IN THE NAME OF GOD

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING
CERTAIN IRANIAN ASSETS

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

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

VOLUME II

17 August 2020

TABLE OF CONTENTS

PART V – U.S COURT DECISIONS

Annex 32	*Kirschenbaum, et al. v. Islamic Republic of Iran,* U.S. District Court for the District of Columbia, Opinion and Order (Liability), 15 December 2010, Case No. 08-cv-1814	p. 1
Annex 33	*Kirschenbaum, et al. v. Islamic Republic of Iran,* U.S. District Court for the District of Columbia, Memorandum Opinion (Punitive Damages), 19 May 2011, Case No. 08-cv-1814	p. 21
Annex 34	*Khaliq, et al. v. Republic of Sudan, et al; Owens, et al. v. Republic of Sudan, et al.; and Mwila, et al. v. Republic of Sudan, et al. (consolidated),* U.S. District Court for the District of Columbia, Memorandum Opinion (Liability), 30 November 2011, Cases Nos. 10-0356, 01-2244 and 08-1377 *(excerpts)*	p. 27
Annex 35	*Peterson, et al. v. Islamic Republic of Iran, et al*., U.S. District Court for the Southern District of New York, Defendant Bank Markazi's Memorandum of Law in Support of its Motion to Dismiss, 15 March 2012, Case No. 10 civ 4518 (BSJ) *(excerpts)*	p. 51
Annex 36	*Davis, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security,* U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 30 March 2012, Case No. 07-cv-1302	p. 67
Annex 37	*Estate of Anthony K. Brown, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security,* U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 3 July 2012, Case No. 08-cv-531	p. 83
Annex 38	*In Re: Terrorist Attacks on September 11, 2001 (relating to Havlish v. Bin Laden),* U.S. District Court, Southern District of New York, Report and Recommendation to the Honorable George B. Daniels, 30 July 2012, Case 1:03- cv-09848-GBD-FM	p. 97
Annex 39	*In Re Terrorist Attacks of September 11, 2001 (relating to Havlish v. Bin Laden),* U.S. District Court for the Southern District of New York, Memorandum Decision and Order of 3 October 2012, Case 1:03-cv-09848-GBD-SN	p. 119
Annex 40	*Levin, et al. v. Bank of New York, et al.,* U.S. District Court, Southern District of New York, Amended Answer of JP Morgan Chase Parties to Amended Counterclaim of Heiser Judgment Creditors, with Counterclaims, and Amended and Supplemental Third-Party Complaint against Judgment Creditors of Iran, Plaintiffs Suing Iran and Account and Wire Transfer Parties (Phase 3), 10 October 2012, No. 09 Civ. 5900 and Exhibit A *(excerpts)*	p. 129

Annex 41	*In Re Terrorist Attacks of September 11, 2001 (relating to Havlish v. Bin Laden),* U.S. District Court, Southern District of New York, Order and Judgment of 12 October 2012, Case 1:03-cv-09848-GBD-SN	p. 159
Annex 42	*Bennett, et al. v. The Islamic Republic of Iran, et al.,* U.S. District Court for the Northern District of California, Order Denying Motion to Dismiss, 28 February 2013, Case 3:11-cv-05807-CRB	p. 169
Annex 43	*Peterson, et al. 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.,* U.S. District Court for the Southern District of New York, Order Entering Partial Final Judgment Pursuant to Fed. R. Civ. P. 54 (b), Directing Turnover of the Blocked Assets, Dismissal of Citibank with Prejudice and Discharging Citibank from Liability, 9 July 2013, No. 10-cv-4518-KBF, *(excerpts)*	p. 191
Annex 44	*Peterson, et al. 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.,* U.S. District Court for the Southern District of New York, Order Approving Qualified Settlement Fund, 9 July 2013, No. 10-cv-4518-KBF	p. 209
Annex 45	*The Estate of Michael Heiser, et al. v. Bank of Baroda, New York Branch,* U.S. District Court, Southern District of New York, Judgment and Order Allocating Remaining Blocked Assets, 19 August 2013, No. 11 Civ. 1602	p. 215
Annex 46	*Khaliq, et al. v. Republic of Sudan, et al.*, U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 28 March 2014, Case No. 10-0356	p. 219
Annex 47	*Owens, et al. v. Republic of Sudan, et al.,* U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 28 March 2014, Case No. 01-2244	p. 231
Annex 48	*Mwila, et al. v. Republic of Sudan, et al.,* U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 28 March 2014, Case No. 08-1377	p. 251
Annex 49	*Peterson, et al. v. Iran, Bank Markazi, Banca UBAE, Clearstream, JP Morgan Chase Bank,* U.S. District Court for the Southern District of New York, Amended Complaint, 25 April 2014, No. 13-cv-9195-KBF *(excerpts)*	p. 269
Annex 50	*Peterson, et al. v. Iran, Bank Markazi, Banca UBAE, Clearstream, JP Morgan Chase Bank*, U.S. District Court for the Southern District of New York, Opinion and Order, 20 February 2015, No. 13-cv-9195-KBF	p. 289
Annex 51	*Hoglan, et al. v. Iran, et al.*, U.S. District Court for the Southern District of New York, Plaintiffs Proposed Findings of Fact and Conclusions of Law in Support of Motion for Entry of Default Judgment, 31 August 2015, and Order of Judgment, 31 August 2015, Case No. 1:11 Civ. 7550 (GBD) *(excerpts)*	p. 315

Annex 52 *Ashton, et al. v. al Qaeda Islamic Army, et al.*, U.S. District Court for the Southern District of New York, Amended Order of Judgment, 8 March 2016, Case No. 02-cv-6977(GBD) p. 345

Annex 53 *Hake, et al. v. Bank Markazi, et al.*, U.S. District Court for the District of Columbia, Complaint, 17 January 2017, Case No. 1:17-cv 00114 *(excerpts)* p. 359

Annex 54 *Thomas Burnett Sr., et al. v. The Islamic Republic of Iran, et al.*, U.S. District Court for the Southern District of New York, Plaintiffs' Motion for Judgment by Default against the Islamic Republic of Iran, The Islamic Revolutionary Guard, and the Central Bank of the Islamic Republic of Iran (the "Sovereign Defendants") and Order of Judgment dated 31 January 2017 granting Plaintiffs Motion p. 377

Annex 55 *Brooks, et al. v. Bank Markazi, et al.*, U.S. District Court for the District of Columbia, Complaint, 20 April 2017, Case No. 1:17-cv-00737 *(excerpts)* p. 381

Annex 56 *Holladay, et al. v. Ira,n et al.*, U.S. District Court for the District of Columbia, Amended Complaint, 14 September 2017, Case No. 1:17-cv-00915 *(excerpts)* p. 395

Annex 32

***Kirschenbaum, et al. v. Islamic Republic of Iran,* U.S. District Court for the District of Columbia, Opinion and Order (Liability), 15 December 2010, Case No. 08-cv-1814**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON KIRSCHENBAUM, *et al.*,	)	
Plaintiffs,	)	
v.	)	08-cv-1814 (RCL)
ISLAMIC REPUBLIC OF IRAN, *et al.*,	)	
Defendants.	)	

OPINION AND ORDER

I. INTRODUCTION

This action arises from the December 1, 2001 suicide bombing on Ben Yehuda Street in Jerusalem by members of the terrorist organization Hamas.[1] The attack killed 20 individuals and wounded over one-hundred others, including Jason Kirschenbaum, a United States citizen studying abroad in Israel at the time. Plaintiffs to this action include Jason, his parents, and his siblings. These same plaintiffs have previously brought suit against defendants Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS") pursuant to the former "state-sponsored terrorism" exception to the Foreign Sovereign Immunities Act ("FSIA"), which, at the time of that suit, was codified at 28 U.S.C. § 1605(a)(7). In that case, this Court found defendants—who provided regular support to Hamas during the period surrounding the Ben Yehuda Street bombing—legally responsible for the attack that left Jason severely injured and emotionally traumatized, and awarded plaintiffs a total of $13.75 million in compensatory damages. *Kirschenbaum v. Islamic Republic of Iran*, 572 F. Supp. 2d 200, 212–14

[1] Throughout this opinion, references to "Hamas" refer 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).

(D.D.C. 2008) ("*Kirschenbaum I*"). Plaintiffs also sought punitive damages, but the Court denied that request as unavailable under then-applicable law. *Id.* at 214.

Prior to the Court's entry of judgment *Kirschenbaum I*, Congress passed the National Defense Authorization Act for Fiscal Year 2008 ("NDAA"), which repealed § 1605(a)(7) and replaced it with a new state-sponsored terrorism exception. Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338–44 (2008). This new exception, codified at 28 U.S.C. § 1605A, "creat[ed] a federal right of action against foreign states, for which punitive damages may be awarded." *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 40 (D.D.C. 2009) (citing *Simon v. Republic of Iraq*, 529 F.3d 1187, 1190 (D.C. Cir. 2008) ("*In re Terrorism Litig.*"). The NDAA also permits plaintiffs to have § 1605A retroactively applied in certain circumstances. *Id.* at 62–63. Plaintiffs here—the same plaintiffs as in *Kirschenbaum I*—seek to invoke the additional remedies provided by this new state-sponsored terrorism exception through the retroactive procedures outlined in the NDAA. For the reasons set forth below, the Court finds that plaintiffs have sufficiently established their right to relief under § 1605A.

II. PROCEDURAL HISTORY

A. *Kirschenbaum I*

Plaintiffs filed their first action against defendants pursuant to § 1605(a)(7) in 2003. *Kirschenbaum I*, 572 F. Supp. 2d at 204. The state-sponsored terrorism exception, as written at that time, was "merely a jurisdiction-conferring provision that d[id] not otherwise provide a cause of action . . . . [but] act[ed] as a pass-through to substantive causes of action . . . that may exist in federal, state or international law." *Id.* at 209–10 (internal quotations and citations omitted). The *Kirschenbaum I* Complaint, in accordance with then-standard practice, set forth state law claims for battery and intentional infliction of emotional distress. *Id.* at 210.

The Court in *Kirschenbaum I* held a hearing to receive evidence supporting plaintiffs' claims on January 3, 2008. At that hearing, plaintiffs testified about the Ben Yehuda Street bombing and subsequent events, and the Court received documentary evidence substantiating plaintiffs' claims. *Id.* at 204. Based on the evidence presented, the Court made numerous findings of fact, *see generally Kirschenbaum I*, 572 F. Supp. 2d at 204–08, and ultimately determined that, under New York law, "defendants' actions proximately caused the severe injury of Jason Kirschenbaum and the subsequent emotional distress experienced by Jason, his father, mother, brothers and sister . . . . [and] conclude[d] that plaintiffs . . . established their claims or right to relief by evidence satisfactory to the court." *Id.* at 212 (internal quotations omitted). Based on these findings, the Court awarded Jason Kirschenbaum $5 million, each of his parents—Isabelle and Martin Kirschenbaum—$2.5 million, and each of his siblings—Danielle Teitlebaum, Joshua Kirschenbaum and David Kirschenbaum—$1.25 million. *Id.* at 213–14. The Court then denied the parties' request for punitive damages, as such damages "were not available against foreign states" under prevailing law. *Id.* at 214.

B. This Action

Plaintiffs filed this suit in October of 2008, not long after final judgment was entered in *Kirschenbaum I.* Complaint, Oct. 17, 2008 [3]. In their Complaint, plaintiffs allege four causes of action: extrajudicial killing under § 1605A, extrajudicial killing under federal common law, battery under New York law on behalf of Jason Kirschenbaum, and intentional infliction of emotional distress under New York law on behalf of all plaintiffs. *Id.* at ¶¶ 21–35. In support of these claims, plaintiffs allege that "Iran and MOIS have knowingly provided material support and substantial assistance to Hamas . . . in their terrorist activities, including the extrajudicial killings," and that the suicide bombing on Ben Yehuda Street in 2001 "was a foreseeable

consequence of such agreement, support and assistance, as were consequent personal injuries to Plaintiffs." *Id.* at ¶ 14. Plaintiffs seek an award of $70 million in compensatory damages and $300 million in punitive damages. *Id.* at 8.

Plaintiffs served copies of the relevant court papers, and the necessary translations, by diplomatic channels through the U.S. Department of State, as authorized by 28 U.S.C. § 1608(a)(4). The diplomatic note submitted to the Court, as mandated by that provision, states that service of the court papers was effective on June 1, 2010, thus setting the due date for defendants' response on August 2, 2010. *See id.* at § 1608(d) (stating that defendants "shall serve an answer or other responsive pleading . . . within sixty days after service has been made"). After defendants failed to respond or otherwise appear, the Clerk of the Court entered default on their behalf in early November. Clerk's Entry of Default, Nov. 2, 2010 [23]. Plaintiffs then moved the Court for entry of default judgment, and asked the Court to take judicial notice of the evidence and findings in *Kirschenbaum I.* Motion for Default Judgment, Nov. 13, 2010 [25]. Based on that motion, the record in this case, and facts available for judicial notice, the Court makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

When defendants default in FSIA actions, the law does not permit a court to simply enter judgment without further inquiry; rather, a court must determine that the plaintiffs have "establishe[d their] claim or right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e); *see Rimkus v. Islamic Republic of Iran*, ___ F. Supp. 2d __, __, No. 08 Civ. 1615, 2010 U.S. Dist. LEXIS 120991, at *13–14 (D.D.C. Nov. 16, 2010) (holding that FSIA courts must "inquire further before entering judgment against parties in default") (internal quotations omitted). In satisfaction of this statutory obligation, plaintiffs ask that the Court take judicial

notice of the evidence and findings in *Kirschenbaum I*. For the reasons set forth in *Beer v. Islamic Republic of Iran*, the Court will consider the evidence presented in that earlier proceeding without requiring plaintiffs to re-present it, but will reach its own independent findings of fact. ___ F. Supp. 2d __, __; 2010 U.S. Dist. LEXIS 129953, at *8–10 (D.D.C. Dec. 9, 2010) ("*Beer II*").[2] The *Kirschenbaum I* Court received substantial testimonial and documentary evidence at the January 3, 2008 hearing. Based on that evidence the Court here makes the following findings of fact:

Parties

Documentary evidence establishes that Jason Kirschenbaum is, and was at all times, an American citizen domiciled in New York, *Kirschenbaum I*, 572 F. Supp. 2d at 204, and that he was studying abroad in Israel at the time of the bombing on Ben Yehuda Street. *Id.* at 205. The remaining plaintiffs constitute his mother and father,[3] as well as his three siblings. *Id.*

Defendant Iran "is a foreign state and has been designated a state sponsor of terrorism pursuant to section 69(j) of the Export Administration Act of 1979, 50 U.S.C. § 2405(j), continuously since January 19, 1984, *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 47 (D.D.C. 2006)—well before the attack in 2001. Defendant MOIS is Iran's secret police and

---

[2] The Court views *Kirschenbaum I* and this case as companion cases to *Beer v. Islamic Republic of Iran*, 574 F. Supp. 2d 1 (D.D.C. 2008) ("*Beer I*") and *Beer II*. Though the cases involve different events and different plaintiffs, they otherwise share numerous similarities. First, both the *Beer* and *Kirschenbaum* cases arise out of suicide bombings in Israel by operatives of Hamas. Second, *Beer I* and *Kirschenbaum I* were both brought pursuant to former § 1605(a)(7), both continued to proceed under that provision following enactment of the NDAA, both reached final judgment for plaintiffs, and the opinions in both were released on the same day—August 26, 2008. Third, plaintiffs in *Beer I* and *Kirschenbaum I* both received compensatory awards, and the Court denied punitive damages in both cases. Fourth, *Beer II* and this action were both filed on the same day, and just as the plaintiffs in *Beer II* were the same as those in *Beer I*, the plaintiffs in this action are the same as those in *Kirschenbaum I*. Finally, plaintiffs' counsel in this action is also counsel to plaintiffs in *Beer II*. Because of the numerous similarities between *Beer II* and this action, the cases raise several identical legal issues. As a result, throughout this opinion the Court often relies explicitly upon the analysis set forth, and conclusions reached, in the *Beer II* opinion, which was released six days ago.

[3] Though Jason's father, Martin Kirschenbaum, was alive at the time *Kirschenbaum I* was commenced, he is now deceased. His widow, Jason's mother Isabelle Kirschenbaum, thus brings suit as executrix of his estate. Complaint at ¶ 4.

intelligence organization. This Court has previously characterized it as a "division of the state of Iran," *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 65 (D.D.C. 2010), and at least one other court in this district has found that "Iran funnels much of its support to Hamas through MOIS." *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 262 (D.D.C. 2003).

The December 1, 2001 Suicide Bombing

The first-hand testimony of Jason Kirschenbaum establishes the following facts:

> Jason Kirschenbaum was walking toward Burger King on Ben Yehuda Street when suddenly he heard a loud explosion up the street. Seconds later, he heard another loud explosion and was simultaneously thrown to the ground. . . . The first bomb went off at the end of Ben Yehuda Street, and the second went off right next to Jason Kirschenbaum.

Kirschenbaum I, 572 F. Supp. 2d at 205. Jason's recollection of the events is consistent with other evidence concerning the 2001 bombings on Ben Yehuda Street. *See* U.S. Dep't of State, *Patterns of Global Terrorism 2001* app. A, at 83 (2002) ("On 1 December, two suicide bombers detonated explosives on a busy down-town pedestrian mall."). As a result of the explosion, Jason suffered severe injuries to his arm and leg, and also sustained emotional trauma from graphic exposure to the bloody and devastating aftermath. *Kirschenbaum I*, 572 F. Supp. 2d at 205–06. In addition to Jason's injuries, the attack killed at least 10 people and wounded 120 others. *Patterns of Global Terrorism 2001*, *supra* at app. A, at 83. Finally, documentary evidence presented in *Kirschenbaum I* establishes that Hamas claimed responsibility for the attack shortly after it occurred. 572 F. Supp. 2d at 206; *see also Patterns of Global Terrorism 2001*, *supra* at app. A, at 83 (observing that "HAMAS claimed responsibility" for the bombing).

Iranian Support for Hamas and Involvement in the 2001 Bombing

The evidence presented to the Court in *Kirschenbaum I* establishes that "Iran has continuously provided material support in the form of, *inter alia*, funding, training, and safe

haven to Hamas and its members so that they may undertake terrorist attacks like the one in this action." 572 F. Supp. 2d at 211. And numerous counts in FSIA actions brought in this district have found equally strong connections between defendants and Hamas. *See, e.g.*, *Belkin v. Islamic Republic of Iran*, 667 F. Supp. 2d 8, 14 n.4 (D.D.C. 2009) ("Hamas . . . is an organization that has been supported over the years by the Islamic Republic of Iran, primarily through . . . MOIS."); *Bennett v. Islamic Republic of Iran*, 604 F. Supp. 2d 152, 154 (D.D.C. 2009) (finding sufficient evidence to determine that "Iran and its MOIS provided material support to Hamas in furtherance of its terrorist objectives"); *Beer v. Islamic Republic of Iran*, 574 F. Supp. 2d 1, 6 (D.D.C. 2008) ("Hamas is an organization supported by Iran."). Moreover, according to the U.S. Department of State, "Hamas receives some funding, weapons, and training from Iran." U.S. Dep't of State, *Country Reports on Terrorism 2009*, Chp. 6 (2010). This finding is entirely consistent with the State Department's determinations at the time of the Ben Yehuda Street bombing. *See Patterns of Global Terrorism 2001*, *supra* at app. B, at 93 (stating that Hamas "[r]eceives funding from Palestinian expatriates, Iran, and private benefactors . . . ."). Based on this evidence, the Court determines that Iran and MOIS routinely provided support in various forms to Hamas for their terrorist activities, and that this provision of support directly led to the December 1, 2001 Ben Yehuda Street suicide bombing that severely injured Jason Kirschenbaum.

IV. CONCLUSIONS OF LAW

Based on the above findings of fact, the Court reaches the following conclusions of law:

A. Jurisdiction

Under the FSIA, "foreign states generally enjoy immunity from suit in U.S. courts." *Bettis v. Islamic Republic of Iran*, 315 F.3d 325, 329 (D.C. Cir. 2003). The state-sponsored

terrorism exception can overcome this immunity, but only in limited circumstances where the facts (1) justify the exercise of original jurisdiction by the Court and (2) waive defendants' sovereign immunity so that the Court may hear the case.

The Court obtains original jurisdiction only in suits where (1) "money damages are sought," (2) "against a foreign state" for (3) "personal injury or death" that (4) "was caused" (5) "by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources . . . for such an act." 28 U.S.C. § 1605A(a)(1). Here, plaintiffs seek only money damages. Complaint at 8. Moreover, Iran is plainly a foreign state, and MOIS, which is "'an integral part of Iran's political structure,'" also constitutes a foreign state under established precedent. *Beer II*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *16–17 (quoting *TMR Energy Ltd. v. State Prop. Fund of Ukraine*, 411 F.3d 296, 300 (D.C. Cir. 2005)). In addition, Jason Kirschenbaum's testimony establishes that he was injured in the Ben Yehuda Street bombing and that his family members suffered as a result, *see supra* Section III, while other evidence demonstrates that Iran's support of Hamas—funneled through MOIS—led to the attack. *See id.* Finally, the regular financial support defendants provided to Hamas constitutes provision of material support. The Court therefore has jurisdiction over this case.

As to defendants' waiver of sovereign immunity, this occurs by operation of statute (1) where "the foreign state was designated as a state sponsor of terrorism at the time [of] the act . . . and . . . remains so designated when the claim is filed," and (2) the claimant or the victim was, at the time of the act . . . a national of the United States [or] a member of the armed forces [or] otherwise an employee of the Government of the United States . . . acting within the scope of the employee's employment," 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." 28 U.S.C. § 1605A(a)(2)(i)–(iii). Here, Iran was—and remains—a designated state-sponsor of terrorism, *see supra* Section III, and all plaintiffs are American citizens. *See id.* Moreover, the attack occurred in Israel, and so the parties are under no obligation to attempt to arbitrate the dispute. Thus, the Court may hear this case, as defendants' sovereign immunity is waived by statute.[4]

B. Retroactive Application of § 1605A to this Case

In creating the new state-sponsored terrorism exception, Congress provided that the provision could be retroactively applied in certain situations. In particular, "a plaintiff in a case pending under former § 1605(a)(7) may move the Court to have that case treated as if brought under § 1605A, or a plaintiff may bring a separate action under § 1605A within a specified range following final judgment in the earlier related proceeding." *Rimkus*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 120991 at *46. Plaintiffs followed this latter approach, filing this action less than two months after final judgment in their original proceeding under § 1605(a)(7). *Compare Kirschenbaum I*, 572 F. Supp. 2d at 214 (entering final judgment on August 26, 2008), *with* Complaint at 1 (initiating this action on October 17, 2008). This suit thus qualifies for retroactive application of § 1605A. NDAA § 1083(c)(3) (stating that new § 1605A case related to prior § 1605(a)(7) case "may be brought . . . if the action is commenced not later than . . . 60 days after the date of entry of judgment in the original action").

C. Causes of Action

The Complaint sets forth four causes of action. Complaint Counts I–IV. In the first two, the plaintiffs allege claims for "Personal Injuries Caused by Extrajudicial Killings"; one under §

[4] Plaintiff served defendants through diplomatic channels on June 1, 2010, Return of Service/Affidavit, Aug. 20, 2010 [19], as authorized under the FSIA. 28 U.S.C. § 1608(a)(4). The Court thus has personal jurisdiction over defendants. *See Stern v. Islamic Republic of Iran*, 271 F. Supp. 2d 286, 296 (D.D.C. 2003) (holding that personal jurisdiction exists over non-immune foreign state where service is effected under §1608).

1605A (Count I), and one under federal common law (Count II). In the second two, the Complaint sets forth claims for battery (Count III) and intentional infliction of emotional distress (Count IV), both under New York law. For the reasons set forth in *Beer II*, the § 1605A Count is deficient—as "plaintiffs in FSIA actions must 'articulate the justification for their recovery, generally through the lens of civil tort liability,'" *Beer II*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *24 (quoting *Rimkus*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 120991 at *28)—but may still be considered by the Court, while the federal common law Count is dismissed as "improper, duplicative and unnecessary." *Id.* Moreover, because the state-sponsored terrorism exception no longer acts simply as a "jurisdiction conferring provision," *Valore*, 700 F. Supp. 2d at 57, plaintiffs' state law claims shall be dismissed, as they are "based on an improper source of law." *Beer II*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *28. As in *Beer II*, however, the Court will draw upon the theories set forth in the allegations supporting these state law claims to remedy the deficiencies in the § 1605A claim. *Id.*

D. Liability

The state-sponsored terrorism exception's federal cause of action permits plaintiffs to bring suits against a foreign state for (1) "an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act" where (2) the act was committed, or the provision provided, by the foreign state or an official, employee, or agent of the foreign state if the act (3) "caused" (4) "personal injury or death" (5) "for which courts of the United States may maintain jurisdiction under this section for money damages." 28 U.S.C. §§ 1605A(a)(1) & (c). As the Court has often explained, the third and fourth elements of this claim—causation and injury—require a plaintiff to "prove a theory of liability under which

defendants cause[d] the requisite injury or death." *Valore*, 700 F. Supp. 2d at 73. The Court takes each of these elements in turn.

1. Act

Plaintiffs' central allegations in this case are that "Defendants Iran and MOIS have knowingly provided material support and substantial assistance to Hamas . . . in their terrorist activities," Complaint at ¶ 14, that Hamas orchestrated the suicide bombing of Ben Yehuda Street, and that the "killings involved were 'extrajudicial' killings within the meaning of" the FSIA's state-sponsored terrorism exception. *Id.* at ¶¶ 12–13. These allegations implicate the FSIA's prohibition against both extrajudicial killings and the provision of material support to terrorist organizations. 28 U.S.C. § 1605A(a)(1).

Under the FSIA, an extrajudicial killing is defined as

> [(1)] a deliberated killing [(2)] not authorized by a previous judgment pronounced by a regularly constituted court [(3)] affording all judicial guarantees which are recognized as indispensable by civilized peoples.

Torture Victim Protection Act of 1991 § 3(a), 28 U.S.C. § 1350 note. The evidence establishes that an extrajudicial killing occurred here, as the bombing was planned and deliberate, and the attack was not sanctioned by any judicial body. *See supra* Section III. However, just as in *Beer II*, the evidence here does not establish that Iran or MOIS provided any specific support for, or otherwise directed Hamas agents in, the 2001 Ben Yehuda Street attack; nor does it demonstrate that the Hamas bombers acted at the behest of defendants. Thus, while the attackers undoubtedly perpetrated numerous extrajudicial killings, Iran and MOIS cannot be held vicariously liable for the murders under theories of agency. *See Beer II*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *30–33 (noting that agency requires agent to "act on [principal's] behalf and subject to his control") (citing Restatement (Second) of Agency § 1(1) (1958)).

Plaintiffs have established, however, that Iran and MOIS are subject to liability for the provision of material support to Hamas. The FSIA defines this act by reference to the U.S. criminal code, 28 U.S.C. § 1605A(h)(3), which includes provision of

> 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, personnel . . . and transportation, except medicine or religious materials.

18 U.S.C. § 2339A(b)(1). Under established precedent, "the routine provision of financial assistance to a terrorist group in support of its terrorist activities constitutes providing material support and resources for a terrorist act within the meaning'" of the state-sponsored terrorism exception. *In re Terrorism Litig.*, 659 F. Supp. 2d at 42 (quoting *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 19 (D.D.C. 1998)). And where the practice of regularly financing a terrorist organization is established by sufficient evidence, "'a plaintiff need not establish that the material support or resources provided by a foreign state for a terrorist act contributed directly to the act from which his claim arises.'" *Murphy*, ___ F. Supp. 2d __, __, 2010 U.S. Dist. LEXIS 101250, at *48 (D.D.C. Sep. 24, 2010) (quoting *In re Terrorism Litig.*, 659 F. Supp. 2d at 42). The evidence in *Kirschenbaum I* has established, and other sources have confirmed, that Iran provided regular financial support—funneled through MOIS—to Hamas during the period surrounding the Ben Yehuda Street attack. *See supra* Section III. Based on these facts, the Court finds that defendants provided material support for the suicide bombing—an extrajudicial killing—that severely injured Jason Kirschenbaum and emotionally traumatized his family.

2. Actor

The Court has determined that defendants Iran and MOIS provided material support to Hamas, and that this support in part led to the horrific suicide bombings that struck Ben Yehuda

Street in 2001. *See supra* Section III.B. Defendants may therefore be held liable for these acts under the state-sponsored terrorism exception.

3. Theory of Recovery – Causation & Injury

"[P]laintiffs in FSIA cases must set forth a legal theory that courts can apply to the facts of the case in order to determine whether a foreign state may be held liable under the federal cause of action in § 1605A." *Beer II*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *35. These theories should be based on "well-established principles of law, such as those found in Restatement (Second) of Torts and other leading treatises, as well as those principles that have been adopted by the majority of state jurisdictions." *In re Terrorism Litig.*, 659 F. Supp. 2d at 61. Here, drawing upon the plaintiffs' otherwise-improper state law claims, the Court construes the Complaint to set forth theories of recovery for battery and intentional infliction of emotional distress under § 1605A's federal cause of action. The Court discusses each theory in turn.

Battery

The *Murphy* Court has previously articulated the scope of the theory of recovery for battery under § 1605A: "[Defendant] is liable for battery in this case if, [(1)] when it . . . provided material support and resources therefor, it acted 'intending to cause a harmful or offensive contact with . . . , or an imminent apprehension of such a contact' by, those attacked and (2) 'a harmful contact with' those attacked 'directly or indirectly resulted.'" ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 101250 at *55 (quoting Restatement (Second) of Torts § 13). Under this theory, harmful contact results when it causes "any physical impairment of the condition of another's body, or physical pain or illness." Restatement (Second) of Torts § 15. Here, defendants provided regular support to Hamas with full knowledge of the murderous terrorist attacks—like the Ben Yehuda Street bombing—that would result from such provision.

See supra Section III. "[A]cts of terrorism are, by their very nature, intended to harm and to terrify by instilling fear of such harm." *Murphy*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 101250 at *56. And the evidence here establishes that Jason Kirschenbaum suffered severe injuries as a result of the 2001 attack. *See supra* Section III. Plaintiffs have therefore established a claim for battery by sufficient evidence.

Intentional Infliction of Emotional Distress

FSIA Courts have, on numerous occasions since the enactment of the NDAA, articulated the general theory of recovery based on intentional infliction of emotional distress, explaining: "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." *Heiser v. Islamic Republic of Iran*, 659 F. Supp. 2d 20, 26 (D.D.C. 2009). The scope of this theory is limited by two qualifications: the plaintiff must be "a member of [the injured person's] immediate family" and must be "present at the time." Restatement (Second) of Torts § 46(2)(a)–(b).[5]

Here, the evidence presented in *Kirschenbaum I* establishes that plaintiffs have proved claims for intentional infliction of emotional distress. As this Court stated in that case, "defendants' motives in providing material support to Hamas were to facilitate a deliberately outrageous act of terrorism intended to not only cause physical harm to those present in Ben

[5] The Court pauses to note that the estate-plaintiff in this action—the estate of Jason Kirschenbaum's father, Martin Kirschenbaum—seeks pain and suffering and punitive damages. Such awards, however, are not universally available for estate-plaintiffs. *Anderson v. Islamic Republic of Iran*, ___ F. Supp. 2d __, __, No. 08 Civ. 535, 2010 U.S. Dist. LEXIS 126457, at *32–33 (D.D.C. Dec. 1, 2010). Rather, as this Court has previously discussed, the question of whether an estate-plaintiff has standing to pursue a theory of intentional infliction of emotional distress in a FSIA action under § 1605A is controlled "by the law of the state which also governs the creation of the estate." *Id.* Here, the estate of Martin Kirschenbaum is governed by New York law. Complaint at ¶¶ 3–4. And under New York law, "all tort and contract actions that belonged to a decedent may . . . be maintained by the estate's personal representative." *Heslin v. County of Greene*, 923 N.E.2d 1111, 1114 n.4 (N.Y. 2010); *see also* N.Y. E.P.T.L. § 11-3.2 ("No cause of action for injury to person . . . is lost because of the death of the person in whose favor the cause of action existed."). Thus, the cause of action here may stand, as the estate's executrix, Isabelle Kirschenbaum, is proceeding with the claim.

Yehuda Street, but also to instill terror in their loved ones and others." *Kirschenbaum I*, 572 F. Supp. 2d at 212. And here, neither limitation to the theory of intentional infliction of emotional distress is applicable: plaintiffs are all either Jason Kirschenbaum's parents or siblings, and any presence requirement is waived due to the unique and particularly horrific nature of defendants' conduct. *See Anderson v. Islamic Republic of Iran*, ___ F. Supp. 2d __, __, 2010 U.S. Dist. LEXIS 126457, at *45–46 (D.D.C. Dec. 1, 2010) (holding that "[t]errorism is unique . . . in both its extreme methods and aims . . . [and is] intended to cause the highest degree of emotional distress . . . [thus] a plaintiff need not be present") (internal citations and quotations omitted). Based on these findings, plaintiffs have established claims under § 1605A based on the theory of intentional infliction of emotional distress.

4. Jurisdiction

The Court has already determined that it may exercise jurisdiction over defendants, and that plaintiffs are only seeking monetary compensation. *See Supra* Section IV.A. Plaintiffs have therefore provided sufficient evidence to support each element of the federal cause of action under § 1605A, and thus the Court holds defendants liable for the severe and traumatizing injuries to Jason Kirschenbaum, and the emotional distress suffered by his family, which resulted from the tragic suicide bombing of Ben Yehuda Street in Jerusalem on December 1, 2001.

V. DAMAGES

In their Complaint, plaintiffs seek $70 million in compensatory damages, and $300 million in punitive damages. Complaint at 8. As to compensatory damages, this Court held in *Beer II* that "plaintiffs 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." ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *45–46. Thus, principles of double-recovery prevent plaintiffs from obtaining any compensatory damages here. With respect to punitive damages, a substantial risk exists that a traditional punitive award based on standard methods employed in FSIA cases would result in an award that, in this case, could potentially violate the Court's obligation to avoid "grossly excessive or arbitrary punishments on a tortfeasor." *Hunter v. D.C.*, 384 F. Supp. 2d 257, 261 (D.D.C. 2005). Thus, the Court here shares the same concerns that the Court in *Beer II* discussed, *see generally Beer II*, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *46–53, and invites plaintiffs here to join the *Beer II* plaintiffs in briefing the Court on those issues.

VI. CONCLUSION

The Ben Yehuda Street bombing was another horrific attack in an unfortunately long line of murderous acts of violence and terrorism that have plagued Israel, and much of the world, for far too long. Jason Kirschenbaum, an American student studying abroad, was severely injured that day, and scarred—both physically and emotionally—in many ways that will never truly heal. His family in the United States, moreover, was left in a state of shock, panic, fear and helplessness that the Court simply cannot fathom. Having previously awarded compensatory damages to the Kirschenbaum family, the Court now finds that defendants should be subjected to punitive measures for their role in supporting the treacherous acts of Hamas, and awaits the plaintiffs' view as to what sanction is appropriate to help prevent another family from suffering such a terrible fate. Accordingly, it is hereby

ORDERED that judgment is entered against all defendants as to liability for plaintiffs' federal cause of action brought pursuant to 28 U.S.C. § 1605A in Count I of the Complaint; it is furthermore

ORDERED that Counts II through IV of the Complaint are dismissed with prejudice; it is furthermore

ORDERED that plaintiffs shall either

1. join with the plaintiffs in *Beer v. Islamic Republic of Iran*, No. 08-cv-1807, in providing the Court with a memorandum of law addressing the concerns about the proper measurement of punitive damages raised by the Court's memorandum opinion in that case; or

2. provide the Court with a supplemental memorandum addressing those subjects by January 10, 2011.

SO ORDERED

Signed by Royce C. Lamberth, Chief Judge, on December 15, 2010.

Annex 33

***Kirschenbaum, et al. v. Islamic Republic of Iran,* U.S. District Court for the District of Columbia, Memorandum Opinion (Punitive Damages), 19 May 2011, Case No. 08-cv-1814**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON KIRSCHENBAUM, *et al.*, Plaintiffs,	)	
v.	)	08-cv-1814 (RCL)
ISLAMIC REPUBLIC OF IRAN, *et al.*, Defendants.	)	

MEMORANDUM OPINION

This action arises from the December 1, 2001 suicide bombing of Ben Yehuda Street in Jerusalem, Israel by members of the terrorist organization Hamas.[1] The attack killed twenty and wounded over one-hundred, including Jason Kirschenbaum, an American citizen studying abroad. Plaintiffs, who include Jason, his parents and his siblings, allege that Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS") provided financial and material support to Hamas and thus are liable for Jason's injuries. Plaintiffs bring suit under the state-sponsored terrorism exception, 28 U.S.C. § 1605A, of the Foreign Sovereign Immunities Act ("FSIA"), seeking $70 million in compensatory damages and $300 million in punitive damages. Complaint 8, Oct. 17, 2008 [3]. The Court has previously found defendants "liable for the severe and traumatizing injuries to Jason . . . and the emotional distress suffered by his family, which resulted from the tragic suicide bombing of Ben Yehuda Street in Jerusalem on December 1, 2001," Opinion and Order 15, Dec. 15, 2010 [26] ("Op."), and denied plaintiffs' request for compensatory damages because they previously recovered such damages. *See id.* at

[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).

15–16. ("[P]rinciples of double-recovery prevent plaintiffs from obtaining any compensatory damages."). The issue before the Court today is the appropriate measure of punitive damages.

This case, along with the prior related case of *Kirschenbaum v. Islamic Republic of Iran*, 572 F. Supp. 2d 200 (D.D.C. 2008) ("*Kirshenbaum I*"),[2] form the companion cases to the *Beer* cases, which include *Beer v. Islamic Republic of Iran*, 574 F. Supp. 2d 1, (D.D.C. 2008), ("*Beer I*"), *Beer v. Islamic Republic of Iran*, ___ F. Supp. 2d __, __, No. 08 Civ. 1807, 2010 U.S. Dist. LEXIS 129953 (D.D.C. Dec. 8, 2010) ("*Beer II*"), and—most recently—Memorandum Opinion, *Beer*, No. 08 Civ. 1807, May 19, 2011 [31] ("*Beer III* Op."). *See* Op. at 5 n.2 (explaining that "*Kirschenbaum I* and this case [are the] companion cases to [the *Beer* cases]" because both cases arose from suicide bombings, followed similar procedural tracks, had opinions issued and subsequent suits filed on identical days, and plaintiffs in both cases share lawyers). Nearly two months ago, this Court in *Beer II* expressed reservations with the established method of calculating punitive damages in FSIA actions, ___ F. Supp. 2d at __, 2010 U.S. Dist. LEXIS 129953 at *43, and in response, the Court here "invite[d] plaintiffs here to join the *Beer II* plaintiffs in briefing the Court on those issues." Op. at 16. Plaintiffs subsequently submitted a joint brief with the *Beer* plaintiffs in which they assert 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 [27] ("Ps. Br."). Plaintiffs also note 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 in the *Beer III* opinion issued today, the Court

[2] 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).

agrees with plaintiffs, and holds that the established method for calculating punitive damages should determine the appropriate award in this case. *See generally Beer III* Op. at 3–19.

Here, as in *Beer III*, plaintiff relies on the standard estimation of defendants' support for international terrorism—$100 million—and the typical multiplier used in FSIA litigation—3. The Court will thus award $300 million in punitive damages, to be dispersed in proportion to each plaintiff's share of the compensatory award. *Id.* at 19–20.

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 34

***Khaliq, et al. v. Republic of Sudan, et al; Owens, et al. v. Republic of Sudan, et al.; and Mwila, et al. v. Republic of Sudan, et al. (consolidated)*, U.S. District Court for the District of Columbia, Memorandum Opinion (Liability), 30 November 2011, Cases Nos. 10-0356, 01-2244 and 08-1377**

Excerpts: pp. 1-2 & pp. 27-45

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES OWENS, et al., **Plaintiffs,** **v.** **REPUBLIC OF SUDAN, et al.,** **Defendants.**	**Civil Action No. 01-2244 (JDB)**
WINFRED WAIRIMU WAMAI, et al., **Plaintiffs,** **v.** **REPUBLIC OF SUDAN, et al.,** **Defendants.**	**Civil Action No. 08-1349 (JDB)**
MILLY MIKALI AMDUSO, et al., **Plaintiffs,** **v.** **REPUBLIC OF SUDAN, et al.,** **Defendants.**	**Civil Action No. 08-1361 (JDB)**
JUDITH ABASI MWILA, et al., **Plaintiffs,** **v.** **THE ISLAMIC REPUBLIC OF IRAN, et al.,** **Defendants.**	**Civil Action No. 08-1377 (JDB)**

MARY ONSONGO, et al., **Plaintiffs,** **v.** **REPUBLIC OF SUDAN, et al.,** **Defendants.**	**Civil Action No. 08-1380 (JDB)**
RIZWAN KHALIQ, et al., **Plaintiffs,** **v.** **REPUBLIC OF SUDAN, et al.,** **Defendants.**	**Civil Action No. 10-0356 (JDB)**

MEMORANDUM OPINION

Over thirteen years ago, on August 7, 1998, the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania were devastated by simultaneous suicide bombings that killed hundreds of people and injured over a thousand. Now, in this civil action under the Foreign Sovereign Immunities Act ("FSIA"), plaintiffs — victims of the bombings and their families — seek to assign liability for their injuries to the Republic of Sudan ("Sudan"), the Ministry of the Interior of the Republic of Sudan, the Islamic Republic of Iran ("Iran"), the Iranian Revolutionary Guards Corps ("IRGC") and the Iranian Ministry of Information and Security ("MOIS") (collectively "defendants").

The Court will proceed in two steps. First, it will present findings as to the causes of the bombings — specifically, findings that defendants were indeed responsible for supporting, funding, and otherwise carrying out this unconscionable attack. Second, the Court will set forth

individuals on site in the 1998 U.S. embassy attacks in Nairobi, Kenya and Dar es Salaam, Tanzania. The evidence overwhelmingly supports the conclusion that al Qaeda carried out the two bombing attacks, and Bin Laden himself claimed responsibility for them during an al Qaeda documentary history released by the al Qaeda media wing. See Exs. LL, MM, NN, OO; Tr. Vol. III at 313-16.

II. CONCLUSIONS OF LAW

The "terrorism exception" to the FSIA was first enacted as part of the Mandatory Victim's Restitution Act of 1996, which was itself part of the larger Antiterrorism and Effective Death Penalty Act of 1996. See Pub. L. No. 104-132, § 221(a)(1)(C), 110 Stat. 1241, 1241 (formerly codified at 28 U.S.C. §1605(a)(7)). The exception permitted claims against foreign state sponsors of terrorism that resulted in personal injury or death, where either the claimant or the victim was a United States citizen at the time of the terrorist act. See 28 U.S.C. § 1605(a)(7) (2007). Shortly thereafter, Congress passed the so-called "Flatlow Amendment" in the Omnibus Consolidated Appropriations Act of 1996. See Pub. L. No. 104-208, § 589, 110 Stat. 3009-1, 3009-172 (codified at 28 U.S.C. §1605 note). Initially, some courts construed § 1605(a)(7) and the Flatlow Amendment, read in tandem, as creating a federal cause of action against the foreign state sponsor of terrorism. See, e.g., Flatlow v. Islamic Republic of Iran, 999 F. Supp. 1, 27 (D.D.C. 1998).

In Cicippio-Puleo v. Islamic Republic of Iran, the D.C. Circuit concluded that neither § 1605(a)(7) nor the Flatlow Amendment itself created a cause of action against the foreign state. 353 F.3d 1024, 1027 (D.C. Cir 2004). Instead of a federal cause of action, the D.C. Circuit directed plaintiffs to assert causes of action using "some other source of law, including state law." Id. at 1036; see, e.g., Dammarell v. Islamic Republic of Iran, 2005 WL 756090, at *33 (D.D.C.

