id. ¶¶ 9-10.) UBAE concedes that this sale was performed at the request of and for the benefit of Bank Markazi. (Id. ¶ 13.)

Plaintiffs allege that, despite any allegations that the sale of the $250 million in Markazi Bonds occurred in Luxembourg, the defendants arranged for the transfer of the dollar-denominated bond proceeds from the Citibank account in New York to UBAE. (SAC ¶ 98.) Clearstream allegedly instructed Citibank to transfer the cash proceeds of the $250 million from the holding account to Clearstream's cash account. (Id.) Next, Clearstream instructed Citibank to make an electronic funds transfer ("EFT") of the cash from Citibank to UBAE's correspondent bank in New York, HSBC. (Id. ¶¶ 100, 214.) Finally, UBAE, acting on behalf of Bank Markazi, then wired the cash from HSBC to UBAE in Italy.

After the sale of the $250 million, over $1.75 billion in proceeds the Markazi Bonds thus remain in the UBAE / Clearstream account currently at Citibank in New York. On a number of occasions, Bank Markazi has stated that it owns the Markazi Bonds and all proceeds associated with them (now held in the Citibank account). It has stated that "Over $1.75 billion in securities belonging to Bank Markazi . . . are frozen in a custodial Omnibus Account at [Citibank]"; that the "Restrained Securities are the property of Bank Markazi, the Central Bank of Iran",

that the "aggregate value of the remaining bond instruments, i.e. the Restrained Securities that are the property of Bank Markazi and the subject of the Turnover Action – is thus $1.753 billion"; that the "Restrained Securities are the property of a Foreign Central Bank . . ."; that the "Restrained Securities are presumed to be the property of Bank Markazi"; and "the Restrained Securities are prima facie the property of a third party, Bank Markazi . . . ." (See Bank Markazi's First Mem. of L. in Support of its Mot. to Dismiss the Am. Compl. ("Markazi's First MOL") at 1, 5, 9, 10, 36, ECF No. 18.) In addition, two officers of Bank Markazi have sworn under penalty of perjury that the Blocked Assets are the "sole property of Bank Markazi and held for its own account." (Aff. of Gholamossein Arabieh ¶ 2, Decl. of Liviu Vogel in Support of Pls.' Mot. for Partial Summ. Judgment ("Vogel Decl."), Ex. J, Oct. 17, 2010, ECF No. 210; Aff. of Ali Asghar Massoumi ¶ 2, Vogel Decl. Ex. K, Oct. 17, 2010, ECF No. 210). UBAE has similarly asserted that it does not have a "legally cognizable interest in the restrained bonds." (See UBAE Mem. of L. in Opp. to Pls.' Mot. for Summ. J. ("UBAE S.J. Opp. Br.") at 2, ECF No. 328.)

All initial transactions relating to payment of interest and principal for the Markazi Bonds have occurred in New York. Clearstream's Citibank account has been credited with any such payments. Prior to the 2008 "free of payment" transfer, Clearstream's procedure was then to credit Bank Markazi's Clearstream account with the appropriate amounts; following the transfer, Clearstream has credited such amounts to UBAE. UBAE concedes that it has paid interest to Bank Markazi related to the bonds; such interest payments were credited to Bank Markazi's

account with UBAE in Rome. (See Decl. of Biagio Matranga ("Matranga Decl.") ¶15, ECF No. 95.) UBAE maintained its correspondent account at HSBC in New York until at least some time in 2009. (Id. ¶ 5.)

UBAE acknowledges that at the close of each day, and sometimes more than once a day, its treasurer (located in Italy) arranges for electronic transfers of the balance of any of its proprietary international U.S. Dollar accounts to its U.S. Dollar correspondent account at HSBC in New York, where they are pooled and may be transferred to Italy. (See Id.)

In 2012, the last of the Markazi Bonds matured. Clearstream's account at Citibank currently consists of cash associated with the bonds.[4]

UBAE sold the bonds and Clearstream, on behalf of UBAE, instructed Citibank New York to transfer the cash proceeds of the sale from Citibank New York to Clearstream's account at Citibank New York. As with the $250 million sale, when UBAE requested a withdrawal, Clearstream instructed Citibank to make an EFT through Clearstream's correspondent bank, JP Morgan Chase in New York, to UBAE's correspondent bank in New York, HSBC.

On June 12, 2008, this Court issued a writ of execution as to the Blocked Assets. (ECF No. 84.) This writ was levied upon Citibank as of June 13, 2008. The legal effect of levying this writ upon the Markazi Bonds and associated bank accounts was to restrain those assets. On October 17, 2008, this Court issued a

[4] The cash held in Clearstream's Citibank account is herein referred to as the "Blocked Assets." The terms "blocked" and "restrained" have particular legal importance. As discussed, infra, the Blocked Assets have been "blocked" pursuant to statute. The Blocked Assets were "restrained" pursuant to statute and by the writs of attachment previously obtained by the plaintiffs herein.

second writ of execution, this time against Clearstream Banking S.A. (ECF No. 118.) Plaintiffs served Citibank and Clearstream Banking S.A. with Restraining Notices and Amended Restraining Notices later in June 2008. On June 27, 2008, this Court ordered that the Markazi Bonds and associated accounts (all encompassed within the category of "Blocked Assets") remain restrained until further order. (ECF No. 103.) Various extensions of the original restraints were issued by this Court in June 2009, May and June 2010. (ECF No. 171; Vogel Decl. Ex. G, Order Extending Levy, 18 Misc. 302 (BSJ)(S.D.N.Y. May 10, 2010), ECF No. 210; Id. Ex. H, Order Extending Levy, 18 Misc. 302 (BSJ)(S.D.N.Y. June 11, 2010).)

On June 8, 2010, following two years of legal activity in the Southern District of New York relating to the Blocked Assets (including registering judgments, obtaining restraining orders, and issuing writs of attachment, see generally Vogel Decl. Exs. B, C, D, U), the Peterson plaintiffs filed the original complaint which commenced this action, seeking, inter alia, turnover of the Blocked Assets. This had the legal effect of continuing the restraints on those assets pursuant to N.Y. C.P.L.R. § 5232(a), until transfer or payment in the amount of the Blocked Assets is made.

The First Amended Complaint was filed on October 20, 2010 (ECF No. 3), and the Second Amended Complaint ("SAC"), the operative complaint in this matter, was filed on December 7, 2011. (ECF No. 160.) The SAC asserts eight causes of action including (1) a declaration that Bank Markazi is an agent and/or alter ego of Iran, the Restrained Bonds are beneficially owned by Iran and are

subject to execution for enforcement of Plaintiffs' judgments, and that the Restrained Bonds are not covered by 28 U.S.C. § 1611(b)(1); (2),(3) rescission of allegedly fraudulent conveyances by Iran, Bank Markazi, and Clearstream under New York Debtor and Creditor Law §§ 276(a) and 273-a; (4),(5) turnover of the Markazi Bonds under N.Y. C.P.L.R. §§ 5225 and 5227; (6) equitable relief against all defendants; (7) tortious interference with collection of money judgment, and (8) prima facie tort against UBAE and Clearstream.

On February 5, 2012, President Obama issued Exec. Order No. 13,599 ("E.O. 13599"), 77 Fed. Reg. 6659. E.O. 13599 declared that "[a]ll property and interests" in property of Iran and held in the United States, were "blocked" under his authority pursuant to the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1701.

E.O. 13599 had the effect of turning any restrained assets owned by the Iranian government (or any agency or instrumentality thereof) into "Blocked Assets". As Bank Markazi is the Central Bank of Iran, any of its assets located in the United States as of February 5, 2012, became "Blocked Assets" pursuant to E.O. 13599.

Citibank complied with its obligations under E.O. 13599 by reporting the Clearstream account proceeds to the Office of Foreign Assets Control ("OFAC") and placing proceeds relating to the Markazi Bonds into a segregated interest bearing account (this has been referred to from time to time as the "omnibus" account).

That account is maintained in the Southern District of New York. As of April 2012, the Blocked Assets in that Citibank account now consist solely of cash.

II. LAW RELEVANT TO ALL MOTIONS

A. The Foreign Sovereign Immunities Act

Generally, U.S. law provides that a foreign sovereign is entitled to immunity from legal action in the United States. See Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602-1611.

The FSIA codifies "the restrictive theory of sovereign immunity." Verlinden B.V. v. Cent. Bank of Nigeria, 461 U.S. 480, 488, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983). The Supreme Court found that when Congress enacted the FSIA, it intended to ensure that "duly created instrumentalities of a foreign state are to be accorded a presumption of independent status." See First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba ("Bancec"), 462 U.S. 611, 627, 103 S.Ct. 2591, 77 L.Ed.2d 46 (1983). The "presumption of independent status" is not to be "lightly overcome." Hercaire Int'l, Inc. v. Argentina, 821 F.2d 559, 565 (11th Cir.1987). Such "instrumentalities" include a foreign state's "political subdivisions and agencies or instrumentalities," as set forth in the statute. See Hester Int'l Corp. v. Federal Republic of Nigeria, 879 F.2d 170, 176 n.5 (5th Cir.1989)(emphasis added).

The property of a sovereign's central bank is immune from attachment under certain circumstances, including if the property is that of a central bank held for its own account. 28 U.S.C. § 1611(b)(1).

The FSIA does, however, provide exceptions to immunity in connection with

legal proceedings seeking attachment to fulfill a judgment:

> (b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States ... if—
>
> (2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3) or (5) or 1605(b), or 1605A of this chapter ...

28 U.S.C. § 1610 (emphasis added).

Section 1605A, the "Terrorism Exception to the Jurisdictional Immunity of a Foreign State", provides:

> (a) In general—
>
> (1) No immunity—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state ...

28 U.S.C. § 1605A.

According to § 1603 of the FSIA, a "foreign state" includes, "a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b)." 28 U.S.C. § 1603(a). Subsection (b) provides:

> (b) An 'agency or instrumentality of a foreign state' means any entity—
>
> (1) Which is a separate legal person, corporate or otherwise, and
>
> (2) Which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) Which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.

28 U.S.C. § 1603(b).

Thus, in order to pierce through the FSIA, including its provision for central bank immunity, the Court must undertake various analyses. The first question is whether the assets at issue are in fact "Iranian" and the judgments in compensation for acts of terrorism. This analysis complies with 28 U.S.C. §§ 1603, 1605A, and 1610. Next, for central bank assets, specifically, the Second Circuit has adopted a functional test that asks whether those assets are used for central bank functions as normally understood, irrespective of their commercial nature. See NML Capital, Ltd. v. Banco Central de la Republica Argentina, 652 F.3d 172, 194 (2d Cir. 2011). Under NML, if the property at issue is that of a central bank, to execute against such property, a plaintiff must demonstrate "with specificity that the funds are not being used for central banking functions as such functions are normally understood." Id. at 194. However, other statutes (as discussed below) provide for alternative ways to reach such assets.

B. TRIA

The Terrorism Risk Insurance Act of 2002 ("TRIA"), codified in a note to the FSIA, allows a plaintiff to execute against "blocked" assets of a terrorist party. TRIA states, in relevant part:

> Notwithstanding any other provision of law . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28 United

> States Code, the blocked assets of that terrorist party . . . shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a), Pub.L. No. 107–297, Title II, 116 Stat. 2337 (2002)(emphasis added).

TRIA defines the term "terrorist party" as "a terrorist, terrorist organization . . . , or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C.App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371)." TRIA § 201(d)(4). Iran has been designated as a "state sponsor of terrorism" under section 6(j) of the Export Administration Act of 1979 since January 19, 1984. State Sponsors of Terrorism, U.S. Dep't of State, at http://www.state.gov/j/ct/c14151.htm (last visited July 27, 2012). TRIA's broad language—"notwithstanding any other provision of law . . . in every case"—provides one basis pursuant to which a separate "central bank" analysis becomes unnecessary; TRIA trumps the central bank provision in 28 U.S.C. § 1611(b)(2).

C. The IEEPA and E.O. 13599

In 1977, Congress enacted the International Emergency Economic Powers Act ("IEEPA"). 50 U.S.C. §§ 1701, 1702. The IEEPA authorizes the president to take broad-ranging action against the financial assets and transactions of those entities he determines pose an "unusual and extraordinary threat" to the national security of the United States. Id. On February 6, 2012, pursuant to his authority under IEEPA, President Obama issued Executive Order ("E.O.") 13599. E.O. 13599

provides that:

> [a]ll property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that are or hereafter come within the United States, or that hereafter come within the possession or control of any United States person, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Exec. Order No. 13,599, 77 Fed.Reg. 26 (Feb. 6, 2012)(emphasis added). For purposes of E.O. 13599, the "Government of Iran" is "any political subdivision, agency or instrumentality thereof, . . . and any [individual or entity] owned or controlled by, or acting for or on behalf of, the Government of Iran." Id. That definition is similar to the definition promulgated by the Department of Treasury:

> (a) The state and the Government of Iran, as well as any political subdivision, agency or instrumentality thereof; (b) Any entity owned or controlled directly or indirectly by the foregoing; (c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the applicable effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing.

31 C.F.R. § 560.304.

Thus, as a matter of law, Bank Markazi's (indisputably the Central Bank of Iran) assets were "blocked" on February 6, 2012. "Blocking" Bank Markazi's assets located in the U.S.—and, here, in the Southern District of New York—has the effect of restraining them and prevents any transfer or dealing in those assets. The writs of attachment previously obtained had already restrained Bank Markazi's assets held at Citibank. However, to the extent UBAE asserts it has any control relating

to those assets, it (as discussed below) simply fits within E.O. 13599's provision for a person acting "directly or indirectly" on behalf of Iran.

The Office of Foreign Assets Control ("OFAC"), operating under the United States Department of Treasury, has determined that "E.O. 13599 requires U.S. persons to block all property and interests in property of the Government of Iran, unless otherwise exempt under OFAC." Frequently Asked Questions and Answers, U.S. Dep't of Treasury (hereinafter "OFAC FAQs"), available at http:// www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx (last visited July 25, 2012); see also 31 C.F.R. § 501.603(a)(1) ("Any person ... holding property blocked pursuant to this chapter must report."). According to the OFAC "Fact Sheet", "[a]mong other things, the E.O. [13599] freezes all property of the Central Bank of Iran and all other Iranian financial institutions, as well as all property of the Government of Iran ...". See OFAC Regulations for the Financial Community, Dep't of the Treasury § V(A) (Jan. 24, 2012); Fact Sheet: Implementation of National Defense Authorization Act Sanctions on Iran, U.S. Dep't of Treasury, available at http:// www.treasury.gov/press-center/press-releases/Pages/tg1409.aspx (last visited July 25, 2012).

OFAC periodically publishes a list of "Specially Designated Nationals and Blocked Persons" (the "SDN list"). The SDN list aids the Court to determine which entities are known to be blocked. That list, however, purports to be neither exhaustive nor exclusive. It cannot be used as a sole reference point in connection with a determination as to whether a particular entity's assets are in fact "blocked"

pursuant to E.O. 13599. In general, and therefore left to judicial determination, "E.O. 13599 blocks the property and interests in property of any individual or entity that comes within its definition of the term 'Government of Iran' regardless of whether it is listed on the SDN List . . . ." OFAC FAQs. The Government of Iran and Bank Markazi are on the SDN list. Clearstream and UBAE are not.

The SDN list is updated when individuals, entities or the Treasury report assets owned by Iran. According to OFAC, "E.O. 13599 requires U.S. persons to block all property and interests in property of the Government of Iran, unless otherwise exempt under OFAC." See 31 C.F.R. §501.603(a)(1)("Any person . . . holding property blocked pursuant to this chapter must report.") In connection with its OFAC reporting obligations, in February 2012—four years after the "free of payment" transfer of the bonds to UBAE—Citibank reported to the U.S. Treasury the account it maintained for Clearstream in connection with the Bank Markazi Bonds.

D. The Newest Act: 22 U.S.C. § 8772

On August 10, 2012, the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "2012 Act") went into effect. 22 U.S.C. §8701, et seq. The 2012 Act does not eliminate any of the authority and bases for blocking or executing against certain assets as set forth under the FSIA or TRIA. It does, however, provide a separate and additional basis for execution on assets in aid of fulfilling judgment. Section 502 of the 2012 Act (22 U.S.C. § 8772) states:

(a) Interests in blocked assets

(1) In general

Subject to paragraph (2), notwithstanding any other provision of law, including any provision of law relating to sovereign immunity and preempting any inconsistent provision of State law, a financial asset that is—

(A) held in the United States for a foreign securities intermediary doing business in the United States;

(B) a blocked asset (whether or not subsequently unblocked) that is the property described in subsection (b); and

(C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran or any agency or instrumentality of that Government, that such foreign securities intermediary or a related intermediary holds abroad,

shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death...

(2) Court determination required

In order to ensure that Iran is held accountable for paying the judgments described in paragraph (1) and in furtherance of the broader goals of this Act to sanction Iran, prior to an award turning over any asset...the court shall determine whether Iran holds equitable title to, or beneficial interest in, the assets described in subsection (b) and that no other person possesses a constitutionally protected interest in the assets described in subsection (b) under the Fifth Amendment to the Constitution of the United States. To the extent the court determines that a person other than Iran holds—

(A) equitable title to, or a beneficial interest in, the assets described in subsection (b)...; or

(B) a constitutionally protected interest in the assets described in subsection (b),

> Such assets shall be available only for execution or attachment in aid of execution to the extent of Iran's equitable title or beneficial interest therein...
>
> (b) Financial assets described
>
> The financial assets described in this section are the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson, et al. v. Islamic Republic of Iran, et al. ...that were restrained by restraining notices and levies secured by plaintiffs in those proceedings...
> ...
>
> (3) Financial asset; securities intermediary
> ...
>
> The term "Iran" means the Government of Iran, including the central bank or monetary authority of that Government and any agency or instrumentality of that Government.

22 U.S.C. § 8772 (emphases added).

As the statute relates specifically to the instant action, its interpretation is a matter of first impression.

On its face, the statute sweeps away the FSIA provision setting forth a central bank immunity, 28 U.S.C. § 1611(b)(1); it also eliminates any other federal or state law impediments that might otherwise exist, so long as the appropriate judicial determination is made. 22 U.S.C. § 8772(a)(2). If UBAE is merely an agent acting directly or indirectly on behalf of Iran, then the 2012 Act provides that assets it holds for Iran are subject to execution if its requirements are met; the 2012 Act therefore provides a separate basis—in addition to the FSIA and TRIA—for execution.

III. DEFENDANTS' MOTIONS TO DISMISS

Each defendant—Clearstream, UBAE, and Bank Markazi—has filed a separate motion to dismiss.

A. UBAE and Clearstream Motions to Dismiss

Clearstream and UBAE have moved pursuant to Fed. R. Civ. P. 12(b)(2) to dismiss all claims against them for lack of personal jurisdiction. It is undisputed that each is a nonresident defendant. Both Clearstream and UBAE argue that they are based in Europe and have no presence in New York.

i. Standard of Review for Personal Jurisdiction

Plaintiffs bear the burden to establish personal jurisdiction as to each defendant. See MacDermid Inc., v. Deiter, 702 F.3d 725, 727-28 (2d Cir. 2012)(citing Seetransport Wiking Trader Schiffarhtsgellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala, 989 F.2d 572, 580 (2d Cir. 1993)). Jurisdiction is measured at the time that plaintiffs filed suit. (See Banca UBAE Mem. of L. in Suppt. of Mot. to Dismiss ("UBAE MTD Br.") at 3.) See Klinghoffer v. S.N.C. Achille Lauro, 937 F.2d 44, 52 (2d Cir. 1991). Prior to trial, when a motion to dismiss for lack of personal jurisdiction is based on affidavits and other written materials, a plaintiff need only make a prima facie showing. See MacDermid, 703 F.3d at 727. The Court is required to accept the allegations in the complaint as true so long as they are uncontroverted by defendant's affidavits. Id.

In order for this Court to exercise personal jurisdiction, such jurisdiction must have a statutory basis and comport with the due process clause of the Fifth Amendment. See Fed. R. Civ. P. 4(k); Chloe v. Queen Bee of Beverly Hills, LLC, 616 F.3d 158, 163-65 (2d Cir. 2010); Grand Rivers Enters. Six Nations, Ltd. v. Pryor, 425 F.3d 158, 165 (2d Cir. 2005).

ii. Discussion

Plaintiffs argue that Fed. R. Civ. P. 4(k)(1)(A)—which permits this Court to exercise personal jurisdiction to the extent of the applicable New York statutes—provides the basis for personal jurisdiction. The Court agrees with that assessment, but finds two additional bases on which personal jurisdiction is proper: first, general jurisdiction exists over Clearstream under Rule 4(k)(1)(A). Second, even if jurisdiction is not proper under the New York long arm statute, Fed. R. Civ. P. 4(k)(2) provides an alternative basis for personal jurisdiction as to UBAE.

As to Rule 4(k)(1)(A)—the sole basis of jurisdiction asserted by plaintiffs—this Court must determine whether either general or specific personal jurisdiction exists under the relevant New York statutes.

a. General Jurisdiction under C.P.L.R. § 301

Under N.Y. C.P.L.R. § 301, "general jurisdiction is established if the defendant is shown to have 'engaged in continuous, permanent, and substantial activity in New York.'" See, e.g., United Mobile Technologies, LLC v. Pegaso PCS, S.A. de C.V., 11-2813-CV, 2013 WL 335965 (2d Cir. Jan. 30, 2013). For general jurisdiction over a foreign corporation, this requires a showing that the corporation

is "doing business" in New York, "not occasionally or casually, but with a fair measure of permanence and continuity." See, e.g., Gallelli v. Crown Imports, LLC, 701 F.Supp.2d 263, 271 (E.D.N.Y. 2010)(quoting Hoffritz for Cutlery, Inc. v. Amajac, Ltd., 763 F.2d 55, 58 (2d Cir. 1985)). The claim over which plaintiffs seek to assert personal jurisdiction over the defendants need not relate to the activity that gives rise to general jurisdiction. See Hoffritz for Cutlery, 763 F.2d at 58.

To determine whether a corporate defendant is "doing business" in New York, courts look factors such as "the existence of an office in New York; the solicitation of business in the state; the presence of bank accounts and other property in the state; and the presence of employees of the foreign defendant in the state." See Id.

b. Specific Jurisdiction under C.P.L.R. § 302(a)(1)

Even in the absence of the systematic presence needed for "doing business" jurisdiction, a plaintiff may properly assert specific jurisdiction based on its "transacting business" in New York—i.e., where a defendant, itself "'or through an agent . . . transacts any business within the state, so long as the plaintiff's 'cause of action aris[es] from' that 'transact[ion].'" See Licci ex rel. Licci v. Lebanese Canadian Bank, SAL (hereinafter "Licci I"), 673 F.3d 50, 60 (2d Cir. 2012); Best Van Lines, Inc. v. Walker, 490 F.3d 239, 240 (2d Cir. 2007).

To establish that an entity or its agent has transacted business within New York, a plaintiff must demonstrate a defendant's purposeful availment of the privilege of conducting business in New York. Licci, 673 F.3d at 61. The central inquiry relates to the "quality" of a defendant's contacts with New York—i.e.,

whether the contacts indicate an intent to invoke the benefits and privileges of New York law. Id.; see also Deutsche Bank Sec., Inc. v. Montana Bd. of Invs., 7 N.Y.3d 65, 72 (2006); see also Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985).

It is perhaps counterintuitive – but nonetheless well-established – that for purposes of establishing that a defendant has "transacted business" within New York, the defendant or its agent need not have physically entered New York; the question is whether the defendant or its agent engaged in purposeful activities in New York. See Best Van Lines, 490 F.3d at 249.

Purposeful availment is thus a fact-based inquiry: a single telephone call to place a single order in New York that would be sent to another state or the transitory presence of a corporate official may not be sufficient under certain circumstances. Licci I, 673 F.3d at 62. Yet, in another case, Deutsche Bank, the Court found that a sophisticated investor who may use electronic devices to "enter" New York to conclude a substantial transaction, met the "transacting business" requirement. 7 N.Y.3d at 72.

A court is thus required to look at the totality of the circumstances. See Licci I, 673 F.3d at 62. Instructive in this regard—especially for this case—is the Second Circuit's recent opinion in Licci I. In Licci I, the Second Circuit certified to the New York Court of Appeals the question of whether a defendant's maintenance and frequent use of a correspondent bank in New York (to effect international wire transfers) met the requirements of the New York long-arm statute. Id. at 66. The

New York Court of Appeals found that, under the circumstances there presented, it did.

In certifying the question, the Second Circuit examined cases in which personal jurisdiction was based on the use of a correspondent bank. It found that in some instances the mere presence of having a correspondent bank account might be insufficient to confer jurisdiction, id. at 63-64, yet in others the use of a correspondent bank account might be sufficient. Id.

For instance, in Amigo Foods Corp. v. Marine Midland-Bank-N.Y., 39 N.Y.2d 391, 394 (1976), an out-of-state bank passed letters of credit through a correspondent New York bank. While the Appellate Division initially dismissed such use as insufficient to meet the requirements of New York's long-arm statute, the Court of Appeals reversed and remanded for jurisdictional discovery. Id. at 396. The Court of Appeals agreed that the mere presence of a correspondent bank in New York was not in and of itself sufficient to confer jurisdiction, but it allowed discovery as to whether there were other facts indicating sufficient use of the correspondent bank account to do so. Id.

In a later case, the Court of Appeals found that use of a correspondent bank in connection with securities transactions was sufficient to meet the requirements of C.P.L.R. § 302(a). See Ehrlich-Bober & Co. v. Univ. of Houston, 49 N.Y.2d 574, 577, 580-82 (1980).

Similarly, the Court of Appeals upheld the exercise of personal jurisdiction over a Russian bank that maintained and used a correspondent bank account

through which it engaged in currency-exchange options transactions with the plaintiff. See Indosuez International Finance B.V. v. National Reserve Bank, 98 N.Y.2d 238, 247 (2002).

In addition, the Second Circuit noted in Banco Ambrosiano v. Artoc Bank & Trust, 62 N.Y.2d 65, 72 (1984) that the use of the correspondent account to effect the transactions at issue in the lawsuit was sufficient to meet the requirements of due process for quasi-in rem jurisdiction. Licci I, 673 F.3d at 64. (The holding in that case was based on considerations of due process; the Second Circuit found it nonetheless relevant insofar as statutory and constitutional inquiries in New York have become entangled. Id. at 64 (quoting from Best Van Lines, 490 F.3d at 242.))

Resolving any ambiguities in these cases, the Court of Appeals answered the Second Circuit's certified question in the affirmative; a defendant's maintenance and frequent use of a New York correspondent account can be sufficient for "transacting business" jurisdiction under C.P.L.R. § 302(a). See Licci v. Lebanese Canadian Bank, SAL (hereinafter "Licci II"), 2012 WL 5844997 (N.Y. Nov. 20, 2012).

The facts of Licci II bear certain similarities to those before this Court such that they bear reciting in some detail. There, plaintiffs were several dozen American, Canadian and Israeli citizens who were injured or whose family members were injured or killed in rocket attacks allegedly launched by Hizballah in 2006. Id., at *1. Hizballah had been declared a terrorist organization by the United States Department of State. Id. Plaintiffs commenced a lawsuit in the Southern

District of New York against the Lebanese Canadian Bank, SAL ("LCB"), alleging that LCB had assisted Hizballah in its terrorist acts by facilitating certain financial transactions. LCB did not operate branches or offices, or maintain employees in New York. Its sole "point of contact with the United States was a correspondent bank account with AmEx in New York." Id., at *2. The complaint alleged that LCB used the correspondent bank account to transfer funds that enabled, inter alia, the attacks which killed or injured plaintiffs or their relatives. Id.

In its analysis, the Court of Appeals acknowledged the fact-specific nature of an inquiry as to whether personal jurisdiction can be based on maintenance and use of a correspondent bank. Id., at *3. Ultimately the Court found that "complaints alleging a foreign bank's repeated use of a correspondent account in New York on behalf of a client – in effect, a 'course of dealing'. . . show purposeful availment of New York's dependable and transparent banking system, the dollar as a stable and fungible currency, and the predictable jurisdictional and commercial law of the United States." Id., at *3. The Court further found that there had to be some relatedness between the use of the correspondent bank and the claim at issue – the claim could not be "completely unmoored" from the transaction utilizing the correspondent account. In that case, the complaint alleged that LCB used the correspondent account repeatedly to support a terrorist organization. Id. *4.

Under New York law, then, a foreign bank's maintenance and use of a correspondent account in New York can be sufficient to support personal

jurisdiction, at least where transactions indicate purposeful availment of New York's banking system and those transactions relate to the claim at issue.

c. Statutory Jurisdiction under Rule 4(k)(2)

Even if personal jurisdiction under the C.P.L.R. is not proper, however, that does not signify that a nondomiciliary entity is automatically outside this Court's jurisdiction. Assuming, arguendo, that no C.P.L.R.-based jurisdiction exists, to the extent federal questions are at issue—and plaintiffs have asserted such questions here—the Court might still exercise personal jurisdiction under the federal question personal jurisdiction statute, Fed. R. Civ. P. 4(k)(2).

Rule 4(k)(2) subjects a defendant to this Court's personal jurisdiction where plaintiff demonstrates that (1) the claim arises under federal law; (2) the defendant is not "subject to jurisdiction in any state's courts of general jurisdiction"; and (3) the exercise of jurisdiction is "consistent with the United States Constitution and laws" – e.g., it comports with due process. See Porina v. Marward Shipping Co., Ltd., 521 F.3d 122, 127 (2d Cir. 2008).

As with 4(k)(1)(A) jurisdiction, plaintiff need only raise a prima facie case that 4(k)(2) jurisdiction is proper to survive a Rule 12(b)(2) motion to dismiss. See, e.g., Catlin Ins. Co. (UK) Ltd. v. Bernuth Lines Ltd., 12-1773-CV, 2013 WL 406273 (2d Cir. Feb. 4, 2013)(stating prima facie standard in context of 4(k)(2) analysis).

d. Due Process Analysis

If this Court determines that statutory jurisdiction—either under Rule 4(k)(1) or Rule 4(k)(2)—is proper, it must finally ask whether such jurisdiction comports with due process.

1. Minimum contacts

In doing so, the Court first asks whether sufficient minimum contacts exist between that nonresident defendant and either New York (under Rule 4(k)(1)) or the United States generally (under Rule 4(k)(2)), such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Worldwide Volkswtagen Corp. v. Woodson, 444 U.S. 286, 291 (1980).

The minimum contacts necessary to comport with the New York jurisdictional statutes, C.P.L.R. §§ 301 and 302, necessarily comport with the Due Process Clause since New York law requires a greater showing of minimum contacts than would be required by the Due Process Clause alone. See Licci I, 673 F.3d at 60-61 ("The New York long-arm statute does not extend in all respects to the constitutional limits established by International Shoe.") Thus, the "purposeful availment" analysis for specific jurisdiction under C.P.L.R. 302(a) satisfies a similar purposeful availment analysis under the Due Process Clause. See Burger King Corp., 471 U.S. at 472 (setting forth purposeful availment standard under the Due Process Clause).

In contrast, the "minimum contacts" prong for federal question personal jurisdiction under Rule 4(k)(2) focuses on whether the defendant "has the requisite aggregate contacts with the United States" as a whole. Eskofot A/S v. E.I. Du Pont De Nemours & Co., 872 F. Supp. 81, 87 (S.D.N.Y. 1995). The Second Circuit has held that those contacts may be satisfied by "1) transacting business in the United States, (2) doing an act in the United States, or (3) having an effect in the United States by an act done elsewhere." See Id. at 87 (citing Leasco Data Processing Equipment Corp. v. Maxwell, 468 F.2d 1326, 1340 (2d Cir.1972)).

2. Reasonableness Factors

Lastly, if the defendant has sufficient minimum contacts, the Court must also determine that the exercise of personal jurisdiction over this defendant is reasonable. Chloe, 616 F.3d at 172-73; MacDermid, 702 F.3d. at 730-31. The Supreme Court has established five factors this Court must consider in order to determine whether the exercise of personal jurisdiction is reasonable:

1. The burden on the defendant;
2. The interests of the forum State
3. The plaintiffs' interests in obtaining relief;
4. The interstate judicial system's interest in obtaining the most efficient resolution of controversies; and
5. The shared interest of the Several States in furthering substantive social policies.

Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 113-14 (1987); Chloe, 616 F.3d at 172-73.

The mere fact that a defendant is foreign and would have to travel to New York is insufficient to defeat a finding of reasonableness. See MacDermid, 702 F.3d

at 730-31 (holding that the fact that defendant was Canadian was insufficient to defeat minimum contacts; the defendant's act of accessing a computer server located within New York from outside the state satisfied the minimum contacts requirement); Kernan v. Kurz-Hastings., Inc., 175 F.3d 236, 244 (2d Cir. 1999)(holding that burden on Japanese defendant to defend suit in the United States was insufficient to overcome its minimum contacts – particularly in light of the ease of modern travel and communication).

e. Personal Jurisdiction over UBAE

UBAE asserts that plaintiffs are unable to make out a prima facie basis for personal jurisdiction. This Court disagrees. Plaintiffs have alleged sufficient facts which, when analyzed against the legal framework set forth above, leave no doubt that either specific jurisdiction over UBAE exists pursuant to C.P.L.R. 302(a)(1) or, in the alternative, that jurisdiction exists under the federal question provision, Rule 4(k)(2).

1. Specific Jurisdiction

Plaintiffs base personal jurisdiction as to UBAE on the New York long-arm statute, C.P.L.R. § 302. They suggest that jurisdiction is proper under the "transacting business" provision, § 302(a)(1), as well as the provisions for personal jurisdiction based on tortious acts committed within New York, C.P.L.R. § 302(a)(2), and those committed without New York, C.P.L.R. § 302(a)(3)(ii). The Court need not address the tortious acts basis for specific jurisdiction since plaintiffs clearly make out a prima facie case of "transacting business" jurisdiction.

While the parties do not agree as to how and why certain transactions relating to the bonds were structured and occurred as they did, the allegations in the complaint, UBAE's factual concessions contained in the Matranga declaration (ECF No. 95), and the materials presented in the Vogel Declaration in opposition to UBAE's Rule 12(b)(2) motion (ECF No. 323) are sufficient to meet the standard for "transacting business" in New York.

UBAE admits that a series of acts occurred relating to the Markazi Bonds – but it argues that those acts all occurred outside of the United States, and further, that UBAE has no presence in the United States at all. (See Matranga Decl. ¶ 3 ("UBAE did not advertise, solicit business, or market its services in New York, or anywhere in the United States.") In this regard, UBAE asserts that it followed Bank Markazi's directive to sell two of the Markazi Bonds securities with a combined face value of $250 million. (Matranga Reply Decl. ¶ 7.) Though the securities were physically held in New York, UBAE would work exclusively from Luxembourg to buy the $250 million in securities from Bank Markazi and negotiate a higher price on the open market. (Id. ¶ 8.) It would then pocket the difference between the two as its fee. (Id.)

While the structure of the transaction did not cause UBAE to send personnel into New York, UBAE ignores the crucial fact that the bonds were physically located in New York at the time of sale; therefore, by definition UBAE engaged in sales transactions for bonds physically located in New York. In addition, plaintiffs present evidence from UBAE's own sales records that indicate that UBAE

distributed sales proceeds and interest payments from the Markazi Bonds via its correspondent account at HSBC in New York. (See Decl. of Liviu Vogel in Opp. to UBAE Mot. to Dismiss ("Vogel UBAE MTD Decl.") Exs. C-F.)

This pathway of proceeds through New York is enough to constitute § 302 "transacting business". N.Y. C.P.L.R. § 302(a)(1). The fact that UBAE may have been making all of the arrangements relating to the sales outside of the U.S. cannot erase the fact that the bonds and proceeds relating thereto physically transferred in New York. UBAE used its correspondent account to process the proceeds of the sale because it offered the stability and security of the New York banking laws—purposeful availment analogous to that in Licci II.

Finally, UBAE argues that since it was unaware of plaintiffs' judgment until June 2008, there cannot be any causal connection between its March 2008 actions and trying to avoid that judgment. This argument also fails. The New York long-arm statute provides that an entity or its agent may engage in conduct which supports jurisdiction. See, e.g., Kreutter v. McFadden Oil Corp., 71 N.Y.2d 460, 467 (N.Y. 1988)(finding C.P.L.R. § 301(a)(1) jurisdiction proper where corporation never entered New York, but its agent engaged in "purposeful activities in this State in relation to his transaction for the benefit of and with the knowledge and consent [of the corporation] . . . and that they exercised some control over [the agent].")

Even if UBAE itself was not transacting business in New York, its agents most certainly were. Plaintiffs have sufficiently alleged, and the facts in the record support, that Bank Markazi and Clearstream were aware of plaintiffs' judgments at

the time that UBAE was engaged to open an account and engage in a sale transaction on behalf of Bank Markazi. (SAC ¶¶ 13, 15, 24, 37, 41.) UBAE's own concession that Clearstream was acting on its behalf in the United States and its more recent statements in opposition to plaintiffs' motion for partial summary judgment[5] are sufficient to support an agency relationship. (See Matranga Reply Decl. ¶¶ 8-10.)

2. Rule 4(k)(2) Jurisdiction

By arguing that it has no presence in the United States and did not engage in transactions in New York sufficiently related to the instant dispute to constitute "transacting business" jurisdiction, however, UBAE has in fact established the necessary predicate for personal jurisdiction pursuant to Fed. R. Civ. P. 4(k)(2). It is undisputed that this case raises federal claims—the execution of the judgments obtained by plaintiffs is governed by federal laws FSIA, TRIA, E.O. 13599, and 22 U.S.C. § 8772. Rule 4(k)(2) applies to just such situations.[6] UBAE argues strenuously that it has no presence in the United States that would subject it to general personal jurisdiction in any state. (See Matranga Decl. ¶ 4.) Provided that exercising jurisdiction over UBAE anywhere in the United States comports with due process, in personam jurisdiction in this Court is proper. Fed. R. Civ. P. 4(k)(2).

[5] In its summary judgment opposition brief, UBAE admits both that it "has not asserted a legally cognizable interest in the restrained bonds" and that "UBAE is not in 'possession' or 'custody' of any of the restrained bonds." (UBAE SJ Opp. Br. at 2.)

[6] As stated above, Rule 4(k)(2) provides: "For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws." Fed. R. Civ. P. 4(k)(2).

3. Due Process Analysis

Indeed, under the New York long-arm statute—and thus under the Due Process Clause itself—there are sufficient minimum contacts (under International Shoe and its progeny) between New York / the United States and UBAE to exercise jurisdiction, and doing so would undoubtedly be reasonable.

First, UBAE itself has conceded that it uses the services of its correspondent bank on a daily basis to manage its U.S. dollar holdings. (See Matranga Decl. ¶¶ 5-6.) In addition, its actions with respect to the bonds were aimed at New York – and it caused transfers between a number of New York financial institutions in order to complete (e.g. the FBNY, DTC, Citibank, JP Morgan Chase, just to name those as to which even UBAE cannot assert a lack of involvement.)

The Asahi "reasonableness" factors are also met both for jurisdiction pursuant to Rule 4(k)(2) and/or pursuant to New York's long arm statute. The burden on UBAE of defending this suit is minimal in comparison to the interests of New York and the United States in providing a forum to adjudicate disputes over bond proceeds physically located in New York. In addition, plaintiffs have a strong interest in—and right to—seek relief from Iran. That relief would be stymied if UBAE, acting as agent of Bank Markazi, was able to take those precise acts Bank Markazi would have taken with respect to the Blocked Assets present in New York, but evade jurisdiction here. Likewise, bringing UBAE before this court will enable efficient resolution of plaintiffs' claims as to these assets in a single proceeding,

putting an end to the years of disjointed litigation and delays. Finally, only by subjecting UBAE to this Court's jurisdiction will the Court be able to enforce the policies behind the anti-terrorism provisions of FSIA, TRIA and Section 8772—as Congress clearly intended.

As the requirements of the Due Process Clause are met with respect to UBAE, this Court therefore finds that plaintiffs make out a prima facie case of specific personal jurisdiction under Fed. R. Civ. P. 4(k)(1)(A), incorporating C.P.L.R. § 302(a). In the alternative, Rule 4(k)(2) jurisdiction is proper. UBAE's Rule 12(b)(2) motion to dismiss is denied.

f. Analysis regarding Clearstream

Clearstream's motion to dismiss for lack of personal jurisdiction also fails. As an initial matter, it is rather remarkable that Clearstream has spent the time to make such an argument given the existence and persistence of its New York operations supportive of its overall business. The Court finds that there are bases to suggest both general jurisdiction and specific jurisdiction over Clearstream under Rule 4(k)(1).[7]

Clearstream is clearly doing business in New York and thus subject to general jurisdiction under C.P.L.R. § 301. For such a determination it is unnecessary that Clearstream conduct all of its business in New York – or even that the specific facts relating to the issues in this case relate to specific acts taken in New York. See Gelfand v. Tanner Motor Tours, Ltd., 385 F.2d 116, 121 (2d Cir.

[7] A basis for Rule 4(k)(2) jurisdiction may also exist over Clearstream, but—unlike UBAE—Clearstream has not alleged that it cannot be subject to general personal jurisdiction in any U.S. jurisdiction—a prerequisite for 4(k)(2) jurisdiction.

1967)("[A] foreign corporation is doing business in New York 'in the traditional sense' when its New York representative provides services beyond 'mere solicitation' and these services are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services."). It is enough that as a general matter it is in fact doing business in New York. This is evidenced by the presence of a Clearstream office in New York, which employs Clearstream employees for the purpose of obtaining and also supporting business for Clearstream Luxembourg from New York. As the evidence demonstrates, Clearstream in New York is not merely soliciting business—it provides support services for its Luxembourg operations and is part of Clearstream's overall strategy to "provide[ ] global services to the securities industry . . . close to its customers in all major time zones". (See Letter of Liviu Vogel to Hon. Barbara S. Jones Ex. 1 at 2, Aug. 14, 2009, ECF No. 178.) These activities demonstrate the "permanence and continuity" required for § 301 general jurisdiction. Cf. Hoffritz for Cutlery, Inc. v. Amajac, Ltd., 763 F.2d at 58 (finding no general § 301 jurisdiction where nonresident defendant lacked an office in New York, did not solicit business in the state and did not have bank accounts, other property or employees in the state).

However, even if this Court were to analyze whether there is a sufficient basis for long-arm jurisdiction over Clearstream Luxembourg, the answer would still clearly – and resoundingly – have to be "yes." Clearstream Luxembourg's contacts with New York relate directly to plaintiffs' allegations regarding the

Markazi Bonds that were maintained at the FBNY and DTC in New York. Even if this Court were to ignore the presence of Clearstream's office on Broad Street in New York, the fact that Clearstream Luxembourg engaged in a series of financial transactions over an extended period of time with regard to these New York based bonds would require a finding of sufficient "transacting business" for long-arm jurisdiction under C.P.L.R. § 302(a)—and, necessarily, also a finding of sufficient minimum contacts to satisfy due process.

That transaction of business is clear from Clearstream's innumerable acts to maintain its New York-based Citibank account. It has repeatedly communicated with Citibank about the Blocked Assets and arranged for various transactions with Citibank. (See, e.g., Decl. of Liviu Vogel in Opp. to Clearstream's Mot. to Vacate Restraints ("Vogel Vacate Restraints Opp. Decl.") Exs. 4, 16, ECF No. 299.). It is irrelevant whether its New York office had anything to do with those actions. It is enough that Clearstream's Luxembourg operations repeatedly had contacts with New York by virtue of its account at Citibank – and that the account has, at all relevant times, been connected with the Blocked Assets. See Licci II, 2012 WL 5844997 ("[T]he 'arise-from' prong [of C.P.L.R. § 302(a)(1)] limits the broader 'transaction-of-business' prong to confer jurisdiction only over those claims in some way arguably connected to the transaction.").

Finally, applying the Asahi factors suggests that exercising personal jurisdiction with respect to Clearstream is reasonable. The interests with respect to Clearstream are nearly identical to those for UBAE. And the burden on

Clearstream to defend a suit in this Court is minimal given Clearstream's continuous and systematic contacts with New York.

Clearstream is subject to this Court's general personal jurisdiction and, in the alternative, plaintiff makes out a prima facie case of "transacting business" jurisdiction under the New York long-arm statute. Clearstream's Rule 12(b)(2) motion to dismiss is denied.

B. Bank Markazi's Motion to Dismiss

Bank Markazi has moved to dismiss plaintiffs' claims on the basis of a lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1). Bank Markazi argues that (1) plaintiffs' TRIA § 201 claim raises a non-justiciable political question, (2) that the assets are technically not "of"—i.e., not owned by—Bank Markazi, (3) that the situs of the bonds is outside the jurisdiction of this Court, (4) that execution would violate U.S. obligations under the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran ("Treaty of Amity"), Aug. 15, 1955, 8 U.S.T. 899, and finally (5) that the assets are immune central banking assets under FSIA § 1611(b)(1).

i. Rule 12(b)(1) Standard of Review

Federal district courts are courts of limited jurisdiction. Challenges to a court's subject matter jurisdiction are challenges to the ability of the Court to entertain an action in the first instance. The party invoking federal subject matter jurisdiction bears the burden of establishing that jurisdiction exists by a preponderance of the evidence. See Lujan v. Defenders of Wildlife, 504 U.S. 555,

561 (1992); Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000). Determining the existence of subject matter jurisdiction is a threshold inquiry; a case is properly dismissed under Fed. R. Civ. P. 12(b)(1) when the district court lacks the constitutional power to adjudicate it. See Arar v. Ashcroft, 532 F.3d 157, 168 (2d Cir. 2008).

A defendant may challenge either the legal or factual sufficiency of plaintiffs' assertion of jurisdiction. Nat. Union Fire Ins. Co. of Pittsburgh v. BP Amoco PLC, 319 F.Supp.2d 352, 371 (S.D.N.Y. 2004). In determining whether this Court has subject matter jurisdiction over plaintiffs' actions, it must accept as true all material factual allegations in the SAC, but because jurisdiction must be shown affirmatively, this Court must refrain from drawing inferences favorable to the parties asserting jurisdiction (here, plaintiffs). See APWU v. Potter, 343 F.3d 619, 623 (2d Cir. 2003). The Court can resolve disputed factual issues by reference to evidence outside of the pleadings. See Flores v. Southern Peru Copper Corp., 343 F.3d 140, 161 n.30 (2d Cir. 2003); see also Makarova, 201 F.3d at 113.

ii. Analysis as to Bank Markazi

An analysis of the facts regarding the actions and assets of Bank Markazi in this district leaves no serious doubt that this Court has subject matter jurisdiction.

1. Political Question

Courts lack authority to decide non-justiciable political questions. Zivotofsky ex rel. Zivotofsky v. Clinton, 132 S. Ct. 1421, 1427, 182 L. Ed. 2d 423 (2012). Bank Markazi argues that the European Union's ("E.U.") blocking regime has frozen all

assets of the Central Bank of Iran and thereby created a non-justiciable political question with respect to any action this Court might take under U.S. law that would impact the holders of the Blocked Assets under European law.

In 2010, the E.U. enacted regulations that froze "all funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in [certain annexes]." See Council Regulation (EU) No. 961/2010, Article 16(1)-(3). These regulations also provide that "no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in [certain annexes]." Id.

Bank Markazi was not listed on the original annexes. However, on January 24, 2012—just prior to the issuance of E.O. 13599 in the United States–it was added. See Council Implementing Regulation (EU) No. 54/2012 of January 23, 2012, Article 1.1 (Annex VIII ¶ 51).

In addition, article 23(2) of an EU regulation passed in March 2012 consolidated previous regulations and explicitly maintained the freeze on assets of the Central Bank of Iran. Council Regulation (EU) No. 267/2012, Arendt III ¶¶51-52 & Exh. J. The freezing of funds prevents "any move, transfer, alteration, use of, access to, or dealing in funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination, or other change that would enable the funds to be used, including portfolio management." Id.

According to Bank Markazi, the EU regulations change everything. It argues that, even assuming that the Blocked Assets are assets "of" Bank Markazi (which, as discussed below, it argues is incorrect), the EU blocking regime presents direct competition with E.O. 13599—competition that implicates foreign relations concerns and must be resolved by the political—not judicial—branches of government. (See Bank Markazi Reply Mem. in Support of Mot. to Dismiss ("Markazi MTD Reply") at 3-4 (adopting Clearstream Reply Memorandum in Support of its Renewed Mot. to Vacate Restraints ("Clearstream Mot. to Vacate Reply") at 9-16, ECF No. 220).)

The facts giving rise to this conflict are both simple and technical: a debit to the Blocked Assets in Clearstream's Omnibus Account at Citibank in New York by virtue of turnover would require a corresponding debit in Clearstream's Luxembourg account – constituting a direct violation of the EU Regulation. [8]

In connection with this motion only, in order to allow the Court to decide the issue, Bank Markazi affirmatively makes the following factual assumptions: that the underlying beneficial owner of the Blocked Assets is Bank Markazi, that Bank Markazi's transfer to UBAE has been "undone" such that the assets remain in an account between Clearstream and Bank Markazi, that this Court can exercise personal jurisdiction over Clearstream in New York, and that all of the other actions by other banks and issuers occurred in New York. (See Id. at 4-6 (argument adopted by Bank Markazi as explained in Clearstream brief).)

[8] Markazi—via Clearstream—argues that the debit would constitute a "change in volume, amount, location, ownership, possession, character, [or] destination" of the Blocked Assets. (See Clearstream Vacate Restraints Reply Br. at 13.)

2. Political Question Analysis

The E.U. and U.S. blocking regimes are not here in "competition", and they do not create a non-justiciable political question.

Whether or not a question is "political," and therefore non-justiciable, is determined by reference to six factors:

> [(1)] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [(2)] a lack of judicially discoverable and manageable standards for resolving it; or [(3)] the impossibility of deciding without an internal policy determination of a kind clearly for non-judicial discretion; or [(4)] the impossibility of the court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or [(5)] an unusual need for unquestioning adherence to a political decision already made; or [(6)] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. 186, 217 (1962); see also 767 Third Ave. Assocs. V. Consulate Gen. of Socialist Fed. Republic of Yugoslavia, 218 F.3d 152, 160 (2d Cir. 2000).

Bank Markazi argues that the EU and U.S. blocking regimes raise important questions of foreign relations, lack judicially manageable standards, and generally raise Baker v. Carr concerns. This Court disagrees.

To the extent that the differential treatment of the assets of terrorist states raises foreign relations concerns, the executive and legislative branches have demonstrated a clear intent that not only permits but affirmatively encourages the judiciary to resolve the issues surrounding restraint and turnover of such assets. As set out above, the sheer multitude of statutory and executive pronouncements

directly and unquestionably applicable to the motions before this Court makes any political question argument baseless.

Bank Markazi can point to no aspect of the Constitution that commits the treatment of a hypothetical turnover of U.S.-based assets by a foreign legal system to a "coordinate political department". Instead, Congress and the President agree that it is the province of the judiciary to determine the effect, if any, of these competing regimes: provisions of the FSIA, as described above, enable courts to enforce judgments against sovereigns when those judgments relate to acts of terrorism; TRIA allows a court to execute against blocked assets of a terrorist party; E.O. 13599 provides that assets of Iran and the Central Bank of Iran are blocked; the SDN list indicates that Iran and Bank Markazi are on the list of blocked terrorist organizations; and finally, the most recent pronouncement, 22 U.S.C. § 8772, specifically provides that the assets at issue in this very lawsuit are subject to execution and attachment in aid of execution.

Nor can there be a suggestion of a lack of judicially manageable standards to resolve the potential friction between the U.S. and E.U. regimes. Congress enacted 22 U.S.C. § 8772 in August 2012 – well after March 2012, when the EU promulgated the last of its blocking Regulations referred to by Clearstream. Congress certainly could have altered the statute in light of the E.U. regulations; it chose not to do so.

Instead, § 8772 gives this Court clear standards to rule on the questions before it with respect to these very assets. The statute spells out specific

requirements for judicial determinations as to whether a non-Iranian entity has a constitutionally protected interest in the assets, or holds equitable or beneficial title or interest in the assets. See 22 U.S.C. § 8772(a)(2). Together, these various statutes and orders require this Court to find that it should rule on the very questions here presented. In addition, of course, it cannot be that a court must refrain from adjudicating a dispute where the potential exists for a foreign legal regime to impose penalties on a litigant based on the U.S. court's decision. Foreign ramifications alone do not create a non-justiciable political question. And they do not here.

3. Ownership of the Blocked Assets

Bank Markazi next argues that the Blocked Assets are not assets "of" Bank Markazi. Bank Markazi states a showing of ownership is required for subject matter jurisdiction under TRIA § 201(a).[9]

Even if Bank Markazi were correct regarding TRIA (and it is not), that does not mean this court lacks subject matter jurisdiction. The 2012 Act, § 8772, specifically trumps "any other provision of law" and specifically permits execution on the assets specifically at issue in this litigation, rendering moot any ambiguity in TRIA. 22 U.S.C. § 8772(a)(1).

Even in the absence of § 8772, however, this Court finds that TRIA provides for subject matter jurisdiction with respect to Bank Markazi. It is true that TRIA authorizes execution of assets "of" a terrorist party. See 28 U.S.C. § 1610 n.

[9] Section 201(a) refers to attachment only of the "blocked assets of th[e] terrorist party" (emphasis added).

(2006)("[I]n every case in which a person has obtained a judgment against a terrorist party . . . the blocked assets of that terrorist party . . . shall be subject to execution . . . .")(emphasis added). In the case of the Blocked as Assets here at issue, Bank Markazi is the only owner. Clearstream—in whose name the Citibank account is listed—never claims it "owns" the assets. UBAE argues it has acted with respect to the assets merely on behalf of Bank Markazi. (See UBAE SJ Opp. Br. at 2 (stating UBAE "has not asserted a legally cognizable interest in the restrained bonds" and that "UBAE is not in 'possession' or 'custody' of any of the restrained bonds"); Matranga Reply Decl. ¶¶ 7-10.) Citibank states that it is a neutral stakeholder. (See Letter of Sharon L. Schneier to the Hon. Katherine B. Forrest, Dec. 14, 2012, ECF No. 300).

Bank Markazi has repeatedly conceded at a variety of times in connection with this litigation—and Clearstream has stipulated for the limited purpose of resolving its motion to vacate the restraints, infra—Bank Markazi is "the" sole beneficial owner of the assets.[10]

[10] Bank Markazi has stated that "Over $1.75 billion in securities belonging to Bank Markazi . . . are frozen in a custodial Omnibus Account at [Citibank]"; that the "Restrained Securities are the property of Bank Markazi, the Central Bank of Iran", that the "aggregate value of the remaining bond instruments, i.e. the Restrained Securities that are the property of Bank Markazi and the subject of the Turnover Action – is thus $1.753 billion"; that the "Restrained Securities are the property of a Foreign Central Bank..."; that the "Restrained Securities are presumed to be the property of Bank Markazi"; and "the Restrained Securities are prima facie the property of a third party, Bank Markazi . . . ." (See Bank Markazi's First Mem. of L. in Support of its Mot. to Dismiss the Am. Compl., May 11, 2011, ECF No. 18 ("Markazi's First MOL"), at 1, 5, 9, 10, 36 (emphases added).) In addition, two officers of Bank Markazi have sworn under penalty of perjury that the Blocked Assets are the "sole property of Bank Markazi and held for its own account." (Aff. of Gholamossein Arabieh ¶ 2, Vogel Decl. Ex. J, Oct. 17, 2010, ECF No. 210; Aff. of Ali Asghar Massoumi ¶ 2, Vogel Decl. Ex. K, Oct. 17, 2010, ECF No. 210).

Bank Markazi suggests that Judge Cote's decision in Calderon-Cardona v. JPMorgan Chase Bank, N.A., 867 F. Supp. 2d 389, 400 (S.D.N.Y. 2011), counsels a different result.[11] This Court disagrees.

The Court in Calderon-Cardona held that electronic funds transfers ("EFTs") allegedly related to North Korea were not subject to attachment under TRIA and the FSIA. It is distinguishable in several respects: first, the Calderon-Cardona decision related to mid-stream EFTs—rapid funds transfers between a sending and receiving bank, processed by an intermediary bank—rather than the static proceeds of financial instruments. Id. A significant question in Calderon-Cardona was whether the EFTs were "owned" by North Korea at the time of the transfers. Id. In finding no such ownership, the Court noted Second Circuit precedent holding that—according to New York law— "EFTs are neither the property of the originator nor the beneficiary while briefly in the possession of an intermediary bank." Id. at 400 (citing Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd., 585 F.3d 58, 71 (2d Cir.2009)). Even if North Korea was the originator or beneficiary, then, it could not be the "owner" of the EFTs for the purposes of TRIA. Id. The Court concluded that "[t]he petitioners have pled no facts . . . indicating that North Korea has an interest in any of the blocked accounts that exceeds that of an originator or beneficiary in a midstream EFT." Id. at 407.

In contrast, here, nearly $2 billion in bond proceeds is sitting in an account in New York at Citibank—there are no fleeting or ephemeral interests like those that

[11] As with the political question arguments, Markazi expressly adopted this argument from Clearstream's memoranda in support of its motion to vacate the restraints. (See Markazi MTD Reply at 5.)

occur in EFTs. The only entity with any financial interest in the funds in the account is Bank Markazi—as it has stipulated for the purposes of this motion, but also as it has repeatedly asserted. Clearstream has no such interest; UBAE's interest is analogous to that of Clearstream (and, as it states, it has no legally cognizable interest). Any possible contrary interpretation under state law is expressly preempted by the express language of § 8772.

Accordingly, on these facts, this Court need not choose whether it is necessary to follow the Calderon-Cardona rationale or those of the other cases in this District involving EFTs. See, e.g., Hausler v. JP Morgan Chase Bank, N.A. (hereinafter "Hausler I"), 740 F.Supp.2d 525 (S.D.N.Y. 2010); Hausler v. JP Morgan Chase Bank, N.A. (hereinafter "Hausler II"), 845 F.Supp.2d 553 (S.D.N.Y. 2012); Levin v. Bank of N.Y., No. 09 Civ. 5900, 2011 WL 812032 (S.D.N.Y. Mar. 4, 2011). All of the EFT cases attempt to answer whether transfers between financial institutions that pass through a banking institution within the U.S. are nonetheless "assets of" the terrorist party to whose benefit the transfers may ultimately inure. See, e.g., Hausler I, 740 F.Supp.2d at 526; Hausler II, 845 F.Supp.2d at 558-561; Levin, 2011 WL 812032, at *11. Only one of the cases—Levin—dealt with any proceeds of financial instruments; the Court in Levin issued a turnover order for those assets. See Levin, 2011 WL 812032, at *20-21 (finding no bar under New York law to turnover of non-EFT accounts allegedly owned by instrumentalities of Iran).

4. Location of the Blocked Assets and Treaty of Amity

Markazi's remaining arguments—(1) that the bonds are not located in the United States and therefore cannot be executed upon under FSIA and (2) that blocking the assets violates U.S. treaty obligations—fail for the same reason: 22 U.S.C. §8772 obviates any need for this Court to rely on TRIA or the Treaty of Amity for resolution of this motion.

However, even if this Court were to ignore § 8772, the arguments nonetheless fail.

First, Bank Markazi argues that the Markazi Bonds are located in Luxembourg and thus outside this Court's jurisdiction. (See Markazi MTD Reply Br. at 6.) They cite this Court's decision in a related case, Bank of Tokyo-Mitsubishi, UFJ, Ltd. New York Branch v. Peterson, No. 12 Civ. 4038 (BSJ), 2012 WL 1963382, at *2 (S.D.N.Y. May 29, 2012), for the proposition that assets held outside the United States are not subject to execution.

This "extra-territoriality" argument assumes that the Blocked Assets are located outside of the United States. This argument is sophistry: the Blocked Assets are located in a bank account at Citibank in New York (additional assets relating to the now liquidated $250 million in Markazi Bonds do not appear to be in New York, but their location is irrelevant to the resolution of this motion). It may well be that there are account entries on the books of entities in Europe – such as Clearstream Luxembourg – relating to the Blocked Assets. But the mere fact that

the account at Citibank is listed under the Clearstream and UBAE names does not alter the fact that those entities are agents of Bank Markazi. Nor do mere book entries in Luxembourg transform the Citibank New York account into assets located in Luxembourg.[12]

In addition, the Treaty of Amity provides no barrier to subject matter jurisdiction. Bank Markazi argues that Arts. III.2 and IV.1 of the Treaty entitle it to separate juridical status from Iran and, as such, its assets cannot be seized to satisfy a judgment against the sovereign state. (Markazi MTD Br. at 22.)

The treaty is inapplicable. First, irrespective of any interpretation of the language of the Treaty, in Weinstein v. Islamic Republic of Iran, 609 F.3d 43, 53 (2d Cir. 2010) the Second Circuit stated that the phrase "notwithstanding any other provision of law" in FSIA effectively trumps any conflicting law. As to the textual interpretation of the Treaty itself, the Weinstein Court held that the Treaty of Amity provisions cited by Bank Markazi are inapposite; the purpose behind the Treaty of Amity was "simply to grant legal status to corporations of each of the signatory countries in the territory of the other, thus putting the foreign corporations on equal footing with domestic corporations." Id. at 53. There is no basis to find that the Treaty was intended to be used or has been used to aid instrumentalities of foreign governments to circumvent congressional acts or authorized legal actions.

[12] This is particularly true in light of 22 U.S.C. 8772, its preemption of any contrary law, and its required narrow judicial determinations.

Lest any ambiguity remain, Congress inserted an additional "notwithstanding" clause in 22 U.S.C. § 8772(a)(1). That clause evinces clear Congressional intent to abrogate treaty language inconsistent with FSIA and § 8772. Id. (noting Circuit Courts have interpreted similar "notwithstanding" clauses to abrogate treaty language). To do otherwise would render FSIA a dead letter—something Congress and the President clearly did not intend.

Thus, the plain language of the Treaty of Amity renders it inapplicable to the Blocked Assets and, further, Congress has abrogated any application of the Treaty in the FSIA context.

5. Central Bank Immunity

Bank Markazi's final set of arguments assert FISA § 1611(b)(1) immunity from attachment for assets used for central banking purposes. FSIA § 1611(b)(1) provides that "the property . . . of a foreign central bank or monetary authority held for its own account" is entitled to immunity from attachment and execution. The Court only has jurisdiction to hear a turnover action for sovereign assets where a valid exception to FSIA exists; the central banking rule negates any FSIA exception. See Aurelius Capital Partners, LP v. Republic of Argentina, 584 F.3d 120, 129-30 (2d Cir. 2009)(citing FSIA § 1609).

Again, even if the Blocked Assets were, in fact, "held for [the central bank's] own account," TRIA § 201(a), E.O. 13599, and 22 U.S.C. § 8772 expressly preempt any immunity.

Congress is presumed to be aware of its previous enactments when it passes

a new statute. See Vimar Seguors y Reaseguros, S.A. v. M/V Sky Reefer, 515 U.S. 528, 554 (1995)(citing Cannon v. Univ. of Chicago, 441 U.S. 677, 696-699 (1999)). TRIA's "notwithstanding" clause—enacted well after § 1611(b) was adopted in 1976—thus preempts central bank immunity to the extent it would apply. TRIA § 201(a). As the Supreme Court has observed, "a clearer statement" of intent to supersede all other laws than a "notwithstanding clause" is "difficult to imagine" Cisneros v. Alpine Ridge Group, 508 U.S. 10, 18 (1993).