Mar. 25, 2005) (requiring plaintiffs post-Cicippio-Puleo to amend their complaint to state causes of action under the law of the state in which they were domiciled at the time of their injuries). Hence, following Cicippio-Puleo, the FSIA "terrorism exception" began to serve as "a 'pass-through' to substantive causes of action against private individuals that may exist in federal, state or international law." Bodoff v. Islamic Republic of Iran, 424 F. Supp. 2d 74, 83 (D.D.C. 2006).

In some cases, applying relevant state law created practical problems for litigants and the courts. Under applicable choice of law principles, district courts applied the state tort law of each individual plaintiff's domicile, which in many cases involved several different states for the same terrorism incident. See, e.g., Dammarell v. Islamic Republic of Iran, 404 F. Supp. 2d 261, 275-324 (D.D.C. 2005) (applying the law of six states and the District of Columbia). This analysis resulted in different awards for similarly-situated plaintiffs, based on the substantive tort law distinctions among states for intentional infliction of emotional distress claims. See, e.g., Peterson v. Islamic Republic of Iran, 515 F. Supp. 2d 25, 44-45 (D.D.C. 2007) (dismissing intentional infliction of emotional distress claims of those family members domiciled in Pennsylvania and Louisiana, whose laws required the claimant to be present at the site of the event causing emotional distress).

To address these issues, Congress enacted section 1083 of the 2008 NDAA, which amended the "terrorism exception" and other related FSIA provisions. The Act repealed §1605(a)(7) of Title 28 and replaced it with a separate section, §1605A, which, among other things: (1) broadened the jurisdiction of federal courts to include claims by members of the U.S. armed forces and employees or contractors of the U.S. government injured while performing their duties on behalf of the U.S. Government; and (2) created a federal statutory cause of action for

those victims and their legal representatives against state sponsors of terrorism for terrorist acts committed by the State, its agents, or employees, thereby abrogating Cicippio-Puleo. See Simon v. Republic of Iraq, 529 F.3d 1187, 1190 (D.C. Cir. 2008), rev'd on other grounds, 129 S. Ct. 2183 (2009).

This case is the second to apply §1605A to non-U.S. national plaintiffs who worked for the U.S. government (and their non-U.S. national family members), who are now entitled to compensation for personal injury and wrongful death suffered as a result of the terrorist attacks on the U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania. The first was this Court's recent decision in Estate of Doe v. Islamic Republic of Iran, 2011 WL 3585963 (D.D.C. Aug. 16, 2011), dealing with claims arising out of the 1983 and 1984 bombings of the U.S. embassy in Lebanon.

A. Jurisdiction Under The FSIA

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). 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). Moreover, 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) & 1604. Here, this Court has jurisdiction because service was proper and defendants' conduct falls within the "state sponsor of terrorism" exception set forth in 28 U.S.C. §

1605A.

1. Service of Process

Courts may exercise personal jurisdiction over a foreign state where the defendant is properly served in accordance with 28 U.S.C. § 1608. See 28 U.S.C. § 1330(b); TMR Energy Ltd. v. State Prop. Fund of Ukr., 411 F.3d 196, 199 (D.C. Cir. 2005). "A foreign state or its political subdivision, agency or instrumentality must be served in accordance with 28 U.S.C. § 1608." Fed. R. Civ. P. 4(j)(1). "The FSIA prescribes four methods of service, in descending order of preference. Plaintiffs must attempt service by the first method (or determine that it is unavailable) before proceeding to the second method, and so on." Ben-Rafael v. Islamic Republic of Iran, 540 F. Supp. 2d 39, 52 (D.D.C. 2008); see also 28 U.S.C. § 1608. As described above, plaintiffs in each case here properly effected service on all defendants. See supra at 2-4. And in each case, defendants did not respond or make an appearance within 60 days, and thus, pursuant to § 1608(d), the Clerk entered default against defendants. Hence, as defendants were properly served in accordance with § 1608, this Court has personal jurisdiction over them.

2. Subject Matter Jurisdiction

The provisions relating to the waiver of immunity for claims alleging state-sponsored terrorism, as amended, 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 in a case 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.

§ 1605A(a)(1). For a claim to be heard in such a case, 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. Id. Finally, subsection (a)(2)(A)(ii) requires that 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)(I-III)(emphasis added).

As explained in more detail below, plaintiffs satisfy each of the requirements for subject matter jurisdiction. First, Iran and Sudan were designated as state sponsors of terrorism at the time all of the related actions in this case were filed. Second, plaintiffs' injuries were caused by the defendants' acts of "extrajudicial killing" and provision of "material support" for such acts to their agents. Third, plaintiffs presented evidence that they were either themselves nationals of the United States or U.S. Government employees at the time of the attacks, or their claims are derived from claims where the victims were either U.S. nationals or U.S. Government employees at the time of the attacks, as required by section 1605A(a)(2)(A)(ii). As the case progresses to the damages phase, individual plaintiffs will be required to produce evidence of their employment or familial relationship to establish their standing under the statute.

i. Iran and Sudan Designated As State Sponsors of Terrorism

A foreign state defendant must have been designated as a state sponsor of terrorism at the time the act complained of occurred. 28 U.S.C. § 1605A(a)(2)(A)(I). The statute defines "state sponsor of terrorism" as "a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)),

section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism . . . ." 28 U.S.C. § 1605A(h)(6).

Iran and Sudan were designated by the U.S. Department of State as state sponsors of terrorism on January 19, 1984 and August 12, 1993, respectively. Iran was formally declared a state sponsor of terrorism by Secretary of State Schultz, see 49 Fed. Reg. 2836 (Jan. 23, 1984), and today remains designated as a state sponsor of terrorism. Sudan was originally designated a state sponsor of terrorism in 1993. See 58 Fed. Reg. 52,523 (Oct. 8, 1993). Once a country has been designated as a state sponsor of terrorism, the designation cannot be rescinded unless the President submits to Congress a proper report, as described in the Export Administration Act. See 50 U.S.C. app. § 2405(j)(4). Iran and Sudan have never been removed from this list of state sponsors of terrorism. Hence, the requirements set forth in section 1605A(a)(2)(A)(i) are satisfied.

ii. Extrajudicial Killing and Provision of Material Support

The FSIA, as amended, strips immunity "in any case . . . in which money damages are sought against a foreign state for personal injury or death that was caused by an act of . . . extrajudicial killing . . . or the provision of material support or resources for such an act if such an act or provision of material support or resources is engaged in by an official, employee, or agent or such foreign state while acting within the scope of his or her office, employment, or agency." 28 U.S.C. § 1605A(a)(1). 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).

Plaintiffs have satisfied their burden under 28 U.S.C. § 1608(e) to show that the governments of Sudan and Iran provided material support and resources to Bin Laden and al Qaeda for acts of terrorism, including extrajudicial killings. Targeted, large-scale bombings of U.S. embassies or official U.S. government buildings constitute acts of extrajudicial killings. Estate of Doe, 2011 WL 3585963, at *10 ("[T]he 1983 and 1984 Embassy bombings both qualify as an 'extrajudicial killing.'"); Dammarell v. Islamic Republic of Iran, 281 F. Supp. 2d 105, 192 (D.D.C. 2003)("[T]he evidence is conclusive that [the victims of the 1983 embassy bombing in Lebanon] were deliberately targeted for death and injury without authorization by a previous court judgment . . . and [the 1983 bombing] constitutes an act of 'extrajudicial killing.'"); Wagner v. Islamic Republic of Iran, 172 F. Supp. 2d 128, 134 (D.D.C. 2001) (finding the September 1984 bombing of the U.S. embassy annex in Lebanon was a "deliberate and premeditated act" that killed 14 people and "[t]here is no evidence that it was judicially sanctioned by any lawfully constituted tribunal"); Brewer, 664 F. Supp. 2d at 52-53 (same); Welch v. Islamic Republic of Iran, 2007 U.S. Dist. LEXIS 99191, at *26 (D.D.C. Sept. 20, 2007) (finding that an embassy attack "clearly qualifies as an extrajudicial killing").

With the support of Sudan and Iran, al Qaeda killed hundreds of individuals — and attempted to kill thousands more — on site in the 1998 U.S. embassy attacks in Nairobi and Dar es Salaam. No one questions that al Qaeda carried out the two bombing attacks, and Bin Laden

himself claimed responsibility for them during an al Qaeda documentary history released by the al Qaeda media wing. See Exs. LL, MM, NN, OO; Tr. Vol. III at 313-16. Such acts of terrorism are contrary to the guarantees "recognized as indispensable by civilized persons." Hence, the 1998 embassy attacks in Kenya and Tanzania, and the resulting deaths and injuries, qualify as an "extrajudicial killing."

The statute defines "material support or resources" to include "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 without which it could not have carried out the 1998 bombings. Sudan provided — at least — safe haven for Bin Laden and al Qaeda, and functioned as its training, organizational and logistical hub, from 1991 to 1996. When a foreign sovereign allows a terrorist organization to operate from its territory, this meets the statutory definition of "safehouse" under 18 U.S.C. § 2339A(b):

> Insofar as the government of the Republic of Sudan affirmatively allowed and/or encouraged al Qaeda and Hizbollah to operate their terrorist enterprises within its borders, and thus provided a base of operations for the planning and execution of terrorist attacks — as the complaint unambiguously alleges — Sudan provided a "safehouse" within the meaning of 18 U.S.C. § 2339A, as incorporated in 28 U.S.C. § 1605(a)(7).

Owens v. Republic of Sudan, 412 F. Supp. 2d 99, 108 (D.D.C. 2006). The Sudanese government also provided inauthentic passports, which qualify as "false documentation or identification" under 18 U.S.C. § 2339A(b). Plaintiffs also established that the Iranian government both trained al Qaeda members and authorized the provision of training by Hezbollah in explosives, and

specifically in how to destroy large buildings. This support qualifies as "training, expert advice or assistance" under 18 U.S.C. § 2339A(b). See id. § 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").

The statute also requires that the extrajudicial killings be "caused by" the provision of material support. The causation requirement under the FSIA is satisfied by a showing of proximate cause. See 28 U.S.C. § 1605A(a)(1); Estate of Doe, 2011 WL 3585963, at *11; Valore, 700 F. Supp. at 66; Kilburn v. Socialist People's Libyan Arab Jamahiriya, 376 F.3d 1123, 1128 (D.C. Cir. 2004) (weighing the import of the phrase "caused by" from 28 U.S.C. § 1605(a)(7), the predecessor statute to 28 U.S.C. § 1605A). 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)). Plaintiffs have demonstrated several reasonable connections between the material support provided by defendants and the two embassy bombings. Sudan provided the safe harbor necessary to allow al Qaeda to train and organize its members for acts of large-scale terrorism from 1992 to 1996. Sudan facilitated its safe harbor through constant vigilance by its security services and the provision of documentation required to shelter al Qaeda from foreign intelligence services and competing terrorist groups. Iran's training and technical support was specifically required for the successful execution of al Qaeda's plot to bomb the two embassies. Hence, plaintiffs have

established that the 1998 embassy bombings were caused by Iran and Sudan's provision of material support.

B. Federal Cause of Action

Once jurisdiction has been established over plaintiffs' claims against all defendants, liability on those claims in a default judgment case is established by the same evidence if "satisfactory to the Court." 28 U.S.C. § 1608(e). Plaintiffs' claims are brought under section 1605A(c), the newly created federal cause of action, or, in the alternative, under applicable state or foreign law. Section 1605A(c) authorizes claims against state sponsors of terrorism to recover compensatory and punitive damages for personal injury or death caused by acts described 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.

The plain meaning approach to statutory construction governs the Court's interpretation of § 1605A(c). See Estate of Doe, 2011 WL 3585963, at *13-*14. A straightforward reading of §

1605A(c) is that it creates a federal cause of action for four categories of individuals: a national of the United States, a member of the U.S. armed forces, a U.S. Government employee or contractor, or a legal representative of such a person. Absent from these four categories are non-U.S. national family members of the victims of terrorist attacks. The statutory language that follows the listing of the four categories of individuals in § 1605A(c) does not expand the private right of action beyond those four categories. The cause of action is further described as "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." Id.

Plaintiffs argue that the statutory language creates a cause of action for any individual victim or claimant "for which the courts of the United States may maintain jurisdiction." But the plain language of the statute does not support this construction. Indeed, the text refers back to the waiver of sovereign immunity as to a foreign state for terrorist acts as provided in section (a)(1). Nonetheless, the family member plaintiffs contend that, even if they do not fit expressly within the four categories listed in § 1605A(c)(1)-(4), once the immunity of the defendants has been waived as to their claims, the intent of Congress indicates that the immediate family members of U.S. government employees, despite their status as foreign nationals, are entitled to bring claims through a federal statutory cause of action and seek damages for their losses, including for solatium and pain and suffering.

Plaintiffs explain that the legislative history reveals that a purpose of the 2008 amendments to the FSIA was to "fix[] the inequality" of rights between U.S. citizens and non-U.S. citizens to seek relief from the perpetrators of terrorist acts. See 154 Cong. Rec. S54 (daily ed. Jan. 22, 2008) (statement by Sen. Lautenberg). And, plaintiffs continue, Congress was prompted to create a

federal statutory cause of action that would resolve the disparity among the various state laws regarding the recovery of emotional distress by immediate family members that existed prior to the statutory amendments. See 154 Cong. Rec. S54 (daily ed. Jan. 22, 2008) (statement by Sen. Lautenberg) (noting that the amendments would fix the problem of "judges hav[ing] been prevented from applying a uniform damages standard to all victims in a single case because a victim's right to pursue an action against a foreign government depends upon State law"). Indeed, if foreign national immediate family members of victims do not have a cause of action under § 1605A(c), then Senator Lautenberg did not completely "fix" the problem of disparate damages standards for this particular category of claimants. But it is not the court's role to fix a problem that Congress failed to address. See Estate of Doe, 2011 WL 3585963, at *14. As Cicippio-Puleo instructed, "the Supreme Court has declined to construe statutes to imply a cause of action where Congress has not expressly provided one." 353 F.3d at 1033.

Some courts have found jurisdiction and a cause of action under §1605A and, in so doing, have noted that because § 1605A(c) incorporates the elements required to waive the foreign state's immunity and vest the court with subject matter jurisdiction under section 1605A, "liability under section 1605A(c) will exist whenever the jurisdictional requirements of section 1605A are met." Calderon-Cardona v. Democratic People's Republic of Korea, 723 F. Supp. 2d 441, 460 (D.P.R. 2010); see also Kilburn v. Islamic Republic of Iran, 699 F. Supp. 2d 136, 155 (D.D.C. 2010) (explaining that the elements of immunity and liability are "essentially the same [under the new amendments] in that § 1605A(a)(1) must be fulfilled to demonstrate that a plaintiff has a cause of action" under § 1605A(c)); Murphy v. Islamic Republic of Iran, 740 F. Supp. 2d 51, 72 (D.D.C. 2010) (analyzing liability and jurisdiction together); Brewer, 664 F. Supp. 2d at 52 ("[I]f immunity is waived, the Act provides for economic damages, solatium, pain and suffering, and punitive

damages."); Gates v. Syrian Arab Republic, 580 F. Supp. 2d 53, 64-69 (D.D.C. 2008) (analyzing liability under the same elements required for jurisdiction and finding liability where extrajudicial killing and material support elements satisfied). But that is not true here. In each of those cases, the claimants fit within the four categories of individuals who are explicitly provided a cause of action under § 1605A(c) of the statute. The elements for a waiver of immunity and for liability, then, may indeed be the same. But not for individuals who do not fit within the four categories listed in § 1605A(c). See Estate of Doe, 2011 WL 3585963, at *15.

Hence, those plaintiffs who are foreign national family members of victims of the terrorist attacks in Nairobi and Dar es Salaam lack a federal cause of action. Nonetheless, they may continue to pursue claims under applicable state and/or foreign law. Although § 1605A created a new federal cause of action, it did not displace a claimant's ability to pursue claims under applicable state or foreign law upon the waiver of sovereign immunity. See Estate of Doe, 2011 WL 3585963, at *15 (citing Simon, 529 F.3d at 1192). Indeed, plaintiffs injured or killed as a result of state-sponsored terrorist attacks have pursued claims under both the federal cause of action and applicable state law, and are precluded only from seeking a double recovery. See id.

C. Choice of Law

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. Federal courts addressing FSIA claims in the District of Columbia apply the choice of law rules of the forum state. Oveissi v. Islamic Republic of Iran, 573 F.3d 835, 840 (D.C. Cir. 2009); Dammarell, 2005 WL 756090, at *18. This Court will therefore look to the choice of law rules of the District of Columbia in this case.

Under District of Columbia choice of law rules, the court must first determine whether a

conflict exists between the law of the forum and the law of the alternative jurisdiction. If there is no true conflict, the court should apply the law of the forum. See USA Waste of Md. Inc. v. Love, 954 A.2d 1027, 1032 (D.C. 2008) ("A conflict of laws does not exist when the laws of the different jurisdictions are identical or would produce the identical result on the facts presented."). If a conflict is present, the District of Columbia employs a "'constructive blending' of the 'government interests' analysis and the 'most significant relationship' test" to determine which law to apply. Oveissi, 573 F.3d at 842; Dammarell, 2005 WL 756090, at *18 (citation omitted).

In Dammarell, an FSIA case that involved the 1983 bombing of the U.S. embassy in Beirut, Lebanon, this Court explained that "under the governmental interests analysis as so refined, we must evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be most advanced by having its law applied to the facts of the case under review." 2005 WL 756090, at *18. For the "'most significant relationship' component of the analysis, the D.C. Court of Appeals directs courts to section 145 of the Restatement of the Conflict of Laws, which identifies four relevant factors: (i) 'the place where the injury occurred'; (ii) 'the place where the conduct causing the injury occurred'; (iii) 'the domicile, residence, nationality, place of incorporation and place of business of the parties'; and (iv) 'the place where the relationship, if any, between the parties is centered.'" Id. (citing Restatement (Second) of Conflict of Laws § 145 (1971)). The Restatement also references the "needs of the interstate and the international systems, the relevant policies of the forum, the relevant policies of other interested states, certainty, predictability and uniformity of result, and ease in the determination and application of the law to be applied." Id.; see also Oveissi, 573 F.3d at 842; Estate of Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229, 266 (D.D.C. 2006). As a general rule, the law of the forum governs, "unless the foreign state has a greater interest in the controversy."

Kaiser-Georgetown Cmty. Health Plan v. Stutsman, 491 A.2d 502, 509 (D.C. 1985).

Three conceivable choices of law are presented in this case: the law of the forum state (the District of Columbia), the laws of the place of the tort (Kenya and Tanzania), or the law of the domicile state or country of each plaintiff (including domestic and foreign locations). See Dammarell, 2005 WL 756090, at *18. In previous FSIA terrorism cases involving U.S. citizen plaintiffs, this Court ruled that the law of the domicile state of each plaintiff should provide the rule of decision, noting each state's interest in the welfare and compensation of the surviving family members of individuals killed in the terrorist attacks. See id. at *21 (citing cases). Here, as in Estate of Doe, the choice of law analysis pertains only to non-U.S. national family members of victims of the terrorist attacks (who lack a federal cause of action), and the balance of interests suggests a different outcome from the FSIA cases involving U.S. citizen plaintiffs.

Consistent with Dammarell and other FSIA cases, United States domestic law remains more appropriate in state-sponsored terrorism cases than foreign law. Furthermore, in light of the 2008 amendments to FSIA that seek to promote uniformity and extend access to U.S. federal courts to foreign national immediate family members of victims of terrorism, the law of the forum state, the District of Columbia, should provide the rule of decision.

1. Domestic Law

As in Dammarell, the choice of law analysis here points away from the place of the injury, and toward applying the laws of a United States forum. First, no clear conflict of law is present between the laws of the forum (District of Columbia) and the laws of Kenya and Tanzania. Like District of Columbia law, Kenyan law allows immediate family members to recover for their emotional distress. See Pl.'s Att. B, Kenyan Legal Opinion. Tanzanian law also permits immediate family members to recover for some emotional injuries. Tanzanian Probate and

Administration of Estates Act, ¶ 33 (Lexis 2010). When "the laws of the different jurisdictions . . . would produce the identical result on the facts presented," USA Waste, 954 A.2d at 1032, it tilts the balance of this Court's choice of law analysis towards domestic law.

Second, to the extent that United States law and the law of Kenya and Tanzania (or another foreign jurisdiction) conflict, the District of Columbia's "governmental interests" choice of law test in state-sponsored terrorism cases strongly favors the application of United States law over foreign law. Although "[t]he law of a foreign country has provided the cause of action in some cases arising out of mass disasters that occurred on foreign soil," Dammarell, 2005 WL 756090, at *19 (citing Harris v. Polskie Linie Lotnicze, 820 F.2d 1000, 1004 (9th Cir. 1987) (applying Polish law to airplane crash occurring in Poland), and Barkanic v. Gen. Admin. of Civil Aviation of the People's Republic of China, 923 F.2d 957, 962-64 (2d Cir. 1991) (applying Chinese law to airplane crash occurring in China)), such a result is less appropriate in state-sponsored terrorism-related cases. In terrorism cases, "[t]he United States has a unique interest in having its domestic law — rather than the law of a foreign nation — used in the determination of damages in a suit involving such an attack." Holland v. Islamic Republic of Iran, 496 F. Supp. 2d 1, 22 (D.D.C. 2005) (citing Restatement (Third) of Foreign Relations Law § 402(3) (1987)).

Here, just as in Dammarell, "the particular characteristics of this case heighten the interests of a domestic forum and diminish the interest of the foreign state. The injuries in this case are the result of a state-sponsored terrorist attack on a United States embassy and diplomatic personnel. The United States has a unique interest in its domestic law, rather than the law of a foreign nation, determining damages in a suit involving such an attack." Dammarell, 2005 WL 756090, at *20; see also Restatement (Third) of Foreign Relations Law § 402(3) (1987) (recognizing that the United States has an interest in projecting its laws overseas for "certain conduct outside its territory by

persons not its nationals that is directed against the security of the state or against a limited class of other state interests"). These considerations "elevate the interests of the United States to nearly its highest point." Dammarell, 2005 WL 756090, at *20; see also Kaiser-Georgetown Cmty. Health Plan, 491 A.2d at 509 n.10 (suggesting that unless a foreign state has a greater interest in the application of its law than the forum state, the interests of efficiency only serve to further "tilt the balance in favor of applying the law of the forum state"). Hence, the "governmental interest" prong of the District of Columbia choice of law analysis counsels against applying the law of Kenya and Tanzania, or other foreign laws, and suggests that domestic law should control. Cf. Estate of Doe, 2011 WL 3585963, at *17.

2. District of Columbia Law

In addition to the strong governmental interest in applying United States law in this case, the interests of uniformity of decision among the foreign national family members points to the application of the law of the forum. Most of these plaintiffs are domiciled in Kenya and Tanzania, although some are domiciled in other countries. In previous FSIA decisions, this Court has applied the laws of the several domiciliary states. See, e.g., Dammarell, 2005 WL 756090, at *21. Here, however, the interests of uniformity provided by the law of the forum state, which also has a significant interest in the underlying events, provides the most appropriate choice of law for all foreign national family members who lack a federal cause of action. See Kaiser-Georgetown Cmty. Health Plan, 491 A.2d at 509 n.10 ("'The forum State's interest in the fair and efficient administration of justice' together with the 'substantial savings [that] can accrue to the State's judicial system' when its judges are 'able to apply law with which [t]he[y are] thoroughly familiar or can easily discover,' tilt the balance in favor of applying the law of the forum." (quoting Allstate Ins. Co. v. Hague, 449 U.S. 302, 326 & n.14 (1981)).

In the recent amendments to the FSIA, Congress has sought to strengthen enforcement of United States terrorism laws and to extend their protections to foreign nationals who are employees of United States embassies targeted by terrorists and their immediate family members, as well as to correct the problem of disparity among the various state laws regarding recovery of emotional distress by family members. See Estate of Doe, 2011 WL 3585963, at *18. As discussed above, Congressional desire to promote uniformity does not, by itself, create a federal cause of action for non-United States national family members where the statutory text fails to do so. But efficiency and uniformity are appropriate and meaningful factors in a choice of law analysis. Without doubt, applying District of Columbia law will provide greater uniformity of result, as individual plaintiffs domiciled in different states and foreign nations will all be subject to the same substantive law. Although "the D.C. Court of Appeals has emphasized that concerns of uniformity and familiarity cannot prevail when another location otherwise has 'a significantly greater interest than does the District' in the cause of action," Dammarell, 2005 WL 756090, at *20 (citing Mims v. Mims, 635 A.2d 320, 324-25 (D.C. 1993)), the recent amendments — and the stated goal of those amendments to promote uniformity — serve to increase the interest in applying District of Columbia substantive law to this case.

The District of Columbia's connection to the terrorist attacks in this case further supports this choice of law conclusion. To be sure, the 1998 embassy bombings took place in Kenya and Tanzania, the nationalities and domiciles of the various victims and plaintiffs are disparate and varied, and the defendants have no connection to the United States. But a unifying factor in this case is that all of plaintiffs' claims derive from employment with a federal agency headquartered in the District of Columbia, the seat of the federal government. The application of District of Columbia substantive law best promotes the United States' interest in applying domestic law rather

than the law of a foreign nation, Congress's intent to promote uniformity of result, and the District of Columbia's real connection to the attacks in this case. See Estate of Doe, 2011 WL 3585963, at *19. Hence, this Court will apply the law of the District of Columbia to plaintiffs' claims that do not arise under the federal cause of action at § 1605A(c).

III. CONCLUSION

For the foregoing reasons, final judgment on liability will be entered in favor of plaintiffs and against defendants. Plaintiff's claims, under federal[3] or state law, will be referred to a special master, who will receive evidence and prepare proposed findings and recommendations for the disposition of each individual claim in a manner consistent with this opinion. A separate order will be issued on this date.

/s/

JOHN D. BATES
United States District Judge

Dated: November 28, 2011

3 For plaintiffs' federal claims under § 1605A(c), "[t]he Court is presented with the difficulty of evaluating these claims under the FSIA-created cause of action, which does not spell out the elements of these claims that the Court should apply." Valore, 700 F. Supp. 2d at 75. Hence, the Court "is forced . . . to apply general principles of tort law — an approach that in effect looks no different from one that explicitly applies federal common law"; but "because these actions arise solely from statutory rights, they are not in theory matters of federal common law." Heiser, 659 F. Supp. 2d at 24; see also Bettis v. Islamic Republic of Iran, 315 F.3d 325, 333 (D.C. Cir. 2003) (discussing that the term "federal common law" under the FSIA "seems to us to be a misnomer" because "these actions are based on statutory rights"). District courts thus look to Restatements, legal treatises, and state decisional law "to find and apply what are generally considered to be the well-established standards of state common law, a method of evaluation which mirrors — but is distinct from — the 'federal common law' approach." Heiser, 659 F. Supp. 2d at 24.

Annex 35

***Peterson, et al. v. Islamic Republic of Iran, et al.*, U.S. District Court for the Southern District of New York, Defendant Bank Markazi's Memorandum of Law in Support of its Motion to Dismiss, 15 March 2012, Case No. 10 civ 4518 (BSJ)**

Excerpts: p. 1, pp. 10-13 & pp. 19-26

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, et al.,

Defendants.

Case No. 10 CIV 4518 (BSJ)

FILED UNDER SEAL

CONTAINS CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE ORDER

DEFENDANT BANK MARKAZI'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS THE SECOND AMENDED COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

David M. Lindsey
James M. Hosking
Andreas A. Frischknecht
Yasmine Lahlou

CHAFFETZ LINDSEY LLP
505 Fifth Avenue, 4th Floor
New York, NY 10017
Tel. (212) 257-6960
Fax (212) 257-6950
www.chaffetzlindsey.com

March 15, 2012

Attorneys for Defendant Bank Markazi

{00111132;v1}

Defendant Bank Markazi ("Bank Markazi" or "the Bank"), the Central Bank of Iran, respectfully submits this Memorandum of Law in support of its Motion pursuant to Fed. R. Civ. P. 12(b)(1) (the "Motion") to dismiss the Second Amended Complaint dated December 7, 2011 (the "Complaint") and all Cross-Claims asserted by any Third Party Respondent (as defined in the Court's November 29, 2011 Scheduling Order, Dkt. # 157) in this action (the "Turnover Action") for lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act (the "FSIA" or the "Act"), 28 U.S.C. §§ 1602-1611.

PRELIMINARY STATEMENT

At stake in this Turnover Action are over $1.75 billion in assets (the "Restrained Bonds") that have been restrained at Citibank N.A. ("Citibank") in New York since June 2008. The Restrained Bonds consist of security entitlements of Clearstream Banking, S.A. ("Clearstream") with Citibank relating to an investment by Bank Markazi in certain sovereign and supranational bonds. It is undisputed that the Restrained Bonds were held, through Clearstream and UBAE SpA ("UBAE"), for the ultimate benefit of Bank Markazi such that Bank Markazi has a beneficial ownership interest in those assets.

As the Court is aware, President Obama signed an Executive Order on February 5, 2012 blocking all property and "interests in property" of Bank Markazi in the United States. As Bank Markazi unquestionably has an interest in the Restrained Bonds, those assets have now been blocked. Pursuant to the Executive Order, the Executive Branch has *control* of the Restrained Bonds, but the Executive Order had no impact on *ownership* of those assets.

Both Clearstream's pending December 22, 2011 Motion to Vacate the Restraints ("Clearstream's Motion") and the instant Motion raise threshold issues the Court will need to determine before this Turnover Action can proceed, as a matter of law. If the Court grants either

{00111132;v1}

motion, this case will be at an end and the Restrained Bonds will remain exactly where they are now—frozen at Citibank—pending further action by the President.

Clearstream's Motion goes to the issue of ownership. Specifically, Clearstream demonstrates that under Article 8 of the New York Uniform Commercial Code ("UCC"), the security entitlements that have been restrained (and now blocked) in New York are not attachable because they are not *Bank Markazi's* entitlements vis-à-vis Clearstream, they are *Clearstream's* entitlements vis-à-vis Citibank. If the Court grants Clearstream's Motion on that basis and determines that no attachable property interest of Bank Markazi is present in the United States, then it need not reach the principal issue addressed in *this* Motion, namely the immunity of the Restrained Bonds from attachment and execution under section 1611(b)(1) of the FSIA.

Plaintiffs have taken the position that the blocking of the Restrained Bonds pursuant to the Executive Order "moots" all of the arguments that Clearstream and Bank Markazi have raised because Plaintiffs now have an automatic right to seize those assets under section 201 of the Terrorism Risk Insurance Act of 2002 ("TRIA"). Plaintiffs' position is incorrect for at least three reasons. *First,* Clearstream's Motion remains dispositive of Plaintiffs' claims in this Turnover Action because TRIA section 201, on its face, applies only to the "blocked *assets of*" Bank Markazi. Thus, the Court will need to determine whether Bank Markazi actually owns the Restrained Bonds under the UCC—the precise issue addressed in Clearstream's Motion.

Second, should the Court conclude, contrary to Clearstream's argument, that Bank Markazi *actually owns* the Restrained Bonds, the Court will then need to determine whether subject matter jurisdiction exists under the FSIA. More specifically, the Court will need to determine whether the Restrained Bonds are immune from attachment and execution under

section 1611(b)(1) of the FSIA. As demonstrated in this Motion, the heightened immunity of central bank property under that provision of the FSIA overrides any claim Plaintiffs may have under TRIA section 201.

The United States Court of Appeals for the Second Circuit has determined that where, as here, "funds are held in an account in the name of a central bank or monetary authority, the funds *are presumed to be immune* from attachment under § 1611(b)(1)." *NML Capital, Ltd. v. Banco Central de la República Argentina,* 652 F.3d 172, 194 (2d Cir. 2011) (emphasis added).

The only way Plaintiffs could overcome that presumption is *"by demonstrating with specificity"* that the Restrained Bonds "are not being used for central banking functions as such functions are normally understood." *Id.* (emphasis added). Not only have Plaintiffs failed to meet that burden here, but the allegations in the Complaint are in fact *consistent with* Bank Markazi's use of the Restrained Bonds as an investment of the Bank's foreign currency reserves—a classic central banking function.

Third, Plaintiffs' claim under TRIA section 201 fails for the additional reason that application of section 201 in the circumstances presented here would violate the Treaty of Amity between the United States and Iran. The United States Supreme Court has instructed that a statute should not be deemed to abrogate existing United States treaty obligations absent a clear expression of congressional intent to override the treaty. TRIA section 201 evidences no such congressional intent.

For all of these reasons and the additional reasons discussed below, the Complaint must be dismissed.

PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiffs' Underlying Judgment Against Iran

Plaintiffs are judgment creditors with respect to a $2.65 billion default judgment they obtained against the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS") in the United States District Court for the District of Columbia. On May 30, 2003, Judge Royce Lamberth of that court entered judgment on liability against Iran and MOIS pursuant to former section 1605(a)(7) of the FSIA for providing material support to Hezbollah in connection with the bombing of the United States Marine barracks in Beirut, Lebanon on October 23, 1983. *See Peterson v. Islamic Republic of Iran,* 264 F. Supp. 2d 46 (D.D.C. 2003). Judge Lamberth later entered a September 7, 2007 judgment in favor of Plaintiffs in the aggregate amount of $2,656,944,877.00 and allocated the amount awarded among the individual Plaintiffs. Compl. Ex. B.

There was never any allegation in the underlying action in the District of Columbia, nor is there any allegation in the present Complaint, that Bank Markazi played any role in the bombing of the United States Marine barracks in Beirut in 1983.

B. Plaintiffs' Enforcement Proceeding

In response to a subpoena from the Plaintiffs, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") disclosed to Plaintiffs on June 11, 2008 that it was in receipt of information indicating *inter alia* that "Clearstream has an Iranian government client that has a beneficial ownership interest in assets custodied in the United States," and that "Clearstream has a sub-custodial account in the United States with Citibank[.]" Compl. Ex. C, at 2. The assets that were the subject of OFAC's disclosure consisted of U.S. dollar-denominated security entitlements with an aggregate face value of $2.003 billion. *Id.*

production, the Complaint will be subject to dismissal as a matter of law. *See, e.g., Orkin v. Swiss Confederation*, 770 F. Supp. 2d 612, 616 (S.D.N.Y. 2011), *aff'd*, 444 Fed. Appx. 469 (2d Cir. 2011) ("conclusory assertions *of fact or law*" are insufficient to avoid dismissal for lack of subject matter jurisdiction under the FSIA) (emphasis added).

Nor may Plaintiffs forestall dismissal by claiming that they require discovery from Bank Markazi. Plaintiffs may seek discovery from Bank Markazi *"only* to verify allegations of *specific facts crucial to an immunity determination." EM Ltd. v. Republic of Argentina*, 473 F.3d 463, 486 (2d Cir. 2007) (emphasis added). Here, however, Bank Markazi's Motion demonstrates that on the face of the Complaint, the Restrained Bonds are immune from attachment and execution under the FSIA. Accordingly, Plaintiffs are not entitled to any discovery from Bank Markazi.[8]

II. Plaintiffs' Claim Pursuant To TRIA Section 201 Fails Because The Restrained Bonds Are Not "Assets Of" Bank Markazi

As previously stated, "[a]ll property *and interests in property*"[9] of Bank Markazi in the United States have been blocked as of February 6, 2012 pursuant to Executive Order No. 13599, which President Obama issued pursuant to his statutory authority under, *inter alia*, the NDAA and IEEPA. Accordingly, the Restrained Bonds are now blocked, as Bank Markazi unquestionably has an "interest in" those assets.

8 *See Sniado v. Bank Austria AG*, No. 00-cv-9123 (AGS), 2001 WL 812236, at *1 (S.D.N.Y. July 18, 2001) ("Discovery is not necessary for a party opposing a facial challenge to subject matter jurisdiction."); *Berces v. Debrecen Tartositoipari Kombinat*, No. 94 Civ 3381 (KMW), 1995 WL 640486, at *1 (S.D.N.Y. Oct. 31, 1995) (claims against a sovereign instrumentality "must be dismissed without allowance of even limited discovery" where a "facial attack [on subject matter jurisdiction under the FSIA] succeeds"); *Gabay v. Mostazafan Foundation of Iran*, 151 F.R.D. 250, 255 (S.D.N.Y. 1993) (a plaintiff's claim may be "so legally insufficient that he is precluded from discovery as a matter of law").

9 Executive Order, §§ 1(a) & 1(b) (emphasis added).

Bank Markazi's "interest in" the Restrained Bonds, however, is not dispositive under TRIA section 201. Instead, the Restrained Bonds are subject to attachment and execution under TRIA section 201 only if they are "assets of" Bank Markazi. Whether the Restrained Bonds are "assets of" Bank Markazi turns on whether the Bank *owns* those assets. Clearstream's Motion addresses that issue.[10]

Bank Markazi has consistently maintained that it has a *beneficial* ownership interest in the Restrained Bonds. Indeed, it is undisputed that the Restrained Bonds "are held ultimately for the benefit of Bank Markazi."[11] This does not mean, however, that Bank Markazi is the *owner* of those assets.

As Clearstream has demonstrated, Bank Markazi is not in fact the owner of the Restrained Bonds, which are *Clearstream's* security entitlements vis-à-vis Citibank. Bank Markazi's property—in the form of the Bank's security entitlements vis-à-vis Clearstream—is located in Luxembourg. Both under New York law (including Article 8 of the UCC) and Luxembourg law, no property interest *of Bank Markazi* exists in the United States.[12] And Bank Markazi's property interest in Luxembourg is not attachable in any event under the FSIA, which

---

[10] Importantly, at the time Bank Markazi filed its May 11, 2011 Motion to Dismiss Plaintiffs' First Amended Complaint, the Bank did not yet have access to the filings under seal in the related Enforcement Proceeding, *Peterson v. Islamic Republic of Iran,* Case. No. 18 Misc. 302 (S.D.N.Y.), including Clearstream's arguments in support of its then-pending Motion to Vacate the Restraints. The reason Bank Markazi did not have access to those filings is because *Plaintiffs objected* to the Bank's request for access.

Since it did not have access to, and was not aware of, Clearstream's arguments (or Plaintiffs' arguments in response), Bank Markazi expressly reserved its right to amend or supplement its arguments based on "any newly discovered facts and circumstances" and/or "any additional arguments [by Plaintiffs] purportedly derived from the filings under seal." *See* Bank Markazi's May 11, 2011 Memorandum of Law in Support of Its Motion to Dismiss the Amended Complaint for Lack of Subject Matter Jurisdiction, at p. 7 n.3.

Under these circumstances, any attempt by Plaintiffs to question Bank Markazi's reliance on Clearstream's arguments in *this* Motion would be disingenuous at best and must be rejected.

[11] Clearstream Br. at 21.

[12] *See id.* at 30-38.

contains no exception to immunity for the property of a sovereign party located outside the United States.[13]

In sum, as discussed below, the Restrained Bonds are not "assets of" Bank Markazi for purposes of TRIA section 201 because the Bank does not *actually own* those assets under applicable law. The Complaint must be dismissed.

A. The Blocking Of The Restrained Bonds Pursuant To The Executive Order Transferred *Control*—But Not *Ownership*—Of Those Assets To The Executive Branch

The freezing or blocking of property by the Executive Branch "transfers *possessory* interest in the property." *Smith ex rel. Estate of Smith v. Federal Reserve Bank of New York,* 346 F.3d 264, 272 (2d Cir. 2003) (emphasis in original). However, such freezing or blocking has no impact on *ownership* of the property. *See id.* As the United States Supreme Court stated in *Dames & Moore v. Regan,* 453 U.S. 654, 673 (1981), "the congressional purpose in authorizing blocking orders is to put control of foreign assets in the hands of the President[.]" *Id.* (internal quotation and citation omitted). In contrast, "the IEEPA does not give the President the power to 'vest' or to take title to the assets." *Id.* at 672 n.5.

In keeping with the nature and effect of blocking as just described, the Executive Order here provides that all "property and interests in property" of Bank Markazi in the United States "may not be transferred, paid, exported, withdrawn or otherwise dealt in."[14] As a result, the

[13] *See id.* at 38-40. *See, e.g., Fidelity Partners, Inc. v. Philippine Export and Foreign Loan Guarantee Corp.,* 921 F. Supp. 1113, 1119 (S.D.N.Y. 1996) ("Under the FSIA, assets of foreign states located outside the United States retain their traditional immunity from execution to satisfy judgments entered in United States courts.").

[14] Executive Order, §§ 1(a) & 1(b). The Executive Order further provides for the blocking of any property "within the possession or control of any United States person." *Id.* The Executive Order defines the term "United States person" to mean "any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States." Executive Order, §7(c). The NDAA includes a separate definition of the term "United States person" as "(A) a natural person who

Executive Branch now has *control* of the Restrained Bonds. The Executive Order, however, does not impact the *ownership* of those assets. In other words, whoever owned the Restrained Bonds as of February 4, 2012—the day before President Obama signed the Executive Order—continues to own those assets today.

B. The Restrained Bonds Are Not "Assets Of" Bank Markazi

Section 201 of TRIA, Pub. L. No. 107-297, Title II, § 201, 116 Stat. 2337 (2002) (codified as a note to section 1610 of the FSIA), provides no basis for the seizure of the Restrained Bonds because that provision applies only to "blocked *assets of*" a terrorist party. Subsection (a) of section 201 provides in pertinent part:

> 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 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 (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.

---

is a citizen or resident of the United States or a national of the United States . . . and (B) an entity that is organized under the laws of the United States or a jurisdiction within the United States." NDAA § 1245(h)(3).

Plaintiffs claim, in opposition to Clearstream's Motion to Vacate the Restraints, that Clearstream must be deemed a "United States person" under the Executive Order because there are purportedly "extensive contacts between Clearstream and the United States." *See* Plaintiffs' March 12, 2012 Opposition to Clearstream's Renewed Motion to Vacate Restraints, at 22-24. On that basis, Plaintiffs claim that Clearstream is "subject to the jurisdiction of the United States" under section 1702(a)(1)(B) of IEEPA, 50 U.S.C. § 1702(a)(1)(B).

Plaintiffs cite no support for this assertion, and it is incorrect as a matter of law. It is undisputed that Clearstream "is a banking corporation organized under the laws of [the] Grand Duchy of Luxembourg" maintaining "operational centres in Luxembourg, Germany and Singapore." Compl. ¶ 40. Therefore, Clearstream is not a "United States person." *See, e.g., Glen v. Club Méditerranée S.A.*, 365 F. Supp. 2d 1263, 1273-74 (S.D. Fla. 2005) (rejecting argument that French corporation having its principal place of business in France was "subject to the jurisdiction of the United States" for purposes of the Cuban Assets Control Regulations and deeming irrelevant plaintiffs' allegation that the French corporation engaged in "substantial business in the United States").

28 U.S.C. §1610, note regarding "Treatment of Terrorist Assets" (emphasis added).[15]

1. <u>The Restrained Bonds Cannot Be Deemed "Assets Of" Bank Markazi Unless the Bank Actually Owns Those Assets</u>

Only assets *actually owned by* Bank Markazi qualify as "assets of" Bank Markazi under TRIA section 201.

> The plain language of TRIA § 201 requires *both* that the [assets in question] be "blocked assets" and that these blocked assets be "of that terrorist party." . . . . The Supreme Court has determined that "the use of the word 'of' denotes ownership." For [a blocked asset] to be attachable, then, [the terrorist party] must actually *own* it.

Calderon-Cardona v. JP Morgan Chase Bank, N.A., --- F. Supp. 2d ----, No. 11 Civ. 3283 (DLC), 2011 WL 6155987, at *8 (S.D.N.Y. Dec. 7, 2011) (emphasis in original) (quoting *Board of Trustees of the Leland Stanford Junior University v. Roche Molecular Systems, Inc.*, --- U.S. ----, 131 S.Ct. 2188, 2196 (2011)); *see also Rubin v. Islamic Republic of Iran,* 541 F. Supp. 2d 416, 420 (D. Mass. 2008) ("TRIA permits judgment creditors to levy on blocked assets. . . . Obviously, in order to succeed in the levy, the judgment creditor would have to establish that the property may be taken on execution *because it belongs to* the judgment debtor.") (emphasis added).

The position of the United States Government on this issue is clear: "The plain meaning of the phrase 'of that terrorist party' [in TRIA section 201] clearly requires ownership on the part of that terrorist party; the statute's text does not support attachment of assets that do not belong to the 'terrorist party.'" Statement of Interest of the United States of America in Response to Petitioners' Motion for Immediate Turnover of Funds ("Statement of Interest of the United

[15] By its plain terms, subsection (a) of TRIA section 201 does not allow for the recovery of punitive (as opposed to compensatory) damages. *See id.* (". . . to the extent of any *compensatory damages* for which such terrorist party has been adjudged liable.") (emphasis added).

States"), *Rux v. ABN Amro Bank NV*, 08 Civ. 6588 (AKH) (S.D.N.Y.) (Dkt. # 185, filed on Jan. 12, 2009) at 10-11.[16] Therefore, "any attempt to attach more than the [terrorist party]'s interest in any particular property would appear to exceed TRIA's scope." *Id.* at 11.

Not only is the Government's position supported by the plain text of section 201, it also avoids the "absurd results" that would ensue if there were no requirement of ownership. *Calderon,* 2011 WL 6155987, at *11. Indeed, if there were no such requirement, TRIA section 201 would "allow attachment of assets with only the most tangential relationship to [the terrorist state]." *Id.*

Here, the Restrained Bonds have been blocked pursuant to the Executive Order because Bank Markazi has an "interest" in that property. However, "[t]he terms 'interest' and 'title' are clearly not synonymous." *Bank of New York v. Norilsk Nickel*, 14 A.D. 3d 140, 147 (1st Dep't 2004). Thus, the Executive Order "block[s] assets based on interests in property and the use to which such property was put, *not based on who own[s] the property in question.*"[17]

Like the executive order and accompanying regulations at issue in *Norilsk Nickel,* the purpose of the Executive Order here is to "impede[] movement" of the Restrained Bonds by requiring that those assets remain exactly where they are now—frozen at Citibank in New York. *Id.* at 146. It does not follow, however, that the Restrained Bonds are available for distribution to Plaintiffs under TRIA section 201 because "TRIA's plain language dictates that not all 'blocked assets' are attachable." *Calderon,* 2011 WL 6155987, at *14.

Unlike Judge Cote in *Calderon,* two other courts in this district have rejected the United States Government's stated position that attachment and execution under TRIA section 201

[16] The Statement of Interest of the United States is attached as Exhibit C to the Lindsey Declaration.

[17] *Id.* (discussing executive order and accompanying OFAC regulations providing for the blocking of property and interests in property of certain entities affiliated with the former nation of Yugoslavia) (emphasis added).

requires actual ownership of the assets in question. Thus, in *Hausler v. JPMorgan Chase Bank, N.A.*, 740 F. Supp. 2d 525 (S.D.N.Y. 2010), the court declined "[t]o treat the Executive Branch's statutory interpretation of TRIA as controlling" based on a finding that Congress intended TRIA "to provide terrorism victims with ample avenues to compensation for acts perpetrated by state sponsors of terrorism." *Id.* at 537.[18] *Accord. Levin v. Bank of New York*, No. 09 CV 5900 (RPP), 2011 WL 812032, at *16 (S.D.N.Y. Mar. 4, 2011) (discussing TRIA's "remedial purpose").

Respectfully, however, that reasoning is not persuasive. However "ample" the rights of judgment creditors under TRIA section 201 may be, they are plainly not without limitations.[19] Among those limitations is the requirement imposed by the plain text of section 201 that in order to be attachable, the blocked assets must be "assets of" the terrorist party.

Indeed, as Judge Cote noted, if Congress had intended to make *all* blocked assets available for distribution to judgment creditors under TRIA section 201 regardless of ownership, Congress easily could have done so by providing that "'blocked assets in which that terrorist party has any property interest' or 'all assets blocked pursuant to OFAC sanctions regulations targeting that terrorist party'" are subject to attachment and execution. *Calderon*, 2011 WL 6155987, at *12. But that is not what section 201 says. Instead, section 201 "allows for

---

[18] In another, recent opinion in the same case, Judge Marrero reaffirmed this broad interpretation of the scope of TRIA section 201. *See Hausler v. JPMorgan Chase Bank, N.A.*, --- F.Supp.2d ----, 2012 WL 601034 (S.D.N.Y. Feb. 22, 2012).

[19] The excerpt from a statement by Senator Tom Harkin, the sponsor of TRIA section 201, that the *Hausler* court cited to support its conclusion that all blocked assets are attachable under TRIA is not to the contrary. In his statement, Senator Harkin criticized what he described as the Executive Branch's policy of "[h]olding the *blocked assets of* state sponsors of terrorism in perpetuity" rather than making those assets available to "compensate American victims of terrorist attacks." *Hausler*, 740 F. Supp. 2d 525 at 538 n.13 (emphasis added, quoting 148 Cong. Rec. S11528 (Statement of Senator Harkin)).

In any event, "[t]he remarks of a single legislator, even the sponsor, are not controlling in analyzing legislative history." *Chrysler Corp. v. Brown*, 441 U.S. 281, 311 (1979).

attachment only of 'blocked assets *of that terrorist party.*'" *Id.* (quoting TRIA section 201(a), emphasis in original).

2. New York Law Determines Whether The Restrained Bonds Are "Assets Of" Bank Markazi

The Second Circuit has instructed that "[i]n the absence of a superseding federal statute or regulation, state law generally governs the nature of any interests in or rights to property that an entity may have." *Export-Import Bank of the United States v. Asia Pulp & Paper Co.,* 609 F.3d 111, 117 (2d Cir. 2010). The key test is whether a federal statute such as TRIA section 201 "itself creates . . . property rights" or instead "merely attaches consequences, federally defined, to rights created under state law." *Id.* (quoting *United States v. Craft,* 535 U.S. 274, 278 (2002)). TRIA falls into the latter category.

As Judge Cote found in *Calderon,* "[n]owhere in TRIA is there a definition of 'property' or 'property ownership,' or any other indication that the statute intends to create a special regime of federal property interests or rights." *Calderon,* 2011 WL 6155987, at *9. TRIA section 201 thus "provides no guidance for determining *which blocked assets* are 'of that terrorist party.'" *Id.* at *10 (emphasis added).

Accordingly, "[section 201 of] TRIA does not pre-empt New York law." *Id.* at *9. Nor does the Executive Order itself pre-empt New York law, as it does not purport to define "property *ownership.*" *See id.* at *12 (emphasis in original). Nothing in the Executive Order "impl[ies] that simply because a certain piece of 'property' or 'property interest' is blocked pursuant to the sanctions regime [against Bank Markazi], it therefore belongs to [Bank Markazi]." *Id.*

In other words, "federal and state law d[o] not conflict at all; they simply address[] different issues." *Norilsk Nickel*, 14 A.D. 3d at 147. Thus, "there are no 'conflicting portions' of

{00111132;v1}

Annex 36

***Davis, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security,* U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 30 March 2012, Case No. 07-cv-1302**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAROLYN DAVIS, *et al.*,	)	
Plaintiffs,	)	
v.	)	07-cv-1302 (RCL)
ISLAMIC REPUBLIC OF IRAN, *et al.*,	)	
Defendants.	)	

MEMORANDUM OPINION

I. Introduction

This action arises out of the devastating 1983 bombing of the U.S. Marine barracks in Beirut, Lebanon. The attack decimated the facility, killed 241 U.S. servicemen and left countless others wounded. Various affected servicemen and family members now bring suit against defendants Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS"). Their action is brought pursuant to the state-sponsored exception to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1602 et seq., which was enacted as part of the National Defense Authorization Act for Fiscal Year 2008 ("NDAA"). Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338–44 (2008). That provision, codified at 28 U.S.C. § 1605A, provides "a federal right of action against foreign states" that sponsor terrorist acts. *Haim v. Islamic Republic of Iran*, 784 F. Supp. 2d 1, 4 (D.D.C. 2011) (quoting reference omitted).

II. Liability

On February 1, 2010, this Court took judicial notice of the findings of fact and conclusions of law in *Peterson v. Islamic Republic of Iran* and *Boulos v. Islamic Republic of Iran*, which also concern the Marine barracks bombing, and entered judgment in favor of the plaintiffs and against Iran and MOIS with respect to all issues of liability. *Davis v. Islamic Republic of Iran*, No. 1:07-cv-01302-RCL, ECF No. 27 (D.D.C. Feb. 2, 2010). This Court then referred this action to a special master for consideration of plaintiffs' claims for damages *Id.*, ECF No. 29. Since the issue of liability has been previously settled, this Court now turns to examine the damages recommended by the special master.

III. 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 (D.D.C. 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 (D.D.C. 2005) (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 II*, *Valore*, *Bland*, *Anderson*, and *O'Brien* 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; *Bland v. Islamic Republic of Iran*, No. 1:05-cv-2124-RCL (D.D.C. Dec. 21, 2011), 2011 WL 6396527; *Anderson v. Islamic Republic of Iran*, No. 1:08-cv-535-RCL (D.D.C. Mar. 20, 2012), 2012 WL 928256; *O'Brien v. Islamic Republic of Iran*, No. 1:06-cv-690-RCL (D.D.C. Mar. 28, 2012), 2012 WL 1021471. However, if 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 at 25 n.26 (citing *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 59 (D.D.C. 2006)). In *Peterson II*, 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.* The Court typically awards $1 million to servicemen who survive a few minutes to a few hours after the bombing. *See Elahi v. Islamic Republic of Iran*, 124 F. Supp. 2d 97, 113 (D.C. 2000). However, "i[f] death was instantaneous there can be no recovery . . . ." *Id.* at 112 (citation omitted). When a serviceman suffers severe emotional injury without physical injury, this Court has typically awarded the victim $1.5 million. *See Valore*, 700 F. Supp. 2d at 85; *Bland*, 2011 WL 6396527 at *3.

Again, this Court ADOPTS all of special master awards for pain and suffering unless otherwise discussed below:

The special master recommends a $5 million pain and suffering award for serviceman Gary Wayne Allison. Report of Special Master Concerning Counts LIII–LVI [ECF No. 76], at 9. Mr. Allison suffered hearing loss and severe PTSD as a result of the bombing. *Id.* at 7. In light of the less severe nature of his physical injuries, while not ignoring his severe emotional injuries, the Court finds a more appropriate pain and suffering award to be $2 million.

The special master recommends a $5 million pain and suffering award for serviceman John W. Nash. Report of Special Master Concerning Counts CXII–CXVI [ECF No. 109], at 31. Mr. Nash was "covered in cuts and bruises by the blast, and coated in gray dust and debris from the building, but [was] otherwise unharmed." *Id.* at 7. In light of the less severe nature of his

physical injuries, while not ignoring his severe emotional injuries, the Court finds a more appropriate pain and suffering award to be $2 million.

The special master recommends a $3 million pain and suffering award for serviceman Charles Simmons. Report of Special Master Concerning Count CLII–CLV [ECF No. 40], at 10. Mr. Simmons was "asleep in his tent with several other motor pool staff at the time of the bombing." *Id.* at 5. While the record reflects that Mr. Simmons suffered severe emotional injuries, it does not reflect that he suffered any physical injury, and therefore the Court finds a more appropriate pain and suffering award to be $1.5 million.

The special master recommends a $5 million pain and suffering award for serviceman Thomas Andrew Walsh. Report of Special Master Concerning Counts CLXV–CLXIX [ECF No. 105], at 19. Mr. Walsh suffered hearing loss and severe PTSD as a result of the bombing. *Id.* at 5–6. In light of the less severe nature of his physical injuries, while not ignoring his severe emotional injuries, the Court finds a more appropriate pain and suffering award to be $2 million.

The special master recommends a $5 million pain and suffering award for serviceman Gerald Wilkes, Jr. Report of Special Master Concerning Counts CLXXV–CLXXIX [ECF No. 112], at 11. While the record reflects that Mr. Wilkes suffered severe emotional injuries, it does not contain any medical evidence that he suffered physical injury, and therefore the Court finds a more appropriate pain and suffering award to be $1.5 million.

The special master recommends a $2 million pain and suffering award for serviceman Michael Corrigan. Report of Special Master Concerning Counts LXX–LXXII [ECF No. 38], at 10. Mr. Corrigan was stationed on the USS Iowa Jima at the time of the attack, but participated extensively in the rescue operations. *Id.* at 4. He later received a 70% VA disability rating. *Id.* at 7. While the record reflects that Mr. Corrigan suffered severe emotional injuries, it does not

reflect that he suffered any physical injury, and therefore the Court finds a more appropriate pain and suffering award to be $1.5 million.

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); *see also Bland*, 2011 WL 6396527, at *4–5. Children of a deceased victim typically receive an award of $3 million, while children of a surviving victim receive $1.5 million. *O'Brien*, 2012 WL 1021471, at *2; *Anderson*, 2012 WL 928256, at *2; *Bland*, 2011 WL 6396527, at *4; *Stern v. Islamic Republic of Iran*, 271 F. Supp. 2d 286, 301 (D.D.C. 2003).

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 (D.D.C. 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 the facts found and recommendations made by the special master concerning solatium awards unless otherwise discussed below:

1. After-Born Children of Surviving Servicemen

The Restatement (Second) of Torts § 46 has traditionally guided this Court in deciding who has standing to recover solatium damages in FSIA § 1605A cases. *See Heiser v. Islamic Republic of Iran (Heiser II)*, 659 F. Supp. 2d 20, 26 (D.D.C. 2009) (Lamberth, C.J.); *Valore*, 700 F. Supp. 2d at 79; *Valencia v. Islamic Republic of Iran*, 774 F. Supp. 2d 1, 14 (D.D.C. 2010) (Lamberth, C.J.); *Reed v. Islamic Republic of Iran*, No. 03-cv-2657 (D.D.C. Feb. 28, 2012) (Urbina, J.), 2012 WL 639139 at *6 n.4. Restatement § 46 states that

> (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.
>
> (2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress
>
> > (a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or
> >
> > (b) to any other person who is present at the time, if such distress results in bodily harm.

In the terrorism context, this Court has strictly interpreted § 46(2)(a)'s "immediate family" requirement while loosely interpreting its "presence" requirement. *Valore*, 700 F. Supp. 2d at 79–80; *Heiser II*, 659 F. Supp. 2d at 28 –29. Thus, nieces, nephews, uncles, aunts, non-adoptive stepparents, and non-adoptive stepchildren generally may not collect solatium damages under FSIA § 1605A. *Valore*, 700 F. Supp. 2d at 79. By contrast, this Court has allowed those who are "functional equivalent of immediate family members" to receive solatium awards. *Id.*

This Court has not yet specifically considered whether FSIA § 1605A(c) allows surviving servicemen's children born after the date of the bombing—October 23, 1983—to collect solatium awards (referred to by the special master and this Court as "after-born children"). The special master found that Iran's actions "were of such a nature that their effect continued beyond the immediacy of the October 1983 bombing." Report of Special Master Concerning Counts CXCVIII, [ECF No. 116], at 10. Therefore, the special master recommends solatium awards for various plaintiffs who are after-born children.

While this Court agrees with the special master that the bombing's impact on the surviving servicemen and their families continued long after the attack, Restatement § 46 requires that the bombing be "*directed at* a third person." (emphasis added). It is true that "a

terrorist attack—by its nature—is directed not only at the victim but also at the victims' families." *Heiser*, 659 F. Supp. 2d at 27 (quoting *Salazar*, 370 F. Supp. 2d at 115). However, the special master goes too far in assuming that the attack was "directed at" both the family members then-alive—who may clearly recover—while also being "directed at" unborn family members, a potentially unlimited class. This class of after-born plaintiffs eligible to recover could remain open for decades after a terrorist attack. For example, under the special master's interpretation, children born in 2012—almost 30 years after the bombing—could be eligible for solatium awards. Congress did not intend for FSIA § 1605A(c) to create such an expansive and indefinite scope of liability. As this Court has noted, "[s]ome lines must be drawn." *Heiser*, 659 F. Supp. 2d at 27. In light of this Court's strict interpretation of the "immediate family" requirement, as well as Restatement § 46's "directed at" requirement, this Court holds that a plaintiff bringing an action under § 1605A must have been alive at the time of the attack in order to collect solatium damages.

Therefore, the following after-born children plaintiffs are DISMISSED: Marvin Albright, Jr., Shateria Albright, Mark E. Bartholomew, Michelle Burnette, Evan Burnette, Christopher Eaves, India Eaves, Joseph Matthew Garner, Justina Nicole Garner, Reva Paige Garner, Estate of Chadwick Matthews, Drew Matthews, Abigail Elizabeth Santos, Alexandra Elizabeth Santos, Cooper Jeffrey Santos, Libbi Elizabeth Santos, Lilli Elizabeth Santos, Gerald Wilkes III, Justin Wilkes, Joshua Wilkes, and Elizabeth M. Struble.

2. Solatium Awards Exceeding Pain and Suffering Awards

In *Bland* and *O'Brien* this Court held that it is inappropriate for the solatium awards of family members to exceed the pain and suffering awards of the surviving servicemen. *Bland*, 2011 WL 6396527, at *5; *O'Brien*, 2012 WL 1021471, at *3. In those cases, the servicemen

received $1.5 million pain and suffering awards. *Id.* The Court reduced the awards of the family members in rough proportion to the *Heiser* framework to: $1 million for spouses, $850,000 for parents, $750,000 for children, and $500,000 for siblings. *Id.* Therefore, following *Bland* and *O'Brien*, this Court will proportionally reduce the awards of Teresa Bartholomew, Crystal Bartholomew, Jerry Bartholomew, Joyce Bartholomew, Toledo Dudley, Sherry Latoz, Cynthia Blankenship, Ginger Tuton, Scott Dudley, David Eaves, Sylvia Eaves, Jane Costa, Estate of Ann Hollis, John Westrick, Patricia Westrick, Whitney R. Westrick, Gerald Wilkes, Sr., Estate of Peggy Wilkes, and Sue Zilka.

Two family groupings deserve further discussion. The special master recommends a $5 million pain and suffering award for serviceman John W. Nash. Report of Special Master Concerning Counts CXII–CXVI [ECF No. 109], at 31. Mr. Nash was "covered in cuts and bruises by the blast, and coated in gray dust and debris from the building, but [was] otherwise unharmed." *Id.* at 7. In light of the less severe nature of his physical injuries, while not ignoring his severe emotional injuries, the Court reduced his pain and suffering award to $2 million. *See supra* Part III.A. Therefore, John's parents, Rose Ann Nash and the Estate of Frank E. Nash, will receive reduced awards of $1 million each, and his siblings, William H. Nash, Mark S. Nash, Frank E. Nash, Jr., Jaklyn Milliken, and Rosemarie Vilet, will receive reduced awards of $650,000 each.

Second, the special master recommends a $5 million pain and suffering award for serviceman Thomas Andrew Walsh. Report of Special Master Concerning Counts CLXV–CLXIX [ECF No. 105], at 19. Mr. Walsh suffered hearing loss and severe PTSD as a result of the bombing. *Id.* at 5–6. In light of the less severe nature of his physical injuries, while not ignoring his severe emotional injuries, the Court reduced his pain and suffering award to $2

million. *See supra* Part III.A. Therefore, his parents, Charles Walsh and Ruth Walsh, will receive reduced awards of $1 million each, and his siblings, Pat Campbell, Rachel Walsh, Timothy Walsh, Michael Walsh, and the Estate of Sean Walsh, will receive reduced awards of $650,000 each.

3. Corrections

In a number of situations, the special master indicates no intent to depart from this Court's established damages framework, but nonetheless recommends awards inconsistent with the framework. Therefore, the Court will correct the following awards to conform them to this Court's past damages awards:

Mecot Echo Camara, child of decedent, $5,000,000 award reduced to $3,000,000;

Dale and Tommy Comes, siblings of survivor, $2,500,000 award reduced to $1,250,000;

Susan Baker, child of decedent, $5,000,000 award reduced to $3,000,000;

Regina Periera, child of decedent, $5,000,000 award reduced to $3,000,000;

Cindy Colasanti, child of decedent, $5,000,000 award reduced to $3,000,000;

Jack Darrell Hunt, child of survivor, $2,500,000 award reduced to $1,500,000;

Mendy Leight Hunt, child of survivor, $2,500,000 award reduced to $1,500,000;

Molly Fay Hunt, child of survivor, $2,500,000 award reduced to $1,500,000;

Jacqueline Gibson, child of survivor, $2,500,000 award reduced to $1,500,000;

Samantha Stowe, child of decedent, $5,000,000 award reduced to $3,000,000;

Henry Townsend, Sr., father of decedent, $8,000,000 award reduced to $5,000,000;

Lillian Townsend, mother of decedent, $8,000,000 award reduced to $5,000,000;

Kawanna Duncan, child of decedent, $5,000,000 award reduced to $3,000,000.

Additionally, the Court DISMISSES the claims of Tracy Ann Santos, Sandra Rivers and Sylvia Eaves because they were not married to the servicemen at the time of the attack and therefore do not qualify as "immediate family" for the purposes of recovery. *Peterson II*, 515 F. Supp. 2d at 46 n.21; *Bland*, 2011 WL 6396527, at *4.

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 81, 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 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 81–82. 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); *see also Bland*, 2011 WL 6396527, at *6. 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 $1,674,997,937.

IV. CONCLUSION

In closing, the Court applauds plaintiffs' 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 and cowardly act impacted countless individuals and their families, many of whom receive awards in 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 $486,918,005 in compensatory damages and $1,674,997,937 in punitive damages, for a total award of $2,161,915,942.

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

SO ORDERED.

Signed by Chief Judge Royce C. Lamberth on March 30, 2012.

Annex 37

***Estate of Anthony K. Brown, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security*, U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 3 July 2012, Case No. 08-cv-531**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ESTATE OF ANTHONY K. BROWN, *et al.*, Plaintiffs, v. ISLAMIC REPUBLIC OF IRAN, *et al.*, Defendants.	)	08-cv-531 (RCL)

MEMORANDUM OPINION

I. Introduction

This action arises out of the devastating 1983 bombing of the U.S. Marine barracks in Beirut, Lebanon. The attack decimated the facility, killed 241 U.S. servicemen and left countless others wounded, and caused injuries to the servicemen who are a part of this action. The servicemen, joined by various family members, now bring suit against defendant Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS"). Their action is brought pursuant to the state-sponsored terrorism exception to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1602 et seq., which was enacted as part of the National Defense Authorization Act for Fiscal Year 2008 ("NDAA"). Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338–44 (2008). That provision, codified at 28 U.S.C. § 1605A, provides "a federal right of action against foreign states" that sponsor terrorist acts. *Haim v. Islamic Republic of Iran*, 784 F. Supp. 2d 1, 4 (D.D.C. 2011) (quoting reference omitted).

II. Liability

On December 16, 2009, 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, and entered judgment in favor of the plaintiffs and against Iran and MOIS with respect to all issues of liability. *Brown v. Islamic Republic of Iran*, No. 08-cv-531 (D.D.C. Feb. 1, 2010), ECF No. 30 (citing *Peterson*, 264 F. Supp. 2d 46 (D.D.C. 2003) (*Peterson I*)). This Court then referred this action to a special master for consideration of plaintiffs' claims for damages. *Id.* at 2. Since the issue of liability has been previously settled, this Court now turns to examine the damages awards recommended by the special master.

III. 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 (D.D.C. 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 (D.D.C. 2005) (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 (D.D.C. 2007).

The Court hereby ADOPTS, just as it did in *Peterson II*, *Valore*, *Bland*, *Anderson*, *O'Brien*, and *Davis*, 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; *Bland v. Islamic Republic of Iran*, 831 F. Supp. 2d 150, 154 (D.D.C. 2011); *see also Anderson v. Islamic Republic of Iran*, No. 08-cv-535 (D.D.C. Mar. 20, 2012), 2012 WL 928256; *O'Brien v. Islamic Republic of Iran*, No. 06-cv-690 (D.D.C. Mar. 28, 2012), 2012 WL 1021471; *Davis v. Islamic Republic of Iran*, No. 07-cv-1302 (D.D.C. Mar. 30, 2012), 2012 WL 1059700. However, if 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. *Id.* 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

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 at 25 n.26 (citing *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 59 (D.D.C. 2006)). In *Peterson II*, 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.* When a victim suffers severe emotional injury without physical injury, this Court has typically awarded the victim $1.5 million. *Id.* at 84–85.

After reviewing the special master reports, the Court finds that the special master correctly applied the damages framework outlined in *Peterson II* and *Valore*, and ADOPTS all of the special master awards for pain and suffering.

B. Economic Loss

In addition to pain and suffering, several plaintiffs who survived the attack 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 *Estate of 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 (D.D.C. 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). 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); *see also Bland*, 831 F. Supp. 2d at 157. 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); *Bland*, 831 F. Supp. 2d at 157; *Anderson*, 2012 WL 928256, at *2.

This Court has recently expounded further on the *Heiser* framework. In *Bland* and *O'Brien* this Court held that—absent special circumstances—it is inappropriate for the solatium awards of family members to exceed the pain and suffering awards of the surviving servicemen. *Bland*, 831 F. Supp. 2d at 157–58; *O'Brien*, 2012 WL 1021471, at *3. In those cases, the servicemen received $1.5 million pain and suffering awards for their emotional pain and suffering, but did not receive an award for physical pain and suffering. *Id.* The Court reduced the awards of the family members in rough proportion to the *Heiser* framework to: $1 million for spouses, $850,000 for parents, $750,000 for children, and $500,000 for siblings. *Id.*; *accord Davis*, 2012 WL 1059700, at *6.

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 (D.D.C. 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.

Again, this Court ADOPTS the special master awards as conforming to the *Heiser* framework unless otherwise modified below:

The special master found that Joseph A. Barile did not suffer physical injury in the Beirut bombing but that he did suffer from severe emotional injury. In light of this, the special master correctly recommended that Joseph receive a $1.5 million pain and suffering award. *See Bland*, 831 F. Supp. 2d at 157–58. While the special master did correctly recommend reduced awards for Joseph's family members, he did not recommend reduced awards in line with *Davis* and *Bland*. Therefore, the Court will award $850,000 to Mr. Barile's spouse, Angela Barile, and award $500,000 to each of his siblings: Michael Barile, Andrea Ciarla, Ann Marie Moore, and Angela Yoak. For similar reasons, the following special master awards are also modified in accordance with *Bland* and *Davis*:

Eugene Burns, father of Rodney Burns, from $750,000 to $850,000;

Alice J. Scaggs, mother of Rodney Burns, from $750,000 to $850,000;

David Burns, brother of Rodney Burns, from $350,000 to $500,000;

Mary Jean Hodges, mother of Maynard Hodges, from $500,000 to $850,000;

Loretta Brown, sister of Maynard Hodges, from $350,000 to $500,000;

Cindy Holmes, sister of Maynard Hodges, from $350,000 to $500,000;

Estate of Thomas Gunther, father of Daniel Kremer, from $500,000 to $850,000;

Estate of Christine Kremer, mother of Daniel Kremer, from $500,000 to $850,000;

Joseph Kremer, brother of Daniel Kremer, from $350,000 to $500,000;

Jacqueline Stahrr, sister of Daniel Kremer, from $350,000 to $500,000;

Teresa Gunther, sister of Paul Martinez, Sr., from $350,000 to $500,000;

Alphonso Martinez, brother of Paul Martinez, Sr., from $350,000 to $500,000;

Daniel L. Martinez, brother of Paul Martinez, Sr., from $350,000 to $500,000;

Michael Martinez, brother of Paul Martinez, Sr., from $350,000 to $500,000;

Tomasita L. Martinez, mother of Paul Martinez, Sr., from $500,000 to $850,000;

Ester Martinez-Parks, sister of Paul Martinez, Sr., from $350,000 to $500,000;

Susanne Yeoman, sister of Paul Martinez, Sr., from $350,000 to $500,000.

LaJuana Smith's brother Anthony Brown was killed in the Beirut bombing. Following the *Heiser* framework she would normally be entitled to a baseline solatium award of $2.5 million. *Heiser*, 466 F. Supp. 2d at 269. However, the special master recommended an upward departure to $3 million for LaJuana because "she suffered a 'nervous breakdown' following Anthony's death for which she sought medical treatment and was prescribed medication for approximately one year." Report of the Special Master (Estate of Anthony Brown), ECF No. 51, at 11–13, 17. Because of her exceptionally severe reaction to Anthony's death, this Court finds that the special master's recommended upward departure is warranted.

Brian Kirkpatrick was severely injured in the Beirut bombing. Following the *Heiser* framework, the special master recommended that his son, Sean Kirkpatrick, receive a $2.5

million solatium award. Report of the Special Master (Sean Kirkpatrick), ECF No. 33, at 7. Sean was born on December 17, 1983—almost two months after the October 23 bombing. This Court has previously held that "some lines must be drawn" and that after-born children are ineligible to receive solatium awards under FSIA § 1605A. *Davis*, 2012 WL 1059700, at *5; *see also Wultz v. Islamic Republic of Iran*, 08-cv-1460 (D.D.C. May 14, 2012), 2012 WL 1664027, at *10. Accordingly, Sean Kirkpatrick may not recover in this action and his claims are DISMISSED WITH PREJUDICE.

William Ray Gaines, Jr., was killed in the Beirut bombing. The special master found that Evelyn Sue Spears-Elliot, James S. Spears, and Mark Spears, the half-siblings of Mr. Gaines, did not have a close relationship with him—a prerequisite to a solatium award. Report of the Special Mater (Estate of Williams Ray Gaines, Jr.), ECF No. 52, at 19–20. The evidence shows that they were separated from Mr. Gaines at a young age and there is little evidence showing that they experienced the severe emotional distress necessary to sustain a solatium award. Therefore, their solatium claims will be DISMISSED WITH PREJUDICE. The special master did recommend a solatium award for William's mother, Carolyn Ruth Spears. Ms. Spears was separated from her son when he was five and there is no evidence that she saw him in the subsequent sixteen years. While there is evidence she suffered emotional distress when learning of William's death, the special master's downward departure from $5 million to $1 million is warranted.

Dennis West was killed in the Beirut bombing. The special master found a close relationship between Dennis and his father Charles F. West, but "no reason to deviate" from the established framework. Report of the Special Master (Family of Dennis West), ECF No. 45, at 13–14. In accordance with the *Heiser* framework, Charles F. West should have received a $5 million solatium award as the father of a deceased serviceman. 466 F. Supp. 2d at 269. The

special master, in error, only awarded $3 million. Therefore, the solatium award of Charles F. West will be increased to $5 million.

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 81, 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 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 81–82. 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); *see also Bland*, 831 F. Supp. 2d at 158; *Davis*, 2012 WL 1059700, at *7. 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 $630,487,651.

E. Prejudgment Interest

Plaintiffs' complaint also requests prejudgment interest. Am. Compl., at 80. Whether to award such interest is a question that rests within this Court's discretion, subject to equitable considerations. *See Pugh v. Socialist People's Libyan Arab Jamahiriya*, 530 F. Supp. 2d 216, 263 (D.D.C. 2008). When this Court applies the *Heiser* and *Peterson II* damages framework, it

does not typically award prejudgment interest. *Oveissi v. Islamic Republic of Iran*, 768 F. Supp. 2d 16, 30 n.12 (D.D.C. 2011) (concluding that prejudgment interest was not warranted for solatium damages because the values set by the *Heiser* scale "represent the appropriate level of compensation, regardless of the timing of the attack."); *accord Harrison v. Republic of Sudan*, 10-cv-1689 (D.D.C. Mar. 30, 2012), 2012 WL 1066683, at *24; *Wultz* 2012 WL 1664027, at *16–17. Additionally, a significant portion of the delay in this case was caused by plaintiffs' failure to timely submit necessary documents to the special master. *See* Order Concerning Submissions to the Special Master, Apr. 12, 2011, ECF No. 28. Therefore, this Court DENIES plaintiffs' request for prejudgment interest.

IV. Conclusion

Iran is racking up quite a bill from its sponsorship of terrorism. After this opinion, this Court will have issued over $8.8 billion in judgments against Iran as a result of the 1983 Beirut bombing.[1] A number of other Beirut bombing cases remain pending, and their completion will surely increase this amount. Regardless, no award—however many billions it contained—could accurately reflect the countless lives that have been changed by Iran's dastardly acts.

In closing, the Court applauds plaintiffs' persistent efforts to hold Iran accountable for its cowardly support of terrorism. The Court concludes that defendant Iran 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, a number of whom receive awards in this lawsuit. This Court hopes that the victims and their families may find some measure of solace

[1] *See Peterson II*, 515 F. Supp. 2d at 60 (awarding victims $2,656,944,977 in compensatory damages); *Valore*, 700 F. Supp. 2d at 90 (awarding victims $290,291,092 in compensatory damages and $1 billion in punitive damages); *Murphy*, 740 F. Supp. 2d at 83 (awarding victims $31,865,570 in compensatory damages and $61,302,571.60 in punitive damages); *Bland*, 831 F. Supp. 2d at 158 (awarding victims $277,805,908 in compensatory damages and $955,652,324 in punitive damages); *Anderson*, 2012 WL 928256 at *4 (awarding victims $7,500,000 in compensatory damages and $25,800,000 in punitive damages); *O'Brien*, 2012 WL 1021471 at *4 (awarding victims $10,050,000 in compensatory damages and $34,572,000 in punitive damages); *Davis*, 2012 WL 1059700 at *8 (awarding $486,918,005 in compensatory damages and $2,161,915,942 in punitive damages).

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 $183,281,294 in compensatory damages and $630,487,651 in punitive damages, for a total award of $813,768,945.

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

SO ORDERED.

Signed by Chief Judge Royce C. Lamberth on July 3, 2012.

Annex 38

***In Re Terrorist Attacks on September 11, 2001 (relating to Havlish v. Bin Laden),* U.S. District Court, Southern District of New York, Report and Recommendation to the Honorable George B. Daniels, 30 July 2012, Case 1:03-cv-09848-GBD-FM**

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: ______________
DATE FILED: July 30, 2012

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
--x
In Re:

TERRORIST ATTACKS ON SEPTEMBER 11, 2001 : :

--x

REPORT AND RECOMMENDATION TO THE HONORABLE GEORGE B. DANIELS

03 MDL 1570 (GBD) (FM)

This Document Relates to
Havlish v. bin Laden,
03 Civ. 9848 (GBD) (FM)

FRANK MAAS, United States Magistrate Judge.

The former World Trade Center site is only a few blocks from this Courthouse. At that location, the 9/11 Memorial opened last year, and a new One World Trade Center, known as the "Freedom Tower," is rapidly nearing completion. Sadly, despite these and other reaffirmations of the human spirit, there remains one group of Americans affected by the September 11th tragedy for whom it will always be difficult to achieve closure – those whose immediate relatives lost their lives as a result of the terrorists' acts. The plaintiffs in this multidistrict litigation include many such persons who are seeking to recover monetary compensation from the individuals and entities that carried out, or aided and abetted, the September 11th attacks.

On December 22, 2011, Your Honor entered a default judgment on behalf of the plaintiffs in the Havlish action ("Plaintiffs"), one of the cases comprising this MDL proceeding, against two groups of defendants: (a) certain sovereign defendants, including the Islamic Republic of Iran, Ayatollah Ali Hoseini Khamenei, Hezbollah, and other Iranian individuals and entities ("Sovereign Defendants"); and (b) certain non-sovereign

defendants, including Osama bin Laden, the Taliban, and al Qaeda ("Non-Sovereign Defendants") (collectively, the "Defendants"). (ECF No. 2516). The case subsequently was referred to me to report and recommend with respect to the Plaintiffs' damages. For the reasons set forth below, I find that the Plaintiffs collectively should be awarded damages in the amount of $6,048,513,805, plus prejudgment interest on their non-economic damages.

I. Standard of Review

In light of the Defendants' default, the Plaintiffs' well-pleaded allegations concerning issues other than damages must be accepted as true. See Cotton v. Slone, 4 F.3d 176, 181 (2d Cir. 1993); Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158 (2d Cir. 1992); Time Warner Cable of N.Y.C. v. Barnes, 13 F. Supp. 2d 543, 547 (S.D.N.Y. 1998).

Additionally, although plaintiffs seeking to recover damages against defaulting defendants must prove their claims through the submission of admissible evidence, the Court need not hold a hearing as long as it has (a) determined the proper rule for calculating damages, see Credit Lyonnais Sec. (USA), Inc. v. Alcantara, 183 F.3d 151, 155 (2d Cir. 1999), and (b) the plaintiff's evidence establishes, with reasonable certainty, the basis for the damages specified in the default judgment, see Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997). Here, because both requirements have been met, a hearing is unnecessary.

II. Factual and Procedural Background

The Havlish action concerns fifty-nine victims of the September 11, 2001 terrorist attacks. Seventeen of the victims were killed in the South Tower of the World Trade Center, thirty-two in the North Tower of the World Trade Center, and three in the Pentagon in Washington, D.C. (See ECF No. 2553 (Pls.' Proposed Findings of Fact and Conclusions of Law ("Proposed Findings")) ¶¶ 159-66). Three further victims were inside the airplane that crashed into the South Tower, including the plane's captain, who was murdered by the hijackers; another victim was a passenger on United Airlines Flight 93, which crashed near Shanksville, Pennsylvania; and three victims were killed in the immediate vicinity of the World Trade Center. (Id. ¶¶ 165, 167-70). Forty-seven of the plaintiffs ("Estate Plaintiffs") sue in their capacity as the legal representatives of their decedents. Claims also are brought individually on behalf of 111 family members of the fifty-nine victims of the attacks ("Individual Plaintiffs").

On December 22, 2011, in addition to entering a default judgment, Your Honor issued Findings of Facts and Conclusions of Law regarding the liability of the Sovereign Defendants.[1] (ECF No. 2515). In that document, Your Honor concluded that the "Plaintiffs ha[d] established by evidence satisfactory to the Court that the [Sovereign

[1] To obtain a default judgment in an action under the Foreign Sovereign Immunity Act ("FSIA"), a plaintiff must demonstrate a right to relief "by evidence satisfactory to the court," 28 U.S.C. § 1608(e), a standard that may be met "through uncontroverted factual allegations, which are supported by . . . documentary and affidavit evidence." Valore v. Islamic Republic of Iran, 700 F. Supp. 2d 52, 59 (D.D.C. 2010) (internal quotation marks omitted).

Defendants] provided material support and resources to" the perpetrators of the September 11th terrorist attacks, by, "inter alia, planning funding, [and] facilitat[ing] . . . the hijackers' travel and training," and providing the hijackers with "services, money, lodging, training, expert advice or assistance, safehouses, false documentation or identification, and/or transportation." (Id. at 50-53). By virtue of their defaults, the Non-Sovereign Defendants also have admitted their role in the September 11th terrorist attacks.

Accordingly, because all questions concerning the Havlish defendants' liability have been fully resolved, the only remaining task is the determination of the Plaintiffs' damages.

III. Damages

A. Sovereign Defendants

Among the claims that the Plaintiffs assert against the Sovereign Defendants in their third amended complaint (ECF No. 2259 ("Complaint" or "Compl.")) are survival, wrongful death, and solatium claims under section 1605A of the FSIA, 28 U.S.C. § 1605A ("Section 1605A"). Section 1605A creates an exception to sovereign immunity pursuant to which a United States citizen can sue "[a] foreign state that is or was a state sponsor of terrorism . . . , and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency," for damages arising out of an act of terrorism sponsored by that state. See Section 1605A(c). Although Congress enacted Section 1605A in 2008, it applies retroactively to suits then

pending against foreign states that had been designated as state sponsors of terrorism by the time the suits originally were filed. See Section 1605A(2)(A)(i)(II); Nat'l Defense Auth. Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 3.

Section 1605A effected a "sea change" in suits against state sponsors of terrorism. Read v. Islamic Republic of Iran, ___ F. Supp. 2d ___, ___, 2012 WL 639139, at *8 (D.D.C. Feb. 28, 2012). Previously, to recover damages against such defendants, plaintiffs had to demonstrate their entitlement under state or foreign law. Id. Now, such claims are subject to a "uniform federal standard." Id. (citing In re Terrorism Litig., 659 F. Supp. 2d 31, 85 (D.D.C. 2009)). Courts therefore usually determine damages under Section 1605A by applying the legal principles found in the Restatement of Torts and other leading treatises. Harrison v. Republic of Sudan, ___ F. Supp. 2d ___, ___, 2012 WL 1066683, at *3 (D.D.C. Mar. 30, 2012).

In an action under Section 1605A, "damages may include economic damages, solatium, pain and suffering, and punitive damages." Section 1605A(c)(4). Additionally, "[i]n any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents." Id. Consequently, the "estates of those who [died] 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, 700 F. Supp. 2d at 83.

1. Economic Damages

The Estate Plaintiffs seek economic damages for (a) the past and future lost wages and benefits of each decedent; (b) the estate's loss of household services; (c) its loss of advice, counsel, guidance, instruction, and training services; (d) its loss of accompaniment services; and (e) prejudgment interest. (See ECF No. 2554 (Pls.' Am. Damages Inquest Mem. ("Pls.' Mem.")) Ex. H). To support their claims for these damages, the Estate Plaintiffs have submitted extensive analyses by Dr. Stan V. Smith, a forensic economist. (See Pls.' Mem. Ex. F (Dr. Smith's curriculum vitae)). Dr. Smith calculated each decedent's lost wages and benefits by assuming that the decedent would have worked until the age of sixty-seven and adjusting his calculations through the use of growth and discount rates. Dr. Smith also calculated each decedent's estate's non-wage-related losses by determining the replacement cost of those services. Finally, Dr. Smith calculated the prejudgment interest on these damages using the annual average of monthly interest rates for thirty-day Treasury Bills. (See id. Ex. H).

Dr. Smith has provided detailed reports for two decedents and calculated the economic damages for the other forty-five decedents in the same manner. Having reviewed Dr. Smith's reports, I find that his calculations are reasonable, and yield proposed economic damages awards comparable to those in other cases. See, e.g., Dammarell v. Islamic Republic of Iran, 404 F. Supp. 2d 261, 310-24 (D.D.C. 2005); Alejandre v. Republic of Cuba, 996 F. Supp. 1239, 1249 (S.D. Fla. 1997); Ferrarelli v. United States, CV 90-4478 (JMA), 1992 WL 893461, at *19 (E.D.N.Y. Sept. 24, 1992). I

therefore adopt his findings regarding lost wages, benefits, and services, and prejudgment interest thereon, which leads to a finding that the Estate Plaintiffs' economic damages total $394,277,884. The separate award to each individual Estate Plaintiff is set forth in Appendix 1 to this Report and Recommendation.

2. Pain and Suffering

The Estate Plaintiffs also seek damages for their decedents' pain and suffering. "When determining the appropriate damages for pain and suffering, [the Court] is bound by a standard of reasonableness." Mastrantuono v. United States, 163 F. Supp. 2d 244, 258 (S.D.N.Y. 2001) (citing Battista v. United States, 889 F. Supp. 716, 727 (S.D.N.Y. 1995)).

Relying on Pugh v. Socialist People's Libyan Arab Jamahiriya, 530 F. Supp. 2d 216 (D.D.C. 2008), the Estate Plaintiffs seek $18 million for each decedent's pain and suffering. (Pls.' Mem. at 10). In Pugh, a suitcase bomb on an airplane detonated mid-flight, killing everyone on board. The court awarded the estate of each passenger $18 million for the passenger's pain and suffering, but did not explain how it arrived at that number, nor did it cite any cases in which there had been similar awards. See 530 F. Supp. 2d at 266-73. In other FSIA cases, courts have made considerably lower pain and suffering awards to the estates of victims of state-sponsored terrorism. For example, in Stethem v. Islamic Republic of Iran, 201 F. Supp. 2d 78, 89 (D.D.C. 2002), the court awarded $1.5 million to an estate for the pain and suffering of a decedent who was tortured for fifteen hours before being shot to death. Similarly, in Eisenfeld v.