Beyond the statutory language, E.O. 13599 suggests that Bank Markazi is not engaged in activities protected by § 1611(b), and thus is not entitled to immunity. The Order makes a finding that Bank Markazi's assets are blocked "in light of the deceptive practices of [Bank Markazi] and other Iranian banks to conceal transactions of sanctioned parties . . . and the continuing and unacceptable risk posed to the international financial system by Iran's activities . . ." E.O. 13599. This executive determination suggests that the activities of Bank Markazi are not central banking activities that would provide § 1611(b) immunity. See NML, 652 F.3d at 172 (setting forth functional test for central banking activities).

Finally, § 8772 also applies "notwithstanding any other provision of law, including any provision of law relating to sovereign immunity[.]" 22 U.S.C. § 8772(a)(1)(emphasis added). Assuming—as the Court finds below—that § 8772 is valid, it must also find no central bank immunity.

In light of the above conclusions, there is no doubt that this Court has subject matter jurisdiction with respect to claims asserted against Bank Markazi. Its motion to dismiss is denied.

IV. MOTION TO VACATE RESTRAINTS

A. Background and Procedural History

As set forth above, in 2008, plaintiffs obtained writs of attachment and execution against an account that Clearstream maintained at Citibank, imposing restraints—restrictions against the transfer or disposal of the assets in that account. That account was used to manage proceeds connected to the Markazi Bonds.

In June 2008, Clearstream challenged the restraints and this Court held an evidentiary hearing. At that hearing, Clearstream presented evidence that "at one time Clearstream's [customer, the Central Bank of Iran ("Bank Markazi"), was the underlying beneficial owner of the securities entitlements identified in the restraints, but that in February 2008] Bank Markazi [transferred all but one of its securities entitlements to the bonds identified in the restraints from its account at Clearstream to an account with another Clearstream customer], Banca UBAE S.p.A." (See Clearstream's Consol. Mem. in Supp. Of Mot. To Vacate Restraints ("Clearstream Vacate Br.) at 3.) At that hearing, a Clearstream employee testified that he did not know whether Bank Markazi remained the beneficial owner of the securities entitlements. (Id.) At the conclusion of the hearing, Judge Koeltl lifted the restraints as to the two bonds that had been sold to customers other than UBAE

(valued at approximately U.S. $250 million). The restraints were not lifted as to the remaining assets held in Clearstream's Omnibus Account at Citibank. (Id. at 4.)

At a June 27, 2008, hearing, Clearstream moved again to vacate the remaining restraints – this time pursuant to the Uniform Commercial Code ("UCC"), §8-112(c). Clearstream argued that neither it nor Citibank was a proper "garnishee" under the provision. Clearstream further argued that the restraints should be lifted since the securities entitlements were Clearstream's and not Bank Markazi's. (Id.)

On June 23, 2009, Judge Barbara Jones held that Clearstream was not a proper garnishee under § 8-112(c) of the UCC because all but one of the securities at issue were held at Clearstream in the name of UBAE, rather than Bank Markazi. (See Order, Peterson et al. v. Islamic Republic of Iran et al. (S.D.N.Y. June 23 2009), ECF No. 171.) Bank Markazi, as an instrumentality of Iran, was the only proper garnishee under UCC § 8-112(c). The Order noted that it was possible, however, that the transfer of the Bank Markazi securities to the UBAE account was fraudulent and that Bank Markazi therefore remained the true holder of the securities. (Id.) She held that the restraints would remain in place pending a further judicial determination as to (1) whether such transfers could be fraudulent as a matter of law, (2) if they were, in fact, fraudulent, and (3) if Clearstream was (or could be made) a proper garnishee. (Id.)

The parties then briefed whether a judicial determination that the conveyance was fraudulent would alter the UCC analysis and whether Clearstream

could in any event be a proper garnishee. (See Letter of Frank Panopoulos to Hon. Barbara S. Jones (hereinafter "Clearstream Restraints Br."), Aug. 14, 2009, ECF No. 181; Letter of Liviu Vogel to Hon. Barbara S. Jones (hereinafter "Pls.' Restraints Br."), Sept. 19, 2009, ECF No. 183). In the same briefing, plaintiffs also raised alternative theories supporting turnover of the same assets. (Pls.' Restraints Br. at 4-6.) The Court never issued a subsequent ruling addressing those arguments. Those arguments were then re-briefed and consolidated into Clearstream's motion to vacate now pending before this Court and resolved herein. (See Renewed Mot. To Vacate Restraints, ECF No. 174.)

Clearstream's motion to vacate initially relied upon the following five arguments:

- Clearstream is not a proper garnishee under UCC §8-112(c);
- According to UCC §8-110, Bank Markazi's assets or interests are located in Luxembourg and not this district and must be restrained there;
- Common law "situs" rules are not applicable as a basis to restrain or turnover the assets;
- The restrained assets are not "Blocked Assets" under TRIA;
- Equitable relief is unavailable to restrain and turnover the blocked assets.

In its reply memorandum on this motion, Clearstream adds a sixth argument—that the competing E.U. and U.S. blocking regimes present a non-justicable political question, the same argument the Court rejected, supra, with respect to Bank Markazi's motion to dismiss.

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In response to this series of arguments, plaintiffs contend that (1) the EU Regulation does not create a non-justiciable political question; (2) the UCC is inapplicable to the questions before this Court because TRIA preempts conflicting state law and the Blocked Assets are therefore subject to both the restraints and to turnover; (3) TRIA and E.O.13599 render the situs argument inapplicable; and (4) that the restrained assets are designated as Blocked Assets. According to plaintiffs, New York's CPLR permits enforcement of plaintiffs' judgments against the cash held in the Omnibus Account.

B. Analysis

"Enough is enough" is the reductionist version of plaintiffs' response to Clearstream's motion to vacate. This Court agrees.

i. Political Question

The Court rejected the political question argument with respect to Bank Markazi's motion to dismiss and Clearstream's version of the argument is not materially different.

Clearstream adds only one novel aspect to its political question argument: it argues that a turnover order will subject it to inconsistent obligations in the United States and Europe. If the plaintiffs were to obtain a turnover order, the resulting debit in the Luxembourg book entry might violate the E.U. blocking regime and Clearstream's obligation to Bank Markazi.

However, even if a change in the Clearstream accounts in the U.S. will cause a book entry in Luxembourg – placing Clearstream at risk of violating of EU

Regulations—that issue is one left to Clearstream to address in the EU. As stated above, if this Court were required to hypothesize as to the implications of foreign regulations with respect to actions before it, paralysis would result in numerous situations: U.S. courts would no doubt be inundated with such issues brought forward tactically. There is no such hardline rule, and in a world of transnational commerce there should not be.

ii. Remaining Arguments for Vacating the Restraints

The same statute – 22 U.S.C. § 8772 – crucial to resolving Bank Markazi's motion to dismiss also answers the remaining arguments Clearstream has raised in support of its motion to vacate. Section 8772 specifically preempts "any other provision of law" including "any inconsistent provision of state law." 22 U.S.C. § 8772(a)(1). Accordingly, this Court need not address the potpourri of UCC-based arguments raised by Clearstream: Section 8772 provides that, so long as the appropriate judicial determinations are made, there is no legal barrier to execution on the Blocked Assets.

Accordingly, the Court denies Clearstream's motion to vacate the restraints.

V. PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs have moved for partial summary judgment against defendants Clearstream, Bank Markazi, and UBAE[14] on their cause of action for turnover of

[14] UBAE did not file substantive opposition to plaintiffs' partial summary judgment motion initially. It argued that it should not be compelled to respond to plaintiffs' motion until its own Rule 12(b)(2) motion to dismiss had been decided. In the interests of judicial economy, the Court issued an Order on February 14, 2013, directing UBAE to file any opposition to plaintiffs' motion, and directed UBAE to "assume that the Court finds sufficient bases to exercise personal jurisdiction over it." (See Order, Feb. 14, 2013, ECF No. 325.) UBAE filed its substantive opposition brief on February 22, 2013. (ECF No. 328.)

the approximately $1.75 billion[15] in Blocked Assets, held in the Omnibus Account at Citibank.[16]

The Court has already determined that the assets at issue are properly restrained. The question before the Court is now whether there exist triable issues of fact as to whether those assets are subject to turnover.

While both Clearstream and Bank Markazi raise additional arguments (many of which were already raised in the prior motions), the crux of this motion is really a single question: is there a triable issue as to whether the Blocked Assets are owned by Bank Markazi? In the context of the motion to vacate the restraints, Clearstream had stipulated that UBAE had no beneficial interest and the transfer between UBAE and Bank Markazi was unwound. There is no such stipulation on this motion.

For the reasons set forth below, this Court finds that the record evidence is clear and one-sided: there is no triable issue on this question. No rational juror could find that any person or entity—other than Bank Markazi—has a constitutional, beneficial or equitable interest in the Blocked Assets; plaintiffs are therefore entitled to turnover as a matter of law.

Defendants also argue that turnover would run afoul of certain constitutional rights: first, that the specific statutory provision, 22 U.S.C. § 8772 is an invalid

[15] UBAE correctly points out that the two securities with a face value of $250 million it is alleged to have conveyed fraudulently in early 2008 are not at issue in the plaintiffs' motion for partial summary judgment. (See UBAE S.J. Opp. Br." at 2 n.2.) The Court does not resolve any merits issues as regards claims based on this alleged conveyance.

[16] As set forth above, plaintiffs have reached agreement regarding priority, as between themselves, of distribution of the assets. Accordingly, the Court does not address any such questions herein.

legislative act of adjudication that violates Article III; second, that it constitutes an unlawful bill of attainder, U.S. Const. art. I, § 9, cl. 3; third, that turnover would amount to an unconstitutional taking in violation of their due process rights. See U.S. Const. amend. V. None of these arguments has merit.

A. Legal Standard for Summary Judgment

Summary Judgment, as to all or part of a claim, is warranted if the pleadings, the discovery and disclosure materials, along with any affidavits that are admissible, demonstrate that there is no genuine issue of fact necessitating resolution at trial. Fed.R.Civ.P. 56(c); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322-323 (1986). A party moving for summary judgment bears the initial burden of demonstrating that no genuine issue of material fact exists; all reasonable inferences should be drawn in favor of the non-moving party. See Anderson, 477 U.S. at 255; Grady v. Affiliated Cent., Inc., 130 F.3d 553, 559 (2d Cir. 1997). The burden then shifts to the non-moving party to come forward with "admissible evidence sufficient to raise a genuine issue of fact for trial in order to avoid summary judgment." See Jaramillo v. Weyerhauser Co., 536 F.3d 140, 145 (2d Cir. 2008). Where the non-moving party would bear the ultimate burden of proof on an issue at trial, the moving party satisfies its burden on the motion by pointing to an absence of evidence to support an essential element of the non-movant's claim. See Libraire v. Kaplan, CV No. 06-1500, 2008 WL 794973 at *5 (E.D.N.Y. Mar. 24, 2008). Where it is clear that no rational trier of fact could find in favor of the non-moving party, summary judgment

is warranted. Gallo v. Prudential Residential Servs., Ltd., 22 F.3d 1219, 1223 (2d Cir. 1994). The mere possibility that a dispute may exist, without more, is not sufficient to overcome a convincing presentation by the moving party." Anderson, 477 U.S. at 247-48. Mere speculation or conjecture is insufficient to defeat a motion. W. World Ins. Co. v. Stack Oil, Inc., 922 F.2d 118, 121 (2d Cir. 1990).

B. Analysis

As stated above, in opposition to this motion, defendants have filled the proverbial kitchen sink with arguments. As the Court has reviewed the thousands of pages of briefing on and in support of these motions, building in a crescendo to the instant motion, it cannot help but be reminded of the grand finale in a Fourth of July fireworks show – all arguments thrown in and set off at once. While this Court has carefully reviewed all of defendants' various arguments, it will not address each of them here.[17] It need not do so because the basic question and the dispositive legal principles do not require descent into those waters—or into that sink, to mix metaphors.

i. The Blocked Assets are Bank Markazi's

Clearstream argues that there are triable issues as to whether Bank Markazi is the "owner of" the Blocked Assets. As with similar arguments made in the context of the motion to dismiss, the arguments made in support of this assertion are based on laws preempted by 22 U.S.C. § 8772.

[17] Defendants' UCC, situs of property and Treaty of Amity arguments, in particular, are mooted by the Court's determination with respect to 22 U.S.C. § 8772.

As noted above, § 8772 requires the Court to determine who—other than an agency or instrumentality of Iran—has a constitutional, beneficial or equitable interest in the assets at issue. None of the defendants cite authority or facts supporting that any entity other than Bank Markazi has such an interest.

On this record and as a matter of law no other entity could have an equitable or beneficial interest. A beneficial interest is "[a] right or expectancy in something . . . as opposed to legal title to that thing." Interest, Black's Law Dictionary (9th ed. 2009). The key factor is whether "the property benefitted [the beneficial owner] as if he had received the property directly. See Exp.-Imp. Bank of U.S. v. Asia Pulp & Paper Co., Ltd., 609 F.3d 111, 120 (2d Cir. 2010)(citing United States v. Coluccio, 51 F.3d 337, 341 (2d Cir.1995)). Clearstream's only role with regard to the Blocked Assets is as the agent of Bank Markazi. Even absent the restraints, it fails to proffer any evidence that it has the right to use or move the Blocked Assets held at Citibank without express permission or direction from Bank Markazi. Nor does Clearstream have equitable title, "a beneficial interest in property [that] gives the holder the right to acquire formal legal title." Lippe v. Genlyte Group Inc., 98 CIV. 8672 (DC), 2002 WL 531010 (S.D.N.Y. Apr. 8, 2002)(citing Black's Law Dictionary 1493 (7th ed.1999)). Clearstream does not allege—and puts forward no facts—that it has legal title or the right to acquire that title for the Blocked Assets. UBAE disclaims any "legally congnizable interest" in the Citibank proceeds. [18] They are

[18] UBAE admits that it has "no legally cognizable interest" in the restrained bonds. (UBAE SJ Opp. Br. at 2-3.) UBAE thus admits that which plaintiffs wish to prove on summary judgment: there is no issue of material fact as to the ownership of the Markazi Bonds with respect to UBAE (and, as the remainder of the above analysis shows, nor does Clearstream have any such ownership interest).

both merely account holders without authority to move or use the assets in the absence of direction. They simply—like Citibank—maintain that account on behalf of another, Bank Markazi.

In addition, Bank Markazi's arguments that it is immune from pre- or post-judgment attachment depend upon preempted provisions of the FSIA. See 22 U.S.C. § 8772(a).

Bank Markazi has repeatedly insisted that it is the sole beneficial owner of the Blocked Assets. As set forth above, but bears repeating in the context of the Court's analysis of this motion, in various submissions Bank Markazi has asserted that "Over $1.75 billion in securities belonging to Bank Markazi . . . are frozen in a custodial Omnibus Account at [Citibank]"; that the "Restrained Securities are the property of Bank Markazi, the Central Bank of Iran", that the "aggregate value of the remaining bond instruments, i.e. the Restrained Securities that are the property of Bank Markazi and the subject of the Turnover Action – is thus $1.753 billion"; that the "Restrained Securities are the property of a Foreign Central Bank . . ."; that the "Restrained Securities are presumed to be the property of Bank Markazi"; and "the Restrained Securities are prima facie the property of a third party, Bank Markazi . . . ." (See Bank Markazi's First Mem. of L. in Support of its Mot. to Dismiss the Am. Compl., May 11, 2011, ECF No. 18 ("Markazi's First MOL"), at 1, 5, 9, 10, 36 (emphases added).) In addition, two officers of Bank Markazi have sworn under penalty of perjury that the Blocked Assets are the "sole property of Bank Markazi and held for its own account." (Aff. of Gholamossein

Arabieh ¶ 2, Vogel Decl. Ex. J, Oct. 17, 2010, ECF No. 210; Aff. of Ali Asghar Massoumi ¶ 2, Vogel Decl. Ex. K, Oct. 17, 2010, ECF No. 210).

There simply is no other possible owner of the interests here other than Bank Markazi; there is no triable issue of fact.

ii. Constitutional Arguments

Bank Markazi and Clearstream urge that, if this Court determines that the assets are subject to turnover pursuant to § 8772, prior to doing so it must consider whether that statute passes constitutional muster. In this regard, their arguments combine both general constitutional arguments with specific arguments directed at 22 U.S.C. §8772. As set forth above, § 8772(a)(5) provides that this Court must make a judicial determination as to whether another person has a constitutionally protected interest in the assets. The Court has made such a determination, and no other person has such an interest.

Clearstream and Bank Markazi's various constitutional arguments are without merit.[19]

a. Separation of Powers

First, defendants Clearstream and Bank Markazi argue that, pursuant to Article III of the Constitution, 22 U.S.C. § 8772 is a congressional act violative of the separation of powers. (See Bank Markazi Supp. Mem. of L. in Opp. to Pls.' Mot. for Partial Summ. J. ("Markazi Supp. SJ Br.") at 10-12.) They argue that, in

[19] Plaintiffs have asserted that Clearstream does not itself have standing to raise constitutional challenges because it does not own or even have a beneficial interest in the Blocked Assets. Because none of the constitutional challenges has merit – whether raised by Bank Markazi or Clearstream (and they are raised by both of those defendants) – the Court need not and does not reach the standing issue.

passing § 8772, Congress effectively dictated specific factual findings in connection with a specific litigation—invading the province of the courts. (Id.) See U.S. v. Klein, 80 U.S. 128, 146 (1871) (Congress may not prescribe rules of decision). According to Bank Markazi, the statute's requirement of judicial determinations does not save it since those determinations are "legislative fig lea[ves]" that pre-determine a finding that turnover is required. (Markazi Supp. SJ Br. at 12.)

This argument ignores the structure of the statute. The statute does not itself "find" turnover required; such determination is specifically left to the Court. The statute is not a self-executing congressional resolution of a legal dispute, but rather requires the Court to make determinations regarding (1) whether and to what extent Iran has a beneficial or equitable interest in the assets at issue, and (2) whether constitutionally-protected interest holders other than Iran are present. These determinations are not mere fig leaves; it is quite possible that the Court could have found that defendants raised a triable issue as to whether the Blocked Assets were owned by Iran, or that Clearstream and/or UBAE have some form of beneficial or equitable interest. Any such finding of true third party interest could limit—or even eliminate turnover (at least at this time). The statute merely "chang[es] the law applicable to pending cases;" it does not "usurp the adjudicative function assigned to the federal courts[.]" See Axel Johnson, Inc. v. Arthur Andersen & Co., 6 F.3d 78, 81 (2d Cir. 1993). There is frankly plenty for this Court to adjudicate.

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b. Bills of Attainder and Ex Post Facto Law

Similarly, § 8772 does not violate the constitutional prohibition against bills of attainder or ex post facto laws. Bills of attainder exist when a congressional act (1) legislatively determines guilt, and (2) and inflicts punishment upon an identifiable individual, (3) without the protections accompanying a trial. See Nixon v. Adm'r of Gen. Svcs., 433 U.S. 425, 468 (1977). A critical aspect of a bill of attainder is its retrospective nature – classically, defining conduct which has already occurred (and was legal when it occurred) as illegal. Consol. Edison Co. v. Pataki, 292 F.3d 338, 349 (2d Cir. 2002). In short, it is an ex post facto declaration or finding of guilt by legislative act.

Here, there is no retrospective "punishment" enacted against any defendant. As the Court found above, the financial intermediaries—UBAE and Clearstream—have no constitutional, beneficial, or equitable interest in the assets at issue; thus, it is impossible for seizure of those assets to constitute "punishment" as to them. As to Bank Markazi, now many years ago plaintiffs obtained default judgments as to liability and damages against the Iranian Government. Iran's conduct leading to such determinations was based on established common law principles. Iran's liability and its required payment of damages was therefore established years prior to the 2012 Act. At issue now is merely execution on assets present in this district, in connection with those judgments. Prior to the 2012 Act, the FSIA and TRIA, along with the CPLR, supported restraint and execution against those assets.

Section 8772 is thus a legislative act that does not determine "guilt". The law is clear that forbidden legislative punishment is not involved "merely because [the act] imposes burdensome consequences." Nixon, 433 U.S. at 742.

Section § 8772 is therefore also not backward-looking; it did not change the reasonable expectations of parties as to which assets may be subject to attachment and turnover. Indeed, this litigation regarding attachment of the assets at issue was commenced long before the passage of § 8772.

c. Takings

Nor does the statute effect an unconstitutional taking without just compensation as to either Clearstream or Bank Markazi. The Takings Clause of the Constitution provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amdt. V.

Clearstream has no constitutionally protected property interest in the Blocked Assets. It makes a purely legal argument that such an interest arises from its alleged right to payment from Citibank. This argument is without merit. Clearstream is in no different position from Citibank: it is merely a stakeholder without any cognizable interest in the resolution of this dispute on the merits. No doubt it views it necessary for client relations to advocate forcefully against negative impacts to its client's (Bank Markazi) interests, but the fact remains that there is no record evidence that it is acting as anything other than an agent; it does not own the assets at issue.

The cases which Clearstream cites in support of its position do not alter this analysis. For instance, Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1019 (1992), refers to a taking as extinguishing a property right. Lucas related to real property. Of course, Clearstream's interest in the Blocked Assets is one of account entry only – it provides services with respect to assets for its clients, UBAE, on behalf Bank Markazi. Nothing in the record supports that Clearstream could unilaterally choose to use those assets.

The regulatory takings doctrine set forth in Penn Central Transp. Co. v. N.Y., 438 U.S. 104, 124 (1978), also cited by Clearstream, is similarly inapposite. There, the Supreme Court found that a regulation—structured in a particular manner—could result in a taking. When faced with such issues, courts are to ask about (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations . . . and (3) the character of the government action. Clearstream's only argument in support of such a regulatory taking is that as a stakeholder, if the assets are turned over, it might be exposed to claims from Bank Markazi. That is no different from Citibank's position. Clearstream does not have distinct investment-backed expectations—indeed, it cannot use these funds itself. The regulatory structure surrounding turnover provides for ample (and there certainly has been ample) due process in furtherance of an important and reasonable governmental interest in pursuing its national security goals.

Finally, of course, Clearstream's rights and obligations are frankly no different under § 8772 than in the absence of that statute. The statute perhaps allows a court, if it were at the beginning of this process, to weed out baseless arguments. However, the outcome of this matter is neither entirely nor primarily dependent on the existence of § 8772. The combination of the FSIA, TRIA, and E.O.13599 would lead to the same result. Accordingly, §8772 cannot be an independent "taking" of that to which Clearstream and UBAE are not entitled and Bank Markazi is no longer entitled.

For that reason Bank Markazi's suggestion that the statute effects a taking per se—completely appropriating Markazi's property and depriving it of all economically beneficial use—is incorrect. See Lucas, 505 U.S. at 1019. Markazi has no reasonable expectation in the assets at issue because, as the court held in Hausler II, once assets are blocked, "parties with interests in those assets have no reasonable expectation that their interests will not be diminished or extinguished."

Nor does § 8772 effect a taking for purely private use. Bank Markazi points out that the U.S. government "may not take the property of A for the sole purpose of transferring it to another private party B, even though A is paid just compensation." Kelo v. Civy of New London, Conn., 545 U.S. 469, 477 (2005). The sole purpose of § 8772, Markazi argues, is to expropriate sovereign property for a purely private purpose. (See Markazi Supp. SJ Br. at 19.)

But the statute does not lack a public purpose. As the Court held in connection with another action seeking turnover of Iranian assets, awarding such

assets does not violate the public use requirement where, as here, the Government seeks to address the "'unusual and extraordinary threat to the national security, foreign policy, and economy of the United States' that . . . Iran poses to the United States." See In re 650 Fifth Ave. and Related Props., 777 F. Supp. 2d 529, 576-77 (S.D.N.Y. 2011)(quoting Exec. Order No. 12957, 60 FR 14615 (March 15, 1995)).

Moreover, even § 8772 requires that this Court make certain judicial determinations prior to ordering turnover: that no party has a constitutional, beneficial or equitable interest in the property at issue. In connection with making these determinations, the Court has allowed many submissions; the many felled trees required for this Court to plow through are evidence of that process.

Finally, Clearstream's argument that turnover would violate Equal Protection also fails. The law is clear that legislation is presumed valid and will be upheld so long as it is reasonably related to a legitimate state interest. See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985). There can be no serious dispute that §8772 furthers the United States' legitimate interest in furthering its foreign policy with respect to Iran. Clearstream's argument that §8772 unjustly discriminates against foreign intermediaries fails. The legislation is presumed valid – foreign intermediaries are entitled to no special treatment.

iii. UBAE's Arguments

UBAE is in no different a position – it is another layer of stakeholder trying to shield Bank Markazi from turnover. Nowhere does UBAE assert – nor could it – that it is the true beneficial owner of the Blocked Assets. Indeed, it disclaims any

legally cognizable interest. At most, it is a layer in the sandwich built to try and interfere with execution on those assets. Even if UBAE can control the Blocked Assets, that control is irrelevant; it simply fits within E.O. 13599's provision for a person acting "directly or indirectly" on behalf of Iran.

Nor has the notice given UBAE been deficient; it has been served with all motion papers and its counsel have attended the conferences in this action. UBAE makes no additional arguments here that could credibly change the outcome of this motion with respect to it, nor to the other defendants. As a mere agent of Bank Markazi, then, the Blocked Assets held in the name of UBAE are subject to turnover.

iv. Defendants' other arguments against turnover

Defendants' final array of arguments in opposition to this motion were already dispensed with on the basis of § 8772.

Defendants argue that (1) if this Court found that the assets are Bank Markazi's, allowing execution thereon would violate the Treaty of Amity; (2) if the assets are those "of" Bank Markazi, then plaintiffs have failed to demonstrate that there is no triable issue as to whether, under the FSIA §1611(b)(1), they are assets used for central bank purposes; (3) that Bank Markazi is immune from pre-judgment and post-judgment attachment and that immunity cannot be waived, and (4) a variety of arguments regarding whether the assets are theoretically located in Luxembourg and not New York.

None of these arguments succeed. The Court specifically refers to earlier discussions relating to the arguments above. Section 8772 explicitly states the congressional intent that Iran be held accountable for the judgments against it. Importantly, the statute explicitly refers to those assets at issue in this action. Accordingly, Congress has itself swept aside defendants' final arguments.

On a motion for summary judgment, the Court must determine whether there is a triable issue of fact precluding turnover. As discussed above, there is not. Bank Markazi–the central bank of Iran–has repeatedly asserted it is the sole beneficial owner of the assets. No other party can raise a triable issue as to that, the ultimate question. And on the evidence in this record, no rational juror could find otherwise.

Plaintiffs' motion for partial summary judgment is granted.

VI. BLAND MOTION FOR EXECUTION

As a final matter, the Bland judgment creditors present a motion for execution under 28 U.S.C. § 1610.[20] The Bland group already possesses a § 1610 order, issued October 4, 2012, by the U.S. District Court for the District of Columbia. See Order, Estate of Steven Bland, et al, v. Islamic Republic of Iran, et al, 05-cv-2124 (RCL)(D.D.C. Oct. 4, 2012), ECF No. 84. They seek an additional order within this District.

[20] The Bland creditors are the plaintiffs in Estate of Steven Bland, et al, v. Islamic Republic of Iran, et al, 05-cv-2124 (RCL)(D.D.C.).

While the Court expresses no opinion as to the necessity of a § 1610(c) order in a TRIA action,[21] the Bland creditors make a sufficient showing for an order of execution under § 1610(c). That section of FSIA provides for execution of a valid judgment against an instrumentality of a terrorist state where (1) the Court "determine[s] that a reasonable period of time has elapsed following the entry of judgment", and (2) proper "notice required under section 1608(e)" has been given. 28 U.S.C. § 1610(c). Under § 1608(e), a defaulting foreign sovereign must be served in accordance with one of several methods, including "by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state . . . to the Secretary of State" for transmittal via diplomatic note. 28 U.S.C. §§ 1608(a),(e).

The Bland judgment meets both of the § 1610(c) requirements. Claimants present a valid default judgment against Iran dated December 12, 2011. (Bland Mot. for Entry of Order Pursuant to 28 U.S.C. § 1610(c) ("Bland § 1610(c) Mot."), Ex. A, ECF No. 305.) Service on Iran via the Department of State was completed on July 4, 2012, in accordance with 28 U.S.C. § 1608(a). See Aff. of Service, Estate of Steven Bland, et al. v. Islamic Republic of Iran, et al, 05-cv-2124 (RCL)(D.D.C. Aug. 13, 2012), ECF No. 82. The Government of Iran has had more than 100 days as of the date of this Opinion and Order in which to respond to the Bland judgment; it has not. This period is reasonable for the purposes of § 1610(c). See, e.g., Gadsby &

[21] The Peterson plaintiffs have argued in separate briefing that no § 1610(c) order is required to execute under TRIA. (See Pls.' Summ. J. Reply at 54-57.) As the Court finds that the requirements of § 1610(c) are met with respect to the Bland creditors, it need not address the order's relevance to TRIA.

Hannah v. Socialist Republic of Romania, 698 F. Supp. 483, 486 (S.D.N.Y. 1988) (two months constitutes a "reasonable period of time" under § 1610(c)); Ferrostaal Metals v. S.S. Lash Pacifico, 652 F. Supp. 420, 423 (S.D.N.Y. 1987) (three months constitutes reasonable time under § 1610(c)).

The Bland creditors' motion for an order of attachment and/or turnover pursuant to 28 U.S.C. § 1610 is granted. They may proceed to collection of the Bland Judgment by attachment and/or execution, or by any other means permitted by applicable law against the assets of the Islamic Republic of Iran and the Iranian Ministry of Information and Security, in accordance with 28 U.S.C. §§ 1610(a),(b).

CONCLUSION

For these reasons and set forth more fully above, the following motions are DENIED:

- UBAE's Motion to Dismiss;
- Clearstream's Motion to Dismiss;
- Bank Markazi's Motion to Dismiss;
- Clearstream's Motion to Vacate the Restraints and Renewed Motion to Vacate the Restraints;

For the reasons set forth above, the following motions are GRANTED:

- Plaintiffs' Motion for Partial Summary Judgment;
- The Bland judgment creditors' motion for execution;

The parties shall confer and jointly and, not later than March 15, 2013, submit a proposed schedule to resolve the remainder of the case. If the parties are

unable to agree, they shall set forth in a letter by the same date the matters and issues which they believe remain to be resolved and each party's proposed schedule.

The Clerk of Court is directed to close the motions at ECF Nos. 174, 205, 209, 295, 299 (under seal), 301, and 305 (under seal).

SO ORDERED.

Dated: New York, New York
February 28, 2013

K. B. Forrest

KATHERINE B. FORREST
United States District Judge

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)

ADDENDUM B

Non-Binding Issues To Be Raised On Appeal

1. Whether the District Court erred in holding that 22 U.S.C. § 8772 is constitutional.

   Standard of Review: *De novo.* U.S. v. Desposito, 704 F.3d 221, 229 (2d Cir. 2013).

2. Whether the District Court erred in holding that the Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, Aug. 15, 1955, 8 U.S.T. 899, does not preclude turnover of the Assets at Issue pursuant to 22 U.S.C. § 8772 and/or section 201 of the Terrorism Risk Insurance Act of 2002 ("TRIA"), codified as a note to 28 U.S.C. § 1610.

   Standard of Review: *De novo.* Swarna v. Al-Awadi, 622 F.3d 123, 132 (2d Cir. 2010).

3. Whether the District Court erred in holding that application of TRIA section 201 to require turnover of the Assets at Issue does not raise any non-justiciable political question.

   Standard of Review: *De novo,* as a question of law. Bah v. Mukasey, 529 F.3d 99, 110 (2d Cir. 2008); Custer County Action Ass'n v. Garvey, 256 F.3d 1024, 1030-31 (10th Cir. 2001).

4. Whether the District Court erred in holding that the Assets at Issue meet the statutory requirements for turnover pursuant to TRIA section 201.

Standard of Review: *De novo.* U.S. v. Robles, 709 F.3d 98, 99 (2d Cir. 2013)

5. Whether the District Court erred in holding that it was unnecessary to determine whether the Assets at Issue are immune from attachment and execution as the property of a foreign central bank held for its own account pursuant to section 1611(b)(1) of the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1611(b)(1), and that the FSIA does not otherwise preclude turnover of the Assets at Issue.

   Standard of Review: *De novo.* NML Capital, Ltd. v. Republic of Argentina, 680 F.3d 254, 256-57 (2d Cir. 2012).

Annex 59

***Levin et al. v. Bank of New York et al.*, U.S. District Court, Southern District of New York, 10 October 2013, No. 09 Civ. 5900 (S.D.N.Y. 2013)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEREMY LEVIN and DR. LUCILLE LEVIN, *Plaintiffs,* *-against-* BANK OF NEW YORK, JPMORGAN CHASE, SOCIETE GENERALE and CITIBANK, *Defendants.* *Truncated Caption*	**(FILED PARTIALLY UNDER SEAL PURSUANT TO ORDER DATED JANUARY 21, 2010)** Case No. 09 Civ. 5900 (RPP) (MHD) **[~~PROPOSED~~] JUDGMENT AND ORDER DIRECTING TURNOVER OF FUNDS AND DISCHARGE**

WHEREAS, on August 29, 2012, plaintiffs Jeremy Levin and Dr. Lucille Levin (collectively, the "Levins"), third-party defendants Steven Greenbaum, *et al.* (the "Greenbaum Judgment Creditors"), Carlos Acosta, *et al.* (the "Acosta Judgment Creditors"), and the Estate of Michael Heiser, *et al.* (the "Heiser Judgment Creditors") (collectively, the "Judgment Creditors[1]") filed a joint motion for partial summary judgment on their claims for turnover of certain blocked assets among those designated by the Court for inclusion in Phase Two of the above-captioned interpleader proceedings (the "Motion") (ECF Doc. No. 763). The blocked assets sought by the Motion are among those that this Court has previously designated as the Phase Two Blocked Assets, [redacted] and are detailed more fully in Annex A hereto, and are currently held by defendants and third-party plaintiffs JPMorgan Chase Bank, N.A. and JPMorgan Chase & Co. (together, "JPMorgan"), The Bank of New York Mellon ("BNYM"), Citibank, N.A. ("Citibank"), and Société Générale ("SoGen") (collectively,

[1] The Judgment Creditors are more specifically identified in Annex B hereto.

the "Garnishee Banks" or "Defendant Banks"). Those blocked assets, including accrued interest thereon, are referred to herein as the "Phase Two Assets";

WHEREAS, on October 15, 2012, SoGen filed a response to the Motion (ECF Doc. No. 803);

WHEREAS, on October 15 and 16, 2012, JPMorgan and BNYM filed responses to the Motion, which responses included a joint memorandum of law (ECF Doc. No. 804);

WHEREAS, on October 22, 2012, Citibank filed a response to the (ECF Doc. No. 815);

WHEREAS, more than 200 commercial third-party defendants were interpleaded by the Garnishee Banks in Phase Two of these proceedings and duly served with third-party summonses and complaints by the Judgment Creditors on the Garnishee Banks' behalf (the "Commercial Third-Party Defendants[2]");

WHEREAS, one Commercial Third-Party Defendant, [redacted], filed a formal opposition to the Motion [redacted];

WHEREAS, in addition to the above-referenced Commercial Third-Party Defendants, the Garnishee Banks also interpleaded numerous other judgment creditors of the Islamic Republic of Iran ("Iran") and plaintiffs with claims pending against Iran, including, the plaintiff groups known in these proceedings, respectively, as the Peterson, Rubin, Weinstein, Owens, Valore, Sylvia, Bland, Brown, Murphy, and Bennett judgment creditors (collectively, the "Other Judgment Creditors[3]");

[2] The Commercial Third-Party Defendants are more specifically identified in Annex C hereto.

[3] The Other Judgment Creditors are more specifically identified in Annex D hereto.

WHEREAS, none of the Other Judgment Creditors filed any oppositions to the Motion;

WHEREAS, the Court held a hearing on the Motion and the oppositions to the Motion on November 13, 2012;

WHEREAS the Court issued an Opinion and Order, dated September 19, 2013, and entered on the public docket in redacted form on September 23, 2013 (the "Opinion and Order"), granting the Motion, which Opinion and Order is incorporated by reference herein;

WHEREAS, the Court held in the Opinion and Order that the Judgment Creditors hold a priority interest in, and are entitled to turnover of, the Phase Two Assets, which assets consist of the proceeds from wire transfers or deposit accounts blocked pursuant to blocking regulations issued by the Office of Foreign Assets Control ("OFAC") of the United States Treasury Department held at Citibank (the "Citibank Phase Two Assets"), JPMorgan (the "JPMorgan Phase Two Assets"), BNYM (the "BNYM Phase Two Assets"), and SoGen (the "SoGen Phase Two Assets"), all as more specifically set forth on Annex A (collectively, the "Phase Two Assets");

WHEREAS, for purposes of this Judgment and Order Directing Turnover of Funds and Discharge, the blocked account held at JPMorgan in the principal amount of [redacted], which was the subject of [redacted] opposition to the Motion, shall be referred to as the [redacted];

WHEREAS, the Court held in the Opinion and Order that the Defendant Banks were ordered to turn over the Phase Two Assets with accrued interest;

WHEREAS BNYM, SoGen, Citibank and JPMorgan, having commenced third-party proceedings seeking interpleader relief, as described above, pursuant to Rule 22 of the Federal Rules of Civil Procedure and other applicable provisions of law (the "Interpleader Proceedings"), and having brought before the Court in these proceedings all potential claimants to the Phase Two Assets, including the Greenbaum Judgment Creditors, Acosta Judgment Creditors and Heiser Judgment Creditors, as well as the Commercial Third-Party Defendants and Other Judgment Creditors, so that they could each assert claims to the Phase Two Assets, are entitled to an order discharging them from any and all liability with respect to any and all claims made by any party with regard to the Phase Two Assets, as more fully described below; and

WHEREAS the parties have agreed that BNYM, SoGen, Citibank and JPMorgan, having commenced the Interpleader Proceedings and brought before the Court in these proceedings all potential claimants to the Phase Two Assets, including the Greenbaum Judgment Creditors, Acosta Judgment Creditors and Heiser Judgment Creditors, as well as the Commercial Third-Party Defendants and Other Judgment Creditors, so that each could assert claims to the Phase Two Assets, shall receive an award of attorneys' fees and expenses in connection with the Interpleader Proceedings as they relate to the Phase Two Assets, to be paid from the Phase Two Assets as described more fully below.

NOW, THEREFORE, it is:

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is Granted.

2. Summary Judgment is entered in favor of the Judgment Creditors and against BNYM, SoGen, Citibank, JPMorgan, and [redacted] with respect to the Phase Two Assets.

3. The Opinion and Order is hereby incorporated by reference.

4. Subject to Paragraph 13 below, Citibank shall, within fourteen (14) days of the date of entry of this Judgment and Order, turn over the Citibank Phase Two Assets as follows:

A. One-third of the Citibank Phase Two Assets shall be paid to counsel for the Greenbaum and Acosta Judgment Creditors for the benefit of the Greenbaum and Acosta Judgment Creditors;

B. One-third of the Citibank Phase Two Assets shall be paid to counsel for the Levins for the benefit of the Levins; and

C. One-third of the Citibank Phase Two Assets shall be paid to counsel for the Heiser Judgment Creditors for the benefit of the Heiser Judgment Creditors.

5. Subject to Paragraph 13 below, JPMorgan shall, within fourteen (14) days of the date of entry of this Judgment and Order, turn over the JPMorgan Phase Two Assets (excluding the [redacted]) as follows:

A. One-third of the JPMorgan Phase Two Assets shall be paid to counsel for the Greenbaum and Acosta Judgment Creditors for the benefit of the Greenbaum and Acosta Judgment Creditors;

B. One-third of the JPMorgan Phase Two Assets shall be paid to counsel for the Levins for the benefit of the Levins; and

C. One-third of the JPMorgan Phase Two Assets shall be paid to counsel for the Heiser Judgment Creditors for the benefit of the Heiser Judgment Creditors.

6. Subject to Paragraph 13 below, BNYM shall, within fourteen (14) days of the date of entry of this Judgment and Order, turn over the BNYM Phase Two Assets as follows:

A. One-third of the BNYM Phase Two Assets shall be paid to counsel for the Greenbaum and Acosta Judgment Creditors for the benefit of the Greenbaum and Acosta Judgment Creditors;

B. One-third of the BNYM Phase Two Assets, shall be paid to counsel for the Levins for the benefit of the Levins; and

C. One-third of the BNYM Phase Two Assets, shall be paid to counsel for the Heiser Judgment Creditors for the benefit of the Heiser Judgment Creditors.

7. Subject to Paragraph 13 below, SoGen shall, within fourteen (14) days of the date of entry of this Judgment and Order, turn over the SoGen Phase Two Assets as follows:

A. One-third of the SoGen Phase Two Assets shall be paid to counsel for the Greenbaum and Acosta Judgment Creditors for the benefit of the Greenbaum and Acosta Judgment Creditors;

B. One-third of the SoGen Phase Two Assets shall be paid to counsel for the Levins for the benefit of the Levins; and

C. One-third of the SoGen Phase Two Assets shall be paid to counsel for the Heiser Judgment Creditors for the benefit of the Heiser Judgment Creditors.

8. If the United States Marshal at any time requests a fee relating to the Phase Two Assets, or if a dispute regarding any such fee request ever arises, the Judgment Creditors alone shall be responsible for the payment of any such fee or for resolving any such dispute. In addition, if a dispute at any time arises among the Judgment Creditors as to the allocation of the funds being turned over in accordance with this Judgment, the Judgment Creditors alone shall be responsible for the resolution of that dispute, and no Judgment Creditor shall have recourse of any kind as against any one or more of the Defendant Banks. The discharge granted to the Defendant Banks under paragraphs 9 and 10 of this Judgment shall be deemed to cover any of the circumstances described in this paragraph 8.

9. Upon turnover by Citibank, JPMorgan, BNYM and SoGen of the Citibank Phase Two Assets, the JPMorgan Phase Two Assets (excluding the [redacted]), the BNYM Phase Two Assets and the SoGen Phase Two Assets, respectively, Citibank, JPMorgan, BNYM and SoGen shall respectively be discharged and released from all liability and obligation of any nature to the Levins, the Heiser Judgment Creditors, the Greenbaum Judgment Creditors, the Acosta Judgment Creditors, the Commercial Third-Party Defendants, the Other Judgment Creditors, and any other person or entity with specific respect to the Citibank Phase Two Assets, the JPMorgan Phase Two Assets (excluding the [redacted]), the BNYM Phase Two Assets and the SoGen Phase Two Assets.

10. The Levins, the Heiser Judgment Creditors, the Greenbaum Judgment Creditors, the Acosta Judgment Creditors, the Commercial Third-Party Defendants, the Other Judgment Creditors, and all other persons and entities shall hereby be permanently restrained and enjoined, subsequent to the turnover by Citibank, JPMorgan, BNYM and SoGen of the Citibank Phase Two Assets, the JPMorgan Phase Two Assets (excluding the [redacted]), the BNYM Phase Two Assets and the SoGen Phase Two Assets, respectively, from instituting or pursuing any legal action or proceeding against Citibank, JPMorgan, BNYM or SoGen with respect to the Citibank Phase Two Assets, the JPMorgan Phase Two Assets (excluding the [redacted]), the BNYM Phase Two Assets and the SoGen Phase Two Assets.

11. Upon turnover of the Phase Two Assets, all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind served on, or delivered to, Citibank, JPMorgan, BNYM or SoGen, to the extent that they apply or attach to the Citibank Phase Two Assets, the JPMorgan Phase Two Assets, the BNYM Phase Two Assets or the SoGen Phase Two Assets, shall be vacated and null and void as to the Citibank Phase Two Assets, the JPMorgan Phase Two Assets, the BNYM Phase Two Assets, and the SoGen Phase Two Assets, respectively; provided, however, that this provision of this Judgment shall not vacate or nullify any such writ of execution, notice of pending action, restraining notice or other judgment creditor process with respect to any other funds, moneys, property, debts, assets or accounts, other than the Phase Two Assets.

12. Upon turnover of the Phase Two Assets, the Heiser Judgment Creditors are hereby ordered to withdraw their claims to the Phase Two Assets

[redacted]

(excluding the [redacted]), and only the Phase Two Assets (excluding the [redacted]), in the turnover proceedings styled: Estate of Michael Heiser, *et al.* v. The Bank of New York Mellon, *et al.*, Case No. 11-cv-0998 (RPP) (MHD) (S.D.N.Y.); Estate of Michael Heiser, *et al.* v. Citibank, N.A., Case No. 11-cv-1598 (VM) (MHD) (S.D.N.Y.); Estate of Michael Heiser, *et al.* v. JPMorgan Chase Bank, N.A., Case No. 11-cv-1606 (LTS) (MHD) (S.D.N.Y.). Upon resolution of the [redacted] as set forth in paragraph 14 herein, then the Heisers shall also withdraw their claims to the [redacted], and only the [redacted], in the turnover proceedings styled: Estate of Michael Heiser, *et al.* v. The Bank of New York Mellon, *et al.*, Case No. 11-cv-0998 (RPP) (MHD) (S.D.N.Y.); Estate of Michael Heiser, *et al.* v. Citibank, N.A., Case No. 11-cv-1598 (VM) (MHD) (S.D.N.Y.); Estate of Michael Heiser, *et al.* v. JPMorgan Chase Bank, N.A., Case No. 11-cv-1606 (LTS) (MHD) (S.D.N.Y.).

13. BNYM, SoGen, Citibank and JPMorgan have represented to the Judgment Creditors that they have collectively incurred approximately [redacted] in legal fees and expenses in connection with the Interpleader Proceedings as they relate to the Phase Two Assets. The parties have agreed that BNYM, SoGen, Citibank and JPMorgan shall collectively receive a total award of [redacted] for their attorneys' fees and expenses in connection with the Interpleader Proceedings as they relate to the Phase Two Assets, to be paid from the Phase Two Assets as follows: the Defendant Banks shall pay [redacted] from the Phase Two Assets to Stroock & Stroock & Lavan LLP to be held by Stroock & Stroock & Lavan LLP in escrow pending a joint

written instruction by the Defendant Banks as to how such monies shall be allocated among themselves. Upon receiving such joint instruction from all of the Defendant Banks, Stroock & Stroock & Lavan LLP shall pay the [redacted] pursuant to the joint written instructions within seven (7) days of receipt of such instruction. The payment of the [redacted] for the Defendants Banks' attorneys' fees and expenses in connection with the Interpleader Proceedings as they relate to the Phase Two Assets shall not be, and shall not be deemed to be, a payment for the benefit of the Judgment Creditors and shall not reduce any of the Judgment Creditors' judgments. The parties have agreed that such payment shall be made in satisfaction of any and all claims made with respect to attorneys' fees and expenses in connection with the Interpleader Proceedings as they relate to the Phase Two Assets, but that nothing in this Judgment and Order shall preclude BNYM, SoGen, Citibank or JPMorgan from making an application for, or recovering, attorneys' fees and expenses in connection with the Interpleader Proceedings as they relate to assets other than the Phase Two Assets. Nor shall anything in this Judgment and Order preclude any of the parties from opposing, in whole or in part, any such application by BNYM, SoGen, Citibank and JPMorgan, and such rights of the parties are hereby preserved and not waived.

14. The [redacted] shall remain a blocked account at JPMorgan under the applicable OFAC regulations until the earlier of the following: (a) the failure of the [redacted] to file a notice of appeal before the expiration of the appeal period under the Federal Rules of Appellate Procedure or written notice by [redacted] before the expiration of the appeal period under the Federal Rules of Appellate Procedure to the Judgment Creditors and JPMorgan that [redacted] shall not be taking an appeal (the "Appeal

Expiration"); or (b) the resolution of an appeal brought by [redacted] with this Court's judgment being affirmed on appeal by the United States Court of Appeals for the Second Circuit and/or the United States Supreme Court, as applicable (the "Affirmance"). Upon the occurrence of the earlier of the Appeal Expiration or the Affirmance, then within fourteen (14) days thereafter JPMorgan shall turn over the [redacted] as follows:

A. One-third of the [redacted] shall be paid to counsel for the Greenbaum and Acosta Judgment Creditors for the benefit of the Greenbaum and Acosta Judgment Creditors;

B. One-third of the [redacted] shall be paid to counsel for the Levins for the benefit of the Levins; and

C. One-third of the [redacted] shall be paid to counsel for the Heiser Judgment Creditors for the benefit of the Heiser Judgment Creditors.

Upon JPMorgan's payment of the funds in the [redacted] (i) to the Judgment Creditors (in the event of an Appeal Expiration or an Affirmance) or (ii) to CBN (in the event of a reversal, no longer subject to appeal, of that part of this Judgment and Order that applies to the [redacted]), then JPMorgan shall be discharged and released from all liability and obligations with respect to the [redacted]. as to any and all persons or entities, in accordance with paragraphs 9 and 10 of this Judgment and Order. That discharge shall be deemed a final judgment, within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure, in accordance with paragraph 15 of this Judgment and Order.

15. This Judgment and Order is a final judgment, within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure, and there is no just reason for delay in the entry of it as a final judgment. This Judgment finally disposes of all claims asserted by the Judgment Creditors, and by all other parties that have or could have asserted claims, as to the Phase Two Assets.

16. This Judgment and Order shall be filed under seal, but a redacted version of this Judgment and Order, redacted to eliminate account numbers, names and any dollar amounts held in particular accounts, shall be electronically filed by counsel for the Garnishee Banks.

17. This Court shall retain jurisdiction over this matter to enforce a violation of this Judgment and Order's terms.

18. Subject to the entry of this Judgment and Order and based upon their agreement to the terms of this Judgment and Order, the Garnishee Banks and Judgment Creditors waive any right to appeal from any part of this Judgment and Order.

SO ORDERED.

Dated: New York, New York
October 9, 2013

United States District Judge

JUDGMENT CREDITORS

JUDGMENT CREDITOR GROUP	PLAINTIFF
Levin Plaintiffs and Judgment Creditors	Jeremy Levin
Levin Plaintiffs and Judgment Creditors	Dr. Lucille Levin
Greenbaum Judgment Creditors	Steven M. Greenbaum (on his own behalf and as Administrator of the Estate of Judith (Shoshana) Lillian Greenbaum)
Greenbaum Judgment Creditors	Alan D. Hayman
Greenbaum Judgment Creditors	Shirlee Hayman
Acosta Judgment Creditors	Carlos Acosta
Acosta Judgment Creditors	Maria Acosta
Acosta Judgment Creditors	Tova Ettinger
Acosta Judgment Creditors	The Estate of Irving Franklin
Acosta Judgment Creditors	The Estate of Irma Franklin
Acosta Judgment Creditors	Baruch Kahane
Acosta Judgment Creditors	Libby Kahane (on her own behalf and as Administratrix of the Estate of Meir Kahane)
Acosta Judgment Creditors	Ethel J. Griffin (as Administratrix of the Estate of Binyamin Kahane)
Acosta Judgment Creditors	Norman Kahane (on his own behalf and as Executor of the Estate of Sonia Kahane)
Acosta Judgment Creditors	Ciporah Kaplan
Heiser Judgment Creditors	The Estate of Michael Heiser, deceased
Heiser Judgment Creditors	Gary Heiser
Heiser Judgment Creditors	Francis Heiser
Heiser Judgment Creditors	The Estate of Leland Timothy Haun, deceased
Heiser Judgment Creditors	Ibis S. Haun
Heiser Judgment Creditors	Milagritos Perez-Dalis
Heiser Judgment Creditors	Senator Haun
Heiser Judgment Creditors	The Estate of Justin R. Wood, deceased
Heiser Judgment Creditors	Richard W. Wood
Heiser Judgment Creditors	Kathleen M. Wood
Heiser Judgment Creditors	Shawn M. Wood
Heiser Judgment Creditors	The Estate of Earl F. Cartrette, Jr., deceased
Heiser Judgment Creditors	Denise M. Eichstaedt
Heiser Judgment Creditors	Anthony W. Cartrette
Heiser Judgment Creditors	Lewis W. Cartrette
Heiser Judgment Creditors	The Estate of Brian McVeigh, deceased
Heiser Judgment Creditors	Sandra M. Wetmore
Heiser Judgment Creditors	James V. Wetmore
Heiser Judgment Creditors	the Estate of Millard D. Campbell, deceased
Heiser Judgment Creditors	Marie R. Campbell
Heiser Judgment Creditors	Bessie A. Campbell
Heiser Judgment Creditors	The Estate of Kevin J. Johnson, deceased

Heiser Judgment Creditors	Shyrl L. Johnson
Heiser Judgment Creditors	Che G. Colson
Heiser Judgment Creditors	Kevin Johnson, a minor, by his legal guardian Shyrl L. Johnson
Heiser Judgment Creditors	Nicholas A. Johnson, a minor, by his legal guardian Shyrl L. Johnson
Heiser Judgment Creditors	Laura E. Johnson
Heiser Judgment Creditors	Bruce Johnson
Heiser Judgment Creditors	The Estate of Joseph E. Rimkus, deceased
Heiser Judgment Creditors	Bridget Brooks
Heiser Judgment Creditors	James R. Rimkus
Heiser Judgment Creditors	Anne M. Rimkus
Heiser Judgment Creditors	The Estate of Brent E. Marthaler, deceased
Heiser Judgment Creditors	Katie L. Marthaler
Heiser Judgment Creditors	Sharon Marthaler
Heiser Judgment Creditors	Herman C. Marthaler III
Heiser Judgment Creditors	Matthew Marthaler
Heiser Judgment Creditors	Kirk Marthaler
Heiser Judgment Creditors	The Estate of Thanh Van Nguyen, deceased
Heiser Judgment Creditors	Christopher R. Nguyen
Heiser Judgment Creditors	The Estate of Joshua E. Woody, deceased
Heiser Judgment Creditors	Dawn Woody
Heiser Judgment Creditors	Bernadine R. Beekman
Heiser Judgment Creditors	George M. Beekman
Heiser Judgment Creditors	Tracy M. Smith
Heiser Judgment Creditors	Jonica L. Woody
Heiser Judgment Creditors	Timothy Woody
Heiser Judgment Creditors	The Estate of Peter J. Morgera, deceased
Heiser Judgment Creditors	Michael Morgera
Heiser Judgment Creditors	Thomas Morgera
Heiser Judgment Creditors	The Estate of Kendall Kitson, Jr., deceased
Heiser Judgment Creditors	Nancy R. Kitson
Heiser Judgment Creditors	Kendall K. Kitson
Heiser Judgment Creditors	Steve K. Kitson
Heiser Judgment Creditors	Nancy A. Kitson
Heiser Judgment Creditors	The Estate of Christopher Adams, deceased
Heiser Judgment Creditors	Catherine Adams
Heiser Judgment Creditors	John E. Adams
Heiser Judgment Creditors	Patrick D. Adams
Heiser Judgment Creditors	Michael T. Adams
Heiser Judgment Creditors	Daniel Adams
Heiser Judgment Creditors	Mary Young
Heiser Judgment Creditors	Elizabeth Wolf
Heiser Judgment Creditors	William Adams
Heiser Judgment Creditors	The Estate of Christopher Lester, deceased

Heiser Judgment Creditors	Cecil H. Lester
Heiser Judgment Creditors	Judy Lester
Heiser Judgment Creditors	Cecil H. Lester, Jr.
Heiser Judgment Creditors	Jessica F. Lester
Heiser Judgment Creditors	The Estate of Jeremy A. Taylor, deceased
Heiser Judgment Creditors	Lawrence E. Taylor
Heiser Judgment Creditors	Vickie L. Taylor
Heiser Judgment Creditors	Starlina D. Taylor
Heiser Judgment Creditors	The Estate of Patrick P. Fennig, deceased
Heiser Judgment Creditors	Thaddeus C. Fennig
Heiser Judgment Creditors	Catherine Fennig
Heiser Judgment Creditors	Paul D. Fennig
Heiser Judgment Creditors	Mark Fennig

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OTHER JUDGMENT CREDITORS

The Plaintiffs listed in the action entitled *Judith Abasi Mwila, et al. v. The Islamic Republic of Iran, et al.*, Civil Action No. 08-01377 (JDB)(D.D.C.)
The Plaintiffs listed in the action entitled *James Owens, et al. v. Republic of Sudan, et al.*, Civil Action No. 01-02244 (JDB)(D.D.C.)
The Plaintiffs listed in the action entitled *Khaliq, et al. v. Republic of Sudan, et al.*, Civil Action No. 10 CV 356 (D.D.C.)
The Plaintiffs listed in the action entitled *Rizwan Khaliq, et al. v. Republic of Sudan, et al.*, Civil Action No. 08-01273 (JDB)(D.D.C.)
The Plaintiffs listed in the action entitled *Peterson, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 01-2094 (RCL)(D.D.C.)
The Plaintiffs listed in the action entitled *Rubin, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 01-1655 (RCL)(D.D.C.)
The Plaintiffs listed in the action entitled *Valore, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 03-1959 (RCL)(D.D.C.)
The Plaintiffs listed in the action entitled *Lolita M. Arnold, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 06-516 (RCL)(D.D.C.)
The Plaintiffs listed in the action entitled *Lynne Michol Spencer, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 06-750 (RCL)(D.D.C.)
The Plaintiffs listed in the action entitled *Bonk, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 08-1273 (RCL)(D.D.C.)
The Plaintiffs listed in the action entitled *Weinstein, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 00-2601 (RCL)(D.D.C.)
The Plaintiffs listed in the action entitled *Estate of Anthony K. Brown, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 08-0531 (RCL)(D.D.C.)
The Plaintiffs listed in the action entitled *Estate of Stephen B. Bland, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 05-2124 (RCL)(D.D.C.)

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Annex 60

***Levin et al. v. Bank of New York et al.*, U.S. District Court, Southern District of New York, 31 October 2013, No. 09 Civ. 5900 (S.D.N.Y. 2013)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEREMY LEVIN and DR. LUCILLE LEVIN, *Plaintiffs,* -*against*- BANK OF NEW YORK, JPMORGAN CHASE, SOCIETE GENERALE and CITIBANK, *Defendants.* *Truncated Caption*	**(FILED PARTIALLY UNDER SEAL PURSUANT TO ORDER DATED JANUARY 21, 2010)** Case No. 09 Civ. 5900 (RPP) (MHD) **[PROPOSED] JUDGMENT AND ORDER DIRECTING TURNOVER OF FUNDS AND DISCHARGE**

WHEREAS, on September 12, 2013, plaintiffs Jeremy Levin and Dr. Lucille Levin (collectively, the "Levins"), third-party defendants Steven Greenbaum, *et al.* (the "Greenbaum Judgment Creditors"), Carlos Acosta, *et al.* (the "Acosta Judgment Creditors"), and the Estate of Michael Heiser, *et al.* (the "Heiser Judgment Creditors") (collectively, the "Judgment Creditors"[1]) filed a joint motion for partial summary judgment on their claims for turnover of certain blocked assets among those designated by the Court for inclusion in Phase Three of the above-captioned interpleader proceedings (the "Motion") (ECF Doc. No. 917). The blocked assets sought by the Motion including accrued interest thereon (the "Subject Assets," detailed more fully in Annex A hereto) are among those that this Court has previously designated as the Phase Three Blocked Assets, [redacted] and are currently held by defendant and third-party plaintiff JPMorgan Chase Bank, N.A. ("JPMCB") (JPMCB and defendant and third-party plaintiff JPMorgan Chase & Co ("JPMC") being at times referred to collectively as "JPMorgan");

[1] The Judgment Creditors are more specifically identified in Annex B hereto.

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WHEREAS, on September 27, 2013, JPMCB and JPMC filed a response to the Motion (ECF Doc. No. 930), noting that they did not oppose the Motion so long as they received a discharge as to the Subject Assets and recovered their legal fees and expenses incurred in Phase Three of these proceedings;

WHEREAS, by their Amended and Supplemental Third-Party Complaint Against Judgment Creditors of Iran, Plaintiffs Suing Iran, and Account and Wire Transfer Parties (Phase 3), dated October 10, 2012, JPMCB and JPMC interpleaded the Judgment Creditors and various other parties believed by them to potentially possess claims to, or right with respect to, *inter alia*, the Subject Assets, including: (1) [redacted] (collectively, the "Commercial Third-Party Defendants"); (2) judgment debtors the Islamic Republic of Iran ("Iran"), the Iranian Ministry of Information and Security, and the Iranian Islamic Revolutionary Guard Corp (collectively, the "Iranian Third-Party Defendants"); and (3) other judgment creditors of Iran and plaintiffs with claims pending against Iran, including the plaintiff groups known in these proceedings, respectively, as the Peterson, Rubin, Weinstein, Owens, Valore, Sylvia, Bland, Brown, Murphy, and Bennett judgment creditors (collectively, the "Other Judgment Creditors[2]," and together with the Commercial Third-Party Defendants and the Iranian Third-Party Defendants, the "Other Third-Party Defendants");

WHEREAS, each of the Other Third Party Defendants was duly served with process and thereby interpleaded in Phase Three of these proceedings (*see* Decl. of Curtis Mechling in Support of Motion, dated September 12, 2013 ("Mechling Decl.) (ECF Doc. No. 918), Exs. 1, 2; Certificate of Service filed by JPMorgan on October 10, 2012 (ECF Doc. No. 794); Certificate of

[2] The Other Judgment Creditors are more specifically identified in Annex C hereto.