Islamic Republic of Iran, 172 F. Supp. 2d 1, 8 (D.D.C. 2000), the court awarded $1 million in damages for pain and suffering to the estate of a victim of a bus bombing who had survived for several minutes before ultimately dying. See also Weinstein v. Islamic Republic of Iran, 184 F. Supp. 2d 13, 22-23 (D.D.C. 2002) ($10 million award to estate of victim who survived for forty-nine days with limited pain medication after suffering extensive burn and blast injuries during a terrorist bombing of a bus).

Although the specifics of each decedent's demise remain largely unknown, the Plaintiffs have submitted the expert report of Dr. Alberto Diaz, Jr., M.D., a retired Navy Rear Admiral, which provides a chilling account of the horrific conditions that each of the Estate Plaintiffs' decedents likely encountered immediately before his or her death. (See Pls.' Mem. Exs. D, E). As Dr. Diaz's report confirms, there is little doubt that many, if not all, of the decedents in this case experienced unimaginable pain and suffering on September 11, 2001. As Judge Baer noted in a previous case brought by two of the Estate Plaintiffs:

> The effort after a tragedy of this nature to calculate pain and suffering is difficult at best. Unfortunately, there is no way to bring back [the decedents] and no way to even come close to understanding what [they] experienced during their last moments. Under our legal system, compensation can only be through the award of a sum of money. While always difficult and never exact, the devastation and horror accompanying this tragedy makes a realistic appraisal almost impossible.

Smith ex rel. Smith v. Islamic Emirate of Afghanistan, 262 F. Supp. 2d 217, 233 (S.D.N.Y. 2003), amended, 2003 WL 23324214 (S.D.N.Y. May 19, 2003).

Judge Baer awarded the two Smith plaintiffs $1 million and $2.5 million, respectively, for their decedents' pain and suffering. Id. at 234, 239. Judge Baer reasoned that a $1 million award was reasonable for the first victim, who died in the South Tower, because there was no evidence that he survived the plane's impact, and that a $2.5 million award was appropriate for the second victim, because there was evidence that he had survived the initial impact and subsequently was trapped in the North Tower for some time before his death. Id.

As Judge Baer's analysis in Smith suggests, the decedents in this case arguably may have experienced different levels of pain and suffering dependant upon whether they were in the North Tower (the first to be hit but the second to collapse), the South Tower (where they may have had knowledge of the first attack but less notice that a structural collapse was likely), the Pentagon, one of the airplanes, or on the ground. The decedents' precise locations when the attack occured also may have affected their levels of conscious pain and suffering. In these circumstances, calculating a precise award for each decedent's individual pain and suffering obviously would be impossible. Nonetheless, the Estate Plaintiffs are entitled to fair compensation for their injuries; the awards in other FSIA cases – particularly those made by Judge Baer in Smith – suggest that $2 million per decedent is a reasonable figure. Accordingly, I recommend that each of the Estate Plaintiffs be awarded that amount for their decedents' pain and suffering. The total recommended pain and suffering award is therefore $94,000,000.

3. Solatium

Under Section 1605A, family members of the decedents also are entitled to damages for solatium. "A claim for solatium refers to the mental anguish, bereavement, and grief that those with a close relationship to the decedent experience as a result of the decedent's death, as well as the harm caused by the loss of decedent's society and comfort." Dammarell v. Islamic Republic of Iran, 281 F. Supp. 2d 105, 196 (D.D.C. 2003), vacated on other grounds, 404 F. Supp. 2d 261 (D.D.C. 2005). "Acts of terrorism are by their very definition extreme and outrageous and intended to cause the highest degree of emotional distress." Belkin v. Islamic Republic of Iran, 667 F. Supp. 2d 8, 22 (D.D.C. 2009). For that reason, in FSIA cases, courts have recognized that a solatium claim is "'indistinguishable' from the claim of intentional infliction of emotional distress." See, e.g., Surette v. Islamic Republic of Iran, 231 F. Supp. 2d 260, 267 n.5 (D.D.C. 2002) (quoting Wagner v. Islamic Republic of Iran, 172 F. Supp. 2d 128, 135 n.11 (D.D.C. 2001)).

In Estate of Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229 (D.D.C. 2006), District Judge Royce Lamberth articulated a framework for determining solatium damages pursuant to which spouses of deceased victims each received approximately $8 million, parents each received $5 million, and siblings each received $2.5 million. Several courts subsequently have followed the Heiser framework while acknowledging that upward or downward departures are sometimes appropriate. See, e.g., Estate of

Bland v. Islamic Republic of Iran, 831 F. Supp. 2d 150, 156 (D.D.C. 2011); Valore, 700 F. Supp. 2d at 85.

Here, each of the Individual Plaintiffs has submitted a declaration attesting to the traumatic effects of the loss of his or her loved one. (See Pls.' Mem. Ex. B). A review of those submissions makes clear that all of the Individual Plaintiffs have suffered profound agony and grief as a result of the tragic events of September 11th. Worse yet, the Individual Plaintiffs clearly are faced with frequent reminders of the events of that day. (Id.). Considering the extraordinarily tragic circumstances surrounding the September 11th attacks, and their indelible impact on the lives of the victims' families, I find that it is appropriate to grant the upward departures from the Heiser framework that the Individual Plaintiffs collectively have requested. Accordingly, I recommend that with one exception[2] the Individual Plaintiffs be awarded solatium damages as follows:

Relationship to Decedent	**Solatium Award**
Spouse	$12,500,000
Parent	$8,500,000
Child	$8,500,000
Sibling	$4,250,000

[2] The exception relates to Chrislan Fuller Manuel ("Manuel"), the niece of one of the decedents. Typically, solatium damages are available only to the spouses, children, parents, and siblings of decedents. See Smith, 262 F. Supp. 2d at 234. Although courts occasionally have awarded solatium damages to more distant relatives who served functionally as immediate family members, see, e.g., id. at 236 (grandmother who raised decedent from an early age); Surette, 231 F. Supp. 2d at 270 (decedent's unmarried partner of over twenty years), Manuel did not have that sort of relationship with her aunt. (See Pls.' Mem. Ex. B).

If this recommendation is adopted, the 110 Individual Plaintiffs entitled to recover damages for solatium will receive a total of $874,000,000. The separate solatium award for each Individual Plaintiff is set forth in Appendix 2 to this Report and Recommendation.

4. Punitive Damages

Pursuant to the FSIA, the Plaintiffs also are entitled to punitive damages. See Section 1605A(c)(4). The Plaintiffs propose two different ways to calculate their punitive damages. First, the Plaintiffs propose that the Court follow the reasoning articulated in Estate of Bland, 831 F. Supp. 2d at 158. Under that rubric, the Court would calculate punitive damages by multiplying the Plaintiffs' compensatory damages by 3.44. (See Pls.' Mem. at 20). Alternatively, the Plaintiffs propose applying a 5.35 ratio as the court did in Flax v. DaimlerChrysler Corp., 272 S.W.3d 521 (Tenn. 2008). (See Pls.' Mem at 21).

In Estate of Bland, an FSIA case arising out of the bombing of the United States Marine barracks in Beirut, the court, "relying on the Supreme Court's opinion in Philip Morris USA v. Williams, 549 U.S. 346 (2007)," applied a 3.44 ratio, noting that several courts previously had applied that ratio in FSIA cases. Estate of Brand, 831 F. Supp. 2d at 158 (citing Murphy v. Islamic Republic of Iran, 740 F. Supp. 2d 51, 75 (D.D.C. 2010), and Valore, 700 F. Supp. 2d at 52). In Flax, a products liability case arising out of a car accident, the Tennessee Supreme Court upheld a punitive damages award that was 5.35 times the victim's compensatory damages. 272 S.W.3d at 540, cert.

denied, 129 S. Ct. 2433. In the course of approving that higher multiplier, however, the court expressly noted that the victim's compensatory damages were not so substantial as to render such a high ratio unconstitutional. Id. at 539.

As the court explained in Estate of Bland, the 3.44 ratio "has been established as the standard ratio applicable to cases arising out of" terrorist attacks. 831 F. Supp. 2d at 158. Moreover, the Plaintiffs in this case are entitled to substantial compensatory damages. Accordingly, Flax, which was decided several years before Bland and involves dissimilar facts, does not suggest that this Court should deviate from the established standard in FSIA cases. The Plaintiffs' compensatory damages amount to $1,362,277,884. I therefore recommend that they be awarded punitive damages based on a 3.44 multiplier, yielding a punitive damages total of $4,686,235,921.

5. Prejudgment Interest

Recognizing that an award of prejudgment interest is warranted when plaintiffs are delayed in recovering compensation for non-economic injuries caused by acts of terrorism, Magistrate Judge Facciola recently awarded such plaintiffs prejudgment interest at the prime rate. See Baker v. Socialist People's Libyan Arab Jamahirya, 775 F. Supp. 2d 48, 86 (D.D.C. 2011). Dr. Smith similarly has used the average prime rate published by the Federal Reserve Bank for the period from September 11, 2001, through the date of his report and assumed that prejudgment interest would be awarded through January 1, 2013. (See Pls.' Mem. Ex. J). There is, however, no reason to believe that this Report and Recommendation will be reviewed by a particular date. Accordingly, if this

Report and Recommendation is adopted, the Clerk of the Court should simply be directed to award prejudgment interest on the Plaintiffs' damages for solatium and pain and suffering, which total $968,000,000, at the rate of 4.96 percent per annum for the period from September 11, 2001, through the date that judgment is entered.

B. Non-Sovereign Defendants

Although the Plaintiffs' submissions do not discuss their claims against the Non-Sovereign Defendants in great detail, those Defendants are liable for the same damages as the Sovereign Defendants under traditional tort principles.[3] See Valore, 700 F. Supp. 2d at 76-80. The Non-Sovereign Defendants consequently should be held jointly and severally liable for the damages set forth above and in the appendices to this Report and Recommendation.[4]

C. Costs

The Plaintiffs also seek approximately $2 million in costs. (See Pls.' Mem. Ex. M). Pursuant to 28 U.S.C. § 1920 and Local Civil Rule 54.1(c), only certain expenditures may be taxed as costs. The Plaintiffs have requested an award of costs

---

[3] The Plaintiffs, however, cannot recover treble damages against the Non-Sovereign Defendants pursuant to the Antiterrorism Act, 18 U.S.C. § 2333, see Smith, 262 F. Supp. 2d at 220-22, because they did not assert such a claim in their Complaint. (See Compl. ¶¶ 401-21).

[4] As discussed above, at least two of the Estate Plaintiffs already have been awarded damages against some of the Non-Sovereign Defendants. See Smith, 262 F. Supp. 2d at 240-41. To the extent that the damages awarded in this action may exceed those awarded in a previous action, the Non-Sovereign Defendants have waived any potential res judicata defense by failing to appear.

primarily for expenses that are not recoverable. In addition, the proffered evidence is insufficient for the Court to calculate any taxable costs that could be allowed. The Plaintiffs' application for costs consequently should be denied without prejudice to a renewed application.

IV. Conclusion

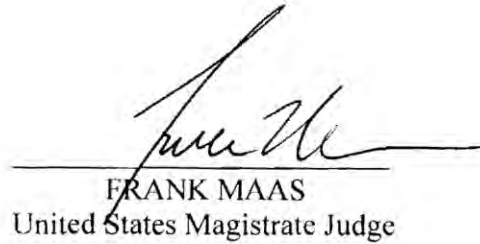
For the reasons set forth above, the Plaintiffs should be awarded damages against the Sovereign and Non-Sovereign Defendants in the amount of $6,048,513,805. Additionally, the Plaintiffs are entitled to prejudgment interest on their non-economic compensatory damages at the rate of 4.96 percent per annum from September 11, 2001, through the date judgment is entered.

V. Notice of Procedure for Filing of Objections to this Report and Recommendation

The parties shall have fourteen days from the service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. See also Fed. R. Civ. P. 6(a) and (d). Any such objections shall be filed with the Clerk of the Court, with courtesy copies delivered to the Chambers of the Honorable George B. Daniels and to the Chambers of the undersigned at the United States Courthouse, 500 Pearl Street, New York, New York 10007, and to any opposing parties. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b). Any requests for an extension of time for filing objections must be directed to

Judge Daniels. The failure to file these timely objections will result in a waiver of those objections for purposes of appeal. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b); Thomas v. Arn, 474 U.S. 140 (1985).

Dated: New York, New York
July 30, 2012



FRANK MAAS
United States Magistrate Judge

Copies to:

Hon. George B. Daniels
United States District Judge

All counsel via ECF

Appendix 1
Economic Damage Awards

ESTATE	ECONOMIC DAMAGES
Bane, Michael	$5,960,665
Boryczewski, Martin	17,363,416
Cafiero, Steven	1,754,202
Caproni, Richard M.	3,551,011
Chirchirillo, Peter	5,440,587
Coale, Jeffrey	5,558,859
Coffey, Daniel M.	5,059,077
Coffey, Jason	4,006,486
Collman, Jeffrey	4,318,172
Diehl, Michael	5,584,103
Dorf, Stephen	3,242,690
Fernandez, Judy	2,852,544
Gamboa, Ronald	2,890,981
Godshalk, William	16,672,472
Grazioso, John	7,376,753
Gu, Liming	11,883,059
Halvorson, James	9,464,745
Havlish, Donald	6,711,879
Lavelle, Dennis	4,039,992
Levine, Robert	4,520,876
Lostrangio, Joseph	5,777,844
Mauro, Dorothy	1,580,579
Melendez, Mary	7,531,551
Milano, Peter T.	22,153,588

Moreno, Yvette	2,360,239
Nunez, Brian	2,499,922
Ognibene, Philip	4,435,087
Papasso, Salvatore T.	6,289,680
Perry, John	4,924,240
Ratchford, Marsha	6,233,977
Reiss, Joshua	7,726,738
Rodak, John M.	24,440,747
Romero, Elvin	14,783,971
Rosenthal, Richard	7,274,204
Santillan, Maria Theresa	3,255,002
Saracini, Victor	9,593,658
Schertzer, Scott	2,792,107
Sloan, Paul K.	5,967,696
Smith, George	2,609,215
Soulas, Timothy	86,796,344
Steiner, William	6,443,814
Stergiopoulos, Andrew	5,716,259
Straub, Edward W.	16,552,703
Tino, Jennifer	2,625,577
Wallendorf, Jeanmarie	1,768,803
Waller, Meta	1,200,501
Ward, Timothy	2,691,269
TOTAL	**$394,277,884**

(See Pls.' Mem. Ex. H).

Appendix 2
Solatium Damages

RELATIONSHIP	NUMBER OF PLAINTIFFS	DAMAGES	TOTAL
Spouse	23	$12,500,000	$287,500,000
Parent	41	8,500,000	348,500,000
Child	10	8,500,000	85,000,000
Sibling	36	4,250,000	153,000,000
Total	**110**		**$874,000,000**

(See Pls.' Mem. Ex. A)

Annex 39

***In Re Terrorist Attacks of September 11, 2001 (relating to Havlish v. Bin Laden),* U.S. District Court for the Southern District of New York, Memorandum Decision and Order of 3 October 2012, Case 1:03-cv-09848-GBD-SN**

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10-3-12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001

MEMORANDUM DECISION AND ORDER
03 MDL 1570 (GBD)(FM)

This Document Relates to
Havlish v. bin Laden,
03 Civ. 9848 (GBD) (FM)

GEORGE B. DANIELS, District Judge:

The plaintiffs in this multi-district litigation ("MDL") seek monetary damages from defendants who are liable for the physical destruction, death, and injuries suffered as a result of the terrorist attacks of September 11, 2001 ("September 11th Attacks"). On December 22, 2011, default judgment was entered on behalf of the plaintiffs in the Havlish action ("Plaintiffs"), against (a) certain sovereign defendants, including the Islamic Republic of Iran, Ayatollah Ali Hoseini Khamenei, Hezbollah, and other Iranian individuals and entities ("Sovereign Defendants"); and (b) certain non-sovereign defendants, including Osama bin laden, the Taliban, and al Qaeda ("Non-Sovereign Defendants") (collectively, the "Defendants"). See Docket Entry No. 2516. This Court referred the matter to Magistrate Judge Frank Maas for an inquest on damages.

Magistrate Judge Maas issued a Report and Recommendation ("Report") recommending that Plaintiffs collectively be awarded damages in the amount of $6,048,513,805, plus prejudgment interest.

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections to the Report, the Court must make a *de novo* determination of those portions of the Report to which objections are made. Id.; see also Rivera v. Barnhart, 432 F.Supp. 2d 271, 273 (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(c). It is not required, however, that the Court conduct a *de novo* hearing on the matter. See United States v. Raddatz, 447 U.S. 667, 676 (1980). Rather, it is sufficient that the Court "arrive at its own, independent conclusions" regarding those portions to which objections were made. Nelson v. Smith, 618 F. Supp. 1186, 1189-90 (S.D.N.Y.1985) (quoting Hernandez v. Estelle, 711 F.2d 619, 620 (5th Cir.1983)). When no objections to a Report are made, the Court may adopt the Report if "there is no clear error on the face of the record." Adee Motor Cars, LLC v. Amato, 388 F.Supp. 2d 250, 253 (S.D.N.Y.2005) (citation omitted). In his report, Magistrate Judge Maas advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). No party objected to the Report. As there is no clear error on the face of the record, this Court adopts the Report in its entirety.

Sovereign Defendants

Magistrate Judge Maas properly determined that Plaintiffs may recover for "economic damages, solatium, pain and suffering, and punitive damages" in an action under Section 1605A. 28 U.S.C. § 1605A(c)(4). In such an action, the "estates of those who [died] can recover economic losses stemming from the 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, 83 (D.D.C. 2010).

Magistrate Judge Maas properly determined that economic damages totaling $394,277,884, as broken down in Appendix 1 of this opinion, are appropriate. Plaintiffs submitted extensive analyses from a forensic economist with detailed calculations for two decedents, as well as damage calculations for the remaining forty-five decedents done in the same manner. These analyses yield proposed economic damages comparable to those in other cases. See, e.g., Dammarell v. Islamic Republic of Iran, 404 F. Supp. 2d 261, 310-24 (D.D.C. 2005); Alejandre v. Republic of Cuba, 996 F. Supp. 2d 261, 310-24 (D.D.C. 2005). Plaintiffs have thus provided a sufficient basis to determine damages and are entitled to economic damages as outlined in the Report. See Transatl. Marine Claims Agency, Inc. v. ACE Shipping Corp., 109 F. 3d 105, 111 (2d Cir. 1997) (noting that the Court "should take the necessary steps to establish damages with reasonable certainty").

Magistrate Judge Maas also properly determined that $2,000,000 per decedent, for a total of $94,000,000, is an appropriate measure of damages which meets the standard of reasonableness for pain and suffering awards. See Mastrantuono v. United States, 163 F. Supp. 2d 244, 258 (S.D.N.Y. 2001). Calculating a precise award for each decedent's individual pain and suffering would be impossible because the decedents in this case may have experienced different levels of pain and suffering dependent on their precise locations at the time of the September 11th attacks. However, Plaintiff's expert report confirms that many, if not all of the decedents in this case experienced horrific pain and suffering on September 11, 2001. Awards in other FSIA cases, particularly those determined by Judge Baer in Smith ex rel. Smith v. Islamic Emirate of Afghanistan, suggest that $2 million per decedent is a reasonable figure. See Smith

ex rel. Smith v. Islamic Emirate of Afghanistan, 262 F. Supp. 2d 217, 233 (S.D.N.Y. 2003), amended, 2003 WL 23324214 (S.D.N.Y. May 19, 2003); see also Pugh v. Socialist People's Libyan Arab Jamahiriya, 530 F. Supp. 2d 216 (D.D.C. 2008); Stethem v. Islamic Republic of Iran, 201 F. Supp. 2d 87, 89 (D.D.C. 2002).

Magistrate Judge Maas properly determined that the following solatium[1] awards are appropriate[2], as an upward departure from the framework in Estate of Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229 (D.D.C. 2006):

Relationship to Decedent	**Solatium Award**
Spouse	$12,500,000
Parent	$8,500,000
Child	$8,500,000
Sibling	$4,250,000

A review of Plaintiff's submissions makes clear that all of the Individual Plaintiffs have suffered profound agony and grief as a result of the tragic events of September 11th. Considering the extraordinarily tragic circumstances surrounding the September 11th attacks, the indelible impact on the lives of the victims' families, and the frequent reminders that each of the individual Plaintiffs face daily, upward departures from the Heiser framework are warranted.

[1] "A claim for solatium refers to the mental anguish, bereavement, and grief that those with a close relationship to the decedent experience as a result of the decedent's death, as well as the harm caused by the loss of decedent's society and comfort." Dammarell v. Islamic Republic of Iran, 281 F. Supp. 2d 105, 196 (D.D.C. 2003), vacated on other grounds, 404 F. Supp. 2d 261 (D.D.C. 2005).

[2] Magistrate Judge Maas properly determined that one individual Plaintiff is not entitled to a solatium award because he is not a spouse, child, parent, or sibling of a decedent. Although that plaintiff is the niece of one of the decedents, she has not demonstrated that she is entitled to a solatium award because she does not serve functionally as an immediate family member. See Smith, 262 F. Supp. 2d at 234.

Magistrate Judge Maas also properly determined that Plaintiffs are entitled to punitive damages pursuant to the FSIA in an amount of 3.44 multiplied by their compensatory damages, for a total of $4,686,235,921. See Section 1605(c)(4); Estate of Bland v. Islamic Republic of Iran, 831 F. Supp. 2d 150, 158 (D.D.C. 2011). The 3.44 ratio has been used as the standard ratio applicable to a number of cases arising out of terrorist attacks. See id.; Valore, 700 F. Supp. 2d at 52; Murphy v. Islamic Republic of Iran, 740 F. Supp. 2d 51, 76 (D.D.C. 2011).

Magistrate Judge Maas also properly determined that prejudgment interest is appropriate on Plaintiffs' damages for solatium and pain and suffering. The decision to award prejudgment interest, as well as how to compute that interest, rests within the discretion of the court, subject to equitable considerations. Baker v. Socialist People's Libyan Arab Jamahirya, 775 F. Supp. 2d 48, 86 (D.D.C. 2011). Courts "have awarded prejudgment interest in cases where plaintiffs were delayed in recovering compensation for their injuries—including, specifically, where such injuries were the result of targeted attacks perpetrated by foreign defendants." Id. (internal quotations omitted). An appropriate measure of what rate to use when calculating prejudgment interest is the prime rate. Id. Magistrate Judge Maas properly accepted testimony from Plaintiffs' expert that the average prime rate from September 11, 2001 through the date of his report was 4.96%. Thus, Plaintiffs should be awarded prejudgment interest at the rate of 4.96% per annum on their damages of solatium and pain and suffering damages, which total $968,000,000, from the period from September 11, 2001, through the date that judgment is entered.

Non-Sovereign Defendants

Magistrate Judge Maas properly determined that the Non-Sovereign Defendants are jointly and severally liable for the damages against the Sovereign Defendants. The Non-

Sovereign Defendants are liable for the same damages as the Sovereign Defendants under traditional tort principles. See Valore, 700 F. Supp. 2d at 76-80.

Costs

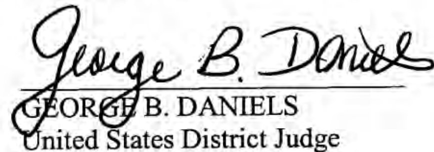
Magistrate Judge Maas properly determined that Plaintiffs are not entitled to the $2 million they seek in costs. Plaintiffs' requested costs are primarily for expenses that are not recoverable pursuant to 28 U.S.C. § 1920 and Local Rule 54.1(c). For expenses that are recoverable, Plaintiffs have not provided sufficient evidence to establish these amounts with reasonable certainty. Transatl. Marine Claims Agency, Inc. v. ACE Shipping Corp., 109 F. 3d 105, 111 (2d Cir. 1997; See N.Y. State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1148 (2d Cir. 1983). Thus Plaintiffs' application for costs is denied without prejudice.

Conclusion

This Court adopts the Report and Recommendation in its entirety. Judgment should be entered against the Sovereign Defendants for (1) economic damages totaling $394,277,884 as broken down in Appendix 1 of this Opinion; (2) damages for pain and suffering of $2,000,000 per decedent totaling $94,000,000; (3) punitive damages totaling $4,686,235,921; and (4) damages for solatium totaling $874,000,000. The Non-Sovereign Defendants are joint and severally liable for these damages. Plaintiffs' additional claims for costs are denied without prejudice.

Dated: New York, New York
October 3, 2012

SO ORDERED:



GEORGE B. DANIELS
United States District Judge

Annex 40

***Levin, et al. v. Bank of New York, et al.,* U.S. District Court, Southern District of New York, Amended Answer of JP Morgan Chase Parties to Amended Counterclaim of Heiser Judgment Creditors, with Counterclaims, and Amended and Supplemental Third-Party Complaint against Judgment Creditors of Iran, Plaintiffs Suing Iran and Account and Wire Transfer Parties (Phase 3), 10 October 2012, No. 09 Civ. 5900 and Exhibit A**

Excerpts: p. 1, p. 21, p. 30-32, pp. 43-62 & Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

JEREMY LEVIN and DR. LUCILLE LEVIN, Plaintiffs, -against- BANK OF NEW YORK, JP MORGAN CHASE, SOCIÉTÉ GÉNÉRALE and CITIBANK, Defendants.	:	09 Civ. 5900 (RPP) (MHD) ECF Case **FILED UNDER SEAL**

---x

JPMORGAN CHASE & CO. and JPMORGAN CHASE BANK, N.A.,

Third-Party Plaintiffs,

-against-

STEVEN M. GREENBAUM, et al.,

Third-Party Defendants.

---x

JPMORGAN CHASE & CO. and JPMORGAN CHASE BANK, N.A., Third-Party Plaintiffs, -against- JEREMY LEVIN, DR. LUCILLE LEVIN, STEVEN M. GREENBAUM (INDIVIDUALLY AND AS THE ADMINISTRATOR OF THE ESTATE OF JUDITH GREENBAUM), ALAN D. HAYMAN, SHIRLEE HAYMAN, CARLOS ACOSTA, MARIA ACOSTA, TOVA ETTINGER, IRVING FRANKLIN (INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF IRMA FRANKLIN), BARUCH KAHANE,	:	**AMENDED ANSWER OF JPMORGAN CHASE PARTIES TO AMENDED COUNTERCLAIM OF HEISER JUDGMENT CREDITORS, WITH COUNTERCLAIMS, AND AMENDED AND SUPPLEMENTAL THIRD-PARTY COMPLAINT AGAINST JUDGMENT CREDITORS OF IRAN, PLAINTIFFS SUING IRAN, AND ACCOUNT AND WIRE TRANSFER PARTIES (PHASE 3)**

OF TERRENCE RICH, BRYAN HARRIS, ARMANDO J. YBARRA, JOHN E. L'HEUREUX, JANE L'HEUREUX, KERRY M. L'HEUREUX, MARY E. WELLS, MICHAEL BENNETT (INDIVIDUALLY AND AS CO-ADMINISTRATOR OF THE ESTATE OF MARLA ANN BENNETT), LINDA BENNETT (INDIVIDUALLY AND AS CO-ADMINISTRATOR OF THE ESTATE OF MARLA ANN BENNETT), ESTATE OF MARLA ANN BENNETT AND LISA BENNETT, MASTERCARD INTERNATIONAL INCORPORATED, BANK MELLI, BANK SADERAT IRAN, [redacted], ISLAMIC REPUBLIC OF IRAN, IRANIAN MINISTRY OF INFORMATION AND SECURITY, AND IRANIAN ISLAMIC REVOLUTIONARY GUARD CORP., ALSO KNOWN AS IRANIAN REVOLUTIONARY GUARD CORP.,

Third-Party Defendants.

---x

Defendants, Third-Party Plaintiffs, and Counterclaim Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. ("JPMCB") (collectively, "JPMorgan"), by their attorneys, Levi Lubarsky & Feigenbaum LLP, as their amended answer, with counterclaims (the "Amended Answer"), to the amended counterclaim (the "Amended Counterclaim") asserted by Third-Party Defendants and Counterclaim Plaintiffs Estate of Michael Heiser, et al. (the "Heiser Judgment Creditors"), in their amended answer dated August 16, 2012 to JPMorgan's Amended and Supplemental Third-Party Complaint dated September 21, 2011 ("JPMorgan's September 21, 2011

lawfully subject to execution to satisfy the Judgment exceeds the amount needed to satisfy the Judgment, or exceeds the amount of that portion of the Judgment that can properly be satisfied from such assets, the Court should allocate the amounts to be turned over by JPMorgan, the other Defendants, and the defendants and respondents in such other proceedings and determine which property, funds, and assets held by or for which persons should be turned over, in such a way that none of the parties that is being required to turn over funds or assets and no other affected person is required to turn over more than that party's or person's allocable share of the amount available and needed to satisfy the Judgment.

COUNTERCLAIMS AGAINST HEISER JUDGMENT CREDITORS AND THIRD-PARTY COMPLAINT AGAINST JUDGMENT CREDITORS OF IRAN, PLAINTIFFS SUING IRAN, AND ACCOUNT AND WIRE TRANSFER PARTIES (PHASE 3)

As counterclaims against Third-Party Defendants and Counterclaim Plaintiffs Estate of Michael Heiser, et al. and as third-party claims against the Third-Party Defendants referred to in paragraphs 50 to 74 of this pleading, JPMorgan (as previously defined above) alleges as follows:

Nature of the Counterclaims/Third-Party Claims

44. JPMorgan has filed these counterclaims and third-party claims pursuant to Section 5239 of the New York Civil Practice Law and Rules ("CPLR"), Rule 22 of the Federal Rules of Civil Procedure (these Rules will be cited herein as "Rule __"), Sections 1335 and 2361 of Title 28, United States Code, Section 134 of the New York Banking Law, and CPLR § 1006 in order to seek a determination by the Court of the rights, if any, of the Heiser Judgment Creditors (using that term as defined in paragraph 50 below), the persons and entities (collectively, "persons") named as Third-

Party Defendants herein, and any other persons in the funds, property, and assets identified in Exhibit A hereto (hereinafter referred to as the "JPM Phase 3 Assets"). The JPM Phase 3 Assets are being held by JPMorgan in blocked accounts, as required by Presidential Executive Orders and regulations promulgated by OFAC that apply to, inter alia, entities that may be agencies or instrumentalities of, or owned or controlled directly or indirectly by, the Islamic Republic of Iran (hereinafter sometimes referred to as "IRI") and that have been designated by Presidential Executive Order or by OFAC as being subject to such regulations.

45. The Heiser Judgment Creditors have interposed an Amended Counterclaim against JPMorgan. A copy of this Amended Counterclaim is annexed hereto as Exhibit I. Their Amended Counterclaim alleges that they have 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 Revolutionary Guard Corps (the term "Iran" will be used below to refer to one or more or all of these parties, depending on the context), and the Amended Counterclaim seeks to enforce their Judgment against blocked assets held by JPMorgan. In particular, the Heiser Judgment Creditors have notified JPMorgan and the Court that pursuant to the Amended Counterclaim, they intend to seek the turnover to them, pursuant to CPLR §§ 5225(b) and 5227, of the JPM Phase 3 Assets identified in Exhibit A hereto in partial satisfaction of their Judgment.

46. Many persons and entities other than the Heiser Judgment Creditors also appear to have claims to or rights or interests in the JPM Phase 3 Assets. In the first place, many other persons have obtained judgments against Iran based on an

act of terrorism or an act within the scope of 28 U.S.C. § 1605A, and they may claim the right to execute on the JPM Phase 3 Assets in order to satisfy their judgments. Still other persons have commenced lawsuits against Iran based on similar claims for relief but have not yet obtained a judgment against Iran. In addition, persons who established deposit accounts with JPMorgan that are included in the JPM Phase 3 Assets and parties to the blocked wire transfers that give rise to some of the JPM Phase 3 Assets may have claims to or rights or interests in the JPM Phase 3 Assets, as may other persons for whose benefit the funds in question were being held or transferred. Finally, the Heiser Judgment Creditors' claims to the JPM Phase 3 Assets are based on the contention that Iran itself has a sufficient interest in the JPM Phase 3 Assets to make those assets subject to execution and turnover.

47. JPMorgan has filed these counterclaims and third-party claims in order to bring such persons before the Court and give them the opportunity to assert any claims they may have to the JPM Phase 3 Assets, so that the Court can determine whether the funds should be turned over to the Heiser Judgment Creditors, to other judgment creditors of Iran or persons suing Iran, or be dealt with in some other way. This proceeding may be the only chance for persons named as counterclaim defendants or third-party defendants in this pleading to assert any claim or interest they may have in the funds, property, and assets that are involved in this proceeding. Unless such persons file an answer within the specified time and appear to assert their rights or claims, any claim, right, or interest they may have in the JPM Phase 3 Assets may be terminated and the funds in question may be turned over to the Heiser Judgment Creditors or other persons.

judgments against Iran with this Court, the delivery of writs of execution by those judgment creditors to the United States Marshal's Office for the Southern District of New York (the "SDNY Marshal"), and the filing of the Levins' complaint and the counterclaims described below, occurred in this district, certain Third-Party Defendants can be found here, and many of the defendants are aliens.

Common Factual Allegations

77. On or about June 26, 2009, the Levins filed the first of the above captioned proceedings in this Court pursuant to Rule 69 and CPLR §§ 5225(b) and 5227. Their complaint (Docket No. 70 in this proceeding), a redacted copy of which, without exhibits, is annexed hereto as Exhibit H, asked the Court to order JPMorgan and the other defendant banks to turn over to the Levins, in satisfaction of the Levins' judgment against Iran, certain funds held by the defendants in blocked accounts. The funds that the Levin Judgment Creditors sought to seize in order to satisfy their judgment included the proceeds of wire transfers that were blocked by JPMorgan, and that were being held by JPMorgan in blocked accounts, as required by OFAC Regulations set forth in 31 C.F.R. Parts 544, 594, and 595, and the balances in blocked deposit accounts that were being held by JPMorgan pursuant to those Regulations (all such blocked wire transfer proceeds and blocked account balances held by JPMorgan at any time will be referred to hereinafter as the "Blocked Assets"). (References to the docket number for a document filed in these proceedings, such as Docket No. 70, indicate the number of that document on the docket for this case, unless otherwise specified. Any person can go to the Courthouse of the Court at 500 Pearl Street, New York, New York, and view any item on the docket except for documents filed under seal. In addition, most lawyers admitted to

practice law in the Court subscribe to PACER, a system that allows them to view all such documents on line for a small charge. The undersigned law firm for JPMorgan will provide copies of any pleadings or documents referred to in this Third-Party Complaint, at no cost, at the request of any Third-Party Defendant that has not yet appeared in this case by a lawyer admitted to practice law in the Court.)

78. After filing their answers in this proceeding, JPMorgan and the other defendants commenced third-party proceedings in this proceeding in 2010 against various persons who had, upon information and belief, obtained judgments against Iran that appeared to be based on acts of terrorism or actions within the scope of FSIA § 1605A. JPMorgan and the other defendants also commenced third-party proceedings in 2010 against persons who had brought suit against Iran, based on what appeared to be acts of terrorism or actions within the scope of FSIA § 1605A, and who had delivered notices of lis pendens pursuant to FSIA § 1605A(g) to one or more of the defendants, even though they might not yet have obtained judgments against Iran. All of those parties appeared in these proceedings and filed answers, and in many cases their answers contained counterclaims asserting that they, and not the Levins, were entitled to execute on the blocked assets held by the defendants, including the Blocked Assets held by JPMorgan, to satisfy their judgments against Iran.

79. On July 6, 2010, the Heiser Judgment Creditors filed an amended answer, with an amended counterclaim (Docket No. 212), to a third-party complaint served on therm. In their amended counterclaim, the Heiser Judgment Creditors sought the entry of an order directing JPMorgan and another defendant to turn over to them all personal and, if applicable, real property of Iran held by those defendants, in an amount

not to exceed the amount of their judgment against Iran, plus post-judgment interest. Their request for this relief was based, inter alia, on allegations that they had registered their judgment against Iran with this Court on September 8, 2008 and filed a notice of lis pendens pursuant to 28 U.S.C. § 1605A(g) with this Court on November 19, 2009.

80. On April 30, 2010, upon information and belief, the Heiser Judgment Creditors also obtained a writ of garnishment from the United States District Court for the District of Maryland (the "Maryland Federal Court") addressed to JPMCB, a copy of which was delivered to JPMCB in Maryland on or about May 3, 2010. This gave rise to a proceeding in the Maryland Federal Court to enforce that writ of garnishment against JPMCB. By order dated March 31, 2011, that proceeding was transferred to the United States District Court for the Southern District of New York to the extent that claims were asserted against JPMCB and certain other parties. The transferred proceeding was docketed in this Court as *Estate of Heiser, et al. v. JPMorgan Chase Bank, N.A.*, No. 11 Civ. 2570 (LBS) (DCF) (S.D.N.Y.). The Heiser Judgment Creditors' Response to JPMCB's answer in the Maryland proceeding, which is now on file in this Court (Docket No. 58 in No. 11 Civ. 2570), seeks leave of Court to proceed to enforce their alleged judgment against Iran by executing on assets held by JPMCB. For the moment, this transferred proceeding has been stayed (Docket No. 104 in that proceeding).

81. On March 7, 2011, the Greenbaum Judgment Creditors filed an amended answer, with amended counterclaims (Docket No. 344), to a third-party complaint served on them. In their amended counterclaims, the Greenbaum Judgment Creditors sought the entry of an order directing JPMorgan and other defendants to turn

over to them personal and, if applicable, real property with a value of the amount of their judgment against Iran, plus post-judgment interest, or the payment of a sum of money not exceeding those amounts, and the turnover to them of all blocked assets in the defendants' possession, custody, and control owed to or held for the benefit of Iran. Their request for this relief was based on writs of execution that they had allegedly delivered to the SDNY Marshal on February 9, 2011 for service on the defendants and that were allegedly served on JPMorgan on or before February 17, 2011.

82. On March 7, 2011, the Acosta Judgment Creditors filed an amended answer, with amended counterclaims (Docket No. 345), to a third-party complaint served on them. In their amended counterclaims, the Acosta Judgment Creditors sought the entry of an order directing the turnover to them of personal and, if applicable, real property with a value of the amount of their judgment against Iran, plus post-judgment interest, or the payment of a sum of money not exceeding those amounts, and the turnover to them of all blocked assets in the defendants' possession, custody, and control owed to or held for the benefit of Iran. Their request for this relief was based on writs of execution that they had allegedly delivered to the SDNY Marshal on January 6, 2011 for service on the defendants and that were allegedly served on JPMorgan on or before February 17, 2011.

83. On July 8, 2010, the Peterson Judgment Creditors filed an amended answer, with amended counterclaims and crossclaims against various parties (Docket No. 216), to a third-party complaint served on them. In their amended counterclaims, the Peterson Judgment Creditors sought the entry of an order directing the turnover by JPMorgan to them of personal and, if applicable, real property of Iran with a

value of, or otherwise to receive payment of a sum of money not exceeding the amount of, their judgment against Iran, plus post-judgment interest, and the turnover by JPMorgan to them, in satisfaction of their judgment against Iran, of all blocked assets in JPMorgan's possession, custody, or control owed to or held for the benefit of Iran. Their request for this relief was based, inter alia, on allegations that they had registered their judgment against Iran with this Court on March 24, 2008 and delivered a writ of execution to the SDNY Marshal on June 12, 2008.

84. Upon information and belief, the Rubin Judgment Creditors have delivered one or more writs of execution relating to their judgment against Iran to the SDNY Marshal in an effort to satisfy that judgment. On April 19, 2010, the Rubin Judgment Creditors filed an answer (Docket No. 145) to a third-party complaint served on them, but their answer did not include counterclaims.

85. Upon information and belief, many of the Valore Judgment Creditors have filed Notices of Pending Action Pursuant to FSIA § 1605A(g) with the Clerk of this Court in an attempt to establish a lien on property within this judicial district that may be subject to execution to satisfy their judgment against Iran. On April 20, 2010, the Valore Judgment Creditors who were made Third-Party Defendants to this proceeding in 2010 filed answers (Docket Nos. 153 and 155) to a third-party complaint served on them, but their answers did not include counterclaims.

86. Upon information and belief, the Brown Judgment Creditors have filed a Notice of Pending Action Pursuant to FSIA § 1605A(g) with the Clerk of this Court in an attempt to establish a lien on property within this judicial district that may be subject to execution to satisfy their judgment against Iran. On April 20, 2010, the Brown

Plaintiffs filed an answer (Docket No. 153) to a third-party complaint served on them, but their answer did not include counterclaims.

87. Upon information and belief, the Bland Judgment Creditors have filed a Notice of Pending Action Pursuant to FSIA § 1605A(g) with the Clerk of this Court in an attempt to establish a lien on property within this judicial district that may be subject to execution to satisfy their judgment against Iran. On April 20, 2010, the Bland Judgment Creditors filed an answer (Docket No. 153) to a third-party complaint served on them, but their answer did not include counterclaims.

88. Upon information and belief, the Khaliq Plaintiffs, the Owens Plaintiffs, and the Mwila Plaintiffs have filed a Notice of Pending Action Pursuant to FSIA § 1605A(g) with the Clerk of this Court in an attempt to establish a lien on property within this judicial district that may be subject to execution to satisfy any judgment that they may recover against Iran under FSIA § 1605A.

89. On July 13, 2010, the Levins made a motion for partial summary judgment in the Levin Turnover Proceeding (Docket Nos. 218-224). Their motion asked the Court to order the defendants to turn over to them certain of the Blocked Assets (the "Phase 1 Assets") immediately. In response, the Greenbaum Judgment Creditors and the Acosta Judgment Creditors made cross-motions to compel JPMorgan and defendant Citibank, N.A. ("Citibank") to turn over certain of the Phase 1 Assets to them. The Heiser Judgment Creditors also made a cross-motion for an order directing defendants The Bank of New York Mellon ("BNY Mellon") and Société Générale ("SG") to turn over certain of the Phase 1 Assets to them.

90. On January 20, 2011, this Court entered an order, later modified on March 4, 2011 (the "Summary Judgment Order") (Docket No. 342), that denied the Levins' motion for partial summary judgment, on the ground that their writ of execution was not valid. The Summary Judgment Order also denied the Heiser Judgment Creditors' motion for partial summary judgment, on the ground that the writ of execution on which their motion was based was issued and served in the State of Maryland, not the State of New York, and so could not be enforced against assets held in New York. The Summary Judgment Order granted the motions for partial summary judgment made by the Greenbaum Judgment Creditors and the Acosta Judgment Creditors and ordered that the funds held by JPMorgan in one blocked account and certain assets held by Citibank must be turned over to the Greenbaum Judgment Creditors and the Acosta Judgment Creditors. The Summary Judgment Order was entered as a Rule 54(b) judgment in favor of those parties with respect to the blocked assets that had been awarded to them.

91. The Levins took an immediate interlocutory appeal from the Summary Judgment Order. Upon information and belief, while the appeal was pending, the Levins reached a settlement with the Greenbaum Judgment Creditors, the Acosta Judgment Creditors, and the Heiser Judgment Creditors. Upon information and belief, this settlement provides for the Levins, the Greenbaum Judgment Creditors, the Acosta Judgment Creditors, and the Heiser Judgment Creditors (the "Settling Parties") to divide among themselves, according to a formula that is not known to the Stakeholders, some or all of the funds, property, and assets that are turned over to any of the Settling Parties in this proceeding, and possibly also in other proceedings brought by any of them in an effort to satisfy a judgment against Iran. The Levins then withdrew their appeal.

92. On March 8, 2011, meanwhile, the Heiser Judgment Creditors filed in this Court a separate turnover proceeding against JPMCB entitled *Estate of Michael Heiser, et al. v. JPMorgan Chase Bank, N.A.*, Index No. 11 Civ. 1606 (LTS) (MHD) (S.D.N.Y.). The Heiser Judgment Creditors' petition in that proceeding (Docket No. 1 in that proceeding) seeks the entry of an order compelling JPMCB to convey, assign, and pay to petitioners, in satisfaction of their judgment against Iran, all right, title, interest, and money in their possession in which Iran or its agencies or instrumentalities (or any separate juridical entity in which Iran has an interest, direct or indirect), may have an interest, including but not limited to, Blocked Assets. Their request for this relief is based, inter alia, on allegations that the Heiser Judgment Creditors delivered a writ of execution to the SDNY Marshal on December 10, 2010 and that this writ was served on JPMCB on January 28, 2011. For the moment, this proceeding has been stayed.

93. In June 2011, the Settling Parties made a joint motion for summary judgment in the Levin Turnover Proceeding, seeking the immediate turnover of all of the Phase 1 Assets. The Court granted this motion and entered an order dated June 21, 2011 (Docket No. 412), modified on July 11, 2011, that directed JPMorgan and the other defendants to turn over all of the Phase 1 Assets to the Settling Parties. In July 2011, JPMCB, acting pursuant to this order, turned over certain funds to the SDNY Marshal for delivery to the Settling Parties.

94. Thereafter, the Settling Parties designated additional Blocked Assets held by the defendants, including blocked assets held by JPMCB that had been blocked in or before June 2011, for inclusion in Phase 2 of this proceeding. Upon

information and belief, the Blocked Assets designated for inclusion in Phase 2 (the "Phase 2 Assets") involve more than $4 million in blocked funds.

95. In September and October 2011, JPMorgan filed additional Third-Party Complaints (the "Additional Third-Party Complaints") in order to obtain interpleader relief and other relief against persons who might have an interest or rights in or assert a claim to one or more of the Phase 2 Assets held by JPMorgan. Partially redacted copies of JPMorgan's Additional Third-Party Complaints are on file in the public docket of this proceeding (Docket Nos. 430 and 597).

96. On October 5, 2011, the Levins filed an answer to an amended third-party complaint filed by SG in September 2011. The Levins' answer (Docket No. 437) asserted crossclaims against JPMorgan that sought the entry of an order directing JPMorgan to convey to the Levins all right, title, interest, and money held by them in accounts that had been blocked or restrained or that JPMorgan had control over due to those accounts' or assets' nexus with Iran. Their request for this relief was based on additional writs of execution that the Levins had allegedly delivered to the SDNY Marshal on August 25, 2011 for service on various entities and that were allegedly served on JPMorgan on or before September 8, 2011.

97. The Greenbaum Judgment Creditors, who were named as Third-Party Defendants in JPMorgan's Additional Third-Party Complaints, filed an answer thereto (Docket No. 444) that asserted counterclaims against JPMorgan. These counterclaims were based on the same writs and sought the same relief as the counterclaims previously asserted by them in earlier pleadings that are described in paragraph 38 above.

98. The Acosta Judgment Creditors, who were named as Third-Party Defendants in JPMorgan's Additional Third-Party Complaints, also filed an answer thereto (Docket No. 442) that asserted counterclaims against JPMorgan. These counterclaims were based on the same writs and sought the same relief as the counterclaims asserted by them in earlier pleadings that are described in paragraph 39 above.

99. The Heiser Judgment Creditors, who were named as Third-Party Defendants in JPMorgan's Additional Third-Party Complaints, also filed an answer thereto (Docket No. 447) that asserted counterclaims against the Stakeholders. These counterclaims sought the same relief as the counterclaims asserted by them in earlier pleadings that are described in paragraph 36 above. Their request for this relief was based in part on the same allegations regarding the issuance of writs of execution and the service of those writs that they had made in the petitions filed by them against the Stakeholders that are described in paragraphs 37 and 49 above.

100. The Valore Judgment Creditors, who were named as Third-Party Defendants in JPMorgan's Additional Third-Party Complaints, also filed an answer thereto (Docket No. 490) that asserted counterclaims against JPMorgan. In their counterclaims the Valore Judgment Creditors sought the entry of an order directing the turnover to them of personal and, if applicable, real property of Iran with a value of, or otherwise to receive payment of a sum of money not exceeding the amount of, their judgment against Iran, plus post-judgment interest, from the defendants, and the turnover by the defendants to them, in satisfaction of their judgment against Iran, of all blocked assets in the defendants' possession, custody, or control owed to or held for the benefit of

Iran. Their request for this relief was based, inter alia, on allegations that they had registered their judgment against Iran with this Court on July 5, 2011 and delivered a writ of execution to the SDNY Marshal on October 5, 2011 for service on, inter alia, JPMorgan.

101. The Brown Judgment Creditors and the Bland Judgment Creditors, who were also named as Third-Party Defendants in JPMorgan's Additional Third-Party Complaints, filed an answer thereto (Docket No. 440) that did not include counterclaims.

102. The Khaliq Plaintiffs, the Owens Plaintiffs, and the Mwila Plaintiffs, who were also named as Third-Party Defendants in JPMorgan's Additional Third-Party Complaints, filed an answer thereto (Docket No. 458) that did not include counterclaims.

103. The Peterson Judgment Creditors, who were also named as Third-Party Defendants in JPMorgan's Additional Third-Party Complaints, entered into a stipulation dismissing with prejudice any claim they might have to the Phase 2 Blocked Assets (Docket No. 561).

104. The Rubin Judgment Creditors, who were also named as Third-Party Defendants in JPMorgan's Additional Third-Party Complaints, did not file an answer to those third-party complaints.

105. JPMorgan's Additional Third-Party Complaints also named as Third-Party Defendants Susan Weinstein (individually, as Co-Administrator of the Estate of Ira William Weinstein and as natural guardian of David Weinstein), Jeffrey A. Miller (as Co-Administrator of the Estate of Ira William Weinstein), Joseph Weinstein, Jennifer Weinstein Hazi, and David Weinstein (the "Weinstein Judgment Creditors"). Upon

information and belief, the Weinstein Judgment Creditors were plaintiffs in an action entitled *Weinstein, et al., against Islamic Republic of Iran, et al.*, Civil Action No. 00-2601 (RCL) (D.D.C.), who recovered a judgment against Iran in that action in the amount of approximately $183.2 million. Upon information and belief, the Weinstein Judgment Creditors have served restraining notices on one or more of the Stakeholders. The Weinstein Judgment Creditors did not file answers to JPMorgan's Additional Third-Party Complaints.

106. JPMorgan's Additional Third-Party Complaints also named as third-party defendants numerous persons and entities in whose names the blocked deposit accounts included in the Phase 2 Blocked Assets were being held, or who were named as parties to wire transfers that gave rise to Phase 2 Blocked Assets, or who appeared to have a possible interest in or claim to one or more of the Phase 2 Blocked Assets on other grounds (the "Phase 2 Wire Transfer/Account Parties"). Some of the Phase 2 Wire Transfer/Account Parties have filed answers to the Additional Third-Party Complaints, and some of their answers have included counterclaims asserting that they owned or had a claim to or interest in one or more of the Phase 2 Assets held by JPMorgan. Other Phase 2 Wire Transfer/Account Parties may also decide to appear in this proceeding and assert claims to one or more Blocked Assets or may commence other legal proceedings to assert claims to one or more Blocked Assets.

107. On August 29, 2012, the Settling Parties made a motion for partial summary judgment in the Levin Turnover Proceeding, seeking the immediate turnover by JPMorgan and the other defendants of a large percentage of the Phase 2 Assets. This motion is scheduled to be argued before the Court on November 13, 2012.

108. In addition to the Phase 1 and Phase 2 Assets held or formerly held by it, JPMorgan is holding several millions of dollars in blocked funds, including funds formerly held in deposit accounts and funds that represent the proceeds of blocked wire transfers, and including funds blocked by JPMorgan after June 2011.

109. Upon information and belief, the Murphy Judgment Creditors commenced a proceeding in this Court in 2011 entitled *Elizabeth Murphy, et al. v. Islamic Republic of Iran, et al.*, 11 MC 0243 (S.D.N.Y.). Upon information and belief, the Murphy Judgment Creditors have obtained the issuance of a writ of execution in that proceeding and have delivered the writ to the SDNY Marshal for service upon various banks. On information and belief, copies of this writ of execution have been delivered to one or more other banks but not, as of the date of filing of these Counterclaims and this Third-Party Complaint, to JPMorgan.

110. On June 15, 2012, JPMorgan, BNY Mellon, and SG filed a supplemental third-party complaint (the "2012 Third-Party Complaint") seeking interpleader and other relief (Docket No. 706) against the Murphy Judgment Creditors and the Bennett Judgment Creditors.

111. On July 5, 2012, the Bennett Judgment Creditors filed an answer (Docket No. 716) to the 2012 Third-Party Complaint that asserted counterclaims against JPMorgan. In their counterclaims, the Bennett Judgment Creditors sought the entry of an order directing JPMorgan to turn over to them Iranian assets, in an amount not to exceed the amount of their judgment against Iran, plus interest, from assets blocked by JPMorgan after June 2011. Their request for this relief was based on a writ of execution

that they had allegedly delivered to the SDNY Marshal on May 31, 2012 for service on the defendants and that was allegedly served on JPMorgan on June 4, 2012.

112. The Murphy Judgment Creditors filed an answer (Docket No. 737) to the 2012 Third-Party Complaint that did not include counterclaims.

113. On August 16, 2012, the Court granted the Heiser Judgment Creditors permission to file an amended answer to the Additional Third-Party Complaints, with an amended counterclaim, and to pursue turnover of certain blocked assets held by JPMorgan and Citibank that were blocked after June 2011, including the JPM Phase 3 Assets.

114. On August 17, 2012, the Heiser Judgment Creditors filed an amended answer (Docket No. 753) to the Additional Third-Party Complaints that asserted an amended counterclaim against JPMorgan. This counterclaim was based on the same writs and sought the same relief as the counterclaim previously asserted by them in earlier pleadings that are described in paragraphs 36, 37, 49, and 56 above, but it also sought the turnover of blocked assets that were not included among the Phase 1 Assets or the Phase 2 Assets, based in part on a writ of execution allegedly issued by the Court and delivered to the SDNY Marshal on May 29, 2012 and served on JPMorgan on June 4, 2012. A copy of this amended answer is annexed hereto as Exhibit I.

115. Counsel for the Heiser Judgment Creditors has advised the Court and counsel for JPMorgan that the immediate purpose of filing the Heiser Judgment Creditors' latest amended counterclaim against JPMorgan is to seek the turnover to the Heiser Judgment Creditors of the JPM Phase 3 Assets, which are being held by JPMorgan in three blocked accounts. The JPM Phase 3 Assets are described in detail in

Exhibit A to this third-party complaint, and relevant portions of Exhibit A will be served on all Third-Party Defendants identified in paragraphs 65 to 74 above (the "Phase 3 Wire Transfer/Account Parties") who may have a claim to or an interest or rights in the JPM Phase 3 Assets.

116. Upon information and belief, the Third-Party Defendants, or some of them, may have claims to or rights with respect to some or all of the JPM Phase 3 Assets that are superior to the rights of the Heiser Judgment Creditors to seize those Blocked Assets to satisfy their judgments against Iran.

117. Upon information and belief, the Phase 3 Wire Transfer/Account Parties, or some of them, may have a sufficient interest in the JPM Phase 3 Assets that they have standing to contend that some or all of the JPM Phase 3 Assets are not subject to execution to satisfy the judgments or claims of any of the Counterclaim Defendants or Third-Party Defendants identified in paragraphs 50 to 64 above who have judgments against or are seeking to recover judgments against Iran (the "Iran Claimants").

118. By reason of the foregoing, JPMorgan is faced with the prospect of multiple claims to some or all of the Phase 3 Blocked Assets from the persons named as Counterclaim Defendants and Third-Party Defendants herein. In these circumstances, JPMorgan has legitimate concerns that JPMorgan may be exposed to double or multiple liability, vexatious and burdensome litigation in different courts and proceedings, and the attendant risk of inconsistent rulings.

119. These counterclaims and third-party claims do not supersede any other counterclaim or third-party claims referred to herein or heretofore filed in this proceeding.

First Counterclaim/Claim for Relief

120. JPMorgan repeats and realleges each and every allegation set forth in paragraphs 33 through 119 above to the same extent as if those allegations were set forth here in full.

121. CPLR § 5239 provides that "[p]rior to the application of property or debt . . . to the satisfaction of a judgment, any interested person may commence a special proceeding against the judgment creditor or other person with whom a dispute exists to determine rights in [such] property or debt," and that in such a proceeding the Court "may vacate the execution or order, void the levy [or] direct the disposition of the property or debt."

122. In the circumstances set forth above, JPMorgan is entitled to an order determining the rights of the Heiser Judgment Creditors, the Third-Party Defendants in this proceeding, and all interested parties in and to the JPM Phase 3 Assets.

Second Counterclaim/Claim for Relief

123. JPMorgan repeats and realleges each and every allegation set forth in paragraphs 33 through 119 above to the same extent as if those allegations were set forth here in full.

124. As set forth above, the Heiser Judgment Creditors are asserting that they are entitled to seize the JPM Phase 3 Assets to satisfy their judgments against Iran, but some or all of the third-party defendants in this proceeding may have claims to or rights in some or all of the JPM Phase 3 Assets that may take priority over the Heiser Judgment Creditors' claims to or rights therein, or may be able to establish that the Heiser

Judgment Creditors or the other Iran Claimants are not entitled to execute on some or all of the JPM Phase 3 Assets.

125. By reason of the foregoing, JPMorgan is exposed to the risk of multiple and inconsistent liability and burdensome litigation in different courts with respect to the JPM Phase 3 Assets.

126. In these circumstances JPMorgan is entitled to interplead all other parties who may have claims to or rights in the JPM Phase 3 Assets and obtain a determination by the Court, pursuant to New York Banking Law § 134, Rule 22, 28 U.S.C. §§ 1335 and 2361, and CPLR § 1006, of the rights of all interested parties with respect thereto.

Third Counterclaim/Claim for Relief

127. JPMorgan repeats and realleges each and every allegation set forth in paragraphs 33 through 119, 121, 122, and 124 through 126 above to the same extent as if those allegations were set forth here in full.

128. By reason of the foregoing, JPMorgan is entitled to preliminary and permanent injunctive relief restraining and enjoining the Heiser Judgment Creditors, the Third-Party Defendants, and all other persons and entities who may have claims to or rights in the JPM Phase 3 Assets from instituting or prosecuting any other proceeding in any state or United States court or in any other jurisdiction relating to or affecting the JPM Phase 3 Assets, requiring them to assert their claims to the JPM Phase 3 Assets, if any, in this proceeding, and restraining and enjoining them from instituting or prosecuting any proceeding in any jurisdiction relating to any of the JPM Phase 3 Assets

or any portion thereof that JPMorgan is ordered to turn over to any Counterclaim or Third-Party Defendant in this proceeding.

Fourth Counterclaim/Claim for Relief

129. JPMorgan repeats and realleges each and every allegation set forth in paragraphs 33 through 119, 121, 122, and 124 through 126 above to the same extent as if those allegations were set forth here in full.

130. By reason of the foregoing, JPMorgan is entitled to a declaratory judgment determining its rights and the rights of the Heiser Judgment Creditors, the Third-Party Defendants, and all interested parties with respect to the JPM Phase 3 Assets.

WHEREFORE Defendants, Counterclaim Defendants, and Counterclaim and Third-Party Plaintiffs JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. request the entry of a judgment in these proceedings

(1) Dismissing the Amended Counterclaim in its entirety as against JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.;

(2) Determining their rights and the rights of the Heiser Judgment Creditors, the Third-Party Defendants, and all interested parties in the JPM Phase 3 Assets;

(3) Determining whether any of the Phase 3 Wire Transfer/Account Parties is an agency or instrumentality of the Islamic Republic of Iran;

(4) Determining with respect to each of the JPM Phase 3 Assets whether the Heiser Judgment Creditors or any of the other Iran Claimants have met their burden of proof with respect to the other requirements and conditions set forth in Section 201 of TRIA or Section 1610(g) of the FSIA for execution against such assets;

(5) Determining that the service of this Third-Party Complaint, the third-party summons, and other relevant documents upon the Third-Party Defendants constitutes good and sufficient service under CPLR § 5239 and any other applicable provision of law;

(6) Determining this Court's subject matter jurisdiction and its in personam and in rem jurisdiction over the Third-Party Defendants and the JPM Phase 3 Assets to the extent necessary to determine the parties' rights with respect to such assets;

(7) Determining whether JPMorgan Chase & Co. or JPMorgan Chase Bank, N.A. is a proper garnishee and has properly been subjected to execution of any judgment against Iran in favor of any of the Heiser Judgment Creditors or any of the other Iran Claimants with respect to any of the JPM Phase 3 Assets;

(8) Determining whether and to what extent, if any, each of the JPM Phase 3 Assets is subject to execution to satisfy any judgment entered heretofore or hereafter in favor of the Heiser Judgment Creditors or any of the Iran Claimants against Iran, and the extent to which any person is entitled to the turnover of such assets;

(9) Discharging JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. from any and all liability to the Heiser Judgment Creditors, the Third-Party Defendants, and any and all other claimants and interested persons with respect to any portion of the Phase 3 Blocked Assets that may be ordered turned over to any of them in this proceeding in satisfaction of any judgment against Iran;

(10) Restraining and enjoining the Heiser Judgment Creditors, the Third-Party Defendants, and all other persons and entities who may have claims to or rights in the JPM Phase 3 Assets from instituting or prosecuting any proceeding in any

jurisdiction relating any of the JPM Phase 3 Assets or any portion thereof that JPMorgan is ordered to turn over to any Third-Party Defendant;

(11) Awarding to JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. their costs and expenses in these proceedings, including reasonable attorneys' fees; and

(12) Awarding to JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. such other and further relief as may be just and proper.

Dated: New York, New York
October 10, 2012

LEVI LUBARSKY & FEIGENBAUM LLP

By: ______________________
Howard B. Levi
Richard F. Lubarsky
J. Kelley Nevling, Jr.
1185 Avenue of the Americas, 17th Floor
New York, NY 10036
Tel. No. (212) 308-6100
E-mail addresses: hlevi@llf-law.com or
knevling@llf-law.com

Attorneys for Defendants, Counterclaim Defendants, and Counterclaim and Third-Party Plaintiffs JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.

EXHIBIT A

EXHIBIT A (CONFIDENTIAL)

The records of JPMorgan Chase & Co. and/or JPMorgan Chase Bank, N.A. (collectively, "JPMorgan") indicate that you, or one or more entities you have done business with, may have an interest in or rights to funds being held by JPMorgan Chase Bank, N.A. ("JPMCB") in the following blocked account that was established to hold funds subject to blocking regulations issued by the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury of the United States of America:

Amount Blocked:	US$2,927,258.58
Date Blocked:	March 8, 2012
Name of Prior Property Custodian:	MasterCard International Incorporated
Other Interested Entities:	Bank Melli Iran Bank Saderat Iran

JPMorgan's records reflect that this account was established by JPMCB at the request of MasterCard International Incorporated ("MasterCard") and that MasterCard has notified JPMCB that the funds in question were settlement funds due and owing to Bank Melli Iran, an entity that is subject to OFAC blocking regulations set forth in 31 C.F.R. Part 544 (Weapons of Mass Destruction Proliferators Sanctions Regulations), and/or Bank Saderat Iran, an entity that is subject to blocking regulations set forth in 31 C.F.R. Parts 594 and 595 (Anti-Terrorism Regulations).

These funds are being held by JPMCB in a blocked account. They are included among the JPM Phase 3 Assets that are described in the third-party complaint to which this Exhibit I is attached. As described in the accompanying third-party complaint, various parties who have obtained a judgment against the Islamic Republic of Iran, or who have brought suit to obtain such a judgment, are trying to seize the funds in this blocked account in order to satisfy their judgment against the Islamic Republic of Iran, or are seeking to impose a lien on this account until they can obtain such a judgment. The basis for their claims appears to be that such funds are blocked assets of the Islamic Republic of Iran or one or more of its agencies and instrumentalities, within the meaning of Section 201(a) of the Terrorism Risk Insurance Act of 2002, or are property of the Islamic Republic of Iran or one or more of its agencies and instrumentalities, or in which they have an interest, within the meaning of Section 1610(g) of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1610(g).

THIS EXHIBIT IS DESIGNATED AS CONFIDENTIAL UNDER THE PROTECTIVE ORDER THAT WAS SO ORDERED BY THE COURT ON OCTOBER 26, 2009, AS MODIFIED ON JANUARY 11 AND AUGUST 6, 2010

EXHIBIT A (Continued) (CONFIDENTIAL)

The records of JPMorgan Chase & Co. and/or JPMorgan Chase Bank, N.A. (collectively, "JPMorgan") indicate that you, or one or more entities you have done business with, may have an interest in or rights to funds being held by JPMorgan Chase Bank, N.A. ("JPMCB") in the following blocked account that was established to hold funds subject to blocking regulations issued by the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury of the United States of America:

Amount Blocked:	US$1,264,233.67
Date Blocked:	March 8, 2012
Name of Prior Property Custodian:	MasterCard International Incorporated
Other Interested Entities:	Bank Melli Iran

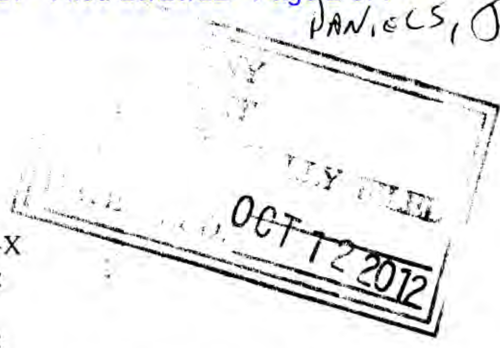
JPMorgan's records reflect that this account was established by JPMCB at the request of MasterCard International Incorporated ("MasterCard") and that MasterCard has notified JPMCB that the funds in question were cash collateral pledged by Bank Melli Iran, an entity that is subject to OFAC blocking regulations set forth in 31 C.F.R. Part 544 (Weapons of Mass Destruction Proliferators Sanctions Regulations).

These funds are being held by JPMCB in a blocked account. They are included among the JPM Phase 3 Assets that are described in the third-party complaint to which this Exhibit I is attached. As described in the accompanying third-party complaint, various parties who have obtained a judgment against the Islamic Republic of Iran, or who have brought suit to obtain such a judgment, are trying to seize the funds in this blocked account in order to satisfy their judgment against the Islamic Republic of Iran, or are seeking to impose a lien on this account until they can obtain such a judgment. The basis for their claims appears to be that such funds are blocked assets of the Islamic Republic of Iran or one or more of its agencies and instrumentalities, within the meaning of Section 201(a) of the Terrorism Risk Insurance Act of 2002, or are property of the Islamic Republic of Iran or one or more of its agencies and instrumentalities, or in which they have an interest, within the meaning of Section 1610(g) of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1610(g).

THIS EXHIBIT IS DESIGNATED AS CONFIDENTIAL UNDER THE PROTECTIVE ORDER THAT WAS SO ORDERED BY THE COURT ON OCTOBER 26, 2009, AS MODIFIED ON JANUARY 11 AND AUGUST 6, 2010

Annex 41

***In Re Terrorist Attacks of September 11, 2001 (relating to Havlish v. Bin Laden)*, U.S. District Court, Southern District of New York, Order and Judgment of 12 October 2012, Case 1:03-cv-09848-GBD-SN**



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001 :

ORDER AND JUDGMENT

03 MDL 1570 (GBD)(FM)

---X

This Document Relates to
Havlish v. bin Laden,
03 Civ. 9848 (GBD) (FM)

In accordance with the Memorandum Decision and Order entered on October 3, 2012, it is HEREBY:

ORDERED that Final Judgment is entered in favor of all Plaintiffs and against all Sovereign Defendants and Non-Sovereign Defendants;

ORDERED that Plaintiffs are awarded: (1) economic damages of $394,277,884, as set forth below; (2) damages for pain and suffering of $2,000,000 per Decedent for a total of $94,000,000, as set forth below; (3) damages for solatium totaling $874,000,000, as set forth below; (4) punitive damages of $4,686,235,921, as set forth below; and (5) prejudgment interest on the amount of $968,000,000 in pain and suffering and solatium damges.

ORDERED that all Defendants are jointly and severally liable for the entire award;

AND IT IS FURTHER ORDERED that the economic damages are awarded to the Decedents' Estates as follows:

DECEDENT ESTATE	ECONOMIC LOSS TO EST.	PUNITIVE DAMAGES	TOTAL ECON. DAM.
Estate of Donald J. Havlish, Jr.	$6,711,879	$23,088,864	**$29,800,743**
Estate of Michael A. Bane	$5,960,665	$20,504,688	**$26,465,353**
Estate of Martin Boryczewski	$17,363,416	$59,730,151	**$77,093,567**
Estate of Steven Cafiero	$1,754,202	$6,034,455	**$7,788,657**
Estate of Richard M. Caproni	$3,551,011	$12,215,478	**$15,766,489**
Estate of Peter Chirchirillo	$5,440,587	$18,715,619	**$24,156,206**
Estate of Jeffrey Coale	$5,558,859	$19,122,475	**$24,681,334**
Estate of Daniel M. Coffey	$5,059,077	$17,403,225	**$22,462,302**
Estate of Jason Coffey	$4,006,486	$13,782,312	**$17,788,798**
Estate of Jeffrey Collman	$4,318,172	$14,854,512	**$19,172,684**
Estate of Michael Diehl	$5,584,103	$19,209,314	**$24,793,417**
Estate of Stephen Dorf	$3,242,690	$11,154,854	**$14,397,544**
Estate of Judy Fernandez	$2,852,544	$9,812,751	**$12,665,295**
Estate of Ronald Gamboa	$2,890,981	$9,944,975	**$12,835,956**
Estate of William R. Godshalk	$16,672,472	$57,353,304	**$74,025,776**
Estate of John Grazioso	$7,376,753	$25,376,030	**$32,752,783**
Estate of Liming Gu	$11,883,059	$40,877,723	**$52,760,782**
Estate of James D. Halvorson	$9,464,745	$32,558,723	**$42,023,468**
Estate of Denis Lavelle	$4,039,992	$13,897,572	**$17,937,564**
Estate of Robert Levine	$4,520,876	$15,551,813	**$20,072,689**
Estate of Joseph Lostrangio	$5,777,844	$19,875,783	**$25,653,627**
Estate of Dorthy Mauro	$1,580,579	$5,437,192	**$7,017,771**
Estate of Mary Melendez	$7,531,551	$25,908,535	**$33,440,086**
Estate of Peter T. Milano	$22,153,588	$76,208,343	**$98,361,931**
Estate of Yvette Nichole Moreno	$2,360,239	$8,119,222	**$10,479,461**
Estate of Brian Nunez	$2,499,922	$8,599,732	**$11,099,654**
Estate of Philip Paul Ognibene	$4,435,087	$15,256,699	**$19,691,786**
Estate of Salvatore T. Papasso	$6,289,680	$21,636,499	**$27,926,179**
Estate of John William Perry	$4,924,240	$16,939,386	**$21,863,626**
Estate of Marsha Dianah Ratchford	$6,233,977	$21,444,881	**$27,678,858**
Estate of Joshua Scott Reiss	$7,726,738	$26,579,979	**$34,306,717**
Estate of John M. Rodak	$24,440,747	$84,076,170	**$108,516,917**
Estate of Elvin Romero	$14,783,971	$50,856,860	**$65,640,831**
Estate of Richard Rosenthal	$7,274,204	$25,023,262	**$32,297,466**
Estate of Maria Theresa Santillian	$3,255,002	$11,197,207	**$14,452,209**
Estate of Victor Saracini	$9,593,658	$33,002,184	**$42,595,842**
Estate of Scott Schertzer	$2,792,107	$9,604,848	**$12,396,955**
Estate of Paul K. Sloan	$5,967,696	$20,528,874	**$26,496,570**
Estate of George Eric Smith	$2,609,215	$8,975,700	**$11,584,915**
Estate of Timothy P. Soulas	$86,796,344	$298,579,423	**$385,375,767**
Estate of William R. Steiner	$6,443,814	$22,166,720	**$28,610,534**

Estate of Andrew Stergiopoulos	$5,716,259	$19,663,931	**$25,380,190**
Estate of Edward W. Straub	$16,552,703	$56,941,298	**$73,494,001**
Estate of Jennifer Tino	$2,625,577	$9,031,985	**$11,657,562**
Estate of Jeanmarie Wallendorf	$1,768,803	$6,084,682	**$7,853,485**
Estate of Meta Waller	$1,200,501	$4,129,723	**$5,330,224**
Estate of Timothy Raymond Ward	$2,691,269	$9,257,965	**$11,949,234**
	$394,277,884	**$1,356,315,921**	**$1,750,593,805**

AND IT IS FURTHER ORDERED that damages for pain and suffering are awarded to the Decedents' Estates as follows:

DECEDENT ESTATE	PAIN & SUFFERING	PUNITIVE DAMAGES	TOTAL PAIN & SUF.
Estate of Donald J. Havlish, Jr.	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Michael A. Bane	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Martin Boryczewski	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Steven Cafiero	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Richard M. Caproni	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Peter Chirchirillo	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Jeffrey Coale	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Daniel M. Coffey	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Jason Coffey	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Jeffrey Collman	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Michael Diehl	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Stephen Dorf	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Judy Fernandez	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Ronald Gamboa	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of William R. Godshalk	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of John Grazioso	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Liming Gu	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of James D. Halvorson	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Denis Lavelle	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Robert Levine	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Joseph Lostrangio	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Dorthy Mauro	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Mary Melendez	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Peter T. Milano	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Yvette Nichole Moreno	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Brian Nunez	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Philip Paul Ognibene	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Salvatore T. Papasso	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of John William Perry	$2,000,000.00	$6,880,000.00	**$8,880,000.00**

Estate of Marsha Dianah Ratchford	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Joshua Scott Reiss	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of John M. Rodak	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Elvin Romero	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Richard Rosenthal	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Maria Theresa Santillian	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Victor Saracini	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Scott Schertzer	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Paul K. Sloan	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of George Eric Smith	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Timothy P. Soulas	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of William R. Steiner	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Andrew Stergiopoulos	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Edward W. Straub	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Jennifer Tino	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Jeanmarie Wallendorf	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Meta Waller	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
Estate of Timothy Raymond Ward	$2,000,000.00	$6,880,000.00	**$8,880,000.00**
	$94,000,000.00	**$323,360,000.00**	**$417,360,000.00**

AND IT IS FURTHER ORDERED that damages for solatium are awarded as follows:

PLAINTIFF	SOLATIUM	PUNITIVE	TOTAL
Fiona Havlish	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Donald Havlish, Sr.	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
William Havlish	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Susan Conklin	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Tara Bane	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Donald Bane	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Christina Bane-Hayes	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Krystyna Boryczewski	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Estate of Michael Boryczewski	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Julia Boryczewski	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Michele Boryczewski	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Richard A. Caproni	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Dolores Caproni	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Christopher Caproni	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Michael Caproni	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Lisa Caproni-Brown	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Clara Chirchirillo	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Livia Chirchirillo	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Catherine Deblieck	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
William Coale	$8,500,000.00	$29,240,000.00	**$37,740,000.00**

Frances M. Coffey	$21,000,000.00	$72,240,000.00	**$93,240,000.00**
Daniel D. Coffey, M.D.	$12,750,000.00	$43,860,000.00	**$56,610,000.00**
Kevin M. Coffey	$12,750,000.00	$43,860,000.00	**$56,610,000.00**
Dwayne W. Collman	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Brian Collman	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Charles Collman	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Brenda Sorenson	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Loisanne Diehl	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Morris Dorf	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Anne Marie Dorf	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Joseph Dorf	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Michelle Dorf	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Robert Dorf	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Linda Sammut	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Corazon Fernandez	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Grace Parkinson-Godshalk	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Tina Grazioso	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Maureen Halvorson	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Jin Liu	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Alan Gu	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Grace Kneski	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Roni Levine	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Teresanne Lostrangio	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
JoAnne Lovett	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Regina Maria Merwin	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Margaret Mauro	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Ramon Melendez	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Patricia Milano	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Ivy Moreno	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Estate of Vincent A. Ognibene	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Marie Ann Paprocki	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Patricia J. Perry	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Christine Papasso	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Rodney Ratchford	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Rodney M. Ratchford	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Marshee R. Ratchford	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Benefit of Maranda C. Ratchford	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Joyce Ann Rodak	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Chelsea Nicole Rodak	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Benefit of Devon Marie Rodak	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
John Rodak	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Regina Rodak	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Joanne Gori	$4,250,000.00	$14,620,000.00	**$18,870,000.00**

Diane Romero	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Loren Rosenthal	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Judith Reiss	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Expedito Santillian	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Ester Santillian	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Ellen Saracini	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Guardian of Anne C. Saracini	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Joanne Renzi	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Paul Schertzer	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Ronald S. Sloan	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Raymond Doyle Smith	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Katherine Soulas	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Russa Steiner	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
George Stergiopoulos, M.D.	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Angela Stergiopoulos	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Sandra Straub	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Joan E. Tino	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Pamela Schiele	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Christine Barton (now Pence)	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Doyle Raymond Ward	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Gerald Bingham	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Alice Carpeneto	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Stephen L. Cartledge	$12,500,000.00	$43,000,000.00	**$55,500,000.00**
Michelle Wright	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Maureen Halvorson	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Haomin Jian	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
FuMei Chien	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Huichun Jian	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Hui-Chuan Jian	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Hui-Chien Chen	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Hui-Zon Jian	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Michael LoGuidice	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Ralph S. Maerz	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Martin Panik	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Estate of Linda Ellen Panik	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Mary Lynn-Anna Panik Stanley	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Helen Rosenthal	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Alexander Rowe	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Ed Russin	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Gloria Russin	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Barry Russin	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
Leonard Zeplin	$8,500,000.00	$29,240,000.00	**$37,740,000.00**
Leona Zeplin	$8,500,000.00	$29,240,000.00	**$37,740,000.00**

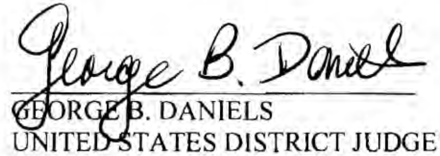
Joslin Zeplin	$4,250,000.00	$14,620,000.00	**$18,870,000.00**
	$874,000,000.00	**$3,006,560,000.00**	**$3,880,560,000.00**

IT IS FURTHERMORE:

ORDERED that Plaintiffs shall forthwith, consistent with the requirements of 28 U.S.C. § 1608(e), send a copy of this Order and Judgment, together with the Memorandum Decision and Order entered on October 3, 2012, and the Report and Recommendation to the Honorable George B. Daniels issued on July 30, 2012, to Defendants.

This is a final, appealable order. See Fed.R.App.P.(4)(a).

SO ORDERED.



DATE ____________

GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON ____________

Annex 42

***Bennett, et al. v. The Islamic Republic of Iran et al.,* U.S. District Court for the Northern District of California, Order Denying Motion to Dismiss, 28 February 2013, Case 3:11-cv-05807-CRB**

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL BENNETT, ET AL.,

Plaintiffs,

v.

THE ISLAMIC REPUBLIC OF IRAN, ET AL.,

Defendants.

No. C 11-05807 CRB

ORDER DENYING MOTION TO DISMISS

This case involves an Iranian instrumentality that seeks to avoid payment to American victims of Iranian terrorist acts. Specifically, four groups of judgment creditors ("Plaintiffs") who hold judgments against Iran seek to recover assets ("the Blocked Assets") held by Third Party Plaintiffs Visa and Franklin.[1] Those assets are owed to an Iranian instrumentality, Bank Melli, but have been blocked by executive orders issued by the President of the United States and blocking regulations issued by the United States Department of the Treasury, Office of Foreign Assets Control ("OFAC"). Visa and Franklin brought this interpleader action "to obtain a determination as to which [of the groups of judgment creditors], if any, has priority with respect to those assets to satisfy their judgments or their claims." Compl.

[1] Visa is a financial services company that had a commercial relationship with Third Party Defendant Bank Melli. Compl. (dkt. 16) ¶ 16. A Franklin subsidiary distributed shares in the mutual fund in which the Blocked Assets were invested. Id. ¶ 18.

¶ 4. Bank Melli has appeared in the case, and now moves to dismiss it in its entirety. See generally MTD (dkt. 112).

I. BACKGROUND

A. Bank Melli and the Blocked Assets

Bank Melli is Iran's largest financial institution. MTD at 2. Its stock is wholly owned by the Iranian government. Id. The Blocked Assets at issue in this case are "funds due and owing by contract to Bank Melli pursuant to a commercial relationship with [Visa]." Compl. ¶ 16. In 1984, the United States designated Iran a terrorist party pursuant to section 6(j) of the Export Administration Act of 1797, and, pursuant to the International Emergency Economic Powers Act, the President directed 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." Id. ¶ 17. The United States added Bank Melli to the list, freezing its assets, in October 2007, upon finding that from 2002 to 2006, Bank Melli had "facilitated numerous purchases of sensitive materials for Iran's nuclear and missile programs," "provided a range of financial services on behalf of Iran's nuclear and missile industries," and "employed deceptive banking practices to obscure its involvement from the international banking system." Id.; Fact Sheet. Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism, U.S. Dep't of the Treasury Press Ctr. (Oct. 25, 2007), http://www.treasury.gov/press-center/press-releases/pages/hp644.aspx (hereinafter "10/25/07 Fact Sheet").

Visa and Franklin claim no ownership interest in the Blocked Assets and "only continue[] to hold them because, pursuant to OFAC regulations, the assets cannot be released to Bank Melli or to anyone else without a license from OFAC or an appropriate court order." Compl. ¶ 18.[2]

//

[2] Bank Melli does not dispute this, arguing that "[i]f this Court rules in favor of Bank Melli, the assets will go back to Visa and Franklin." Opp'n to Discharge Mot. (dkt. 119) at 2-3.

United States District Court
For the Northern District of California

B. Procedural History

Plaintiffs are four groups of individuals (the Bennett Plaintiffs, the Greenbaum Plaintiffs, the Acosta Plaintiffs, and the Heiser Plaintiffs) who obtained default judgments against the government of Iran. See MTD at 2. The Bennett Plaintiffs sued Iran over the July 31, 2002 bombing of a cafeteria at Hebrew University in Jerusalem. MTD at 3 n.2. On August 30, 2007, they obtained a default judgment of almost $13 million under 28 U.S.C. § 1605(a)(7). Id. The Greenbaum Plaintiffs sued Iran over the August 9, 2001 bombing of a Jerusalem restaurant. Id. On August 10, 2006, they obtained a default judgment of almost $20 million under 28 U.S.C. § 1605(a)(7). Id. The Acosta Plaintiffs sued Iran over the November 5, 1990 shooting of various individuals, including U.S. Postal Officer Carlos Acosta. Id. On August 26, 2008, they obtained a default judgment exceeding $350 million under 28 U.S.C. § 1605A. Id. The Heiser Plaintiffs sued Iran over the June 25, 1996 bombing of the Khobar Towers in Saudi Arabia. Id. On December 22, 2006, they obtained a default judgment of over $254 million under 28 U.S.C. § 1605(a)(7); on September 30, 2009, they obtained a further default judgment of almost $337 million under 28 U.S.C. § 1605A. Id. Bank Melli is not named as a party to any of the judgments and is not alleged to have been involved in any of the events underlying them. Id. at 4.

On December 2, 2011, the Bennett Plaintiffs filed a complaint against Visa and Franklin, seeking to execute against the Blocked Assets in order to satisfy their judgment. Id. On February 3, 2012, Visa and Franklin filed their Third Party Complaint in the nature of an interpleader, naming as defendants Bank Melli and other third-party defendants with potential claims to the Blocked Assets. See generally Compl. Visa and Franklin subsequently deposited the assets into this Court's registry. See dkts. 88-89.

On April 26, 2012, the Clerk entered a default against Bank Melli. See dkt. 79. On June 12, 2012, however, Bank Melli entered its appearance, see dkt. 96, and on July 5, 2012, this Court entered a stipulated order vacating the default, see dkt. 109. Bank Melli then moved to dismiss the case. See generally MTD.

United States District Court
For the Northern District of California

1 The Court discharged Visa and Franklin at the November 16, 2012 hearing, and heard
2 preliminary argument on the merits of Bank Melli's motion to dismiss. The parties each filed
3 supplemental briefs, see Bank Melli Br. (dkt. 124); Pls. Br. (dkt. 125), and then, on
4 December 13, 2012, participated in a second and more fulsome hearing on the motion to
5 dismiss. See Mins. (dkt. 127). The Court then took the motion under submission.

6 **II. DISCUSSION**

7 Bank Melli's motion makes four arguments for dismissal: (A) that under First
8 National City Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611 (1983)
9 ("Bancec"), it cannot be held liable for Iran's debts; (B) that the statutes on which Plaintiffs
10 rely to pursue the Blocked Assets, the Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L.
11 No. 107-297, § 201(a), 116 Stat. 2322, 2337 (hereinafter "TRIA"), and the Foreign
12 Sovereign Immunities Act (FSIA), 28 U.S.C. § 1610(g) (hereinafter "section 1610(g)"), do
13 not apply retroactively; (C) that TRIA and section 1610(g) only apply where the assets at
14 issue are "assets of" and "property of" Bank Melli, allegations that are missing here; and (D)
15 that Federal Rule of Civil Procedure 19 requires dismissal. See generally MTD. This Order
16 addresses each argument in turn.

17 **A. Bancec**

18 Bank Melli argues first that it cannot be held liable for the debts of Iran, because,
19 although it is an instrumentality of Iran, it is juridically distinct. See MTD at 6. No doubt,
20 the Supreme Court held in Bancec, 462 U.S. at 626-27, that "government instrumentalities
21 established as juridical entities distinct and independent from their sovereign should normally
22 be treated as such." In addition, the Treaty of Amity between the United States and Iran
23 states that "[c]ompanies constituted under the applicable laws" of each country must "have
24 their juridical status recognized within the territories of the other." Treaty of Amity,
25 //
26 //
27 //
28 //

Economic Relations, and Consular Rights, U.S.-Iran, Art. III ¶ 1, Aug. 15, 1955, 8 U.S.T. 899.[3]

However, two statutes permit judgment creditors to execute on Blocked Assets in this context, abrogating Bancec as to terrorism-based judgments against foreign state sponsors of terrorism. Section 1610(g)[4] states 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 . . . is subject to attachment in aid of execution, and execution, upon that judgment." TRIA[5] similarly 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 section 1605(a)(7) 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.

Neither of these statutes is the least bit ambiguous – both allow for attaching the blocked assets of a terrorist instrumentality.[6] The Court therefore agrees with the Second Circuit's holding in Weinstein that the statutes' plain language defeats Bank Melli's argument. 609 F.3d at 49 ("If this did not constitute an independent grant of jurisdiction over the agencies and instrumentalities, the parenthetical would be a nullity.").

//

//

//

United States District Court
For the Northern District of California

[3] But see Weinstein v. Islamic Rep. of Iran, 609 F.3d 43, 53 (2d Cir. 2010), cert. denied, 133 S. Ct. 21 (June 25, 2012) (explaining that the Supreme Court found in Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176 (1982), that this language is found in a number of treaties, and was not designed to give separate juridical status to instrumentalities).

[4] Emphasis added.

[5] Emphasis added.

[6] Bank Melli makes various arguments for a strained interpretation of this language in which instrumentalities' assets are not subject to attachment, including relying on cases decided before these statutes were enacted; the Court rejects such arguments as unpersuasive.

Incidentally, the Second Circuit went on to explain that its interpretation was also supported by a floor statement by one of TRIA's sponsors.[7] Id. at 50. Bank Melli mischaracterizes Weinstein as having "based its holding on" that legislative history – not so. See Reply (dkt. 117) at 6; Weinstein, 609 F.3d at 50 ("even if, contrary to fact, there were an ambiguity here, it would be resolved in plaintiff's favor by the legislative history"). Bank Melli then makes much of the fact that Senator Harkin's words "were never uttered on the Senate floor" but were added to the congressional record after the vote. See Reply at 6-7. As Plaintiffs note, "Senators can, and routinely do, revise and extend their on-floor remarks for inclusion in the Congressional Record." Pls.' Opp'n to MTD (dkt. 115) at 9 n.7. Regardless of the weight to which the floor statement is entitled, however, the plain language of the statutes is unambiguous and dispositive. The Court therefore rejects this argument for dismissal.