Service filed by JPMorgan on February 13, 2013 (ECF Doc. No. 876); Affidavit of Service filed by JPMorgan on February 13, 2013 (ECF Doc. No. 877); Certificates of Service filed by JPMorgan on February 20, 2013 (ECF Doc. Nos. 882-85); Affidavit of Service filed by JPMorgan on February 22, 2013 (ECF Doc. No. 888); Certificate of Service filed by JPMorgan on March 8, 2013 (ECF Doc. No. 891); Letter to Clerk of Court from William P. Fritzlen, dated July 9, 2013 (ECF Doc. No. 908));

WHEREAS, [redacted] appeared in this action only to disclaim any and all interest in the Subject Assets and, on February 15, 2013, entered into a Stipulation, Order and Judgment of Dismissal (ECF Doc. No. 887), by which [redacted] disclaimed any and all interest in the Phase Three Assets, and JPMorgan dismissed all claims against [redacted];

WHEREAS, of the remaining Other Third-Party Defendants, only the Bennett, Valore, Bland, Brown, Peterson and Murphy plaintiffs filed answers to JPMorgan's Phase Three third-party complaint (*see* ECF Doc. Nos. 821, 834, 839, 850 and 889); however, all of those parties have since disclaimed any and all interest in the Subject Assets and/or have voluntarily withdrawn their claims to such assets;

WHEREAS, none of the Other Third-Party Defendants filed an opposition to the Motion or otherwise cross-moved for turnover of the Subject Assets, nor did any of those parties appear for oral argument on the Motion at the hearing held by the Court on October 4, 2013, except counsel for the Peterson plaintiffs, in *Peterson v. Iran*, et. al, Civil Action No. 01-2094, in the United States District Court for the District of Columbia (collectively, the "Petersons"), who agreed in open court at the hearing to withdraw their claims to all assets that are the subject of this action and have disclaimed any interest in or claims to all such assets, including the Subject Assets;

WHEREAS, the Court previously determined in the Order Granting the Levin Plaintiffs and the Greenbaum, Acosta and Heiser Judgment Creditors' Joint Motion for Partial Summary and Turnover of Phase One Assets and Entering Partial Final Judgment Directing Turnover of Funds and Discharging Garnishee Banks from Liability (ECF Doc. No. 412) (the "Phase One Order") that Iran is a "state sponsor of terrorism" within the meaning of §§ 1605(a)(7) and 1605A of the Foreign Sovereign Immunity Act ("FSIA"), 28 U.S.C. §§ 1605(a)(7) and 1605A, and a "terrorist party" within the meaning of § 201 of the Terrorism Risk Insurance Act ("TRIA"), codified as a note to § 1610 of the FSIA;

WHEREAS, the Court previously determined in the Phase One Order that the Judgment Creditors all hold valid judgments entered against Iran pursuant to either §§ 1605(a)(7) or 1605A of the FSIA and registered in the Southern District of New York;

WHEREAS, the Subject Assets constitute [redacted], all of which have been placed in blocked accounts pursuant to regulations propounded by the Department of Treasury, Office of Foreign Assets Control ("OFAC");

WHEREAS, the Court has previously determined that [redacted] are instrumentalities of Iran (*see* Phase One Order; Judgment and Order Directing Turnover of Funds and Discharge (ECF Doc. 936) (the "Phase Two Order"));

WHEREAS, the Subject Assets constitute blocked assets belonging to Iran or an agency and/or instrumentality of Iran and are properly subject to execution pursuant to § 1610 of the FSIA and TRIA, codified as a note thereto;

WHEREAS, this Court has previously found that the Judgment Creditors collectively possess a priority interest in the blocked assets interpleaded by JPMorgan in these proceedings, including the Subject Assets;

WHEREAS, the Judgment Creditors are entitled to summary judgment and an order and judgment directing the turnover of the Subject Assets;

WHEREAS, the Court held a hearing on the Motion on October 4, 2013;

WHEREAS the Court granted the Motion at the hearing and awarded turnover of the Subject Assets to the Judgment Creditors;

WHEREAS JPMCB and JPMC, having commenced third-party proceedings seeking interpleader relief, as described above, pursuant to Rule 22 of the Federal Rules of Civil Procedure and other applicable provisions of law (the "Interpleader Proceedings"), and having brought before the Court in these proceedings all potential claimants to the Phase Three Assets, including the Judgment Creditors and the Other Third-Party Defendants, so that those potential claimants could each assert claims to the Subject Assets, are entitled to an order discharging them from any and all liability with respect to any and all claims made by any party with regard to the Subject Assets, as more fully described below; and

WHEREAS the Judgment Creditors and JPMorgan have agreed that JPMorgan, having commenced the Interpleader Proceedings and brought before the Court in these proceedings all potential claimants to the Phase Three Assets, including the Judgment Creditors and the Other Third-Party Defendants, so that each could assert claims to the Subject Assets, shall receive an award of attorneys' fees and expenses in connection with the Interpleader Proceedings as they relate to the Subject Assets, to be paid from the Subject Assets as described more fully below.

NOW, THEREFORE, it is:

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is Granted.

2. Summary Judgment is entered in favor of the Judgment Creditors and against JPMorgan with respect to the Subject Assets.

3. The Court hereby finds or reaffirms the facts set forth in the preceding "WHEREAS" clauses and incorporates those facts herein by reference.

4. Subject to Paragraph 11 below, JPMorgan shall, within fourteen (14) days of the date of entry of this Judgment and Order, turn over the Subject Assets as follows:

A. One-third of the Subject Assets shall be paid to counsel for the Greenbaum and Acosta Judgment Creditors for the benefit of the Greenbaum and Acosta Judgment Creditors;

B. One-third of the Subject Assets shall be paid to counsel for the Levins for the benefit of the Levins; and

C. One-third of the Subject Assets shall be paid to counsel for the Heiser Judgment Creditors for the benefit of the Heiser Judgment Creditors.

5. If the United States Marshal at any time requests a fee relating to the Subject Assets, or if a dispute regarding any such fee request ever arises, the Judgment Creditors alone shall be responsible for the payment of any such fee or for resolving any such dispute. In addition, if a dispute at any time arises among the Judgment Creditors as to the allocation of the funds being turned over in accordance with this Judgment, the Judgment Creditors alone shall be responsible for the resolution of that dispute, and no Judgment Creditor shall have recourse of any kind as against JPMorgan. The discharge granted to JPMorgan under paragraphs 6 and 7 of this Judgment shall be deemed to cover any of the circumstances described in this paragraph 5.

6. Upon turnover by JPMCB of the Subject Assets, JPMCB and JPMC shall be discharged and released from all liability and obligation of any nature to the Levins, the Heiser Judgment Creditors, the Greenbaum Judgment Creditors, the Acosta Judgment Creditors, the Commercial Third-Party Defendants, the Other Judgment Creditors, the Iranian Third-Party Defendants, and any other person or entity with specific respect to the Subject Assets.

7. The Levins, the Heiser Judgment Creditors, the Greenbaum Judgment Creditors, the Acosta Judgment Creditors, the Other Third-Party Defendants, and all other persons and entities shall hereby be permanently restrained and enjoined, subsequent to the turnover by JPMCB of the Subject Assets, from instituting or pursuing any legal action or proceeding against JPMCB or JPMC with specific respect to the Subject Assets.

8. Upon turnover of the Subject Assets, all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind served on, or delivered to JPMorgan, to the extent that they apply or attach to the Subject Assets, shall be vacated and null and void as to the Subject Assets, provided, however, that this provision of this Judgment shall not vacate or nullify any such writ of execution, notice of pending action, restraining notice or other judgment creditor process with respect to any other funds, moneys, property, debts, assets or accounts, other than the Subject Assets.

9. This Judgment and Order does not affect in any way the Petersons' claims to any other assets – other than the Subject Assets and the other Phase 3 Assets as defined in, and identified in Exhibit A to JPMorgan's October 10, 2012 Amended Answer and Third-Party Complaint in this action – that are or become the subject of any other enforcement proceeding to recover other assets of Iran

10. Upon turnover of the Subject Assets, the Heiser Judgment Creditors are hereby ordered to withdraw their claims to the Subject Assets, and only the Subject Assets, in the turnover proceeding styled Estate of Michael Heiser, *et al.* v. JPMorgan Chase Bank, N.A., Case No. 11-cv-1606 (LTS) (MHD) (S.D.N.Y.).

11. The parties have agreed that JPMorgan shall receive an award of [redacted] for their reasonable attorneys' fees and expenses in connection with the Interpleader Proceedings as they relate to the Phase Three Blocked Assets, including the Subject Assets, to be paid from the Subject Assets as follows: JPMorgan shall pay [redacted] from the Subject Assets to Stroock & Stroock & Lavan LLP to be held by Stroock & Stroock & Lavan LLP in escrow pending a written instruction by the JPMorgan to pay such money to JPMorgan. Upon receiving such instruction from all JPMorgan, Stroock & Stroock & Lavan LLP shall pay the [redacted] pursuant to the written instruction within seven (7) days of receipt of such instruction. The parties have agreed that such payment shall be made in satisfaction of any and all claims made with respect to attorneys' fees and expenses in connection with the Interpleader Proceedings as they relate to the Phase Three Blocked Assets, including the Subject Assets, but that nothing in this Judgment and Order shall preclude JPMorgan from making an application for, or recovering, attorneys' fees and expenses in connection with the Interpleader Proceedings as they relate to assets other than the Subject Assets; provided, however, that to the extent the Judgment Creditors seek in the future the turnover of Phase Three Blocked Assets other than the Subject Assets, JPMorgan shall limit any such application for attorneys' fees and expenses to those incurred after the entry of this Judgment and Order. Nor shall anything in this Judgment and Order preclude any of the parties from opposing, in whole or in part, any such application by JPMorgan, and such rights of the parties are hereby preserved and not waived.

12. This Judgment and Order is a final judgment, within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure, and there is no just reason for delay in the entry of it as a final judgment. This Judgment finally disposes of all claims asserted by the Judgment Creditors, and by all other persons or entities that have or could have asserted claims, as to the Subject Assets.

13. This Judgment and Order shall be filed under seal, but a redacted version of this Judgment and Order, redacted to eliminate account numbers, confidential names and any dollar amounts held in particular accounts, shall be electronically filed by counsel for JPMorgan.

14. Subject to the entry of this Judgment and Order and based upon their agreement to the terms of this Judgment and Order, JPMorgan and the Judgment Creditors waive any right to appeal from any part of this Judgment and Order.

15. This Court shall retain jurisdiction over this matter to enforce a violation of this Judgment and Order's terms.

SO ORDERED.

Dated: New York, New York
October 31, 2013

United States District Judge

Annex 61

***Ministry of Defense of Iran et al. v. Cubic Defense Systems et al.*, U.S. District Court, Southern District of California, 27 November 2013, 984 F. Supp. 2d 1070 (S.D. Cal. 2013)**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MINISTRY OF DEFENSE AND SUPPORT FOR THE ARMED FORCES OF THE ISLAMIC REPUBLIC OF IRAN, Petitioner, vs. CUBIC DEFENSE SYSTEMS, INC., Respondent, and JENNY RUBIN, et al.; and FRANCE RAFII, Lien Claimants.	CASE NO. 98-CV-1165-B (DHB) ORDER GRANTING LIEN CLAIMANTS' MOTION TO ATTACH CUBIC JUDGMENT [Doc. No. 222]

This motion concerns an attempt by ten American citizens[1] to collect judgments against the Islamic Republic of Iran ("Iran") for personal injuries arising out of the country's terrorist activities. The Lien Claimants seek to attach the $2.8 million judgment that the Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran (hereinafter "MOD" or "MODSAF") obtained in this

[1]Jenny Rubin, Deborah Rubin, Daniel Miller, Abraham Mendelson, Stuart E. Hersh, Renay Frym, Noam Rozenman, Elana Rozenman, Tzvi Rozenman, and France M. Rafii (hereinafter collectively referred to as "Lien Claimants").

arbitration case.[2] MOD opposes the motion by invoking its sovereign immunity as well as its rights under the Algiers Accords, an international agreement between Iran and the United States. Declaration of the Government of the Democratic and Popular Republic of Algeria, U.S.–Iran, 20 I.L.M. 224 (Jan. 1981). In addition to extensive briefing by the parties,[3] the United States Department of Justice filed a Statement of Interest. Doc. No. 277; 28 U.S.C. § 517. The Court heard oral argument on January 8, 2013.

Having carefully considered the arguments of counsel and the governing law, the Court holds that Lien Claimants are entitled to the relief they seek. The Court holds that the Cubic Judgment is subject to attachment under § 201 of the Terrorism Risk Insurance Act of 2002 ("TRIA") , as well as § 1610(g) of the Foreign Sovereign Immunities Act of 1976 ("FSIA"). The Court does not at this time release the funds, which are on deposit with the Clerk of the Court. The Court stays *disbursement* of funds pending appeal, but *title* to the funds is immediately vested in the Lien Claimants (in a manner to be determined by a future Order). Also, the Lien Claimants must submit additional information.

I. BACKGROUND

After two decades adjudicating the dispute in various forums, the parties are well-acquainted with the facts, thus, the Court describes only those essential to the pending motion. The first section summarizes the facts underlying the $2.8 million Cubic Judgment in MOD's favor; the second background section describes the terrorism-related judgments held by the Lien Claimants against Iran.

A. Military Equipment Contracts and the Cubic Judgment

In 1977, while the Shah governed Iran, Cubic Defense Systems, Inc.

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[2]With accrued interest and the addition of attorneys' fees, over $9.4 million is available. *See* Doc. Nos. 208, 235, 287, 294.

[3]The Court grants MOD leave to file its supplemental brief late. Doc. No. 288. Recently, the Lien Claimants submitted an unauthorized supplemental brief. Doc. No. 297; Civ. LR 7.1(e)(7). The Court has read the brief, but it does not raise any issue that warrants further briefing or discussion.

("Cubic") entered into two contracts to sell and maintain an air combat maneuvering range system ("ACMR") to MOD.[4] The contracts had arbitration clauses and were governed by Iranian law. MOD's Request for Judicial Notice, Ex. C ¶¶ 2.6, 7.4 (hereinafter "Final Award"). By October 1978, Iran had paid over $12 million of the purchase price and modest sums on the service contract. *Id.* ¶ 2.2; *MOD v. Cubic*, 29 F. Supp. 2d 1168, 1170 (S.D. Cal. 1998).[5] By February 1979, Cubic obtained export permits and was poised to transfer ownership of the equipment to Iran.

In November 1979, the Iranian revolution – which replaced the monarchy with the theocratic Islamic Republic of Iran, disrupted foreign relations with the United States, and culminated in the hostage crisis at the American Embassy – permanently prevented full performance of the military equipment contracts. Final Award ¶¶ 8.3, 8.8, 8.12, 8.18; *see generally MOD v. Gould Inc.*, 887 F.2d 1357 (9th Cir. 1989) (describing American foreign policy implications of revolution in Iran).

In 1991, MOD initiated arbitration proceedings with the International Chamber of Commerce ("ICC"). The ICC found that the parties agreed to discontinue the contracts in light of the Islamic revolution, and reached a modified agreement that allowed Cubic to sell the ACMR to another country. Final Award ¶¶ 9-10. "Depending on the result of the attempt to resell the System, either [Iran] became entitled to be (partly) reimbursed for the payments it had made to Cubic, or Cubic became entitled to claim, in balance, an additional payment from Iran." *Id.* ¶ 11.28. In the Fall of 1982, Cubic sold the military equipment to Canada, yet Cubic

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[4]The original contracts were entered into by predecessors, but their former names are immaterial.

[5]In the interest of brevity, the Court omits the extensive subsequent history from citations to earlier published decisions in this same action, including: *MOD v. Cubic*, 29 F. Supp. 2d 1168 (S.D. Cal. 1998) and *MOD v. Cubic*, 236 F. Supp. 2d 1140 (S.D. Cal. 2002), *aff'd on other grounds*, 385 F.3d 1206 (9th Cir. 2004), *vacated and remanded by MOD v. Elahi*, 546 U.S. 450 (2006) (per curiam), *on remand*, 495 F.3d 1024 (9th Cir. 2007), *rev'd*, 556 U.S. 366 (2009), *on remand*, 665 F.3d 1091 (9th Cir. 2011).

ignored Iran's requests for an accounting.[6] *E.g., id.* ¶¶ 6.1, 10.8, 16.1(h); *Elahi*, 556 U.S. at 372 (observing "that Cubic had not lived up this modified agreement"). In May 1997, the ICC held that Cubic owed MOD $2.8 million plus interest and costs. Final Award ¶ 21.

In 1998, MOD filed a petition to confirm the arbitration award. This Court confirmed the arbitration award on December 7, 1998.[7] *MOD*, 29 F. Supp. 2d 1168. The "Cubic Judgment" was entered on August 10, 1999.

After years of appeals, the contract dispute is now resolved and the funds have been deposited with this Court.[8]

B. Lien Claimants Seek to Satisfy Terrorism-Related Judgments[9]

1. Claimant France M. Rafii

In 2001, Rafii, a United States citizen, sued Iran and the Ministry of Information and Security ("MOIS") for the wrongful death of her father Dr.

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[6]The record is not entirely clear, but it appears that Canada expressed interest in buying the equipment in 1981, and the sale was completed in 1982. *Compare Elahi*, 556 U.S. at 1737 (arbitrators found that Cubic sold system in September 1981) *and* MOD's Opp. Br. at 13 n.2 (stating Cubic sold equipment to Canada on September 16, 1981) *with Elahi*, 556 U.S. at 1739 (Cubic completed sale to Canada in October 1982).

[7]The Honorable Rudi M. Brewster presided over the district court proceedings from 1998 until his death in 2012. The parties consented to have the under-signed judge dispose of the remaining motions. Doc. Nos. 259, 265, 269.

[8]Regulations bar transfer of funds to Iran, thus, Cubic applied for, and in March 2012, received a license from Office of Foreign Assets Control ("OFAC") of the Department of the Treasury. Doc. No. 203, Ex. C; *see generally Rubin v. Islamic Republic of Iran*, 709 F.3d 49, 55 (1st Cir. 2013) ("OFAC is responsible for administering sanctions imposed" by President); MOD's Request for Judicial Notice, Ex. E (Decl. of Dir. Newcomb describes function of OFAC). The license permits the judgment funds to be held by the Clerk of the Court; and, depending upon the outcome of the case, the OFAC license permits the funds to be deposited into a blocked bank account in MOD's name *or* distributed to successful Lien Claimants under TRIA. Doc. No. 201. At the hearing, Cubic renewed its request to be relieved of its reporting obligations. *See* Doc. No. 235 (denying Cubic's request to shift administrative burden to Court). The Court finds no basis to shift the duties to any other party than the licensee. Thus, Cubic shall maintain its license with OFAC.

[9]Rafii currently holds the senior lien, followed by the Rubin Claimants. Prior liens by Stephen Flatlow and Daniel Elahi were resolved in prior appeals. *Elahi*, 556 U.S. 366; *see* Doc. Nos. 40 & 67. The Peterson claimants have not pursued their junior lien. *See* Doc. No. 171. The *Estate of Heiser* withdrew its motion. Doc. Nos. 208, 214, 219.

Shapour Bakhtiar, the former prime minister of Iran. Compl. *Rafii v. Islamic Republic of Iran*, No. 01-CV-850-CKK (D.D.C. filed Apr. 18, 2001), ECF No. 1.[10] Rafii filed suit pursuant to the terrorism exception in FSIA based on her allegation that agents of Iran assassinated Dr. Bakhtiar for his political opposition to the Islamic regime. 28 U.S.C. § 1605(a)(7) (2006) (repealed in 2008 and replaced by 28 U.S.C. § 1605A). Defendants did not appear.

In 2002, the Honorable Colleen Kollar-Kotelly conducted a two-day bench trial; made the necessary factual, jurisdictional, and statutory findings; and entered default judgment against Iran for $5 million compensatory damages. Order & Findings of Fact and Conclusions of Law *Rafii*, 01-CV-850-CKK (D.D.C. filed Dec. 2, 2002), ECF 21 (also awarding compensatory and punitive damages against MOIS).[11]

In 2003, Rafii filed a notice of lien on the Cubic Judgment.[12] Doc. No. 124. She attached a copy of the registered default judgment and served MOD's counsel in this action. *Id.* at 4 & Ex. A.

2. The Nine Rubin Claimants

Using the then-existing terrorism exception to FSIA, 28 U.S.C. § 1605(a)(7), the Rubin suit was filed in 2001 based upon a suicide bomb attack by Hamas at a pedestrian mall in Jerusalem in 1997. Compl. *Rubin v. Islamic Republic of Iran*, No. 01-CV-1655-RMU (D.D.C. filed July 31, 2001), ECF No. 1 (hereinafter *Rubin*, No. 01-CV-1655-RMU). Several American citizens were injured, and nine pursue

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[10]The Court viewed the Lien Claimants' court documents in PACER. Fed. R. Evid. 201; *Ben-Rafael v. Islamic Republic of Iran*, 718 F. Supp. 2d 25, 31 (D.D.C. 2010).

[11]FSIA § 1608(a)(3) permits service of the complaint on the United States Department of State. The docket on PACER shows that Rafii took advantage of that method and that the Clerk served the complaint on the Department of State which then served Iran through diplomatic channels. There is no indication, however, that the default judgment was served on Iran as required by § 1608(e).

[12]Both Rafii and Rubin listed Cubic's appeal bond, however, the Court exonerated the bond in 2012, thus, this request is moot. Doc. No. 235.

the Cubic Judgment (hereinafter the "Rubin Claimants"). These include five who were present at the bombing (J. Rubin, Miller, Mendelson, Hersh, and N. Rozenman), and four relatives who sought pain and suffering damages (D. Rubin, Frym, E. Rozenman, and T. Rozenman). Iran and its co-defendants (MOIS and three senior officials) did not appear.

In 2003, the Honorable Ricardo M. Urbina of the District of Columbia District Court conducted an evidentiary hearing before concluding that Defendants provided terrorist training and other material assistance to the bombers. *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258 (D.D.C. 2003) (findings of fact & conclusions of law in consolidated actions, including the Rubin claimants). The Court entered default judgment in 2003. Order & Judgment *Rubin v. Islamic Republic of Iran*, No. 01-CV-1655-RMU (D.D.C. filed Sept. 10, 2003), ECF No. 23. The Court ordered Iran to pay the nine Rubin Claimants compensatory damages ranging from $2.5 million to $15 million. *Campuzano*, 281 F. Supp. 2d at 275-77.[13]

In 2008, Congress repealed § 1605(a)(7) and replaced it with an improved cause of action § 1605A to sue foreign terrorists. National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083, 122 Stat. 3 (2008). The amendment permitted plaintiffs with a pending terrorism-related lawsuit to ask the court to give their case "effect as if the action had originally been filed" under the new provision. *Id.* § 1083(c)(2)(A) (Application to Pending Cases). The Rubin

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[13]The docket on PACER shows that the complaint was served on Iran by various means. In 2004, as instructed by Judge Urbina, the Clerk served the translated default judgment on the State Department for service on Iran. § 1608(e). The 2008 Order was not served on Iran. However, FSIA does not require service of post-judgment documents on a foreign state in default. *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1129-30 & n.5 (9th Cir. 2010); *Estate of Heiser v. Islamic Republic of Iran*, 807 F. Supp. 2d 9, 23 (D.D.C. 2011).

As of July 2008, the Rubin Claimants had collected $400,000 on their judgment. Pls.' Motion at 2 *Rubin*, Case No. 01-CV-1655-RMU (D.D.C. filed Mar. 28, 2008), ECF 76; *cf. Rubin*, 709 F.3d 49 (rejecting attempt to attach museum assets); *Bank of New York v. Rubin*, 484 F.3d 149 (2d Cir. 2007) (per curiam) (denying motion to attach bank accounts).

plaintiffs promptly took advantage of the opportunity because their case was still pending as defined by the statute. *Id.*; Motion Pursuant to § 1083(c)(2) *Rubin*, No. 01-CV-1655-RMU (D.D.C. filed Mar. 28, 2008), ECF No. 76. In June 2008, the District Court granted the motion. Memorandum Order at 2 n.3, 5, *Rubin*, No. 01-CV-1655-RMU (D.D.C. filed June 3, 2008) (noting "seven-year litigious saga" that included remand to resolve the pending motion pursuant to Fed. R. Civ. P. 60(b)), ECF No. 81.

In 2003, and as amended in 2009, the nine Rubin Claimants filed a notice of lien totaling $71.5 million.[14] Doc. Nos. 130 & 145. MOD's attorney was served with both versions of the notice and a copy of the 2003 default judgment. Doc. Nos. 130 at 42 & Ex. B, 144, & 145, Ex. A.

Now before the Court is the joint motion by Lien Claimants to attach the Cubic Judgment to satisfy a portion of their default judgments against Iran. The motion to attach is a simple matter as MOD does not contest that Lien Claimants complied with the procedural requirements. The complexities arise from MOD's assertion of sovereign immunity and its reliance on the Algiers Accords. As in the past, "[d]etermining the viability of MOD's claim requires us to follow a labyrinthine path through several statutes and regulations." *MOD*, 385 F.3d at 1214.

II. LEGAL PRINCIPLES

A. Algiers Accords

In the course of the Iranian revolution, Iran took hostages at the American Embassy in Tehran in November 1979. President Carter responded by issuing Executive Order 12170, which "blocked all property and interests in property of the Government of Iran." Exec. Order 12170 (Nov. 14, 1979). The International Emergency Economic Power Act ("IEEPA") authorizes the President to block any

[14] As discussed below, the Rubin Claimants may rely on the broad exception to attachment immunity in § 1610(g), which Congress added to FSIA in 2008.

property interest of a foreign country to deal with an "unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States." 50 U.S.C. §§ 1701(a), 1702(a). "The frozen assets serve as a 'bargaining chip' to be used by the President when dealing with a hostile country." *Dames & Moore v. Regan*, 453 U.S. 654, 673-74 (1981).

The Department of Treasury's OFAC immediately promulgated the Iranian Assets Control Regulations ("IACR") to execute the sanction. 31 C.F.R. pt. 535; 44 Fed. Reg. 65956-01 (Nov. 15, 1979). In particular, the IACR states that "[n]o property subject to the jurisdiction of the United States or which is in the possession of or control of persons subject to the jurisdiction of the United States in which on or after the effective date Iran has any interest of any nature whatsoever may be transferred, paid, exported, or withdrawn or otherwise dealt in except as authorized." 31 C.F.R. § 535.201 (2013). The freeze took effect on November 14, 1979.

On January 19, 1981, the United States settled the hostage crisis and entered the Algiers Accords with Iran. The United States promised to ensure that Iran would recover its frozen assets. "General Principle A" states:

> Within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, the United States *will restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979*. In this context, the United States commits itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9.

MOD's Request for Judicial Notice, Ex. A (emphasis added). Paragraph 9 provides that the United States would arrange for the transfer of all Iranian property, located in the United States, as would have been allowed before November 14, 1979. *Id.*

In addition, Article II established the Iran–United States Claims Tribunal (hereinafter "Tribunal") "to resolve disputes between the two nations concerning each other's performance under the Algiers Accord." *Elahi*, 556 U.S. at 371. The Tribunal has jurisdiction to interpret the agreement. MOD's Request for Judicial

Notice, Ex. A, Art. II(3). The Tribunal still has jurisdiction over Iran's claim that the United States should pay damages for failing to transfer the ACMR as required by the Algiers Accord. MOD's Request for Judicial Notice, Exs. A & F; *Elahi*, 556 U.S. at 371 (noting that Case No. B61 involves the military equipment built by Cubic but never exported from the United States to Iran); MOD's Opp. Br. at 6-7 (citing Contract No. 134 as the ACMR contracts between Iran and Cubic).[15]

To comply with the Algiers Accord, the United States lifted President Carter's 1979 sanction (Executive Order 12170) and unblocked Iranian assets. *See generally Elahi*, 556 U.S. at 370-71 (collecting citations to regulations); *Rubin*, 709 F.3d at 55-56 (reviewing history); *Weinstein v. Islamic Republic of Iran*, 299 F. Supp. 2d 63, 65-68 (S.D.N.Y. 2004) (same); MOD's Request for Judicial Notice, Ex. E (OFAC's Director Newcomb describes history of Iran sanctions and regulations). The Department of Treasury amended the IACR to reflect the settlement. 46 Fed. Reg. 14336 (Feb. 26, 1981). For example, OFAC issued a general license authorizing transactions involving property in which Iran's interest arose after January 19, 1981, the date of the Algiers Accord. *Elahi*, 556 U.S. at 370-71 (citing 31 C.F.R. § 535.579(a)).

B. Foreign Sovereign Immunities Act of 1976

The Iranian government is protected by sovereign immunity. *Saudi Arabia v.*

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[15]In January 1982, Iran filed two cases in the Tribunal relating to the Cubic contracts. One claim has been resolved. *Elahi*, 556 U.S. at 371.

In Case No. B66, the Tribunal held that it did not have jurisdiction over Cubic and that the contracts did not impose obligations on the United States. MOD's Request for Judicial Notice, Ex. B ¶ 11; *Elahi*, 556 U.S. at 31-72. The Tribunal dismissed Case No. B66 in April 1987. That decision freed MOD to pursue its contract claims against Cubic in arbitration.

In the second case, the Tribunal held that the United States could prohibit the export of military equipment, but it had an "implicit obligation" to compensate Iran for any losses caused by its failure to issue export licenses on military equipment owned by Iran. MOD's Request for Judicial Notice, Ex. D ¶¶ 112, 125, 133, 141, 183. The Tribunal found that Iran had to prove that it sustained a financial loss, and that part of the B61 claim is still pending. *Id.* ¶¶ 170, 180.

Further, the United States contends that any money Iran collects from Cubic will be deducted from any money the United States might owe Iran in the B61 claim. *Id.*, Ex. G. Iran disputes this setoff argument. MOD Opp. Br. at 13-14 n.2; Doc. No. 277 at 12.

Nelson, 507 U.S. 349, 355 (1993) ("[A] foreign state is presumptively immune from suit in United States' courts."). Absent an exception in FSIA, 28 U.S.C. §§ 1602-1611, it cannot be sued in federal court nor can its assets be attached to satisfy a judgment. *Saudi Arabia*, 507 U.S. at 355 (FSIA "provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country.") (quotation and citation omitted); *Rubin v. Islamic Republic of Iran*, 637 F.3d 783, 799 (7th Cir. 2011) ("immunity inheres in the property itself"), *cert. denied*, 133 S. Ct. 23 (June 25, 2012). A foreign state does not waive its immunity simply by failing to appear in court. *Walters v. Indus. & Commercial Bank of China, Ltd.*, 651 F.3d 280, 295-96 (2d Cir. 2011) (collecting cases).

FSIA governs the scope of sovereign immunity of a foreign state and its political subdivisions, agencies, and instrumentalities. 28 U.S.C. §§ 1602-1611. Because MOD is an inseparable part of the state of Iran, it qualifies as a "foreign state" within the meaning of FSIA § 1603(a). *MOD*, 495 F.3d at 1034-36; *Garb v. Republic of Poland*, 440 F.3d 579, 596 & n.21 (2d Cir. 2006) (as used in FSIA, "[t]he term 'political subdivisions' includes all governmental units beneath the central government"); *Reed v. Islamic Republic of Iran*, 845 F. Supp. 2d 204, 210 (D.D.C. 2012) (Ministry of Information is a political subdivision of Iran for purpose of FSIA) (citations omitted). In those instances when FSIA treats the foreign state and its political subdivisions differently than an agency or instrumentality,[16] MOD enjoys the same sovereign immunity afforded to the foreign state itself.[17]

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[16] *E.g.*, 28 U.S.C. § 1606 (punitive damages), § 1608 (service), § 1610 (attachment). Most of the differences disappear in terrorism-related lawsuits. *E.g.*, §§ 1605A, 1610(a)(7), (b)(2), (f), (g) & note (TRIA).

[17] The Ninth Circuit held that MOD is not an "agency or instrumentality" of a foreign state. *MOD*, 495 F.3d at 1034-36 (citing *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 151 (D.C. Cir. 1994) (a country's air force performs the inherently sovereign act of providing military defense; by contrast, an agency carries out private functions, such as commerce)); *see generally Garb*, 440 F.3d at 589-95 & nn. 14, 17, 19 (explaining core functions test in relation to power to wage war). As a result, Lien Claimants cannot rely on the companion exception from attachment

(continued...)

There are two types of immunity: (1) jurisdictional immunity (*i.e.*, a foreign state's immunity from being haled into an American court), §§ 1604-1607, and (2) attachment immunity (*i.e.*, its property in the United States is immune from "attachment arrest and execution"), §§ 1609-1611. *See generally Walters*, 651 F.3d at 286-90 (describing differences). The two components are not symmetrical. In some instances, FSIA "creates a right without a remedy" by allowing citizens to secure judgments against foreign states but not to seize assets to satisfy those judgments. *Id.* at 286-90 (criticizing policy); *Peterson*, 627 F.3d at 1128 (noting that "the exceptions to immunity from execution are more narrow than the exceptions from immunity from suit" because Congress intended "foreign states to voluntarily comply with U.S. court judgments"); *Heiser*, 807 F. Supp. 2d at 12-16, 18-19, 25-26 (same).

Historically, countries retained jurisdictional and attachment immunity for "'sovereign or public acts (*jure imperii*),'" but FSIA eliminated immunity for a foreign state's "'private acts (*jure gestionis*),'" which primarily means a country's commercial activities.[18] *MOD*, 495 F.3d at 1034 (quoting *Republic of Austria v. Altmann*, 541 U.S. 677, 690-91 (2004)); *e.g.*, 28 U.S.C. § 1602 (describing

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[17](...continued)
immunity in § 1610(b)(2) (allowing attachment of assets "of an agency or instrumentality *engaged* in commercial activity" regardless of whether the property is or was involved in the creditors' underlying cause of action) (emphasis added).

[18]The Ninth Circuit held that MOD has not "used" the Cubic Judgment for a "commercial activity," for example, by using it as security on a loan. *MOD*, 495 F.3d at 1036-37. Instead, "Iran intends to send the proceeds back to Iran for assimilation into MOD's general budget." *Id.* at 1037. The Ninth Circuit acknowledged that MOD engaged in commerce in 1977 when it entered the contracts to buy the ACMR from Cubic. The Court held, however, that the focus must be on the use of the asset in question. It found that the nexus was too attenuated to allow the Cubic Judgment to be attached based on the source of the funds. *MOD*, 495 F.3d at 1036-37. Consequently, the Ninth Circuit held that the Cubic Judgment cannot be attached pursuant to the § 1610(a)(7) exception for a foreign state's commercial activity. *See supra* footnote 17 (discussing commercial activity exception for an agency or instrumentality).

Conversely, courts have not allowed terrorism victims to attach diplomatic properties under any subsection of § 1610. *E.g.*, *Bennett v. Islamic Republic of Iran*, 604 F. Supp. 2d 152 (D.D.C. 2009), *aff'd*, 618 F.3d 19 (D.C. Cir. 2010).

international law), § 1603(d) (defining commercial activity), § 1609 (attachment immunity except as provided by statute); *see generally Saudi Arabia*, 507 U.S. at 360 ("a state engages in commercial activity . . . where it exercises only those powers that can also be exercised by private citizens, as distinct from those powers peculiar to sovereigns"); *Garb*, 440 F.3d at 585-88 (describing history of sovereign immunity and commercial activity exception).

More recently, Congress has responded to acts of international terrorism by removing jurisdictional and attachment immunity from foreign states that injure or kill United States citizens. *See generally In re Islamic Republic of Iran Terrorism Litig*., 659 F. Supp. 2d 31, 35, 49-58 (D.D.C. 2009) (describing Congress' response to efforts by victims to enforce default judgments against Iran); *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46, 59 (D.D.C. 2003) (in 1996, Congress lifted immunity for sovereign acts of terrorism "that are repugnant to the United States and the international community"). "'Those nations that operate in a manner inconsistent with international norms should not expect to be granted the privilege of immunity from suit, that is within the prerogative of Congress to grant or withhold.'" *Elahi v. Islamic Republic of Iran*, 124 F. Supp. 2d 97, 106 (D.D.C. 2000) (quoting *Daliberti v. Republic of Iraq*, 97 F. Supp. 2d 38, 50-52 (D.D.C. 2000)).

Over time, many plaintiffs successfully sued Iran for its sponsorship of violent terrorism. The long break in foreign relations, however, meant that Iran had few assets in the United States to satisfy the backlog of judgments. By 2009, Iran faced "billions of dollars in liability" for the injuries caused by its state sponsorship of terrorist activities, yet "the prospects for recovery are virtually nonexistent." *Iran Terrorism Litig*., 659 F. Supp. 2d at 58 (citing OFAC's Terrorist Assets Report of $9.6 billion in outstanding judgments against Iran but less than $55 million in known blocked and unblocked financial assets in the United States). Congress frequently amended the immunity statute in an attempt to remedy this situation.

Jennifer K. Elsea, Suits Against Terrorist States by Victims of Terrorism 2-3, 6-8, 17, 51, 98-102 (Beatrice V. Mohoney, ed., 2009). Lien Claimants' motion to attach relies on two of those modern amendments to FSIA: (1) TRIA, enacted in 2002, and (2) § 1610(g), added in 2008.[26]

1. Terrorism Risk Insurance Act of 2002

In 2002, Congress enacted the TRIA in an effort to further assist victims of terrorism collect compensation from hostile foreign actors. Pub. L. No. 107-297, § 201, 116 Stat. 2322 (Nov. 26, 2002); *e.g.*, 148 Cong. Rec. H. 6133, 6135-36 (2002) (remarks of Mr. Grucci, Mr. Oxley, Mr. Baker, & Mr. Watt); 148 Cong. Rec. H 6649, 6655 (2002) (remarks of Mr. Fossella); H.R. 107-779 (Nov. 13, 2002) (joint

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[26]In 1998, Congress amended FSIA to add § 1610(f) to allow terrorism victims to attach property "regulated" by the Departments of State and Treasury in connection with financial sanctions against foreign governments. Omnibus Consolidated & Emergency Supplemental Appropriations Act, Pub. L. 105-277, div. A, tit. I, § 117, 112 Stat. 2681 (Oct. 21, 1998). The Executive branch had identified and seized billions of dollars of foreign assets as part of its foreign policy negotiations. Congress wanted terrorism victims to have first right to those funds as a way to punish sponsors of terrorism. *E.g.*, 146 Cong. Rec. H 6963, 6937 (date) (remarks of Mr. Chabot describing circumstances).

Congress, however, acknowledged that the President needed flexibility to manage complex diplomatic relationships. Congress thus included a provision that allowed the President to "waive" § 1610(f). *Id.*, § 117(d); *accord* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, div. C, § 2002(f), 114 Stat. 1464 (Oct. 28, 2000). President Clinton immediately determined that national security interests would be impaired if those assets were redirected to satisfy terrorism-related judgments and invoked his power to waive the regulated-assets exception. 63 Fed. Reg. 59201 (Oct. 21, 1998) (Presidential Determination No. 99-1); *accord* 65 Fed. Reg. 66483 (Oct. 28, 2000) (Determination to Waive Attachment Provisions Relating to Blocked Property of Terrorist-List States).

Despite criticism, the Presidential waiver remains in place. *E.g., Hausler v. JP Morgan Chase Bank, N.A.*, 740 F. Supp. 2d 525, 538 n. 13 (S.D.N.Y. 2010) (citing 148 Cong. Rec. S 11528); *Flatlow v. Islamic Republic of Iran*, 76 F. Supp. 2d 16, 19, 25-27 (D.D.C. 1999) (President "intervened to forestall plaintiff Flatlow's ability to satisfy his judgment" when Congress gave the Executive that flexibility in "the oft-sensitive area of foreign relations"); H.R. Rep. No. 11-844, 2008 WL 4211130 at *6 (Sept. 15, 2008) ("While Congress has supported giving terrorism victims the right to obtain relief and to enforce judgments, the Executive Branch has been less supportive."). Consequently, the Ninth Circuit recognized that the regulated-assets exception to attachment immunity is not a viable option, even for those who hold terrorism-related judgments. *MOD*, 495 F.3d at 1031-32 n.8 (holding that the enactment of TRIA in 2002 did not "reinvigorate 1610(f)(a)(A) from President Clinton's waiver"); *accord Bennett*, 604 F. Supp. 2d at 161 (stating that § 1610(f) "remains a nullity"). Thus, even though the Cubic Judgment is regulated by an OFAC license, the Lien Claimants cannot rely on § 1610(f).

explanatory statement of the committee of conference); *see Heiser*, 807 F. Supp. 2d at 12-16, 18-19, 25-26 (surveying "complex regime" of laws that "unfortunately, more often prevented . . . FSIA plaintiffs from enforcing judgments"); *Hausler*, 740 F. Supp. 2d at 535-36 (the remedial purpose of TRIA to comprehensively address frustration of terrorism victims unable to enforce judgments is plain on face of statute and supported by legislative history). TRIA is codified as a note following FSIA § 1610 and currently states:

> Notwithstanding any other provision of law, and except as provided in subsection (b) [of this note], *in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism* or for which a terrorist party is not immune under 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008) of title 28, United States Code, *the blocked assets of that terrorist party* (including the blocked assets of any agency or instrumentality of that terrorist party) *shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages* for which such terrorist party has been adjudged liable.

28 U.S.C. § 1610 note (emphasis added).[27] Congress thereby expanded the ability of victims of terrorism to reach beyond commercial property to attach property frozen by a financial sanction. *See generally Iran Terrorism Litig.*, 659 F. Supp. 2d at 57-58 (describing TRIA); Elsea, *supra*, at 6-8, 17. The term "blocked asset" means "any asset seized or frozen by the United States under . . . the International Emergency Economic Powers Act (50 U.S.C. § 1701, 1702) . . . ." *Id.* (2)(A). TRIA directs that such assets "shall be subject to" attachment "notwithstanding any other provision of law." § 1610 note.

The term "terrorist party" includes a foreign state designated as a state sponsor of terrorism under the Export Administration Act of 1979. *Id.* The

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[27]The exception in subsection (b) gives the President the power to waive certain assets in the interest of national security. *Id.*; Elsea, *supra*, at 17. This provision allows the Executive branch the flexibility to mange complex diplomatic efforts. *See Dames & Moore*, 453 U.S. at 673. This provision is not at issue in this case as the Executive branch supports the Lien Claimants' efforts to attach the Cubic Judgment.

When Congress enacted TRIA in 2002, the terrorism exception to jurisdictional immunity was codified as § 1605(a)(7). In 2008, when Congress substituted § 1605A, it neglected to update this reference; however it corrected that discrepancy in 2012. Pub. L. 112-158, tit. V, § 502(e)(1)(A), 126 Stat. 1214 (Aug. 10, 2012).

Secretary of State designated Iran as a country that has repeatedly provided support for acts of international terrorism pursuant to the Export Administration Act. 50 U.S.C. App. § 2405(j); 31 C.F.R. § 596.201 (2013); *accord* Arms Export Control Act, 22 U.S.C. § 2780; 22 C.F.R. § 126.1(d) (2013); Foreign Assistance Act of 1961, 22 U.S.C. § 2371(a). Iran has been so designated since 1984 and that designation remains in place. 49 Fed. Reg. 2836-02 (Jan. 23, 1984); *MOD*, 495 F.3d at 1032; *Reed*, 845 F. Supp. 2d at 211; *Flatlow v. Islamic Republic of Iran*, 999 F. Supp. 1, 9 (D.D.C. 1998).

2. 2008 Amendment Adds § 1610(g)

In 2008, Congress made several changes to FSIA to enhance the remedies for terrorism victims. One significant change was to strengthen the terrorism exception to a foreign state's jurisdictional immunity. As discussed above, Congress replaced § 1605(a)(7) with § 1605A to improve access to federal court and the available remedies. National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, div. A, tit. X, § 1083(b)(3), 122 Stat. 3 (Jan. 28, 2008); *see generally Iran Terrorism Litig.*, 659 F. Supp. 2d at 36-41, 58-62 (describing improvements, such as permitting recovery of punitive damages); Elsea, *supra*, at 38-46, 99; *see supra* page 6.

In a second important change, Congress added § 1610(g) to expand the power of victims of state-sponsored terrorism to attach any property in the United States as long as the foreign state has "simple ownership" of the asset. 28 U.S.C. § 1610(g); *e.g.*, 154 Cong. Rec. S54-01, 2008 WL 182982 (Jan. 22, 2008) (remarks of Senator Lautenberg); H.R. Rep. 110-844, 2008 WL 4211130 at *8-9; *Heiser*, 807 F. Supp. 2d at 25-26 ("in crafting the broad remedial language of § 1610(g), Congress made no exceptions to its reach"); *Calderon-Cardona v. Democratic People's Republic of Korea*, 723 F. Supp. 2d 441, 458 (D. P.R. 2010) (stating that § 1610(g) "significantly eases enforcement of judgments entered under section 1605A"); Elsea, *supra*, at 41-44, 99-101.

III. ANALYSIS

A. The Algiers Accord

1. The Algiers Accord Does Not Prevent Attachment because MOD's Interest in the Asset in Question Arose after November 14, 1979

MOD argues that distribution of the Cubic Judgment to the Lien Claimants would violate the United States' foreign policy obligations in the Algiers Accord. MOD contends that the Court should give full effect to that Executive Agreement and consider the imperative importance of maintaining the United States' compliance with its international commitments. *Dames & Moore*, 453 U.S. at 660, 673; *Murray v. The Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804). The United States obligated itself to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979." MOD's Request for Judicial Notice, Ex. A. The purpose of the Algiers Accord was to retain the status quo of Iran's financial position *before* President Carter froze Iran's assets to punish the taking of American hostages. MOD argues that, prior to November 14, 1979, Iran's financial position included the amount of the ICC's Final Award on the Cubic contracts. According to MOD, the fund now held by this Court constitutes the net value of MOD's property rights in the military equipment, or alternatively, the monetary value of the contracts.

MOD grounds its argument on events that predate November 14, 1979. By late 1978, MOD had made significant payments on the sales contract ($12 million of the $17 million purchase price). By early 1979, Cubic had substantially completed building the ACMR and had secured an export license. Moreover, before the hostages were seized, the parties mutually agreed to modify the contracts and settle accounts later. *Elahi*, 556 U.S. at 372. Cubic's subsequent breach of that agreement – by failing to remit to MOD the proceeds of the 1982 sale of the ACMR to Canada – does not alter those basic facts. According to MOD, these facts establish its ownership interest by the date established in the Algiers Accord.

MOD further argues that those facts establish a legal right to the Cubic Judgment under Iranian law.[28] Iranian law governs the interpretation of the Cubic contracts. MOD states that Iranian law created an enforceable property right in 1977 (when MOD signed the contracts) or alternatively in 1978 (when the ACMR was produced under the terms of the contracts). *See* MOD's Request for Judicial Notice, Ex. F. Thus, MOD argues that the Cubic Judgment falls within the Algiers Accords as part of Iran's financial position that existed before November 14, 1979.

Consequently, MOD argues the Lien Claimants cannot attach the Cubic Judgment because the United States must honor its agreement and restore Iran to its pre-1979 financial position by ensuring the transfer of the $2.8 million award (plus accrued interest) to MOD (into a blocked bank account as required by current sanctions). *Dames & Moore*, 453 U.S. at 660.

The Court holds that the Algiers Accord does not bar the attachment of the Cubic Judgment in light of the United States Supreme Court's decision in *Elahi*, 556 U.S. 366.[29]

There, in an earlier appeal by a different lien claimant seeking to attach under TRIA, the Supreme Court held that Iran's interest in the Cubic Judgment *or* "the property that underlies" it first arose in October 1982. In *Elahi*, the Supreme Court emphasized that attachment depends upon properly identifying the "asset in question." *Id.* at 376. The asset in question is the Cubic Judgment enforcing the arbitration award – not Iran's interest in the ACMR, not MOD's right to pursue its legal remedies for breach of the 1977 contracts, and not the ICC's Final Award in

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[28]MOD also argues that United States law recognizes that Iran's ownership interest in the Cubic Judgment predates November 14, 1979. MOD relies on the Department of Treasury regulations implementing the Algiers Accord, specifically, 31 C.F.R. § 535.540. The Court addresses this separate argument in the next section.

[29]For an example of an action that did impair the United States' commitments to uphold the Algiers Accords, see the cases filed by former hostages. *Roeder v. Islamic Republic of Iran*, 333 F.3d 228 (D.C. Cir. 2003) (holding hostages could not sue Iran because Algiers Accord contained express provision prohibiting lawsuits arising out of hostage-taking); Elsea, *supra*, at 21-25.

favor of MOD.[30] *Id.* The Supreme Court found, at the earliest, that Iran's interest in the Cubic Judgment *itself* arose in 1998 when the district court confirmed the arbitration award. *Id.* The Supreme Court also acknowledged that Iran's interest could be characterized as "the property that underlies the Cubic Judgment," namely, the *proceeds* from the sale of the ACMR to Canada. *Id.* at 376-77. In that regard, the Supreme Court determined that Iran's claim to the proceeds of the military equipment contract arose, at the earliest, in October 1982, when Cubic was able to "reasonably, comprehensively, and precisely account" for the results of the agreement to resell the system to Canada. *Id.* at 376-77. Until the sale to the third party was accomplished, the amount of restitution, if any, could not be determined because Cubic was entitled to its expenses, a reasonable profit, and other compensation. *Id.* (citing ICC Final Award). The resale to Canada in 1982 was essential to transforming Iran's inchoate claim into a tangible, attachable asset.

This analysis defeats MOD's defense to the instant motion. Applying the *Elahi* analysis, "prior to November 14, 1979" (the date identified in the Algiers Accord), it was *uncertain* whether Iran *or* Cubic would be entitled to financial compensation on the contracts. *See id.* at 376. Hence, for the purpose of deciding the Lien Claimants' motion to attach, Iran's interest in the Cubic Judgment arose three years *after* the critical date for applying the Algiers Accord. Consequently, the Algiers Accord is not an obstacle to the relief sought by the Lien Claimants.

The United States supports this decision. In its Statement of Interest, the United States contends that "[n]othing in the Algiers Accords would prohibit the attachment of Iran's 1999 monetary judgment in this case." Doc. No. 277 at 10.

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[30]The distinction is sound. The military equipment cannot be the asset because it is no longer in the United States, having been sold and shipped to Canada in 1982. Neither the right to sue for an unascertainable amount of contract damages nor a final arbitration award can be attached. *E.g.*, Cal. Civ. P. § 483.010(a); *Jordan-Lyon Prods., Ltd. v. Cineplex Odeon Corp.*, 35 Cal. Rptr. 2d 200, 207 (Ct. App. 1994). By contrast, a court judgment enforcing an arbitration award is an asset that supports a lien. *E.g.*, *Jordan-Lyon*, 35 Cal. Rptr. 2d at 207.

The government's interpretation of its own agreement is entitled to "great weight." *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 184-85 & n.10 (1982); *see Altman*, 541 U.S. at 702 & n.23 (courts defer to Executive branch's opinion on issue of foreign policy in particular cases); *United States v. Lombera-Camorlinga*, 206 F.3d 882, 887 (9th Cir. 2000) (en banc) (courts ordinarily respect State Department's interpretation of a treaty that it negotiated); *Estate of Heiser v. Islamic Republic of Iran*, 885 F. Supp. 2d 429, 441 (D.D.C. 2012) (giving weight to Statement of Interest by Executive Branch on issue of foreign policy).

Consequently, the Court holds that the Algiers Accord does not prevent the Lien Claimants from attaching the Cubic Judgment.

2. Treasury Regulation 31 C.F.R. § 535.540(f)

MOD also contends that United States law recognizes Iran's ownership of the proceeds of the sale of the ACMR to Canada, even if realized after 1981. MOD argues that the proceeds of the ACMR sale are governed by 31 C.F.R. § 535.540(f) (defining "[t]he proceeds of [a] sale" as "property"). MOD contends this federal regulation requires the monies interpleaded by Cubic to be returned to Iran in accordance with the Algiers Accord.

MOD observes that the Supreme Court construed TRIA in relation to Treasury regulation 31 C.F.R. § 535.579 in order to review the Ninth Circuit's decision on the general license. *See Elahi*, 556 U.S. at 376-77; *MOD*, 385 F.3d at 1124. MOD now relies on a different section of the IACR. The Supreme Court did not address the requirements of § 535.540, therefore, MOD contends that the *Elahi* decision is not necessarily inconsistent with its current position.

The Department of Treasury enacted § 535.540 in July 1982 to handle situations where exporters, purchasing agents, or other Americans were holding tangible property that could not be transferred to Iran due to the freeze, but the property might deteriorate, decline in value, or incur expensive storage costs. 47 Fed. Reg. 31682 (July 22, 1982). The regulation created a new licensing procedure

to allow the goods to be sold at a public auction. In particular, the regulation governed "tangible properties as to which Iran did not possess complete or uncontested ownership rights under applicable provisions of U.S. law because of failure to pay the purchase price and other related charges." *Id.* Upon deducting reasonable costs, the licensee was required to deposit the contested funds into a "separate blocked, interest-bearing account at a domestic bank." § 535.540(d); *see* § 535.333(c) (stating that Iran's property interests can be considered "contested" if there is a reasonable belief and the opinion of an attorney "that Iran does not have title or has only partial title to the asset"). Nonetheless, the regulation required that Iran's uncontested share of the proceeds of such a sale to be transferred to Iran as promised in the Algiers Accords. § 535.540(f).

MOD contends that this regulation shows that United States law recognizes Iran's ownership of the ACMR system or the resale proceeds by the date of the Algiers Accord. MOD attempts to demonstrate that the regulation applies because (1) the ACMR was tangible property that President Carter blocked on November 14, 1979 and (2) Cubic contested ownership of the asset. [31] "If Iran had a share in the resale proceeds of the ACMR system, it means that it should have possessed a property interest in the asset itself in the first place, otherwise it could not have any share in the resale proceeds." MOD's Reply to U.S. at 4.

The Court is not persuaded by this argument. MOD's reliance on § 535.540 attempts to equate the funds now held by this Court either to the net value of the

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[31]MOD bolsters this argument by speculating that Cubic must have obtained a specific license from OFAC to sell the ACMR to Canada. 31 C.F.R. § 535.540(a); *e.g.* Kerekes Reply Decl., Ex. A (license to auction Iran's military equipment stored by Behring International, Inc.).

MOD served a subpoena on Cubic requesting a copy of the license. Doc. Nos. 285, 288. Cubic could not locate any such document. Doc. No. 289. At the hearing, MOD withdrew its request and deems the matter settled as to Cubic.

In addition, MOD asks the Court to order OFAC to produce this license. Because the United States is not a party to this case, the Court declines this request. In any event, such a license would have required Cubic to indemnify the United States for any damages awarded by the Tribunal. 31 C.F.R. § 535.540(a)(4). Assuming such a license exists, it would not advance MOD's argument in these judicial proceedings.

ACMR or to the proceeds of the sale of that military equipment to Canada. In *Elahi*, the Supreme Court rejected an analysis tied to the tangible asset of the ACMR. Instead, the Supreme Court analyzed Iran's property interest as either the Cubic Judgment itself or the proceeds of the Canadian sale. For the purpose of deciding a motion to attach, the Supreme Court identified the attached asset as one in which Iran's property interest did not arise until October 1982 at the earliest. This Court is bound by that characterization. MOD's reliance on § 535.540 fails to alter the outcome: Iran's financial interest in the attached asset arose *after* the effective date of the Algiers Accord (January 19, 1981).

Moreover, the *Elahi* decision determined that the Cubic Judgment did not have the status of a blocked asset up to the date of the Ninth Circuit's decision in mid-2007. *Elahi*, 556 U.S. at 377-78. Instead, the Supreme Court concluded the Cubic Judgment was governed by the general license in § 535.579. *Id.* at 377. It follows that the Cubic Judgment was not, at that time, "blocked by § 535.201" so as to require the specific license outlined in § 535.540(a). Thus, this regulation is not relevant to the facts.

3. The Tribunal has Jurisdiction to Interpret the Algiers Accord and to Enforce the United States' Obligations

In addition, the Court observes that MOD's arguments concerning the Algiers Accord are directed at the United States. *E.g.*, MOD's Opp. Br. at 10-13 & n.1; MOD's Response to United States Br. 2-6; MOD's Sur-Reply Br. at 2-7; MOD's Reply Br. at 2-6. The United States is not a party to this action. It filed a written statement as a courtesy to the Court. The Court is deciding the separate issue of whether the Lien Claimants can attach the Cubic Judgment. To the extent that MOD contends that the United States breached the Algiers Accord, the Court notes that the United States' obligations can be determined in Iran's pending Case No. B61. *See supra* footnote 15. The B61 case includes Iran's claim for compensation from the United States for military equipment owned by Iran on or before

November 1979. *See MOD*, 495 F.3d at 1030-31 (distinguishing between Cubic's contractual obligations and United States' obligations). The Tribunal has jurisdiction over the United States and has the power to craft an appropriate remedy to enforce the international agreement. The Tribunal is the proper venue to resolve whether the United States' duty to "restore the financial position of Iran" under the Algiers Accord includes compensation for the ACMR.[32] The Court expresses no opinion on the merits of the dispute between Iran and the United States in Case No. B61. *See* Doc. 277 at 11-12 (discussing setoff dispute).

B. Lien Claimants Can Attach the Cubic Judgment under TRIA because it is a Blocked Asset on the Date of this Decision

Lien Claimants satisfy several preliminary requirements of TRIA. First, it has been established that Iran is a "state sponsor of terrorism" and a "terrorist party." *See supra* pages 14-15. Second, the record shows that Lien Claimants seek to

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[32]In particular, the following arguments are more appropriately addressed to the Tribunal in relation to the United States' obligations to Iran.

(1) To the extent that MOD contends the United States breached it obligations to ensure the transfer of all "property" as implemented by 31 C.F.R. § 535.540(f), the Tribunal has the authority to decide if the regulation complies with United States' commitments in the Algiers Accord. *See* MOD's Request for Judicial Notice, Ex. A ¶ 4 (noting that Tribunal held certain Treasury Regulations "unlawful" in Case No. A15); Doc. No. 85, Ex. 1 ¶ 77 (Tribunal's decision in Case No. A15 finds certain Treasury Regulations inconsistent with United States' commitments in Algiers Declarations).

(2) MOD relies on the Tribunal's Partial Award in Case No. B61 to argue that the ICC award constitutes the net value of Iran's "financial position" as reflected either by the military equipment or the receipt of the replacement value for that asset. MOD cites the Tribunal's definition of"financial position" as "the assets and liabilities at a certain point in time." MOD's Request for Judicial Notice, Ex. D ¶¶ 143-44. The Tribunal explained that "it is only those legally enforceable rights and obligations that are capable of assessment in monetary terms that are taken into account." *Id.* Under that test, MOD argues that, before 1979, Iran's "financial position" on the Cubic contracts, "measured in monetary terms," was its "net asset position." *See id.*

(3) MOD raises an equitable argument that Iran has owned the equipment since 1978/1979 once it made substantial payments and Cubic obtained the export license, and that Iran should not be punished now for Cubic's failure to timely perform its obligations and the delay caused by years of litigation. 31 C.F.R. § 535.215 (2013) (compelling all persons within United States who control Iranian assets to transfer property in compliance with Algiers Accord); 31 C.F.R. § 535.540(f). MOD argues that the United States is obligated under the Algiers Accords to "ensure" transfer of the assets back to Iran – regardless of how long it took because Iran has not been made whole for its pre-1979 financial position.

enforce judgments for compensatory damages for claims based on acts of terrorism. *See supra* pages 4-7. Third, MOD does not dispute that it is liable for Iran's debts.[33] Fourth, it is undisputed that MOD received adequate notice that Lien Claimants would be seeking to attach the Cubic Judgment.[34] *See supra* pages 4-7. The only dispute is whether the Cubic Judgment is a blocked asset under TRIA on the date of this decision. *Elahi*, 556 U.S. at 368, 376, 377, 387.

The Court agrees with Lien Claimants that the Cubic Judgment is a blocked asset under two separate federal laws: (1) Executive Order 13599 and (2) the Weapons of Mass Destruction Proliferators Sanctions regulations. Consequently, MOD's property, the Cubic Judgment, is not immune from execution of the Lien Claimants' District of Columbia terrorism-related judgments.

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[33]The Ninth Circuit determined that MOD is an inseparable part of the government of Iran. *See supra* footnote 17 (citing *MOD*, 495 F.3d at 1034-36); *accord Roeder*, 333 F.3d at 234-35 & n.4 (a Ministry that governs the nation's armed forces is treated as "the state of Iran" and is "not legally distinct" from Iran). Therefore, all sums owed to MOD are owed to Iran itself.

In any event, TRIA and § 1610(g) permit terrorism-based judgments to be satisfied by assets of a "juridically distinct" entity, thereby increasing the scope of assets subject to execution to satisfy Iran's liability. *Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 48-49 (2d Cir. 2010), *cert. denied*, 133 S. Ct. 21 (June 25, 2012); *Bennett v. Islamic Republic of Iran*, 927 F. Supp. 2d 833, 841-42 & n.9 (N.D. Cal. 2013) (holding that TRIA and § 1610(g) abrogate the *Bancec* doctrine terrorism-based judgments); *cf. First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611 (1983) ("*Bancec*") (holding that a private trading bank, partially owned and controlled by the foreign government with "separate juridical status," is immune from suit based on actions taken by that government; however, affirming district court's finding that Ministry of Foreign Trade is a member of and "no different than" the Government of Cuba).

[34]The Court has an independent duty to ensure that the requirements of FSIA have been met. *Walters*, 651 F.3d at 290 (collecting cases including the Ninth Circuit's decision of *Peterson*, 627 F.3d at 1126–29). Although the docket on PACER discloses potential problems with service in Rafii's District of Columbia action, *see supra* footnote 11, MOD does not and cannot claim that it lacked adequate notice of her lien. *Cf.* 28 U.S.C. § 1610(c) (notice required for attachment under § 1610(a) or (b)); *see Rubin*, 637 F.3d at 799-801; *Agudas Chasidei Chabad of U.S. v. Russian Fed'n*, 798 F. Supp. 2d 260, 266-70 (D.D.C. 2011); *Murphy v. Islamic Republic of Iran*, 778 F. Supp. 2d 70, 72 (D.D.C. 2011); *Murphy v. Islamic Republic of Iran*, 740 F. Supp. 2d 51, 66-67 (D.D.C. 2010). As noted, MOD's counsel in this action was served with both liens many years ago. Doc. Nos. 124, 130, 144, & 145. Each notice included a copy of the District of Columbia default judgment. *Id.* Further, MOD availed itself of its right to respond to this motion. Finally, because MOD is an inseparable part of the Iranian government, Iran is deemed to have received actual notice of the liens. *Peterson*, 627 F.3d at 1129; *see supra* footnote 17.

1. President Obama's February 2012 Executive Order

First, the Court concludes that the Cubic Judgment satisfies the definition of a blocked asset based upon President Obama's Executive Order 13599 freezing "[a]ll property and interests in property of the Government of Iran" that are subject to the jurisdiction of the United States. 77 Fed. Reg. 6659 (Feb. 8, 2012). It became effective in February 2012 and remains in effect today. 77 Fed. Reg. 7660 (Feb. 13, 2012). This recent Executive Order blocked all Iranian property interests, including those of its political subdivisions such as MOD, pursuant to the IEEPA. 77 Fed. Reg. at 6660 § 7(d); 31 C.F.R. pt. 560 (2013) (Iranian Transactions and Sanctions Regulations).

The United States supports this interpretation of the Executive Order. Doc. No. 277 at 8; *accord* Doc. No. 203, Ex. C (OFAC License describes Cubic Judgment as blocked asset under Executive Order 13599); *see also Heiser*, 885 F. Supp. 2d at 441 ("Courts have traditionally accorded some weight to the views of the Executive Branch" regarding blocked assets in foreign policy arena).

In opposition, MOD argues that Executive Order 13599, by its terms, does not apply to property first blocked by President Carter's Executive Order 12170 (November 14, 1979) but thereafter made subject to the transfer directives of the Algiers Accords as implemented by Executive Order 12281 (January 19, 1981). 77 Fed. Reg. at 6660 § 4(b). In short, President Obama made an exception for property covered by the Algiers Accord. MOD repeats its contention that attachment of the Cubic Judgment breaches the United States' treaty obligations because those funds must be restored to Iran as part of its pre-1979 financial position.

For the same reasons discussed above, the Court is not persuaded. *See supra* pages 16-22 (citing *Elahi*, 556 U.S. at 375-77). Accordingly, the Court finds that the Cubic Judgment is blocked by Executive Order 13599 and its implementing regulations. Therefore, TRIA allows those who hold judgments related to Iran's terrorist activities to attach the Cubic Judgment.

2. Weapons of Mass Destruction Proliferators Sanctions Regulations

Second, the Cubic Judgment is a "blocked asset" pursuant to Executive Order 13382 which pertains to the proliferation of weapons of mass destruction (including nuclear, biological, and chemical weapons). Pursuant to the IEEPA, the Executive Order blocks the property of any foreign person engaged in or attempting to engage in the production of such weapons. Executive Order 13382; 70 Fed. Reg. 38567 (June 28, 2005). In 2007, the Department of State designated MOD as supporter of and actor involved with the production of weapons of mass destruction. 72 Fed. Reg. 71991, 71992 (Dec. 19, 2007). The accompanying Weapons of Mass Destruction Proliferators Sanctions ("WMDPS") regulations operate broadly to block "all property and interests of property that are in the United States" of the designated entities. 31 C.F.R. §§ 544.201(a), 544.301 (2013); 74 Fed. Reg. 16771-01 (Apr. 13, 2009).