B. Retroactivity

Bank Melli next argues that, even if the statutes mean what the Court understands them to mean, they cannot be applied to this case without rendering them impermissibly retroactive. MTD at 15-17. A statute "is retroactive if it alters the legal consequences of acts completed before its effective date." Chang v. United States, 327 F.3d 911, 920 (9th Cir. 2003) (citing Miller v. Florida, 482 U.S. 423, 430 (1987)). To determine whether a statute is retroactive, courts apply the two-part test set out in Landgraf v. USI Film Products, 511 U.S. 244, 280 (1994).

"First, courts must 'determine whether Congress has expressly prescribed the statute's proper reach,'" in which case the language used by Congress controls. See Ctr. for Biological Diversity v. U.S. Dep't of Agric., 626 F.3d 1113, 1117 (9th Cir. 2010) (quoting Landgraf, 511 U.S. at 280). The Court rejects Plaintiffs' argument that TRIA's plain language expresses Congress' intent that it apply retroactively. See Pls. Br. at 4. Plaintiffs note that Section 201 of TRIA states that it applies "in every case" in which a person "has

[7] That statement included the language: "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. S11524-01 (daily ed. Nov. 19, 2002) (statement of Sen. Harkin).

obtained a judgment" against a terrorist party . . . and renders the terrorist party's blocked assets subject to execution to the extent of any compensatory damages for which the terrorist party "has been adjudged liable." Id. While that language might support Plaintiffs' interpretation, it falls quite short of an "'unambiguous directive' or 'express command' that the statute . . . be applied retroactively." See Ctr. for Biological Diversity, 626 F.3d at 1118 (quoting Martin v. Hadix, 527 U.S. 343, 354 (1999)).

Second, under Landgraf, "absent such express language, courts must 'determine whether the new statute would have retroactive effect, i.e., whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'" Id. at 1117 (quoting Landgraf, 511 U.S. at 280). If a statute would operate retroactively at step two, it does not apply. Id. Bank Melli states, and Plaintiffs do not dispute, that at the time of the conduct underlying Plaintiffs' judgments, Bank Melli's assets could not have been seized to satisfy Iranian government debts. MTD at 15. Accordingly, Bank Melli contends, seizing Bank Melli's assets now to satisfy a judgment based on "conduct that occurred before Congress enacted [the laws] would clearly 'increase [Bank Melli's] liability for past conduct.'" Id. at 16. Although this argument holds some initial appeal, the Court finds that it falters under close scrutiny, for two alternative reasons.

1. Bank Melli's Conduct Post-TRIA

Bank Melli's argument depends upon a simplified narrative in which the only significant events, for example, in the case of the Bennett Plaintiffs, are: (1) the bombing at Hebrew University, in July 2002; (2) TRIA's enactment, in November 2002; and (3) the Bennett Plaintiffs' default judgment against Iran, in August 2007. Such a narrative enables Bank Melli to argue that, as a statute's retroactivity turns on "when the primary conduct at issue in the suit took place," the primary conduct at issue here is the bombing. See MTD at 16 (citing Scott v. Boos, 215 F.3d 940, 949 (9th Cir. 2000)). But Bank Melli's narrative omits an additional event of great significance: the freezing of Bank Melli's assets in October 2007 in light of OFAC's findings that, from 2002 to 2006, "Bank Melli . . . provided a range

United States District Court
For the Northern District of California

1 of financial services on behalf of Iran's nuclear and missile industries." See 10/25/07 Fact
2 Sheet. Plaintiffs therefore argue that, because "the illicit conduct underlying the blocking of
3 Bank Melli's property and subjecting such property to execution in satisfaction of judgments
4 against Iran[] occurred years after TRIA's enactment," Bank Melli should have understood
5 that "its nefarious conduct could and would result in its U.S. property being blocked and
6 executed against pursuant to TRIA." Pls.' Opp'n to MTD at 16.
7 Bank Melli responds that "later secondary conduct – even if wrongful – does not
8 eliminate a statute's retroactive effect." Bank Melli Br. at 2. In support of this assertion,
9 Bank Melli relies on three cases, Johnson v. United States, 529 U.S. 694 (2000), Vartelas v.
10 Holder, 132 S. Ct. 1479 (2012), and Tyson v. Holder, 670 F.3d 1015 (9th Cir. 2012).
11 See Reply at 11; Bank Melli Br. at 2-3. None apply here.
12 In Johnson, 529 U.S. at 697-98, Congress had enacted a statute authorizing a court to
13 impose an additional term of supervised release if a defendant violated conditions of his
14 initial release; the defendant had been convicted before Congress enacted the statute, but he
15 violated the conditions of his release after Congress enacted the statute. Johnson appealed
16 his sentence, arguing that applying the new statute to him violated the Ex Post Facto Clause.
17 Id. at 698. The Sixth Circuit found that the application of the statute was not retroactive,
18 because it punished Johnson's violations of the conditions of supervised release, which
19 occurred after the statute was amended. Id. at 698-99. The Supreme Court disagreed,
20 concluding that the "postrevocation penalties relate to the original offense," and that "to
21 sentence Johnson to a further term of supervised release under [the statute] would be to apply
22 this section retroactively." Id. at 701.
23 Importantly, the Court's conclusion in Johnson was driven by "the serious
24 constitutional questions that would be raised by construing revocation and reimprisonment as
25 punishment for the violation of the conditions of supervised release." Id. at 700. The Court
26 noted that conduct violating supervised release need not be criminal and need only be found
27 by a judge under a preponderance of the evidence standard; in addition, where the conduct is
28 criminal, it could form the basis for a separate prosecution, which would trigger double

United States District Court
For the Northern District of California

jeopardy concerns. Id. It is for those reasons that the Court "attribute[d] postrevocation penalties to the original conviction." Id. at 701. None of those reasons are present here: proof beyond a reasonable doubt, double jeopardy, and the myriad of weighty constitutional issues that surround criminal sentencing have no bearing on this civil matter.

Vartelas and Tyson, though not criminal cases, are similarly inapposite.[8]

In Vartelas, 132 S. Ct. at 1485, a legal permanent resident had pled guilty to conspiracy to make or possess counterfeit securities in 1994, for which he received a short sentence. He traveled regularly thereafter to visit his aging parents in Greece, but in 2003, he was stopped upon his return and an immigration officer classified him as an alien seeking admission under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), a statute enacted in 1996. Id. at 1483, 1485. The Second Circuit rejected Vartelas's argument that IIRIRA operated prospectively. Id. at 1486. The Supreme Court disagreed, holding that neither Vartelas's sentence nor the immigration law in effect in 1994 prevented Vartelas from visiting his parents in Greece, and so applying IIRIRA to him attached "'a new disability' to conduct over and done well before the provision's enactment." Id. at 1487. As in Johnson, the Court's conclusion was based on the principle that it was unfair to attach additional penalties to the original crime. Rejecting the government's argument that "the relevant event" was Vartelas's "post-IIRIRA act of returning to the United States," id. at 1488, the Court held that Vartelas's "past misconduct . . . not present travel, is the wrongful activity Congress targeted," id. at 1489.

In so holding, the Court drew a sharp distinction between cases in which the subsequent act was illegal and/or dangerous, and those in which the subsequent act was "innocent." See id. at 1489-90. Thus it distinguished Racketeer Influenced and Corrupt Organizations Act (RICO) prosecutions that encompassed pre-enactment conduct, because "those prosecutions depended on criminal activity . . . occurring after the provision's

[8] The case law has long recognized a relationship between criminal and immigration cases. See Bridges v. Wixon, 326 U.S. 135, 154 (1945) ("Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom. That deportation is a penalty – at times a most serious one – cannot be doubted.").

United States District Court
For the Northern District of California

1 effective date," as opposed to IIRIRA, which does not. Id. at 1489. And it distinguished
2 Fernandez-Vargas v. Gonzales, 548 U.S. 30 (2006), in which the Court held that an IIRIRA
3 provision, providing that an alien who reenters the country after having been removed can be
4 removed again under the same removal order, could be applied to an alien who returned
5 illegally before IIRIRA's enactment. Id. The Court explained that it was an "'alien's choice
6 to continue his illegal presence . . . after the effective date of the new la[w],'" and "'not a
7 past act that he is helpless to undo'" that subjected him to the new law. Id. (quoting
8 Fernandez-Vargas, 548 U.S. at 44). The Court contrasted the alien in Fernandez-Vargas with
9 Vartelas, whom it "several times stressed, engaged in no criminal activity after IIRIRA's
10 passage." Id. (emphasis added). The Court likewise distinguished cases dealing with laws
11 that prevent felons from possessing firearms, laws that prevent persons convicted of sex
12 crimes against minors from working in jobs involving contact with minors, and laws that
13 prevent a person who has been adjudicated as mentally defective from possessing guns; those
14 laws "target a present danger," while "[t]he act of flying to Greece" did not make Vartelas
15 "hazardous." Id.; id. n.7. Deeming Vartelas's travel and return "innocent" acts that
16 "involved no criminal infraction," the Court concluded that applying IIRIRA to bar Vartelas
17 from traveling abroad "rested not on any continuing criminal activity, but on a single crime
18 committed years before IIRIRA's enactment." Id. at 1490. Bank Melli cannot argue that its
19 assistance in Iran's nuclear proliferation efforts is either an "innocent act," akin to visiting
20 one's elderly parents in Greece, or something Bank Melli was "helpless to undo." The
21 Court's concerns in Vartelas are absent here.
22 Moreover, Tyson is analogous to Vartelas. In Tyson, 670 F.3d at 1017, a lawful
23 permanent resident was convicted in 1980 of importing heroin, following her consent to a
24 bench trial with stipulated facts and testimony. Twenty-four years later, she left the United
25 States and was denied re-entry. Id. She sought a waiver of inadmissibility under former
26 § 212(c), which had been repealed in 1996. Id. In so doing, she relied on INS v. St. Cyr.,
27 533 U.S. 289 (2001), in which the Supreme Court had held that § 212(c) relief remained
28 available to aliens who entered plea bargains with the expectation that they would remain

United States District Court
For the Northern District of California

1 eligible for a waiver. Id. The Ninth Circuit concluded that Tyson was entitled to invoke St.
2 Cyr. Id. at 1020. The court explained that applying the repeal of § 212(c) to Tyson would
3 impose "an impermissible retroactive effect on aliens . . . who in reliance on the possibility of
4 discretionary relief, agreed to a stipulated facts trial." Id. at 1022.
5 Tyson turned on an a lawful permanent resident's settled expectations about the
6 impact of a criminal conviction. See id. at 1021-22. In light of St. Cyr., it is no surprise that
7 the court found it unfair to prevent Tyson from applying for a § 212(c) waiver. And,
8 consistent with Vartelas, it is no surprise that the court would not wish to add to the
9 consequences of Tyson's original conviction by denying her re-entry based only on the
10 innocuous act of travel. See id. at 1021 (identifying the only two consequences of Tyson's
11 stipulated facts trial in 1980).
12 All three of Bank Melli's cases therefore involve, and reject, attempts to attach extra
13 penalties to an individual's original criminal conviction based on subsequent innocuous or
14 non-criminal behavior. That is not this case. This case involves, instead: (1) terrorist act(s)
15 by the government of Iran; (2) the enactment of TRIA, which did not make Bank Melli's
16 assets subject to attachment for Iranian debts, but should have put Bank Melli on notice of
17 that possibility; and (3) default judgment(s) against Iran; followed by (4) Bank Melli's
18 support for Iran's nuclear and missile industries; and (5) this government's resulting decision
19 to freeze Bank Melli's assets. There is no original criminal conviction against Bank Melli.
20 Bank Melli's assets are subject to attachment in this case because of Bank Melli's own
21 actions, post-TRIA, in supporting Iran's nuclear and missile industries. Those actions are not
22 innocuous or harmless. Accordingly, the Court rejects Bank Melli's retroactivity argument.
23 **2. Post-Judgment Enforcement Action**
24 In the alternative, Bank Melli's retroactivity argument fails because Bank Melli
25 misconstrues what TRIA does. Bank Melli argues that Plaintiffs seek to use TRIA to make it
26 liable for something for which it was not liable pre-TRIA. MTD at 15. In both motion
27 hearings and in its supplemental briefing, Bank Melli has maintained that liability and
28 collectability are interchangeable concepts; that is, that collecting money from Bank Melli in

1 connection with Iran's actions is the equivalent of holding Bank Melli liable for Iran's
2 actions. See, e.g., Bank Melli Br. at 3-4 (citing snippets from various cases using terms like
3 "liability for a money judgment"). The Court disagrees. This case is not about holding Bank
4 Melli liable for Iran's actions, it is simply about collecting money from Iran, wherever that
5 money can be found.[9]

6 Neither TRIA nor section 1610(g) speak of shifting liability from a terrorist party to
7 its instrumentality. Both speak of attaching an instrumentality's assets in aid of executing a
8 judgment against a terrorist party. See section 1610(g) (stating that "the property of an . . .
9 instrumentality of such a state . . . is subject to attachment in aid of execution, and execution,
10 upon that judgment"); TRIA (stating that "(. . . the blocked assets of any . . . instrumentality
11 of that terrorist party) shall be subject to execution or attachment in aid of execution in order
12 to satisfy such judgment"). These laws "merely provide[] an exception to foreign sovereign
13 immunity from execution for assets of . . . instrumentalities of foreign sovereign terrorist
14 parties in the post-judgment context of execution and attachment proceedings to satisfy
15 judgments against such foreign sovereign terrorist parties 'for which there was original
16 jurisdiction under the FSIA.'" Pls.' Opp'n to MTD at 13 (citing Bennett, et al., v. Islamic
17 Rep. of Iran, et al., No. 11-80065, 2011 WL 3157089, at *5 (N.D. Cal. July 26, 2011)).

18 Bank Melli's argument to the contrary presupposes that Bancec, 462 U.S. at 626-27,
19 which held that "government instrumentalities established as juridical entities distinct and
20 independent from their sovereign should normally be treated as such," stands for an
21 immutable principle of law. But Congress created the presumption of separateness in the
22 first place, see Bancec, 462 U.S. at 627 (in enacting FSIA, "Congress clearly expressed its
23 intention that duly created instrumentalities of a foreign state are to be accorded a
24 presumption of independent status"), and it had the power to revoke that presumption. As
25 discussed above, Congress revoked that presumption in this context through TRIA and
26

27 [9] By way of analogy, it is as if, after Plaintiffs had obtained their default judgments against Iran, Iran had gone out and purchased Bank Melli. Like shares in Bank Melli, the law recognizes the Blocked
28 Assets as assets of Iran, to which Iran's judgment creditors are entitled. Cf. Pls. Br. at 3-4 ("Iran's liability for the amounts owed under the Judgments remains the same; the scope of the assets subject to execution in satisfaction of the Judgments, however, has increased.").

United States District Court
For the Northern District of California

1 section 1610(g). See Estate of Heiser v. Islamic Rep. of Iran, 807 F. Supp. 2d 9, 15 (D.D.C.
2 2011) (section 1610(g) abrogates Bancec in the context of terrorism-related judgments);
3 Weinstein, 609 F.3d at 51 (TRIA overrides presumption of separateness in Bancec).
4 Thus in Weinstein, 609 F.3d at 50, where (as here) plaintiffs sought to recover assets
5 from Bank Melli to satisfy a judgment against Iran, the Second Circuit rejected Bank Melli's
6 argument[10] that the court should "read the TRIA as applying, prospectively, only to
7 judgments rendered final after the TRIA's enactment, and thus not to" judgments pre-dating
8 TRIA. The Second Circuit explained that "[t]he effect of the TRIA . . . was simply to render
9 a judgment more readily enforceable against a related third party. The judgment itself was in
10 no way tampered with." Id. at 51. Here, too, the Court is not altering the judgment against
11 Iran in order to hold Bank Melli liable; it is allowing Iran's judgment creditors to recover
12 from Iran's instrumentality because that instrumentality is no longer presumed to be separate
13 from Iran.[11] The Court therefore also rejects Bank Melli's retroactivity argument because
14 TRIA relates to collectability, not liability.
15 **C. "Assets of" Bank Melli**
16 Bank Melli also urges dismissal because, it argues, it does not actually own the
17 Blocked Assets. See MTD at 18-20. For TRIA or section 1610(g) to apply, the funds at
18 issue must be "assets of" or "property of" Bank Melli. See TRIA; section 1610(g)(1);
19 Calderon-Cardona v. JPMorgan Chase Bank, N.A., 867 F. Supp. 2d 389, 400 (S.D.N.Y.
20 2011) ("For the accounts at respondent banks to be attachable, then, North Korea or one of
21 its agencies or instrumentalities must actually own it."). In the Complaint, however,
22
23 [10] As counsel for Bank Melli candidly conceded at the motion hearing, Bank Melli did not make a retroactivity argument in Weinstein, and so the Second Circuit did not squarely address that issue.
24 Nonetheless, Bank Melli argued there that TRIA violated the separation of powers doctrine, and, in connection with that argument, that TRIA should only be applied prospectively. Id.

25 [11] That this case is not about Bank Melli's liability is further supported by the case law on
26 joinder (discussed below). Where plaintiffs have secured default judgments against Iran, its instrumentalities need not even be served with post-judgment motions, which suggests that collecting
27 assets from those instrumentalities is not about the instrumentalities' liability. See Peterson v. Islamic Rep. of Iran, 627 F.3d 1117, 1130 (9th Cir. 2010) ("[s]ervice of post-judgment motions is not required");
28 Estate of Heiser, 807 F. Supp. 2d at 23 ("Congress did not [intend] to require service of garnishment writs on agencies or instrumentalities of foreign states responsible for acts of state-sponsored terrorism").

Plaintiffs allege only that the Blocked Assets are "due and owing by contract to Bank Melli," not that Bank Melli "owns" them. See Compl. ¶ 16.

No matter. As Plaintiffs note in their briefing, Federal Rule of Civil Procedure 69 provides that enforcement proceedings in federal courts are governed by the law of the state in which the Court sits, although a federal statute governs if applicable. Pls.' Opp'n to MTD at 19; Fed. R. Civ. P. 69(a)(1). The Ninth Circuit explained in Peterson, 627 F.3d at 1130, that "[t]he FSIA does not provide methods for the enforcement of judgments against foreign states, only that those judgments may not be enforced by resort to immune property. . . . Therefore, California law on the enforcement of judgments applies to this suit insofar as it does not conflict with the FSIA."[12]

California law treats the Blocked Assets as subject to execution. In California, all property of a judgment debtor, regardless of the type of interest, is subject to enforcement of a money judgment. See Cal. Civ. Proc. Code §§ 680.310 ("'Property' includes real and personal property and any interest therein."), 695.010(a) ("Except as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment."), 699.710 (all property subject to enforcement of money judgment also subject to levy). This includes property of a judgment debtor that is held by a third party. See id. § 708.210 ("If a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor, the judgment creditor may bring an action against the third person"). Thus, in Peterson, 627 F.3d at 1130-31 (quoting Cal. Civ. Proc.

[12] Neither party has argued that federal law conflicts with state law in this case, or preempts it, as some courts have concluded. See, e.g., Hausler v. JPMorgan Chase Bank, 845 F. Supp. 2d 553, 563 (S.D.N.Y. 2012) ("the use of state property law to dictate the range of assets that are executable under the TRIA would generate absurd results"); cf. Calderon-Cardona, 867 F. Supp. 2d at 399-405 (applying state law "because [TRIA] provides no guidance for determining which blocked assets are 'of that terrorist party,'" but discussing federal law "for the sake of argument"). Bank Melli's argument on this subject is based, instead, on language from a variety of cases, and from a couple of amicus briefs, supporting the uncontroversial point that having an interest in property is not necessarily the same thing as owning property. See MTD at 19-20. Nonetheless, the Court is aware of no federal law that would alter its conclusion. Certainly, Bank Melli does not cite to any authority, federal or otherwise, holding that a party's 100% beneficial interest in an asset, or a vested right to receive a sum certain that has been reduced to cash, does not constitute an "asset of" that party. Moreover, the cases dealing with entitlement to mid-stream electronic fund transfers are distinguishable on their facts. See, e.g., Estate of Heiser v. Islamic Rep. of Iran, No. 00-2329, 01-2104, 2012 WL 3776705, at *16 (D.D.C. Aug. 31, 2012) (describing "Iran's indefinite, ephemeral interest" in blocked EFTs).

United States District Court
For the Northern District of California

United States District Court
For the Northern District of California

1 Code § 708.510(a)), the court noted that "California enforcement law authorizes a court to
2 'order the judgment debtor to assign to the judgment creditor . . . all or part of a right to
3 payment due or to become due, whether or not the right is conditioned on future
4 developments.'"
5 Here, there is no dispute that Bank Melli has a 100% beneficial interest in the Blocked
6 Assets, and that the Blocked Assets are already "due and owing" to Bank Melli from Visa.
7 See Compl. ¶ 16. Those funds – in an amount certain – have been deposited into the Court's
8 registry. See dkts. 88-89. Visa has disclaimed any beneficial ownership interest in the
9 Blocked Assets, explaining that it only continued to hold them because the assets were
10 blocked. See Compl. ¶ 18; Pls.' Opp'n to MTD at 21 ("[B]ut for the fact that such funds are
11 blocked, Bank Melli would be entitled to payment of those funds today."). Under such
12 circumstances, the Court concludes that the Blocked Assets are "assets of" or "property of"
13 Bank Melli. The Court therefore rejects this argument for dismissal.
14 //
15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //
28

United States District Court
For the Northern District of California

D. Rule 19[13]

Finally, Bank Melli argues that it is a required party that cannot be joined due to its sovereign immunity. MTD at 20-22. Bank Melli's argument relies almost entirely on Republic of Philippines v. Pimentel, 553 U.S. 851 (2008). Pimentel, 553 U.S. at 854-58, involved an interpleader action in which human rights victims who had obtained a judgment against Ferdinand Marcos sought to attach property held by a bank. Two of the entities in the suit, the Republic of the Philippines and the Philippine Presidential Commission on Good Governance ("the Commission"), invoked sovereign immunity, and were dismissed; however, the district court allowed the action to proceed. Id. The Ninth Circuit held that dismissal of the interpleader suit was not necessary because, although the Philippines and the Commission were "necessary parties" under Rule 19, their claim had so little merit that the interpleader action could proceed without them. Id. at 860. The Supreme Court reversed, explaining that the Court of Appeals had not given the necessary weight to the absent

---

[13] Rule 19 provides, in part:

(a) Persons Required to Be Joined if Feasible.
(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
(A) in that person's absence, the court cannot accord complete relief among existing parties; or
(B) that 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:
(i) as a practical matter impair or impede the person's ability to protect the interest; or
(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest. . . .
(b) When Joinder Is Not Feasible. If a 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. The factors for the court to consider include:
(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
(2) the extent to which any prejudice could be lessened or avoided by:
(A) protective provisions in the judgment;
(B) shaping the relief; or
(C) other measures;
(3) whether a judgment rendered in the person's absence could be adequate; and
(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Fed. R. Civ. P. 19(a)-(b).

United States District Court
For the Northern District of California

entities' assertion of sovereign immunity: "where sovereign immunity is asserted, and the claims of the sovereign are not frivolous, dismissal of the action must be ordered where there is a potential for injury to the interests of the absent sovereign." Id. at 864-67. Bank Melli argues that, as in Pimentel, it is a foreign sovereign not amenable to suit, and so the Court must dismiss. See MTD at 21-22.

Bank Melli assumes that it is a required party. It is not. Bank Melli is a mere instrumentality of Iran, and as such its presence is not central to this case. That conclusion is supported by Estate of Heiser, 807 F. Supp. 2d at 12, in which victims of state-sponsored terrorism sought to direct Sprint to turn over funds owed to the Telecommunication Infrastructure Company of Iran ("TIC"), an instrumentality of Iran. Sprint argued that it should be permitted to interplead TIC into the proceeding. Id. at 23. The court explained that "Congress did not [intend] to require service of garnishment writs on agencies or instrumentalities of foreign states responsible for acts of state-sponsored terrorism" and that, accordingly, "TIC [was] not a necessary party to [the] action under applicable law."[14] Id.; cf. Peterson, 627 F.3d at 1130 (under FSIA, plaintiff need not serve post-judgment motions on foreign state). Here, the Blocked Assets are owed to an instrumentality of judgment debtor Iran; such property is therefore stripped of immunity and subject to execution as a matter of law. See TRIA; section 1610(g). Bank Melli has failed to demonstrate either that "in [its] absence, the court cannot accord complete relief among existing parties" or that "disposing of the action in [its] absence may (i) . . . impair or impede [its] ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations." See Fed. R. Civ. P. 19(a).

This case is therefore distinguishable from Pimentel, where there was no dispute that the Philippines and the Commission were required parties. See 553 U.S. at 863 ("[t]he application of subdivision (a) of Rule 19 is not contested"). The dispute in Pimentel centered on Rule 19(b), "whether the action may proceed without the Republic and the Commission,

[14] The court added that Sprint had also not established a risk of being subjected to double liability over the funds, but that was not the basis for its conclusion that TIC was not a necessary party. See id. at 23-24.

given that the Rule requires them to be parties." Id. at 864. Because this Court finds that Bank Melli is not a required party, it need not reach Rule 19(b), and the question of whether Bank Melli can be joined. The Court notes, however, that, unlike in Pimentel, 553 U.S. at 865, where "[i]mmunity . . . [was] uncontested," here there are two applicable statutory exceptions to immunity, which alleviate any concerns about prejudice to Bank Melli or about the adequacy of a judgment rendered in Bank Melli's absence. See TRIA; section 1610(g); see also Weinstein, 609 F.3d at 50 ("[W]e 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."). Bank Melli's response, that the exceptions to immunity pertain to the property, and not to Bank Melli, see Bank Melli Br. at 7, only reinforces the Court's conclusion that the statutory scheme is not about Bank Melli's liability, but about Plaintiffs' ability to collect from Iran. This case could proceed without Bank Melli.

Because Bank Melli is not a required party that cannot be joined under Rule 19, the Court rejects this argument for dismissal as well.

III. CONCLUSION

For the foregoing reasons, the Court DENIES Bank Melli's Motion to Dismiss. The Court further finds that the standards of 28 U.S.C. § 1292(b) have been met,[15] and

//

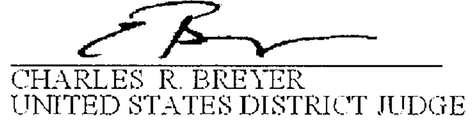
[15] Specifically, the Court finds that the issues raised by Bank Melli in favor of dismissal are controlling issues of law, and could "materially affect the outcome of the litigation in the district court." In re Cement Antitrust Litig., 673 F.2d 1020, 1026 (9th Cir. 1982). If Bank Melli is correct that Bancec applies, or that the statutes are impermissibly retroactive, or that Plaintiffs have not adequately alleged that the assets are Bank Melli's property, or that it is a required party that cannot be joined, Bank Melli is entitled to dismissal. Moreover, in light of the paucity of authority on these issues, particularly as to TRIA, there is substantial ground for difference of opinion. See 28 U.S.C. § 1292(b); Levine v. United Healthcare Corp., 285 F. Supp. 2d 552, 560 (N.J. 2003) ("[T]he issue on this motion is whether there is substantial ground for debate on this issue and this Court finds that the question involved here is admittedly complicated and sufficiently close that reasonable minds could disagree with this Court's conclusion."). Finally, "an immediate appeal from the order may materially advance the ultimate termination of the litigation," 28 U.S.C. § 1292(b), as it "would conserve judicial resources and spare the parties from possibly needless expense if it should turn out that this Court's rulings are reversed." APCC Servs. v. Sprint, 297 F. Supp. 2d 90, 1000 (D.D.C. 2003).

United States District Court
For the Northern District of California

1 CERTIFIES this Order for interlocutory appeal.

2 **IT IS SO ORDERED.**

3



4 Dated: February 28, 2013

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Annex 43

***Peterson, et al. 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.*, U.S. District Court for the Southern District of New York, Order Entering Partial Final Judgment Pursuant to Fed. R. Civ. P. 54 (b), Directing Turnover of the Blocked Assets, Dismissal of Citibank with Prejudice and Discharging Citibank from Liability, 9 July 2013, No. 10-cv-4518-KBF**

Excerpts: pp. 1-15

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: JUL 09 2013

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 ENTERING PARTIAL FINAL JUDGMENT PURSUANT TO FED. R. CIV. P. 54(b), DIRECTING TURNOVER OF THE BLOCKED ASSETS, DISMISSAL OF CITIBANK WITH PREJUDICE AND DISCHARGING CITIBANK FROM LIABILITY**

The Miscellaneous Proceeding

WHEREAS, the plaintiffs in the action captioned *Peterson, et al. v. Islamic Republic of Iran, et al.*, Civil Action Nos. 01-cv-2094 and 2684 (D.D.C.) (the "Peterson Judgment Creditors") obtained a default judgment for damages pursuant to 28 U.S.C. § 1605(a)(7) against the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS");

WHEREAS, on or about June 13, June 17, and June 24, 2008, the Peterson Judgment Creditors served a writ of execution, a restraining notice and an amended restraining notice on Citibank, N.A. ("Citibank") with respect to 22 debt securities and related cash held by Citibank in an omnibus account for its customer Clearstream Banking, S.A. ("Clearstream") in which Iran was alleged to have an interest (the "Miscellaneous Proceeding");

WHEREAS, the aforementioned debt instruments and securities have varying maturity dates all of which have now matured and been converted to cash;

WHEREAS, on or about June 16, June 23 and October 27, 2008, the Peterson Judgment Creditors served writs and amended writs of execution and restraining and amended restraining notices on Clearstream in New York with respect to the same assets;

WHEREAS, upon consideration of the Order to Show Cause submitted by Citibank with supporting documentation, and following a hearing on June 27, 2008, the Court issued an Order vacating the restraints corresponding to securities ISIN US298785DM51 and ISIN US465410BK38 and upheld the restraints with respect to the remaining assets (the "Restrained Assets");

WHEREAS, the restraints, writs of execution and levies upon Citibank and Clearstream were extended by Court Order through the date of commencement of this action;

The Turnover and Interpleader Proceedings

WHEREAS, on or about June 8, 2010, the Peterson Judgment Creditors commenced this action seeking turnover of the Restrained Assets (the "Turnover Proceeding"). On or about October 20, 2010, the Peterson Judgment Creditors filed an Amended Complaint naming as defendants Iran, Bank Markazi a/k/a Central Bank of Iran ("Bank Markazi"), Banca UBAE SpA ("UBAE"), Citibank and Clearstream. The Peterson Judgment Creditors filed a Second Amended Complaint on or about December 7, 2011;

WHEREAS, on or about June 27, 2011, the Court consolidated the Miscellaneous Proceeding and the Turnover Proceeding, and authorized Citibank to file and serve third-party interpleader petitions (the "Interpleader Petitions") on all those persons or entities who had served Citibank or Clearstream with writs of execution, lis pendens or other process indicating that they may have an interest in the Restrained Assets. Citibank filed the interpleader action (the "Interpleader Action" which, together with the Miscellaneous Proceeding and the Turnover Proceeding constitute the "Consolidated Proceedings") to provide notice to potential claimants who were not parties to the proceeding, to provide notice to potential claimants to funds targeted for turnover by plaintiffs, and to obtain a discharge from liability in interpleader. On or about May 24, 2012, the Court authorized Citibank to file and serve additional third-party interpleader petitions on additional third-parties similarly situated;

WHEREAS, Citibank is a stakeholder without interest in the ultimate outcome of this dispute and its interest is in resolution of ownership of the funds at issue herein so that it may, when so ordered, ensure that they are appropriately disbursed;

WHEREAS, by Order dated November 28, 2011 the Interpleader Petitions were consolidated with the Turnover Proceeding;

WHEREAS, the judgment creditors and third-party respondents named in the Interpleader Petitions include the following plaintiffs in the following actions: (1) the Peterson Judgment Creditors; (2) *Acosta, et al. v. Islamic Republic of Iran, et al.,* 06-cv-00745 (D.D.C.); (3) *Greenbaum v. Islamic Republic of Iran, et al.,* 02-cv-02148-RCL (D.D.C.); (4) *Estate of Michael Heiser v. Islamic Republic of Iran et al.,* 00-02329 and 00-cv-2104 (D.D.C.) (the "Heiser Judgment Creditors"); (5) *Jeremy and Dr. Lucille Levin v. The Islamic Republic of Iran, et al.,* Civil Action No. 05-cv-2494 (D.D.C.); (6) *Valore v. The Islamic Republic of Iran, et al.,* Civil Action No. 08-cv-1273 (D.D.C.); (7) *Beer, et al. v. Islamic Republic of Iran, et al.*, Civil Action Nos. 06-cv-473 and 08-cv-1807 (D.D.C.); (8) *Kirschenbaum, et al. v. Islamic Republic of Iran, et al.*, Civil Action Nos. 03-cv-1708 and 08-cv-1814 (D.D.C.); (9) *Murphy, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 06-cv-596 (D.D.C.) (the "Murphy Judgment Creditors"); (10) *Rubin v. Islamic Republic of Iran, et al.*, Civil Action No. 01-cv-1655 (D.D.C.); (11) *Estate of Anthony K. Brown v. Islamic Republic of Iran, et al.*, Civil Action No. 08-cv-531 (D.D.C.); (12) *Estate of Stephen B. Bland v. Islamic Republic of Iran, et al.*, Civil Action No. 05-cv-2124 (D.D.C.); (13))*Bonk, et al. v. Islamic Republic of Iran, et al.,* Civil Action No. 08-cv-1273 (D.D.C.); (14) *Arnold, et al. v. Islamic Republic of Iran, et al.,* Civil Action 06-cv-516 (D.D.C.); (15) *Estate of James Silvia, et al. v. Islamic Republic of Iran , et al.,* Civil Action No. 06-cv-750 (D.D.C.) (the foregoing judgment creditors numbered (1) through (15)are collectively referred to herein as "Plaintiffs"); (16) Mwila, et al. v. Islamic Republic of Iran, et al., Civil Action No. 08-cv-1377 (D.D.C.) (the "Mwila Action"); (17) Owens, et al., v. Republic of Sudan, et al., Civil Action No. 01-cv-2244 (D.D.C.) (the "Owens Action"); and (18) Khaliq, et al. v. Republic of Sudan, et al., Civil Action No. 08-cv-1273 (D.D.C.) (the "Khaliq Action");

WHEREAS, on or about January 13, 2013, judgment creditors of Iran who were plaintiffs in the case captioned *Shahintaj Bakhtiar v. Islamic Republic of Iran*, Civil Action No. 02-cv-92 (D.D.C.) moved this Court to intervene in this proceeding and assert a claim to the Blocked Assets. The Bakhtiar Plaintiffs withdrew the motion, and the writ of execution served on Citibank, on January 25, 2013;

WHEREAS, Iran and MOIS were served with the Summons and Complaint and with the Amended and Second Amended Complaint, and Iran with the Interpleader Petition (both in English and Farsi), and that said service constitutes good and sufficient service pursuant to 28 U.S.C. §1608, but they have not appeared and default was entered against them by this Court;

WHEREAS, on or about February 5, 2012, the President of the United States issued Executive Order 13599, declaring "[a]ll property and interests in property of" Iran or Bank Markazi held in the United States or by a "United States person" "blocked" pursuant to the President's authority under the International Emergency Economic Powers Act. In compliance therewith, Citibank designated the Restrained Assets as "blocked" (hereinafter the "Blocked Assets"), reported the blocking to the United States Treasury Department's Office of Foreign Assets Control ("OFAC") as required by applicable OFAC regulations, and has held the funds in a blocked account in accordance with OFAC regulations;

The Motions and the Court's Decision

WHEREAS, on or about December 22, 2011, Clearstream moved to vacate the writs of execution and restraining orders with respect to the Restrained Assets (the "Motion to Vacate Restraints");

WHEREAS, on or about March 15, 2012, Bank Markazi moved to dismiss the Second Amended Complaint;

WHEREAS, on or about April 2, 2012, a Motion for Partial Summary Judgment with respect to the Blocked Assets was filed by and/or on behalf of the Plaintiffs, which sought to enforce turnover of the Blocked Assets pursuant to § 201 of the Terrorism Risk Insurance Act ("TRIA"), codified as a note to 28 U.S.C. §1610;

WHEREAS, on or about August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "2012 Act"), 22 U.S.C. §8701, *et seq.*, §8772 of which refers explicitly to the Blocked Assets and makes them subject to turnover to the Plaintiffs subject to Court determination of certain issues enumerated therein;

WHEREAS, Plaintiffs supplemented their motion for summary judgment based on the grounds set forth in 22 U.S.C. §8772;

WHEREAS, on or about December 10, 2012 and December 14, 2012, Clearstream moved to dismiss the turnover claims alleged in the Second Amended Complaint and certain cross-claims by incorporating by reference its Motion to Vacate Restraints, and its prior briefing concerning the supposed lack of personal jurisdiction over it;

WHEREAS, on or about December 21, 2012, UBAE moved to dismiss the Second Amended Complaint based upon the supposed lack of personal jurisdiction over it;

WHEREAS, on or about February 25, 2013, judgment creditors of Iran who were plaintiffs in the case captioned *Wultz v. Islamic Republic of Iran*, Civil Action No. 08-cv-1460 (D.D.C.) moved this Court to intervene in this proceeding and assert a claim to the Blocked Assets, which motion was opposed by Plaintiffs. On May 10, 2013, the Court granted the motion shortly after Plaintiffs and the Wultz plaintiffs had reached a resolution regarding the Wultz plaintiffs' interest in the Restrained Assets;

WHEREAS, on February 28, 2013, the Court issued an Opinion and Order (the "Turnover Order"), denying in their entirety the Motions to Dismiss filed by Clearstream, UBAE and Bank Markazi, and Clearstream's Motion to Vacate Restraints, and granting Plaintiffs' Motion for Partial Summary Judgment in favor of turnover and the Bland judgment creditors' motion for execution;

WHEREAS, Clearstream and UBAE moved for reconsideration of the Turnover Order, which motion was denied by order dated May 20, 2013 (the "Reconsideration Order");

WHEREAS the findings and conclusions of the Turnover Order and the Reconsideration Order, are incorporated in this Partial Judgment by reference and with respect to which this

Partial Judgment constitutes the final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure for purposes of an appeal;

WHEREAS, counsel for the plaintiffs in the Owens Action, the Khaliq Action and the Mwila Action filed declarations dated June 26, 2013, informing the Court that none of the plaintiffs in those actions have obtained judgments for damages against Iran and thus have no claim to the Blocked Assets, and consenting to entry of an order vacating the Turnover Order to the extent that it granted partial summary judgment in favor of the plaintiffs in the Owens Action, the Khaliq Action and the Mwila Action and to entry of a final order to the same extent as provided in this Partial Judgment releasing and discharging Citibank and Clearstream from any obligations to the plaintiffs in those actions pursuant to C.P.L.R. §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure as applicable, from any and all liability and obligations or other liabilities of any nature, which relate to the Blocked Assets, to the full extent that any such order also discharges and releases Citibank's obligations and liabilities as to all other parties to this action, and as further provided therein;

WHEREAS, the Plaintiffs have agreed among themselves to settle their competing claims with respect to the Blocked Assets;

WHEREAS, the Court has found that only Bank Markazi has a beneficial interest in the Blocked Assets;

WHEREAS, UBAE has represented to the Court that it claims no legally cognizable interest in or to the Blocked Assets;

WHEREAS, the Court has found that Citibank and Clearstream are neutral stakeholders of the Blocked Assets;

WHEREAS, by Order of this Court dated July 9, 2013, a trust was created 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 this Partial Judgment Pursuant to Fed. R. Civ. P. 54(b) (the "Partial Judgment") and the Turnover Order; and distributing the Blocked Assets to the individual Plaintiffs;

WHEREAS, the Restrained and/or Blocked Assets have been maintained at Citibank in segregated and/or blocked accounts;

WHEREAS, Citibank, having commenced third-party proceedings in the nature of interpleader, as described above, pursuant to Rule 22 of the Federal Rules of Civil Procedure and other applicable provisions of law, and having brought before the Court in these proceedings all potential claimants to the Blocked Assets as in accordance with, and pursuant to the Court's June 27, 2011 and May 24, 2012 Orders so that they could assert their claims to the Blocked Assets, is entitled to an order discharging it from any and all liability with respect to any and all claims made by any party with regard to the Blocked Assets, as more fully described below;

WHEREAS, 22 U.S.C. § 8772(a)(2) provides that the Court's determination thereunder to turn over the Blocked Assets to judgment creditors like the Plaintiffs is in furtherance of the broader goals of the 2012 Act, which, as expressed in 22 U.S.C. § 8711, are to sanction Iran in order to compel Iran to abandon efforts to acquire a nuclear weapons capability and other threatening activities by imposing all available sanctions against Iran, including those imposed by the 2012 Act, in a complete, timely, and vigorous manner;

WHEREAS, the vast majority of the more than one thousand individual Plaintiffs suffered serious injuries at the hands of Iran in connection with the terrorist bombing of the U.S. Marine barracks in Beirut, Lebanon on October 23, 1983, and the balance of the Plaintiffs suffered serious injuries a number of years ago in connection with various terrorist attacks sponsored by Iran;

WHEREAS, the issues presented by the remaining claims asserted by only some of the Plaintiffs are based upon fraudulent conveyance and tort theories alleged against defendants Clearstream, Markazi and UBAE only and are related to Markazi's 2008 sales of debt securities with a face amount of $250 million, and the facts and law relevant to those claims differ from the legal and factual issues presented by Plaintiffs' claims for turnover of the Blocked Assets, as decided by the Court in connection with the Turnover Order; and

WHEREAS, by email dated May 16, 2013 the Office of the Chief Counsel (Foreign Assets Control) of the U.S. Department of the Treasury advised counsel for Citibank and the Peterson Judgment Creditors that OFAC will issue a license (the "License") authorizing the transfer of the Blocked Assets pursuant to 31 C.F.R. 501 on receipt of an order from the Court directing Citibank to turnover the Blocked Assets in accordance with this Order (*see* ECF No. 404);

For the foregoing reasons, and those set forth in the Turnover Order and the Reconsideration Order,

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

1. This Court has jurisdiction over the subject matter of this action and the *res*. This Court has personal jurisdiction over Citibank, Clearstream, and Bank Markazi. This Court has not made a final determination as to personal jurisdiction over UBAE with respect to the remaining claims asserted by some of the Plaintiffs against UBAE.

2. Plaintiffs are awarded judgment for turnover of the Blocked Assets.

3. OFAC shall issue the License within fourteen (14) business days after entry of this Order, and such License shall include a License to the Trustee of the QSF and UBS Wealth Management (Americas) Inc. to transfer the Blocked Assets to the Registry of the Court as may be required under paragraph 7 of this Order. Citibank shall, within fourteen (14) business days of the issuance by OFAC of the License, deposit the Blocked Assets, plus all accrued interest thereon to date, minus any reasonable fees calculated thereon (the amount of which remains subject to Court approval), which as of June 4, 2013 constituted $1,895,600,513.03, in an account opened in the name of the QSF at UBS Wealth Management (Americas) Inc. (the "QSF Account") in accordance with, and under the terms of, the Order approving the formation of the QSF dated July 9, 2013.

4. Until either of the events in paragraphs 5 or 7 of this Order have occurred, the funds shall be held in the QSF Account and shall not be distributed therefrom to any party other than to pay to Citibank such reasonable attorneys' fees as shall be awarded by the Court in accordance with paragraph 17 hereof, to pay fees on the QSF Account, taxes on earnings from the QSF Account, and any fees and expenses payable to the trustee of the QSF as may be approved by further order of the Court.