The United States supports this interpretation. Doc. No. 277 at 7-8; *accord* Doc. No. 203, Ex. C (OFAC License describes Cubic Judgment as a blocked asset under 31 C.F.R. pt. 544); *see also Heiser*, 885 F. Supp. 2d at 441 (courts give some weight to Executive Branch's views on foreign policy issues).

The Court holds that the Cubic Judgment is a blocked asset within the definition of TRIA pursuant to the designation of MOD as a proliferator of weapons of mass destruction.

MOD raises two objections to the application of the WMDPS regulations. MOD first argues that the designation applies to the "Ministry of Defense and Armed Forces Logistics" ("MODAFL"). MOD argues that the designation does not extend to the distinct entity of the "Ministry of Defense and Support for the Armed Forces," the entity awarded the Cubic Judgment.

The Court agrees with the United States that MOD cannot evade the designation based on a minor discrepancy in the translation of the Ministry's name.

Doc. No. 277 at 8. The Department of State interprets its regulation referring to "MODAFL" to apply to MOD. *See* 72 Fed Reg. 71991-02 (Dec. 19, 2007) (listing both MODAFL and MODSAF as designees). That reasonable interpretation is not clearly erroneous and thus controls. *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (citations omitted); *see also Heiser*, 885 F. Supp. at 441.

MOD's second objection is that a regulation prohibits the use of the Cubic Judgment to satisfy the Lien Claimants' request. The regulation is entitled: "Payments from blocked accounts to satisfy obligations prohibited." 31 C.F.R. § 544.407 (2013). It states: "Pursuant to § 544.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part." *Id.* MOD argues this regulation bars Lien Claimants from attaching the Cubic Judgment because the funds are held by the Clerk of the Court in a "blocked account"; consequently, no debit can be made to satisfy MOD's obligation to Lien Claimants, who are "U.S. persons."

The Court agrees with the Lien Claimants' analysis of the regulation. This regulation simply lists one of many ways the United States prevents anyone from making any type of transaction to transfer, pay, export, withdraw, or otherwise deal with designated entities except as set forth in the WMDPS regulations. *Id.* § 544.201; *e.g.*, *id.* § 544.405 (prohibiting the performance of services including accounting, financial, brokering, freight forwarding, transportation, or public relations), § 544.406 (prohibiting transfers through an offshore transaction), § 544.409 (prohibiting transfer via charge cards, debit cards, or credit agreements), § 544.410 (prohibiting taking a setoff against blocked property). The "debit" restriction immobilizes a designated entity's assets within the jurisdiction of the United States in every possible manner. Taken in context, the Court interprets the regulation as preventing designated parties from circumventing the sanction by having a third party take funds from a blocked account to satisfy a debt. The regulation thus prohibits indirect, concealed access to frozen funds by creditors as

well as direct, undisguised access by the designated entity itself.

Moreover, MOD's reliance on § 544.407 is inconsistent with the policy of TRIA to empower terrorism victims to attach blocked assets. *See supra* pages 12-14 and *infra* pages 32-33 & 36-37. Even if MOD correctly reads § 544.407 so that it conflicts with TRIA, the regulation would be barred by the "[n]otwithstanding any other provision of law" language in FSIA. 28 U.S.C. § 1610 note, § (a). The Court concludes that this vague regulation does not override the statute that specifically allows holders of terrorism-related judgments "in every case" to attach "blocked assets" to obtain compensation. *Id.*; *see United States v. Maes*, 546 F.3d 1066, 1068 (9th Cir. 2008) ("a regulation does not trump an otherwise applicable statute unless the regulation's enabling statute so provides"); *United States v. Doe*, 701 F.2d 819, 823 (9th Cir. 1983) ("Where an administrative regulation conflicts with a statute, the statute controls.") (citations omitted).

Lien Claimants correctly observe that TRIA does not permit execution *unless* the account has the status of being frozen. *See Rubin*, 709 F.3d at 54 (assets must be "'blocked' to fall within TRIA's scope"); *Smith v. Fed. Reserve Bk. of NY*, 346 F.3d 264, 271 (2d Cir. 2003) (TRIA's plain language gives "terrorist victims who actually receive favorable judgments a right to execute against assets that would *otherwise* be blocked") (emphasis added). In light of that reality, it would not make sense for § 544.407 to prevent attachment by victims of terrorism.

Finally, OFAC issued a license to the Cubic Judgment that permits the Court to distribute these funds pursuant to TRIA. Doc. No. 203, Ex. C. The Department of Treasury's OFAC thus implicitly interprets its own WMDPS regulations to permit the Lien Claimants to attach this asset. *See City of Seattle v. FERC*, 923 F.2d 713, 716 (9th Cir. 1991) (courts show deference to agency's sensible reading of a license); *Heiser*, 885 F. Supp. 2d at 441 (deferring to Executive Branch's interpretation of TRIA in light of important role that blocked assets play in foreign policy); *e.g.*, *Heiser v. Bank of Tokoyo Mitsubishi UFJ*, 919 F. Supp. 2d 411, 422-

23 (S.D.N.Y. 2013) (allowing distribution of funds to victims pursuant to TRIA of assets blocked by WMDPS without an OFAC license).

In sum, the Court rejects MOD's regulatory defense to attachment.

3. MOD Does Not Have a Defense to Attachment under TRIA

In its effort to defeat the straightforward application of TRIA, MOD raises three other arguments. Each argument fails.

a. The Algiers Accords Does Not Bar this TRIA Motion

MOD reframes its reliance on the Algiers Accord. MOD contends that the Court must interpret TRIA consistent with the United States' treaty obligations. *MacLeod v. United States*, 229 U.S. 416, 434 (1913) (when construing a statute, "it should not be assumed that Congress proposed to violate the obligations of the country to other nations"); *Chew Heong v. United States*, 112 U.S. 536, 550 (1884); *Murray*, 6 U.S. at 118 ("an act of Congress ought never to be construed to violate the law of nations if any other construction remains"). This concept applies to executive agreements like the Algiers Accord. *Dames & Moore*, 453 U.S. at 660, 679-86. MOD argues that "[w]hether viewed as a presumption as to congressional intent, a rule of inadvertent repeal, or a vindication of comity, the canon's principle objective is to ensure the integrity of United States' obligations under international agreements." Br. at 15.

MOD argues that the competence of the Tribunal should not be undermined because the United States agreed to settle claims in that forum. The facts show that both Iran and the United States recognize that the Cubic contracts are at issue in the Tribunal. Br. at 13-14 n.2. MOD asserts that Lien Claimants should not impede the bargaining powers of the President to "block" assets as part of his diplomatic efforts. *Dames & Moore*, 453 U.S. at 673. It argues the Court should defer to the President's power to handle foreign policy negotiations with Iran rather than allow Lien Claimants to collect. MOD argues that any interpretation of TRIA that permits the Lien Claimants to attach the Cubic Judgment should conform to the United

States' obligations under the Algiers Accords to restore Iranian property to Iran. MOD argues that granting the attachment motion would render the United States in default of the Algiers Accord.

The Court is not persuaded by MOD's argument. Congress expressly allows victims of terrorism to attach assets under TRIA "notwithstanding any other provision of law." 28 U.S.C. § 1610 note; *see Weinstein*, 609 F.3d at 53-54 (rejecting a bank's reliance on the 1955 Treaty of Amity between Shah of Iran and United States because TRIA "trumps" all other laws). This clear statement permits the Lien Claimants to attach any asset that is, at present, blocked as defined by United States law. *See Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) (use of a "notwithstanding" clause "clearly signals" intent to "override conflicting provisions") (collecting cases); *United States v. Novak*, 476 F.3d 1041, 1046-47 (9th Cir. 2007) (en banc) (generally, a "notwithstanding" clause in a statute signals Congress' clear intent to supercede any previously enacted conflicting laws) (collecting cases); *cf. Roeder*, 333 F.3d at 237-38 (if Congress had enacted a "notwithstanding" provision to allow hostages to sue Iran, the language might abrogate the Algiers Accords promise to the contrary).

b. The Iranian Assets Control Regulations Do Not Prevent Attachment of the Cubic Judgment

In 1979, the Department of Treasury issued the Iranian Assets Control Regulations ("IACR") to implement President Carter's order to block assets, and then amended them in 1981 to implement the Algiers Accord. *See generally Weinstein*, 299 F. Supp. 2d at 65-68 (describing regulations before and after hostage crisis settled); *Security Pacific National Bank v. Islamic Republic of Iran*, 513 F. Supp. 864 (C.D. Cal. 1981) (same); MOD's Request for Judicial Notice, Ex. E (describing OFAC's implementation of sanctions against Iran and the Algiers settlement); *see supra* pages 7-9.

As a defense to attachment, MOD cites the general license authorizing "new

transactions concerning certain Iranian property." 31 C.F.R. § 535.579 (2013). This regulation authorizes "[t]ransactions involving property in which Iran or an Iranian entity has an interest" either when the property came within the jurisdiction of the United States or when Iran's interest in the property arose "*after* January 19, 1981." *Id.* § 535.579(a) (emphasis added). Thus, if the Court finds that Iran's interest in the Cubic Judgment arose in October 1982 upon the sale of the ACMR to Canada, MOD contends that Iran is entitled to the money because its interest arose after January 19, 1981. *See Elahi*, 556 U.S. at 377 ("we must conclude that October 1982 is the time when Iran's claim to proceeds arose"). Under MOD's analysis, the Cubic Judgment is not a blocked asset because it falls within the general license covering Iran's property interests that arose after January 19, 1981. *Id.* § 535.579(a).

The Court is not persuaded by this interpretation of the regulation. MOD takes the language out of context. The "new transactions" regulation was enacted in 1981 to implement the hostage release agreement with Iran by lifting the freeze on Iranian assets that President Carter *previously* imposed in 1979. 46 Fed. Reg. 14336 (Feb. 26, 1981); *see generally Dames & Moore*, 453 U.S. at 662-73. Effective January 19, 1981, § 535.579 merely states that "new transactions" with Iran were now permitted (within the confines of the IACR). The clear intent of this 1981 general license was to authorize *future* transactions of Iranian assets that were not entangled with the Algiers Accord. *See Weinstein*, 299 F. Supp. 2d at 67 ("To implement EO 12282, the OFAC repealed certain provisions of the IACR and promulgated a 'general license' authorizing transactions with Iran, codified at 31 C.F.R. § 535.579.") (footnote omitted); MOD's Request for Judicial Notice, Ex. E ¶¶ 15-16 (Decl. of OFAC Director Newcomb describes general license in § 535.579); *cf. Dames & Moore*, 453 U.S. at 669-74 (holding IEEPA authorized President to enforce Algiers Accord by nullifying a creditor's pre-judgment attachment and ordering transfer of asset to Iran).

More importantly, MOD's position ignores recent sanctions. MOD oversimplifies the analysis by equating a transaction permitted by the general license set forth in IACR § 535.579 with an "unblocked asset" in every respect. *Weinstein*, 299 F. Supp. at 74-76 (TRIA defines "blocked assets" as those "seized or frozen," not "as an 'omnibus' term extending to all assets 'regulated' or 'licensed' by the OFAC"). MOD's position might have had merit if it had been made anytime between January 19, 1981 and October 2007, when the IACR was the only sanction at issue.[35] But in October 2007 and again in February 2012, the legal landscape changed. As the Court discussed above, the Cubic Judgment bears the current status as a "blocked asset" by operation of laws other than the IACR.

c. The Nine Rubin Claimants May Rely on TRIA

MOD argues that the Rubin Claimants cannot rely on TRIA to attach the Cubic Judgment because the repeal of § 1605(a)(7) makes TRIA inapplicable to subsequently entered terrorism-related judgments. MOD's complicated theory relies on the fact that the Rubin Claimants filed their complaint in 2001 and secured their judgment against Iran in 2003. During that time period, FSIA allowed lawsuits against state sponsors of terrorism under § 1605(a)(7). The Rubin Claimants filed their original lien on the Cubic Judgment in 2003 and cited § 1605(a)(7). Doc. No. 130. But in 2008, Congress repealed that subsection governing jurisdictional immunity and replaced it with § 1605A. *See supra* pages 6 & 15 (citing legislation). As soon as Congress amended FSIA in 2008, the Rubin Claimants obtained permission from the District of Columbia District Court to give their action the same effect as if it had been filed under the new terrorism exception, § 1605A. *See supra* pages 6-7. MOD argues that § 1605A also requires judgment

[35]The Court expresses no opinion on the Lien Claimants' assertion that the Cubic Judgment is blocked under other Executive orders that predate President Obama's action in February 2012. Jt. Motion Br. at 6 n.5.

creditors of a foreign state to follow the attachment procedures in § 1610(a)(7).[36] In 2009, the Rubin Claimants amended their notice of lien on the Cubic Judgment. Because the 2009 lien is subsequent to the 2008 amendment, MOD argues TRIA does not apply to the Rubin Claimants.

As a matter of statutory interpretation, MOD's premise is unwarranted. The Court concludes that Congress' clear and consistent intent in amending FSIA in recent years, and in particular enacting § 1605A as well as TRIA, has been to assist victims collect compensation from foreign states that sponsored acts of terrorism. *E.g.*, *Heiser*, 807 F. Supp. 2d at 12-16, 18-19, 25-26 (surveying "the latest in series of attempts by Congress to aid these victims" of state-sponsored terrorism to enforce judgments). The language of § 1605A clearly states that victims have the right to benefit from treating their claim "as if" it had been filed under the new jurisdictional immunity exception for terrorism. Moreover, Congress specified that it applied to actions pending "in any form" and that "[t]he defenses of res judicata, collateral estoppel, and limitation period are waived." Pub. L. No. 110-181, § 1083(C)(2)(A) & (B), 122 Stat. 3 (2008). Congress wanted to help victims with pending actions, not create a hurdle for those who had secured money damages. The Court is not persuaded by MOD's argument that the 2008 amendment of FSIA

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[36]MOD's brief incorrectly paraphrases § 1605A as if it were limited to the attachment provisions of "section 1610(a)(7) and (b)(2)" governing commercial property. MOD's Opp. Br. at 18. The actual language of the statute is not limited to those subsections, but instead refers to § 1610 in its entirety. 28 U.S.C. § 1605A(g)(1)(A).

Also, MOD's brief confuses citations to § 1610(g) with § 1605A(g). MOD's Opp. Br. at 18-19. MOD quotes, and its argument relies upon, the language of § 1605A(g). *Id.* at 18. Section 1605A concerns the terrorism exception to jurisdictional immunity. One of the improvements Congress made in 2008 was to create an automatic lien of lis pendens upon any property that was subject to attachment under § 1610, which sets out the exceptions to attachment immunity. § 1605A(g); Elsea, *supra*, at 39-41, 99-100. Before that amendment, FSIA permitted prejudgment attachment of property used for commercial activities. § 1610(d). The lis pendens provision does not apply to this motion. The Court discusses attachment under § 1610(g) below.

In this same section of its brief, MOD further argues that the property available for attachment in § 1610(g) is limited to property used for a "commercial activity" as defined in § 1610(a). MOD's Opp. Br. at 17-19. The Court addresses this separate argument below. *See infra* pages 34-37.

restricted the ability of victims attach the assets of foreign states.

This conclusion is validated by the 2012 amendment to TRIA. Congress updated TRIA to reflect the new terrorism cause of action in § 1605A. Pub. L. No. 112-158, tit. V, § 502(e)(2), 126 Stat. 1260 (Aug. 10, 2012). TRIA now refers to both judgments "under section 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008)." 28 U.S.C. § 1610 note (2013). This amendment demonstrates that TRIA's attachment remedy is available to those who hold judgments "based upon" acts of terrorism, for which FSIA statute withholds jurisdictional immunity from designated state sponsor of terrorism. The Rubin Claimants satisfy that requirement. *Campuzano*, 281 F. Supp. 2d at 261-62, 269-71; *see supra* pages 6-7.

Even if the Court were to accept MOD's contention that the 2008 amendment does not apply to a "subsequently" entered judgment, the District of Columbia District Court did not enter a new judgment. The Rubin Claimants' judgment was entered in 2003. A new judgment was not prepared when the District Court granted the motion to transform the Rubins' lawsuit against Iran as permitted by Congress. *See supra* pages 6-7; Doc. No. 145, Ex. A.

C. FSIA § 1610(g) Authorizes the Rubin Claimants to Attach the Cubic Judgment

As an alternative to TRIA, Lien Claimants argue that 28 U.S.C. § 1610(g) allows terrorism victims to attach "the property of a foreign state" without any requirement that the asset be "blocked."

MOD argues subsection § 1610(g) is not available because the property must have been used in connection with "commercial activity." MOD notes that the Ninth Circuit held in a prior appeal that MOD has not "used" the Cubic Judgment for a commercial purpose. *MOD*, 495 F.3d at 1036-37; *see supra* footnote 18. In addition, MOD contends that the Supreme Court ruled that the commercial activity exception does "not apply to property of an entity that itself is an inseparable part of

the foreign state." *Elahi*, 556 U.S. at 374 (citing *MOD*, 495 F.3d at 1035-36). Only a foreign state can buy military equipment to defend the nation, thus MOD contends that it entered into the Cubic contracts to perform a classic government function.

Lien Claimants contend that MOD misreads the scope of that decision. The Court agrees that MOD's contention is over broad in some respects. None of the prior decisions "declared that the Cubic Judgment is not subject to attachment under the immunity exemption of § 1610" *as a whole*. *See* MOD's Opp. Br. at 19. The Supreme Court was referring to § 1610(b)(7) – the commercial property exception to attachment of an agency's or instrumentality's assets. The Supreme Court held that Ninth Circuit erred in its 2004 decision by assuming that MOD qualified as an agency or instrumentality. On remand, in 2007, the Ninth Circuit held that MOD did not fit that category, but instead was entitled to the immunity afforded the foreign state itself. Thereafter, the Ninth Circuit held that the Cubic Judgment was not attachable under § 1610(a)(7) – the commercial activity exception that governs foreign states and political subdivisions – because MOD had not "used" the asset in that context. *See supra* footnote 18. The instant motion does not rely on the subsections addressed in those prior appeals. Instead, Lien Claimant's base this motion on § 1610(g). Because this section was added to FSIA in 2008, it was not at issue in the prior appeals. Pub. L. 110-181, div. A, tit. X, § 1083(b)(3), 122 Stat. 3 (Jan. 28, 2008).

Nonetheless, this argument raises the question of whether or not § 1610(g) is restricted to property that a foreign state has used in connection with commercial activity. MOD's argument presupposes that § 1610(g) covers only commercial property. Lien Claimants read the statute to separate § 1610(g) from any commercial activity requirement. By its own terms, § 1610(g) eschews any "commercial" use test by permitting attachment regardless of where the profits go or whether the government controls the property. § 1610(g)(1)(A)-(E) (listing five factors that do not prevent attachment).

The Court agrees with Lien Claimants that § 1610(g) "*expanded* the category of foreign sovereign property that can be attached; judgment creditors can now reach *any U.S. property* in which Iran has *any interest*." *Peterson*, 627 F.3d at 1123 n.2 (emphasis added); Elsea, *supra*, at 41-44, 100-01. The plain language of the statute supports a broad reading. Section 1610(g) allows attachment of any "property of a foreign state against which a judgment is entered under section 1605A."[37] Congress did not qualify the definition by limiting it to property connected to a commercial activity. *Heiser*, 807 F. Supp. 2d at 19 n. 8 (in dicta, stating "§ 1610(g) does not limit attachment to property used in 'commercial activity' – unlike the execution provisions found in § 1610(a) & (b) – and thus the Act 'removes from the victims the burden of specifying commercial targets . . . to help them receive justice and recover damages") (quoting Debra M. Strauss, *Reaching Out to the International Community: Civil Lawsuits as the Common Ground in the Battle against Terrorism*, 19 Duke J. Comp. & Int'l L. 307, 332-33 (2009)).

If Congress had intended the commercial activity restriction to apply then it could have included the new language under a subsection to § 1610(a). Section

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[37]The current statute reads as follows:

(g) Property in certain actions. --

(1) In general. – Subject to paragraph (3) [regarding innocent third-party owners], the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of –

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

28 U.S.C. § 1610(g) (2013).

1610(a) covers property "used" by a foreign state "for a commercial activity" in seven situations. § 1610(a)(1) to (a)(7). But Congress did not insert the new attachment provision under the subheading of the commercial activity exception (*i.e.*, as § 1610(a)(8)). The plain text and placement of the new attachment provision shows that it is not limited to "commercial" property.

Similarly, subsection 1610(b), governing the property of an agency or instrumentality "engaged in commercial activity," and subsection 1610(d), governing lis pendens of property "used for a commercial activity," are specifically limited to assets connected to commercial activity. Congress knew how to specify when commercial assets were vulnerable to attachment.

The historical context is also important. A significant roadblock exists because few Iranian assets remain in the United States given severed economic and diplomatic ties. *Heiser*, 885 F. Supp. 2d at 441; *Heiser*, 807 F. Supp. 2d at 14. That fact impairs the ability of terrorism victims to obtain justice. Congress added § 1610(g), like FSIA § 1610(f) and TRIA, specifically to assist victims of terrorism who had been thwarted in their attempts to find assets to satisfy their judgments. *E.g.*, *Heiser*, 807 F. Supp. 2d at 13-16 (reviewing the "desolate backdrop" of barriers facing victims before Congress enacted § 1610(g) in 2008); Elsea, *supra*, at 6-18, 51, 98-99. Notably, all of these subsections only apply to the rare countries that have been designated as state sponsors of terrorism. *E.g.*, 31 C.F.R. § 596.201 (designating Iran and three other countries). By comparison, the commercial activity exceptions in § 1610(a) and (b) apply to *every* country, thereby providing greater protection to property owned by friendly governments than by hostile governments. *See Peterson*, 627 F.3d at 1127-28. Congress has the power to withhold the privilege of jurisdictional immunity from foreign states that sponsor terrorist acts and to treat their property differently. *Elahi*, 124 F. Supp. 2d at 106 (citation omitted); *Heiser*, 885 F. Supp. 2d at 444 ("the 'property of' of designated state-sponsor of terror loses its sovereign immunity and may become subject to

attachment"). In an attempt to help such victims obtain compensation, Congress sensibly expanded the universe of assets that could be attached to "any property interest in which the foreign state enjoys a beneficial ownership." H. Rep. No. 110-447 (Dec. 6, 2007); *Peterson*, 627 F.3d at 1123 n. 2; *Calderon-Cardona*, 723 F. Supp. 2d at 458.

In light of the plain language of § 1610(g), the Court finds that the Cubic Judgment is "property" that can be attached by the Rubin Lien Claimants, as holders of judgments under § 1605A based upon Iran's sponsorship of terrorist activities.

This particular holding applies only to the Rubin Claimants. When Congress added § 1610(g) in 2008, it limited the broad attachment exception to suits under § 1605A. As described, the Rubin Claimants' lawsuit was pending at the time Congress enacted § 1605A. *See supra* pages 6-7. The District of Columbia District Court gave their judgment the same effect as if it had been entered under § 1605A. Thus, the Rubin Claimants can rely on § 1610(g). Because Rafii's lawsuit was brought under the now-repealed terrorism exception, § 1605(a)(7), she is not eligible to invoke § 1610(g). *Peterson*, 627 F.3d at 1123 n.2 ("Plaintiffs in this case failed to re-file their actions under the new § 1605A terrorism exception and cannot take advantage of new § 1610(g).") (citation omitted); *Heiser*, 807 F. Supp. 2d at 18 n.5 ("the benefits provided [by § 1610(g)] accrue only to victims of state-sponsored terrorism who obtained judgments under § 1605A, and not its predecessor, § 1605(a)(7)") (citation omitted); *Bennett*, 604 F. Supp. 2d at 162 (Section "1610(g), by its express terms, applies only to 'judgments entered under 1605A,' and thus this new provision is not available to plaintiffs, like the Bennetts in this action, who have judgments under § 1605(a)(7)"). Moreover, when Congress amended FSIA in August 2012, it often extended attachment relief to judgments entered under the old § 1605(a)(7) as well as the current § 1605A. *E.g.*, § 1610(a)(7), (b)(3); Pub. L. 112-158, tit. V, § 502(e)(1), 126 Stat. 1214 (Aug. 10, 2012). It did not make that change to § 1610(g). Therefore, the Court holds that Rafii cannot rely on § 1610(g) to

attach the Cubic Judgment.

D. California's Attachment Procedure

Though the gravamen of the instant motion is attachment under California law, the issue warrants only brief discussion. MOD does not object to the procedure used by the Lien Claimants' to attach the Cubic Judgment.

State law applies to motions to attach a money judgment issued by a federal court. Fed. R. Civ. P. 69(a)(1); *Peterson*, 627 F.3d at 1130 (citations omitted); *Hausler v. J.P. Morgan Chase Bank, N.A.*, 845 F. Supp. 2d 553, 563 (S.D.N.Y. 2012) (citing legislative history that "Congress contemplated the use of state procedural law to enforce judgments" while federal law provides substantive rules of TRIA).

California's procedure to satisfy a lien is set forth in § 708.470 of the Code of Civil Procedure.[38] The claimant bears the burden of proof and the Court has discretion whether to grant the application. *Brown v. Super. Ct.*, 9 Cal. Rptr. 3d 912, 924 (2004). "To obtain a lien under this article, the judgment creditor shall file a notice of lien and an abstract or certified copy of the judgment creditor's money judgment in the pending action or special proceeding." Cal. Civ. Proc. Code § 708.410(2)(b) (West 2012).

The Court has independently reviewed the documents and has only one concern. California follows the "first in time, first in right" rule "according to the time of their creation," that is, on the date of filing a notice of lien. Cal. Civ. Code §

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[38]That statute states:

> If the judgment debtor is entitled to money or property under the judgment in the action or special proceeding and a lien created under this article exists, upon application of any party to the action or special proceeding, the court may order that the judgment debtor's rights to money or property under the judgment be applied to the satisfaction of the lien created under this article as ordered by the court. Application for an order under this section shall be on noticed motion. The notice of motion shall be served on all other parties. Service shall be made personally or by mail.

Cal. Civ. Proc. Code § 708.470 (West 2012).

2897 (West 2012); *Fleet Credit Corp. v. TML Bus Sales, Inc.*, 65 F.3d 119, 122 (9th Cir. 1995); *First Bank v. East West Bank*, 132 Cal. Rptr. 3d 267, 270 (Ct. App. 2011); *Oldham v. Calif. Capital Fund Inc.*, 134 Cal. Rptr. 2d 744, 751 (Ct. App. 2003) (notice of lien establishes and preserves creditor's priority); *Brown*, 9 Cal. Rptr. at 918. Rafii holds the senior lien (filed on May 16, 2003). The Rubin Claimants filed their notice five months later (October 30, 2003, as amended on April 29, 2009).

The Rafii and Rubin Lien Claimants filed a joint motion and have agreed between themselves how to allocate the proceeds of the Cubic Judgment. They request that the funds be deposited to a bank account designated by their attorneys so as to relieve the Court of any obligation to apportion the funds between claimants.

This request is inconsistent with Rafii's senior lien. She is entitled to satisfy her judgment in full and has no obligation in law or fact to share the Cubic Judgment with junior creditors.[39] Equally important, each of nine Rubin Claimants must understand the operation of the apportionment agreement to their compensation awards. *See supra* page 6 (Noam Rozenman recovered $15 million, while Deborah Rubin's damage award totaled $2.5 million).

Accordingly, the Court orders each Lien Claimant to submit an individual, notarized statement consenting to the apportionment of the Cubic Judgment between and among them as negotiated by their attorneys. *Collins v. Home Sav. & Loan Ass'n*, 22 Cal. Rptr. 817, 822 (Ct. App. 1962) (a party may waive or subordinate her priority); *Irvine v. Calif. Cotton Credit Corp.*, 64 P.2d 782, 782-83 (Cal. Ct. App. 1937). The affidavit must contain a clear and concise explanation of the terms of the apportionment agreement and the statutory right of priority. The

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[39]The record indicates that the Lien Claimants seek postjudgement interest on their default judgments. *E.g.*, Pls.' Motion at 2 *Rubin*, Case No. 01-CV-1655-RMU (D.D.C. filed Mar. 28, 2008), ECF 76. A simple calculation shows that interest at the federal rate on Rafii's ten-year old judgment could exhaust the entire $9.4 million on deposit before the Rubin Claimants collect any of those funds. 28 U.S.C. § 1961.

information must be written in plain, easily understood language so as to reflect that each Lien Claimant is making a knowing, voluntary, and intelligent decision. The affidavits shall be submitted to the Court within 45 days from the date of the filing of this Order, and in counsel's discretion, may be accompanied by a motion to file the notarized statements under seal.

As a housekeeping note, counsel shall also provide the federal taxpayer identification number as required by Local Rule 67.1.

E. Stay

MOD requests a stay of execution of the liens to allow it time to appeal. Fed. R. Civ. P. 62.

Lien Claimants oppose a stay on the grounds that the case presents no extraordinary circumstance; MOD's arguments lack merit; and ten years have passed since the victims secured their judgments against Iran.

The Court prefers a two-step process that immediately provides for execution on the attachment and forthwith transfers title to the Lien Claimants, but stays disbursement of the funds until the conclusion of any appeal.

The docket shows that no other claimant has a senior lien.

The Court instructs the Clerk of the Court to reflect the name on the account in this action so that the owners are France M. Rafii, Jenny Rubin, Deborah Rubin, Daniel Miller, Abraham Mendelson, Stuart E. Hersh, Renay Frym, Noam Rozenman, Elana Rozenman, and Tzvi Rozenman. The allocation of the funds between the several claimants will be set forth in a future Order.

The Court concludes that it is appropriate to stay the *disbursement* of funds pending appeal. *Haw. Hous. Auth. v. Midkiff*, 463 U.S. 1323 (1983); *Klaus v. Hi-Shear Corp.*, 528 F.2d 225 (9th Cir. 1975) (purpose of stay is to preserve status quo); *Marisco, Ltd. v. F/V/ Madee*, 631 F. Supp. 2d 1320 (D. Haw. 2009) (applying Rule 62 standard to request to stay enforcement of a money judgment). These are complex and important legal issues. The United States' relationship with Iran is

constantly changing, and the United States may alter the sanctions in response. The funds have been deposited with the Court and this eliminates any risk that the funds will not be available to the prevailing party. *See Colo. River Indian Tribes v. Town of Parker*, 776 F.2d 846, 850-51 (9th Cir. 1985). If MOD prevails on appeal, however, it may be difficult to retrieve the funds from Lien Claimants. *Lamon v. Shawnee, Kan.*, 758 F. Supp. 654 (D. Kan. 1991); Order *Rubin*, No. 01-CV-1655-RMU (D.D.C. filed May 26, 2005) (granting stay on execution of bank funds since it would be difficult to get money back from plaintiffs). That situation could have diplomatic implications on the pending negotiations between the United States and Iran.

On balance, these factors persuade the Court to transfer title but stay *disbursement* of the funds until the completion of the appeal.

The Court finds that a bond is unnecessary given the safety of the Court's registry account. Fed. R. Civ. P. 62(d).

In the event that MOD does not file a timely appeal, Lien Claimants may return to the Court to request the release of the funds.

CONCLUSION

Upon due consideration of the parties' memoranda and exhibits, the arguments advanced at hearing, and for the reasons set forth above, the Court hereby grants Lien Claimants' joint motion to attach and execute on the Cubic Judgment. [# 222]

Within 45 days, Lien Claimants shall submit the affidavits described above.

The Lien Claimants' judgments shall attach the proceeds of the Cubic Judgment. Execution on that Cubic Judgment to partially satisfy the judgments of the Lien Claimants shall be deemed to have been accomplished. Title to the proceeds is deemed vested in the Lien Claimants. The Clerk of the Court shall reflect the name on the account in this action so that the owners are France M. Rafii, Jenny Rubin, Deborah Rubin, Daniel Miller, Abraham Mendelson,

Stuart E. Hersh, Renay Frym, Noam Rozenman, Elana Rozenman, and Tzvi Rozenman. The Clerk shall not disburse any funds until further Order of this Court.

IT IS SO ORDERED.

DATED: November 27, 2013

BARRY TED MOSKOWITZ, Chief Judge
United States District Court

Annex 62

***Peterson et al. v. Islamic Republic of Iran et al.*, U.S. Court of Appeals, Second Circuit, 9 July 2014, *758 F.3d 185* (2nd Cir. 2014)**

13-2952-cv
Peterson v. Islamic Republic of Iran

In the
United States Court of Appeals
For the Second Circuit

AUGUST TERM, 2013

ARGUED: MAY 19, 2014
DECIDED: JULY 9, 2014

No. 13-2952-cv

DEBORAH D. PETERSON, *et al.*,
Plaintiffs-Appellees,

v.

ISLAMIC REPUBLIC OF IRAN, *et al.*,
Defendants-Appellants.[*]

Appeal from the United States District Court
for the Southern District of New York.
No. 10 Civ. 4518 – Katherine B. Forrest, *Judge*.

Before: WINTER, WALKER, and CABRANES, *Circuit Judges*.

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[*] Consistent with the order entered by this Court on October 18, 2013, ECF No. 118, we use the short-form caption for the purpose of publishing this opinion.

To satisfy terrorism-related judgments against Iran, the district court (Forrest, *J.*) awarded turnover of $1.75 billion in assets under both the Terrorism Risk Insurance Act of 2002 ("TRIA") and a statute enacted specifically to address the assets at issue in this case, 22 U.S.C. § 8772. Although Iran argues that the TRIA ownership requirements have not been satisfied, we need not reach this issue in light of Congress's enactment of § 8772. Iran concedes that the statutory elements for turnover of the assets under § 8772 have been satisfied, and we reject Iran's arguments that § 8772 conflicts with the Treaty of Amity between the United States and Iran, violates separation of powers, and effects an unconstitutional taking. We also conclude that the district court did not abuse its discretion in issuing an anti-suit injunction to protect its judgment. We AFFIRM.

JAMES P. BONNER, Stone Bonner & Rocco LLP, New York, N.Y. (Liviu Vogel, Salon Marrow Dyckman Newman & Broudy LLP, New York, N.Y.; Patrick L. Rocco, Susan M. Davies, Stone Bonner & Rocco LLP, New York, N.Y., *on the brief*), *for Plaintiffs-Appellees*.

ANDREAS A. FRISCHKNECHT (David M. Lindsey, *on the brief*), Chaffetz Lindsey LLP, New York, N.Y., *for Defendants-Appellants.*

JOHN M. WALKER, JR., *Circuit Judge*:

To satisfy terrorism-related judgments against Iran, the district court (Forrest, *J.*) awarded turnover of $1.75 billion in assets under both the Terrorism Risk Insurance Act of 2002 ("TRIA") and a statute enacted specifically to address the assets at issue in this case, 22 U.S.C. § 8772. Although Iran argues that the TRIA ownership requirements have not been satisfied, we need not reach this issue in light of Congress's enactment of § 8772. Iran concedes that the statutory elements for turnover of the assets under § 8772 have been

satisfied, and we reject Iran's arguments that § 8772 conflicts with the Treaty of Amity between the United States and Iran, violates separation of powers, and effects an unconstitutional taking. We also conclude that the district court did not abuse its discretion in issuing an anti-suit injunction to protect its judgment. We AFFIRM.

BACKGROUND

Plaintiffs-appellees are the representatives of hundreds of Americans killed in multiple Iran-sponsored terrorist attacks, and they have billions of dollars in unpaid compensatory damages judgments against Iran stemming from these attacks.[1] Defendant-appellant Bank Markazi is the Central Bank of Iran, which is wholly owned by the Iranian government. The assets at issue in this appeal are $1.75 billion in cash proceeds of government bonds, currently held in New York by defendant Citibank, N.A., in an omnibus account for defendant Clearstream Banking, S.A., a financial intermediary. One of the customers for whom Clearstream maintains this account is defendant Banca UBAE S.p.A., an Italian bank whose customer, in turn, is Bank Markazi. Bank Markazi concedes that through this chain of parties it has at least a "beneficial interest" in the assets at issue. Plaintiffs seek turnover of these assets to satisfy their judgments.

When plaintiffs first learned of Bank Markazi's interest in the assets in 2008, they obtained restraints against transfer of the assets. In 2010, plaintiffs initiated this action against Bank Markazi, UBAE, Clearstream, and Citibank to obtain turnover of the assets under section 201(a) of the TRIA, which provides that "in every case in which a person has obtained a judgment against a terrorist party . . . the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment." Terrorism Risk Insurance Act of 2002, Pub L. No. 107-297, § 201(a), 116 Stat. 2322, 2337 (codified at

[1] The appellees first entered this action in various procedural postures, but they are all judgment creditors of Iran and are referred to collectively as "plaintiffs" for ease of reference.

28 U.S.C. § 1610 Note "Satisfaction of Judgments from Blocked Assets of Terrorists, Terrorist Organizations, and State Sponsors of Terrorism").

In February 2012, while this action was pending, President Obama issued Executive Order 13,599, which stated:

> [I]n light of the deceptive practices of [Bank Markazi] . . . to conceal transactions of sanctioned parties . . . . [a]ll property and interests in property of the Government of Iran, including [Bank Markazi], that are in the United States . . . or that are or hereafter come within the possession or control of any United States person . . . are blocked . . . .

Exec. Order No. 13,599, 77 Fed. Reg. 6659, 6659 (Feb. 5, 2012). The assets at issue (which were still under restraint) were blocked based on this Executive Order. Plaintiffs then filed a motion for partial summary judgment on their TRIA claim.

In August 2012, while that motion was pending, Congress passed the Iran Threat Reduction and Syria Human Rights Act of 2012. That Act included a section, codified at 22 U.S.C. § 8772, which stated that "the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in *Peterson et al. v. Islamic Republic of Iran et al.*, Case No. 10 Civ. 4518" "shall be subject to execution . . . in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by an act of [terrorism]." Pub. L. 112-158, § 502, 126 Stat. 1214, 1258. Plaintiffs then filed a supplemental motion for summary judgment under § 8772.

In March 2013, the district court granted summary judgment to plaintiffs, ordering turnover of the assets on the two independent bases of TRIA section 201(a) and 22 U.S.C. § 8772. *Peterson v. Islamic Republic of Iran*, No. 10 Civ. 4518, 2013 WL 1155576 (S.D.N.Y. Mar. 13, 2013). In July 2013, the district court issued an order directing turnover of the blocked assets and enjoining the parties from initiating a claim to the assets in another jurisdiction. *Peterson v. Islamic Republic of Iran*, No. 10 Civ. 4518 (S.D.N.Y. July 9, 2013), ECF

No. 463. Post-judgment, plaintiffs settled with Clearstream and UBAE, and Citibank is a neutral stakeholder, leaving Bank Markazi as the sole appellant.

DISCUSSION

"We review *de novo* a district court's grant of summary judgment, construing the evidence in the light most favorable to the non-movant, asking whether there is a genuine dispute as to any material fact and whether the movant is entitled to judgment as a matter of law." *Padilla v. Maersk Line, Ltd.*, 721 F.3d 77, 81 (2d Cir. 2013) (citing Fed. R. Civ. P. 56(a)). "We [also] review *de novo* the district court's legal conclusions, including those interpreting and determining the constitutionality of a statute," *United States v. Stewart*, 590 F.3d 93, 109 (2d Cir. 2009), or involving the "interpretation of a treaty," *Swarna v. Al-Awadi*, 622 F.3d 123, 132 (2d Cir. 2010).

Bank Markazi argues that the assets at issue are not "assets of" Bank Markazi as required for turnover under TRIA section 201(a), and that even if the assets were held to be "assets of" Bank Markazi, then they would be "the property . . . of a foreign central bank . . . held for its own account" and thus "immune from attachment and from execution" under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1611(b)(1). We need not resolve this dispute under the TRIA, however, as Congress has changed the law governing this case by enacting 22 U.S.C. § 8772. Bank Markazi concedes that plaintiffs have satisfied the statutory elements of their § 8772 claim but argues that turnover under this provision (1) conflicts with the Treaty of Amity between the United States and Iran; (2) violates separation of powers under Article III; and (3) violates the Takings Clause. As we explain below, none of these arguments has merit. We also reject Bank Markazi's challenge to the district court's anti-suit injunction.

I. Treaty of Amity

Bank Markazi argues that turnover of the assets under § 8772 would conflict with obligations of the United States under the Treaty

of Amity, which is a self-executing treaty between the United States and Iran that was signed in 1955. Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, Aug. 15, 1955, 8 U.S.T. 899; *see also McKesson Corp. v. Islamic Republic of Iran*, 539 F.3d 485, 488 (D.C. Cir. 2008) ("The Treaty of Amity, like other treaties of its kind, is self-executing."). But even if there were a conflict, the later-enacted § 8772 would still apply: "The Supreme Court has held explicitly that legislative acts trump treaty-made international law, stating that 'when a statute which is subsequent in time [to a treaty] is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null.'" *United States v. Yousef*, 327 F.3d 56, 110 (2d Cir. 2003) (alteration in original) (quoting *Breard v. Greene*, 523 U.S. 371, 376 (1998)); *see also Whitney v. Robertson*, 124 U.S. 190, 194 (1888) ("By the constitution, a treaty is placed on the same footing, and made of like obligation, with an act of legislation . . . . [and] if the two are inconsistent, the one last in date will control the other."). Indeed, when Iran raised a similar argument against turnover under TRIA section 201(a) in a different case, we concluded that even if this provision conflicted with the Treaty of Amity, "the TRIA would have to be read to abrogate that portion of the Treaty." *Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 53 (2d Cir. 2010).[2]

In any event, we see no conflict between § 8772 and the Treaty of Amity. Bank Markazi first contends that Congress's inclusion of Bank Markazi in its definition of "Iran" in § 8772(d)(3) violates Article III.1 of the Treaty, which states that Iranian companies "shall have their juridical status recognized within" the United States. But as Bank Markazi acknowledges, this argument has been rejected by our Court in the context of a similar provision in the TRIA. *See Weinstein*, 609 F.3d at 53 (concluding that Iran's argument was

[2] Additionally, § 8772, like TRIA section 201(a), contains a broad provision stating that it applies "notwithstanding any other provision of law," 22 U.S.C. § 8772(a)(1), and "the Courts of Appeals have regularly interpreted such 'notwithstanding' provisions 'to supersede all other laws,'" *Weinstein*, 609 F.3d at 53 (quoting *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993)).

foreclosed by the Supreme Court's analysis of similar provisions in *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176 (1982)).

Bank Markazi also argues that § 8772 violates Articles IV.1 and V.1, which require that treatment of Iranian companies and their property interests be "fair and equitable" and no "less favorable than that accorded nationals and companies of any third country." But the provision of § 8772 that Bank Markazi points to contains no country-based discrimination; rather, it simply states that "[n]othing in this section shall be construed . . . to affect the availability, or lack thereof, of a right to satisfy a judgment in any other action against a terrorist party in any proceedings other than [these] proceedings." 22 U.S.C. § 8772(c). Contrary to Bank Markazi's argument, this provision is expressly *non*-discriminatory.

Finally, Bank Markazi argues that turnover under § 8772 violates Article III.2, which accords Iranian companies "freedom of access to [U.S.] courts," and Article IV.2, which states that Iranian "property shall not be taken except for a public purpose" and upon "prompt payment of just compensation." As discussed below, however, § 8772 neither usurps the adjudicative role of the courts nor effects an unconstitutional taking of Bank Markazi's assets.

In sum, turnover of the blocked assets under § 8772 is entirely consistent with the United States' obligations under the Treaty of Amity. And, assuming *arguendo* that it is not, § 8772 would have to be read to abrogate any inconsistent provisions in the Treaty.

II. Separation of Powers

Bank Markazi next challenges § 8772 as violating the separation of powers between the legislative branch and the judiciary under Article III by compelling the courts to reach a predetermined result in this case. We conclude, however, that § 8772 does not usurp the judicial function; rather, it retroactively changes the law applicable in this case, a permissible exercise of legislative authority.

In the leading case to find a separation-of-powers violation, *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872), Congress had

passed a statute requiring courts to treat pardons of Confederate sympathizers as conclusive evidence of disloyalty, and the Supreme Court found the statute invalid for prescribing a rule of decision to the courts. But while *Klein* illustrates that Congress may not "usurp[] the adjudicative function assigned to the federal courts," later cases have explained that Congress may "chang[e] the law applicable to pending cases," even when the result under the revised law is clear. *Axel Johnson Inc. v. Arthur Andersen & Co.*, 6 F.3d 78, 81 (2d Cir. 1993).

In *Robertson v. Seattle Audubon Society*, 503 U.S. 429 (1992), Congress had passed legislation to resolve two environmental suits challenging logging in the Pacific Northwest. The result of the cases under the new law was clear: the statute stated that "Congress hereby determines and directs" that if the forests at issue were managed under the terms of the new statute, it would "meet[] the statutory requirements that are the basis for" the plaintiffs' environmental law challenges in those particular cases. 503 U.S. at 434-35 (quoting Department of the Interior and Related Agencies Appropriations Act, Pub. L. No. 101-121, § 318(b)(6)(A), 103 Stat. 701, 747 (1989)). The Ninth Circuit held this statute to be unconstitutional under *Klein* as directing a particular decision in the two cases. *Id.* at 436. But the Supreme Court rejected this position, concluding instead that "[t]o the extent that [the statute] affected the adjudication of the cases, it did so by effectively modifying the provisions at issue in those cases," not by compelling findings or results under those provisions. *Id.* at 440.

Our court rejected a similar separation-of-powers challenge to section 27A(a) of the Securities Exchange Act of 1934, which was enacted to preserve pending securities law claims that would otherwise have been dismissed as untimely. *Axel Johnson*, 6 F.3d at 80-82. We noted that, like the statute in *Robertson*, section 27A(a) does not compel findings or results under old law, but rather "constitutes a change in law applicable to a limited class of cases" that "leaves to the courts the task of determining whether a claim falls within the ambit of the statute." *Id.* at 82.

Similarly, § 8772 does not compel judicial findings under old law; rather, it changes the law applicable to this case. And like the statutes at issue in *Robertson* and *Axel Johnson*, § 8772 explicitly leaves the determination of certain facts to the courts:

> [T]he court shall determine whether Iran holds equitable title to, or the beneficial interest in, the assets [at issue] and that no other person possesses a constitutionally protected interest in the assets . . . under the Fifth Amendment to the Constitution of the United States. To the extent the court determines that a person other than Iran holds—
>
> > (A) equitable title to, or a beneficial interest in, the assets . . . (excluding a custodial interest of a foreign securities intermediary or a related intermediary that holds the assets abroad for the benefit of Iran); or
> >
> > (B) a constitutionally protected interest in the assets . . . ,
>
> such assets shall be available only for execution or attachment in aid of execution to the extent of Iran's equitable title or beneficial interest therein and to the extent such execution or attachment does not infringe upon such constitutionally protected interest.

22 U.S.C. § 8772(a)(2).

Bank Markazi argues that while § 8772(a)(2) may formally give discretion to the courts, it effectively compels only one possible outcome, as Iran's beneficial interest in the assets had been established by the time Congress enacted § 8772. But this argument is foreclosed by the Supreme Court's decision in *Robertson*, as the statute there was specifically enacted to resolve two pending cases, and the Supreme Court found no constitutional violation. Indeed, it would be unusual for there to be more than one likely outcome when Congress changes the law for a pending case with a developed factual record.

As we have noted, "[t]he conceptual line between a valid legislative change in law and an invalid legislative act of adjudication is often difficult to draw," *Axel Johnson*, 6 F.3d at 81,

and there may be little functional difference between § 8772 and a hypothetical statute directing the courts to find that the assets at issue in this case are subject to attachment under existing law, which might raise more concerns. But we think it is clear that under the Supreme Court's guidance in *Robertson*, § 8772 does not cross the constitutional line.

III. Takings Clause

Bank Markazi's final challenge to § 8772 is that it effects an unconstitutional taking. *See* U.S. Const., amend. V ("[N]or shall private property be taken for public use, without just compensation."). As we have already stated in a similar case against another Iranian bank, however, "where the underlying judgment against Iran has not been challenged, seizure of [the bank's] property, as an instrumentality of Iran, in satisfaction of that liability does not constitute a 'taking' under the Takings Clause." *Weinstein*, 609 F.3d at 54.

Bank Markazi argues that this case raises retroactivity concerns that were not present in *Weinstein* because § 8772 was enacted after the assets were first restrained. But this is not a case in which legislation "imposes severe retroactive liability on a limited class of parties that could not have anticipated the liability." *E. Enters. v. Apfel*, 524 U.S. 498, 528-29 (1998) (plurality opinion). Iran—the 100% owner of Bank Markazi—had already been found liable to plaintiffs for billions of dollars in uncontested judgments, and § 8772 simply helps plaintiffs reach Iranian assets in partial satisfaction of these judgments. "Here, where Bank [Markazi's] assets are subject to attachment to satisfy a judgment against its foreign sovereign, the underlying purpose of the Takings Clause is in no way violated by attachment of Bank [Markazi's] assets." *Weinstein*, 609 F.3d at 54.

IV. Anti-Suit Injunction

Bank Markazi's final argument on appeal challenges the district court's order that it "shall be permanently restrained and enjoined from instituting or prosecuting any claim or pursuing any actions against Clearstream in any jurisdiction or tribunal arising

from or relating to any claim (whether legal or equitable) to the Blocked Assets." *Peterson v. Islamic Republic of Iran*, No. 10 Civ. 4518, slip op. at 12 (S.D.N.Y. July 9, 2013), ECF No. 463. Bank Markazi argues that the district court lacked jurisdiction to issue this impermissible restraint on its property outside the United States.

As this court has explained, however, "federal courts . . . have inherent power to protect their own judgments from being undermined or vitiated by vexatious litigation in other jurisdictions." *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 500 F.3d 111, 124 (2d Cir. 2007) (emphasis omitted). "The standard of review for the grant of a permanent injunction, including an anti-suit injunction, is abuse of discretion." *Id.* at 118-19. We see no abuse of discretion here, especially as Bank Markazi expressly consented to this language in the district court. At the hearing on this order, Bank Markazi's counsel objected to the anti-suit injunction as overly broad, the district court modified the language in response to this objection, and Bank Markazi's counsel then expressly stated, "That's fine with us as well, your Honor." Transcript of Conference at 24, *Peterson v. Islamic Republic of Iran*, No. 10 Civ. 4518 (S.D.N.Y. July 9, 2013), ECF No. 466. Because this issue does not involve jurisdictional concerns, Bank Markazi has no basis to now object to this injunction on appeal. *See Kraebel v. N.Y. City Dep't of Hous. Pres. & Dev.*, 959 F.2d 395, 401 (2d Cir. 1992) ("We have repeatedly held that if an argument has not been raised before the district court, we will not consider it.").

CONCLUSION

For the reasons stated above, we AFFIRM the judgment of the district court.

Annex 63

***Havlish et al.*, Dénonciation de saisie-arrêt, 21 January 2016, Case No. 177266**

PATRICK KURDYBAN
HUISSIER DE JUSTICE
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DENONCIATION DE SAISIE-ARRET AVEC ASSIGNATION EN VALIDITE

L'an deux mille seize, le vingt-et-un janvier.

A la requête de :

I. Les personnes suivantes à titre de parents et/ou héritiers des victimes décédées lors des attentats du 11 septembre 2001 agissant en leur nom personnel :

1. **Madame Tara BANE**, sans état connu, demeurant à 2114 North Crescent Boulevard Yardley, Pennsylvania 19067,
2. **Monsieur Donald BANE**, sans état connu, demeurant à 1311 Fox Hole Road Wyoming, Delaware 19934,
3. **Madame Christina BANE-HAYES**, sans état connu, demeurant à 1804 Oakdale Avenue Richmond, Virginia 23227,
4. **Monsieur Gerald BINGHAM**, sans état connu, demeurant à 624 Kings Court, Plant City, Florida 33565,
5. **Madame Krystyna BORYCZEWSKI**, sans état connu, demeurant à 460 Park Road, Parsippany, New Jersey 07054,
6. **Madame Julia BORYCZEWSKI**, sans état connu, demeurant à 3110 Scenic Court, Denville, New Jersey 07834,
7. **Madame Michele BORYCZEWSKI**, sans état connu, demeurant à 192 Well Road, Greely, Pennsylvania 18425,
8. **Madame Grace KNESKI**, sans état connu, demeurant à 95 Fieldfare Way, Charleston, South Carolina 29414,
9. **Monsieur Richard A. CAPRONI**, sans état connu, demeurant à 1208 Ocean Parkway, Ocean Pines, Maryland 21811,
10. **Madame Dolores CAPRONI**, sans état connu, demeurant à 1208 Ocean Parkway, Ocean Pines, Maryland 21811,
11. **Monsieur Michael CAPRONI**, sans état connu, demeurant à 401 East 65th Street, New York, New York 10065,
12. **Madame Lisa CAPRONI-BROWN**, sans état connu, demeurant à 1155 Warburton Avenue, Apt. 11-U Yonkers, New York 10701-1017,
13. **Madame Alice CARPENETO**, sans état connu, demeurant à 656 8th Street, Bohemia, New York 11716,
14. **Monsieur Stephen L. CARTLEDGE**, sans état connu, demeurant à 5282 Keel Way, Fort Pierce, Florida 34949,

15. **Madame Michelle WRIGHT**, sans état connu, demeurant à 5106 Gaslight Lane, Culver City, California 90230,

16. **Madame Clara CHIRCHIRILLO**, sans état connu, demeurant à 197 Crossroads Lakes Drive, Ponte Vedra Beach, Florida 32082,

17. **Madame Livia CHIRCHIRILLO**, sans état connu, demeurant à 415 Beverly Road, Apt. 3R, Brooklyn, New York 11218,

18. **Madame Catherine DEBLIECK**, sans état connu, demeurant à 2 Roving Road, Levittown, Pennsylvania 19056,

19. **Madame Frances M. COFFEY**, sans état connu, héritière de **Daniel M. COFFEY**, demeurant à 20 Carriage Drive, Newburgh, New York 12550,

20. **Monsieur Kevin M. COFFEY**, sans état connu, héritier de **Daniel M. COFFEY**, demeurant à 20 Carriage Drive, Newburgh, New York 12550,

21. **Monsieur Daniel D. COFFEY**, sans état connu, médecin, héritier de **Daniel M. COFFEY**, 43 Rainey Street, Apt. 2002, Austin, Texas 78701,

22. **Madame Frances M. COFFEY**, sans état connu, héritière de **Jason COFFEY**, demeurant à 20 Carriage Drive, Newburgh, New York 12550,

23. **Monsieur Kevin M. COFFEY**, sans état connu, héritier de **Jason COFFEY**, demeurant à 20 Carriage Drive, Newburgh, New York 12550,

24. **Monsieur Daniel D. COFFEY**, sans état connu, M.D., héritier de **Jason COFFEY**, demeurant à 43 Rainey Street, Apt. 2002, Austin, Texas 78701,

25. **Monsieur Dwayne W. COLLMAN**, sans état connu, demeurant à 308 E. Orange Street, Yorkville, Illinois 60560,

26. **Monsieur Brian COLLMAN**, sans état connu, demeurant à 1390 Vegas Valley Drive, Apt. 27, Las Vegas, Nevada 89169,

27. **Monsieur Charles COLLMAN**, sans état connu, demeurant à 3687 Sweeten Creek Road, Apt. 3, Arden, North Carolina 28704,

28. **Madame Brenda SORENSON**, sans état connu, demeurant à 401, 34th Street North, #78, St. Petersburg, Florida 33713,

29. **Madame Loisanne DIEHL**, sans état connu, demeurant à 21 Morningside Court, Lakewood, New Jersey 08701,

30. **Madame Anne Marie DORF**, sans état connu, demeurant à 15D Bulger Avenue, New Milford, New Jersey 07646,

31. **Monsieur Joseph DORF**, sans état connu, demeurant à 540 Duke Road, New Milford, New Jersey 07646,

32. **Madame Michelle DORF**, sans état connu, demeurant à 540 Duke Road, New Milford, New Jersey 07646,

33. **Monsieur Robert DORF**, sans état connu, demeurant à 1291 Sanford Street, Port Charlotte, Florida 33953,

34. **Madame Linda SAMMUT**, sans état connu, demeurant à 5 Second Street, Belford, New Jersey 07718,

35. **Madame Corazon FERNANDEZ**, sans état connu, demeurant à 19 Windstar Drive, Little Egg Harbor, New Jersey 08087,

36. **Madame Regina Maria MERWIN**, sans état connu, demeurant à 7613 Beechdale Road, Crestwood, Kentucky 40014,

37. **Madame Grace PARKINSON-GODSHALK**, sans état connu, demeurant à 608 Countess Drive, Yardley, Pennsylvania 19067,

38. **Madame Tina GRAZIOSO**, sans état connu, demeurant à 100 Bonnie Drive, North Middletown, New Jersey 07748,

39. **Monsieur Jin LIU**, sans état connu, demeurant à 35 Woodstone Circle, Short Hills, New Jersey 07078,

40. **Monsieur Alan GU**, sans état connu, demeurant à 35 Woodstone Circle, Short Hills, New Jersey 07078,

41. **Madame Maureen HALVORSON**, sans état connu, demeurant à 175 Huguenot Street, Apt. 702, New Rochelle, New York 10801,

42. **Madame Maureen HALVORSON**, sans état connu, héritière de **James HALVORSON**, demeurant à 175 Huguenot Street, Apt. 702, New Rochelle, New York 10801,

43. **Madame Maureen HALVORSON**, sans état connu, héritière de **William WILSON**, demeurant à 175 Huguenot Street, Apt. 702, New Rochelle, New York 10801,

44. **Madame Flona HAVLISH**, sans état connu, demeurant à P. O. Box 20488, Boulder, Colorado 30308,

45. **Monsieur William HAVLISH**, sans état connu, demeurant à 6505 Indian Acres Trail, Tucker, Georgia 30084,

46. **Madame Susan CONKLIN**, sans état connu, demeurant à 235 Starboard Point, Roswell, Georgia 30076,

47. **Monsieur Hui-Chien CHEN**, sans état connu, demeurant à 179, Sec. 1 Fusing South Road, Da-An District, Taipei, Taiwan, R.O.C.,

48. **Monsieur Haomin JIAN**, sans état connu, demeurant à 60-17 44th Avenue, Woodside, New York 11377,

49. **Madame Fu Mei CHIEN**, sans état connu, demeurant à 8 Tallman Lane, Somerset, New Jersey 08873,

50. **Madame Huichun JIAN**, sans état connu, demeurant à 48 Dong-Shin Street, 3rd Floor, Tao Yuan, Taiwan, R.O.C. 33048,

3

51. **Madame Hui-Chuan JIAN**, sans état connu, demeurant à 151 Lin-Sen North Road, Jhongshan Dist., Taipei City 10454, Taiwan, R.O.C. 10454,

52. **Madame Hui-Zon JIAN**, sans état connu, demeurant à No. 9, Alley 19, Lane 120, Sec. 2, Shatian Road, Daidu Township, Touchung County 432, Taiwan, R.O.C. 43242,

53. **Madame Marie Ann PAPROCKI**, sans état connu, demeurant à 61 Lakeview Drive, Mahopac, New York 10541,

54. **Monsieur Michael LOGUIDICE**, sans état connu, demeurant à 3152 Little Road #207, Trinity, Florida 34655,

55. **Madame Theresann LOSTRANGIO**, sans état connu, demeurant à 325 Barnsbury Road, Langhorne, Pennsylvania 19047,

56. **Monsieur Ralph S. MAERZ**, sans état connu, demeurant à 815 Via Del Sol, North Fort Myers, Florida 33903,

57. **Madame Margaret MAURO**, sans état connu, demeurant à 3804 Green Garden Court, Antioch, Tennessee 37013,

58. **Monsieur Ramon MELENDEZ**, sans état connu, demeurant à 435 Sabol Road, Stroudsburg, Pennsylvania 18360,

59. **Madame Patricia MILANO**, sans état connu, demeurant à 221 Yale Boulevard, Shrewsbury, New Jersey 07702,

60. **Madame Ivy MORENO**, sans état connu, demeurant à 1541 Seminole Street, First Floor, Bronx, New York 10461,

61. **Madame JoAnne LOVETT**, sans état connu, demeurant à 17 Man O War Lane, Howell, New Jersey 07731,

62. **Monsieur Martin PANIK**, sans état connu, demeurant à 1100 Blue Ball Road, P. O. Box 185, Mingoville, Pennsylvania 16856,

63. **Madame Mary Lynn-Anna PANIK-STANLEY**, sans état connu, demeurant à 375 East Vine Street, LaRue, Ohio 43332,

64. **Madame Christine PAPASSO**, sans état connu, demeurant à 5330 Arthur Kill Road, Staten Island, New York 10307,

65. **Madame Patricia J. PERRY**, sans état connu, demeurant à 2934 East 28th Street, Kansas City, Missouri 64128,

66. **Monsieur Rodney M. RATCHFORD**, sans état connu, demeurant à 412 Ingram Avenue, Oneonta, Alabama 35121,

67. **Madame Marshae Ratchford**, sans état connu, demeurant à 4327 Wyndham Park Circle, Decatur, Georgia 30034,

68. **Monsieur Rodney RATCHFORD**, pour le compte de **Madame Maranda C. RATCHFORD**, mineure, demeurant à 412 Ingram Avenue Oneonta, Alabama 35121,

69. **Monsieur Rodney MARQUEZ RATCHFORD**, sans état connu, demeurant à 2151 Beau Terra Drive W, Mobile, Alabama 36619,

4

70. **Madame Judith REISS**, sans état connu, demeurant à 969 Princess Drive, Yardley, Pennsylvania 19067,

71. **Madame Joanne RODAK GORI**, sans état connu, demeurant à 1383 Butternut Drive, Southampton, Pennsylvania 18966,

72. **Madame Chelsea Nicole RODAK**, sans état connu, demeurant à 124 Rabbit Run Road, Sewell, New Jersey 08080,

73. **Madame Joyce Ann RODAK**, pour le compte de **Monsieur Devon Marie RODAK**, mineur, demeurant à 124 Rabbit Run Road, Sewell, New Jersey 08080,

74. **Madame Joyce Ann RODAK**, sans état connu, demeurant à 124 Rabbit Run Road, Sewell, New Jersey 08080,

75. **Monsieur John RODAK**, sans état connu, demeurant à 600 Pickering Road, Southampton, Pennsylvania 18966,

76. **Madame Regina RODAK**, sans état connu, demeurant à 600 Pickering Road, Southampton, Pennsylvania 18966,

77. **Madame Diane ROMERO**, sans état connu, demeurant à 5 Chatham Court, Matawan, New Jersey 07748,

78. **Madame Loren ROSENTHAL**, sans état connu, demeurant à 91 Quarry Drive, Woodland Park, New Jersey 07424-4200,

79. **Madame Helen ROSENTHAL**, sans état connu, demeurant à 225 West 83rd Street, Apt. 4K, New York, New York 10024,

80. **Monsieur Alexander ROWE**, sans état connu, demeurant à P. O. Box 237, X11 Bryanston, Simonstown, South Africa 7995,

81. **Monsieur Ed RUSSIN**, sans état connu, demeurant à 25 Regina Road, Morganville, New Jersey 07748,

82. **Madame Gloria RUSSIN**, sans état connu, demeurant à 25 Regina Road, Morganville, New Jersey 0748,

83. **Monsieur Barry RUSSIN**, sans état connu, demeurant à 3 York Road, Marlboro, New Jersey 07746,

84. **Monsieur Expedito SANTILLAN**, sans état connu, demeurant à 1 Rockridge Court, Morris Plains, New Jersey 07748,

85. **Madame Ester SANTILLAN**, sans état connu, demeurant à 1 Rockridge Court, Morris Plains, New Jersey 07748,

86. **Madame Ellen SARACINI**, sans état connu, demeurant à 1460 Heather Circle, Yardley, Pennsylvania 19067,

87. **Madame Joanne RENZI**, sans état connu, demeurant à 5821 Ivy Branch Drive, Dublin, Ohio 43016,

88. **Monsieur Paul SCHERTZER**, sans état connu, demeurant à 8 Annette Drive, Edison, New Jersey 08820,

89. **Monsieur Ronald SLOAN**, sans état connu, demeurant à 301 Mission Street, 38-C, San Francisco, California 94105,

90. **Monsieur Raymond Doyle SMITH**, sans état connu, demeurant à 75 Traymore Street, Apt. 2, Buffalo, New York 14216,

91. **Madame Katherine SOULAS**, sans état connu, demeurant à 3 Beaver Creek Court, Far Hills, New Jersey 07931,

92. **Madame Russa STEINER**, sans état connu, demeurant à 30 Paddock Drive, New Hope, Pennsylvania 18938,

93. **Monsieur George STERGIOPOULOS**, médecin,, demeurant à 184 Marvin Ridge Road, New Canaan, Connecticut 06840,

94. **Madame Angela STERGIOPOULOS**, sans état connu, demeurant à 184 Marvin Ridge Road, New Canaan, Connecticut 06840,

95. **Madame Sandra STRAUB**, sans état connu, demeurant chez **Madame Brianna L. Gomes**, 37849 Millwood Drive, Woodlake, California 93286,

96. **Madame Joan E. TINO**, sans état connu, demeurant à 9 Howland Circle, West Caldwell, New Jersey 07006,

97. **Madame Pamela SCHIELE**, sans état connu, demeurant à 2 Lowry Avenue, Wharton, New Jersey 07855,

98. **Madame Christine BARTON PENCE**, sans état connu, demeurant à 721 S.E. 1st Way, Apt. 210, Deerfield Beach, Florida 33441,

99. **Monsieur Michael E. PAIGE**, héritier de **Timothy Raymond WARD**, 2057 South Della Lane, Anaheim, California 92802,

100. **Monsieur Leonard ZEPLIN**, sans état connu, demeurant à 400 East 77th Street, New York, New York 10021,

101. **Madame Leona ZEPLIN**, sans état connu, demeurant à 400 East 77th Street, New York, New York 10021,

102. **Monsieur Joslin ZEPLIN**, sans état connu, demeurant à 420 East 72nd Street, New York, New York 10021, P. O. Box 630260, Rockville, Utah 84763,

II. Les mêmes parties que sub I en tant que représentants et/ou héritiers des successions (estates) des victimes décédées lors des prédits attentats du 11 septembre 2001 (dont le détail figure en annexe, pièce n°8) à savoir :

1. **Succession de Donald J. HAVLISH, Jr.** représentée par **Madame Fiona HAVLISH**, sans état connu, demeurant à P. O. Box 20488, Boulder, Colorado 30308, et par **Madame Susan CONKLIN**, sans état connu, demeurant à 235 Starboard Point, Roswell, Georgia 30076 ;

2. **Succession de Michael A. BANE**, représentée par **Madame Tara BANE**, sans état connu, demeurant à 2114 North Crescent Boulevard Yardley, Pennsylvania 19067 ;

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3. **Succession de Martin BORYCZEWSKI, représentée par Madame Krystyna BORYCZEWSKI**, sans état connu, demeurant à 460 Park Road, Parsippany, New Jersey 07054 ;

4. **Succession de Steven CAFIERO,** représentée par **Madame Grace KNESKI**, sans état connu, demeurant à 95 Fieldfare Way, Charleston, South Carolina 29414 ;

5. **Succession de Richard M. CAPRONI, représentée par Monsieur Richard A. CAPRONI**, sans état connu, demeurant à 1208 Ocean Parkway, Ocean Pines, Maryland 21811;

6. **Succession de Peter CHIRCHIRILLO,** représentée par **Madame Clara CHIRCHIRILLO**, sans état connu, demeurant à 197 Crossroads Lakes Drive, Ponte Vedra Beach, Florida 32082 ;

7. **Succession de Jeffrey COALE,** représentée par **Madame Leslie BROWN**, sans état connu, demeurant à 927 Baltimore Annapolis Blvd, Severna Park, Maryland 21146, dont l'héritier est **Monsieur William COALE**, décédé, dont la succession est représentée par **Madame Leslie BROWN**, prequalifiée ;

8. **Succession de Daniel M. COFFEY**, représentée par ses héritiers :
   - **Madame Frances M. COFFEY**, sans état connu, demeurant à 20 Carriage Drive, Newburgh, New York 12550,
   - **Monsieur Kevin M. COFFEY,** sans état connu, demeurant à 20 Carriage Drive, Newburgh, New York 12550,
   - **Monsieur Daniel D. COFFEY**, sans état connu, M.D., demeurant à 43 Rainey Street, Apt. 2002, Austin, Texas 78701 ;

9. **Succession de Jason COFFEY,** représentée par ses héritiers :
   - **Madame Frances M. COFFEY,** sans état connu, demeurant à 20 Carriage Drive, Newburgh, New York 12550,
   - **Monsieur Kevin M. COFFEY,** sans état connu, demeurant à 20 Carriage Drive, Newburgh, New York 12550,
   - **Monsieur Daniel D. COFFEY,** sans état connu, M.D., demeurant à 43 Rainey Street, Apt. 2002, Austin, Texas 78701 ;

10. **Succession de Jeffrey COLLMAN,** représentée par **Madame Keith BRADKOWSKI**, sans état connu, demeurant à 814 Provence Avenue, Santa Maria, California 934458 ;

11. **Succession de Michael DIEHL,** représentée par **Madame Loisanne DIEHL**, sans état connu, demeurant à 21 Morningside Court, Lakewood, New Jersey 08701 ;

12. **Succession de Stephen DORF,** représentée par **Madame Linda SAMMUT**, sans état connu, demeurant à 5 Second Street, Belford, New Jersey 07718 et **Madame Michelle DORF**, sans état connu, demeurant à 540 Duke Road, New Milford, New Jersey 07646 ;

13. **Succession de Judy FERNANDEZ**, représentée par **Madame Corazon FERNANDEZ**, sans état connu, demeurant à 19 Windstar Drive, Little Egg Harbor, New Jersey 08087 ;

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14. **Succession de Ronald GAMBOA**, représentée par **Madame Regina Maria MERWIN**, sans état connu, demeurant à 7613 Beechdale Road, Crestwood, Kentucky 40014 ;

15. **Succession de William R. GODSHALK**, représentée par **Madame Grace PARKINSON-GODSHALK**, sans état connu, demeurant à 608 Countess Drive, Yardley, Pennsylvania 19067 ;

16. **Succession de John GRAZIOSO**, représentée par **Madame Tina GRAZIOSO**, sans état connu, demeurant à 100 Bonnie Drive, North Middletown, New Jersey 07748 ;

17. **Succession de Liming GU**, représentée par **Monsieur Jin LIU**, sans état connu, demeurant à 35 Woodstone Circle, Short Hills, New Jersey 07078 ;

18. **Succession de James D. HALVORSON**, représentée par **Madame Maureen HALVORSON**, sans état connu, demeurant à 175 Huguenot Street, Apt. 702, New Rochelle, New York 10801 ;

19. **Succession de William HALVORSON**, représentée par **Madame Maureen HALVORSON**, sans état connu, demeurant à 175 Huguenot Street, Apt. 702, New Rochelle, New York 10801 ;

20. **Succession de Denis LAVELLE**, représentée par **Madame Marie Ann PAPROCKI**, sans état connu, demeurant à 61 Lakeview Drive, Mahopac, New York 10541 ;

21. **Succession de Robert LEVINE**, représentée par **Madame Stephanie GIGLIO**, sans état connu, demeurant à 15, Hartsdale Lane, Coram, New York 11727, dont héritier est : **Monsieur Michael LOGUIDICE**, sans état connu, demeurant à 3152 Little Road #207, Trinity, Florida 34655 ;

22. **Succession de Joseph LOSTRANGIO**, représentée par **Madame Theresann LOSTRANGIO**, sans état connu, demeurant à 325 Barnsbury Road, Langhorne, Pennsylvania 19047 ;

23. **Succession de Dorthy MAURO**, représentée par **Madame Margaret MAURO**, sans état connu, demeurant à 3604 Green Garden Court, Antioch, Tennessee 37013 ;

24. **Succession de Mary MELENDEZ**, representée par **Monsieur Ramon MELENDEZ**, sans état connu, demeurant à 435 Sabol Road, Stroudsburg, Pennsylvania 18360 ;

25. **Succession de Peter T. MILANO**, représentée par **Madame Patricia MILANO**, sans état connu, demeurant à 221 Yale Boulevard, Shrewsbury, New Jersey 07702 ;

26. **Succession d'Yvette Nichole MORENO**, représentée par **Madame Ivy MORENO**, sans état connu, demeurant à 1541 Seminole Street, First Floor, Bronx, New York 10461 ;

27. **Succession de Brian NUNEZ**, représentée par **Madame JoAnne LOVETT**, sans état connu, demeurant à 17 Man O War Lane, Howell, New Jersey 07731 ;

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28. **Succession de Philip Paul OGNIBENE**, représentée par **Madame Diane OGNIBENE**, sans état connu, demeurant à 30882 Sandy Ridge Drive, Lewes, Delaware 19958 ;

29. **Succession de Vincent A. OGNIBENE**, représentée par **Madame Diane OGNIBENE**, sans état connu, demeurant à 30882 Sandy Ridge Drive, Lewes, Delaware 19958 ;

30. **Succession de Salvatore T. PAPASSO**, représentée par **Madame Christine PAPASSO**, sans état connu, demeurant à 5330 Arthur Kill Road, Staten Island, New York 10307 ;

31. **Succession de John William PERRY**, représentée par **Madame Patricia J. PERRY**, sans état connu, demeurant à 2934 East 28th Street, Kansas City, Missouri 64128 ;

32. **Succession de Marsha Dianah RATCHFORD**, représentée par **Monsieur Rodney M. RATCHFORD**, sans état connu, demeurant à 412 Ingram Avenue, Oneonta, Alabama 35121 ;

33. **Succession de Joshua Scott REISS**, représentée par **Madame Judith REISS**, sans état connu, demeurant à 969 Princess Drive, Yardley, Pennsylvania 19067;

34. **Succession de John M. RODAK**, représentée par **Madame Joyce Ann RODAK**, sans état connu, demeurant à 124 Rabbit Run Road, Sewell, New Jersey 08080 ;

35. **Succession de Elvin ROMERO**, représentée par **Madame Diane ROMERO**, sans état connu, demeurant à 5 Chatham Court, Matawan, New Jersey 07748 ;

36. **Succession de Richard ROSENTHAL**, représentée par **Madame Loren ROSENTHAL**, sans état connu, demeurant à 91 Quarry Drive, Woodland Park, New Jersey 07424-4200 ;

37. **Succession de Maria Theresa SANTILLIAN**, représentée par **Monsieur Expedito SANTILLAN**, sans état connu, demeurant à 1 Rockridge Court, Morris Plains, New Jersey 07748 ;

38. **Succession de Victor SARACINI**, représentée par **Madame Ellen SARACINI**, sans état connu, demeurant à 1460 Heather Circle, Yardley, Pennsylvania 19067;

39. **Succession de Scott SCHERTZER**, représentée par **Monsieur Paul SCHERTZER**, sans état connu, demeurant à 8 Annette Drive, Edison, New Jersey 08820 ;

40. **Succession de Paul K. SLOAN**, représentée par **Monsieur Ronald SLOAN**, sans état connu, demeurant à 301 Mission Street, 38-C, San Francisco, California 94105 ;

9

41. **Succession de George Eric SMITH**, représentée par **Monsieur Raymond Doyle SMITH**, sans état connu, demeurant à 75 Traymore Street, Apt. 2, Buffalo, New York 14216 ;

42. **Succession de Timothy P. SOULAS**, représentée par **Madame Katherine SOULAS**, sans état connu, demeurant à 3 Beaver Creek Court, Far Hills, New Jersey 07931 ;

43. **Succession de William R. STEINER**, représentée par **Madame Russa STEINER**, sans état connu, demeurant à 30 Paddock Drive, New Hope, Pennsylvania 18938 ;

44. **Succession de Andrew STERGIOPOULOS**, représentée par **Monsieur George STERGIOPOULOS**, médecin, demeurant à 184 Marvin Ridge Road, New Canaan, Connecticut 06840 ;

45. **Succession de Edward W. STRAUB**, représentée par **Madame Sandra STRAUB**, sans état connu, demeurant chez **Madame Brianna L. Gomes**, 37849 Millwood Drive, Woodlake, California 93286 ;

46. **Succession de Jennifer TINO**, représentée par **Madame Joan E. TINO**, sans état connu, demeurant à 9 Howland Circle, West Caldwell, New Jersey 07006 ;

47. **Succession de Jeanmarie WALLENDORF**, représentée par **Madame Christine BARTON PENCE**, sans état connu, demeurant à 721 S.E. 1st Way, Apt. 210, Deerfield Beach, Florida 33441 ;

48. **Succession de Meta WALLER**, représentée par **Monsieur Chrislan FULER MANUEL**, sans état connu, demeurant à 161 Cornerstone Drive, South Windsor, Connecticut 92802 ;

49. **Succession de Timothy Raymond WARD**, représentée par **Monsieur Michael E. PAIGE**, 2057 South Della Lane, Anaheim, California 92802,

50. **Succession de Doyle Raymond WARD**, représentée par **Madame Brianna L. GOMES**, sans état connu, demeurant à 37849 Millwood Drive, Woodlake, California 93286,

élisant domicile en l'étude de **Maître François MOYSE**, Avocat à la Cour, demeurant à L – 2146 Luxembourg – 55-57, rue de Merl, qui est constitué et occupera et au secrétariat communal où demeure le tiers-saisi,

Je soussigné* **Patrick KURDYBAN** Huissier de Justice, demeurant à L-1621 Luxembourg, 21, rue des Genêts, immatriculé près le Tribunal d'Arrondissement de et à Luxembourg,

(* ***Cathérine NILLES***, *Huissier de Justice Suppléant, en remplacement de ...)*

cet alinéa est réputé non écrit s'il n'est pas coché

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Ai signifié et laissé copie entière conforme à:

1. **la République Islamique d'Iran**, représentée par son Ministre des Affaires étrangères, Monsieur Mohammad Javad ZARIF, Ministère des Affaires étrangères, établi à Imam Khomeini Street, Téhéran, Iran;

2. **l'Ayatollah Ali HOSSEINI-KHAMENEI,** ancien Président de la République Islamique d'Iran, sans état connu, représenté par Monsieur le Ministre des Affaires étrangères, Mohammad Javad ZARIF, Ministère des Affaires étrangères, demeurant à Imam Khomeini Street, Téhéran, Iran;

3. **le sieur Ali Akbar HASHEMI RAFSANJANI,** ancien Président de la République Islamique d'Iran, sans état connu, représenté par Monsieur le Ministre des Affaires étrangères, Mohammad Javad ZARIF, Ministère des Affaires étrangères, demeurant à Imam Khomeini Street, Téhéran, Iran;

4. **le Ministère Iranien de l'Information et de la Sécurité,** représenté par Monsieur le ministre des Affaires étrangères, Mohammad Javad ZARIF, Ministère des Affaires étrangères, établi à Imam Khomeini Street, Téhéran, Iran;

5. **l'Organisation Islamique Corps des Gardes Révolutionnaires**, organisation politique,représentée par Monsieur le Ministre des Affaires étrangères, Mohammad Javad ZARIF, Ministère des Affaires étrangères, établi à Imam Khomeini Street, Téhéran, Iran;

6. **le Hezbollah,** organisation politique, représenté par Monsieur le Ministre des Affaires étrangères, Mohammad Javad ZARIF, Ministère des Affaires étrangères, établi à Imam Khomeini Street, Téhéran, Iran;

7. **le Ministère Iranien du Pétrole,** organisme public, représenté par son représentant légal ou statutaire, établi à Hafez Crossing, Taleghani Avenue, Téhéran, Iran;

8. **la Corporation Nationale Iranienne des Pétroliers**, organisme public, représentée par son représentant légal ou statutaire, établie à 65 Shahid Atefi Street, Africa Expressway, Téhéran, Iran;

9. **la Société Nationale Iranienne de Pétrole**, organisme public, représentée par son représentant légal ou statutaire, établie à Hafez Crossing, Taleghani Avenue, Téhéran, Iran;

10. **la Société Nationale de Gaz Iranien**, organisme public, représentée par son représentant légal ou statutaire, établie à National Iranian Gas Company Building, South Aban Street, Karimkhan Boulevard, P.O. Box 15875, Téhéran, Iran;

11. **la Compagnie aérienne d'Iran**, organisme public, représentée par son représentant légal ou statutaire, établie à Iran Air H.Q., Mehrabad Airport, P.O.Box 13185-775, Téhéran, Iran;

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12. **la Compagnie Nationale Iranienne Pétrochimique**, organisme public, représentée par son représentant légal ou statutaire, établie à 144, North, Sheikh Bahaie Avenue, P.O. Box 19395-6896, Téhéran, Iran;

13. **le Ministère Iranien des Affaires Economiques et des Finances,** organisme public, représenté par son Ministre, établi à Imam Khomeini Street, Téhéran, Iran;

14. **le Ministère Iranien du Commerce**, organisme public, représenté par son Ministre, établi à 492, Valieasr Avenue, Téhéran, Iran;

15. **le Ministère Iranien de la Défense et de la Logistique des Forces Armées**, représenté par son Ministre, établi Ferdowsi Avenue, Sarhang Sakhaei Street, Téhéran, Iran;

16. **la Banque Centrale de la République Islamique d'Iran**, organisme public, représentée par son représentant légal ou statutaire, établie à 198, Mirdamad Blvd., Téhéran, Iran,

a) d'un exploit de saisie-arrêt dressé et signifié par le ministère de Cathérine NILLES, huissier de justice suppléant en remplacement de Patrick KURDYBAN, huissier de justice en date du 14 janvier 2016 et contenant, à la requête de la requérante, saisie-arrêt au préjudice des parties signifiées entre les mains de:

la société anonyme CLEARSTREAM BANKING S.A., établie et ayant son siège social à L - 1855 LUXEMBOURG, 42, Avenue J.F. Kennedy, représentée par son conseil d'administration actuellement en fonctions et immatriculée au Registre de Commerce et des Sociétés de Luxembourg sous le numéro B 9248,

b) - d'un jugement rendu par défaut le 22 décembre 2011 par le Tribunal de District des Etats-Unis du District Sud de l'Etat de New York, condamnant tous les défendeurs préqulifiés à indemniser les dommages subis par les requérants suite aux attaques terroristes du 11 septembre 2001 et en réservant le jugement final afin de permettre l'évaluation des dommages ;

- d'un jugement du 3 octobre 2012 rendu par le Tribunal de District des Etats-Unis du District Sud de l'Etat de New York afin d'établir le montant des dommages et intérêts par catégorie de dommage et par catégorie de victimes ainsi que celui des intérêts légaux ;

- d'un jugement définitif rendu le 12 octobre 2012 par le Tribunal de District des Etats-Unis du District Sud de l'Etat de New York dans le cadre des attaques terroristes du 11 septembre 2001 à New York aux ETATS-UNIS condamnant les parties défenderesses préqualifiées au paiement de dommages et intérêts aux familles des victimes pour un montant total de 7.016.463.805,00 US $, soit 6.613.782.530,78.- EUR ;

- d'un jugement du Tribunal de District des Etats-Unis du District Sud de l'Etat de New York du 12 septembre 2013, par lequel les jugements précédents furent rendus exécutoires aux Etats-Unis contre les parties défenderesses ;

A telles fins que de droit.

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Et à même contexte, date, constitution d'avocat à la Cour, requête et élection de domicile que ci-dessus, j'ai, huissier de justice susdit et soussigné, donné assignation aux parties signifiées à comparaître par ministère d'avocat à la Cour, dans le délai de la loi qui est de quinze jours, augmenté du délai de distance en vertu de l'article 167 du NCPC, devant le Tribunal d'arrondissement de et à Luxembourg, siégeant en matière civile, Cité Judiciaire, Plateau du Saint-Esprit à Luxembourg, salle TL. 3.06, pour:

Attendu que les requérantes sont créancières des parties signifiées jusqu'à concurrence et ce pour sûreté et obtenir paiement de la somme en principal de

2 147 394 989.- Euros (deux milliards cent quarante-sept millions trois cent quatre-vingts quatorze mille neuf cent quatre-vingts neuf Euros), équivalant à **2 330 277 884 US$ (deux milliards trois cent trente millions deux cent soixante-dix-sept mille huit cent quatre-vingts quatre US$)**,

avec les intérêts légaux évalués à :
236 611 049.- Euros (deux cents trente-six millions six cent onze mille quarante-neuf Euros), soit un de TOTAL de : **2 384 006 038.- Euros (deux milliards trois cent quatre-vingts quatre millions six mille trente-huit)**,

soit à compter du 12/10/2012 jusqu'au lancement de la procédure de validation de la saisie-arrêt, sous réserve expresse et formelle d'augmentation ultérieure de ce montant en cours d'instance, tous intérêts, indemnités et frais étant expressément et formellement réservés, ainsi que tous autres droits, dus moyens et actions.

à quelque titre et pour quelque cause que ce soit.

Attendu que suivant exploit de saisie-arrêt dressé et signifié par le ministère de Cathérine NILLES, huissier de justice suppléant en remplacement de Patrick KURDYBAN, huissier de justice demeurant à Luxembourg, en date du 14 janvier 2016, les parties requérantes ont formé opposition entre les mains de la partie tierce-saisie préqualifiée, pour sûreté, conservation et parvenir au paiement de ladite somme,

Attendu que ladite saisie-arrêt dont il s'agit est régulière en la forme et juste au fond, qu'il y a lieu de la valider,

A CES CAUSES,

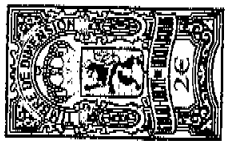
Les parties assignées s'entendre condamner pour sûreté et obtenir paiement de la somme en principal de :

2 147 394 989.- Euros (deux milliards cent quarante-sept millions trois cent quatre-vingts quatorze mille neuf cent quatre-vingts neuf Euros), équivalant à **2 330 277 884 US$ (deux milliards trois cent trente millions deux cent soixante-dix-sept mille huit cent quatre-vingts quatre US$)**,

avec les intérêts légaux évalués à :
236 611 049.- Euros (deux cents trente-six millions six cent onze mille quarante-neuf Euros), soit un de TOTAL de : **2 384 006 038.- Euros (deux milliards trois cent quatre-vingts quatre millions six mille trente-huit)**,

soit à compter du 12/10/2012 jusqu'au lancement de la procédure de validation de la saisie-arrêt, sous réserve expresse et formelle d'augmentation ultérieure de ce montant en cours d'instance, tous intérêts, indemnités et frais étant expressément et formellement réservés, ainsi que tous autres droits, dus moyens et actions.

à quelque titre et pour quelque cause que ce soit.



Voir déclarer bonne et valable l'opposition formée entre les mains de la partie tierce-saisie préqualifiée, par exploit de saisie-arrêt dressé et signifié par le ministère de Cathérine NILLES, huissier de justice suppléant en remplacement de Patrick KURDYBAN, huissier de justice demeurant à Luxembourg, en date du 14 janvier 2016 au préjudice des parties signifiées,

Voir dire en conséquence que les sommes dont la partie tierce-saisie se reconnaîtra ou seront jugées débitrice envers elles, seront par elle versées entre les mains des parties requérantes, en déduction ou jusqu'à concurrence du montant de leur créance en principal et accessoires,

Les parties assignées s'entendre condamner à payer aux parties demanderesses, préqualifiées, une indemnité de procédure de **EUR 5.000,-** (cinq mille euros) sur base de l'article 240 du Nouveau Code de Procédure Civile pour une partie des sommes exposées par elles et non comprises dans les dépens, pour les frais et honoraires d'avocat ainsi que les frais de déplacement et les faux frais exposés (copies, taxes, timbres, téléphone etc.) qu'il serait injuste de laisser à sa seule charge compte tenu de l'attitude adverse ayant conduit au litige,

Les parties assignées s'entendre, en outre, condamner à tous les frais et dépens, sous toutes réserves généralement quelconques,

Réserver aux parties requérantes tous autres droits, moyens, dus et actions,

A ce que les parties assignées n'en ignorent.

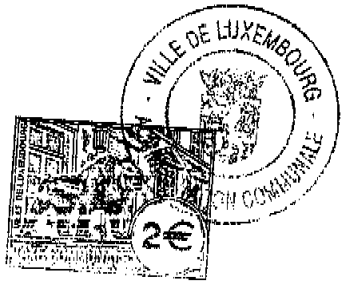
Les parties assignées sont également informées que si la signification du présent exploit est faite à leur personne et qu'elles ne comparaissent pas, le jugement à intervenir sera réputé contradictoire et qu'il ne sera pas susceptible d'opposition.

Dont Acte et attendu que les parties assignées demeurent respectivement sont établies en République Islamique d'Iran, j'ai déposé pour chacune d'elles sous pli recommandé avec avis de réception copie de mon exploit ainsi qu'une traduction en langue perse dudit exploit et des susdites pièces à l'entreprise des postes et télécommunications afin qu'elles soient envoyées aux parties signifiées/assignées, et j'ai en outre envoyé deux copies de mon exploit avec une traduction en langue perse au :

MINISTERE DES AFFAIRES ETRANGERES, DIRECTION DU PROTOCOLE ET DES AFFAIRES JURIDIQUES (DIRECTION III) à L – 2911 LUXEMBOURG

sous pli recommandé avec avis de réception à l'entreprise des postes et télécommunications à Luxembourg, afin que toutes les pièces soient transmises aux parties signifiées/assignées par la voie diplomatique, tout cela contre les récépissés et avis de réceptions annexés à mon original.

Droit	60,00
Adr.	18,00
Voy.	24,00
Taxe	0,00
Tbr.	512,00
Ent.	12,00
TVA	17,34
S-TOTAL	643,34
Div.	0,00
Cop.	780,00
TVA	132,60
Port	650,00
TOTAL	2.205,94



Vu pour légalisation de la signature
de Cathérine NILLES

Luxembourg, le 19-01-2016

Pour le Bourgmestre,
le fonctionnaire délégué,
M. Demoullin

s. Cathérine NILLES
Huissier de Justice Suppléant

Vu pour légalisation de la signature

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PATRICK KURDYBAN
HUISSIER DE JUSTICE
Adresse Etude : 21, rue des Genêts L – 1621 Luxembourg
BP 1368 L – 1013 Luxembourg
TEL : 26.35.08.08 / FAX : 27.69.42.68
E-MAIL : patrick.kurdyban@gmail.com

SAISIE-ARRET

L'an deux mille seize, le quatorze janvier

A la requête de :

I. Les personnes suivantes à titre de parents et/ou héritiers des victimes décédées lors des attentats du 11 septembre 2001 agissant en leur nom personnel :

1. **Madame Tara BANE**, sans état connu, demeurant à 2114 North Crescent Boulevard Yardley, Pennsylvania 19067,

2. **Monsieur Donald BANE,** sans état connu, demeurant à 1311 Fox Hole Road Wyoming, Delaware 19934,

3. **Madame Christina BANE-HAYES**, sans état connu, demeurant à 1804 Oakdale Avenue Richmond, Virginia 23227,

4. **Monsieur Gerald BINGHAM**, sans état connu, demeurant à 624 Kings Court, Plant City, Florida 33565,

5. **Madame Krystyna BORYCZEWSKI**, sans état connu, demeurant à 460 Park Road, Parsippany, New Jersey 07054,

6. **Madame Julia BORYCZEWSKI**, sans état connu, demeurant à 3110 Scenic Court, Denville, New Jersey 07834,

7. **Madame Michele BORYCZEWSKI**, sans état connu, demeurant à 192 Well Road, Greely, Pennsylvania 18425,

8. **Madame Grace KNESKI**, sans état connu, demeurant à 95 Fieldfare Way, Charleston, South Carolina 29414,

9. **Monsieur Richard A. CAPRONI**, sans état connu, demeurant à 1208 Ocean Parkway, Ocean Pines, Maryland 21811,

10. **Madame Dolores CAPRONI**, sans état connu, demeurant à 1208 Ocean Parkway, Ocean Pines, Maryland 21811,

11. **Monsieur Michael CAPRONI**, sans état connu, demeurant à 401 East 65th Street, New York, New York 10065,

12. **Madame Lisa CAPRONI-BROWN**, sans état connu, demeurant à 1155 Warburton Avenue, Apt. 11-U Yonkers, New York 10701-1017,

13. **Madame Alice CARPENETO**, sans état connu, demeurant à 656 8th Street, Bohemia, New York 11716,

14. **Monsieur Stephen L. CARTLEDGE**, sans état connu, demeurant à 5282 Keel Way, Fort Pierce, Florida 34949,

15. **Madame Michelle WRIGHT**, sans état connu, demeurant à 5106 Gaslight Lane, Culver City, California 90230,

16. **Madame Clara CHIRCHIRILLO**, sans état connu, demeurant à 197 Crossroads Lakes Drive, Ponte Vedra Beach, Florida 32082,

17. **Madame Livia CHIRCHIRILLO**, sans état connu, demeurant à 415 Beverly Road, Apt. 3R, Brooklyn, New York 11218,

18. **Madame Catherine DEBLIECK**, sans état connu, demeurant à 2 Roving Road, Levittown, Pennsylvania 19056,

19. **Madame Frances M. COFFEY**, sans état connu, héritière de **Daniel M. COFFEY**, demeurant à 20 Carriage Drive, Newburgh, New York 12550,

20. **Monsieur Kevin M. COFFEY**, sans état connu, héritier de **Daniel M. COFFEY**, demeurant à 20 Carriage Drive, Newburgh, New York 12550,

21. **Monsieur Daniel D. COFFEY**, sans état connu, médecin, héritier de **Daniel M. COFFEY**, 43 Rainey Street, Apt. 2002, Austin, Texas 78701,

22. **Madame Frances M. COFFEY**, sans état connu, héritière de **Jason COFFEY**, demeurant à 20 Carriage Drive, Newburgh, New York 12550,

23. **Monsieur Kevin M. COFFEY**, sans état connu, héritier de **Jason COFFEY**, demeurant à 20 Carriage Drive, Newburgh, New York 12550,

24. **Monsieur Daniel D. COFFEY**, sans état connu, M.D., héritier de **Jason COFFEY**, demeurant à 43 Rainey Street, Apt. 2002, Austin, Texas 78701,

25. **Monsieur Dwayne W. COLLMAN**, sans état connu, demeurant à 308 E. Orange Street, Yorkville, Illinois 60560,

26. **Monsieur Brian COLLMAN**, sans état connu, demeurant à 1390 Vegas Valley Drive, Apt. 27, Las Vegas, Nevada 89169,

27. **Monsieur Charles COLLMAN**, sans état connu, demeurant à 3687 Sweeten Creek Road, Apt. 3, Arden, North Carolina 28704,

28. **Madame Brenda SORENSON**, sans état connu, demeurant à 401, 34th Street North, #78, St. Petersburg, Florida 33713,

29. **Madame Loisanne DIEHL**, sans état connu, demeurant à 21 Morningside Court, Lakewood, New Jersey 08701,

30. **Madame Anne Marie DORF**, sans état connu, demeurant à 15D Bulger Avenue, New Milford, New Jersey 07646,

31. **Monsieur Joseph DORF**, sans état connu, demeurant à 540 Duke Road, New Milford, New Jersey 07646,

32. **Madame Michelle DORF**, sans état connu, demeurant à 540 Duke Road, New Milford, New Jersey 07646,

33. **Monsieur Robert DORF**, sans état connu, demeurant à 1291 Sanford Street, Port Charlotte, Florida 33953,

34. Madame Linda **SAMMUT**, sans état connu, demeurant à 5 Second Street, Belford, New Jersey 07718,

35. **Madame Corazon FERNANDEZ**, sans état connu, demeurant à 19 Windstar Drive, Little Egg Harbor, New Jersey 08087,

36. **Madame Regina Maria MERWIN**, sans état connu, demeurant à 7613 Beechdale Road, Crestwood, Kentucky 40014,

37. **Madame Grace PARKINSON-GODSHALK**, sans état connu, demeurant à 608 Countess Drive, Yardley, Pennsylvania 19067,

38. **Madame Tina GRAZIOSO**, sans état connu, demeurant à 100 Bonnie Drive, North Middletown, New Jersey 07748,

39. **Monsieur Jin LIU**, sans état connu, demeurant à 35 Woodstone Circle, Short Hills, New Jersey 07078,

40. **Monsieur Alan GU**, sans état connu, demeurant à 35 Woodstone Circle, Short Hills, New Jersey 07078,

41. **Madame Maureen HALVORSON**, sans état connu, demeurant à 175 Huguenot Street, Apt. 702, New Rochelle, New York 10801,

42. **Madame Maureen HALVORSON**, sans état connu, héritière de **James HALVORSON**, demeurant à 175 Huguenot Street, Apt. 702, New Rochelle, New York 10801,

43. **Madame Maureen HALVORSON**, sans état connu, héritière de **William WILSON**, demeurant à 175 Huguenot Street, Apt. 702, New Rochelle, New York 10801,

44. **Madame Flona HAVLISH**, sans état connu, demeurant à P. O. Box 20488, Boulder, Colorado 30308,

45. **Monsieur William HAVLISH**, sans état connu, demeurant à 6505 Indian Acres Trail, Tucker, Georgia 30084,

46. **Madame Susan CONKLIN**, sans état connu, demeurant à 235 Starboard Point, Roswell, Georgia 30076,

47. **Monsieur Hui-Chien CHEN**, sans état connu, demeurant à 179, Sec. 1 Fusing South Road, Da-An District, Taipei, Taiwan, R.O.C.,

48. **Monsieur Haomin JIAN**, sans état connu, demeurant à 60-17 44th Avenue, Woodside, New York 11377,

49. **Madame Fu Mei CHIEN**, sans état connu, demeurant à 8 Tallman Lane, Somerset, New Jersey 08873,

50. **Madame Huichun JIAN**, sans état connu, demeurant à 48 Dong-Shin Street, 3rd Floor, Tao Yuan, Taiwan, R.O.C. 33048,

51. **Madame Hui-Chuan JIAN**, sans état connu, demeurant à 151 Lin-Sen North Road, Jhongshan Dist., Taipei City 10454, Taiwan, R.O.C. 10454,

52. **Madame Hui-Zon JIAN**, sans état connu, demeurant à No. 9, Alley 19, Lane 120, Sec. 2, Shatlan Road, Daidu Township, Touchung County 432, Taiwan R.O.C. 43242,

53. **Madame Marie Ann PAPROCKI**, sans état connu, demeurant à 61 Lakeview Drive, Mahopac, New York 10541,

54. **Monsieur Michael LOGUIDICE**, sans état connu, demeurant à 3152 Little Road #207, Trinity, Florida 34655,

55. **Madame Theresann LOSTRANGIO**, sans état connu, demeurant à 325 Barnsbury Road, Langhorne, Pennsylvania 19047,

56. **Monsieur Ralph S. MAERZ**, sans état connu, demeurant à 815 Via Del Sol, North Fort Myers, Florida 33903,

57. **Madame Margaret MAURO**, sans état connu, demeurant à 3604 Green Garden Court, Antioch, Tennessee 37013,

58. **Monsieur Ramon MELENDEZ**, sans état connu, demeurant à 435 Sabol Road, Stroudsburg, Pennsylvania 18360,

59. **Madame Patricia MILANO**, sans état connu, demeurant à 221 Yale Boulevard, Shrewsbury, New Jersey 07702,

60. **Madame Ivy MORENO**, sans état connu, demeurant à 1541 Seminole Street, First Floor, Bronx, New York 10461,

61. **Madame JoAnne LOVETT**, sans état connu, demeurant à 17 Man O War Lane, Howell, New Jersey 07731,

62. **Monsieur Martin PANIK**, sans état connu, demeurant à 1100 Blue Ball Road, P. O. Box 185, Mingoville, Pennsylvania 16856,

63. **Madame Mary Lynn-Anna PANIK-STANLEY**, sans état connu, demeurant à 375 East Vine Street, LaRue, Ohio 43332,

64. **Madame Christine PAPASSO**, sans état connu, demeurant à 5330 Arthur Kill Road, Staten Island, New York 10307,

65. **Madame Patricia J. PERRY**, sans état connu, demeurant à 2934 East 28th Street, Kansas City, Missouri 64128,

66. **Monsieur Rodney M. RATCHFORD**, sans état connu, demeurant à 412 Ingram Avenue, Oneonta, Alabama 35121,

67. **Madame Marshae Ratchford**, sans état connu, demeurant à 4327 Wyndham Park Circle, Decatur, Georgia 30034,

68. **Monsieur Rodney RATCHFORD**, pour le compte de **Madame Maranda C. RATCHFORD**, mineure, demeurant à 412 Ingram Avenue Oneonta, Alabama 35121,

69. **Monsieur Rodney MARQUEZ RATCHFORD**, sans état connu, demeurant à 2151 Beau Terra Drive W, Mobile, Alabama 36619,

70. **Madame Judith REISS**, sans état connu, demeurant à 969 Princess Drive, Yardley, Pennsylvania 19067,

71. **Madame Joanne RODAK GORI**, sans état connu, demeurant à 1383 Butternut Drive, Southampton, Pennsylvania 18966,

72. **Madame Chelsea Nicole RODAK**, sans état connu, demeurant à 124 Rabbit Run Road, Sewell, New Jersey 08080,

73. **Madame Joyce Ann RODAK**, pour le compte de **Monsieur Devon Marie RODAK**, mineur, demeurant à 124 Rabbit Run Road, Sewell, New Jersey 08080,

74. **Madame Joyce Ann RODAK**, sans état connu, demeurant à 124 Rabbit Run Road, Sewell, New Jersey 08080,

75. **Monsieur John RODAK**, sans état connu, demeurant à 600 Pickering Road, Southampton, Pennsylvania 18966,

76. **Madame Regina RODAK**, sans état connu, demeurant à 600 Pickering Road, Southampton, Pennsylvania 18966,

77. **Madame Diane ROMERO**, sans état connu, demeurant à 5 Chatham Court, Matawan, New Jersey 07748,

78. **Madame Loren ROSENTHAL**, sans état connu, demeurant à 91 Quarry Drive, Woodland Park, New Jersey 07424-4200,

79. **Madame Helen ROSENTHAL**, sans état connu, demeurant à 225 West 83rd Street, Apt. 4K, New York, New York 10024,

80. **Monsieur Alexander ROWE**, sans état connu, demeurant à P. O. Box 237, X11 Bryanston, Simonstown, South Africa 7995,

81. **Monsieur Ed RUSSIN**, sans état connu, demeurant à 25 Regina Road, Morganville, New Jersey 07748,

82. **Madame Gloria RUSSIN**, sans état connu, demeurant à 25 Regina Road, Morganville, New Jersey 0748,

83. **Monsieur Barry RUSSIN**, sans état connu, demeurant à 3 York Road, Marlboro, New Jersey 07746,

84. **Monsieur Expedito SANTILLAN**, sans état connu, demeurant à 1 Rockridge Court, Morris Plains, New Jersey 07748,

85. **Madame Ester SANTILLAN**, sans état connu, demeurant à 1 Rockridge Court, Morris Plains, New Jersey 07748,

86. **Madame Ellen SARACINI**, sans état connu, demeurant à 1460 Heather Circle, Yardley, Pennsylvania 19067,

87. **Madame Joanne RENZI**, sans état connu, demeurant à 5821 Ivy Branch Drive, Dublin, Ohio 43016,

88. **Monsieur Paul SCHERTZER**, sans état connu, demeurant à 8 Annette Drive, Edison, New Jersey 08820,

89. **Monsieur Ronald SLOAN**, sans état connu, demeurant à 301 Mission Street, 38-C, San Francisco, California 94105,

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90. **Monsieur Raymond Doyle SMITH**, sans état connu, demeurant à 75 Traymore Street, Apt. 2, Buffalo, New York 14216,

91. **Madame Katherine SOULAS**, sans état connu, demeurant à 3 Beaver Creek Court, Far Hills, New Jersey 07931,

92. **Madame Russa STEINER**, sans état connu, demeurant à 30 Paddock Drive, New Hope, Pennsylvania 18938,

93. **Monsieur George STERGIOPOULOS**, médecin,, demeurant à 184 Marvin Ridge Road, New Canaan, Connecticut 06840,

94. **Madame Angela STERGIOPOULOS**, sans état connu, demeurant à 184 Marvin Ridge Road, New Canaan, Connecticut 06840,

95. **Madame Sandra STRAUB**, sans état connu, demeurant chez **Madame Brianna L. Gomes**, 37649 Millwood Drive, Woodlake, Callfornia 93286,

96. **Madame Joan E. TINO**, sans état connu, demeurant à 9 Howland Circle, West Caldwell, New Jersey 07006,

97. **Madame Pamela SCHIELE**, sans état connu, demeurant à 2 Lowry Avenue, Wharton, New Jersey 07855,

98. **Madame Christine BARTON PENCE,** sans état connu, demeurant à 721 S.E. 1st Way, Apt. 210, Deerfield Beach, Florida 33441,

99. **Monsieur Michael E. PAIGE**, héritier de **Timothy Raymond WARD**, 2057 South Della Lane, Anaheim, California 92802,

100. **Monsieur Leonard ZEPLIN**, sans état connu, demeurant à 400 East 77th Street, New York, New York 10021,

101. **Madame Leona ZEPLIN**, sans état connu, demeurant à 400 East 77th Street, New York, New York 10021,

102. **Monsieur Joslin ZEPLIN**, sans état connu, demeurant à 420 East 72nd Street, New York, New York 10021, P. O. Box 630260, Rockville, Utah 84763.

II. Les mêmes parties que sub I en tant que représentants et/ou héritiers des successions (estates) des victimes décédées lors des prédits attentats du 11 septembre 2001 (dont le détail figure en annexe, pièce n°8) à savoir :

1. **Succession de Donald J. HAVLISH, Jr.** représentée par **Madame Fiona HAVLISH**, sans état connu, demeurant à P. O. Box 20488, Boulder, Colorado 30308, et par **Madame Susan CONKLIN**, sans état connu, demeurant à 235 Starboard Point, Roswell, Georgia 30076 ;

2. **Succession de Michael A. BANE**, représentée par **Madame Tara BANE**, sans état connu, demeurant à 2114 North Crescent Boulevard Yardley, Pennsylvania 19067 ;

3. **Succession de Martin BORYCZEWSKI, représentée par Madame Krystyna BORYCZEWSKI**, sans état connu, demeurant à 460 Park Road, Parsippany, New Jersey 07054 ;

4. **Succession de Steven CAFIERO,** représentée par **Madame Grace KNESKI**, sans état connu, demeurant à 95 Fieldfare Way, Charleston, South Carolina 29414 ;

5. **Succession de Richard M. CAPRONI, représentée par Monsieur Richard A. CAPRONI,** sans état connu, demeurant à 1208 Ocean Parkway, Ocean Pines, Maryland 21811;

6. **Succession de Peter CHIRCHIRILLO,** représentée par **Madame Clara CHIRCHIRILLO**, sans état connu, demeurant à 197 Crossroads Lakes Drive, Ponte Vedra Beach, Florida 32082 ;

7. **Succession de Jeffrey COALE,** représentée par **Madame Leslie BROWN,** sans état connu, demeurant à 927 Baltimore Annapolis Blvd, Severna Park, Maryland 21146, dont l'héritier est **Monsieur William COALE**, décédé, dont la succession est représentée par **Madame Leslie BROWN**, prequalifiée ;

8. **Succession de Daniel M. COFFEY**, représentée par ses héritiers :
   - **Madame Frances M. COFFEY,** sans état connu, demeurant à 20 Carriage Drive, Newburgh, New York 12550,
   - **Monsieur Kevin M. COFFEY,** sans état connu, demeurant à 20 Carriage Drive, Newburgh, New York 12550,
   - **Monsieur Daniel D. COFFEY,** sans état connu, M.D., demeurant à 43 Rainey Street, Apt. 2002, Austin, Texas 78701 ;

9. **Succession de Jason COFFEY,** représentée par ses héritiers :
   - **Madame Frances M. COFFEY,** sans état connu, demeurant à 20 Carriage Drive, Newburgh, New York 12550,
   - **Monsieur Kevin M. COFFEY,** sans état connu, demeurant à 20 Carriage Drive, Newburgh, New York 12550,
   - **Monsieur Daniel D. COFFEY,** sans état connu, M.D., demeurant à 43 Rainey Street, Apt. 2002, Austin, Texas 78701 ;

10. **Succession de Jeffrey COLLMAN,** représentée par **Madame Keith BRADKOWSKI,** sans état connu, demeurant à 814 Provence Avenue, Santa Maria, California 934458 ;

11. **Succession de Michael DIEHL,** représentée par **Madame Loisanne DIEHL**, sans état connu, demeurant à 21 Morningside Court, Lakewood, New Jersey 08701 ;

12. **Succession de Stephen DORF,** représentée par **Madame Linda SAMMUT**, sans état connu, demeurant à 5 Second Street, Belford, New Jersey 07718 et **Madame Michelle DORF**, sans état connu, demeurant à 540 Duke Road, New Milford, New Jersey 07646 ;

13. **Succession de Judy FERNANDEZ**, représentée par **Madame Corazon FERNANDEZ**, sans état connu, demeurant à 19 Windstar Drive, Little Egg Harbor, New Jersey 08087 ;

14. **Succession de Ronald GAMBOA**, représentée par **Madame Regina Maria MERWIN**, sans état connu, demeurant à 7613 Beechdale Road, Crestwood, Kentucky 40014 ;

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15. **Succession de William R. GODSHALK**, représentée par **Madame Grace PARKINSON-GODSHALK**, sans état connu, demeurant à 608 Countess Drive, Yardley, Pennsylvania 19067 ;

16. **Succession de John GRAZIOSO**, représentée par **Madame Tina GRAZIOSO**, sans état connu, demeurant à 100 Bonnie Drive, North Middletown, New Jersey 07748 ;

17. **Succession de Liming GU**, représentée par **Monsieur Jin LIU**, sans état connu, demeurant à 35 Woodstone Circle, Short Hills, New Jersey 07078 ;

18. **Succession de James D. HALVORSON**, représentée par **Madame Maureen HALVORSON**, sans état connu, demeurant à 175 Huguenot Street, Apt. 702, New Rochelle, New York 10801 ;

19. **Succession de William HALVORSON**, représentée par **Madame Maureen HALVORSON**, sans état connu, demeurant à 175 Huguenot Street, Apt. 702, New Rochelle, New York 10801 ;

20. **Succession de Denis LAVELLE**, représentée par **Madame Marie Ann PAPROCKI**, sans état connu, demeurant à 61 Lakeview Drive, Mahopac, New York 10541 ;

21. **Succession de Robert LEVINE**, représentée par **Madame Stephanie GIGLIO**, sans état connu, demeurant à 15, Hartsdale Lane, Coram, New York 11727, dont héritier est : **Monsieur Michael LOGUIDICE**, sans état connu, demeurant à 3152 Little Road #207, Trinity, Florida 34655 ;

22. **Succession de Joseph LOSTRANGIO**, représentée par **Madame Theresann LOSTRANGIO**, sans état connu, demeurant à 325 Barnsbury Road, Langhorne, Pennsylvania 19047 ;

23. **Succession de Dorthy MAURO**, représentée par **Madame Margaret MAURO**, sans état connu, demeurant à 3604 Green Garden Court, Antioch, Tennessee 37013 ;

24. **Succession de Mary MELENDEZ**, représentée par **Monsieur Ramon MELENDEZ**, sans état connu, demeurant à 435 Sabol Road, Stroudsburg, Pennsylvania 18360 ;

25. **Succession de Peter T. MILANO**, représentée par **Madame Patricia MILANO**, sans état connu, demeurant à 221 Yale Boulevard, Shrewsbury, New Jersey 07702 ;

26. **Succession d'Yvette Nichole MORENO**, représentée par **Madame Ivy MORENO**, sans état connu, demeurant à 1541 Seminole Street, First Floor, Bronx, New York 10461 ;

27. **Succession de Brian NUNEZ**, représentée par **Madame JoAnne LOVETT**, sans état connu, demeurant à 17 Man O War Lane, Howell, New Jersey 07731 ;

28. **Succession de Philip Paul OGNIBENE**, représentée par **Madame Diane OGNIBENE**, sans état connu, demeurant à 30882 Sandy Ridge Drive, Lewes, Delaware 19958 ;

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29. **Succession de Vincent A. OGNIBENE**, représentée par **Madame Diane OGNIBENE**, sans état connu, demeurant à 30882 Sandy Ridge Drive, Lewes, Delaware 19958 ;

30. **Succession de Salvatore T. PAPASSO**, représentée par **Madame Christine PAPASSO**, sans état connu, demeurant à 5330 Arthur Kill Road, Staten Island, New York 10307 ;

31. **Succession de John William PERRY**, représentée par **Madame Patricia J. PERRY**, sans état connu, demeurant à 2934 East 28th Street, Kansas City, Missouri 64128 ;

32. **Succession de Marsha Dianah RATCHFORD**, représentée par **Monsieur Rodney M. RATCHFORD**, sans état connu, demeurant à 412 Ingram Avenue, Oneonta, Alabama 35121 ;

33. **Succession de Joshua Scott REISS**, représentée par **Madame Judith REISS**, sans état connu, demeurant à 969 Princess Drive, Yardley, Pennsylvania 19067;

34. **Succession de John M. RODAK**, représentée par **Madame Joyce Ann RODAK**, sans état connu, demeurant à 124 Rabbit Run Road, Sewell, New Jersey 08080 ;

35. **Succession de Elvin ROMERO**, représentée par **Madame Diane ROMERO**, sans état connu, demeurant à 5 Chatham Court, Matawan, New Jersey 07748 ;

36. **Succession de Richard ROSENTHAL**, représentée par **Madame Loren ROSENTHAL**, sans état connu, demeurant à 91 Quarry Drive, Woodland Park, New Jersey 07424-4200 ;

37. **Succession de Maria Theresa SANTILLIAN**, représentée par **Monsieur Expedito SANTILLAN**, sans état connu, demeurant à 1 Rockridge Court, Morris Plains, New Jersey 07748 ;

38. **Succession de Victor SARACINI**, représentée par **Madame Ellen SARACINI**, sans état connu, demeurant à 1460 Heather Circle, Yardley, Pennsylvania 19067;

39. **Succession de Scott SCHERTZER**, représentée par **Monsieur Paul SCHERTZER**, sans état connu, demeurant à 8 Annette Drive, Edison, New Jersey 08820 ;

40. **Succession de Paul K. SLOAN**, représentée par **Monsieur Ronald SLOAN**, sans état connu, demeurant à 301 Mission Street, 38-C, San Francisco, California 94105 ;

41. **Succession de George Eric SMITH**, représentée par **Monsieur Raymond Doyle SMITH**, sans état connu, demeurant à 75 Traymore Street, Apt. 2, Buffalo, New York 14216 ;

42. **Succession de Timothy P. SOULAS**, représentée par **Madame Katherine SOULAS**, sans état connu, demeurant à 3 Beaver Creek Court, Far Hills, New Jersey 07931 ;

43. **Succession de William R. STEINER**, représentée par **Madame Russa STEINER**, sans état connu, demeurant à 30 Paddock Drive, New Hope. Pennsylvania 18938 ;

44. **Succession de Andrew STERGIOPOULOS**, représentée par **Monsieur George STERGIOPOULOS**, médecin, demeurant à 184 Marvin Ridge Road, New Canaan, Connecticut 06840 ;

45. **Succession de Edward W. STRAUB**, représentée par **Madame Sandra STRAUB**, sans état connu, demeurant chez **Madame Brianna L. Gomes**, 37849 Millwood Drive, Woodlake, California 93286 ;

46. **Succession de Jennifer TINO**, représentée par **Madame Joan E. TINO**, sans état connu, demeurant à 9 Howland Circle, West Caldwell, New Jersey 07006 ;

47. **Succession de Jeanmarie WALLENDORF**, représentée par **Madame Christine BARTON PENCE,** sans état connu, demeurant à 721 S.E. 1st Way, Apt. 210, Deerfield Beach, Florida 33441 ;

48. **Succession de Meta WALLER**, représentée par **Monsieur Chrislan FULER MANUEL**, sans état connu, demeurant à 161 Cornerstone Drive, South Windsor, Connecticut 92802 ;

49. **Succession de Timothy Raymond WARD**, représentée par **Monsieur Michael E. PAIGE**, 2057 South Della Lane, Anaheim, California 92802,

50. **Succession de Doyle Raymond WARD**, représentée par **Madame Brianna L. GOMES**, sans état connu, demeurant à 37849 Millwood Drive, Woodlake, California 93286,

élisant domicile en l'étude de **Maître François MOYSE**, Avocat à la Cour, demeurant à L – 2146 Luxembourg – 55-57, rue de Merl, qui est constitué et occupera et au secrétariat communal où demeure le tiers-saisi,

Et en vertu des jugements suivants:

1. Le jugement rendu par défaut le 22 décembre 2011 par l'«*UNITED STATES DISTRICT COURT SOUTHERN DISTRICT DE NEW YORK* » (ci-après, « le Tribunal de District des Etats-Unis du District Sud de l'Etat de New York »), condamnant tous les défendeurs préqulifiés à indemniser les dommages subis par les requérants suite aux attaques terroristes du 11 septembre 2001 et en réservant le jugement final afin de permettre l'évaluation des dommages ;

2. Le jugement du 3 octobre 2012 rendu par le Tribunal de District des Etats-Unis du District Sud de l'Etat de New York afin d'établir le montant des dommages et intérêts par catégorie de dommage et par catégorie de victimes ainsi que celui des intérêts légaux ;

3. Le jugement définitif rendu le 12 octobre 2012 par le Tribunal de District des Etats-Unis du District Sud de l'Etat de New York dans le cadre des attaques terroristes du 11 septembre 2001 à New York aux ETATS-UNIS condamnant les parties défenderesses préqualifiées au paiement de dommages et intérêts aux familles des victimes pour un montant total de 7.016.463.805,00 US $, soit 6.613.782.530,78.- EUR ;

4. Le jugement du Tribunal de District des Etats-Unis du District Sud de l'Etat de New York du 12 septembre 2013, par lequel les jugements précédents furent rendus exécutoires aux Etats-Unis contre les parties défenderesses.

desquels copie entière certifiée conforme est donnée en tête des présentes,

Je soussignée **Cathérine NILLES**, Huissier de Justice Suppléant, en remplacement de **Patrick KURDYBAN** Huissier de Justice, demeurant à L-1621 Luxembourg, 21, rue des Genêts, immatriculé près le Tribunal d'Arrondissement de et à Luxembourg,

Al signifié et déclaré à:

la société anonyme CLEARSTREAM BANKING S.A., établie et ayant son siège social à L - 1855 LUXEMBOURG, 42, Avenue J.F. Kennedy, représentée par son conseil d'administration actuellement en fonctions et immatriculée au Registre de Commerce et des Sociétés de Luxembourg sous le numéro B 9248,

Que par la présente, les parties requérantes s'opposent formellement à ce qu'elles se dessaisissent, paient ou vident leurs mains en d'autres que les leurs sur toutes sommes, deniers, effets, titres, créances, tous droits, garanties, privilèges, gages, nantissements, cautions, sûretés, crédits, actifs corporels ou incorporels, valeurs que cette société redevrait aux parties défenderesses ou détiendrait, directement ou indirectement, à quelque titre que ce soit, pour compte et/ou au nom des parties défenderesses, en particulier sur les comptes numéros 13061 et 13675, mais sinon sur tous comptes bancaires ouverts ou comptes tenus à leur profit, notamment mais non exclusivement, par l'intermédiaire ou auprès de la Banque MARKAZI (Banque Centrale de la République Islamique d'Iran), de la Banque UBAE S.p.A., de la Banque JP Morgan Chase Bank ou tout autre établissement financier, au nom et/ou pour le compte des parties défenderesses suivantes;

1. **la République Islamique d'Iran**, représentée par son Ministre des Affaires étrangères, Monsieur Mohammad Javad ZARIF, Ministère des Affaires étrangères, établi à Imam Khomeini Street, Téhéran, Iran;

2. **l'Ayatollah Ali HOSSEINI-KHAMENEI**, ancien Président de la République Islamique d'Iran, sans état connu, représenté par Monsieur le Ministre des Affaires étrangères, Mohammad Javad ZARIF, Ministère des Affaires étrangères, demeurant à Imam Khomeini Street Tehran, Iran;

3. **le sieur Ali Akbar HASHEMI RAFSANJANI**, ancien Président de la République Islamique d'Iran, sans état connu, représenté par Monsieur le Ministre des Affaires étrangères, Mohammad Javad ZARIF, Ministère des Affaires étrangères, demeurant à Imam Khomeini Street Téhéran, Iran;

4. **le Ministère Iranien de l'Information et de la Sécurité**, représenté par Monsieur le ministre des Affaires étrangères, Mohammad Javad ZARIF, Ministère des Affaires étrangères, établi à Imam Khomeini Street Téhéran, Iran;

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5. **l'Organisation Islamique Corps des Gardes Révolutionnaires**, organisation politique,représentée par Monsieur le Ministre des Affaires étrangères, Mohammad Javad ZARIF, Ministère des Affaires étrangères, établi à Imam Khomeini Street Téhéran, Iran;

6. **le Hezbollah**, organisation politique, représenté par Monsieur le Ministre des Affaires étrangères, Mohammad Javad ZARIF, Ministère des Affaires étrangères, établi à Imam Khomeini Street Téhéran, Iran;

7. **le Ministère Iranien du Pétrole**, organisme public, représenté par son représentant légal ou statutaire, établi à Hafez Crossing, Taleghani Avenue Téhéran, Iran;

8. **la Corporation Nationale Iranienne des Pétroliers**, organisme public, représentée par son représentant légal ou statutaire, établie à 65 Shahid Atefi Street, Africa Expressway, Téhéran, Iran;

9. **la Société Nationale Iranienne de Pétrole**, organisme public, représentée par son représentant légal ou statutaire, établie à Hafez Crossing, Taleghani Avenue, Téhéran, Iran;

10. **la Société Nationale de Gaz Iranien**, organisme public, représentée par son représentant légal ou statutaire, établie à National Iranian Gas Company Building, South Aban Street, Karimkhan Boulevard, P.O. Box 15875, Téhéran, Iran;

11. **la Compagnie aérienne d'Iran**, organisme public, représentée par son représentant légal ou statutaire, établie à Iran Air H.Q., Mehrabad Airport, P.O.Box 13185-775, Téhéran, Iran;

12. **la Compagnie Nationale Iranienne Pétrochimique**, organisme public, représentée par son représentant légal ou statutaire, établie à 144, North, Sheikh Bahaie Avenue, P.O. Box 19395-6896, Téhéran, Iran;

13. **le Ministère Iranien des Affaires Economiques et des Finances**, organisme public, représenté par son Ministre, établi à Imam Khomeini Street Téhéran, Iran;

14. **le Ministère Iranien du Commerce**, organisme public, représenté par son Ministre, établi à 492, Valieasr Avenue, Tehran, Iran;

15. **le Ministère Iranien de la Défense et de la Logistique des Forces Armées**, représenté par son Ministre, établi Ferdowsi Avenue, Sarhang Sakhaei Street, Téhéran, Iran;

16. **la Banque Centrale de la République Islamique d'Iran**, organisme public, représentée par son représentant légal ou statutaire, établie à 198, Mirdamad Blvd., Téhéran, Iran,

avec declaration que cette opposition est faite jusqu'à concurrence et ce pour sûreté et obtenir paiement de la somme en principal de :

2 147 394 989.- Euros (deux milliards cent quarante-sept millions trois cent quatre-vingts quatorze mille neuf cent quatre-vingts neuf Euros), équivalant à **2 330 277 884 US$ (deux milliards trois cent trente millions deux cent soixante-dix-sept mille huit cent quatre-vingts quatre US$),**

avec les intérêts légaux évalués à :
236 611 049.- Euros (deux cents trente-six millions six cent onze mille quarante-neuf Euros), soit un de TOTAL de : **2 384 006 038.- Euros (deux milliards trois cent quatre-vingts quatre millions six mille trente-huit),**

soit à compter du 12/10/2012 jusqu'au lancement de la procédure de validation de la saisie-arrêt, sous réserve expresse et formelle d'augmentation ultérieure de ce montant en cours d'instance, tous intérêts, indemnités et frais étant expressément et formellement réservés, ainsi que tous autres droits, dus moyens et actions.

à quelque titre et pour quelque cause que ce soit.

avec déclaration aux parties signifiées que faute par elles d'avoir aux présentes tels égards que de droit, les parties requérantes entendent les rendre responsables du montant des causes et d'icelle, sans préjudice de tous dommages et intérêts.

A telles fins que de droit et sous toutes réserves généralement quelconques.

Dont Acte.

Droit	90,00
Adr.	6,00
Voy.	8,00
Taxe	0,00
Tbr.	26,00
Enr.	12,00
TVA	12,58
S-TOTAL	124,58
Div.	0,00
Cop.	45,00
TVA	7,65
Port	2,50
TOTAL	179,73

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Annex 64

***Bennett et al. v. The Islamic Republic of Iran et al.*, U.S. Court of Appeals, Ninth Circuit, 22 February 2016, 817 F.3d 1131, as amended 14 June 2016, 825 F.3d 949 (9th Cir. 2016)**

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL BENNETT; LINDA BENNETT, as Co-Administrators of the Estate of Maria Ann Bennett, *Plaintiffs-Appellees*, v. THE ISLAMIC REPUBLIC OF IRAN, *Defendant*, v. VISA INC.; FRANKLIN RESOURCES, INC., *Defendants-third-party-plaintiffs–Appellees*, v. GREENBERG AND ACOSTA JUDGEMENT CREDITORS, *Plaintiff-third-party-defendant–Appellee*, HEISER JUDGMENT CREDITORS, *Plaintiff-fourth-party-defendant–Appellee*, v.	Nos. 13-15442 13-16100 D.C. No. 3:11-cv-05807-CRB ORDER AND AMENDED OPINION

BANK MELLI,

Plaintiff-third-party-defendant–Appellant.

Appeals from the United States District Court
for the Northern District of California
Charles R. Breyer, Senior District Judge, Presiding

Argued and Submitted
April 15, 2015—San Francisco, California

Filed February 22, 2016
Amended June 14, 2016

Before: Sidney R. Thomas,[*] and Susan P. Graber, Circuit Judges, and Dee V. Benson,[**] Senior District Judge.

Order;
Opinion by Judge Graber;
Partial Concurrence and Partial Dissent by Judge Benson

[*] Chief Judge Thomas was drawn to replace Judge Kozinski. He has read the briefs, reviewed the record, and listened to the audio-recording of oral argument held on April 15, 2015.

[**] The Honorable Dee V. Benson, Senior District Judge for the U.S. District Court for the District of Utah, sitting by designation.

SUMMARY[***]

Foreign Sovereign Immunity

The panel filed (1) an order amending its opinion and partial dissent filed February 22, 2016, and denying petitions for panel rehearing and rehearing en banc; and (2) an amended opinion and partial dissent.