5. Within thirty days after this Partial Judgment becomes a "Non-Appealable Sustained Judgment" (as defined below), the Plaintiffs shall apply to the Court for an order authorizing the distribution of the funds in the QSF Account in accordance with the terms of the Plaintiffs' agreement concerning the distribution of those funds.

6. This Partial Judgment shall be considered a Non-Appealable Sustained Judgment when the time to file an appeal from the Partial Judgment has expired or, if any appeal is filed and not dismissed, after the Partial Judgment is upheld in all material respects on appeal or after review by writ of certiorari and is no longer subject to review upon appeal or review by writ of certiorari.

7. If this Partial Judgment does not become a Non-Appealable Sustained Judgment because the Partial Judgment is not upheld in all material respects on appeal or after review by writ of certiorari, the Blocked Assets will be transferred to the Registry of the Court upon application for, and receipt of the License from OFAC, and shall not, in any event, be transferred to Citibank.

8. The Court intends that the deposit by Citibank of the Blocked Assets plus interest and minus fees calculated thereon, into the QSF Account in accordance with paragraph 3 hereof, shall constitute a turnover to the Plaintiffs. Nevertheless, to the extent that an appellate court deems the effect of this Partial Judgment or the Turnover Order stayed pending appeal, the Court

hereby extends the priority established in favor of the Plaintiffs upon the filing of this Partial Judgment under New York C.P.L.R. §5234(c) until sixty (60) days after the later of (a) the date this Partial Judgment becomes a Non-Appealable Sustained Judgment, or (b) the filing of an order of the Court directing turnover of the Blocked Assets or any part thereof that is issued on remand from any appeal of this Partial Judgment .

9. Upon deposit by Citibank of the Blocked Assets, plus all accrued interest thereon to date, and minus any reasonable fees calculated thereon, into the QSF Account in accordance with paragraph 3 hereof, Citibank shall be fully discharged pursuant to C.P.L.R. §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure as applicable, and released from any and all liability and obligations or other liabilities of any nature, to any person or entity including but not limited to defendant Iran, any agency and instrumentality of Iran, Bank Markazi, Clearstream and UBAE, the Plaintiffs, and any other person or entity, which relate to the Blocked Assets, to the full extent of such amounts so held and deposited in the QSF Account in compliance with this Partial Judgment.

10. Upon deposit by Citibank of the Blocked Assets, plus all accrued interest thereon to date, and minus any reasonable fees calculated thereon, into the QSF Account in accordance with paragraph 3 hereof, Defendants Iran, Bank Markazi, Clearstream and UBAE, the Plaintiffs and all other persons and entities, shall be permanently restrained and enjoined from instituting or prosecuting any claim, or pursuing any actions against Citibank in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the Blocked Assets to the full extent of such amounts so held and turned over to the QSF Account in compliance with paragraph 3 of this Order.

11. Once Citibank deposits the Blocked Assets, plus all accrued interest thereon, and minus any reasonable fees payable thereon, into the QSF Account in accordance with paragraph

3 hereof, Citibank's obligations shall be deemed discharged with respect to the Blocked Assets only under all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind, whether served on, or delivered to Citibank, to the extent that they apply, purport to apply or attach only to the Blocked Assets (Citibank's obligations shall continue with respect to such writs of execution, notices of pending action, restraining notices and other judgment creditor process with respect to any assets other than the Blocked Assets as provided by applicable law); provided, however, that such writs of execution, notices of pending action, restraining notices or other creditor process served on behalf of any of the Plaintiffs shall continue as a lien on assets of Markazi, MOIS, and/or Iran or any of its agencies and instrumentalities, as provided by applicable law.

12. Upon the issuance of an order authorizing the distribution of the funds in the QSF Account in accordance with paragraph 5 hereof, and provided that Clearstream does not interfere with the implementation and execution of such order in any way (including but not limited to motions or appeals directed at such order), Clearstream shall be fully discharged pursuant to C.P.L.R. §§5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedures as applicable, and released from any and all liability and obligations or other liabilities of any nature, to any person or entity, including but not limited to defendant Iran, any agency or instrumentality of Iran, Bank Markazi, UBAE, the Plaintiffs, and any other person or entity, which relate to the Blocked Assets, to the full extent of such amounts deposited by Citibank in the QSF Account in compliance with this Partial Judgment.

13. Upon the issuance of an order authorizing the distribution of the funds in the QSF Account in accordance with paragraph 5 hereof, and provided Clearstream does not interfere with the implementation and execution of such order in any way (including but not limited to motions or appeals directed at such order), Defendants Iran, Bank Markazi and UBAE, the

Plaintiffs and all other persons and entities 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 to the full extent of those funds that are being deposited by Citibank in compliance with this Partial Judgment.

14. Within fourteen (14) business days after this Partial Judgment becomes a Non-Appealable Sustained Judgment and the issuance of a payment to the Heiser Judgment Creditors in accordance with paragraph 5 hereof, the Heiser Judgment Creditors shall file a stipulation of voluntary partial dismissal with prejudice with respect to Citibank and the Blocked Assets only in the form attached to this Partial Judgment as Exhibit A in the following actions Estate of Michael Heiser, et al. v. Clearstream Banking, S.A., Case No. 11 Civ. 1597 (S.D.N.Y.), Estate of Michael Heiser, et al. v. Citibank, N.A., Case No. 11-cv-1698 (RPB) (S.D.N.Y.) and Estate of Michael Heiser, et al. v. JPMorgan Chase Bank, N.A., et al., Case No. 11-cv-2570 (LBS) (S.D.N.Y.).

15. Within fourteen (14) business days after Citibank deposits the Blocked Assets, plus all interest accrued thereon, and minus any reasonable fees payable thereon, into the QSF Account in accordance with paragraph 3 hereof, the Murphy Judgment Creditors shall file a stipulation of voluntary dismissal with prejudice with respect to the remaining claims asserted in their pleadings against Citibank that have not been adjudicated by this Partial Judgment, in the form attached to this Partial Judgment as Exhibit B.

16. Citibank shall be entitled to apply for its reasonable costs and attorneys' fees in connection with these proceedings and the parties reserve their right to object to such application. Notwithstanding Fed. R. Civ. P. 54(d)(2)(B), Citibank shall be entitled to submit its

motion or application for attorney's fees and costs at any time until fourteen (14) days after this Partial Judgment and the Turnover Order shall be considered a Non-Appealable Sustained Judgment.

17. Upon the later of: (a) fourteen (14) business days from the date on which the Court approves any award in respect of Citibank's reasonable costs and attorneys' fees; or (b) fourteen business days after this Partial Judgment becomes a Non-Appealable Sustained Judgment, the QSF shall pay Citibank any amount of attorneys' fees and costs awarded by the Court from the QSF Account. The payment of those fees and expenses from the QSF Account shall not prejudice the right of any party to pursue an appeal of any decision reached by the Court with respect to the payment of Citibank's fees and expenses.

18. This Partial Judgment, which incorporates the Turnover Order and the Reconsideration Order, constitutes a final judgment within the meaning of Federal Rule of Civil Procedure 54(b), and there is no just reason for delay of the entry of judgment as provided herein.

19. The Turnover Order is hereby vacated only to the extent that it granted partial summary judgment in favor of the plaintiffs in the Owens Action, the Khaliq Action and the Mwila Action.

20. Among other reasons, the Court concludes that entry of a final judgment pursuant to Rule 54(b) is appropriate because: (a) the factual and legal issues raised by the remainder of the claims that Plaintiffs have alleged are substantially different from the factual and legal issues presented by the claims under TRIA and 22 U.S.C. § 8772 adjudicated in connection with the Turnover Order regarding Plaintiffs' motion for partial summary judgment; (b) the Plaintiffs in this action are victims of terrorism who have been waiting for some compensation for their losses for many years, and most Plaintiffs are victims of the 1983 attack on the Marine Barracks

in Beirut, Lebanon; (c) the Court credits the representations of Plaintiffs' counsel that many of the Plaintiffs are elderly and many others have passed away since the terrorist attacks that underlie this matter, and further delay in payment to the Plaintiffs will result in many victims of the relevant terrorist attacks receiving no compensation at all for their losses; (d) the Court credits the representations of Plaintiffs' counsel that many of the Plaintiffs face difficult financial circumstances and have a significant need for the funds owed to them in connection with this action; (e) several groups of creditor plaintiffs are not asserting any claims that remain to be adjudicated in this matter, so this Partial Judgment resolves all matters relevant to those Plaintiffs; and (f) the goal of Congress to compel Iran to abandon efforts to acquire a nuclear weapons capability and other threatening activities by timely and vigorous imposition of sanctions on Iran under the 2012 Act is furthered by the finality of any determination by this Court to turn over the Blocked Assets to the Plaintiffs in accordance with 28 U.S.C. § 8772.

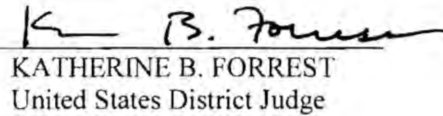
21. Upon deposit by Citibank of the Blocked Assets, plus all interest accrued thereon, and minus any reasonable fees into the QSF Account in accordance with paragraph 3 hereof, Citibank shall be deemed to have satisfied all duties and responsibilities of an interpleader Stakeholder in these Consolidated Proceedings. Citibank shall have no continuing or further obligations with respect to those assets, and all claims, counterclaims and cross-claims that were or could have been asserted against Citibank in this action by any party herein relating to the Blocked Assets (to the full extent of such amounts so held and turned over to the QSF Account in compliance with Paragraph 3 of this Order) shall be dismissed with prejudice. There being no additional claims asserted against Citibank in this action, upon deposit of the Blocked Assets, plus interest and minus reasonable fees payable thereon, into the QSF Account in accordance with Paragraph 3 hereof, it shall be dismissed as a party from this action; provided however, that if, notwithstanding paragraph 7 of this Order, the Blocked Assets are returned to Citibank

pending proceedings on remand after any appeal of this Partial Judgment, Citibank may again be joined in this action by order of the court and the dismissal, discharge and release contained in this Partial Judgment shall be deemed null and void.

22. This Court shall retain jurisdiction over this matter to adjudicate the remaining claims asserted by the Plaintiffs against Clearstream, Markazi and UBAE, and all funds deposited into the QSF Account shall remain subject to the Court's jurisdiction until they are distributed in accordance with the terms of this Partial Judgment.

SO ORDERED.

Dated: New York, New York
July 9, 2013

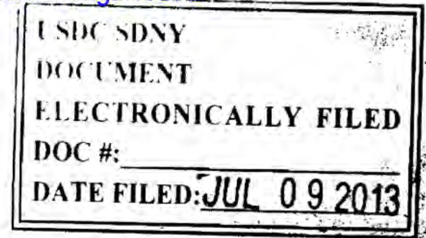


KATHERINE B. FORREST
United States District Judge

219419.4

Annex 44

***Peterson, et al. 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.*, U.S. District Court for the Southern District of New York, Order Approving Qualified Settlement Fund, 9 July 2013, No. 10-cv-4518-KBF**


USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: JUL 09 2013

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 APPROVING QUALIFIED SETTLEMENT FUND

This Court issued an Opinion and Order on February 28, 2013, granting partial summary judgment to plaintiffs and ordering turnover of approximately $1.75 billion in cash held in a blocked account at Citibank, N.A. ("Partial Judgment") (ECF No. 367). The turnover of the assets at issue is to result in the discharge of Citibank from all claims asserted in the action and partial satisfaction of claims against the other Defendants in the action held by the judgment creditors of the Islamic Republic of Iran in the following cases:

(1) Peterson, et al. v. Islamic Republic of Iran, et al., Civil Action Nos. 01-cv-2094 and 2684 (D.D.C.); (2) Acosta, et al. v. Islamic Republic of Iran, et al., 06-cv-00745 (D.D.C.); (3) Greenbaum v. Islamic Republic of Iran, et al., 02-cv-02148-RCL (D.D.C.); (4) Estate of Michael Heiser v. Islamic Republic of Iran et al., 00-02329 and 00-cv-2104 (D.D.C.) (the "Heiser Judgment Creditors"); (5) Jeremy and Dr. Lucille Levin v. The Islamic Republic of Iran, et al., Civil Action No. 05-cv-2494 (D.D.C.); (6) Valore v. The Islamic Republic of Iran, et al., Civil Action No. 08-cv-1273 (D.D.C.); (7) Beer, et al. v. Islamic Republic of Iran, et al., Civil Action Nos. 06-cv-473 and 08-cv-1807 (D.D.C.); (8) Kirschenbaum, et al. v. Islamic Republic of Iran, et

al., Civil Action Nos. 03-cv-1708 and 08-cv-1814 (D.D.C.); (9) Murphy, et al. v. Islamic Republic of Iran, et al., Civil Action No. 06-cv-596 (D.D.C.) (the "Murphy Judgment Creditors"); (10) Rubin v. Islamic Republic of Iran, et al., Civil Action No. 01-cv-1655 (D.D.C.); (11) Estate of Anthony K. Brown v. Islamic Republic of Iran, et al., Civil Action No. 08-cv-531 (D.D.C.); (12) Estate of Stephen B. Bland v. Islamic Republic of Iran, et al., Civil Action No. 05-cv-2124 (D.D.C.); (13) Mwila, et al. v. Islamic Republic of Iran, et al., Civil Action No. 08-cv-1377 (D.D.C.); (14) Owens, et al., v. Republic of Sudan, et al., Civil Action No. 01-cv-2244 (D.D.C.); (15) Khaliq, et al. v. Republic of Sudan, et al., Civil Action No. 08-cv-1273 (D.D.C.); (16) Bonk, et al. v. Islamic Republic of Iran, et al., Civil Action No. 08-cv-1273 (D.D.C.); (17) Arnold, et al. v. Islamic Republic of Iran, et al., Civil Action 06-cv-516 (D.D.C.); and (18) Estate of James Silvia, et al. v. Islamic Republic of Iran, et al., Civil Action No. 06-cv-750 (D.D.C.) (collectively referred to herein as "Plaintiffs"). Upon consideration of the Partial Judgment and the entire record herein, it is hereby

ORDERED that the Court authorizes the establishment and funding of the Peterson §468B Qualified Settlement Fund (the "Fund"), which shall be established and maintained so as to qualify as a qualified settlement fund as defined and described in Internal Revenue Code §468B and in U.S. Treasury Regulation §1.468B-1, and according to the terms of the Agreement for the Peterson §468B Qualified Settlement Fund Pursuant to 26 U.S.C. §468B Qualified Settlement Fund Provisions (the "Fund Agreement"), the form of which is attached to this order;

FURTHER ORDERED that Stanley Sporkin, Esq. shall be appointed as Trustee of the Fund (the "Fund Trustee"); and it is

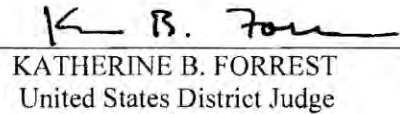
FURTHER ORDERED that all funds directed for turnover pursuant to the Partial Judgment and any Order of this Court directing the entry of a final and appealable order and judgment consistent with the Partial Judgment, shall be paid to the Fund; and it is

FURTHER ORDERED that the Fund shall be administered by the Fund Trustee in accordance with: (i) the terms of the Fund Agreement, (ii) the terms of this Order and any subsequent Orders issued by this Court, and (iii) Internal Revenue Code Section 468B, and (iv) Treasury Regulation Section 1.468B-1 through 1.468B-5; and it is

FURTHER ORDERED that the Court shall retain continuing jurisdiction over the Fund, pursuant to Treasury Regulation Section 1.468B-1(c)(1).

SO ORDERED.

Dated: New York, NY
July 9, 2013

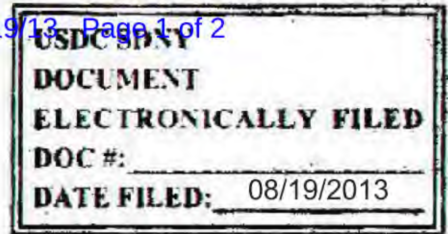


KATHERINE B. FORREST
United States District Judge

218257.1

Annex 45

***The Estate of Michael Heiser, et al. v. Bank of Baroda, New York Branch,* U.S. District Court, Southern District of New York, Judgment and Order Allocating Remaining Blocked Assets, 19 August 2013, No. 11 Civ. 1602**


USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 08/19/2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE ESTATE OF MICHAEL HEISER, et al.,

Petitioners,

v.

BANK OF BARODA, NEW YORK BRANCH,

Respondent.

11-CV-1602 (LGS) (MHD)

~~[PROPOSED]~~ JUDGMENT AND ORDER ALLOCATING REMAINING BLOCKED ASSETS

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 February 19, 2013, the Court granted the Petitioners' Motions for 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 (ECF Dkt. Nos. 49 and 63) establishing that the blocked assets (the "Blocked Assets") retained by Bank of Baroda, New York Branch (the "Respondent") 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.

WHEREAS on March 12, 2013, the Respondent filed its Motion for Reasonable Attorneys Fees and Costs (ECF Dkt. Nos. 78–80) (the "Motion") seeking payment of the $20,000 left unpaid from the Blocked Assets (the "Remaining Assets") as attorneys' fees and expenses in connection with its commencement of an interpleader in this matter.

WHEREAS on April 5, 2013, the Petitioners timely responded to the Motion (ECF Dkt. Nos. 84–85) (the "Response").

WHEREAS on April 19, 2013, the Respondent filed a timely reply to the Petitioners' Response (ECF Dkt. Nos. 87–88).

WHEREAS on July 17, 2013, the Court entered a Memorandum and Order (the "Order") granting the Motion in part and denying the motion in part, awarding the Respondent fees and costs totaling $10,438.69 (the "Bank of Baroda Award"), to be paid out of the Remaining Assets, and finding that the balance of the Remaining Assets, shall be turned over to the Petitioners (the "Residual Assets").

NOW, THEREFORE, in accordance with the Order, it is:

ORDERED, ADJUDGED AND DECREED that:

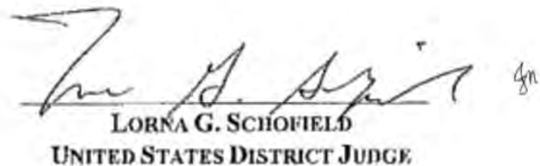
1. The Respondent is awarded fees and costs totaling $10,438.69.

2. Within five (5) days of the date of this Order, the Respondent shall pay and turn over to the Petitioners the Residual Assets, in the amount of $9,561.31 plus any accrued interest.

The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

Dated: New York, New York
August 19, 2013



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Annex 46

***Khaliq, et al. v. Republic of Sudan, et al.*, U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 28 March 2014, Case No. 10-0356**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RIZWAN KHALIQ, et al., **Plaintiffs,** **v.** **REPUBLIC OF SUDAN, et al.,** **Defendants.**	**Civil Action No. 10-356 (JDB)**

MEMORANDUM OPINION[1]

Over fifteen years ago, on August 7, 1998, the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania were devastated by simultaneous suicide bombings that killed hundreds of people and injured over a thousand. This Court has entered final judgment on liability under the Foreign Sovereign Immunities Act ("FSIA") in this civil action and several related cases—brought by victims of the bombings and their families—against the Republic of Sudan, the Ministry of the Interior of the Republic of Sudan, the Islamic Republic of Iran, and the Iranian Ministry of Information and Security (collectively "defendants") for their roles in supporting, funding, and otherwise carrying out these unconscionable acts.[2] The next step in the case is to assess and award damages to each individual plaintiff, and in this task the Court has been aided by a special master.

Plaintiffs are two U.S. citizens injured in the Nairobi bombing, as well as seven immediate family members of the victims, all of whom are also U.S. citizens. Service of process

[1] The Court has redacted plaintiffs' names in both this Opinion and the Judgment filed this date—but the Court has only redacted in this case precisely as requested by plaintiffs' counsel—and unredacted versions will be filed under seal. See Mot. for Order to Redact [ECF No. 39].

[2] Plaintiffs in some of the related actions have also sued—and the Court has entered judgment against—the Iranian Revolutionary Guards Corps.

was completed upon each defendant, but defendants failed to respond, and a default was entered against each defendant. This Court then held that it has jurisdiction over the defendants and that the U.S. nationals have a federal cause of action under 28 U.S.C. § 1605A(c). See Owens v. Republic of Sudan, 826 F. Supp. 2d 128, 148-51 (D.D.C. 2011). A final judgment on liability was then entered in favor of plaintiffs. Nov. 30, 2011 Order [ECF No. 25]. The deposition testimony and other evidence presented established that the defendants were responsible for supporting, funding, and otherwise carrying out the bombings in Nairobi and Dar es Salaam. See Owens, 826 F. Supp. 2d at 135-47.

The Court then referred plaintiffs' claims to a special master, Paul G. Griffin, to prepare proposed findings and recommendations for a determination of damages. Feb. 27, 2012 Order Appointing Special Masters [ECF No. 28] 2. The special master has now filed a completed report, and plaintiffs have filed proposed findings of fact and conclusions of law based on those reports. See Report of Special Master Paul Griffin [ECF No. 34]; Proposed Findings of Fact & Conclusions of Law [ECF No. 36]. In completing those reports and in finding the facts, the special master relied on sworn testimony, expert reports, medical records, and other evidence. The reports extensively describe the key facts relevant to each of the plaintiffs and carefully analyze their claims under the framework established in mass tort terrorism cases. The Court commends Paul Griffin for his excellent work and thoughtful analysis.

The Court hereby adopts all facts found by the special master relating to all plaintiffs in this case. Where the special master has received evidence sufficient to find that a plaintiff is a U.S. national and is thus entitled to maintain a federal cause of action, the Court adopts that finding. The Court also adopts all damages recommendations in the reports, with the few adjustments described below. "Where recommendations deviate from the Court's damages

framework, 'those amounts shall be altered so as to conform with the respective award amounts set forth' in the framework, unless otherwise noted." Valore v. Islamic Republic of Iran, 700 F. Supp. 2d 52, 82-83 (D.D.C. 2010) (quoting Peterson v. Islamic Republic of Iran, 515 F. Supp. 2d 25, 53 (D.D.C. 2007) ("Peterson II"), abrogation on other grounds recognized in Mohammadi v. Islamic Republic of Iran, 947 F. Supp. 2d 48, 65 (D.D.C. 2013)). As a result, the Court will award plaintiffs a total judgment of over $49 million.

CONCLUSIONS OF LAW

I. Plaintiffs Are Entitled To Damages On Their Federal Law Claims Under 28 U.S.C. § 1605A

"To obtain damages in a Foreign Sovereign Immunities Act (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 application of the American rule on damages." Valore, 700 F. Supp. 2d at 83. Plaintiffs here have proven that the consequences of the defendants' conduct were reasonably certain to—and indeed intended to—cause injury to plaintiffs. See Owens, 826 F. Supp. 2d at 135-46. As discussed in this Court's previous opinion, because the FSIA-created cause of action "does not spell out the elements of these claims that the Court should apply," the Court "is forced . . . to apply general principles of tort law" to determine plaintiffs' entitlement to damages on their federal claims. Id. at 157 n.3.

Survivors here are entitled to recover for the pain and suffering caused by the bombings: acts of terrorism "by their very definition" amount to extreme and outrageous conduct and are thus compensable by analogy under the tort of "intentional infliction of emotional distress." Valore, 700 F. Supp. 2d at 77 (citing Restatement (Second) of Torts § 46(1) (1965)); see Baker v. Socialist People's Libyan Arab Jamahriya, 775 F. Supp. 2d 48, 74 (D.D.C. 2011) (permitting

plaintiffs injured in state-sponsored terrorist bombings to recover for personal injuries, including pain and suffering, under tort of "intentional infliction of emotional distress"); Estate of Bland v. Islamic Republic of Iran, 831 F. Supp. 2d 150, 153 (D.D.C. 2011) (same). Hence, "those who survived the attack may recover damages for their pain and suffering, . . . [for] economic losses caused by their injuries; . . . [and] family members can recover solatium for their emotional injury . . . ." Oveissi v. Islamic Republic of Iran, 879 F. Supp. 2d 44, 55 (D.D.C. 2012) ("Oveissi II") (citing Valore, 700 F. Supp. 2d at 82-83); 28 U.S.C. § 1605A(c). Accordingly, all plaintiffs who were injured in the 1998 bombings can recover for their pain and suffering as well as their economic damages, and their immediate family members—if U.S. nationals—can recover for solatium. Bland, 831 F. Supp. 2d at 153.

II. Damages

Having established that plaintiffs are entitled to damages, the Court now turns to the question of the amount of damages, which involves resolving common questions related to plaintiffs with similar injuries. The damages awarded to each plaintiff are laid out in the tables in the separate Order and Judgment issued on this date.

a. Compensatory Damages

1. Economic damages

The special master recommends awarding economic damages to account for certain out-of-pocket medical expenses—which may be recovered under 28 U.S.C. § 1605A(c)—incurred by John Victim Doe as a direct result of the bombings. The Court adopts the special master's recommendations as to out-of-pocket medical expenses John Victim Doe incurred.

2. Awards for pain and suffering due to injury

Courts determine pain-and-suffering awards for survivors based on factors including "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." See O'Brien v. Islamic Republic of Iran, 853 F. Supp. 2d 44, 46 (D.D.C. 2012) (internal quotation marks omitted). When calculating damages amounts, "the Court must take pains to ensure that individuals with similar injuries receive similar awards." Peterson II, 515 F. Supp. 2d at 54. Recognizing this need for uniformity, courts in this district have developed a general framework for assessing pain-and-suffering damages for victims of terrorist attacks, awarding a baseline of $5 million to individuals who suffer severe physical injuries, such as compound fractures, serious flesh wounds, and scars from shrapnel, as well as lasting and severe psychological pain. See Valore, 700 F. Supp. 2d at 84. Where physical and psychological pain is more severe—such as where victims suffered relatively more numerous and severe injuries, were rendered quadriplegic, partially lost vision and hearing, or were mistaken for dead—courts have departed upward from this baseline to $7 million and above. See O'Brien, 853 F. Supp. 2d at 47. Similarly, downward departures to a range of $1.5 to $3 million are warranted where the victim suffers severe emotional injury accompanied by relatively minor physical injuries. See Valore, 700 F. Supp. 2d at 84-85.

The special master recommends an award of $5 million in pain and suffering for John Victim Doe, and a downward departure from the baseline to $1.5 million for his wife, Jane Spouse Doe. Report of Special Master Paul Griffin [ECF No. 34] 54-55. The Court will adopt these recommendations, while noting their consistency with awards in prior cases to plaintiffs who suffered similar injuries. See, e.g., Valore, 700 F. Supp. 2d at 84-85.

3. Solatium

"In determining the appropriate amount of compensatory damages, the Court may look to prior decisions awarding damages for pain and suffering, and to those awarding damages for solatium." Acosta v. Islamic Republic of Iran, 574 F. Supp. 2d 15, 29 (D.D.C. 2008). Only immediate family members—parents, siblings, spouses, and children—are entitled to solatium awards. See Valore, 700 F. Supp. 2d at 79. The commonly accepted framework for solatium damages in this district is that used in Peterson II, 515 F. Supp. 2d at 52. See Valore, 700 F. Supp. 2d at 85; Belkin, 667 F. Supp. 2d at 23. According to Peterson II, the appropriate amount of damages for family members of injured victims is as follows: $4 million to spouses of injured victims, $2.5 million to parents of injured victims, and $1.25 million to siblings of injured victims. Peterson II, 515 F. Supp. 2d at 52.

Although these amounts are guidelines, not rules, see Valore, 700 F. Supp. 2d at 86, the Court finds the distinctions made by the Valore court to be responsible and reasonable, and hence it will adopt the same guidelines for determining solatium damages here. In the interests of fairness and to account for the difficulty in assessing the relative severity of each family member's suffering, in this case and in related cases, the Court will not depart from those guidelines for any individual plaintiff.

The Court finds that the special master has appropriately applied the solatium damages framework to most of the plaintiffs in this case, and will adopt his recommendations with one exception. Other courts in this district have held that it is inappropriate for the solatium awards of family members to exceed the pain-and-suffering awards of surviving victims. See Davis, 882 F. Supp. 2d at 15; O'Brien, 853 F. Supp. 2d at 47; Bland, 831 F. Supp. 2d at 157. The Court will follow that approach here. The special master recommended solatium awards exceeding the

pain-and-suffering awards to the related victim in one case. Hence, the Court will reduce John Victim Doe's solatium award from $4 million to $1.5 million to match his wife's pain-and-suffering award.

b. Punitive Damages

Plaintiffs in this case have waived their claims for punitive damages. See Waivers of Punitive Damages [ECF No. 37-2]. Hence, the Court will dismiss Counts IV, VI, VIII, X, XII, XIV, XVI, XVIII, and XX of [29] plaintiffs' First Amended Complaint.

c. Prejudgment Interest

An award of prejudgment interest at the prime rate is appropriate in this case. See Oldham v. Korean Air Lines Co., Ltd., 127 F.3d 43, 54 (D.C. Cir. 1997); Forman v. Korean Air Lines Co., Ltd., 84 F.3d 446, 450-51 (D.C. Cir. 1996). Prejudgment interest is appropriate on the whole award, including pain and suffering and solatium, with one exception. See Reed v. Islamic Republic of Iran, 845 F. Supp. 2d 204, 214-15 (D.D.C. 2012) (awarding prejudgment interest on the full award). But see Oveissi v. Islamic Republic of Iran, 768 F. Supp. 2d 16, 30 n.12 (D.D.C. 2011) (declining to award prejudgment interest on solatium damages). Under the applicable law of the District of Columbia, the economic loss figures recommended by the special master must be adjusted to reflect present discounted value. See District of Columbia v. Barritaeu, 399 A.2d 563, 568-69 (D.C. 1979). To accomplish this, the Court will apply a different multiplier to the $720 in medical expenses incurred by John Victim Doe in 2009.[3] Awards for pain and suffering and solatium are calculated without reference to the time elapsed since the attacks. Because plaintiffs were unable to bring their claims immediately after the attacks, they have lost use of the money to which they were entitled upon incurring their injuries. Denying prejudgment interest on these damages would allow defendants to profit from the use of the money over the

[3] Using the methodology detailed below, the proper multiplier for an expense incurred in 2009 is 1.17341.

last fifteen years. Awarding prejudgment interest, on the other hand, reimburses plaintiffs for the time value of money, treating the awards as if they were awarded promptly and invested by plaintiffs.

The Court will calculate the applicable interest using the prime rate for each year. The D.C. Circuit has explained that the prime rate—the rate banks charge for short-term unsecured loans to creditworthy customers—is the most appropriate measure of prejudgment interest, one "more appropriate" than more conservative measures such as the Treasury Bill rate, which represents the return on a risk-free loan. See Forman, 84 F.3d at 450. Although the prime rate, applied over a period of several years, can be measured in different ways, the D.C. Circuit has approved an award of prejudgment interest "at the prime rate for each year between the accident and the entry of judgment." See id. at 450. Using the prime rate for each year is more precise than, for example, using the average rate over the entire period. See Doe, 943 F. Supp. 2d at 185 (noting that this method is a "substantially more accurate 'market-based estimate'" of the time value of money (citing Forman, 84 F. 3d at 451)). Moreover, calculating interest based on the prime rate for each year is a simple matter.[4] Using the prime rate for each year results in a multiplier of 2.26185 for damages incurred in 1998.[5] Accordingly, the Court will use this multiplier to calculate the total award.[6]

---

[4] To calculate the multiplier, the Court multiplied $1.00 by the prime rate in 1999 (8%) and added that amount to $1.00, yielding $1.08. Then, the Court took that amount and multiplied it by the prime rate in 2000 (9.23%) and added that amount to $1.08, yielding $1.17968. Continuing this iterative process through 2014 yields a multiplier of 2.26185.

[5] The Court calculated the multiplier using the Federal Reserve's data for the average annual prime rate in each year between 1998 and 2014. See Bd. of Governors of the Fed. Reserve Sys. Historical Data, available at http://www.federalreserve.gov/releases/h15/data.htm (last visited March 28, 2014). As of the date of this opinion, the Federal Reserve has not posted the annual prime rate for 2014, so the Court will conservatively estimate that rate to be 3.25%, the rate for the previous six years.

[6] The product of the multiplier and the base damages amount includes both the prejudgment interest and the base damages amount; in other words, applying the multiplier calculates not the prejudgment interest but the base damages amount plus the prejudgment interest, or the total damages award.

CONCLUSION

The 1998 embassy bombings shattered the lives of all plaintiffs in this case. Reviewing their personal stories reveals that, even more than fifteen years later, they each still feel the horrific effects of that awful day. Damages awards cannot fully compensate people whose lives have been torn apart; instead, they offer only a helping hand. But that is the very least that these plaintiffs are owed. Hence, it is what Court will facilitate.

A separate Order consistent with these findings has issued on this date.

/s/
JOHN D. BATES
United States District Judge

Dated: March 28, 2014

Annex 47

Owens, et al. v. Republic of Sudan, et al., **U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 28 March 2014, Case No. 01-2244**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES OWENS, et al., **Plaintiffs,** **v.** **REPUBLIC OF SUDAN, et al.,** **Defendants.**	**Civil Action No. 01-2244 (JDB)**

MEMORANDUM OPINION[1]

Over fifteen years ago, on August 7, 1998, the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania were devastated by simultaneous suicide bombings that killed hundreds of people and injured over a thousand. This Court has entered final judgment on liability under the Foreign Sovereign Immunities Act ("FSIA") in this civil action and several related cases—brought by victims of the bombings and their families—against the Republic of Sudan, the Ministry of the Interior of the Republic of Sudan, the Islamic Republic of Iran, and the Iranian Ministry of Information and Security (collectively "defendants") for their roles in supporting, funding, and otherwise carrying out these unconscionable acts.[2] The next step in the case is to assess and award damages to each individual plaintiff, and in this task the Court has been aided by a special master.

[1] The Court has redacted plaintiffs' names in both this Opinion and the Judgment filed this date—but the Court has only redacted in this case precisely as requested by plaintiffs' counsel—and unredacted versions will be filed under seal. See Mot. for Order to Redact [ECF No. 298].

[2] Plaintiffs in some of the related actions have also sued—and the Court has entered judgment against—the Iranian Revolutionary Guards Corps.

Plaintiffs are twelve U.S. citizens injured in either the Nairobi or Dar es Salaam bombings, as well as forty-nine[3] immediate family members of the victims, of whom forty-two are U.S. citizens. Service of process was completed upon each defendant, but defendants failed to respond, and a default was entered against each defendant. This Court then held that it has jurisdiction over the defendants and that the U.S. nationals have a federal cause of action under 28 U.S.C. § 1605A(c). See Owens v. Republic of Sudan, 826 F. Supp. 2d 128, 148-51 (D.D.C. 2011). The Court also held that although those plaintiffs who are foreign national family members of victims lack a federal cause of action, they may nonetheless pursue claims under the law of the District of Columbia.[4] Id. at 153-57. A final judgment on liability was then entered in favor of plaintiffs. Nov. 28, 2011 Order [ECF No. 214] 2. The deposition testimony and other evidence presented established that the defendants were responsible for supporting, funding, and otherwise carrying out the bombings in Nairobi and Dar es Salaam. See Owens, 826 F. Supp. 2d at 135-47.

The Court then referred plaintiffs' claims to a special master, Paul G. Griffin, to prepare proposed findings and recommendations for a determination of damages. Feb. 27, 2012 Order Appointing Special Masters [ECF No. 221] 2. The special master has now filed completed reports on each plaintiff, and plaintiffs have filed proposed findings of fact and conclusions of law based on those reports. See Reports of Special Master Paul Griffin [ECF Nos. 271-77, 279, 286, 288]; Proposed Findings of Fact & Conclusions of Law [ECF No. 287]. In completing those reports and in finding the facts, the special master relied on sworn testimony, expert reports, medical records, and other evidence. The reports extensively describe the key facts relevant to

[3] This tally does not include one injured plaintiff's two grandchildren (Jane Grandchild1 Cdoe and Jane Grandchild2 Cdoe), named in the complaint: the Court will dismiss their claims because they do not have a viable cause of action. See infra Part III.a.3.

[4] The non-citizen plaintiffs are Jane Sibling3 Bdoe, Jane Sibling2 Bdoe, Jane Sibling3 Bdoe, Jane Parent1 Gdoe, John Parent2 Gdoe, Jane Sibling3 Gdoe, and Jane Sibling4 Gdoe.

each of the plaintiffs and carefully analyze their claims under the framework established in mass tort terrorism cases. The Court commends Paul Griffin for his excellent work and thoughtful analysis.

The Court hereby adopts all facts found by the special master relating to all plaintiffs in this case. Where the special master has received evidence sufficient to find that a plaintiff is a U.S. national and is thus entitled to maintain a federal cause of action, the Court adopts that finding. In addition, the Court adopts the special master's findings that each plaintiff[5] has established the familial relationship necessary to support standing under section 1605A(a)(2)(A)(ii). See Owens, 826 F. Supp. 2d at 149. The Court also adopts all damages recommendations in the reports, with the few adjustments described below. "Where recommendations deviate from the Court's damages framework, 'those amounts shall be altered so as to conform with the respective award amounts set forth' in the framework, unless otherwise noted." Valore v. Islamic Republic of Iran, 700 F. Supp. 2d 52, 82-83 (D.D.C. 2010) (quoting Peterson v. Islamic Republic of Iran, 515 F. Supp. 2d 25, 53 (D.D.C. 2007) ("Peterson II"), abrogation on other grounds recognized in Mohammadi v. Islamic Republic of Iran, 947 F. Supp. 2d 48, 65 (D.D.C. 2013)). As a result, the Court will award plaintiffs a total judgment of over $487 million.

[5] With the exception of the two grandchildren, who are not immediate family members. See supra note 1.

CONCLUSIONS OF LAW

I. Plaintiffs Are Entitled To Damages On Their Federal Law Claims Under 28 U.S.C. § 1605A

"To obtain damages in a Foreign Sovereign Immunities Act (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 application of the American rule on damages." Valore, 700 F. Supp. 2d at 83. Plaintiffs here have proven that the consequences of the defendants' conduct were reasonably certain to—and indeed intended to—cause injury to plaintiffs. See Owens, 826 F. Supp. 2d at 135-46. As discussed in this Court's previous opinion, because the FSIA-created cause of action "does not spell out the elements of these claims that the Court should apply," the Court "is forced . . . to apply general principles of tort law" to determine plaintiffs' entitlement to damages on their federal claims. Id. at 157 n.3.

Survivors here are entitled to recover for the pain and suffering caused by the bombings: acts of terrorism "by their very definition" amount to extreme and outrageous conduct and are thus compensable by analogy under the tort of "intentional infliction of emotional distress." Valore, 700 F. Supp. 2d at 77 (citing Restatement (Second) of Torts § 46(1) (1965)); see Baker v. Socialist People's Libyan Arab Jamahriya, 775 F. Supp. 2d 48, 74 (D.D.C. 2011) (permitting plaintiffs injured in state-sponsored terrorist bombings to recover for personal injuries, including pain and suffering, under tort of "intentional infliction of emotional distress"); Estate of Bland v. Islamic Republic of Iran, 831 F. Supp. 2d 150, 153 (D.D.C. 2011) (same). Hence, "those who survived the attack may recover damages for their pain and suffering, . . . [for] economic losses caused by their injuries; . . . [and] family members can recover solatium for their emotional injury . . . ." Oveissi v. Islamic Republic of Iran, 879 F. Supp. 2d 44, 55 (D.D.C. 2012) ("Oveissi

II") (citing Valore, 700 F. Supp. 2d at 82-83); 28 U.S.C. § 1605A(c). Accordingly, all plaintiffs who were injured in the 1998 bombings can recover for their pain and suffering as well as their economic damages, and their immediate family members—if U.S. nationals—can recover for solatium. Bland, 831 F. Supp. 2d at 153.

II. Plaintiffs Who Lack A Federal Cause Of Action Are Entitled To Damages Under D.C. Law

This Court previously held that it will apply District of Columbia law to the claims of any plaintiffs for whom jurisdiction is proper, but who lack a federal cause of action under the FSIA. Owens, 826 F. Supp. 2d at 153-57. This category includes only the foreign national family members of the injured victims from the 1998 bombings. Individuals in this category seek to recover solatium damages under D.C. law based on claims of intentional infliction of emotional distress. To establish a prima facie case of intentional infliction of emotional distress under D.C. law, a plaintiff must show: (1) extreme and outrageous conduct on the part of the defendant which, (2) either intentionally or recklessly, (3) causes the plaintiff severe emotional distress. Larijani v. Georgetown Univ., 791 A.2d 41, 44 (D.C. 2002). Acts of terrorism "by their very definition" amount to extreme and outrageous conduct, Valore, 700 F. Supp. 2d at 77; the defendants in this case acted intentionally and recklessly; and their actions caused each plaintiff severe emotional distress. See Owens, 826 F. Supp. 2d at 136-45; Murphy v. Islamic Republic of Iran, 740 F. Supp. 2d 51, 74-75 (D.D.C. 2010). Likewise, D.C. law allows spouses and next of kin to recover solatium damages. D.C. Code § 16-2701. Based on the evidence submitted to the special master, the Court concludes that the foreign national family members of the victims of the 1998 bombings have each made out their claims for intentional infliction of emotional distress and are entitled to solatium damages.

III. Damages

Having established that plaintiffs are entitled to damages, the Court now turns to the question of the amount of damages, which involves resolving common questions related to plaintiffs with similar injuries. The damages awarded to each plaintiff are laid out in the tables in the separate Order and Judgment issued on this date.

a. Compensatory Damages

1. Economic damages

Under the FSIA, plaintiffs may recover economic damages, which typically include lost wages, benefits and retirement pay, and other out-of-pocket expenses. 28 U.S.C. § 1605A(c). To determine each surviving plaintiff's economic losses resulting from the bombings, the special master relied on economic reports submitted by Dr. Jerome Paige and Associates, which estimated lost earnings, fringe benefits, retirement income, and the value of household services lost as a result of the injuries sustained from the bombing. Those reports were attached to each special master report where a plaintiff suffered economic damages. In turn, Dr. Paige and Associates relied on information from the survivors as well as other documentation, including social security benefit reports and employment records. See Proposed Findings of Fact & Conclusions of Law Ex. 2 [ECF No. 287-3] (further explaining methodology employed in creating the economic loss reports). The Court adopts the findings and recommendations of the special master as to economic losses.

The special master also recommends awarding economic damages to account for certain out-of-pocket expenses incurred as a direct result of the bombings, consisting of both past and future medical expenses. The Court adopts the special master's recommendations as to out-of-pocket medical expenses already incurred. In determining future medical costs of certain

plaintiffs, the special master relied on reports created by Mona Yudkoff, R.N, a life care planner, who determined that several plaintiffs will require constant medical care and treatment for the rest of their lives because of the injuries they sustained in the bombing. See Proposed Findings of Fact & Conclusions of Law Ex. 3 [ECF No. 287-4] (further explaining methodology employed in creating future medical expense reports). The Court adopts the special master's recommendations as to these future medical costs as well.

2. Awards for pain and suffering due to injury

Courts determine pain-and-suffering awards for survivors based on factors including "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." See O'Brien v. Islamic Republic of Iran, 853 F. Supp. 2d 44, 46 (D.D.C. 2012) (internal quotation marks omitted). When calculating damages amounts, "the Court must take pains to ensure that individuals with similar injuries receive similar awards." Peterson II, 515 F. Supp. 2d at 54. Recognizing this need for uniformity, courts in this district have developed a general framework for assessing pain-and-suffering damages for victims of terrorist attacks, awarding a baseline of $5 million to individuals who suffer severe physical injuries, such as compound fractures, serious flesh wounds, and scars from shrapnel, as well as lasting and severe psychological pain. See Valore, 700 F. Supp. 2d at 84. Where physical and psychological pain is more severe—such as where victims suffered relatively more numerous and severe injuries, were rendered quadriplegic, partially lost vision and hearing, or were mistaken for dead—courts have departed upward from this baseline to $7 million and above. See O'Brien, 853 F. Supp. 2d at 47. Similarly, downward departures to a range of $1.5 to $3 million are warranted where the victim

suffers severe emotional injury accompanied by relatively minor physical injuries. See Valore, 700 F. Supp. 2d at 84-85.