In its amended opinion, the panel affirmed the district court's denial of the motion of Bank Melli, the national bank of the Islamic Republic of Iran, to dismiss claims filed against it in an interpleader complaint seeking a determination of the rights to blocked Iranian assets held by other parties but owed to Bank Melli. Judgment creditors of Iran sought access to the assets in order to collect on unsatisfied judgments for deaths and injuries suffered in terrorist attacks sponsored by Iran.

The panel held that the Terrorism Risk Insurance Act permits judgment creditors to attach assets held by the instrumentalities of state sponsors of terrorism. Accordingly, the blocked assets of Bank Melli that were at issue in this case could be attached. Agreeing with the Seventh Circuit, the panel held that § 1610(g) of the Foreign Sovereign Immunities Act also permitted attachment. The panel held that these statutes did not impermissibly impose retroactive liability even though the terrorist acts underlying the judgments occurred before enactment of the statutes.

[***] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel also held that under California law, the assets were property of Bank Melli. In addition, because Bank Melli did not enjoy sovereign immunity, and could be joined in the action, Federal Rule of Civil Procedure 19 did not require dismissal of the claims against Bank Melli.

District Judge Benson concurred with the majority that § 201(a) of the Terrorism Risk Insurance Act and § 1610 of the Foreign Sovereign Immunities Act permitted the judgment creditors to attach and execute against monies owed to Bank Melli. Judge Benson dissented from the holding that § 1610(g) is a freestanding immunity exception. He stated that in his view, the judgment creditors could proceed because they had sufficiently alleged that Bank Melli was engaged in commerce in the United States within the meaning of the exception to attachment immunity set forth in § 1610(b)(3).

COUNSEL

Jeffrey A. Lamken, Robert K. Kry (argued) and Lucas M. Walker, MoloLamken LLP, Washington D.C., for Appellant.

Curtis C. Mechling (argued), Benjamin Weathers-Lowin, and Patrick N. Petrocelli, Stroock & Stroock & Lavan LLP, New York, New York; Dale K. Cathell and Richard M. Kremen, DLA Piper LLP, Baltimore, Maryland; Jane Carol Norman and Thomas Fortune Fay, Bond & Norman, Washington, D.C., for Judgment Plaintiffs-Appellees.

Benjamin T. Peele, III (argued), Baker & McKenzie LLP, Washington, D.C.; Bruce H. Jackson, Baker & McKenzie LLP, San Francisco, California, for Appellees Visa, Inc. and Franklin Resources, Inc.

ORDER

The opinion and partial dissent filed February 22, 2016, and reported at 817 F.3d 1131, are amended by the opinion and partial dissent filed concurrently with this order.

With these amendments, Judges Thomas and Graber have voted to deny Appellant's petition for panel rehearing and petition for rehearing en banc. Judge Benson has voted to grant the petition for panel rehearing and has recommended granting the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it.

Appellant's petition for panel rehearing and petition for rehearing en banc are **DENIED**. No further petitions for panel rehearing or for rehearing en banc may be filed.

OPINION

GRABER, Circuit Judge:

Approximately 90 United States citizens (or the representatives of their estates) are attempting to collect on unsatisfied money judgments that they hold against the Islamic Republic of Iran for deaths and injuries suffered in terrorist attacks sponsored by Iran. The assets that are the subject of this interpleader action are monies contractually owed to Bank Melli by Visa Inc. and Franklin Resources Inc. ("Franklin"). Bank Melli is an instrumentality of Iran. It asserts that Plaintiffs cannot execute on the assets (1) because Bank Melli enjoys sovereign immunity under the Foreign Sovereign Immunities Act of 1976 ("FSIA"), (2) because the relevant statutory exceptions to sovereign immunity may not be applied retroactively, (3) because the blocked assets are not property of Bank Melli, and (4) because Bank Melli is a required party that cannot be joined, thus requiring dismissal under Federal Rule of Civil Procedure 19. We disagree and, accordingly, affirm the judgment of the district court.

BACKGROUND LEGAL PRINCIPLES

The jurisdiction of the United States over persons and property within its territory "is susceptible of no limitation not imposed by itself." *Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812). Accordingly, foreign

sovereign immunity is "a matter of grace and comity rather than a constitutional requirement." *Republic of Austria v. Altmann*, 541 U.S. 677, 689 (2004). Courts consistently "defer[] to the decisions of the political branches" on whether to take actions against foreign sovereigns and their instrumentalities. *Id.* (quoting *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 486 (1983)).

The FSIA, 28 U.S.C. §§ 1330, 1602–1611, establishes a default rule that foreign states are immune from suit in United States courts. *Id.* § 1604. Congress enacted the statute to provide a "comprehensive . . . 'set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies, or instrumentalities.'" *Altmann*, 541 U.S. at 691 (quoting *Verlinden B.V.*, 461 U.S. at 488). The FSIA provides the exclusive vehicle for subject matter jurisdiction in all civil actions against foreign state defendants. *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1317 n.1 (2016); *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390, 393 (2015); *Flatow v. Islamic Republic of Iran*, 308 F.3d 1065, 1069 (9th Cir. 2002).

The FSIA includes many exceptions to its general rule of immunity. 28 U.S.C. §§ 1605–1607. Relevant here, in 1996, Congress added a new exception, stripping a foreign state of its sovereign immunity when (1) the United States officially designates the foreign state a state sponsor of terrorism and (2) the foreign state is sued "for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act." *Id.* § 1605A.

Iran was designated a terrorist party pursuant to section 6(j) of the Export Administration Act of 1979, 50 U.S.C. app. § 2405(j) (effective Jan. 19, 1984). *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1123 (9th Cir. 2010); *Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 48 (2d Cir. 2010). That designation means that Iran is not entitled to sovereign immunity for claims under § 1605A.

Separately, the FSIA addresses the immunity of sovereign property from execution and attachment. Subject to enumerated exceptions, a foreign state's property in the United States is immune from attachment and execution. 28 U.S.C. § 1609.

In *First National City Bank v. Banco Para el Comercio Exterior de Cuba* ("*Bancec*"), 462 U.S. 611, 620–21 (1983), the Supreme Court concluded that the FSIA did *not* control whether and to what extent *instrumentalities* could be held liable for the debts of their sovereigns. Applying international law and federal common law, the Court held that "government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such." *Id.* at 626–27. That rule, referred to as the "*Bancec* presumption," may be overcome only in limited circumstances. *Id.* at 628–34. The federal courts later described five "*Bancec* factors" that may be considered in determining whether the presumption has been overcome in any given case. *E.g., Flatow*, 308 F.3d at 1071 n.9.[1]

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[1] The five factors are:

> (1) the level of economic control by the government;
> (2) whether the entity's profits go to the government;

Even after Congress added § 1605(a)(7) (now § 1605A) to the FSIA in 1996, successful plaintiffs struggled to enforce judgments against Iran when they were harmed by its terrorist activities. *See, e.g.*, *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 49–58 (D.D.C. 2009) (describing "The Never-Ending Struggle to Enforce Judgments Against Iran"). Once again, Congress responded by enacting new statutes, this time designed to facilitate the satisfaction of such judgments by expanding successful plaintiffs' ability to attach and execute on the property of agencies and instrumentalities of terrorist states. *Bank Markazi*, 136 S. Ct. at 1318.

First, in 2002, Congress enacted the Terrorism Risk Insurance Act of 2002 ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322. Section 201(a) of the TRIA provides:

> Notwithstanding any other provision of law, and except as provided in subsection (b) [of this note, pertaining to Presidential waiver], in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune

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> (3) the degree to which government officials manage the entity or otherwise have a hand in its daily affairs; (4) whether the government is the real beneficiary of the entity's conduct; and (5) whether adherence to separate identities would entitle the foreign state to benefits in United States courts while avoiding its obligations.

Flatow, 308 F.3d at 1071 n.9 (quoting *Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines*, 965 F.2d 1375, 1380 n.7 (5th Cir. 1992)).

> under section 1605A or 1605(a)(7) . . . , the blocked assets[2] of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a) was codified as a statutory note to 28 U.S.C. § 1610 on "Treatment of Terrorist Assets."

Second, in 2008, Congress amended the FSIA as part of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338. Among other changes, Congress added a new subsection to the FSIA, which provides in part that

> the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of [the

[2] "Blocked assets" refers to "any asset seized by the Executive Branch pursuant to either the Trading With the Enemy Act or the International Emergency Economic Powers Act. *See* TRIA § 201(d)(2)." *Bank Markazi*, 135 S. Ct. at 1318 (citations omitted).

> same five factors described by the federal courts as the "*Bancec* factors"].

28 U.S.C. § 1610(g)(1); *see also Bank Markazi*, 136 S. Ct. at 1318 n.2. For ease of reference, we refer to this section as "FSIA § 1610(g)."

FACTUAL AND PROCEDURAL HISTORY

Four groups of individuals sued the Islamic Republic of Iran for damages arising from deaths and injuries suffered in terrorist attacks sponsored by Iran; in each case, a final money judgment was entered in favor of the plaintiffs and against Iran. In *Estate of Heiser v. Islamic Republic of Iran*, 659 F. Supp. 2d 20 (D.D.C. 2009), and *Estate of Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229 (D.D.C. 2006), the plaintiffs secured judgments for more than $590 million for the 1996 bombing of the Khobar Towers in Saudi Arabia. In *Acosta v. Islamic Republic of Iran*, 574 F. Supp. 2d 15 (D.D.C. 2008), the plaintiffs received a judgment of more than $350 million because of a 1990 mass shooting. In *Bennett v. Islamic Republic of Iran*, 507 F. Supp. 2d 117 (D.D.C. 2007), the plaintiffs obtained a judgment for damages of nearly $13 million for Iran's role in the 2002 bombing of a cafeteria at Hebrew University in Jerusalem. And in *Greenbaum v. Islamic Republic of Iran*, 451 F. Supp. 2d 90 (D.D.C. 2006), the plaintiffs were awarded almost $20 million for damages suffered as a result of the bombing of a Jerusalem restaurant in 2001. Collectively, the judgments total nearly $1 billion. Although all the judgments were taken by default, it is undisputed that all are valid final judgments and that Iran owes the amounts of those judgments to the respective plaintiffs.

Bank Melli, Iran's largest financial institution, is wholly owned by the government of Iran. It is undisputed that Bank Melli qualifies as an instrumentality of Iran under the FSIA. Bank Melli was not named as a defendant in any of the four cases described above and was not itself alleged to have been involved in the underlying terrorist events. On October 25, 2007, the United States Department of the Treasury, Office of Foreign Assets Control exercised its authority under Executive Order No. 13,382, 70 Fed. Reg. 38,567 (June 28, 2005), to block Bank Melli's assets in the United States because of its involvement in Iran's nuclear and missile industries. Bank Melli's assets also are blocked pursuant to a 2012 Executive Order blocking the property of Iran and of Iranian financial institutions. Exec. Order No. 13,599, 77 Fed. Reg. 6659 (Feb. 8, 2012).[3]

Visa and Franklin owe about $17.6 million to Bank Melli pursuant to a commercial relationship that involves the use of Visa credit cards in Iran. Visa and Franklin have not turned the funds over to Bank Melli only because the funds are blocked. The *Bennett* judgment creditors filed a complaint against Visa and Franklin, seeking to attach and execute against the blocked assets. Visa and Franklin responded by initiating this interpleader action, naming as defendants Bank Melli and the three other sets of judgment creditors. Visa and Franklin sought a determination of the rights to the blocked assets in their possession and a discharge of Visa and Franklin with regard to those assets. After Bank Melli entered its appearance, it moved to dismiss the action.

[3] The recent lifting of a portion of the sanctions imposed on Iran does not render this interpleader action moot, nor does it affect our analysis of the issues raised here.

Bank Melli made four arguments for dismissal, each of which the district court rejected. The court held: (1) TRIA § 201(a) and FSIA § 1610(g) enable the judgment creditors to attach the monies owed to Bank Melli; (2) TRIA § 201(a) and FSIA § 1610(g) do not impose retroactive liability; (3) the blocked assets constitute property of Bank Melli; and (4) Bank Melli was not a required party under Federal Rule of Civil Procedure 19. *Bennett v. Islamic Republic of Iran*, 927 F. Supp. 2d 833 (N.D. Cal. 2013). The district court denied the motion to dismiss and certified the order for interlocutory appeal under 28 U.S.C. § 1292(b). *Bennett*, 927 F. Supp. 2d at 845–46.

STANDARD OF REVIEW

We review de novo: questions of statutory construction, *Miranda v. Anchondo*, 684 F.3d 844, 849 (9th Cir. 2012); a district court's ruling on a motion to dismiss for failure to state a claim or for lack of subject matter jurisdiction, *Colony Cove Props., LLC v. City of Carson*, 640 F.3d 948, 955 (9th Cir. 2011); the question whether a statute may be applied retroactively, *Scott v. Boos*, 215 F.3d 940, 942 (9th Cir. 2000); and legal determinations underlying a district court's decision whether an action can proceed in the absence of a required party under Rule 19, *Kescoli v. Babbitt*, 101 F.3d 1304, 1309 (9th Cir. 1996).

DISCUSSION

A. *TRIA § 201(a) and FSIA § 1610(g) permit attachment and execution of the monies owed to Bank Melli.*

1. *TRIA § 201(a)*

We hold that TRIA § 201(a) permits judgment creditors to attach assets held by the instrumentalities of state sponsors of terrorism. As always, when interpreting a statute, we begin with its text. *Metro One Telecomms., Inc. v. Comm'r*, 704 F.3d 1057, 1061 (9th Cir. 2012). Section 201(a) of the TRIA applies "[n]otwithstanding *any* other provision of law," "in *every* case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605A or 1605(a)(7)," and "in order to satisfy such judgment to the extent of *any* compensatory damages for which such terrorist party has been adjudged liable." TRIA § 201(a) (emphases added). The statute provides that, in cases such as this one, "the blocked assets of [the] terrorist party (including the blocked assets of *any* agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution." *Id.* (emphasis added). This wording demonstrates that Congress knew that the blocked assets of an instrumentality might otherwise have been excluded from the phrase "blocked assets of [the] terrorist party" and that Congress acted to ensure that, instead, the instrumentality's blocked assets were included. *Cf. Alejandre v. Telefonica Larga Distancia de P.R., Inc.*, 183 F.3d 1277, 1287, 1288 n.25 (11th Cir. 1999) (stating that a proposed amendment to the FSIA that would have applied to property that "belongs to an *agency or instrumentality* of a foreign state" demonstrated that Congress "knows how to

express clearly an intent to make instrumentalities substantively liable for the debts of their related foreign governments" (internal quotation marks omitted)). Accordingly, we agree with the Second Circuit when it held that it is "clear beyond cavil that Section 201(a) of the TRIA provides courts with subject matter jurisdiction over post-judgment execution and attachment proceedings against property held in the hands of an instrumentality of the judgment-debtor, even if the instrumentality is not itself named in the judgment." *Weinstein*, 609 F.3d at 50.

Bank Melli disputes this reading of § 201(a), arguing instead that it applies only to instrumentalities that are alter egos of the state; that is, Bank Melli argues that the *Bancec* presumption against the attachment of assets held by state instrumentalities applies. Bank Melli reasons that, because "including" is a term of illustration, the words that follow are merely an example of the main preceding principle. That observation is true but is of no assistance to Bank Melli. By listing "the blocked assets of any . . . instrumentality of that terrorist party" as a specific example of assets that are "subject to execution or attachment . . . in order to satisfy" a money judgment obtained under § 1605A or § 1605(a)(7), Congress clearly instructed courts to allow the instrumentality's blocked assets to be reached. Congress also instructed courts to allow these assets to be reached "[n]otwithstanding any other provision of law"—that is, regardless of the usual fiction embodied in *Bancec*. Congress purposely overrode the *Bancec* presumption in this context and abrogated attachment immunity with respect to the blocked assets of instrumentalities of designated state sponsors of terrorism. Section 201(a) permits the judgment creditors to attach the assets of an instrumentality of a state

sponsor of terrorism. Accordingly, the blocked assets of Bank Melli that are at issue in this case may be attached.

2. *FSIA § 1610(g)*

FSIA § 1610(g) allows attachment of and execution against property held by a foreign terrorist state's instrumentality "that is a separate juridical entity," "regardless of" five factors. As noted above, those enumerated factors are the same five factors identified by the federal courts as the "*Bancec* factors" that may be used to decide whether an instrumentality is an alter ego under *Bancec*. *E.g.*, *Flatow*, 308 F.3d at 1071–72, 1071 n.9. It is clear from the text of the statute that Congress was referring to, and abrogating, not just the presumption of separate juridical status, but also *Bancec* specifically. Therefore, § 1610(g) also permits attachment in this case.

But Bank Melli contends that, because § 1610(g) makes assets subject to attachment and execution only "as provided in this section," it is not an independent exception to the immunity granted by 28 U.S.C. § 1609. Bank Melli reasons that subsection (g) applies only if some other part of § 1610 provides for attachment and execution. Bank Melli argues that its assets cannot be attached or executed upon because the assets at issue in this case were not "used for a commercial activity in the United States," a requirement in § 1610(a), and Bank Melli has not itself "engaged in commercial activity in the United States," a requirement in § 1610(b). We are not persuaded.

We hold that subsection (g) contains a freestanding provision for attaching and executing against assets of a foreign state or its agencies or instrumentalities. Subsection (g) covers a different subject than § 1610(a) through (e): by its express terms, it applies *only* to "certain actions," specifically, judgments "entered *under section 1605A*." (Emphasis added.) In turn, § 1605A revokes sovereign immunity for damages claims against a foreign state for personal injury or death caused by "torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support" for such an act. By definition, such claims do not arise from commercial activity; they arise from acts of torture (and the like). Section 1610(g) requires only that a judgment under § 1605A have been rendered against the foreign state; in that event, both the property of the foreign state *and* the property of an agency or instrumentality of that state are subject to attachment and execution. *See Peterson*, 627 F.3d at 1123 n.2 (stating that § 1610(g) "expanded the category of foreign sovereign property that can be attached; judgment creditors can now reach any U.S. property in which Iran has any interest, whereas before they could reach only property belonging to Iran"). To the extent that subsection (g) is inconsistent with subsection (a) or (b), subsection (g) governs because the particular (judgments entered under § 1605A) controls over the general (all judgments entered after a certain date). *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384–85 (1992).

When subsection (g) refers to attachment and execution of the judgment "as provided in this section," it is referring to

procedures contained in § 1610(f).[4] Section 1610(f), like § 1610(g), relates to judgments obtained under § 1605A and its predecessor, § 1605(a)(7). Subsection (f)(1)(A) permits attachment and execution of property that might otherwise be blocked; subsection (f)(1)(B) prohibits attachment or execution against property of a foreign state that it expropriated from a natural person; and subsection (f)(2)(A) provides that the Secretary of State and Secretary of Treasury will make every effort to assist a court or creditor in locating property awarded pursuant to § 1605A. In light of Congress' mandate to the executive branch to assist in the collection of judgments in such cases, 28 U.S.C. § 1610(f), we cannot impute to Congress an empty statutory gesture. *See Gates v. Syrian Arab Republic*, 755 F.3d 568, 576 (7th Cir. 2014) (stating that Congress intended the 2008 amendments to the FSIA "to make it easier for terrorism victims to obtain judgments and to attach assets").[5] Given both the text of the

[4] When Congress enacted subsection (g), subsection (f) already was in place. Subsection (g) was added to the statute in 2008. Pub. L. No. 110-181, div. A, tit. X, § 1083(b)(3), 122 Stat. 3, 341 (2008). Subsection (f) was enacted in 1998. Pub. L. No. 105-277, § 101(h), 112 Stat. 2681-491 (1998).

[5] In its Petition for Rehearing or Rehearing En Banc, Bank Melli argues that our reading of the statute must be wrong because, in 2000, President Clinton waived the enforcement of § 1610(f)(1); it reasons that "as provided in this section" therefore cannot refer to § 1610(f). That argument fails for at least three reasons. *First*, only subsection (f)(1) is not being enforced. Pres. Determ. No. 2001-03, 65 Fed. Reg. 66,483 (Oct. 28, 2000). Several other parts of subsection (f)—described in text—have always remained fully enforced, so subsection (g) refers, at a minimum, to the enforced portions. *Second*, our search is only for congressional intent when subsection (g) was enacted. A partial waiver does not reflect congressional intent; if anything, it demonstrates presidential disagreement with congressional intent. And non-enforcement by the executive branch does not equal repeal by Congress; regardless of the partial waiver, all of

statute and Congress' intention to make it easier for victims of terrorism to recover judgments, we hold that § 1610(g) is a freestanding provision for attaching and executing against assets to satisfy a money judgment premised on a foreign state's act of terrorism.

Bank Melli argues, and our colleague agrees, that our reading of § 1610(g) renders § 1610(a)(7) and (b)(3) superfluous.[6] But the tension works in the opposite direction. If § 1610(g) is interpreted to require that, to be subject to attachment and execution, property must be used by the foreign state for a "commercial activity," § 1610(a), or that the instrumentality must be "engaged in commercial activity in the United States," § 1610(b), then we would have to read into § 1610(g) a limitation that Congress did not insert. *See United States v. Temple*, 105 U.S. (9 Otto) 97, 99 (1881) (holding that the court has "no right to insert words and phrases, so as to incorporate in the statute a new and distinct provision"). Section 1610(g)(1) provides that "*the property of a foreign state* against which a judgment is entered under

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subsection (f) remains the law. *Third*, the blinders-on, technical focus of this argument loses sight of Congress' main aim, which is for private plaintiffs who suffered torture and obtained tort judgments to get their money from terrorist states.

[6] Our colleague gives two other reasons for disagreeing with us on this point. The first is that § 1610(b)(3) does not require property "to be involved in terrorism to abrogate attachment immunity." Partial dissent at 36. We do not suggest to the contrary. The other reason is that it would be "an unjustified and unfortunate result," *id.* at 38, to allow attachment and execution of non-commercial property, such as museum artifacts belonging to Iran. But it is not our province to decide whether the policy choices embodied in a statute are wise or unwise; our task is, rather, to discern congressional intent. *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423 (1952).

section 1605A, and *the property of an agency or instrumentality* of such a state, . . . is subject to attachment in aid of execution, and execution." (Emphases added.) Thus, Congress did not limit the type of property subject to attachment and execution under § 1610(g) to property connected to commercial activity in the United States. The only requirement is that property be "the property of" the foreign state or its instrumentality.

Two Seventh Circuit cases support our conclusion in this regard. In *Wyatt v. Syrian Arab Republic*, 800 F.3d 331, 343 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1721 (2016), the court held that the plaintiffs need not comply with § 1608(e) when proceeding under § 1610(g). The court noted that § 1608(e) is part of a "more general process" applicable to "suits other than those for state-sponsored terrorism, such as more ordinary contract or tort cases arising out of a foreign state's commercial activities." *Id.* at 333. Section 1610(g), the court noted, "contains provisions specific to claims for state-sponsored terrorism." *Id.* Those specific provisions allow plaintiffs with a judgment against a state sponsor of terrorism, obtained pursuant to § 1605A, to attach and execute the judgment against property of the foreign state and against property of any agency and instrumentality of the state. *Id.* The other provisions of § 1610, contained in subsections (a) through (c), establish a general process for judgments against a foreign state not necessarily resting on state-sponsored terrorism. *Id.*

Similarly, the court held in *Gates* that a plaintiff proceeding under § 1610(g) need not comply with § 1610(c). The court wrote in part:

> Sections 1610(a) and (b) are available to satisfy a wide variety of judgments, but they allow attachment of only specific categories of assets to satisfy those judgments. *See, e.g.*, § 1610(a) (allowing attachment of foreign state property located in the United States and used for commercial activity there); § 1610(b) (allowing attachment of property of foreign state agency or instrumentality engaged in United States commercial activity).
>
> By contrast, § 1610(g) is available only to holders of judgments under the § 1605A exception for state-sponsored terrorism, but it allows attachment of a much broader range of assets to satisfy those judgments.

Gates, 755 F.3d at 576.

Regardless of canons of construction—such as the principle that a specific statute takes precedence over a general one—our ultimate search is for congressional intent. *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001). And it is quite clear that Congress meant to expand successful plaintiffs' options for collecting judgments against state sponsors of terrorism.

We acknowledge that § 1610 as a whole is ambiguous.[7] In that circumstance, we may consider legislative history. *Id.* at 91–92; *United States v. Pub. Utils. Comm'n*, 345 U.S. 295, 315 (1953). That history suggests that § 1610(g) was meant to allow attachment and execution with respect to any property whatsoever of the foreign state or its instrumentality. Senator Lautenberg, one of the sponsors of the bill that became § 1610(g), stated that the provision would "allow[] attachment of the assets of a state sponsor of terrorism to be made upon the satisfaction of a 'simple ownership' test." 154 Cong. Rec. S54-01 (Jan. 22, 2008) (statement of Sen. Lautenberg). The House Conference Report for a substantially similar earlier version of the bill noted that the provision "would . . . expand the ability of claimants to seek recourse against the property of that foreign state," in part "by permitting any property in which the foreign state has a beneficial ownership to be subject to execution of that

[7] We also acknowledge that the United States, appearing as amicus curiae, disagrees with our interpretation. We are not required to defer to the government's view because, in deciding this case, we "are not being asked to supplant a foreign policy decision of the political branches with the courts' own unmoored determination." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 132 S. Ct. 1421, 1427 (2012). To the contrary, the executive branch has approved the building blocks of the statutory criteria for execution on the property in question, which we are applying in a routine exercise of statutory interpretation: The President signed the legislation that became § 1610(g), Pub. L. No. 110-181, President Bush Signs the National Defense Authorization Act for Fiscal Year 2008, 2008 U.S.C.C.A.N. S3 (Jan. 28, 2008); the President has not sought to waive enforcement as was done with respect to § 1610(f)(1); the Secretary of State listed Iran as a terrorist state, 49 Fed. Reg. 2836-02 (Jan. 23, 1984); and the President imposed monetary sanctions on Iran, Exec. Order No. 13,599, 77 Fed. Reg. 6659 (Feb. 5, 2012). And, finally, in "[e]nacting the FSIA in 1976, Congress transferred from the Executive to the courts the principal responsibility for determining a foreign state's amenability to suit." *Bank Markazi*, 136 S. Ct. at 1329.

judgment." H.R. Rep. No. 11-447, at 1001 (2007) (Conf. Rep.). The bill, it continued, "is written to subject any property interest in which the foreign state enjoys a beneficial ownership to attachment and execution." *Id.* We have already noted that the basic purpose of adding § 1610(g) was to enable plaintiffs who have established a foreign state's liability under § 1605A and its predecessor, for terrorist acts, to collect on their judgments. As Senator Lautenberg put it, the bill was meant "to facilitate victims' collection of their damages from state sponsors of terrorism." 154 Cong. Rec. S54-01 (Jan. 22, 2008) (statement of Sen. Lautenberg). Our interpretation of § 1610(g) more fully furthers that fundamental aim.

Bank Melli also makes three other arguments regarding § 1610(g). We can dispose of those arguments easily.

(1) The district court's failure to discuss expressly whether to grant Bank Melli discretionary relief under the "innocent party" provision of § 1610(g)(3) does not mean that the court failed to consider whether that provision applied. Bank Melli made its § 1610(g)(3) argument to the district court, and we presume that the court understood its authority but declined to exercise discretion in Bank Melli's favor. *Cf. United States v. Davis*, 264 F.3d 813, 816–17 (9th Cir. 2001) (so holding in the context of a district court's silence regarding a requested downward departure under the United States Sentencing Guidelines).

(2) There is no conflict between § 1610(g) and the 1955 Treaty of Amity between the United States and Iran, which requires that the United States respect the juridical status of Iranian companies, protect their property in accordance with international law, and not discriminate against them. Treaty

of Amity, Economic Relations and Consular Rights Between the United States of America and Iran, Aug. 15, 1955, 8 U.S.T. 899, 902–03. As the Second Circuit held, that treaty provision is intended simply to ensure that foreign corporations are on equal footing with domestic corporations. *Weinstein*, 609 F.3d at 53. Even if the two provisions were inconsistent, when a treaty and a later-enacted federal statute conflict, the subsequent statute controls to the extent of the conflict. *Breard v. Greene*, 523 U.S. 371, 376 (1998) (per curiam).

(3) Allowing the Heiser plaintiffs to obtain relief under § 1610(g) by converting their § 1605(a)(7) judgment to a § 1605A judgment does not violate separation of powers principles. Bank Melli's reliance on *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995), is misplaced. There, the court held that Congress could not require federal courts to reopen final judgments. But here, the judgment was not reopened. Instead, the Heiser plaintiffs have a new collection tool; they can enforce their final judgment against Iran by attaching and executing on the property of Iran's instrumentality. In essence, the statute gives *more* effect to the final judgment, rather than attempting to revise or rescind that judgment.

B. *The statutes do not impermissibly impose retroactive liability*.

Bank Melli next argues that the judgment creditors cannot use TRIA § 201(a) or FSIA § 1610(g) because the terrorist acts that underlie the judgments occurred before the enactment of those statutes. The general default rule is that a law that increases substantive liability for past conduct does

not operate retroactively. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994).

But the statutes do not impose new liability on Iran. Section 1605(a)(7) was in effect at the time of the terrorist acts in question. Rather, the statutes simply permit additional methods of collection. *See id.* at 275 (noting that the default rule does not apply to rules of procedure because of "diminished reliance interests").

Even if TRIA § 201(a) and FSIA § 1610(g) are viewed as imposing new liability retroactively, the default rule is different for statutes that govern foreign sovereign immunity. In *Altmann*, 541 U.S. at 692, the Supreme Court concluded that the *Landgraf* presumption does not apply to such statutes. To the contrary, when it comes to sovereign immunity for both foreign states and their agencies and instrumentalities, there is a presumption in *favor* of retroactivity "absent contraindications" from Congress. *Id.* at 696.

Here, there are no such contraindications. In fact, the opposite is true. The purpose of the statutes at issue was to enable not just future litigants, but also current judgment creditors to collect on the final judgments that they already held—which, as a matter of logic, arose from past acts. Congress chose to make TRIA § 201(a) applicable in "*every* case in which a person *has obtained* a judgment" under either the former statute, § 1605(a)(7), or the current statute, § 1605A. TRIA § 201(a) (emphases added). Similarly, Congress chose to make § 1610(g) applicable to all judgments entered under § 1605A. Accordingly, these statutes apply even if they are seen as imposing liability retroactively, because Congress so intended.

C. *The blocked assets are property of Bank Melli.*

Bank Melli also contends that TRIA § 201(a) and FSIA § 1610(g) do not permit attachment of the assets here because Visa and Franklin own the blocked assets; Bank Melli does not. Under TRIA § 201(a), to be subject to execution or attachment, the blocked assets must be "assets of" the instrumentality. Similarly, § 1610(g) applies to "the property of" the instrumentality.

Like most courts, we look to state law to determine the ownership of assets in this context. *Peterson*, 627 F.3d at 1130–31; *see also Calderon-Cardona v. Bank of N.Y. Mellon*, 770 F.3d 993, 1000–01 (2d Cir. 2014) (looking to New York law to determine what type of interest rendered property attachable under § 1610(g)), *cert. denied*, 136 S. Ct. 893 (2016); *Walker Int'l Holdings, Ltd. v. Republic of Congo*, 415 F.3d 413, 415 (5th Cir. 2005) (applying Texas law to determine attorney fees award in FSIA action); *Hegna v. Islamic Republic of Iran*, 380 F.3d 1000, 1007 (7th Cir. 2004) (applying Illinois law to decide whether property interest was open to challenge in action under FSIA); *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara ("Pertamina")*, 313 F.3d 70, 83 (2d Cir. 2002) (applying New York law to determine what actions are subject to enforcement and available to judgment creditors). Here, California law applies. As we held in *Peterson*, California law authorizes a court to order a judgment debtor to assign to the judgment creditor a right to payments that are due or will become due, even if the right is conditioned on future developments. 627 F.3d at 1130–31; Cal. Civ. Proc. Code § 482.080(a)(2) (providing that a court may order a defendant subject to a writ of attachment to turn over either "evidence of title to property of or a debt owed to the defendant"); *id.*

§ 680.310 ("'Property' includes real and personal property and any interest therein."); *id.* § 708.210 (permitting a judgment creditor to bring an action against a third party to whom the judgment debtor owes money "to have the interest or debt applied to the satisfaction of the money judgment"); *id.* § 708.510(a) (authorizing a court to "order the judgment debtor to assign to the judgment creditor . . . all or part of a right to payment due"). That is precisely the situation in the present case: Bank Melli has a contractual right to obtain payments from Visa and Franklin. Under California law, those assets are property of Bank Melli and may be assigned to judgment creditors.

But even if federal law should govern this question, *see Heiser v. Islamic Republic of Iran*, 735 F.3d 934, 940 (D.C. Cir. 2013) (creating federal rule of decision to interpret ownership requirements in FSIA, based in part on U.C.C. Article 4A and common law principles), Bank Melli would not succeed. Federal law and California law are aligned.

First, we note that Congress has used expansive wording to suggest that immediate and outright ownership of assets is not required. In the TRIA, Congress provided that "[n]othing in this subsection shall bar . . . enforcement of any judgment to which this subsection applies . . . against assets otherwise available under this section *or under any other provision of law*." TRIA § 201(d)(4) (emphasis added). In FSIA § 1610(g), Congress specified that "the property of a foreign state against which a judgment is entered under section 1605A, and *the property of an* agency or *instrumentality* of such a state, *including property that* is a separate juridical entity or *is an interest held directly or indirectly* in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this

section." (Emphases added.) Thus, interests held by the instrumentality of a terrorist state, as is the case here, are subject to attachment under federal law.

Second, in *Heiser*, only foreign nationals, and not a foreign country, had an interest in the blocked funds held by intermediary banks. "Iranian entities were not the originators of the funds transfers. Nor were they the ultimate beneficiaries." *Heiser*, 735 F.3d at 936 (footnote omitted). By contrast, here, Bank Melli *is* the ultimate beneficiary; Visa and Franklin owe money to Bank Melli for services rendered pursuant to an agreement between them. Accordingly, Bank Melli has an interest in the blocked assets.

In summary, California law applies. Under California law, money owed to Bank Melli may be assigned to judgment creditors. Even if federal law applies, under the *Heiser* court's rationale, attachment and execution are allowed here because Bank Melli is the intended contractual beneficiary of the contested funds.

D. *Because Bank Melli does not enjoy sovereign immunity, Rule 19 presents no barrier.*

Finally, Bank Melli relies on Federal Rule of Civil Procedure 19 to support its request for dismissal. That rule provides that a person must be joined as a party if the person "claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may . . . impair or impede the person's ability to protect the interest." Fed. R. Civ. P. 19(a). And, if the "person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the

action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b).

Bank Melli argues that this case must be dismissed because it is a required party that cannot be joined and, further, that the action cannot proceed without it "in equity and good conscience." But, because TRIA § 201(a) and FSIA § 1610(g) confer jurisdiction by creating exceptions to sovereign immunity, Bank Melli *can* be joined in this action. Thus it does not matter whether Bank Melli is otherwise a required party under Rule 19(a); dismissal is not required. *See* 28 U.S.C. § 1330 (providing jurisdiction over a foreign state or its instrumentality when it is not entitled to immunity); *Weinstein*, 609 F.3d at 49–50 (holding that TRIA § 201(a) removes jurisdictional immunity, as well as immunity from attachment and execution).[8]

According to Bank Melli, *Republic of the Philippines v. Pimentel*, 553 U.S. 851 (2008), requires dismissal. We disagree. A class of victims of human rights abuses in the Republic of the Philippines won a $2 billion default judgment against the Estate of Ferdinand Marcos, the former president of that country. *Id.* at 857–58. The class attempted to enforce the judgment by attaching assets owed to Merrill

[8] Bank Melli's citations to *Ministry of Defense & Support for Armed Forces of Islamic Republic of Iran v. Cubic Defense Systems, Inc.*, 385 F.3d 1206 (9th Cir. 2004), *vacated and remanded on other grounds sub nom. Ministry of Def. & Support for Armed Forces of Islamic Republic of Iran v. Elahi*, 546 U.S. 450 (2006) (per curiam); and *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117 (9th Cir. 2010), are inapposite. Neither of those cases addressed the question whether TRIA § 201(a) or FSIA § 1610(g) confers jurisdiction when property owned by a terrorist state's instrumentality is subject to execution in satisfaction of judgments entered against that terrorist state.

Lynch by a bank incorporated by Marcos personally. *Id.* at 858. The Philippines claimed ownership of the bank, and therefore the disputed assets, because the bank had been incorporated through a misuse of public office. *Id.* The Philippines also claimed immunity from the suit. *Id.* Merrill Lynch initiated an interpleader action naming, among other parties, the Republic of the Philippines and one of its agencies. *Id.* at 845–55. The Supreme Court held that the case should be dismissed because "it was improper [for the district court] to issue a definitive holding regarding a nonfrivolous, substantive claim made by an absent, required entity that was entitled by its sovereign status to immunity from suit." *Id.* at 868.

This case plainly is distinguishable. In *Pimentel*, the Republic was a required party that could not be joined because of sovereign immunity. Here, Bank Melli does not enjoy sovereign immunity, so it can be joined as a party, whether or not it is a required party. Unlike the Republic in *Pimentel*, therefore, Bank Melli is able to adjudicate its claim to the contested assets.

CONCLUSION

We hold: (1) TRIA § 201(a) and FSIA § 1610(g) authorize attachment and execution of the monies owed to Bank Melli. (2) Those statutes do not impose liability retroactively but, even if they are viewed as doing so, *Altmann* establishes a presumption in favor of retroactivity for statutes governing sovereign immunity, which is not rebutted here. (3) California law governs the ownership question; the blocked assets are property of Bank Melli under principles of California law and, thus, are subject to attachment and execution under TRIA § 201(a) and FSIA

§ 1610(g). The same result would obtain even if federal law governed. (4) Because Bank Melli can be joined in this action, the dismissal provision of Federal Rule of Civil Procedure 19 does not apply.

AFFIRMED.

BENSON, Senior District Judge, concurring in part and dissenting in part:

I concur with the majority that § 201(a) of the Terrorism Risk Insurance Act ("TRIA") and § 1610 of the Foreign Sovereign Immunities Act ("FSIA") permit the judgment creditors in this case to attach and execute against monies owed to Bank Melli. However, I respectfully believe the majority erred in finding § 1610(g) to be a freestanding immunity exception under FSIA. In my view, judgment creditors relying on § 1610(g) are able to proceed, regardless of Bank Melli's sovereign immunity, because the judgment creditors have sufficiently alleged Bank Melli is engaged in commerce in the United States within the meaning of § 1610(b)(3) of FSIA.

FSIA contains "extensive procedural protections for foreign sovereigns in United States courts." *Wyatt v. Syrian Arab Republic*, 800 F.3d 331, 333 (7th Cir. 2015). Specifically, § 1609 of FSIA provides a general presumption that property of a foreign state and the property of an instrumentality or agency of a foreign state is immune from execution and attachment in United States courts. *See* 28 U.S.C. § 1609; 28 U.S.C. § 1603(a). In turn, § 1610 provides a series of exceptions to this general rule.

Prior to 2008, § 1610 provided different rules for attachment immunity depending on whether the party was seeking immunity as the foreign state or as an agency or instrumentality of a foreign state. Regarding foreign states, § 1610(a) denied immunity where: (1) a judgment creditor obtained a judgment against the foreign state; (2) the property of the foreign state is located in the United States; (3) the property is used for "a commercial activity" in the United States; and (4) one of § 1610(a)'s seven avenues for abrogating immunity applied. *See* 28 U.S.C. § 1610(a). Similarly, with respect to agencies and instrumentalities, § 1610(b) denied immunity where: (1) a judgment creditor obtained a judgment against an agency or instrumentality of foreign state; (2) the agency or instrumentality is engaged in commercial activity in the United States; (3) the property of the agency or instrumentality is located in the United States; and (4) one of § 1610(b)'s three avenues for abrogating immunity applied. *See* 28 U.S.C. § 1610(b).

Prior to 2008, the judgment creditors in this case would have been required to obtain a judgment against Bank Melli to utilize the immunity waiver provisions under § 1610(b) to attach Bank Melli's property.

In 2008, Congress amended FSIA, adding § 1610(g) and § 1605A. National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338 (2008). The purpose of the amendments was to relax the protections of § 1610 in cases of state sponsored terrorism to "make it easier for terrorism victims to obtain judgments and to attach assets." *Gates v. Syrian Arab Republic*, 755 F.3d 568, 576 (7th Cir. 2014); *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 62 (D.D.C. 2009) (noting, "these latest additions to . . . FSIA demonstrate that

Congress remains focused on eliminating those barriers that have made it nearly impossible for plaintiffs in these actions to execute civil judgments against Iran or other state sponsors of terrorism").

Under § 1610(g), if a judgment creditor obtains a judgment under § 1605A, the property of the foreign state and "the property of an agency or instrumentality of such a state, including property that is a separate juridical entity . . . is subject to attachment . . . and execution, upon that judgment *as provided in this section*, regardless" of five factors. 28 U.S.C. § 1610(g)(1) (emphasis added). The five factors enumerated in § 1610(g)(A) through (E) reflect the Bancec presumption, which requires this Court to treat government entities established as separate juridical entities distinct from their sovereigns. *See First Nat'l City Bank v. Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611, 620–21 (1983); *Flatow v. Islamic Republic of Iran*, 308 F.3d 1065, 1071 n.9 (9th Cir. 2009) (outlining the Bancec factors (citing *Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines*, 965 F.2d 1375, 1380 n.7 (5th Cir.1992))).

Section 1610(g) leads to two straightforward conclusions under FSIA. First, if a party obtains a § 1605A judgment against a state sponsor of terror, the Bancec presumption is eliminated, which permits a court to attach and execute against the property of the agency or instrumentality to satisfy the judgments against the foreign state. *See Estate of Heiser v. Islamic Republic of Iran*, 885 F. Supp. 2d 429, 442 (D.D.C. 2012) ("Section § 1610(g) subparagraphs (A)–(E) explicitly prohibit consideration of each of the five Bancec factors."); *aff'd sub nom. Heiser v. Islamic Republic of Iran*, 735 F.3d 934 (D.C. Cir. 2013). Second, the language "as provided in this section" requires a judgment creditor to

find an existing mechanism of attachment under § 1610. Section 1610(g) does not create a new avenue for attachment under FSIA; rather, § 1610(g) broadens the force of § 1610's existing avenues for attachment by eliminating the legal fiction that Bank Melli is a separate juridical entity from Iran.

In this case, judgment creditors relying on § 1610(g) may proceed to attach Bank Melli's property because Bank Melli's property is not immune from attachment by virtue of § 1610(b)(3). Section 1610(b)(3) eliminates attachment immunity if an agency or instrumentality is "engaged in commercial activity in the United States" and "the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter . . . regardless of whether the property is or was involved in the act upon which the claim is based." 28 U.S.C. § 1610(b)(3). The judgment creditors can attach Bank Melli's property because: (1) the judgment creditors have obtained a judgment against Iran pursuant to § 1605A; (2) § 1610(g) eliminates the Bancec presumption, allowing this Court to attach and execute against Bank Melli's assets to satisfy the judgment against Iran; and (3) the judgment creditors have sufficiently plead that Bank Melli is engaged in commercial activity in the United States.

Section 1603(c) of FSIA defines commercial activity as: "either a regular course of commercial conduct *or* a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." 28 U.S.C. § 1603(c) (emphasis added). Bank Melli entered into a contract with an American company to provide an American company a commercial service. [ER, p. 82–83, ¶ 2; ER, p. 64, ¶ 16

("Visa holds the Blocked Assets, funds due and owing by contract to Bank Melli pursuant to a commercial relationship with that bank . . .").] At this stage in the litigation, the Court can conclude that the judgment creditors relying on § 1610(g) have sufficiently alleged Bank Melli is engaged in commercial activity in the United States.

The majority disagrees with the aforementioned interpretation and concludes that § 1610(g) creates a freestanding immunity exception under FSIA. The majority believes a § 1605A judgment creditor may attach Bank Melli's property regardless of any commercial component under § 1610(a) or § 1610(b). In my view, respectfully, the majority misses the mark in three important respects.

First, the majority erroneously finds that § 1610(g) is a freestanding exception to immunity by concluding:

> Subsection (g) covers a different subject than § 1610(a) through (e): by its express terms, it applies *only* to 'certain actions,' specifically, judgments 'entered under section 1605A.' (Emphasis added.) In turn, § 1605A revokes sovereign immunity for damages claims against a foreign state for personal injury or death caused by 'torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support' for such an act. By definition, such claims do not arise from commercial activity; they arise from acts of torture (and the like).

[Maj. Op., p. 17.] In doing so, the majority misinterprets the operation of § 1610(a) and (b) waivers in the context of

§ 1605A judgments. Under § 1610(b)(3), a judgment creditor can attach property where the instrumentality is engaged in commercial activity in the United States. Furthermore, § 1610(b)(3) provides that attachment immunity is eliminated "*regardless* of whether the property is or was involved with the act upon which the claim is based." 28 U.S.C. § 1610(b)(3) (emphasis added). Therefore, a § 1605A judgment allows a judgment creditor to get immunity waived for *any* property where the instrumentality is engaged in commerce in the United States, regardless whether the property was involved in the actions that gave rise to the § 1605A waiver of immunity against the foreign state. Therefore, Bank Melli's property does not need to be involved in terrorism to abrogate attachment immunity under § 1610(b)(3).

Second, the majority concludes that the "as provided in this section" language found in § 1610(g) refers to the procedural aspects of § 1610, namely § 1610(f). Fair enough. But, the majority's conclusion does not mean the language "as provided in this section" refers *only* to § 1610(f). Indeed, the majority's piecemeal reading of § 1610(g) renders other portions of § 1610 inoperable. "It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)). This Court should adopt the interpretation of § 1610 that "'gives effect to every clause and word.'" *Marx v. Gen. Revenue Corp.*, ___U.S.___, 133 S. Ct. 1166, 1177 (2013) (citing *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91 (2011)).

The majority ignores the avenues for exemption under § 1610(a)(7) and § 1610(b)(3). Section 1610(a)(7) and § 1610(b)(3) provide immunity, in addition to requiring some interplay with commerce, where "the judgment relates to a claim for which the foreign state is not immune under section 1605A . . . ." If a § 1605A judgment creditor can waive attachment immunity under § 1610(g) without proving the property is used in commerce or the instrumentality is engaged in commerce in the United States, § 1610(a)(7) and § 1610(b)(3) are rendered superfluous and obsolete. Conversely, recognizing § 1610(g)'s limited purpose was to eliminate the Bancec presumption ensures this Court gives effect to every clause and word in § 1610 while honoring the purpose of the 2008 FSIA amendments.

Finally, the majority's holding ignores the practical limitation the commerce requirement places on § 1605A judgments. Reading § 1610(g) as a freestanding immunity exception does not just relax FSIA in the context of terrorism—it eliminates any immunity protection under FSIA for state sponsors of terror and their instrumentalities. For example, in *Rubin v. Islamic Republic of Iran*, American citizens sued and obtained default judgments against Iran for injuries and losses that arose out of a suicide bombing carried out by Hamas in Israel. 33 F. Supp. 3d 1003, 1006 (N.D. Ill. 2014). The *Rubin* plaintiffs sought to "attach and execute on numerous ancient Persian artifacts" in possession of two museums in the United States to satisfy their default judgments against Iran. *Id.* Like the judgment creditors in this case, the *Rubin* plaintiffs argued that § 1610(g) is a freestanding immunity exception and, therefore, the plaintiffs may attach Iran's artifacts to satisfy their judgments. *Id.* at 1013.

The court disagreed, finding: "The plain language indicates that Section 1610(g) is not a separate basis of attachment, but rather qualifies the previous subsections." *Id.* The court concluded, "the purpose of Section 1610(g) is to counteract the Supreme Court's decision in Bancec, and to allow execution against the assets of separate juridical entities regardless of the protections Bancec may have offered." *Id.* Currently, the *Rubin* case is pending appeal in the Seventh Circuit. *Rubin v. Islamic Republic of Iran*, 33 F. Supp. 3d 1003 (N.D. Ill. 2014), *appeal docketed*, No. 14-1935 (7th Cir. Apr. 25, 2014).

Surely this Court's holding will be argued as precedent to allow the *Rubin* plaintiffs to seize Persian artifacts to be auctioned off to satisfy the *Rubin* plaintiffs' default judgments. This would be an unjustified and unfortunate result. When Congress amended FSIA, the intention was to eliminate the Bancec presumption and relax the rigidity of § 1610 to make it easier for victims of terrorism to satisfy judgments against state sponsors of terror. Congress did not, however, intend to open the floodgates and allow terrorism plaintiffs to attach any and all Iranian property in the United States. Rather, Congress intended the commerce limitation to remain in place.[1] If a foreign state is designated as a state sponsor of terror, the state and the instrumentalities and agencies of the state lose the privilege of doing business in

[1] TRIA § 201 similarly contains a limitation on attachment and execution. TRIA § 201 requires attachable assets to be defined as "blocked assets." Section 201(d)(2)(A) defines a "blocked asset" as any asset "seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702)."

the United States without running the risk of property being seized to satisfy judgments.

In sum, I would require judgment creditors relying on § 1610(g) to satisfy one of § 1610's existing avenues for abrogating attachment immunity. In this case, the judgment creditors have done that. The judgment creditors have sufficiently alleged Bank Melli is engaged in commerce in the United States within the meaning of § 1610(b)(3).

Annex 65

***Ministry of Defense of Iran et al. v. Frym et al.*, U.S. Court of Appeals, Ninth Circuit, Opinion, 26 February 2016, No. 13-57182 (9th Cir. 2016)**

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE MINISTRY OF DEFENSE AND SUPPORT FOR THE ARMED FORCES OF THE ISLAMIC REPUBLIC OF IRAN, as Successor in Interest to the Ministry of War of the Government of Iran, *Petitioner-Appellant*, v. RENAY FRYM; STUART E. HERSH; ABRAHAM MENDELSON; DANIEL J. MILLER; FRANCE MOKHATEB RAFII; ELENA ROZENMAN; NOAM ROZENMAN; TZVI ROZENMAN; DEBORAH RUBIN; JENNY RUBIN, *Claimants-Appellees*, and CUBIC DEFENSE SYSTEMS, INC., as Successor in Interest to Cubic International Sales Corporation, *Respondent*.	No. 13-57182 D.C. No. 3:98-CV-01165-B-DHB OPINION

Appeal from the United States District Court
for the Southern District of California
Barry Ted Moskowitz, Chief District Judge, Presiding

Argued and Submitted
February 2, 2016—Pasadena, California

Filed February 26, 2016

Before: Dorothy W. Nelson, Consuelo M. Callahan, and N. Randy Smith, Circuit Judges.

Opinion by Judge D.W. Nelson

SUMMARY*

Attachment of Judgments

The panel affirmed the district court's grant of lien claimants' motion to attach a judgment that the Ministry of Defense of Iran obtained in an underlying arbitration with an American company.

The lien claimants moved to attach the judgment, known as the "Cubic Judgment," in order to collect on judgments they hold against the Islamic Republic of Iran for their injuries arising out of terrorism sponsored by Iran.

The panel held that the Algiers Accords, by which the United States and Iran resolved the Iranian Hostage Crisis, did not prevent the lien claimants from attaching the Cubic Judgment. The panel also held that the Cubic Judgment was a blocked asset pursuant to President Obama's 2012

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Executive Order No. 13359, subject to attachment and execution under the Terrorism Risk Insurance Act.

COUNSEL

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Stuart F. Delery, Assistant Attorney General; Laura E. Duffy, United States Attorney; Sharon Swingle and Benjamin M. Schultz (argued), Attorneys, Appellate Staff Civil Division, United States Department of Justice; Lisa. J. Grosh, Assistant Legal Advisor, Department of State; Bradley T. Smith, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington D.C, for Amicus Curiae United States.

OPINION

D.W. NELSON, Senior Circuit Judge:

This case involves an attempt by ten American citizens (hereinafter Lien Claimants) to collect on valid judgments they hold against the Islamic Republic of Iran (Iran) for their injuries arising out of terrorism sponsored by Iran. The Lien Claimants seek to attach a $2.8 million judgment[1] that the Ministry of Defense of Iran (the Ministry) obtained in an underlying arbitration with an American company, Cubic Defense Systems, Inc (Cubic).

The district court granted Lien Claimants' motion to attach the Cubic Judgment. The Ministry timely appealed. We have jurisdiction pursuant to 28 U.S.C. § 1291 and we affirm.[2]

[1] With accrued interest and the addition of attorneys' fees, over $9.4 million is available. We refer to the underlying judgment as the "Cubic Judgment."

[2] The district court stayed disbursement of funds to Lien Claimants pending the outcome of the Ministry's appeal. At oral argument, the Ministry requested that this Court maintain the stay of disbursement pending the Ministry's petition for certiorari to the Supreme Court. We decline the Ministry's request. The Ministry has not shown "both a probability of success on the merits and the possibility of irreparable injury," or "that serious legal questions are raised and that the balance of hardships tips sharply in its favor." *Cf. Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983).

I. Background

Like all foreign states, Iran is protected by sovereign immunity. *See Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993) ("A foreign state is presumptively immune from suit in United States' courts."). Absent an exception to the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1602–1611, a foreign state cannot be sued nor can its assets be attached to satisfy a judgment.[3] *Saudi Arabia*, 507 U.S. at 355. One such exception is for claims arising out of state-sponsored terrorism. 28 U.S.C. § 1605A.

The Lien Claimants hold judgments against Iran based on terrorist activity that Iran sponsored.

Claimant France M. Rafii's father, Dr. Shapoir Bakhtiar, was a former prime minister of Iran. In 1991, Iranian agents murdered Dr. Bakhtiar in his home in Paris, France, because of his political opposition to the Islamic regime. In 2001, Rafii sued Iran under the state-sponsored terrorism exception to the FSIA. Iran did not appear. The district court conducted a two-day bench trial and entered default judgment against Iran for $5 million in compensatory damages (after making the necessary factual, jurisdictional, and statutory findings). The Ministry does not dispute the validity of the judgment.

[3] The Ministry of Defense is an inseparable part of the Republic of Iran, and it therefore qualifies as a "foreign state" within the meaning of the FSIA. *Ministry of Def. & Support for Armed Forces of Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 495 F.3d 1024, 1034–36 (9th Cir. 2007), *rev'd on other grounds sub nom. Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Elahi*, 556 U.S. 366 (2009).

In 1997, Hamas detonated a suicide bomb at a pedestrian mall in Jerusalem, injuring many American citizens. The Rubin Claimants are a group of nine individuals who either were themselves injured in the bombing, or whose relatives were injured. In 2001, the Rubin Claimants sued Iran for its part in the bombing under the state-sponsored terrorism exception to the FSIA. Iran did not appear. The district court conducted a four-day evidentiary hearing and concluded that Iran provided terrorist training and other material assistance to the bombers. After evaluating all of the Rubin Claimants' compensatory damages, based on each plaintiff's injuries, the district court entered default judgment against Iran and ordered Iran to pay the damages ranging from $2.5 million to $15 million. The Ministry does not dispute the validity of the judgment.

Despite these valid judgments against Iran, Lien Claimants initially lacked any means to collect because the state-sponsored terrorism exception to the FSIA created an anomaly. While the exception abrogated a foreign sovereign's immunity from judgment, it left in place the foreign sovereign's immunity from attachment of its assets.

In 2002, Congress addressed this problem, enacting the Terrorism Risk Insurance Act (TRIA), Pub. L. No. 107–297, § 201, 116 Stat. 2322, 2337 (codified in relevant part at 28 U.S.C. § 1610 note). As originally enacted, section 201(a) provides:

> Notwithstanding any other provision of law . . . , in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune

> under [28 U.S.C. § 1605(a)(7) (2000)], the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent any compensatory damages for which such terrorist party has been adjudged liable.

"Blocked" assets include assets "seized or frozen by the United States" under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701–1706. *See* TRIA § 201(d)(2). The TRIA therefore permits attachment when it might have otherwise been barred by the FSIA.[4]

In 1977, Cubic agreed to sell the Ministry an air combat maneuvering range system (ACMR) for $17 million. Additionally, under a separate service contract, Cubic agreed to maintain the ACMR for Iran. By October 1978, Iran had paid over $12 million of the purchase price and modest sums on the service contract. By February 1979, Cubic obtained export permits and was poised to transfer the equipment to Iran.

[4] Congress amended the FSIA as part of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110–181, 122 Stat. 3 (2008). Specifically, Congress replaced the terrorism exception to sovereign immunity that had been codified at 28 U.S.C. § 1605(a)(7) with a new terrorism exception codified at 28 U.S.C. § 1605A. The new exception provides an explicit private right of action for U.S. citizens injured by state sponsors of terrorism. In addition, Congress created a special attachment provision for plaintiffs holding a Section 1605A judgment against a foreign state. *See* 28 U.S.C. §1610(g).

But, by November 1979, the Iranian revolution had disrupted relations between Iran and the United States. The revolution permanently prevented full performance of the sales and maintenance contracts. Iran and Cubic eventually entered into a modified agreement, under which Cubic would attempt to sell the ACMR to another country. Depending on the result of Cubic's attempt to resell the ACMR, either Iran would be entitled to partial reimbursement for payments it made to Cubic, or Cubic would be entitled to additional payment from Iran.

In the Fall of 1982, Cubic sold the equipment to Canada but ignored Iran's requests for an accounting.

In 1991, pursuant to its contracts with Cubic, Iran initiated arbitration proceedings with the International Chamber of Commerce (ICC). In 1997, the ICC found that Iran and Cubic agreed to discontinue the acquisition and maintenance contracts in light of the revolution, and that they had reached a modified agreement permitting Cubic to sell the equipment to another country. The ICC held that Cubic owed Iran $2.8 million plus interest and costs.

In 1998, the Ministry filed a petition to confirm the arbitration award. The U.S. District Court for the Southern District of California confirmed the award. It entered the Cubic Judgment in August 1999. After the final resolution of this dispute, Cubic deposited funds covering the Cubic Judgment with the Southern District of California.

The Lien Claimants moved to attach the Cubic Judgment. The Ministry opposed Lien Claimants' attempts, arguing: (1) that the Algiers Accords, by which the United States and Iran resolved the Iranian Hostage Crisis, required the United

States to protect the Cubic Judgment from attachment; and (2) that the Cubic Judgment was in any event not attachable under the TRIA or any other statute.

The district court granted Lien Claimants' motion to attach. It held that allowing attachment would not violate the United States' obligations under the Algiers Accords because the United States committed only to restore Iran to its pre-November 1979 position. As of 1979, the district court explained, Iran did not have an interest in the confirmed arbitration award.

The district court further held that the Cubic Judgment was a "blocked asset" within the meaning of the TRIA. The court reasoned that the Cubic Judgment was blocked pursuant to President Obama's 2012 Executive Order No. 13359, as well as pursuant to President Bush's 2005 Executive Order No. 13382. It therefore found that the Cubic Judgment was subject to attachment under the TRIA.

In the alternative, the district court held that the Rubin Claimants could attach the Cubic Judgment under 28 U.S.C. § 1610(g), the special attachment provision of the FSIA for creditors holding a Section 1605A terrorism-related judgment against a foreign state.

II. Standard of Review

We review the district court's interpretation of treaties, statutes, regulations, and executive orders de novo. *See Motorola, Inc. v. Fed. Express Corp.*, 308 F.3d 995, 999, n.5 (9th Cir. 2002) (treaties); *City of Los Angeles v. United States Dep't of Commerce*, 307 F.3d 859, 868 (9th Cir. 2002) (statutes); *United States v. Willfong*, 274 F.3d 1297, 1300 (9th

Cir. 2001) (regulations); *United States v. Washington*, 969 F.2d 752, 754–55 (9th Cir. 1992) (executive orders).

III. Discussion

We hold that the United States does not violate its obligations under the Algiers Accords by permitting Lien Claimants to attach the Cubic Judgment. We also hold that the Cubic Judgment is a blocked asset pursuant to President Obama's 2012 Executive Order No. 13359 subject to attachment and execution under the TRIA.

Because it is not necessary to our decision, we do not address whether the Cubic Judgment is also a blocked asset pursuant to President Bush's 2005 Executive Order No. 13382. Similarly, we decline to address the district court's alternative holding that the Rubin Claimants can attach the Cubic Judgment under 28 U.S.C. § 1610(g).

1. Permitting Lien Claimants to attach the Cubic Judgment does not violate the United States' obligations under the Algiers Accords.

The Algiers Accords do not prevent Lien Claimants from attaching the Cubic Judgment because the Ministry's interest in the Cubic Judgment did not arise until after November 14, 1979. As the Supreme Court specifically held in *Ministry of Defense & Support for the Armed Forces of the Islamic Republic of Iran v. Elahi*, the appropriate property interest to consider is Iran's interest in the Cubic Judgment, which did not arise until 1998. 556 U.S. 366, 376–77 (2009).

In November 1979, Iran took hostages at the American Embassy in Tehran. Invoking the International Emergency

Economic Powers Act (IEEPA), President Carter responded by issuing Executive Order 12170, which "blocked all property and interests in property of the Government of Iran." Exec. Order 12170, 44 Fed. Reg. 65729 (Nov. 14, 1979).[5]

The Department of Treasury promulgated the Iranian Assets Control Regulations to execute President Carter's Executive Order. 31 C.F.R. pt. 535, 44 Fed. Reg. 65279–01 (Nov. 15, 1979). The Regulations provide that "[n]o property subject to the jurisdiction of the United States or which is in the possession or control of persons subject to the jurisdiction of the United States in which on or after the effective date Iran has any interest of any nature whatsoever may be transferred, paid, exported, or withdrawn or otherwise dealt in except as authorized." 31 C.F.R. § 535.201 (2013). The freeze took effect on November 14, 1979.

On January 19, 1981, the United States and Iran settled the hostage crisis and entered into the Algiers Accords. The United States agreed to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979." The purpose of the Algiers Accords was to return Iran to the position it was in before President Carter froze Iran's assets in response to the taking of hostages at the American Embassy.

In essence, the Ministry argues that based on a number of factors—most importantly, $12 million in payments Iran made to Cubic on the $17 million sales contract—Iran had a

[5] Under the IEEPA, the President can impose economic sanctions to respond to "unusual and extraordinary" international threats. 50 U.S.C. §§ 1701, 1702(a). These sanctions are administered by the Treasury Department's Office of Foreign Assets Control (OFAC).

property interest in the *ACMR* before November 14, 1979. Therefore, according to the Ministry, for the United States to honor its commitments under the Algiers Accords, it must protect the *Cubic Judgment* from attachment.

But, under the Supreme Court's decision in *Elahi*, when Iran gained a property interest in the ACMR is irrelevant to our inquiry.

Elahi involved an attempt by a different lien claimant to attach the Cubic Judgment under the TRIA.[6] The Supreme Court rejected this Court's determination that the ACMR was the relevant asset at issue. In so holding, the Court explained that the lien claimants in that case did not seek to attach the ACMR, but instead tried to attach the "judgment enforcing [the] arbitration award based upon Cubic's failure to account to Iran for Iran's share of the proceeds of that system's sale." *Elahi*, 556 U.S. at 376. The Court explained that Iran's interest in the Cubic Judgment did not arise until 1998, when the district court confirmed the arbitration award. *Id.*

Further, the Supreme Court explained, even Iran's property interest underlying the Cubic Judgment—the proceeds from the sale to Canada—did not arise until October 1982 at the earliest. Only after Cubic sold the equipment could it "reasonably, comprehensively, and precisely account" for the result of its resale attempts. *Id.* at 376–77 (internal quotations omitted).

[6] We note that, before the Supreme Court in *Elahi*, the Ministry made a contrary argument to the one it makes here. There, the Ministry asserted that Iran's interest in the Cubic Judgment could not be "backdated" to 1981.

Under *Elahi*, Iran did not have an interest in the Cubic Judgment or in the property underlying the judgment until well after the Algiers Accords were consummated. Permitting Lien Claimants to attach the Cubic Judgment would therefore not cause the United States to run afoul of its obligations under the Algiers Accords.[7]

2. The Cubic Judgment is a blocked asset subject to attachment and execution under the TRIA.

The Cubic Judgment is a "blocked asset" pursuant to President Obama's 2012 Executive Order No. 13539. It is therefore subject to attachment and execution pursuant to the TRIA.

In 2012, President Obama invoked the IEEPA to block "[a]ll property and interests in property of the Government of Iran . . . that are in the United States."[8] Exec. Order No. 13359, 77 Fed. Reg. 6659, 6659 (Feb. 5, 2012). However,

[7] The United States agrees with this conclusion. In its amicus brief, the United States contends that its "longstanding position . . . is that the [Algiers Accords] simply required the United States to return, as directed by Iran, specified Iranian properties that were in existence and subject to jurisdiction as of January 19, 1981 (the date of the Accords). The United States has no transfer obligation with respect to property that Iran acquired after the date of the Accords." Brief of the United States as Amicus Curiae at 18–19. The government's interpretation of its own agreement is entitled to "great weight." *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 184–85 & n.10 (1982).

[8] This Court has already found that the Ministry is "an inherent part of the state of Iran." *Ministry of Defense*, 495 F.3d at 1036, *rev'd on other grounds by Elahi*, 556 U.S. 366 (2009). Therefore, the Ministry's ownership of the Cubic Judgment—rather than Iran's—does not foreclose the application of President Obama's blocking order.

President Obama's blocking order exempted Iranian property and interests in property that had been blocked in 1979, and that were then unblocked in 1981. 77 Fed. Reg. at 6660.

The Ministry argues that Iran held a property interest in the ACMR that was blocked in 1979 then unblocked in 1981. The Ministry therefore contends that the Cubic Judgment falls within the exemption to President Obama's 2012 Executive Order.

We reject this argument, which just like the Ministry's argument that the Algiers Accords prevent attachment, relies on misidentifying the asset actually at issue in this case.

Under *Elahi*, the key asset is the one the Lien Claimants seek to attach: the Cubic Judgment, not the ACMR as the Ministry now argues. And the Cubic Judgment does not fall within the exemption to President Obama's blocking order. Iran did not gain a property interest in the Cubic Judgment until 1998, when the district court confirmed the underlying arbitration award. *Elahi*, 556 U.S. at 376. Accordingly, Iran's property interest in the Cubic Judgment existed neither in 1979, when Iran's assets were blocked, nor in 1981 when those assets were unblocked. Whether and when Iran gained

a property interest in the ACMR is simply not relevant to this case.[9]

AFFIRMED.

[9] The Ministry's contention that 31 C.F.R. § 535.540(f) governed the proceeds of Cubic's sale to Canada is irrelevant for the same reason. The relevant asset is not the proceeds of the sale, but rather the judgment confirming the arbitral award. *Elahi*, 556 U.S. at 376. Even if it were relevant, the district court correctly found that Section 535.540(f) would not apply. The regulation only requires sale proceeds to be transferred to Iran when the sale of otherwise blocked property is made pursuant to a specific type of OFAC license. The ACMR was not blocked after January 1981, and there is no evidence that Cubic's sale of the ACMR involved any such license.

Annex 66

***Bank Markazi v. Peterson et al.*, U.S. Supreme Court, 20 April 2016, 578 U.S. 1 (2016)**

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BANK MARKAZI, AKA CENTRAL BANK OF IRAN *v.* PETERSON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 14–770. Argued January 13, 2016—Decided April 20, 2016

American nationals may seek money damages from state sponsors of terrorism in the courts of the United States. See 28 U. S. C. §1605A. Prevailing plaintiffs, however, often face practical and legal difficulties enforcing their judgments. To place beyond dispute the availability of certain assets for satisfaction of judgments rendered in terrorism cases against Iran, Congress enacted the Iran Threat Reduction and Syria Human Rights Act of 2012. As relevant here, the Act makes a designated set of assets available to satisfy the judgments underlying a consolidated enforcement proceeding which the statute identifies by the District Court's docket number. 22 U. S. C. §8772. Section 8772(a)(2) requires a court, before allowing execution against these assets, to determine, *inter alia*, "whether Iran holds equitable title to, or the beneficial interest in, the assets."

Respondents—more than 1,000 victims of Iran-sponsored acts of terrorism, their estate representatives, and surviving family members—rank within 16 discrete groups, each of which brought suit against Iran. To enforce judgments they obtained by default, the 16 groups moved for turnover of about $1.75 billion in bond assets held in a New York bank account—assets that, respondents alleged, were owned by Bank Markazi, the Central Bank of Iran. The turnover proceeding began in 2008. In 2012, the judgment holders updated their motions to include execution claims under §8772. Bank Markazi maintained that §8772 could not withstand inspection under the separation-of-powers doctrine, contending that Congress had usurped the judicial role by directing a particular result in the pending enforcement proceeding. The District Court disagreed, concluding that §8772 permissibly changed the law applicable in a pending litigation.

Syllabus

The Second Circuit affirmed.

Held: Section 8772 does not violate the separation of powers. Pp. 12–24.

(a) Article III of the Constitution establishes an independent Judiciary with the "province and duty . . . to say what the law is" in particular cases and controversies. *Marbury* v. *Madison*, 1 Cranch 137, 177. Necessarily, that endowment of authority blocks Congress from "requir[ing] federal courts to exercise the judicial power in a manner that Article III forbids." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 218. Although Article III bars Congress from telling a court how to apply pre-existing law to particular circumstances, *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429, 438–439, Congress may amend a law and make the amended prescription retroactively applicable in pending cases, *Landgraf* v. *USI Film Products*, 511 U. S. 244, 267–268; *United States* v. *Schooner Peggy*, 1 Cranch 103, 110. In *United States* v. *Klein*, 13 Wall. 128, 146, this Court enigmatically observed that Congress may not "prescribe rules of decision to the Judicial Department . . . in [pending] cases." More recent decisions have clarified that *Klein* does not inhibit Congress from "amend[ing] applicable law." *Robertson*, 503 U. S., at 441; *Plaut*, 514 U. S., at 218. Section 8772 does just that: It requires a court to apply a new legal standard in a pending postjudgment enforcement proceeding. No different result obtains because, as Bank Markazi argues, the outcome of applying §8772 to the facts in the proceeding below was a "foregone conclusio[n]." Brief for Petitioner 47. A statute does not impinge on judicial power when it directs courts to apply a new legal standard to undisputed facts. See *Pope* v. *United States*, 323 U. S. 1, 11. Pp. 12–19.

(b) Nor is §8772 invalid because, as Bank Markazi further objects, it prescribes a rule for a single, pending case identified by caption and docket number. The amended law upheld in *Robertson* also applied to cases identified in the statute by caption and docket number. 503 U. S., at 440. Moreover, §8772 is not an instruction governing one case only: It facilitates execution of judgments in 16 suits. While consolidated for administrative purposes at the execution stage, the judgment-execution claims were not independent of the original actions for damages and each retained its separate character. In any event, the Bank's argument rests on the flawed assumption that legislation must be generally applicable. See *Plaut*, 514 U. S., at 239, n. 9. This Court and lower courts have upheld as a valid exercise of Congress' legislative power laws governing one or a very small number of specific subjects. Pp. 19–21.

(c) Adding weight to this decision, §8772 is an exercise of congressional authority regarding foreign affairs, a domain in which the con-

Syllabus

trolling role of the political branches is both necessary and proper. Measures taken by the political branches to control the disposition of foreign-state property, including blocking specific foreign-state assets or making them available for attachment, have never been rejected as invasions upon the Article III judicial power. Cf. *Dames & Moore* v. *Regan*, 453 U. S. 654, 674. Notably, before enactment of the Foreign Sovereign Immunities Act, the Executive regularly made case-specific determinations whether sovereign immunity should be recognized, and courts accepted those determinations as binding. See, *e.g., Republic of Austria* v. *Altmann*, 541 U. S. 677, 689–691. This practice, too, was never perceived as an encroachment on the federal courts' jurisdiction. *Dames & Moore*, 453 U. S., at 684–685. Pp. 21–23.

758 F. 3d 185, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which KENNEDY, BREYER, ALITO, and KAGAN, JJ., joined, and in all but Part II–C of which THOMAS, J., joined. ROBERTS, C. J., filed a dissenting opinion, in which SOTOMAYOR, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 14–770

BANK MARKAZI, AKA THE CENTRAL BANK OF IRAN, PETITIONER *v.* DEBORAH PETERSON, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[April 20, 2016]

JUSTICE GINSBURG delivered the opinion of the Court.*

A provision of the Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U. S. C. §8772, makes available for postjudgment execution a set of assets held at a New York bank for Bank Markazi, the Central Bank of Iran. The assets would partially satisfy judgments gained in separate actions by over 1,000 victims of terrorist acts sponsored by Iran. The judgments remain unpaid. Section 8772 is an unusual statute: It designates a particular set of assets and renders them available to satisfy the liability and damages judgments underlying a consolidated enforcement proceeding that the statute identifies by the District Court's docket number. The question raised by petitioner Bank Markazi: Does §8772 violate the separation of powers by purporting to change the law for, and directing a particular result in, a single pending case?

Section 8772, we hold, does not transgress constraints placed on Congress and the President by the Constitution. The statute, we point out, is not fairly portrayed as a "one-case-only regime." Brief for Petitioner 27. Rather, it covers a category of postjudgment execution claims filed

*JUSTICE THOMAS joins all but Part II–C of this opinion.

by numerous plaintiffs who, in multiple civil actions, obtained evidence-based judgments against Iran together amounting to billions of dollars. Section 8772 subjects the designated assets to execution "to satisfy *any* judgment" against Iran for damages caused by specified acts of terrorism. §8772(a)(1) (emphasis added). Congress, our decisions make clear, may amend the law and make the change applicable to pending cases, even when the amendment is outcome determinative.

Adding weight to our decision, Congress passed, and the President signed, §8772 in furtherance of their stance on a matter of foreign policy. Action in that realm warrants respectful review by courts. The Executive has historically made case-specific sovereign-immunity determinations to which courts have deferred. And exercise by Congress and the President of control over claims against foreign governments, as well as foreign-government-owned property in the United States, is hardly a novelty. In accord with the courts below, we perceive in §8772 no violation of separation-of-powers principles, and no threat to the independence of the Judiciary.

I

A

We set out here statutory provisions relevant to this case. American nationals may file suit against state sponsors of terrorism in the courts of the United States. See 28 U. S. C. §1605A. Specifically, they may seek "money damages . . . against a foreign state for personal injury or death that was caused by" acts of terrorism, including "torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support" to terrorist activities. §1605A(a)(1). This authorization—known as the "terrorism exception"—is among enumerated excep-

tions prescribed in the Foreign Sovereign Immunities Act of 1976 (FSIA) to the general rule of sovereign immunity.[1]

Victims of state-sponsored terrorism, like others proceeding under an FSIA exception, may obtain a judgment against a foreign state on "establish[ing] [their] claim[s] . . . by evidence satisfactory to the court." §1608(e). After gaining a judgment, however, plaintiffs proceeding under the terrorism exception "have often faced practical and legal difficulties" at the enforcement stage. Brief for United States as *Amicus Curiae* 2. Subject to stated exceptions, the FSIA shields foreign-state property from execution. §1609. When the terrorism exception was adopted, only foreign-state property located in the United States and "used for a commercial activity" was available for the satisfaction of judgments. §1610(a)(7), (b)(3). Further limiting judgment-enforcement prospects, the FSIA shields from execution property "of a foreign central bank or monetary authority held for its own account." §1611(b)(1).

To lessen these enforcement difficulties, Congress enacted the Terrorism Risk Insurance Act of 2002 (TRIA), which authorizes execution of judgments obtained under the FSIA's terrorism exception against "the blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)." §201(a), 116 Stat. 2337, note following 28 U. S. C. §1610.

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[1]The FSIA "provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country" and renders a foreign government "presumptively immune from the jurisdiction of United States courts unless one of the Act's express exceptions to sovereign immunity applies." *OBB Personenverkehr AG* v. *Sachs*, 577 U. S. ___, ___ (2015) (slip op., at 3) (internal quotation marks omitted); see 28 U. S. C. §1330(a) (conferring jurisdiction over "any claim . . . with respect to which the foreign state is not entitled to immunity"); §1604 (on "[i]mmunity of a foreign state from jurisdiction").

A "blocked asset" is any asset seized by the Executive Branch pursuant to either the Trading with the Enemy Act (TWEA), 40 Stat. 411, 50 U. S. C. App. 1 *et seq.,* or the International Emergency Economic Powers Act (IEEPA), 91 Stat. 1625, 50 U. S. C. §1570 *et seq.* See TRIA §201(d)(2). Both measures, TWEA and IEEPA, authorize the President to freeze the assets of "foreign enemy state[s]" and their agencies and instrumentalities. Brief for United States as *Amicus Curiae* 25. These blocking regimes "put control of foreign assets in the hands of the President so that he may dispose of them in the manner that best furthers the United States' foreign-relations and national-security interests." *Ibid.* (internal quotation marks omitted).[2]

Invoking his authority under the IEEPA, the President, in February 2012, issued an Executive Order blocking "[a]ll property and interests in property of any Iranian financial institution, including the Central Bank of Iran, that are in the United States." Exec. Order No. 13599, 3 CFR 215 (2012 Comp.). The availability of these assets for execution, however, was contested.[3]

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[2]Again expanding the availability of assets for postjudgment execution, Congress, in 2008, amended the FSIA to make available for execution the property (whether or not blocked) of a foreign state sponsor of terrorism, or its agency or instrumentality, to satisfy a judgment against that state. See §1083 of the National Defense Authorization Act for Fiscal Year 2008, 122 Stat. 341, 28 U. S. C. §1610(g). Section 1610(g) does not take precedence over "any other provision of law," as the TRIA does. See TRIA §201(a). Hence, the FSIA's central-bank immunity provision, see *supra,* at 3, limits §1610(g), but not the TRIA.

[3]As a defense to execution, Bank Markazi contended that the blocked assets were not assets "of" Bank Markazi. See TRIA §201(a). Referring to state property law, Bank Markazi asserted that the assets were "of" a financial intermediary which held them in the United States on Bank Markazi's behalf. See App. to Pet. for Cert. 96a–100a.

To place beyond dispute the availability of some of the Executive Order No. 13599-blocked assets for satisfaction of judgments rendered in terrorism cases, Congress passed the statute at issue here: §502 of the Iran Threat Reduction and Syria Human Rights Act of 2012, 126 Stat. 1258, 22 U. S. C. §8772. Enacted as a freestanding measure, not as an amendment to the FSIA or the TRIA,[4] §8772 provides that, if a court makes specified findings, "a financial asset . . . shall be subject to execution . . . in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by" the acts of terrorism enumerated in the FSIA's terrorism exception. §8772(a)(1). Section 8772(b) defines as available for execution by holders of terrorism judgments against Iran "the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG), that were restrained by restraining notices and levies secured by the plaintiffs in those proceedings."

Before allowing execution against an asset described in §8772(b), a court must determine that the asset is:

> "(A) held in the United States for a foreign securities intermediary doing business in the United States;
>
> "(B) a blocked asset (whether or not subsequently unblocked) . . . ; and
>
> "(C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran . . . ." §8772(a)(1).

In addition, the court in which execution is sought must

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[4] Title 22 U. S. C. §8772(a)(1) applies "notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempt[s] any inconsistent provision of State law."

determine "whether Iran holds equitable title to, or the beneficial interest in, the assets . . . and that no other person possesses a constitutionally protected interest in the assets . . . under the Fifth Amendment to the Constitution of the United States." §8772(a)(2).

B

Respondents are victims of Iran-sponsored acts of terrorism, their estate representatives, and surviving family members. See App. to Pet. for Cert. 52a–53a; Brief for Respondents 6. Numbering more than 1,000, respondents rank within 16 discrete groups, each of which brought a lawsuit against Iran pursuant to the FSIA's terrorism exception. App. to Brief for Respondents 1a–2a. All of the suits were filed in United States District Court for the District of Columbia.[5] Upon finding a clear evidentiary

[5]The 16 judgments include: *Wultz* v. *Islamic Republic of Iran*, 864 F. Supp. 2d 24 (DC 2012); *Murphy* v. *Islamic Republic of Iran*, 740 F. Supp. 2d 51 (DC 2010); *Valore* v. *Islamic Republic of Iran*, 700 F. Supp. 2d 52 (DC 2010) (granting judgment in consolidation of four actions at issue here: *Valore*, No. 1:03–cv–01959; *Bonk* v. *Islamic Republic of Iran*, No. 1:08–cv–01273; *Spencer* v. *Islamic Republic of Iran*, No. 1:06–cv–00750; and *Arnold* v. *Islamic Republic of Iran*, No. 1:06–cv–00516); *Estate of Brown* v. *Islamic Republic of Iran*, No. 1:08–cv–00531 (D DC, Feb. 1, 2010); *Acosta* v. *Islamic Republic of Iran*, 574 F. Supp. 2d 15 (DC 2008); *Beer* v. *Islamic Republic of Iran*, 574 F. Supp. 2d 1 (DC 2008); *Kirschenbaum* v. *Islamic Republic of Iran*, 572 F. Supp. 2d 200 (DC 2008); *Levin* v. *Islamic Republic of Iran*, 529 F. Supp. 2d 1 (DC 2007); *Estate of Heiser* v. *Islamic Republic of Iran*, 466 F. Supp. 2d 229 (DC 2006); *Estate of Bland* v. *Islamic Republic of Iran*, No. 1:05–cv–02124 (D DC, Dec. 6, 2006); *Greenbaum* v. *Islamic Republic of Iran*, 451 F. Supp. 2d 90 (DC 2006); *Campuzano* v. *Islamic Republic of Iran*, 281 F. Supp. 2d 258 (DC 2003) (awarding judgment in both the *Rubin* action, *Rubin* v. *Islamic Republic of Iran*, No. 1:01–cv–01655, the plaintiffs of which are respondents here, and the *Campuzano* action, the plaintiffs of which are not); *Peterson* v. *Islamic Republic of Iran*, 264 F. Supp. 2d 46 (DC 2003). Three additional groups of plaintiffs with claims against Iran were voluntarily dismissed from the instant litiga-

basis for Iran's liability to each suitor, the court entered judgments by default. See, *e.g., Peterson* v. *Islamic Republic of Iran*, 264 F. Supp. 2d 46, 49 (2003). The majority of respondents sought redress for injuries suffered in connection with the 1983 bombing of the U. S. Marine barracks in Beirut, Lebanon. App. to Pet. for Cert. 21a.[6] "Together, [respondents] have obtained billions of dollars in judgments against Iran, the vast majority of which remain unpaid." *Id.,* at 53a.[7] The validity of those judgments is not in dispute. *Id.,* at 55a.

To enforce their judgments, the 16 groups of respondents first registered them in the United States District Court for the Southern District of New York. See 28 U. S. C. §1963 ("A judgment . . . may be registered . . . in any other district . . . . A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner."). They then moved under Federal Rule of Civil Procedure 69 for turnover of about $1.75 billion in bond

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tion after "informing the [District Court] that none of the plaintiffs in those actions ha[d] obtained judgments for damages against Iran." App. to Pet. for Cert. 19a.

[6] "At approximately 6:25 a.m. Beirut time, . . . [a] truck crashed through a . . . barrier and a wall of sandbags, and entered the barracks. When the truck reached the center of the barracks, the bomb in the truck detonated. . . ." *Peterson*, 264 F. Supp. 2d, at 56 (footnote omitted). "As a result of the Marine barracks explosion, 241 servicemen were killed . . . ." *Id.*, at 58. The United States has long recognized Iran's complicity in this attack. See H. R. Rep. No. 104–523, pt. 1, p. 9 (1996) ("After an Administration determination of Iran's involvement in the bombing of the Marine barracks in Beirut in October 1983, Iran was placed on the U. S. list of state sponsors of terrorism on January 19, 1984.").

[7] Some of these 16 judgments awarded compensatory and punitive damages. See, *e.g., Wultz*, 864 F. Supp. 2d, at 42; *Acosta*, 574 F. Supp. 2d, at 31. Both §201(a) of the TRIA and §8772(a)(1) permit execution only "to the extent of any compensatory damages."

assets held in a New York bank account—assets that, respondents alleged, were owned by Bank Markazi. See App. to Pet. for Cert. 52a–54a, 60a, and n. 1; Second Amended Complaint in No. 10–CIV–4518 (SDNY), p. 6.[8] This turnover proceeding began in 2008 when the terrorism judgment holders in *Peterson*, 264 F. Supp. 2d 46, filed writs of execution and the District Court restrained the bonds. App. to Pet. for Cert. 14a–15a, 62a. Other groups of terrorism judgment holders—some of which had filed their own writs of execution against the bonds—were joined in No. 10–CIV–4518, the *Peterson* enforcement proceeding, through a variety of procedural mechanisms.[9] It is this consolidated judgment-enforcement proceeding and assets restrained in that proceeding that §8772 addresses.

Although the enforcement proceeding was initiated prior to the issuance of Executive Order No. 13599 and the enactment of §8772, the judgment holders updated their motions in 2012 to include execution claims under §8772. Plaintiffs' Supplemental Memorandum of Law in Support of Their Motion for Partial Summary Judgment in No. 10–CIV–4518 (SDNY).[10] Making the findings necessary un-

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[8] Federal Rule of Civil Procedure 69(a)(1) provides: "A money judgment is enforced by writ of execution . . . . The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies."

[9] Some moved to intervene; others became part of the proceeding by way of an interpleader motion filed by Citibank. App. to Pet. for Cert. 15a, 52a–53a, n. 1; Third-Party Petition Alleging Claims in the Nature of Interpleader in No. 10–CIV–4518 (SDNY), pp. 12–14. One group of respondents intervened much later than the others, in 2013, after §8772's enactment. See App. to Pet. for Cert. 18a–19a.

[10] Before §8772's enactment, respondents' execution claims relied on the TRIA. Even earlier, *i.e.,* prior to Executive Order No. 13599, which blocked the assets and thereby opened the door to execution under the

der §8772, the District Court ordered the requested turnover. App. to Pet. for Cert. 109a.[11]

In reaching its decision, the court reviewed the financial history of the assets and other record evidence showing that Bank Markazi owned the assets. See *id.,* at 111a–113a, and n. 17. Since at least early 2008, the court recounted, the bond assets have been held in a New York account at Citibank directly controlled by Clearstream Banking, S. A. (Clearstream), a Luxembourg-based company that serves "as an intermediary between financial institutions worldwide." *Id.,* at 56a–57a (internal quotation makes omitted). Initially, Clearstream held the assets for Bank Markazi and deposited interest earned on the bonds into Bank Markazi's Clearstream account. At some point in 2008, Bank Markazi instructed Clearstream to position another intermediary—Banca UBAE, S. p. A., an Italian bank—between the bonds and Bank Markazi. *Id.,* at 58a–59a. Thereafter, Clearstream deposited interest payments in UBAE's account, which UBAE then remitted to Bank Markazi. *Id.,* at 60a–61a.[12]

Resisting turnover of the bond assets, Bank Markazi and Clearstream, as the District Court observed, "filled

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TRIA, respondents sought turnover pursuant to the FSIA's terrorism judgment execution provisions. See Second Amended Complaint in No. 10–CIV–4518 (SDNY), pp. 27, 35–36; *supra,* at 3–4, and n. 2.

[11] In April 2012, the last of the bonds matured, leaving only "cash associated with the bonds" still restrained in the New York bank account. App. to Pet. for Cert. 61a.

[12] Citibank is a "neutral stakeholder," seeking only "resolution of ownership of [the] funds." App. to Pet. for Cert. 54a (internal quotation marks omitted). UBAE did not contest turnover of the $1.75 billion in assets at issue here (though it disputed the District Court's personal jurisdiction in anticipation of other execution claims not now before us). See Memorandum of Law in Support of Banca UBAE, S. p. A.'s Opposition to the Plaintiffs' Motion for Partial Summary Judgment in No. 10–CIV–4518 (SDNY), pp. 1–2.

the proverbial kitchen sink with arguments." *Id.,* at 111a. They argued, *inter alia*, the absence of subject-matter and personal jurisdiction, *id.,* at 73a–104a, asserting that the blocked assets were not assets "of" the Bank, see *supra,* at 4, n. 3, and that the assets in question were located in Luxembourg, not New York, App. to Pet. for Cert. 100a. Several of their objections to execution became irrelevant following enactment of §8772, which, the District Court noted, "sweeps away . . . any . . . federal or state law impediments that might otherwise exist, so long as the appropriate judicial determination is made." *Id.,* at 73a; §8772(a)(1) (Act applies "notwithstanding any other provision of law"). After §8772's passage, Bank Markazi changed its defense. It conceded that Iran held the requisite "equitable title to, or beneficial interest in, the assets," §8772(a)(2)(A), but maintained that §8772 could not withstand inspection under the separation-of-powers doctrine. See Defendant Bank Markazi's Supplemental Memorandum of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment in No. 10–CIV–4518 (SDNY), pp. 1–3, 10–16.[13]

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[13] In addition, Bank Markazi advanced one argument not foreclosed by §8772's text, and another that, at least in Bank Markazi's estimation, had not been rendered irrelevant by §8772. First, Bank Markazi argued that the availability of the assets for execution was a nonjusticiable political question because execution threatened to interfere with European blocking regulations. App. to Pet. for Cert. 92a–94a. Second, the Bank urged that execution would violate U. S. treaty obligations to Iran. See Defendant Bank Markazi's Supplemental Memorandum of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment in No. 10–CIV–4518 (SDNY), pp. 2–3, 21–25. The District Court found these arguments unavailing. The matter was justiciable, the court concluded, because §8772's enactment demonstrated that the political branches were not troubled about interference with European blocking regulations. App. to Pet. for Cert. 94a–96a. And treaty provisions interposed no bar to enforcement of §8772 because, the court reiterated, §8772 displaces "any" inconsistent provision of law, treaty obligations

"[I]n passing §8772," Bank Markazi argued, "Congress effectively dictated specific factual findings in connection with a specific litigation—invading the province of the courts." App. to Pet. for Cert. 114a. The District Court disagreed. The ownership determinations §8772 required, see *supra,* at 8–9, the court said, "[were] not mere fig leaves," for "it [was] quite possible that the [c]ourt could have found that defendants raised a triable issue as to whether the [b]locked [a]ssets were owned by Iran, or that Clearstream and/or UBAE ha[d] some form of beneficial or equitable interest." App. to Pet. for Cert. 115a. Observing from the voluminous filings that "[t]here [was] . . . plenty . . . to [litigate]," the court described §8772 as a measure that "merely chang[es] the law applicable to pending cases; it does not usurp the adjudicative function assigned to federal courts." *Ibid.* (internal quotation marks omitted). Further, the court reminded, "Iran's liability and its required payment of damages was . . . established years prior to the [enactment of §8772]"; "[a]t issue [here] is merely execution [of judgments] on assets present in this district." *Id.,* at 116a.[14]

The Court of Appeals for the Second Circuit unanimously affirmed. *Peterson* v. *Islamic Republic of Iran*, 758 F. 3d 185 (2014).[15] On appeal, Bank Markazi again argued that §8772 violates the separation of powers "by compelling the courts to reach a predetermined result in this case." *Id.,* at 191. In accord with the District Court, the Second

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included. *Id.*, at 101a–102a.

[14] Bank Markazi and Clearstream unsuccessfully sought to defeat turnover on several other constitutional grounds: the Bill of Attainder, *Ex post facto*, Equal Protection, and Takings Clauses. See *id.,* at 115a–119a. Those grounds are no longer pressed.

[15] Clearstream and UBAE settled with respondents before the Second Circuit's decision. *Peterson* v. *Islamic Republic of Iran*, 758 F. 3d 185, 189 (2014).

Circuit responded that "§8772 does not compel judicial findings [or results] under old law"; "rather, it retroactively changes the law applicable in this case, a permissible exercise of legislative authority." *Ibid.* Congress may so prescribe, the appeals court noted, "even when the result under the revised law is clear." *Ibid.*

To consider the separation-of-powers question Bank Markazi presents, we granted certiorari, 576 U. S. ___ (2015), and now affirm.[16]

II

Article III of the Constitution establishes an independent Judiciary, a Third Branch of Government with the "province and duty . . . to say what the law is" in particular cases and controversies. *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). Necessarily, that endowment of authority blocks Congress from "requir[ing] federal courts to exercise the judicial power in a manner that Article III forbids." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 218 (1995). Congress, no doubt, "may not usurp a court's power to interpret and apply the law to the [circumstances] before it," Brief for Former Senior Officials of the Office of Legal Counsel as *Amici Curiae* 3, 6, for "[t]hose who apply [a] rule to particular cases, must of necessity expound and interpret that rule," *Marbury*, 1 Cranch, at 177.[17] And our decisions place off limits to Congress

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[16] Respondents suggest that we decide this case on the ground that §201(a) of the TRIA independently authorizes execution against the assets here involved, instead of reaching the constitutional question petitioner raises regarding §8772. Brief for Respondents 53. The Court of Appeals, however, did not "resolve th[e] dispute under the TRIA," 758 F. 3d, at 189, nor do we. This Court generally does not decide issues unaddressed on first appeal—especially where, as here, the matter falls outside the question presented and has not been thoroughly briefed before us.

[17] Consistent with this limitation, respondents rightly acknowledged

"vest[ing] review of the decisions of Article III courts in officials of the Executive Branch." *Plaut,* 514 U. S., at 218 (citing *Hayburn's Case*, 2 Dall. 409 (1792), and, *e.g., Chicago & Southern Air Lines, Inc.* v. *Waterman S. S. Corp.*, 333 U. S. 103, 114 (1948)). Congress, we have also held, may not "retroactively comman[d] the federal courts to reopen final judgments." *Plaut*, 514 U. S., at 219.

A

Citing *United States* v. *Klein*, 13 Wall. 128 (1872), Bank Markazi urges a further limitation. Congress treads impermissibly on judicial turf, the Bank maintains, when it "prescribe[s] rules of decision to the Judicial Department . . . in [pending] cases." *Id.,* at 146. According to the Bank, §8772 fits that description. Brief for Petitioner 19, 43. *Klein* has been called "a deeply puzzling decision," Meltzer, Congress, Courts, and Constitutional Remedies, 86 Geo. L. J. 2537, 2538 (1998).[18] More recent decisions, however, have made it clear that *Klein* does not inhibit Congress from "amend[ing] applicable law." *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429, 441 (1992); see *id.,* at 437–438; *Plaut*, 514 U. S., at 218 (*Klein*'s "prohibition does not take hold when Congress 'amend[s] applicable law.'"

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at oral argument that Congress could not enact a statute directing that, in "Smith v. Jones," "Smith wins." Tr. of Oral Arg. 40. Such a statute would create no new substantive law; it would instead direct the court how pre-existing law applies to particular circumstances. See *infra* this page and 14–19. THE CHIEF JUSTICE challenges this distinction, *post,* at 11–12, but it is solidly grounded in our precedent. See *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429, 439 (1992) (A statute is invalid if it "fail[s] to supply new law, but direct[s] results under old law."), discussed in R. Fallon, J. Manning, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 324 (7th ed. 2015).

[18] See also *id.*, at 323 (calling *Klein* a "delphic opinion"); Tyler, The Story of *Klein*: The Scope of Congress's Authority to Shape the Jurisdiction of the Federal Courts, in Federal Courts Stories 87 (V. Jackson & J. Resnik eds. 2010) (calling *Klein* "baffl[ing]") (Tyler).

(quoting *Robertson*, 503 U. S., at 441)). Section 8772, we hold, did just that.

Klein involved Civil War legislation providing that persons whose property had been seized and sold in wartime could recover the proceeds of the sale in the Court of Claims upon proof that they had "never given any aid or comfort to the present rebellion." Ch. 120, §3, 12 Stat. 820; see *Klein*, 13 Wall., at 139. In 1863, President Lincoln pardoned "persons who . . . participated in the . . . rebellion" if they swore an oath of loyalty to the United States. Presidential Proclamation No. 11, 13 Stat. 737. One of the persons so pardoned was a southerner named Wilson, whose cotton had been seized and sold by Government agents. Klein was the administrator of Wilson's estate. 13 Wall., at 132. In *United States* v. *Padelford*, 9 Wall. 531, 543 (1870), this Court held that the recipient of a Presidential pardon must be treated as loyal, *i.e.,* the pardon operated as "a complete substitute for proof that [the recipient] gave no aid or comfort to the rebellion." Thereafter, Klein prevailed in an action in the Court of Claims, yielding an award of $125,300 for Wilson's cotton. 13 Wall., at 132.

During the pendency of an appeal to this Court from the Court of Claims judgment in *Klein*, Congress enacted a statute providing that no pardon should be admissible as proof of loyalty. Moreover, acceptance of a pardon without disclaiming participation in the rebellion would serve as conclusive evidence of disloyalty. The statute directed the Court of Claims and the Supreme Court to dismiss for want of jurisdiction any claim based on a pardon. 16 Stat. 235; R. Fallon, J. Manning, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 323, n. 29 (7th ed. 2015) (Hart and Wechsler). Affirming the judgment of the Court of Claims, this Court held that Congress had no authority to "impai[r] the effect of a pardon," for the Constitution entrusted the pardon power

"[t]o the executive alone." *Klein*, 13 Wall., at 147. The Legislature, the Court stated, "cannot change the effect of . . . a pardon any more than the executive can change a law." *Id.,* at 148. Lacking authority to impair the pardon power of the Executive, Congress could not "direc[t] [a] court to be instrumental to that end." *Ibid.* In other words, the statute in *Klein* infringed the judicial power, not because it left too little for courts to do, but because it attempted to direct the result without altering the legal standards governing the effect of a pardon—standards Congress was powerless to prescribe. See *id.,* at 146–147; *Robertson*, 503 U. S., at 438 (Congress may not "compe[l] . . . findings or results under old law").[19]

Bank Markazi, as earlier observed, *supra,* at 13, argues that §8772 conflicts with *Klein*. The Bank points to a statement in the *Klein* opinion questioning whether "the legislature may prescribe rules of decision to the Judicial Department . . . in cases pending before it." 13 Wall., at 146. One cannot take this language from *Klein* "at face value," however, "for congressional power to make valid statutes retroactively applicable to pending cases has often been recognized." Hart and Wechsler 324. See, *e.g., United States* v. *Schooner Peggy*, 1 Cranch 103, 110 (1801). As we explained in *Landgraf* v. *USI Film Products*, 511 U. S. 244, 267 (1994), the restrictions that the Constitution places on retroactive legislation "are of limited scope":

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[19] Given the issue before the Court—Presidential pardons Congress sought to nullify by withdrawing federal-court jurisdiction—commentators have rightly read *Klein* to have at least this contemporary significance: Congress "may not exercise [its authority, including its power to regulate federal jurisdiction,] in a way that requires a federal court to act unconstitutionally." Meltzer, Congress, Courts, and Constitutional Remedies, 86 Geo. L. J. 2537, 2549 (1998). See also Tyler 112 ("Congress may not employ the courts in a way that forces them to become active participants in violating the Constitution.").

> "The *Ex Post Facto* Clause flatly prohibits retroactive application of penal legislation. Article I, §10, cl. 1, prohibits States from passing . . . laws 'impairing the Obligation of Contracts.' The Fifth Amendment's Takings Clause prevents the Legislature (and other government actors) from depriving private persons of vested property rights except for a 'public use' and upon payment of 'just compensation.' The prohibitions on 'Bills of Attainder' in Art. I, §§ 9–10, prohibit legislatures from singling out disfavored persons and meting out summary punishment for past conduct. The Due Process Clause also protects the interests in fair notice and repose that may be compromised by retroactive legislation; a justification sufficient to validate a statute's prospective application under the Clause 'may not suffice' to warrant its retroactive application." *Id.,* at 266–267 (citation and footnote omitted).

"Absent a violation of one of those specific provisions," when a new law makes clear that it is retroactive, the arguable "unfairness of retroactive civil legislation is not a sufficient reason for a court to fail to give [that law] its intended scope." *Id.,* at 267–268. So yes, we have affirmed, Congress may indeed direct courts to apply newly enacted, outcome-altering legislation in pending civil cases. See *Plaut*, 514 U. S., at 226. Any lingering doubts on that score have been dispelled by *Robertson*, 503 U. S., at 441, and *Plaut*, 514 U. S., at 218.

Bank Markazi argues most strenuously that §8772 did not simply amend pre-existing law. Because the judicial findings contemplated by §8772 were "foregone conclusions," the Bank urges, the statute "effectively" directed certain factfindings and specified the outcome under the amended law. See Brief for Petitioner 42, 47. See also *post,* at 12–13. Recall that the District Court, closely monitoring the case, disagreed. *Supra,* at 10–11; App. to

Pet. for Cert. 115a ("[The] determinations [required by §8772] [were] not mere fig leaves," for "it [was] quite possible that the [c]ourt could have found that defendants raised a triable issue as to whether the [b]locked [a]ssets were owned by Iran, or that Clearstream and/or UBAE ha[d] some form of beneficial or equitable interest.").[20]

In any event, a statute does not impinge on judicial power when it directs courts to apply a new legal standard to undisputed facts. "When a plaintiff brings suit to enforce a legal obligation it is not any less a case or controversy upon which a court possessing the federal judicial power may rightly give judgment, because the plaintiff's claim is uncontested or incontestable." *Pope* v. *United States*, 323 U. S. 1, 11 (1944). In *Schooner Peggy*, 1

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[20]The District Court understandably concluded that §8772 left it "plenty . . . to adjudicate." App. to Pet. for Cert. 115a. For one, the statute did not define its key terms, "beneficial interest" and "equitable title." To arrive at fitting definitions, the District Court consulted legal dictionaries and precedent. See *id.,* at 111a–112a; *Zivotofsky* v. *Clinton*, 566 U. S. ___, ___ (2012) (slip op, at 7) (Interpretation of statutes "is a familiar judicial exercise."). Further, §8772 required the District Court to determine whether the Bank owned the assets in question. §8772(a)(2)(A). Clearstream contended that there were triable issues as to whether Bank Markazi was the owner of the blocked assets. App. to Pet. for Cert. 37a–39a, 111a. The court rejected that contention, finding that Clearstream and UBAE were merely account holders, maintaining the assets "on behalf of" the Bank. *Id.,* at 112a–113a; see *id.,* at 38a–39a. Next, §8772 required the court to determine whether any party, other than the Bank, possessed a "constitutionally protected interest" in the assets. §8772(a)(2)(B). Clearstream argued that it had such an interest, but the court disagreed. App. to Pet. for Cert. 117a–118a (determining that Clearstream had no constitutionally protected "investment-backed expectatio[n]" in the assets). Finally, prior to the statute's enactment, Bank Markazi and Clearstream had argued that the assets in question were located in Luxembourg, not New York. *Supra,* at 10. Leaving the issue for court resolution, Congress, in §8772(a)(1), required the District Court to determine whether the assets were "held in the United States."

Cranch, at 109–110, for example, this Court applied a newly ratified treaty that, by requiring the return of captured property, effectively permitted only one possible outcome. And in *Robertson*, 503 U. S., at 434–435, 438–439, a statute replaced governing environmental-law restraints on timber harvesting with new legislation that permitted harvesting in all but certain designated areas. Without inquiring whether the new statute's application in pending cases was a "foregone conclusio[n]," Brief for Petitioner 47, we upheld the legislation because it left for judicial determination whether any particular actions violated the new prescription. In short, §8772 changed the law by establishing new substantive standards, entrusting to the District Court application of those standards to the facts (contested or uncontested) found by the court.

Resisting this conclusion, THE CHIEF JUSTICE compares §8772 to a hypothetical "law directing judgment for Smith if the court finds that Jones was duly served with notice of the proceedings." *Post,* at 12–13.[21] Of course, the hypothesized law would be invalid—as would a law directing judgment for Smith, for instance, if the court finds that the sun rises in the east. For one thing, a law so cast may well be irrational and, therefore, unconstitutional for reasons distinct from the separation-of-powers issues considered here. See, *e.g., infra*, at 21, n. 27. For another, the law imagined by the dissent does what *Robertson* says Congress cannot do: Like a statute that directs, in "Smith v. Jones," "Smith wins," *supra,* at 12–13, n. 17, it "compel[s] . . . findings or results under old law," for it fails to supply any new legal standard effectuating

[21] Recall, again, that respondents are judgment creditors who prevailed on the merits of their respective cases. Section 8772 serves to facilitate their ability to collect amounts due to them from assets of the judgment debtor.

the lawmakers' reasonable policy judgment, 503 U. S., at 438.[22] By contrast, §8772 provides a new standard clarifying that, if Iran owns certain assets, the victims of Iran-sponsored terrorist attacks will be permitted to execute against those assets. Applying laws implementing Congress' policy judgments, with fidelity to those judgments, is commonplace for the Judiciary.

B

Section 8772 remains "unprecedented," Bank Markazi charges, because it "prescribes a rule for a single pending case—identified by caption and docket number." Brief for Petitioner 17.[23] The amended law in *Robertson*, however, also applied to cases identified by caption and docket number, 503 U. S., at 440, and was nonetheless upheld. Moreover, §8772, as already described, see *supra,* at 6–8, facilitates execution of judgments in 16 suits, together encompassing more than 1,000 victims of Iran-sponsored terrorist attacks.[24] Although consolidated for administra-

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[22] The dissent also analogizes §8772 to a law that makes "conclusive" one party's flimsy evidence of a boundary line in a pending property dispute, notwithstanding that the governing law ordinarily provides that an official map establishes the boundary. *Post,* at 1. Section 8772, however, does not restrict the evidence on which a court may rely in making the required findings. A more fitting analogy for depicting §8772's operation might be: In a pending property dispute, the parties contest whether an ambiguous statute makes a 1990 or 2000 county map the relevant document for establishing boundary lines. To clarify the matter, the legislature enacts a law specifying that the 2000 map supersedes the earlier map.

[23] At oral argument, Bank Markazi clarified that its argument extended beyond a single pending case, encompassing as well "a limited category of cases." Tr. of Oral Arg. 5. See also *id.,* at 57–58.

[24] Section 8772's limitation to one consolidated proceeding operates unfairly, Bank Markazi suggests, because other judgment creditors "would be subject to a completely different rule" if they "sought to execute against the same assets" outside No. 10–CIV–4518. Brief for

tive purposes at the execution stage,[25] the judgment-execution claims brought pursuant to Federal Rule of Civil Procedure 69 were not independent of the original actions for damages and each claim retained its separate character. See *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 834–835, n. 10 (1988) (postjudgment garnishment action brought under Rule 69 is part of the "process to enforce a judgment," not a new suit (alteration omitted and emphasis deleted)); 10 Cyclopedia of Federal Procedure §36:8, p. 385 (3 ed. 2010) ("Proceedings in execution are proceedings in the action itself . . . ."); 9A C. Wright & A. Miller, Federal Practice and Procedure §2382, p. 10 (3d ed. 2008) ("[A]ctions do not lose their separate identity because of consolidation.").[26]

The Bank's argument is further flawed, for it rests on the assumption that legislation must be generally applicable, that "there is something wrong with particularized legislative action." *Plaut*, 514 U. S., at 239, n. 9. We have

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Petitioner 26 (citing §8772(c) ("Nothing in this section shall be construed . . . to affect . . . any proceedings other than" No. 10–CIV–4518)). But nothing in §8772 prevented additional judgment creditors from joining the consolidated proceeding after the statute's enactment. Indeed, one group of respondents did so. See *supra*, at 8, n. 9.

[25] District courts routinely consolidate multiple related matters for a single decision on common issues. See, *e.g., Securities Investor Protection Corp.* v. *Bernard L. Madoff Inv. Securities LLC*, 476 B. R. 715, 717 (SDNY 2012) (deciding several legal questions arising in over 80 cases concerning "the massive Ponzi scheme perpetrated by Bernard L. Madoff").

[26] Questioning this understanding of the proceedings below, THE CHIEF JUSTICE emphasizes that many of the judgment creditors were joined in the *Peterson* enforcement proceeding by interpleader. See *post,* at 8, n. 1. That is true, *supra,* at 8, n. 9, but irrelevant. As explained above, execution proceedings are continuations of merits proceedings, not new lawsuits. Thus, the fact that many creditors joined by interpleader motion did not transform execution claims in 16 separate suits into "a single case." *Post,* at 8, n. 1.

found that assumption suspect:

> "While legislatures usually act through laws of general applicability, that is by no means their only legitimate mode of action. Private bills in Congress are still common, and were even more so in the days before establishment of the Claims Court. Even laws that impose a duty or liability upon a single individual or firm are not on that account invalid—or else we would not have the extensive jurisprudence that we do concerning the Bill of Attainder Clause, including cases which say that [the Clause] requires not merely 'singling out' but also *punishment*, see, *e.g., United States* v. *Lovett*, 328 U. S. 303, 315–318 (1946), [or] a case [holding] that Congress may legislate 'a legitimate class of one,' *Nixon* v. *Administrator of General Services*, 433 U. S. 425, 472 (1977)." *Ibid.*[27]

This Court and lower courts have upheld as a valid exercise of Congress' legislative power diverse laws that governed one or a very small number of specific subjects. *E.g., Regional Rail Reorganization Act Cases*, 419 U. S. 102, 158–161 (1974) (upholding Act that applied to specific railroads in a single region); *Pope*, 323 U. S., at 9–14 (upholding special Act giving a contractor the right to recover additional compensation from the Government); *The Clinton Bridge*, 10 Wall. 454, 462–463 (1870) (upholding Act governing a single bridge); *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421, 430–432 (1856) (similar); *Biodiversity Assoc.* v. *Cables*, 357 F. 3d 1152, 1156, 1164–1171 (CA10 2004) (upholding law that abro-

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[27] Laws narrow in scope, including "class of one" legislation, may violate the Equal Protection Clause if arbitrary or inadequately justified. *Village of Willowbrook* v. *Olech*, 528 U.S. 562, 564 (2000) (*per curiam*) (internal quotation marks omitted); *New Orleans* v. *Dukes*, 427 U. S. 297, 305–306 (1976) (*per curiam*).

gated specific settlement agreement between U. S. Forest Service and environmental groups); *SeaRiver Maritime Financial Holdings, Inc.* v. *Mineta*, 309 F. 3d 662, 667, 674–675 (CA9 2002) (upholding law that effectively applied to a single oil tanker); *National Coalition To Save Our Mall* v. *Norton*, 269 F. 3d 1092, 1097 (CADC 2001) (upholding law that applied to a single memorial).

C

We stress, finally, that §8772 is an exercise of congressional authority regarding foreign affairs, a domain in which the controlling role of the political branches is both necessary and proper. See, *e.g., Zivotofsky* v. *Kerry*, 576 U. S. ___, ___ (2015) (slip op., at 19). In furtherance of their authority over the Nation's foreign relations, Congress and the President have, time and again, as exigencies arose, exercised control over claims against foreign states and the disposition of foreign-state property in the United States. See *Dames & Moore* v. *Regan*, 453 U. S. 654, 673–674, 679–681 (1981) (describing this history). In pursuit of foreign policy objectives, the political branches have regulated specific foreign-state assets by, *inter alia*, blocking them or governing their availability for attachment. See *supra,* at 3–4 (describing the TWEA and the IEEPA); *e.g., Dames & Moore*, 453 U. S., at 669–674. Such measures have never been rejected as invasions upon the Article III judicial power. Cf. *id.,* at 674 (Court resists the notion "that the Federal Government as a whole lacked the power" to "nullif[y] . . . attachments and orde[r] the transfer of [foreign-state] assets.").[28]

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[28]THE CHIEF JUSTICE correctly notes that the Court in *Dames & Moore* v. *Regan*, 453 U. S. 654, 661 (1981), urged caution before extending its analysis to "other situations" not presented in that case. *Post,* at 15. Much of the Court's cause for concern, however, was the risk that the ruling could be construed as license for the broad exercise of unilat-

Particularly pertinent, the Executive, prior to the enactment of the FSIA, regularly made case-specific determinations whether sovereign immunity should be recognized, and courts accepted those determinations as binding. See *Republic of Austria* v. *Altmann*, 541 U. S. 677, 689–691 (2004); *Ex parte Peru*, 318 U. S. 578, 588–590 (1943). As this Court explained in *Republic of Mexico* v. *Hoffman*, 324 U. S. 30, 35 (1945), it is "not for the courts to deny an immunity which our government has seen fit to allow, or to allow an immunity on new grounds which the government has not seen fit to recognize." This practice, too, was never perceived as an encroachment on the federal courts' jurisdiction. See *Dames & Moore*, 453 U. S., at 684–685 ("[P]rior to the enactment of the FSIA [courts would not have] reject[ed] as an encroachment on their jurisdiction the President's determination of a foreign state's sovereign immunity.").

Enacting the FSIA in 1976, Congress transferred from the Executive to the courts the principal responsibility for determining a foreign state's amenability to suit. See *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 488–489 (1983). But it remains Congress' prerogative to alter a foreign state's immunity and to render the alteration dispositive of judicial proceedings in progress. See *Republic of Iraq* v. *Beaty*, 556 U. S. 848, 856–857, 865 (2009). By altering the law governing the attachment of particular property belonging to Iran, Congress acted comfortably within the political branches' authority over foreign sovereign immunity and foreign-state assets.

* * *

For the reasons stated, we are satisfied that §8772—a

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eral executive power. See 453 U. S., at 688; *American Ins. Assn.* v. *Garamendi*, 539 U. S. 396, 438 (2003) (GINSBURG, J., dissenting). As §8772 is a law passed by Congress and signed by the President, that risk is nonexistent here.

statute designed to aid in the enforcement of federal-court judgments—does not offend "separation of powers principles . . . protecting the role of the independent Judiciary within the constitutional design." *Miller* v. *French*, 530 U. S. 327, 350 (2000). The judgment of the Court of Appeals for the Second Circuit is therefore

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 14–770

BANK MARKAZI, AKA THE CENTRAL BANK OF IRAN, PETITIONER *v.* DEBORAH PETERSON, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[April 20, 2016]

CHIEF JUSTICE ROBERTS, with whom JUSTICE SOTOMAYOR joins, dissenting.

Imagine your neighbor sues you, claiming that your fence is on his property. His evidence is a letter from the previous owner of your home, accepting your neighbor's version of the facts. Your defense is an official county map, which under state law establishes the boundaries of your land. The map shows the fence on your side of the property line. You also argue that your neighbor's claim is six months outside the statute of limitations.

Now imagine that while the lawsuit is pending, your neighbor persuades the legislature to enact a new statute. The new statute provides that for your case, and your case alone, a letter from one neighbor to another is conclusive of property boundaries, and the statute of limitations is one year longer. Your neighbor wins. Who would you say decided your case: the legislature, which targeted your specific case and eliminated your specific defenses so as to ensure your neighbor's victory, or the court, which presided over the *fait accompli*?

That question lies at the root of the case the Court confronts today. Article III of the Constitution commits the power to decide cases to the Judiciary alone. See *Stern* v. *Marshall*, 564 U. S. 462, 484 (2011). Yet, in this case, Congress arrogated that power to itself. Since 2008, re-

spondents have sought $1.75 billion in assets owned by Bank Markazi, Iran's central bank, in order to satisfy judgments against Iran for acts of terrorism. The Bank has vigorously opposed those efforts, asserting numerous legal defenses. So, in 2012, four years into the litigation, respondents persuaded Congress to enact a statute, 22 U. S. C. §8772, that for this case alone eliminates each of the defenses standing in respondents' way. Then, having gotten Congress to resolve all outstanding issues in their favor, respondents returned to court . . . and won.

Contrary to the majority, I would hold that §8772 violates the separation of powers. No less than if it had passed a law saying "respondents win," Congress has decided this case by enacting a bespoke statute tailored to this case that resolves the parties' specific legal disputes to guarantee respondents victory.

I

A

Article III, §1 of the Constitution vests the "judicial Power of the United States" in the Federal Judiciary. That provision, this Court has observed, "safeguards the role of the Judicial Branch in our tripartite system." *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833, 850 (1986). It establishes the Judiciary's independence by giving the Judiciary distinct and inviolable authority. "Under the basic concept of separation of powers," the judicial power "can no more be shared with another branch than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto." *Stern*, 564 U. S., at 483 (internal quotation marks omitted). The separation of powers, in turn, safeguards individual freedom. See *Bond* v. *United States*, 564 U. S. 211, 223 (2011). As Hamilton wrote, quoting Montesquieu, "'there is no liberty if the power of judging be not

separated from the legislative and executive powers.'" The Federalist No. 78, p. 466 (C. Rossiter ed. 1961); see Montesquieu, The Spirit of the Laws 157 (A. Cohler, B. Miller, & H. Stone eds. 1989) (Montesquieu).

The question we confront today is whether §8772 violates Article III by invading the judicial power.

B

"The Framers of our Constitution lived among the ruins of a system of intermingled legislative and judicial powers." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 219 (1995). We surveyed those ruins in *Plaut* to determine the scope of the judicial power under Article III, and we ought to return to them today for that same purpose.

Throughout the 17th and 18th centuries, colonial legislatures performed what are now recognized as core judicial roles. They "functioned as courts of equity of last resort, hearing original actions or providing appellate review of judicial judgments." *Ibid.* They "constantly heard private petitions, which often were only the complaints of one individual or group against another, and made final judgments on these complaints." G. Wood, The Creation of the American Republic 1776–1787, pp. 154–155 (1969). And they routinely intervened in cases still pending before courts, granting continuances, stays of judgments, "new trials, and other kinds of relief in an effort to do what 'is agreeable to Right and Justice.'" *Id.,* at 155; see Judicial Action by the Provincial Legislature of Massachusetts, 15 Harv. L. Rev. 208, 216–218 (1902) (collecting examples of such laws).

The judicial power exercised by colonial legislatures was often expressly vested in them by the colonial charter or statute. In the Colonies of Massachusetts, Connecticut, and Rhode Island, for example, the assemblies officially served as the highest court of appeals. See 1 The Public Records of the Colony of Connecticut 25 (Trumbull ed.

1850); M. Clarke, Parliamentary Privilege in the American Colonies 31–33 (1943). Likewise, for more than a half century, the colonial assembly of Virginia could review and set aside court judgments. *Id.,* at 37–38. And in New Hampshire, where British authorities directed judicial appeals to the governor and his council, those officials often referred such matters to the assembly for decision. *Id.,* at 33. Colonial assemblies thus sat atop the judicial pyramid, with the final word over when and how private disputes would be resolved.

Legislative involvement in judicial matters intensified during the American Revolution, fueled by the "vigorous, indeed often radical, populism of the revolutionary legislatures and assemblies." *Plaut*, 514 U. S., at 219; see Wood, *supra,* at 155–156. The Pennsylvania Constitution of 1776 epitomized the ethos of legislative supremacy. It established a unicameral assembly unconstrained by judicial review and vested with authority to "'redress grievances.'" Report of the Committee of the Pennsylvania Council of Censors 42 (F. Bailey ed. 1784) (Council Report); see Williams, The State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and Its Influences on American Constitutionalism, 62 Temp. L. Rev. 541, 547–548, 556 (1989). The assembly, in turn, invoked that authority to depart from legal rules in resolving private disputes in order to ease the "hardships which will always arise from the operation of general laws." Council Report 42–43.

The Revolution-era "crescendo of legislative interference with private judgments of the courts," however, soon prompted a "sense of a sharp necessity to separate the legislative from the judicial power." *Plaut*, 514 U. S., at 221. In 1778, an influential critique of a proposed (and ultimately rejected) Massachusetts constitution warned that "[i]f the legislative and judicial powers are united, the maker of the law will also interpret it; and the law may

then speak a language, dictated by the whims, the caprice, or the prejudice of the judge." The Essex Result, in The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780, p. 337 (O. Handlin & M. Handlin eds. 1966). In Virginia, Thomas Jefferson complained that the assembly had, "in many instances, decided rights which should have been left to judiciary controversy." Jefferson, Notes on the State of Virginia 120 (Peden ed. 1982). And in Pennsylvania, the Council of Censors—a body appointed to assess compliance with the state constitution—decried the state assembly's practice of "extending their deliberations to the cases of individuals" instead of deferring to "the usual process of law," citing instances when the assembly overturned fines, settled estates, and suspended prosecutions. Council Report 38, 42. "[T]here is reason to think," the Censors observed, "that favour and partiality have, from the nature of public bodies of men, predominated in the distribution of this relief." *Id.,* at 38.

Vermont's Council of Censors sounded similar warnings. Its 1786 report denounced the legislature's "assumption of the judicial power," which the legislature had exercised by staying and vacating judgments, suspending lawsuits, resolving property disputes, and "legislating for individuals, and for particular cases." Vermont State Papers 1779–1786, pp. 537–542 (W. Slade ed. 1823). The Censors concluded that "[t]he legislative body is, in truth, by no means competent to the determination of causes between party and party," having exercised judicial power "without being shackled with rules," guided only by "crude notions of equity." *Id.,* at 537, 540.

The States' experiences ultimately shaped the Federal Constitution, figuring prominently in the Framers' decision to devise a system for securing liberty through the division of power:

> "Before and during the debates on ratification, Madison, Jefferson, and Hamilton each wrote of the factional disorders and disarray that the system of legislative equity had produced in the years before the framing; and each thought that the separation of the legislative from the judicial power in the new Constitution would cure them." *Plaut*, 514 U. S., at 221.

As Professor Manning has concluded, "Article III, in large measure, reflects a reaction against the practice" of legislative interference with state courts. Manning, Response, Deriving Rules of Statutory Interpretation from the Constitution, 101 Colum. L. Rev. 1648, 1663 (2001).

Experience had confirmed Montesquieu's theory. The Framers saw that if the "power of judging . . . were joined to legislative power, the power over the life and liberty of the citizens would be arbitrary." Montesquieu 157. They accordingly resolved to take the unprecedented step of establishing a "truly distinct" judiciary. The Federalist No. 78, at 466 (A. Hamilton). To help ensure the "complete independence of the courts of justice," *ibid.*, they provided life tenure for judges and protection against diminution of their compensation. But such safeguards against indirect interference would have been meaningless if Congress could simply exercise the judicial power directly. The central pillar of judicial independence was Article III itself, which vested "[t]he judicial Power of the United States" in "one supreme Court" and such "inferior Courts" as might be established. The judicial power was to be the Judiciary's alone.

II

A

Mindful of this history, our decisions have recognized three kinds of "unconstitutional restriction[s] upon the exercise of judicial power." *Plaut*, 514 U. S., at 218. Two concern the effect of judgments once they have been ren-

dered: "Congress cannot vest review of the decisions of Article III courts in officials of the Executive Branch," *ibid.*, for to do so would make a court's judgment merely "an advisory opinion in its most obnoxious form," *Chicago & Southern Air Lines, Inc.* v. *Waterman S. S. Corp.*, 333 U. S. 103, 113 (1948). And Congress cannot "retroactively command[ ] the federal courts to reopen final judgments," because Article III "gives the Federal Judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy." *Plaut*, 514 U. S., at 218–219. Neither of these rules is directly implicated here.

This case is about the third type of unconstitutional interference with the judicial function, whereby Congress assumes the role of judge and decides a particular pending case in the first instance. Section 8772 does precisely that, changing the law—for these proceedings alone—simply to guarantee that respondents win. The law serves no other purpose—a point, indeed, that is hardly in dispute. As the majority acknowledges, the statute "'sweeps away . . . any . . . federal or state law impediments that might otherwise exist'" to bar respondents from obtaining Bank Markazi's assets. *Ante,* at 9–10 (quoting App. to Pet. for Cert. 73a). In the District Court, Bank Markazi had invoked sovereign immunity under the Foreign Sovereign Immunities Act of 1976, 28 U. S. C. §1611(b)(1). Brief for Petitioner 28. Section 8772(a)(1) eliminates that immunity. Bank Markazi had argued that its status as a separate juridical entity under federal common law and international law freed it from liability for Iran's debts. See *First Nat. City Bank* v. *Banco Para el Comercio Exterior de Cuba*, 462 U. S. 611, 624–627 (1983); Brief for Petitioner 27–28. Section 8772(d)(3) ensures that the Bank is liable. Bank Markazi had argued that New York law did not allow respondents to execute their judgments against the Bank's assets. See N. Y. U. C. C. Law Ann. §8–112(c)

(West 2002); see also App. to Pet. for Cert. 126a (agreeing with this argument). Section 8772(a)(1) makes those assets subject to execution. See *id.,* at 97a.

Section 8772 authorized attachment, moreover, only for the

> "financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG), that were restrained by restraining notices and levies secured by the plaintiffs in those proceedings . . . ." §8772(b).

And lest there be any doubt that Congress's sole concern was deciding this particular case, rather than establishing any generally applicable rules, §8772 provided that nothing in the statute "shall be construed . . . to affect the availability, or lack thereof, of a right to satisfy a judgment in any other action against a terrorist party in any proceedings other than" these. §8772(c).[1]

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[1]The majority quarrels with the description of §8772 as being directed to a single case, noting that the claimants had sought attachment of the assets in various prior proceedings. *Ante,* at 18. Those proceedings, however, were not simply consolidated below, but rather were joined in the single interpleader action that was referenced by docket number in §8772. See §8772(b). See generally 7 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §1702 (3d ed. 2001) (explaining that interpleader is a "joinder device" that brings together multiple claimants to a piece of property in a "single" action to "protect[ ] the stakeholder from the vexation of multiple suits"). That is presumably why respondents did not dispute Bank Markazi's characterization of the proceedings as "a single pending case" when they opposed certiorari, Pet. for Cert. i, and why the majority offers no citation to refute Wright & Miller's characterization of an interpleader action as a "single proceeding," 7 Federal Practice and Procedure §1704. In any event, nothing in the majority's opinion suggests that the result would be different under its analysis even if it concluded that only a single case were involved.

B

There has never been anything like §8772 before. Neither the majority nor respondents have identified another statute that changed the law for a pending case in an outcome-determinative way and explicitly limited its effect to particular judicial proceedings. That fact alone is "[p]erhaps the most telling indication of the severe constitutional problem" with the law. *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 505 (2010) (internal quotation marks omitted). Congress's "prolonged reticence would be amazing if such interference were not understood to be constitutionally proscribed." *Plaut*, 514 U. S., at 230.

Section 8772 violates the bedrock rule of Article III that the judicial power is vested in the Judicial Branch alone. We first enforced that rule against an Act of Congress during the Reconstruction era in *United States* v. *Klein*, 13 Wall. 128 (1872). *Klein* arose from congressional opposition to conciliation with the South, and in particular to the pardons Presidents Lincoln and Johnson had offered to former Confederate rebels. See *id.,* at 140–141; see, *e.g.,* Presidential Proclamation No. 11, 13 Stat. 737. Although this Court had held that a pardon was proof of loyalty and entitled its holder to compensation in the Court of Claims for property seized by Union forces during the war, see *United States* v. *Padelford*, 9 Wall. 531, 543 (1870), the Radical Republican Congress wished to prevent pardoned rebels from obtaining such compensation. It therefore enacted a law prohibiting claimants from using a pardon as evidence of loyalty, instead requiring the Court of Claims and Supreme Court to dismiss for want of jurisdiction any suit based on a pardon. See Act of July 12, 1870, ch. 251, 16 Stat. 235; see also *United States* v. *Sioux Nation*, 448 U. S. 371, 403 (1980).

Klein's suit was among those Congress wished to block. Klein represented the estate of one V. F. Wilson, a Con-

federate supporter whom Lincoln had pardoned. On behalf of the estate, Klein had obtained a sizable judgment in the Court of Claims for property seized by the Union. *Klein*, 13 Wall., at 132–134. The Government's appeal from that judgment was pending in the Supreme Court when the law targeting such suits took effect. The Government accordingly moved to dismiss the entire proceeding.

This Court, however, denied that motion and instead declared the law unconstitutional. It held that the law "passed the limit which separates the legislative from the judicial power." *Id.*, at 147. The Court acknowledged that Congress may "make exceptions and prescribe regulations to the appellate power," but it refused to sustain the law as an exercise of that authority. *Id.,* at 146. Instead, the Court held that the law violated the separation of powers by attempting to "decide" the case by "prescrib[ing] rules of decision to the Judicial Department of the government in cases pending before it." *Id.,* at 145–146. "It is of vital importance," the Court stressed, that the legislative and judicial powers "be kept distinct." *Id.,* at 147.

The majority characterizes *Klein* as a delphic, puzzling decision whose central holding—that Congress may not prescribe the result in pending cases—cannot be taken at face value.[2] It is true that *Klein* can be read too broadly,

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[2]The majority instead seeks to recast *Klein* as being primarily about congressional impairment of the President's pardon power, *ante*, at 14–15, despite *Klein*'s unmistakable indication that the impairment of the pardon power was an *alternative* ground for its holding, secondary to its Article III concerns. 13 Wall., at 147 ("The rule prescribed is *also* liable to just exception as impairing the effect of a pardon, and thus infringing the constitutional power of the Executive." (emphasis added)). The majority then suggests that *Klein* stands simply for the proposition that Congress may not require courts to act unconstitutionally. *Ante*, at 14, and n. 19. That is without doubt a good rule, recognized by this Court since *Marbury* v. *Madison*, 1 Cranch 137 (1803). But it is hard to reconstruct *Klein* along these lines, given its focus on the threat to the

in a way that would swallow the rule that courts generally must apply a retroactively applicable statute to pending cases. See *United States* v. *Schooner Peggy*, 1 Cranch 103, 110 (1801). But *Schooner Peggy* can be read too broadly, too. Applying a retroactive law that says "Smith wins" to the pending case of *Smith* v. *Jones* implicates profound issues of separation of powers, issues not adequately answered by a citation to *Schooner Peggy*. And just because *Klein* did not set forth clear rules defining the limits on Congress's authority to legislate with respect to a pending case does not mean—as the majority seems to think—that Article III itself imposes no such limits.

The same "record of history" that drove the Framers to adopt Article III to implement the separation of powers ought to compel us to give meaning to their design. *Plaut*, 514 U. S., at 218. The nearly two centuries of experience with legislative assumption of judicial power meant that "[t]he Framers were well acquainted with the danger of subjecting the determination of the rights of one person to the tyranny of shifting majorities." *INS* v. *Chadha*, 462 U. S. 919, 961 (1983) (Powell, J., concurring in judgment) (internal quotation marks omitted). Article III vested the judicial power in the Judiciary alone to protect against that threat to liberty. It defined not only what the Judiciary can do, but also what Congress cannot.

The Court says it would reject a law that says "Smith wins" because such a statute "would create no new substantive law." *Ante*, at 12, n. 17. Of course it would: Prior to the passage of the hypothetical statute, the law did not

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separation of powers from allowing Congress to manipulate jurisdictional rules to dictate judicial results. See Hart, The Power of Congress To Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic, 66 Harv. L. Rev. 1362, 1373 (1953) ("[I]f Congress directs an Article III court to decide a case, I can easily read into Article III a limitation on the power of Congress to tell the court *how* to decide it . . . as the Court itself made clear long ago in *United States v. Klein*.").

provide that Smith wins. After the passage of the law, it does. Changing the law is simply how Congress acts. The question is whether its action constitutes an exercise of judicial power. Saying Congress "creates new law" in one case but not another simply expresses a conclusion on that issue; it does not supply a reason.

"Smith wins" is a new law, tailored to one case in the same way as §8772 and having the same effect. All that both statutes "effectuat[e]," in substance, is lawmakers' "policy judgment" that one side in one case ought to prevail. *Ante,* at 18. The cause for concern is that though the statutes are indistinguishable, it is plain that the majority recognizes no limit under the separation of powers beyond the prohibition on statutes as brazen as "Smith wins." Hamilton warned that the Judiciary must take "all possible care . . . to defend itself against [the] attacks" of the other branches. The Federalist No. 78, at 466. In the Court's view, however, Article III is but a constitutional Maginot Line, easily circumvented by the simplest maneuver of taking away every defense against Smith's victory, without saying "Smith wins."

Take the majority's acceptance of the District Court's conclusion that §8772 left "plenty" of factual determinations for the court "to adjudicate." *Ante*, at 16–17, and n. 20 (internal quotation marks omitted). All §8772 actually required of the court was two factual determinations—that Bank Markazi has an equitable or beneficial interest in the assets, and that no other party does, §8772(a)(2)—both of which were well established by the time Congress enacted §8772. Not only had the assets at issue been frozen pursuant to an Executive Order blocking "property of the Government of Iran," Exec. Order No. 13599, 77 Fed. Reg. 6659 (2012), but the Bank had "repeatedly insisted that it is the sole beneficial owner of the Blocked Assets," App. to Pet. for Cert. 113a. By that measure of "plenty," the majority would have to uphold a

law directing judgment for Smith if the court finds that Jones was duly served with notice of the proceedings, and that Smith's claim was within the statute of limitations. In reality, the Court's "plenty" is plenty of nothing, and, apparently, nothing is plenty for the Court. See D. Heyward & I. Gershwin, Porgy and Bess: Libretto 28 (1958).

It is true that some of the precedents cited by the majority, *ante,* at 17–19, have allowed Congress to approach the boundary between legislative and judicial power. None, however, involved statutes comparable to §8772. In *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429 (1992), for example, the statute at issue referenced particular cases only as a shorthand for describing certain environmental law requirements, *id.,* at 433–435, not to limit the statute's effect to those cases alone. And in *Plaut*, the Court explicitly distinguished the statute before it—which directed courts to reopen final judgments in an entire class of cases—from one that "'single[s] out' any defendant for adverse treatment (or any plaintiff for favorable treatment)." 514 U. S., at 238. *Plaut*, in any event, held the statute before it *invalid*, concluding that it violated Article III based on the same historical understanding of the judicial power outlined above. *Id.,* at 219–225, 240.[3]

I readily concede, without embarrassment, that it can sometimes be difficult to draw the line between legislative and judicial power. That should come as no surprise; Chief Justice Marshall's admonition "that 'it is a *constitution* we are expounding' is especially relevant when the Court is required to give legal sanctions to an underlying principle of the Constitution—that of separation of powers." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S.

[3] We have also upheld Congress's long practice of settling individual claims involving public rights, such as claims against the Government, through private bills. See generally *Pope* v. *United States*, 323 U. S. 1 (1944). But the Court points to no example of a private bill that retroactively changed the law for a single case involving private rights.

579, 596–597 (1952) (Frankfurter, J., concurring) (quoting *McCulloch* v. *Maryland*, 4 Wheat. 316, 407 (1819)). But however difficult it may be to discern the line between the Legislative and Judicial Branches, the entire constitutional enterprise depends on there *being* such a line. The Court's failure to enforce that boundary in a case as clear as this reduces Article III to a mere "parchment barrier[ ] against the encroaching spirit" of legislative power. The Federalist No. 48, at 308 (J. Madison).

C

Finally, the majority suggests that §8772 is analogous to the Executive's historical power to recognize foreign state sovereign immunity on a case-by-case basis. As discussed above, however, §8772 does considerably more than withdraw the Bank's sovereign immunity. *Supra,* at 7–8. It strips the Bank of any protection that federal common law, international law, or New York State law might have offered against respondents' claims. That is without analogue or precedent. In any event, the practice of applying case-specific Executive submissions on sovereign immunity was not judicial acquiescence in an intrusion on the Judiciary's role. It was instead the result of substantive sovereign immunity law, developed and applied by the courts, which treated such a submission as a dispositive fact. See *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 486–487 (1983); *Ex parte Peru*, 318 U. S. 578, 587–588 (1943).

The majority also compares §8772 to the political branches' authority to "exercise[ ] control over claims against foreign states and the disposition of foreign-state property in the United States." *Ante,* at 21 (citing *Dames & Moore* v. *Regan*, 453 U. S. 654 (1981)). In *Dames & Moore*, we considered whether the President had authority to suspend claims against Iran, and to nullify existing court orders attaching Iran's property, in order to fulfill

U. S. obligations under a claims settlement agreement with that country. *Id.*, at 664–667. We held that the President had that power, based on a combination of statutory authorization, congressional acquiescence, and inherent Executive power. See *id.,* at 674–675, 686.

The majority suggests that *Dames & Moore* supports the validity of §8772. But *Dames & Moore* was self-consciously "a restricted railroad ticket, good for this day and train only." *Smith* v. *Allwright*, 321 U. S. 649, 669 (1944) (Roberts, J., dissenting). The Court stressed in *Dames & Moore* that it "attempt[ed] to lay down no general 'guidelines' covering other situations not involved here, and attempt[ed] to confine the opinion only to the very questions necessary to [the] decision of the case." 453 U. S., at 661; see also *American Ins. Assn.* v. *Garamendi*, 539 U. S. 396, 438 (2003) (GINSBURG, J., dissenting) ("Notably, the Court in *Dames & Moore* was emphatic about the 'narrowness' of its decision.").

There are, moreover, several important differences between *Dames & Moore* and this case. For starters, the executive action *Dames & Moore* upheld did not dictate how particular claims were to be resolved, but simply required such claims to be submitted to a different tribunal. 453 U. S., at 660. Furthermore, *Dames & Moore* sanctioned that action based on the political branches' "longstanding" practice of "settl[ing] the claims of [U. S.] nationals against foreign countries" by treaty or executive agreement. *Id.*, at 679. The Court emphasized that throughout our history, the political branches have at times "disposed of the claims of [U. S.] citizens without their consent, or even without consultation with them," by renouncing claims, settling them, or establishing arbitration proceedings. *Id.*, at 679–681 (internal quotation marks omitted). Those dispositions, crucially, were not exercises of judicial power, as is evident from the fact that the Judiciary lacks authority to order settlement or estab-

lish new tribunals. That is why *Klein* was not at issue in *Dames & Moore*. By contrast, no comparable history sustains Congress's action here, which seeks to provide relief to respondents not by transferring their claims in a manner only the political branches could do, but by commandeering the courts to make a political judgment look like a judicial one. See *Medellín* v. *Texas*, 552 U. S. 491, 531 (2008) (refusing to extend the President's claims-settlement authority beyond the "narrow set of circumstances" defined by the "'systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned'" (quoting *Dames & Moore*, 453 U. S., at 686)).

If anything, what *Dames & Moore* reveals is that the political branches have extensive powers of their own in this area and could have chosen to exercise them to give relief to the claimants in this case. Cf. 50 U. S. C. §1702(a)(1)(C) (authorizing the President, in certain emergency circumstances, to confiscate and dispose of foreign sovereign property). The authority of the political branches is sufficient; they have no need to seize ours.

* * *

At issue here is a basic principle, not a technical rule. Section 8772 decides this case no less certainly than if Congress had directed entry of judgment for respondents. As a result, the potential of the decision today "to effect important change in the equilibrium of power" is "immediately evident." *Morrison* v. *Olson*, 487 U. S. 654, 699 (1988) (Scalia, J., dissenting). Hereafter, with this Court's seal of approval, Congress can unabashedly pick the winners and losers in particular pending cases. Today's decision will indeed become a "blueprint for extensive expansion of the legislative power" at the Judiciary's expense, *Metropolitan Washington Airports Authority* v. *Citizens for Abatement of Aircraft Noise, Inc.*, 501 U. S. 252, 277

(1991), feeding Congress's tendency to "extend[ ] the sphere of its activity and draw[ ] all power into its impetuous vortex," The Federalist No. 48, at 309 (J. Madison).

I respectfully dissent.

Annex 67

***Ministry of Defense of Iran v. Cubic et al.*, U.S. District Court, Southern District of California, 29 April 2016, No. 98 cv 1165 (S.D. Cal. 2016)**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MINISTRY OF DEFENSE AND SUPPORT FOR THE ARMED FORCES OF THE ISLAMIC REPUBLIC OF IRAN,

Petitioner,

v.

CUBIC DEFENSE SYSTEMS, INC.,

Respondent,

and

JENNY RUBIN, et al., and FRANCE RAFII,

Lien Claimants.

Case No.: 98cv1165 B(DHB)

ORDER TO CLOSE INTEREST BEARING ACCOUNT AND DISBURSE FUNDS

Civil Local Rule 67.1 provides: "Upon the entry of a judgment, funds, if any, on deposit in the registry of the court will be disbursed only by order of the court after the time for appeal has expired, or upon written stipulation by all parties approved by the court." The Court finds that the requirements of Rule 67.1 have been satisfied and that the funds in the registry should be disbursed at this time.

The time for appeal has run. In December 2013, Petitioner appealed the Court's Order Granting Lien Claimant's Motion to Attach Cubic Judgment. In a published decision filed on February 21, 2016, the Ninth Circuit Court of Appeals affirmed this Court's Order. The Mandate issued on March 21, 2016. On April 18, 2016, the Court held a status hearing regarding the disbursement of the funds in the registry. The Court explained that if Petitioner did not obtain a stay from the U.S. Supreme Court by the end of the business day on April 22, 2016, the Court would order disbursement of the funds. Petitioner applied to the U.S. Supreme Court to stay disbursement of the funds, but the application was denied by Justice Kennedy on April 21, 2016.

As for the allocation of the disbursed funds, the Claimants have filed affidavits [Docs. 314, 315] stating their agreement with the allocation set forth in a stipulation previously filed with the Court [Doc. 313-1]. Petitioner does not intend to appeal the allocation of the disbursed funds.

Accordingly, the Court finds that the requirements of Rule 67.1 have been satisfied and that there is no reason to delay disbursement of funds. Therefore, the Court **ORDERS** that the Clerk shall, forthwith, close the interest bearing account and release the amount of $9,462,750.81, plus interest, from the interest bearing account in the above entitled case as follows:

(1) The Clerk is authorized to deduct a fee for the handling of all funds deposited with the court and held in interest bearing accounts or instruments. The fee must be equal to that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office of the United States Court.

(2) $2,500,000.00, plus 26.42% of the remaining interest, shall be transmitted and made payable to:

Hirschkop & Associates, P.C.,
Counsel for and on behalf of France Rafii
6128 River Drive
Lorton, Virginia 22079;

(3) $6,962,750.81, plus 73.58% of the remaining interest, shall be transmitted and made payable to:

McIntyre Tate, LLP,
Counsel for and on behalf of Jenny Rubin, et al.
321 South Main Street
Providence, Rhode Island 02903.

Counsel for Claimants are directed to make sure that the disbursed funds are allocated to the individual Claimants in accordance with the terms of the stipulation [Doc. 313-1].

IT IS SO ORDERED.

Dated: April 29, 2016

Barry Ted Moskowitz, Chief Judge
United States District Court

Annex 68

***Peterson et al. v. Islamic Republic of Iran et al.*, U.S. District Court, Southern District of New York, 6 June 2016, No. 10 Civ. 4518 (*S.D.N.Y. 2016*)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

DEBORAH D. PETERSON,
Personal Representative of the Estate
of James C. Knipple (Dec.), *et al.*,

Plaintiffs,

v.

ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI a/k/a CENTRAL BANK OF IRAN; BANCA UBAE SpA; CITIBANK, N.A., and CLEARSTREAM BANKING, S.A.,

Defendants.

10 Civ 4518 (KBF)

ORDER AUTHORIZING DISTRIBUTION OF FUNDS

WHEREAS, the Court entered a partial final judgment in this matter pursuant to Fed. R. Civ. P. 54(b) on July 9, 2013, awarding turnover of the sum of $1,895,600,513.03 plus interest ("Blocked Assets") by Citibank, N.A. to certain judgment creditors holding judgments against the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS"), who are identified as the "Plaintiffs" in said partial final judgment (the "Turnover Judgment") (Dkt. No. 462);

WHEREAS, the Court entered an Order on July 9, 2013, by which it created a trust for the benefit of the Plaintiffs (the "QSF") for the purpose of, *inter alia*, receiving the turnover of the Blocked Assets; holding the Blocked Assets in accordance with the terms of that Order pending appeal of the Turnover Judgment; and distributing the Blocked Assets to the individual Plaintiffs in accordance with the terms of Plaintiffs' agreement concerning the distribution of those funds, as set forth in a written agreement executed by counsel for the Plaintiffs dated as of June 1, 2012 entitled "Litigation Cooperation and Settlement Agreement" (hereinafter, "Cooperation Agreement") and in written agreements between the Plaintiffs and other judgment creditors of Iran (the "QSF Order") (Dkt. No. 460);

WHEREAS, the QSF is governed by the Agreement for the Peterson §468B Fund Pursuant to 26 U.S.C. §468B, executed by the trustee of the QSF, Hon. Stanley Sporkin (the "Trustee"), and filed with the Court on July 9, 2013 (the "QSF Agreement") (Dkt. No. 461);

WHEREAS, the QSF Order mistakenly defined the "Plaintiffs" for whose benefit the QSF was created to include groups of plaintiffs in the following underlying actions identified in the Turnover Judgment who were excluded from the award of turnover of the Blocked Assets for reasons stated therein: *Mwila, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 08-cv-1377 (D.D.C.) (the "Mwila Action"); *Owens, et al., v. Republic of Sudan, et al.*, Civil Action No. 01-cv-2244 (D.D.C.) (the "Owens Action"); and *Khaliq, et al. v. Republic of Sudan, et al.*, Civil Action No. 08-cv-1273 (D.D.C.) (the "Khaliq Action");

WHEREAS, Citibank turned over the Blocked Assets to the QSF in the amount of $1,895,672,127.31 on August 8, 2013;

WHEREAS, the Turnover Judgment directed the Office of the Chief Counsel (Foreign Assets Control) of the U.S. Department of the Treasury ("OFAC") to issue a license authorizing the transfers of the Blocked Assets as set forth in the Turnover Judgment, and OFAC issued such a license bearing license number IA-2013-303215-1 on July 24, 2013, which authorizes the Trustee to engage in all transactions necessary to administer the QSF;

WHEREAS, the Turnover Judgment directs Plaintiffs to apply to the Court for an order authorizing the distribution of the funds held by the QSF in accordance with the terms of the Plaintiffs' agreements concerning the distribution of those funds within thirty days after the Turnover Judgment becomes a "Non-Appealable Sustained Judgment" (as defined therein);

WHEREAS, the Turnover Judgment became a Non-Appealable Sustained Judgment as defined in the Turnover Judgment by virtue of Defendants Clearstream Banking S.A. and Banca UBAE SpA having appealed the Turnover Judgment to the United States Court of Appeal for the Second Circuit and said appeals having been withdrawn by Orders of said court dated December 4, 2013 and December 3, 2013, respectively, Bank Markazi having appealed the Turnover Judgment to the United States Court of Appeals for the Second Circuit, the affirmance thereof by

judgment of the United States Court of Appeals for the Second Circuit dated July 9, 2014, the Order of the United States Court of Appeals for the Second Circuit denying Bank Markazi's petition for rehearing, or in the alternative for rehearing *en banc* dated September 29, 2014, Bank Markazi having petitioned the Supreme Court of the United States for a writ of certiorari, and the Supreme Court of the United States having issued an Order dated October 1, 2015, granting Bank Markazi's petition for a writ of certiorari, the Supreme Court of the United States having heard argument on January 13, 2016 and having issued an opinion and judgment on April 20, 2016 affirming the Judgment of the United States Court of Appeals for the Second Circuit dated July 9, 2014, the United States Court of Appeals for the Second Circuit having issued its mandate on May 24, 2016 and this Court having received the mandate on May 24, 2016 (Dkt. No. 616), the time to file an appeal from the Turnover Judgment having expired and no other party having appealed therefrom, and the Turnover Judgment being no longer subject to review upon appeal or review by writ of certiorari;

NOW, ON MOTION OF THE PLAINTIFFS, IT IS HEREBY ORDERED that the QSF Order is hereby modified by deleting from the definition of "Plaintiffs" the plaintiffs in the Mwila Action, the Owens Action and the Khaliq Action.

AND IT IS FURTHER ORDERED that, effective immediately upon execution of this Order, the Trustee of the QSF is hereby authorized to commence distribution of the assets held by the QSF in accordance with the terms of the Cooperation Agreement and in written agreements between the Plaintiffs and other judgment creditors of Iran. The Trustee of the QSF shall distribute the assets of the Fund, reserving a reasonable amount for expenses and contingencies, by making payments to the Plaintiffs and other judgment creditors of Iran that have written agreements with any of the Plaintiffs to share in the distribution of the Fund, and their respective attorneys in accordance with paragraph 3.1.3 of the QSF (Dkt. No. 461), and no further order from the Court shall be required to make such distributions. The Trustee is authorized to engage such service providers as he reasonably deems necessary to carry out his duties under the QSF Agreement and to pay such service providers' agreed reasonable fees and

expenses from the assets of the Fund without further order from the Court. The Court's prior Orders dated October 1, 2013 (Dkt. No. 500) and December 16, 2013 (Dkt. No. 538) are hereby superseded to the extent that they prevent the Trustee from paying service providers reasonable and necessary fees and expenses incurred in connection with the performance of the Trustee's duties. Nothing herein shall be construed as terminating the QSF Trust, nor this Court's continuing jurisdiction over the Fund, pursuant to Treasury Regulation Section 1.468B-1 (c)(1) and the QSF Order.

The Clerk of the Court is directed to terminate this case upon entry of this Order.

SO ORDERED:

Dated: New York, New York
6/6, 2016

U.S.D.J.

Annex 69

***Estate of Heiser et al. v. Islamic Republic of Iran et al.*, U.S. District Court, District of Columbia, 9 June 2016, No. 00 Civ. 02329 (D.D.C. 2016)**

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ESTATE OF MICHAEL HEISER, *et al.* Plaintiffs v. ISLAMIC REPUBLIC OF IRAN, *et al.* Defendants	Case No.: 00-CV-02329 (RCL) **Consolidated with**
ESTATE OF MILLARD D. CAMPBELL, *et al.* Plaintiffs v. ISLAMIC REPUBLIC OF IRAN, *et al.* Defendants	Case No.: 01-CV-02104 (RCL)

ORDER GRANTING UNOPPOSED MOTION FOR JUDGMENT AGAINST GARNISHEES BANK OF AMERICA, N.A. AND WELLS FARGO BANK, N.A. FOR TURNOVER OF FUNDS, AND FOR INTERPLEADER RELIEF FOR SUCH GARNISHEES

WHEREAS Plaintiffs/Judgment Creditors[1] (the "Plaintiffs") filed an Unopposed Motion for Judgment Against Garnishees Bank of America, N.A. and Wells Fargo Bank, N.A. for

[1] The Plaintiffs consist of: (1) the Estate of Michael Heiser, deceased; (2) Gary Heiser; (3) Francis Heiser; (4) the Estate of Leland Timothy Haun, deceased; (5) Ibis S. Haun; (6) Milagritos Perez-Dalis; (7) Senator Haun; (8) the Estate of Justin R. Wood, deceased; (9) Richard W. Wood; (10) Kathleen M. Wood; (11) Shawn M. Wood; (12) the Estate of Earl F. Cartrette, Jr., deceased; (13) Denise M. Eichstaedt; (14) Anthony W. Cartrette; (15) Lewis W. Cartrette; (16) the Estate of Brian McVeigh, deceased; (17) Sandra M. Wetmore; (18) James V. Wetmore; (19) the Estate of Millard D. Campbell, deceased; (20) Marie R. Campbell; (21) Bessie A. Campbell; (22) the Estate of Kevin J. Johnson, deceased; (23) Shyrl L. Johnson; (24) Che G. Colson; (25) Kevin Johnson, a minor, by his legal guardian Shyrl L. Johnson; (26) Nicholas A. Johnson, a minor, by his legal guardian Shyrl L. Johnson; (27) Laura E. Johnson; (28) Bruce Johnson; (29) the Estate of Joseph E. Rimkus, deceased; (30) Bridget Brooks; (31) James R. Rimkus; (32) Anne M. Rimkus; (33) the Estate of Brent E. Marthaler, deceased; (34) Katie L. Marthaler; (35) Sharon Marthaler; (36) Herman C. Marthaler III; (37) Matthew Marthaler; (38) Kirk Marthaler; (39) the Estate of Thanh Van Nguyen, deceased; (40) Christopher R. Nguyen; (41) the Estate of Joshua E. Woody, deceased; (42) Dawn Woody; (43) Bernadine R. Beekman; (44) George M. Beekman; (45) Tracy M. Smith; (46) Jonica L. Woody; (47) Timothy Woody; (48) the Estate of Peter J. Morgera, deceased; (49) Michael Morgera; (50) Thomas Morgera; (51) the Estate of Kendall Kitson, Jr., deceased; (52) Nancy R. Kitson; (53) Kendall K. Kitson; (54) Steve K. Kitson; (55) Nancy A. Kitson; (56) the Estate of Christopher Adams, deceased; (57) Catherine Adams; (58) John E. Adams; (59) Patrick D. Adams; (60) Michael T. Adams; (61) Daniel Adams; (62) Mary Young; (63) Elizabeth Wolf; (64) William Adams; (65) the Estate of Christopher Lester, deceased; (66) Cecil H. Lester; (67) Judy Lester; (68) Cecil H. Lester, Jr.; (69) Jessica F. Lester; (70) the Estate of Jeremy A. Taylor, deceased; (71) Lawrence E. Taylor; (72) Vickie L. Taylor; (73) Starlina D. Taylor; (74) the Estate of Patrick P. Fennig, deceased; (75) Thaddeus C. Fennig; (76) Catherine Fennig; (77) Paul D. Fennig; and (78) Mark Fennig (collectively, the "Plaintiffs").

Turnover of Funds, and for Interpleader Relief for Such Garnishees (the "Unopposed Motion for Turnover");

WHEREAS Garnishee Bank of America, N.A. ("Bank of America") and Wells Fargo Bank, N.A. ("Wells Fargo," together with Bank of America, the "Garnishees") do not oppose the relief sought by the Unopposed Motion for Turnover;

WHEREAS the Plaintiffs hold an unsatisfied judgment in the amount of $591,089,966.00 against the Islamic Republic of Iran, the Iranian Ministry of Information and Security and the Iranian Islamic Republic Revolutionary Guard Corps. (collectively, "Iran");

WHEREAS, Iran is a terrorist party within the meaning of Section 1610(g) of the FSIA and Section 201 of TRIA, and the Judgment was entered based on acts of terrorism for which Iran is not immune under Section 1605(a)(7) or Section 1605A of the FSIA;

WHEREAS the relief requested by the Plaintiffs is authorized under 28 U.S.C. § 1610(g) and § 201 of the Terrorism Risk Insurance Act of 2002 ("TRIA");

WHEREAS the Garnishees filed a Third-Party Petition Alleging Claims in the Nature of Interpleader (the "Third-Party Petition") on August 31, 2012, by which Iran Marine and Industrial, Sediran Drilling Company (now known as the National Iranian Oil Company), Iran Air, Bank Melli PLC U.K., and the Iranian Navy (the "Adverse Claimants-Respondents"), were interpleaded into this action;

WHEREAS this Court issued interpleader summonses for service on the Adverse Claimants-Respondents on December 10, 2012;

WHEREAS this Court finds that service of the summons, Third-Party Petition, and all other necessary documents and translations on the Adverse Claimants-Respondents, as set forth in the Unopposed Motion for Turnover, was good and effective service, and finds further that

supplemental service on the Iranian Navy through diplomatic channels constitutes good and effective service within the meaning of Section 1608 of the Foreign Sovereign Immunities Act (the "FSIA");

WHEREAS the Iranian Adverse Claimants-Respondents Iran Marine and Industrial, Sediran Drilling Company (now known as the National Iranian Oil Company), Iran Air, Bank Melli PLC U.K., and the Iranian Navy failed to respond to the summons and Third-Party Petition and the Clerk of the Court noticed their default on August 20, 2015;

WHEREAS, no non-Iranian Adverse Claimant-Respondent, including Adverse Claimant-Respondent Vedder Price, which communicated to counsel for the Garnishees its intention not to contest turnover, appeared to contest the ownership by Iran of any of the Blocked Assets that were the subject of the Third-Party Interpleader Petition;

WHEREAS the Court finds that the Iranian Adverse Claimants-Respondents, consisting of Iran Marine and Industrial, Sediran Drilling Company (now known as the National Iranian Oil Company), Iran Air, Bank Melli PLC U.K., and the Iranian Navy, are agencies or instrumentalities of Iran that have a current possessory ownership interest in the blocked assets held by the Garnishees described in Exhibit A and Exhibit B hereto (the "Blocked Assets");

WHEREAS, upon evidence that has been submitted to and found to be satisfactory to the Court, the defaulting Iranian Adverse-Claimants Respondents, including Iran Air, Bank Melli PLC U.K., Iran Marine Industrial Company, the Iranian Navy and the Iranian National Oil Company (as the successor to Sediran Drilling Company), are organs, agencies or instrumentalities of Judgment Debtor the Islamic Republic of Iran within the meaning of the FSIA and TRIA;

WHEREAS the Court finds that the Blocked Assets constitute "blocked assets of a terrorist party" within the meaning of TRIA;

WHEREAS, the Blocked Assets are subject to execution in accordance with the requirements of Section 1610(g) of the FSIA and Section 201 of TRIA;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Unopposed Motion for Turnover is hereby GRANTED;

2. Judgment is hereby entered in favor of the Plaintiffs and against Garnishee Bank of America solely in its capacity as garnishee and solely with respect to the Blocked Assets identified in Exhibit A hereto, plus any accrued interest thereon;

3. Judgment is hereby entered in favor of the Plaintiffs and against Garnishee Wells Fargo solely in its capacity as garnishee and solely with respect to the Blocked Assets identified in Exhibit B hereto, plus any accrued interest thereon;

4. Bank of America shall pay and turn over to the Plaintiffs the Blocked Assets identified on Exhibit A hereto, and any accrued interest thereon, within fifteen (15) business days of the date of this Order, and upon a turnover of the Blocked Assets by Bank of America, Bank of America shall receive a discharge from all further liability for such Blocked Assets as set forth in D.C. Code § 16-528; and

5. Wells Fargo shall pay and turnover to the Plaintiffs the Blocked Assets identified on Exhibit B hereto, and any accrued interest thereon, within fifteen (15) business days of the date of this Order, and upon a turnover of the Blocked Assets by Wells Fargo, Wells Fargo shall receive a discharge from all further liability for such Blocked Assets as set forth in D.C. Code § 16-528;

6. Garnishees are entitled to an award of their reasonable costs and attorneys' fees in connection with the Third-Party Petition (the "Garnishees' Attorneys' Fees"), to be paid solely out of the amount awarded herein, in an amount to be agreed upon with Plaintiffs or to be awarded by the Court upon application;

7. Within fifteen (15) business days of receipt of the funds from the Garnishees, if the Plaintiffs and the Garnishees agree on the amount of the Garnishee Attorneys' Fees, or within fifteen (15) business days from the date on which this Court enters any final, non-appealable order setting the amount of the Garnishees' Attorneys' Fees, Plaintiffs shall pay over to the Garnishees from the amounts referenced in paragraphs 2 and 3 of this Order the Garnishees' Attorneys' Fees;

8. In addition to the discharges set forth in paragraphs 4 and 5 of this Order, Garnishees Bank of America and Wells Fargo shall be fully discharged pursuant Sections 16-554 and 26-803 of the Code of the District of Columbia, and shall be fully discharged in interpleader pursuant to Rule 22 of the Rules of District of Columbia Superior Court Rules of Procedure and Rule 22 of the Federal Rules of Civil Procedure, as applicable, from any and all obligations or other liabilities to Iran, any agency or instrumentality of Iran (including, without limitation, defaulting Iranian Adverse Claimants-Respondent), or to any other party otherwise entitled to claim the funds contained in the Blocked Accounts (including, without limitation, Vedder Price and defaulting non-Iranian Adverse Claimants-Respondents), to the full extent of such amounts so held and paid to the Plaintiffs in accordance with this Order;

9. The Plaintiffs shall obtain the dismissal of any garnishment or similar proceeding that remains pending as against the Garnishees, if any, including the proceedings pending in the United States District Court for the District of Maryland (Case No. 1:11-cv-00137 (GLR)) and in

the United States District Court for the District of South Carolina (Case No. 11-MC-02114 (CMC)); and

10. Each and every party to this proceeding is hereby and shall be restrained and enjoined from instituting or prosecuting any claim or action against the Garnishees in any jurisdiction arising from or relating to any claim to the Blocked Assets that the Garnishees shall have turned over to the Plaintiffs in compliance with this Order, except that this Court retains jurisdiction to enforce this Order.

Washington, D.C.
~~November ___, 2015~~
June 7, 2016

So Ordered:

The Honorable Royce C. Lamberth
United States District Judge

EXHIBIT A

Blocked Assets Held by Bank of America

Account Number	Original Blocked Amount	Amount Blocked as of June 30, 2015	Iranian Entity(ies) with Ownership Interest in the Blocked Asset	Transaction Type
XXX9-002	$37,453.88	$37,543.59	Iran Marine and Industrial	Blocked Account
XXX9-0003	$11,717.00	$11,744.80	Sediran Drilling Company	Blocked Account
XXX8-0069	$9,682.66	$9,743.53	Iran Air, Bank Melli PLC U.K.	Check Proceeds

EAST\115832133.1

EXHIBIT B

Blocked Asset Held by Wells Fargo

Original Blocked Amount	Amount Blocked as of June 30, 2015	Iranian Entity with Ownership Interest in the Blocked Asset	Transaction Type
$207,873.00	$249,365.44	Iranian Navy	Blocked collateral for letter of credit

EAST\115832133.1

Annex 70

***In re: Terrorist Attacks on September 11*, 2001, U.S. District Court, Southern District of New York, 09 September 2016, 2016 WL 1029552 (S.D.N.Y. 2011)**

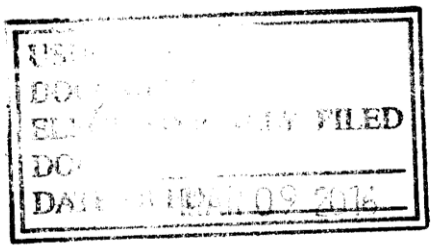
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

TERRORIST ATTACKS ON SEPTEMBER 11, 2001

MEMORANDUM OPINION AND ORDER

03 MDL 1570 (GBD) (FM)



This document relates to:

Ashton v. al Qaeda Islamic Army, 02-cv-6977 (GBD) (FM)

Federal Insurance Co. v. al Qaida, 03-cv-6978 (GBD) (FM)

GEORGE B. DANIELS, District Judge:

On December 28, 2015, Magistrate Judge Maas issued a Report and Recommendation concerning the motions of certain plaintiffs in *Ashton v. al Qaeda Islamic Army*, 02-cv-6977 (GBD) (FM) ("*Ashton*") and *Federal Insurance Co. v. al Qaida*, 03-cv-6978 (GBD) (FM) ("*Federal Insurance*") for assessments of damages in relation to certain categories of their claims against Iran. (Report and Recommendation ("Report"), (ECF No. 3175).) In particular, those applications sought an assessment of damages in favor of the wrongful death plaintiffs in *Ashton* solely as to the pre-death conscious pain and suffering components of their claims, and an assessment of damages in favor of certain of the *Federal Insurance* plaintiffs relative to their property damage claims.

The Report recommended that each of the *Ashton* plaintiffs should be awarded $2 million for their decedents' conscious pain and suffering, plus an additional $6.88 million in punitive damages, for a total of $8.88 million per estate, and, a collective default judgment in the amount of $7,556,880,000. (*Id.* at 3.) With regard to the *Federal Insurance* plaintiffs, the Report recommended they be awarded a default judgment in the amount of $3,040,998,426.03. (*Id.* at 9.) The Report also recommended that to the extent that the plaintiffs' claims arise out of injuries in

New York State, they should be awarded prejudgment interest at the statutory simple interest rate of nine percent per annum from September 1, 2001, though the date judgment is entered. (*Id.* at 9-10.) To the extent that the claims arise out of injuries occurring elsewhere, the Report recommended awarding interest for the same period at the rate of 4.96 percent per annum, compounded annually should this Court deem annually compounded interest appropriate. (*Id.* at 10.)

The Report advised that failure to object within fourteen days would preclude appellate review. (*Id.*) The plaintiffs in *Havlish, et al. v. bin Laden, et al.*, 03-cv-9848 (GBD) (FM) ("*Havlish*") and *Hoglan, et al. v. Islamic Republic of Iran, et al.*, 11-cv-7550 (GBD) (FM) ("*Hoglan*") timely filed objections to the awards recommended in favor of seven estates that are plaintiffs in the *Ashton* case, on the grounds that those estates are also plaintiffs in the *Havlish* or *Hoglan* actions. (Rule 72(b) Objections of the Havlish and Hoglan Plaintiffs, (ECF Nos. 3192-3193).) Counsel for the *Ashton*, *Havlish*, and *Hoglan* plaintiffs have resolved the potential dual recovery issues amicably, and this Court has since issued an Amended Order of Judgment addressing the issue. (*See* Amended Order of Judgment, (ECF No. 3226).) No other objections have been filed.

Courts "may accept, reject, or modify, in whole or in part, the findings and recommendations" set forth within a magistrate judge's report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Courts must review *de novo* the portions of a magistrate judge's report to which a party properly objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir.2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review

if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F .3d 162, 174 (2d Cir. 2000). No such error appears here. This Court adopts the findings and recommendation set forth in the Report in their entirety, as amended. (*See* Amended Order of Judgment, (ECF No. 3226).)

CONCLUSION

The *Ashton* plaintiffs are awarded a default judgment against Iran in the amount of $7,494,720,000. The *Federal Insurance* plaintiffs are awarded a default judgment against Iran in the amount of $3,040,998,426.03.

Dated: March 9, 2016
New York, New York

SO ORDERED:

GEORGE B. DANIELS
United States District Judge

Annex 71

***Levin et al. v. Bank of New York Mellon et al.*, U.S. District Court, Southern District of New York, 1 November 2016, No. 09 Civ. 5900 (S.D.N.Y. 2016)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEREMY LEVIN and DR. LUCILLE LEVIN,

Plaintiffs,

-v-

THE BANK OF NEW YORK MELLON, JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., SOCIÉTÉ GÉNÉRALE, and CITIBANK, N.A.

Defendants.

THE BANK OF NEW YORK MELLON, JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., SOCIÉTÉ GÉNÉRALE, and CITIBANK, N.A.

Third-Party Plaintiffs,

-v-

STEVEN M. GREENBAUM, *et al.*

Third-Party Defendants.

(FILED PARTIALLY UNDER SEAL DUE TO CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER)

Civ. No. 09 CV 5900 (JPO)

JOINT [redacted] AMENDED JUDGMENT AND ORDER DIRECTING TURNOVER OF FUNDS AND DISCHARGE SUBMITTED BY THE LEVIN, GREENBAUM, ACOSTA, AND HEISER JUDGMENT CREDITORS, AND THIRD PARTY DEFENDANT [redacted]

WHEREAS, on September 19, 2013, this Court entered an Opinion & Order (ECF Doc. No. 925) ("Phase Two Turnover Order"), which directed all Phase Two Blocked Assets (as defined therein) to be paid over to plaintiffs Jeremy Levin and Dr. Lucille Levin (collectively, the "Levins" or "Levin Judgement Creditors"), third-party defendants Steven Greenbaum, *et al.* (the "Greenbaum Judgment Creditors" or "Greenbaum"), Carlos Acosta, *et al.* (the "Acosta Judgment Creditors" or "Acosta"), and the Estate of

Michael Heiser, *et al.* (the "Heiser Judgment Creditors" or "Heiser") (collectively, the "Judgment Creditors[1]"), with two exceptions;

WHEREAS, one of the assets excepted from the Phase Two Turnover Order was the proceeds of an electronic funds transfer ("EFT") identified by Third-Party Interpleader Plaintiff Citibank, N.A. ("Citibank") as originating from Third Party Defendant [redacted] and intended to benefit [redacted], which Asset totals approximately [redacted] and is currently held by defendant and third-party plaintiff Citibank (the "[redacted] Asset");

WHEREAS, on June 2, 2014, the Judgment Creditors filed a joint motion for partial summary judgment on their claims for turnover of the [redacted] Asset (the "Motion") (ECF Doc. No. 969), including accrued interest thereon;

WHEREAS, on June 24, 2014, [redacted] filed an Opposition to the Motion, and cross-moved for Summary Judgment, seeking turnover of the [redacted] Asset to [redacted] (the "Cross-Motion");

WHEREAS, on June 25, 2014, Citibank filed a response to the Motion (ECF Doc. No. 989), noting that it did not oppose the Motion so long as they received a discharge as to the [redacted] Asset;

WHEREAS, after being given notice, no other Third-Party Defendant in this action filed an opposition to the Motion or otherwise cross-moved for turnover of the [redacted] Asset, nor did any of those parties appear for oral argument on the Motion at the hearing held by the Court on August 21, 2014;

WHEREAS, the Office of Foreign Assets Control ("OFAC") issued a license to Citibank allowing it to pay [redacted] the [redacted] Asset;

WHEREAS, the Court held a hearing on the Motion on August 24, 2014;

[1] The Judgment Creditors are more specifically identified in Annex A hereto.

WHEREAS on November 7, 2014, the Court issued a stay of the pending Motion and Cross-Motion until the resolution of the *Calderon-Cardona v. Bank of New York Mellon* and *Hausler v. JP Morgan Chase Bank, N.A.* actions, which were then pending before the Second Circuit Court of Appeals;

WHEREAS the Judgment Creditors and [redacted] have met and conferred and agreed on a resolution of the pending Motion and Cross-Motion, and a settlement, and request the Court enter the below Joint Amended Proposed Judgment and Order Directing the Turnover of Funds and Discharge.

NOW, THEREFORE, it is:

ORDERED, ADJUDGED AND DECREED that:

1. The stay entered by the Court on November 7, 2014 is lifted;

2. The Court holds that only the Judgment Creditors and [redacted] have a right to the [redacted] Asset, and the Court orders that the [redacted] Asset shall be released by Citibank and Judgment shall be entered for the Judgment Creditors and for [redacted] as follows:

3. Citibank shall, within fourteen (14) days of its receipt of an unredacted copy of this Amended Judgment and Order, turn over the [redacted] Asset and any accrued interest held by Citibank to [redacted] care of their counsel Kobre & Kim, for distribution as follows:

   A. Within three (3) days of receipt of the [redacted] Asset, Kobre & Kim shall distribute [redacted] of the [redacted] Asset to Howarth & Smith as counsel for the Levin Judgment Creditors for further distribution among the Judgment Creditors pursuant to the terms of the confidential settlement agreement entered into between the Judgment Creditors; and

   B. Within three (3) days of receipt of the [redacted] Asset, Kobre & Kim shall distribute the remaining portion of the [redacted] Asset and any accrued interest to [redacted]

4. If a dispute at any time arises among the Judgment Creditors and/or [redacted] as to the allocation of the funds being turned over in accordance with this Amended Judgment and Order, the Judgment Creditors and/or [redacted] alone shall be responsible for the resolution of that dispute, and no Judgment Creditor or [redacted] shall have recourse of any kind as against Citibank. The discharge granted to Citibank under paragraphs 5 and 6 of this Judgment and Order shall be deemed to cover any of the circumstances described in this paragraph 4.

5. Upon turnover by Citibank of the [redacted] Asset pursuant to paragraph 3, Citibank shall be fully discharged and released from all liability and obligation of any nature to the Levins, the Heiser Judgment Creditors, the Greenbaum Judgment Creditors, the Acosta Judgment Creditors, [redacted] and any other person or entity with specific respect to the turnover of the [redacted] Asset only. Provided, however, that this release shall not apply to claims by [redacted] challenging the calculation of the amount of interest accrued on the [redacted] Asset and owed to [redacted]

6. The Levins, the Heiser Judgment Creditors, the Greenbaum Judgment Creditors, the Acosta Judgment Creditors, [redacted], and all other persons and entities shall hereby be permanently restrained and enjoined, subsequent to the turnover by Citibank of the [redacted] Asset pursuant to paragraph 3, from instituting or pursuing any legal action or proceeding against Citibank with specific respect to the [redacted] Asset only. Provided, however, that this release shall not apply to claims by [redacted] challenging the calculation of the amount of interest accrued on the [redacted] Asset and owed to [redacted]

7. Upon release of the [redacted] Asset pursuant to this Amended Judgment and Order, all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind served on, or delivered to, Citibank, to the extent that they apply or attach to the [redacted] Asset, shall be vacated and null and void as to the [redacted] Asset, provided, however, that this provision of this Amended Judgment and Order shall not vacate or nullify any such writ of execution, notice of pending action,

restraining notice or other judgment creditor process with respect to any other funds, moneys, property, debts, assets or accounts, other than the [redacted] Asset.

8. This Amended Judgment and Order is a final judgment, within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure, and there is no just reason for delay in the entry of it as a final judgment. This Amended Judgment and Order constitutes a final dismissal with prejudice of all claims asserted by the Judgment Creditors, [redacted] and by all other persons or entities that have or could have asserted claims, as to the [redacted] Asset only.

9. To the extent not otherwise addressed in this Amended Judgment and Order, the Motion and the Cross Motion are both denied as moot.

10. This Amended Judgment and Order shall be filed under seal, but a redacted version of this Amended Judgment and Order, redacted to eliminate account numbers, confidential names and any dollar amounts held in particular accounts, shall be electronically filed by counsel for the Levin Judgment Creditors. Upon entry of this order, an unredacted copy of the signed order shall be provided to counsel for the Judgment Creditors, [redacted], OFAC, and Citibank, who are authorized to provide a copy to their respective clients to the extent necessary to effectuate the release of the funds.

11. Subject to the entry of this Amended Judgment and Order and based upon their agreement to the terms of this Amended Judgment and Order, [redacted] and the Judgment Creditors waive any right to appeal from any part of this Amended Judgment and Order.

12. This Court shall retain jurisdiction over this matter to enforce a violation of this Amended Judgment and Order's terms.

SO ORDERED.

Dated: New York, New York
November 1, 2016

J. PAUL OETKEN
United States District Judge

Dated: October 27, 2016

HOWARTH & SMITH

By: _____

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Attorneys for the Greenbaum and Acosta Judgment Creditors

Dated: October ____, 2016

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By: _____

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Dated: October ____, 2016

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Attorneys for the Levin Plaintiffs and Judgment Creditors

Dated: October ____, 2016

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Dated: October 24, 2016

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By: _____

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william.mcgovern@kobrekim.com

Attorney for Third Party Defendant [redacted]

ANNEX A

JUDGMENT CREDITORS

JUDGMENT CREDITOR GROUP	PLAINTIFF
Levin Plaintiffs and Judgment Creditors	Jeremy Levin
Levin Plaintiffs and Judgment Creditors	Dr. Lucille Levin
Greenbaum Judgment Creditors	Steven M. Greenbaum (on his own behalf and as Administrator of the Estate of Judith (Shoshana) Lillian Greenbaum)
Greenbaum Judgment Creditors	Alan D. Hayman
Greenbaum Judgment Creditors	Shirlee Hayman
Acosta Judgment Creditors	Carlos Acosta
Acosta Judgment Creditors	Maria Acosta
Acosta Judgment Creditors	Tova Ettinger
Acosta Judgment Creditors	The Estate of Irving Franklin
Acosta Judgment Creditors	The Estate of Irma Franklin
Acosta Judgment Creditors	Baruch Kahane
Acosta Judgment Creditors	Libby Kahane (on her own behalf and as Administratrix of the Estate of Meir Kahane)
Acosta Judgment Creditors	Ethel J. Griffin (as Administratrix of the Estate of Binyamin Kahane)
Acosta Judgment Creditors	Norman Kahane (on his own behalf and as Executor of the Estate of Sonia Kahane)
Acosta Judgment Creditors	Ciporah Kaplan
Heiser Judgment Creditors	The Estate of Michael Heiser, deceased
Heiser Judgment Creditors	Gary Heiser
Heiser Judgment Creditors	Francis Heiser
Heiser Judgment Creditors	The Estate of Leland Timothy Haun, deceased
Heiser Judgment Creditors	Ibis S. Haun
Heiser Judgment Creditors	Milagritos Perez-Dalis
Heiser Judgment Creditors	Senator Haun
Heiser Judgment Creditors	The Estate of Justin R. Wood, deceased
Heiser Judgment Creditors	Richard W. Wood
Heiser Judgment Creditors	Kathleen M. Wood
Heiser Judgment Creditors	Shawn M. Wood
Heiser Judgment Creditors	The Estate of Earl F. Cartrette, Jr., deceased
Heiser Judgment Creditors	Denise M. Eichstaedt
Heiser Judgment Creditors	Anthony W. Cartrette
Heiser Judgment Creditors	Lewis W. Cartrette
Heiser Judgment Creditors	The Estate of Brian McVeigh, deceased
Heiser Judgment Creditors	Sandra M. Wetmore
Heiser Judgment Creditors	James V. Wetmore
Heiser Judgment Creditors	the Estate of Millard D. Campbell, deceased
Heiser Judgment Creditors	Marie R. Campbell
Heiser Judgment Creditors	Bessie A. Campbell
Heiser Judgment Creditors	The Estate of Kevin J. Johnson, deceased

Heiser Judgment Creditors	Shyrl L. Johnson
Heiser Judgment Creditors	Che G. Colson
Heiser Judgment Creditors	Kevin Johnson, a minor, by his legal guardian Shyrl L. Johnson
Heiser Judgment Creditors	Nicholas A. Johnson, a minor, by his legal guardian Shyrl L. Johnson
Heiser Judgment Creditors	Laura E. Johnson
Heiser Judgment Creditors	Bruce Johnson
Heiser Judgment Creditors	The Estate of Joseph E. Rimkus, deceased
Heiser Judgment Creditors	Bridget Brooks
Heiser Judgment Creditors	James R. Rimkus
Heiser Judgment Creditors	Anne M. Rimkus
Heiser Judgment Creditors	The Estate of Brent E. Marthaler, deceased
Heiser Judgment Creditors	Katie L. Marthaler
Heiser Judgment Creditors	Sharon Marthaler
Heiser Judgment Creditors	Herman C. Marthaler III
Heiser Judgment Creditors	Matthew Marthaler
Heiser Judgment Creditors	Kirk Marthaler
Heiser Judgment Creditors	The Estate of Thanh Van Nguyen, deceased
Heiser Judgment Creditors	Christopher R. Nguyen
Heiser Judgment Creditors	The Estate of Joshua E. Woody, deceased
Heiser Judgment Creditors	Dawn Woody
Heiser Judgment Creditors	Bernadine R. Beekman
Heiser Judgment Creditors	George M. Beekman
Heiser Judgment Creditors	Tracy M. Smith
Heiser Judgment Creditors	Jonica L. Woody
Heiser Judgment Creditors	Timothy Woody
Heiser Judgment Creditors	The Estate of Peter J. Morgera, deceased
Heiser Judgment Creditors	Michael Morgera
Heiser Judgment Creditors	Thomas Morgera
Heiser Judgment Creditors	The Estate of Kendall Kitson, Jr., deceased
Heiser Judgment Creditors	Nancy R. Kitson
Heiser Judgment Creditors	Kendall K. Kitson
Heiser Judgment Creditors	Steve K. Kitson
Heiser Judgment Creditors	Nancy A. Kitson
Heiser Judgment Creditors	The Estate of Christopher Adams, deceased
Heiser Judgment Creditors	Catherine Adams
Heiser Judgment Creditors	John E. Adams
Heiser Judgment Creditors	Patrick D. Adams
Heiser Judgment Creditors	Michael T. Adams
Heiser Judgment Creditors	Daniel Adams
Heiser Judgment Creditors	Mary Young
Heiser Judgment Creditors	Elizabeth Wolf
Heiser Judgment Creditors	William Adams
Heiser Judgment Creditors	The Estate of Christopher Lester, deceased

Heiser Judgment Creditors	Cecil H. Lester
Heiser Judgment Creditors	Judy Lester
Heiser Judgment Creditors	Cecil H. Lester, Jr.
Heiser Judgment Creditors	Jessica F. Lester
Heiser Judgment Creditors	The Estate of Jeremy A. Taylor, deceased
Heiser Judgment Creditors	Lawrence E. Taylor
Heiser Judgment Creditors	Vickie L. Taylor
Heiser Judgment Creditors	Starlina D. Taylor
Heiser Judgment Creditors	The Estate of Patrick P. Fennig, deceased
Heiser Judgment Creditors	Thaddeus C. Fennig
Heiser Judgment Creditors	Catherine Fennig
Heiser Judgment Creditors	Paul D. Fennig
Heiser Judgment Creditors	Mark Fennig

Annex 72

***Leibovitch et al. v. Syrian Arab Republic et al.*, U.S. District Court, Northern District of Illinois, Citation Notice, No. 08-cv-01939 (N.D. Ill. 2016)**

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
(Eastern Division)

SHLOMO LEIBOVITCH, et al.

Case No.: 08-CV-1939
Judge Ruben Castillo

Plaintiffs,

v.

THE SYRIAN ARAB REPUBLIC, et al.

Defendants,

v.

THE BOEING COMPANY

Citation Third Party Respondent

CITATION TO DISCOVER ASSETS TO THIRD PARTY
PURSUANT TO RULE 69 FRCP

To: THE BOEING COMPANY
Boeing Corporate Offices
100 North Riverside Plaza
Chicago, IL 60606-1596

YOU ARE REQUIRED to cause your designated corporate officer to appear on January 4, 2017, at 9:45 a.m., before United States District Judge Ruben Castillo or any judge sitting in his stead in Courtroom 2541, or any other courtroom to which this case is subsequently assigned, of the United States District Court for the Northern District of Illinois, Eastern Division, Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604, to be examined under oath to discover assets or property subject to execution in satisfaction of the judgment in this matter.

A judgment in favor of SHIRA LEIBOVITCH against THE ISLAMIC REPLIC OF IRAN and THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, in the amount of SEVENTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($17,500,000.00) in compensatory damages and in the amount of THIRTY FIVE

MILLION DOLLARS ($35,000,000.00) in punitive damages, was entered on February 1, 2011, in the United States District Court for the Northern District of Illinois (Eastern Division), and a judgment in favor of SHLOMO LEIBOVITCH, GALIT LEIBOVITCH, HILA LEIBOVITCH, MOSHE LEIBOVITCH SHMUEL ELIAD and MIRIAM ELIAD against THE ISLAMIC REPLIC OF IRAN and THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, in the amount of FOURTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($14,500,000.00) in compensatory damages, was entered on March 31, 2014, in the United States District Court for the Northern District of Illinois (Eastern Division). The entire amount of these judgments is due and unpaid.

Your testimony will inform the Court as to property you or your subsidiaries or affiliates may hold belonging to: THE ISLAMIC REPUBLIC OF IRAN ("judgment debtor").

The terms "assets" and "property" as used in this Citation include both the assets and property of the judgment debtor and the assets and property of any agency or instrumentality of the judgment debtor, such as Iran Air or any other agency or instrumentality of the judgment debtor, pursuant to The Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 §201(a), Stat. 2322 (2002) and/or 28 U.S.C. § 1610.

YOU ARE REQUIRED to do the following upon receiving this Citation until further Order of Court in accordance with Supreme Court Rule 277 (f), or until this Citation is dismissed by the Court or by Stipulation:

YOU ARE PROHIBITED from making or allowing any transfer or other disposition of, or interfering with, any property not exempt from execution or garnishment belonging to the judgment debtor or to which it may be entitled or which may be acquired by or become due to it, until further order of court or termination of the proceeding. You are not required to withhold the payment of any money beyond double the amount of the judgment.

WARNING: Your failure to comply with the citation proceeding may result in a judgment being entered against you for the unsatisfied amount of this judgment. 735 ILCS 5/2-1402(f)(1)

WARNING: YOUR FAILURE TO APPEAR IN COURT AS HEREIN DIRECTED MAY CAUSE YOU TO BE ARRESTED AND BROUGHT BEFORE THE COURT TO ANSWER TO A CHARGE OF CONTEMPT OF COURT, WHICH MAY BE PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL.

CERTIFICATE OF ATTORNEY

A judgment in favor of SHIRA LEIBOVITCH against THE ISLAMIC REPUBLIC OF IRAN and THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, in the amount of SEVENTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($17,500,000.00) in compensatory damages and in the amount of THIRTY FIVE MILLION DOLLARS ($35,000,000.00) in punitive damages, was entered on February 1, 2011, in the United States District Court for the Northern District of Illinois (Eastern Division), and a judgment in favor of SHLOMO LEIBOVITCH, GALIT LEIBOVITCH, HILA LEIBOVITCH, MOSHE LEIBOVITCH SHMUEL ELIAD and MIRIAM ELIAD against THE ISLAMIC REPUBLIC OF IRAN and THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, in the amount of FOURTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($14,500,000.00) in compensatory damages, was entered on March 31, 2014, in the United States District Court for the Northern District of Illinois (Eastern Division). The entire amount of these judgments is due and unpaid.

I the undersigned certify to the Court under penalties as provided by law pursuant to 735 ILCS ~~5/1-~~109 that the information herein is true.

Attorney for the judgment ~~creditors~~

Robert J. Tolchin
Berkman Law Office, LLC
111 Livingston Street, Suite 1928
Brooklyn, NY 11201
Telephone: (718) 855-3627
rtolchin@berkmanlaw.com

THOMAS G. BRUTON

Clerk or Deputy Clerk of the Court Melissa Cobb

DEC 14 2016

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
(Eastern Division)

SHLOMO LEIBOVITCH, et al.

Case No.: 08-CV-01939
Judge Ruben Castillo

Plaintiffs,

v.

THE SYRIAN ARAB REPUBLIC, et al.

Defendants,

CITATION NOTICE

SHLOMO LEIBOVITCH
GALIT LEIBOVITCH
SHIRA LEIBOVITCH
MOSHE LEIBOVITCH
HILA LEIBOVITCH
SHMUEL ELIAD
MIRIAM ELIAD

Judgment Creditors

Case No.: 08-CV-01939

Return Date: January 4, 2017
Time: 9:45 a.m.

v.

THE ISLAMIC REPUBLIC OF IRAN

Judgment Debtor

Judgment Debtor's last known address:

THE ISLAMIC REPUBLIC OF IRAN
Ministry of Foreign Affairs
Khomeini Ave. United Nations St.
Teheran, Iran

Judgment Creditors' Address:

C/O their attorneys:

Robert J. Tolchin
Berkman Law Office, LLC
111 Livingston Street, Suite 1928
Brooklyn, NY 11201
Telephone: (718) 855-3627
rtolchin@berkmanlaw.com

Name of person to receive Citation:

THE BOEING COMPANY
Boeing Corporate Offices
100 North Riverside Plaza
Chicago, IL 60606-1596

Amount of Judgment: A judgment in favor of SHIRA LEIBOVITCH against THE ISLAMIC REPLIC OF IRAN and THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, in the amount of SEVENTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($17,500,000.00) in compensatory damages and in the amount of THIRTY FIVE MILLION DOLLARS ($35,000,000.00) in punitive damages, was entered on February 1, 2011, in the United States District Court for the Northern District of Illinois (Eastern Division), and a judgment in favor of SHLOMO LEIBOVITCH, GALIT LEIBOVITCH, HILA LEIBOVITCH, MOSHE LEIBOVITCH SHMUEL ELIAD and MIRIAM ELIAD against THE ISLAMIC REPLIC OF IRAN and THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, in the amount of FOURTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($14,500,000.00) in compensatory damages, was entered on March 31, 2014, in the United States District Court for the Northern District of Illinois (Eastern Division). The entire amount of these judgments is due and unpaid.

NOTICE: The court has issued a Citation against the person named above. The Citation directs that person to appear in court to be examined for the purpose of allowing the judgment creditor to discover income and assets belonging to the judgment debtor or in which the judgment debtor has an interest. The Citation was issued on the basis of a judgment against the judgment debtor and in favor of the judgment creditor in the amount stated above. On or after the court date stated above, the court may compel the application of any discovered income or assets toward payment on the judgment.

The amount of income or assets that may be applied toward the judgment is limited by federal and Illinois law. THE JUDGMENT DEBTOR HAS THE RIGHT TO ASSERT STATUTORY EXEMPTIONS AGAINST CERTAIN INCOME OR ASSETS OF THE JUDGMENT DEBTOR WHICH MAY NOT BE USED TO SATISFY THE JUDGMENT IN THE AMOUNT STATED ABOVE:

(1) Under Illinois or federal law, the exemptions of personal property owned by the debtor include the debtor's equity interest, not to exceed $4,000 in value, in any personal property as chosen by the debtor.

(2) Social Security and SSI benefits;

(3) Public assistance benefits;

(4) Unemployment compensation benefits;

(5) Worker's compensation benefits;

(6) Veteran's benefits;

(7) Circuit breaker property tax relief benefits;

(8) The debtor's equity interest, not to exceed $2,400 in value, in any one motor vehicle;

(9) The debtor's equity interest, not to exceed $1,500 in value, in any implements, professional books, or tools of the trade of the debtor;

(10) Under Illinois law every person is entitled to an estate in homestead, when it is owned and occupied as a residence, to the extent in value of $15,000, which homestead is exempt from judgment.

(11) Under Illinois law, the amount of wages that may be applied toward a judgment is limited to the lesser of (i) 15% of gross weekly wages or (ii) the amount by which disposable earnings for a week exceed the total of 45 times the federal minimum hourly wage, or, under a wage deduction summons served on or after January 1, 2006, the Illinois minimum hourly wage, whichever is greater.

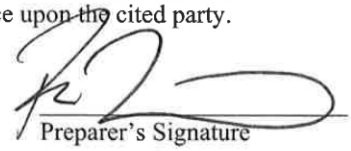
(12) Under federal law, the amount of wages that may be applied toward a judgment is limited to the lesser of (i) 25% of disposable earnings for a week or (ii) the amount by which disposable earnings for a week exceed 30 times the federal minimum hourly wage.

(13) Pension and retirement benefits and refunds may be claimed as exempt under Illinois law.

The judgment debtor may have other possible exemptions under the law.

THE JUDGMENT DEBTOR HAS THE RIGHT AT THE CITATION HEARING TO DECLARE EXEMPT CERTAIN INCOME OR ASSETS OR BOTH. The judgment debtor also has the right to seek a declaration at an earlier date by notifying the clerk in writing at the Office of the Clerk, 219 South Dearborn Street, Chicago, Illinois 60604. When so notified, the Clerk of the Court will obtain a prompt hearing date from the court and will provide the necessary forms that must be prepared by the judgment debtor or the attorney for the judgment debtor and sent to the judgment creditor and the judgment creditor's attorney by regular first class mail, regarding the time and location of such hearing. This notice may be sent to the judgment debtor by regular first class mail.

I certify that this Citation Notice was sent by first class mail, postage prepaid to the judgment debtor within three business days of the service upon the cited party.



Preparer's Signature

Preparing Attorney's Name:
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