The special master recommends an award of $5 million in pain and suffering for three plaintiffs, downward departures from the baseline for five plaintiffs, and upward departures from the baseline for four plaintiffs. The Court will adopt these recommendations with four adjustments to ensure consistency with prior cases and between plaintiffs in this case.

The special master's report on John Victim1 Bdoe suggests an award of $12 million in pain and suffering, based on his extensive injuries. Report of Special Master Paul Griffin Concerning John Victim1 Bdoe [ECF No. 271] 83. Although an upward departure from the baseline is appropriate, the Court finds that a departure of $3 million is more appropriate, bringing the total pain-and-suffering award to $8 million. John Victim1 Bdoe was a supervisor in information technology in the diplomatic services corps at the U.S. Embassy in Nairobi at the time of the bombing. Id. at 2. A steel beam fell on him during the explosion, crushing his left arm and shoulder. Id. at 12. The hospital in Nairobi recommended amputation because the bones were shattered and soft tissues were torn away from the shoulder socket, destroying his rotator cuff, but his doctors did not ultimately amputate. Id. at 10. Efforts to repair John Victim1 Bdoe's shoulder—including eight lengthy reconstructive operations—have failed because of alignment problems, post-operative infections, and other complications. Id. at 12. He has permanently lost the use of his left shoulder, and has only limited use of his left arm below the elbow. Id. at 15. He also suffers from repeated infections due to his injuries, requiring him to take antibiotics for the rest of his life. Id. at 13. John Victim1 Bdoe also suffered massive injuries to his head. Id. at 17. During the bombing, a significant portion of his lower jaw was blown off. Id. He also suffered injuries to many of his teeth and to his mouth and face. Id. Because of the distortion to

his face, oral surgeons have trouble locating nerves to numb when performing dental surgeries, and so he has felt the full pain of such surgeries for hours at a time. Id. at 18. John Victim1 Bdoe also suffers from numerous shrapnel wounds: fragments of glass, drywall, metal, and other debris are embedded in his body; that shrapnel periodically migrates through his body and erupts through his skin. Id. at 22. These physical injuries have destroyed John Victim1 Bdoe's ability to engage in sports with his children. Id. at 29. He also suffers from very serious emotional injuries, including post-traumatic stress disorder ("PTSD"), nightmares, flashbacks, a sense of loss of control over his life, isolation, loneliness, frustration of not being a good husband and father due to his injuries, and financial concerns of how he can support his wife and family after the injuries he sustained. Id. at 31-32. These injuries have substantially interfered with his ability to enjoy a normal family relationship with his wife and children. Id. at 32-33.

In Peterson II, the court departed upwards from the baseline to award $12 million to a bombing survivor who suffered severe injuries that included a broken neck, which resulted in permanent quadriplegia. 515 F. Supp. 2d at 55. Although John Victim1 Bdoe's injuries are horrific, the Court finds that they are more in line with those suffered by plaintiffs awarded $8 million by the Peterson II court. See, e.g., id. at 54 (awarding $8 million to plaintiff Burnette, who was buried alive for four days, and suffered injuries including closed head injury, basilar skull fracture, facial nerve palsy, rib injuries, tympanic membrane ruptures, foot injuries, and severe psychological problems); id. at 55 (awarding $8 million to plaintiff Hunt, who suffered injuries including skull fractures, brain bruising, various broken bones in his leg, an exposed Achilles tendon, and severe psychological problems). Because these injuries and their lasting effects are significantly more serious than those of most plaintiffs receiving the baseline award of $5 million, the Court will award $8 million to John Victim1 Bdoe.

The special master's report on Jane Victim Cdoe suggests an award of $20 million in pain and suffering, based on her extensive injuries. Report of Special Master Paul Griffin Concerning Jane Victim Cdoe [ECF No. 275] 43. Although an upward departure from the baseline is certainly appropriate, the Court finds that a departure of $7 million is more appropriate, bringing the total pain-and-suffering award to $12 million. Jane Victim Cdoe worked for the U.S. Department of State at the U.S. Embassy in Nairobi at the time of the bombing, and she was at work when the bomb went off. Id. at 2. She was knocked unconscious by the blast, and when she regained consciousness she was pinned to the floor by various objects. Id. at 7. She was taken to the hospital, and when she awoke she was on a plane to Germany. Id. at 8. She was later taken to Walter Reed Medical Center, where she spent over a month. Id. As a direct result of the bombing, Jane Victim Cdoe suffered the following injuries: deep lacerations on both feet, severe burns on her left arm, shrapnel and glass embedded in her left arm and chest, first- and second-degree burns to her head and face, two perforated eardrums (one requiring surgery), extremely serious eye injuries resulting in bilateral blindness, a hole in the top of her skull, facial lacerations and embedded glass, serious blast tattooing on her face and permanent scarring, a dislocated elbow, a large piece of shrapnel embedded in her upper thigh, a lost tooth, nerve damage, and PTSD. Id. at 8-9. She was also infected with HIV due to blood contamination at the Nairobi hospital, resulting in AIDS. Id. at 9. Her skin still erupts shrapnel from her face and head twice a month on average, and her hearing is still poor. Id. at 23. Jane Victim Cdoe has had over forty surgeries to repair her eyes, and many other surgeries to repair her other injuries. Id. at 10-11. She is, however, still almost completely blind. Id. at 15. HIV destroyed the physical relationship between Jane Victim Cdoe and her former husband John Spouse Cdoe, and she recently filed for a divorce. Id. at 18.

The Court finds that Jane Victim Cdoe's injuries are most comparable to those of the plaintiff rendered quadriplegic in Peterson II, who was awarded $12 million. 515 F. Supp. 2d at 55. In addition to her horrific physical injuries and many surgeries, as a direct result of the bombing she is irreparably blind and partly deaf, and she contracted HIV. In light of her suffering, the Court finds that a significant upward departure is merited, and it will award $12 million to Jane Victim Cdoe.

The special master's report on John Victim Ddoe suggests an award of $10 million in pain and suffering, based on his extensive injuries. Report of Special Master Paul Griffin Concerning John Victim Ddoe [ECF No. 276] 26. Although an upward departure from the baseline is appropriate, the Court finds that a departure of $2 million is more appropriate, bringing the total pain-and-suffering award to $7 million. John Victim Ddoe was employed by the U.S. Department of State and was stationed at the embassy in Nairobi. Id. at 2. He has since passed away from an unrelated cause. Id. at 3. John Victim Ddoe was knocked unconscious by the explosion and was buried underneath rubble. Id. at 4. After rescuers dug him out of the rubble, he was taken immediately to the hospital in Nairobi. Id. at 5. He was covered in bruises and lacerations from the bombing. Id. at 8. He experienced severe issues as a result of the extreme head trauma he suffered, including issues thinking and talking clearly, being reduced to wearing a diaper, having to relearn remedial tasks such as walking, talking, and using the bathroom, and having trouble remembering things. Id. at 5. As a direct result of the bombing, John Victim Ddoe suffered the following injuries: a fractured scapula, a fractured rib, severed nerves in his leg, burns on his back, missing teeth, brain damage—including impairment of memory function, problems with overall executive function and apathy, disinhibition, problems processing information, and a hematoma—and PTSD. Id. at 7-9.

As with John Victim1 Bdoe and Jane Victim Cdoe, John Victim Ddoe's injuries were significantly more serious than those of most plaintiffs receiving the baseline award. His injuries are comparable to those suffered by one of the plaintiffs in Estate of Doe v. Islamic Republic of Iran, 943 F. Supp. 2d 180, 187 (D.D.C. 2013). There, the court awarded $7 million to a plaintiff who was mistaken for dead; rescue workers threw her body from the building to an ambulance waiting below.

> She remained in the hospital for eight months and underwent several surgeries for severe head injuries. The crown of her head had been split open, the roof of her mouth was cracked, her vision and hearing were damaged, all of her teeth were broken, and her hair was burnt off . . . Due to glass pieces stuck in her lips and cheeks, [she] required surgery to reconstruct her face. She continues to be profoundly affected by her injuries: she is unable to eat certain foods because the roof of her mouth didn't heal correctly, has eye pain, and relies on other people to take care of her in certain ways. She experiences constant dizziness and cannot tolerate loud noises.

Id.; see also Peterson II, 515 F. Supp. 2d at 55 (awarding $7 million to plaintiff Matthews, who suffered injuries including shrapnel wound to forehead destroying nose, lacerations, a perforated eardrum, and severe psychological problems); id. at 56 (awarding $7 million to plaintiff Rivers, who suffered injuries including two broken eardrums, lacerations, burns, knee damage, and severe psychological problems). John Victim Ddoe's injuries are similarly severe. He suffered severe head trauma, burns and lacerations, broken bones, and he suffered from PTSD. Because his injuries are comparable to those of other plaintiffs receiving a $7 million award, the Court will award $7 million to John Victim Ddoe's estate.

The special master's report on John Victim1 Edoe suggests an award of $7.5 million in pain and suffering, based on his extensive injuries. Report of Special Master Paul Griffin Concerning John Victim1 Edoe [ECF No. 277] 40. The Court believes that a downward adjustment from both the special master's recommendation and the baseline amount is

appropriate for John Victim1 Edoe. Where physical injuries are comparatively minor and the primary injury is emotional, courts adjust the award downward. See, e.g., Valore, 700 F. Supp. 2d at 84-85. At the time of the bombing, John Victim1 Edoe was a special agent in the diplomatic services corps assigned to the embassy in Nairobi. Id. at 4. He was at an offsite embassy warehouse a few miles away from the embassy at the time of the bombing. Id. at 5. Knowing that his wife was in the embassy, he immediately drove back there while extremely upset. Id. He found his wife at the embassy, covered in dust, abrasions, and cuts, and he was overjoyed to find her alive. Id. at 6. Despite the grave emotional impact of the bombing on him—he personally knew many of the victims—he organized a search team and began to move through the building, searching for survivors in the rubble. Id. at 6. While searching the building, he witnessed many dead bodies, some with limbs and heads severed from torsos. Id. at 7-8. Even as someone with combat experience, he was overwhelmed by the number of people with severe wounds. Id. at 8. While participating in the cleanup, John Victim1 Edoe's mouth began to bleed from the amount of smoke and particles in the air. Id. at 24. Lifting survivors from the rubble caused him to suffer injuries to his back and shoulders. Id. at 10. As a direct result of his search and rescue efforts after the bombing, John Victim1 Edoe suffered the following injuries: damage to his rotator cuffs, severe bilateral muscle and tendon tears in his shoulders, back injury, lost lung function, Reactive Airways Dysfunction Syndrome, PTSD, anger, nightmares, insomnia, difficulty concentrating, distraction, major depression, and suicidal tendencies. Id. at 10-11, 16-17.

The record reflects lasting and severe psychological pain for John Victim1 Edoe. But in light of his relatively less severe physical injuries when compared to plaintiffs who were injured by the bomb blast itself, a downward departure from the baseline is appropriate. For instance, in

Valore, another judge in this district awarded $1.5 million where a plaintiff was knocked to the ground by a bomb blast, and suffered severe emotional turmoil from helping survivors. See Valore, 700 F. Supp. 2d at 84-85; see also Peterson II, 515 F. Supp. 2d at 55 (departing downward to $2 million where plaintiff experienced "nerve pain and foot numbness" as well as "lasting and severe psychological problems" from the attack). John Victim1 Edoe suffered physical injuries during his admirable search and rescue efforts, which are more severe than those of the plaintiff in Valore. Accordingly, the Court will award $3.5 million to John Victim1 Edoe for pain and suffering.

3. Solatium

"In determining the appropriate amount of compensatory damages, the Court may look to prior decisions awarding damages for pain and suffering, and to those awarding damages for solatium." Acosta v. Islamic Republic of Iran, 574 F. Supp. 2d 15, 29 (D.D.C. 2008). Only immediate family members—parents, siblings, spouses, and children—are entitled to solatium awards. See Valore, 700 F. Supp. 2d at 79. The commonly accepted framework for solatium damages in this district is that used in Peterson II, 515 F. Supp. 2d at 52. See Valore, 700 F. Supp. 2d at 85; Belkin, 667 F. Supp. 2d at 23. According to Peterson II, the appropriate amount of damages for family members of injured victims is as follows: $4 million to spouses of injured victims, $2.5 million to parents of injured victims, and $1.25 million to siblings of injured victims. Peterson II, 515 F. Supp. 2d at 52. Courts in this district have differed somewhat on the proper amount awarded to children of injured victims. Compare Peterson II, 515 F. Supp. 2d at 51 ($2.5 million), with Davis v. Islamic Republic of Iran, 882 F. Supp. 2d 7, 14 (D.D.C. 2012) ($1.5 million). The Court finds the Peterson II approach to be more appropriate: to the extent

such suffering can be quantified, children who lose parents are likely to suffer as much as parents who lose children.

Although these amounts are guidelines, not rules, see Valore, 700 F. Supp. 2d at 86, the Court finds the distinctions made by the Valore court to be responsible and reasonable, and hence it will adopt the same guidelines for determining solatium damages here. In the interests of fairness and to account for the difficulty in assessing the relative severity of each family member's suffering, in this case and in related cases, the Court will not depart from those guidelines for any individual plaintiff.[6]

Some plaintiffs in this case, sadly, had not one but two parents injured in the bombings. Solatium awards are meant to compensate for "the mental anguish . . . that those with a close personal relationship to [an injured victim] experience as the result of the [survivor's injuries], as well as the harm caused by the loss of the [survivor's] society and comfort." Id. at 85 (internal quotation marks omitted). Accordingly, those plaintiffs who suffered the misfortune of experiencing the disruption of not one but two close personal relationships because of the bombings are entitled to doubled solatium awards, and the special master so recommended. See id. at 86 (awarding solatium damages for each lost relationship).

The Court finds that the special master has appropriately applied the solatium damages framework to most of the plaintiffs in this case, and will adopt his recommendations with a few exceptions. Other courts in this district have held that it is inappropriate for the solatium awards of family members to exceed the pain-and-suffering awards of surviving victims. See Davis, 882

[6] Two plaintiffs are actually former—or soon to be former—spouses of injured victims. Case law is unclear on how much to award former spouses. See Baker, 775 F. Supp. 2d at 84 (noting lack of clarity and lowering solatium award because of divorce soon after injury). Here, the special master has not recommended a downward departure for the plaintiffs involved (John Victim2 Fdoe, divorced from Jane Victim1 Fdoe, and John Spouse Cdoe, divorced or soon-to-be divorced from Jane Victim Cdoe). Because of the lengthy post-injury period of marriage in both cases, and because the special master found that both marriages suffered greatly as a result of the bombings, the Court will award the full amount of solatium damages to both plaintiffs.

F. Supp. 2d at 15; O'Brien, 853 F. Supp. 2d at 47; Bland, 831 F. Supp. 2d at 157. The Court will follow that approach here. The special master recommended solatium awards exceeding the pain-and-suffering awards to the related victim in several cases. Hence, the Court will reduce those solatium awards to match corresponding pain-and-suffering awards where appropriate.[7] The Court will also increase the solatium awards for two plaintiffs—John Child1 Fdoe and Jane Child2 Fdoe—for whom the special master apparently calculated solatium awards without accounting for their suffering associated with their brother John Victim3 Fdoe's injuries.[8]

b. Punitive Damages

Plaintiffs in this case have waived their claims for punitive damages. See Waivers of Punitive Damages [ECF No. 298-2]. Hence, the Court will dismiss Count XXV of the Fifth Amended Complaint.

c. Prejudgment Interest

An award of prejudgment interest at the prime rate is appropriate in this case. See Oldham v. Korean Air Lines Co., Ltd., 127 F.3d 43, 54 (D.C. Cir. 1997); Forman v. Korean Air Lines Co., Ltd., 84 F.3d 446, 450-51 (D.C. Cir. 1996). Prejudgment interest is appropriate on the whole award, including pain and suffering and solatium, with one exception. See Reed v. Islamic Republic of Iran, 845 F. Supp. 2d 204, 214-15 (D.D.C. 2012) (awarding prejudgment interest on the full award). But see Oveissi v. Islamic Republic of Iran, 768 F. Supp. 2d 16, 30 n.12 (D.D.C.

---

[7] Accordingly, the Court reduces the following awards: John Victim1 Bdoe's solatium award, reduced from $4 million to $3 million; John Victim1 Edoe's solatium award, reduced from $4 million to $2.5 million; Jane Victim2 Edoe's solatium award, reduced from $4 million to $3.5 million; Jane Victim1 Fdoe's solatium award, reduced from a combined $6.5 million to a combined $4.5 million ($3 million for solatium associated with John Victim2 Fdoe's injuries and $1.5 million for solatium associated with John Victim3 Fdoe's injuries); John Victim2 Fdoe's solatium award, reduced from a combined $6.5 million to a combined $5.5 million ($4 million for solatium associated with Jane Victim1 Fdoe's injuries and $1.5 million for solatium associated with John Victim3 Fdoe's injuries); John Victim1 Gdoe's solatium award, reduced from $4 million to $1.5 million; and Jane Child1 Gdoe's solatium award, reduced from a combined $5 million to a combined $4 million ($2.5 million for solatium associated with John Victim1 Gdoe's injuries and $1.5 million for solatium associated with Jane Victim2 Gdoe's injuries).

[8] Those awards will each amount to $6.25 million: $2.5 million for solatium associated with each of their parents' injuries and $1.25 million for solatium associated with their brother's injuries.

2011) (declining to award prejudgment interest on solatium damages). Because the economic loss figures recommended by the special master have already been adjusted to reflect present discounted value, see District of Columbia v. Barritaeu, 399 A.2d 563, 568-69 (D.C. 1979), the Court will not apply the prejudgment interest multiplier to the economic loss amounts. See Doe, 943 F. Supp. 2d at 186 (citing Oldham, 127 F.3d at 54). Awards for pain and suffering and solatium are calculated without reference to the time elapsed since the attacks. Because plaintiffs were unable to bring their claims immediately after the attacks, they have lost use of the money to which they were entitled upon incurring their injuries. Denying prejudgment interest on these damages would allow defendants to profit from the use of the money over the last fifteen years. Awarding prejudgment interest, on the other hand, reimburses plaintiffs for the time value of money, treating the awards as if they were awarded promptly and invested by plaintiffs.

The Court will calculate the applicable interest using the prime rate for each year. The D.C. Circuit has explained that the prime rate—the rate banks charge for short-term unsecured loans to creditworthy customers—is the most appropriate measure of prejudgment interest, one "more appropriate" than more conservative measures such as the Treasury Bill rate, which represents the return on a risk-free loan. See Forman, 84 F.3d at 450. Although the prime rate, applied over a period of several years, can be measured in different ways, the D.C. Circuit has approved an award of prejudgment interest "at the prime rate for each year between the accident and the entry of judgment." See id. at 450. Using the prime rate for each year is more precise than, for example, using the average rate over the entire period. See Doe, 943 F. Supp. 2d at 185 (noting that this method is a "substantially more accurate 'market-based estimate'" of the time value of money (citing Forman, 84 F. 3d at 451)). Moreover, calculating interest based on the

prime rate for each year is a simple matter.[9] Using the prime rate for each year results in a multiplier of 2.26185 for damages incurred in 1998.[10] Accordingly, the Court will use this multiplier to calculate the total award.[11]

CONCLUSION

The 1998 embassy bombings shattered the lives of all plaintiffs in this case. Reviewing their personal stories reveals that, even more than fifteen years later, they each still feel the horrific effects of that awful day. Damages awards cannot fully compensate people whose lives have been torn apart; instead, they offer only a helping hand. But that is the very least that these plaintiffs are owed. Hence, it is what Court will facilitate.

A separate Order consistent with these findings has issued on this date.

/s/
JOHN D. BATES
United States District Judge

Dated: March 28, 2014

[9] To calculate the multiplier, the Court multiplied $1.00 by the prime rate in 1999 (8%) and added that amount to $1.00, yielding $1.08. Then, the Court took that amount and multiplied it by the prime rate in 2000 (9.23%) and added that amount to $1.08, yielding $1.17968. Continuing this iterative process through 2014 yields a multiplier of 2.26185.

[10] The Court calculated the multiplier using the Federal Reserve's data for the average annual prime rate in each year between 1998 and 2014. See Bd. of Governors of the Fed. Reserve Sys. Historical Data, available at http://www.federalreserve.gov/releases/h15/data.htm (last visited March 28, 2014). As of the date of this opinion, the Federal Reserve has not posted the annual prime rate for 2014, so the Court will conservatively estimate that rate to be 3.25%, the rate for the previous six years.

[11] The product of the multiplier and the base damages amount includes both the prejudgment interest and the base damages amount; in other words, applying the multiplier calculates not the prejudgment interest but the base damages amount plus the prejudgment interest, or the total damages award.

Annex 48

***Mwila, et al. v. Republic of Sudan, et al.,* U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 28 March 2014, Case No. 08-1377**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDITH ABASI MWILA, et al., **Plaintiffs,** **v.** **THE ISLAMIC REPUBLIC OF IRAN, et al.,** **Defendants.**	**Civil Action No. 08-1377 (JDB)**

MEMORANDUM OPINION[1]

Over fifteen years ago, on August 7, 1998, the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania were devastated by simultaneous suicide bombings that killed hundreds of people and injured over a thousand. This Court has entered final judgment on liability under the Foreign Sovereign Immunities Act ("FSIA") in this civil action and several related cases—brought by victims of the bombings and their families—against the Republic of Sudan, the Ministry of the Interior of the Republic of Sudan, the Islamic Republic of Iran, and the Iranian Ministry of Information and Security (collectively "defendants") for their roles in supporting, funding, and otherwise carrying out these unconscionable acts.[2] The next step in the case is to assess and award damages to each individual plaintiff, and in this task the Court has been aided by a special master.

[1] The Court has redacted plaintiffs' names in both this Opinion and the Judgment filed this date—but the Court has only redacted in this case precisely as requested by plaintiffs' counsel in a related case—and unredacted versions will be filed under seal. See Owens v. Repub. of Sudan, No. 01-2244, (D.D.C. Feb. 3, 2014) Mot. for Order to Redact [ECF No. 298].

[2] Plaintiffs in some of the related actions have also sued—and the Court has entered judgment against—the Iranian Revolutionary Guard Corps.

Plaintiffs are four Tanzanian citizens injured and five estates of Tanzanian citizens killed in the Dar es Salaam bombings, as well as forty-nine immediate family members of the victims. Those injured and deceased were employees of entities that had contracts with the U.S. government, and were performing under those contracts within the scope of their employment at the U.S. Embassy in Dar es Salaam when the bombing occurred. Service of process was completed upon each defendant, but defendants failed to respond, and a default was entered against each defendant. The Court has held that it has jurisdiction over defendants and that the foreign national plaintiffs who worked for the U.S. government are entitled to compensation for personal injury and wrongful death under 28 U.S.C. § 1605A(c)(3). See Owens v. Republic of Sudan, 826 F. Supp. 2d 128, 148-51 (D.D.C. 2011). The Court has also held that, although those plaintiffs who are foreign national family members of victims lack a federal cause of action, they may nonetheless pursue claims under the laws of the District of Columbia. Id. at 153-57. A final judgment on liability was entered in favor of plaintiffs. Nov. 28, 2011 Order [ECF No. 214] 2. The deposition testimony and other evidence presented established that the defendants were responsible for supporting, funding, and otherwise carrying out the bombings in Nairobi and Dar es Salaam. See Owens, 826 F. Supp. 2d at 135-47.

The Court then referred plaintiffs' claims to a special master, John Swanson, to prepare proposed findings and recommendations for a determination of damages. Feb. 27, 2012 Order Appointing Special Masters [ECF No. 33] 2. The special master has now filed completed reports on each plaintiff, and plaintiffs have filed proposed findings of fact and conclusions of law based on those reports. See Reports of Special Master John Swanson [ECF Nos. 36-44]; Proposed Findings of Fact & Conclusions of Law [ECF No. 53]. In completing those reports, the special master relied on sworn testimony, expert reports, medical records, and other evidence. The

reports extensively describe the key facts relevant to each plaintiff and carefully analyze their claims under the framework established in mass tort terrorism cases. The Court commends John Swanson for his fine work and thorough analysis.

The Court hereby adopts all facts found by the special master relating to each plaintiff in this case. In addition, the Court adopts the special master's findings that all plaintiffs have established their employment status or their familial relationship necessary to support standing under section 1605A(a)(2)(A)(ii). See Owens, 826 F. Supp. 2d at 149. The Court also adopts all damages recommendations in the reports, with a few adjustments as described below. "Where recommendations deviate from the Court's damages framework, 'those amounts shall be altered so as to conform with the respective award amounts set forth' in the framework, unless otherwise noted." Valore v. Islamic Republic of Iran, 700 F. Supp. 2d 52, 82-83 (D.D.C. 2010) (quoting Peterson v. Islamic Republic of Iran, 515 F. Supp. 2d 25, 53 (D.D.C. 2007) ("Peterson II"), abrogation on other grounds recognized in Mohammadi v. Islamic Republic of Iran, 947 F. Supp. 2d 48, 65 (D.D.C. 2013)). As a result, the Court will award plaintiffs a total judgment of over $419 million.

CONCLUSIONS OF LAW

On November 28, 2011, the Court granted summary judgment on liability against defendants in this case. Nov. 28, 2011 Order [ECF No. 214] 2. The foreign national U.S.-government-employee victims have a federal cause of action, while their foreign-national family members have a cause of action under D.C. law.

I. The Government-Employee Plaintiffs Are Entitled To Damages On Their Federal Law Claims Under 28 U.S.C. § 1605A

"To obtain damages in a Foreign Sovereign Immunities Act (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 application of the American rule on damages." Valore, 700 F. Supp. 2d at 83. Plaintiffs here have proven that the consequences of defendants' conduct were reasonably certain to—and indeed intended to—cause injury to plaintiffs. See Owens, 826 F. Supp. 2d at 135-46. As discussed in this Court's previous opinion, because the FSIA-created cause of action "does not spell out the elements of these claims that the Court should apply," the Court "is forced . . . to apply general principles of tort law" to determine plaintiffs' entitlement to damages on their federal claims. Id. at 157 n.3.

Survivors are entitled to recover for the pain and suffering caused by the bombings: acts of terrorism "by their very definition" amount to extreme and outrageous conduct and are thus compensable by analogy under the tort of "intentional infliction of emotional distress." Valore, 700 F. Supp. 2d at 77 (citing Restatement (Second) of Torts § 46(1) (1965)); see also Baker v. Socialist People's Libyan Arab Jamahriya, 775 F. Supp. 2d 48, 74 (D.D.C. 2011) (permitting plaintiffs injured in state-sponsored terrorist bombings to recover for personal injuries, including pain and suffering, under tort of "intentional infliction of emotional distress"); Estate of Bland v. Islamic Republic of Iran, 831 F. Supp. 2d 150, 153 (D.D.C. 2011) (same). Hence, "those who survived the attack may recover damages for their pain and suffering, . . . [and for] economic losses caused by their injuries. . . ." Oveissi v. Islamic Republic of Iran, 879 F. Supp. 2d 44, 55 (D.D.C. 2012) ("Oveissi II") (citing Valore, 700 F. Supp. 2d at 82-83); see 28 U.S.C. § 1605A(c). Accordingly, all plaintiffs who were injured in the 1998 bombings can recover for their pain and suffering as well as their economic damages. Bland, 831 F. Supp. 2d at 153. In addition, the estates of those who were killed in the attack are entitled to recover compensatory

damages for wrongful death. See, e.g., Valore, 700 F. Supp. at 82 (permitting estates to recover economic damages caused to deceased victims' estates).

II. Family Members Who Lack A Federal Cause Of Action Are Entitled To Damages Under D.C. Law

This Court has previously held that it will apply District of Columbia law to the claims of any plaintiffs for whom jurisdiction is proper, but who lack a federal cause of action under the FSIA. Owens, 826 F. Supp. 2d at 153-57. This category includes only the foreign-national family members of the injured victims from the 1998 bombings. Individuals in this category seek to recover solatium damages under D.C. law based on claims of intentional infliction of emotional distress. To establish a prima facie case of intentional infliction of emotional distress under D.C. law, a plaintiff must show: (1) extreme and outrageous conduct on the part of the defendant which, (2) either intentionally or recklessly, (3) causes the plaintiff severe emotional distress. Larijani v. Georgetown Univ., 791 A.2d 41, 44 (D.C. 2002). Acts of terrorism "by their very definition" amount to extreme and outrageous conduct, Valore, 700 F. Supp. 2d at 77; the defendants in this case acted intentionally and recklessly; and their actions caused each plaintiff severe emotional distress. See Owens, 826 F. Supp. 2d at 136-45; Murphy v. Islamic Republic of Iran, 740 F. Supp. 2d 51, 74-75 (D.D.C. 2010). Likewise, D.C. law allows spouses and next of kin to recover solatium damages. D.C. Code § 16-2701. Based on the evidence submitted to the special master, the Court concludes that the foreign national family members of the victims of the 1998 bombings have each made out their claims for intentional infliction of emotional distress and are entitled to solatium damages (with the few exceptions detailed below).

III. Damages

Having established that plaintiffs are entitled to damages, the Court now turns to the question of the amount of damages, which involves resolving common questions related to

plaintiffs with similar injuries. The damages awarded to each plaintiff are laid out in the tables in the separate Order and Judgment issued on this date.

a. Compensatory Damages

1. Economic damages

Under the FSIA, injured victims and the estates of deceased victims may recover economic damages, which typically include lost wages, benefits and retirement pay, and other out-of-pocket expenses. 28 U.S.C. § 1605A(c). To determine each surviving plaintiff's economic losses resulting from the bombings, the special master relied on economic reports submitted by Associate Professor James M. Warner, who estimated lost earnings, fringe benefits, retirement income, and the value of household services lost as a result of the injuries sustained from the bombing. Those reports were attached to each special master report where a plaintiff suffered economic damages. In turn, Associate Professor Warner relied on information from the survivors as well as other documentation, including country-specific economic data and employment records. See, e.g., Report of Special Master, Ex. 1 [ECF No. 36-1] 2-8 (further explaining methodology employed in creating the economic loss reports). The Court adopts the findings and recommendations of the special master as to economic losses to be awarded injured victims and the estates of deceased victims.

The special master also recommended that some victims' children be awarded economic damages to compensate them for their parent's lost earning potential. Those damages, however, are not included in the category of damages recoverable by family members of victims under either the FSIA or D.C. law, as explained above, and the special master cites nothing to the contrary. Hence, the Court will adjust the special master's recommended awards accordingly.

2. Awards for pain and suffering due to injury

Courts determine pain-and-suffering awards for survivors based on factors including "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." See O'Brien v. Islamic Republic of Iran, 853 F. Supp. 2d 44, 46 (D.D.C. 2012) (internal quotation marks omitted). When calculating damages amounts, "the Court must take pains to ensure that individuals with similar injuries receive similar awards." Peterson II, 515 F. Supp. 2d at 54. Recognizing this need for uniformity, courts in this district have developed a general framework for assessing pain-and-suffering damages for victims of terrorist attacks, awarding a baseline of $5 million to individuals who suffer severe physical injuries, such as compound fractures, serious flesh wounds, and scars from shrapnel, as well as lasting and severe psychological pain. See Valore, 700 F. Supp. 2d at 84. Where physical and psychological pain is more severe—such as where victims suffered relatively more numerous and severe injuries, were rendered quadriplegic, partially lost vision and hearing, or were mistaken for dead—courts have departed upward from this baseline to $7 million and above. See O'Brien, 853 F. Supp. 2d at 47. Similarly, downward departures to a range of $1.5 to $3 million are warranted where the victim suffers severe emotional injury accompanied by relatively minor physical injuries. See Valore, 700 F. Supp. 2d at 84-85.

Damages for extreme pain and suffering are warranted for those individuals who initially survive the attack but then succumb to their injuries. "When the victim endured extreme pain and suffering for a period of several hours or less, courts in these [terrorism] cases have rather uniformly awarded $1 million." Haim v. Islamic Republic of Iran, 425 F. Supp. 2d 56, 71 (D.D.C. 2006). When the period of the victim's pain is longer, the award increases. Id. at 72.

And when the period is particularly brief, courts award less. For instance, where an individual "survived a terrorist attack for 15 minutes, and was in conscious pain for 10 minutes," a court in this district awarded $500,000. See Peterson, 515 F. Supp. 2d at 53.

The special master recommended pain and suffering awards to eight of the nine victims or their estates. The Court will adjust the special master's recommendations as described below to ensure consistency with prior cases and between plaintiffs in this case.[3] The special master recommended pain and suffering awards for four of the five victims killed in the bombings.[4] But the record does not support the award of pain and suffering damages to the estates of these deceased victims because it contains no evidence indicating that they suffered before succumbing to their injuries. See Oldham v. Korean Air Lines Co., Ltd., 127 F.3d 43, 56 (D.C. Cir. 1997) (in pre-death suffering cases, "the key factual dispute turns on whether the [victims] were immediately rendered unconscious" (internal quotation marks omitted)); cf. Peterson, 515 F. Supp. 2d at 53 (awarding pain and suffering damages to estates of deceased victims who initially survived terrorist attack but later died of their injuries). No one testified that any of the deceased victims survived the blast itself for any period of time, and the evidence indicates that they likely did not: John Victim Asmith was decapitated, and his head was never found; John Victim Fsmith was found "not in one piece"; John Victim Hsmith was identifiable only by DNA evidence; John Victim Ismith was "struck in the head by an iron"; and no evidence indicates the exact manner of Jane Victim Gsmith's death. See Report of Special Master John Swanson Concerning John Victim Asmith [ECF No. 36] 4; Report of Special Master John Swanson Concerning John Victim Fsmith [ECF No. 42] 5; Report of Special Master John Swanson

[3] The Court finds the recommended award of $5 million for pain and suffering to John Victim Csmith to be appropriate and in line with awards to similarly situated plaintiffs in this case and others.

[4] The special master does not explain why he did not recommend awarding pain-and-suffering damages to Jane Victim Gsmith, but as with the other deceased victims, an award of pain-and-suffering damages to Jane Victim Gsmith is appropriate.

Concerning John Victim Hsmith [ECF No. 37] 4; Report of Special Master John Swanson Concerning John Victim Ismith [ECF No. 43] ("Ismith Report") 5; Report of Special Master John Swanson Concerning Jane Victim Gsmith [ECF No. 40] ("Gsmith Report") 3-4. The Court is thus unable to conclude on this record that these victims were ever conscious after the blast or that they suffered in between the blast and their deaths. Hence, the Court will not award any damages for pain and suffering to the estates of the deceased victims.

The special master's report on John Victim Bsmith suggests an award of $4 million in pain and suffering, based on his extensive injuries. Report of Special Master John Swanson Concerning John Victim Bsmith [ECF No. 41] ("Bsmith Report"). The Court believes that an upward adjustment from the special master's recommendation to the baseline amount is appropriate for John Victim Bsmith. Where plaintiffs suffer severe physical injuries, such as compound fractures, serious flesh wounds, and scars from shrapnel, as well as lasting and severe psychological pain, courts generally award $5 million in pain and suffering. See Valore, 700 F. Supp. 2d at 84. John Victim Bsmith worked as a security guard at the U.S. Embassy in Dar es Salaam. Bsmith Report at 3. He only remembers experiencing the blast and then waking up in a hospital bed later that afternoon. Id. at 3-4. He suffered loss of hearing, cuts from shrapnel, spinal cord injuries, and impaired vision. Id. at 4, 10. Because of his injuries, he is no longer able to work. Id. at 5. Because his injuries are comparable to those of other plaintiffs receiving a $5 million award—in this and other cases—the Court will award $5 million to John Victim Bsmith.

The special master's report on John Victim Esmith suggests an award of $6 million in pain and suffering, based on his extensive injuries. Report of Special Master John Swanson Concerning John Victim Esmith [ECF No. 39] ("Esmith Report"). The Court believes that a downward adjustment from the special master's recommendation to the baseline amount is

appropriate for John Victim Esmith. John Victim Esmith was employed as a gardener at the U.S. Embassy in Dar es Salaam at the time of the bombing. Id. at 3. He recalls being taken to the hospital, but he does not recall the blast itself. Id. He sustained shrapnel wounds to his leg and face, a severe chest injury, and burns all over his body. Id. at 5. John Victim Esmith ultimately died of a chest infection eleven years after the bombing, but the record is insufficient to establish that the injuries sustained during the bombing caused his death. See id. at 5. As with John Victim Bsmith, the blast caused John Victim Esmith to suffer serious flesh wounds, scars from shrapnel, and lasting and severe psychological pain. Nothing, though, indicates that his injuries were so severe as to warrant an upward departure. Because his injuries are comparable to those of other plaintiffs receiving a $5 million award, the Court will award $5 million to the estate of John Victim Esmith.

The special master's report on John Victim Dsmith suggests an award of $5 million in pain and suffering, based on his injuries. Report of Special Master John Swanson Concerning John Victim Dsmith [ECF No. 44]. The Court believes that a downward adjustment from the special master's recommendation is also appropriate for John Victim Dsmith. John Victim Dsmith was a security guard at the U.S. Embassy in Dar es Salaam at the time of the bombing. Id. at 2. When the bombing occurred, he was far enough away that he was not affected by the blast itself, but he heard the blast and saw people running away from the blast site. Id. at 3. When trying to get a better vantage point to see what had happened, he climbed up to the first floor of the building, but a stampede of people forced him to jump into a nearby tree. Id. at 3. The branch on which he was standing broke, and he suffered injuries from the fall. Id. at 4. Nevertheless, he proceeded to the bomb site and aided the rescue efforts. Id. As a result of the bombing and its aftermath, he suffered back and leg injuries, loss of hearing, and vision and respiratory problems.

Id. at 4-5. The record reflects lasting and severe psychological pain for John Victim Dsmith. But in light of his relatively less severe physical injuries when compared to plaintiffs who were injured by the bomb blast itself, a downward departure from the baseline is appropriate. For instance, in Valore, another judge in this district awarded $1.5 million where a plaintiff was knocked to the ground by a bomb blast, and suffered severe emotional turmoil from helping survivors. See Valore, 700 F. Supp. 2d at 84-85; see also Peterson II, 515 F. Supp. 2d at 55 (departing downward to $2 million where plaintiff experienced "nerve pain and foot numbness" as well as "lasting and severe psychological problems" from the attack). John Victim Dsmith suffered physical injuries during the bombing's aftermath and during his admirable rescue efforts, and his injuries are more severe than those of the plaintiff in Valore. Accordingly, the Court will award $2.5 million to John Victim Dsmith for pain and suffering.

3. Solatium

"In determining the appropriate amount of compensatory damages, the Court may look to prior decisions awarding damages for pain and suffering, and to those awarding damages for solatium." Acosta v. Islamic Republic of Iran, 574 F. Supp. 2d 15, 29 (D.D.C. 2008). Only immediate family members—parents, siblings, spouses, and children—are entitled to solatium awards. See Valore, 700 F. Supp. 2d at 79. The commonly accepted framework for solatium damages in this district is that used in Peterson II, 515 F. Supp. 2d at 52. See Valore, 700 F. Supp. 2d at 85; Belkin, 667 F. Supp. 2d at 23. According to Peterson II, the appropriate amount of damages for family members of deceased victims is as follows: $8 million to spouses of deceased victims, $5 million to parents of deceased victims, and $2.5 million to siblings of deceased victims. 515 F. Supp. 2d at 52. The appropriate amount of damages for family members of injured victims is as follows: $4 million to spouses of injured victims, $2.5 million

to parents of injured victims, and $1.25 million to siblings of injured victims. Id. Courts in this district have differed somewhat on the proper amount awarded to children of victims. Compare Peterson II, 515 F. Supp. 2d at 51 ($2.5 million to child of injured victim), with Davis v. Islamic Republic of Iran, 882 F. Supp. 2d 7, 14 (D.D.C. 2012) ($1.5 million to child of injured victim). The Court finds the Peterson II approach to be more appropriate: to the extent such suffering can be quantified, children who lose parents are likely to suffer as much as parents who lose children.

Although these amounts are guidelines, not rules, see Valore, 700 F. Supp. 2d at 86, the Court finds the distinctions made by the Valore court to be responsible and reasonable, and hence it will adopt the same guidelines for determining solatium damages here. In the interests of fairness and to account for the difficulty in assessing the relative severity of each family member's suffering, in this case and in related cases, the Court will not depart from those guidelines for any individual plaintiff except one: the Court agrees with the special master that awarding $4 million to John Sibling1 Ismith—rather than the $2.5 million typically awarded to siblings of deceased victims—is appropriate because of the closer-than-normal sibling relationship he shared with his twin brother, deceased victim John Victim Ismith. See Ismith Report at 2-4.

The Court finds that the special master has appropriately applied the solatium damages framework to many of the plaintiffs in this case, and will adopt his recommendations with the exceptions described below. Other courts in this district have held that it is inappropriate for the solatium awards of family members to exceed the pain-and-suffering awards of surviving victims. See Davis, 882 F. Supp. 2d at 15; O'Brien, 853 F. Supp. 2d at 47; Bland, 831 F. Supp. 2d at 157. This Court agrees and will follow that approach here. The special master recommended a solatium award to Jane Spouse Dsmith that exceeds the pain-and-suffering

award to her husband. Consequently, the Court will reduce her award from $5 million to $2.5 million to match her husband's pain-and-suffering award.

For the most part, the special master recommended that the family members of those killed in the bombings receive awards consistent with family members of injured victims. The Court will therefore adjust those awards to accord with the guidelines in Peterson.[5] See 515 F. Supp. 2d at 52. The special master also recommended that Jane Sibling1 Esmith, the sister of the injured victim John Victim Esmith, receive $2.5 million, but as an injured victim's sister she is entitled to a solatium award of $1.25 million. The Court will adjust her award accordingly.

The special master also recommended the award of solatium damages to some injured victims' children who were born after the bombings occurred. While the Court acknowledges that the bombings' terrible impact on the victims and their families continues to this day, in similar cases courts have found that children born following terrorist attacks are not entitled to damages under the FSIA. See Davis v. Islamic Republic of Iran, 882 F. Supp. 2d 7, 15 (D.D.C. 2012); Wultz v. Islamic Republic of Iran, 864 F. Supp. 2d 24, 36 (D.D.C. 2012). In holding that a plaintiff must have been alive at the time of an attack to recover solatium damages, the Davis court recognized the need to draw lines in order to avoid creating "an expansive and indefinite scope of liability" under the FSIA—for example, liability to children born fifteen years after an attack (a real possibility in this drawn-out litigation). 882 F. Supp. 2d at 15. The Court agrees

[5] Accordingly, the Court will increase the awards to the following plaintiffs: Jane Spouse Asmith, from $4 million to $8 million; John Child1 Asmith, from $2.5 million to $5 million; Jane Child2 Asmith, from $2.5 million to $5 million; Jane Child3 Asmith, from $2.5 million to $5 million; Jane Spouse Fsmith, from $4 million to $8 million; Jane Child1 Fsmith, from $2.5 million to $5 million; Jane Child2 Fsmith, from $2.5 million to $5 million; John Child3 Fsmith, from $2.5 million to $5 million; Jane Child4 Fsmith, from $2.5 million to $5 million; John Child5 Fsmith, from $2.5 million to $5 million; John Child6 Fsmith, from $2.5 million to $5 million; John Child2 Gsmith, from $2.5 million to $5 million; Jane Child1 Gsmith, from $2.5 million to $5 million; John Spouse Gsmith, from $4 million to $8 million; Jane Spouse Hsmith, from $4 million to $8 million; John Child1 Hsmith, from $2.5 million to $5 million; John Child2 Hsmith, from $2.5 million to $5 million; Jane Child3 Hsmith, from $2.5 million to $5 million; John Child4 Hsmith, from $2.5 million to $5 million; Jane Parent1 Hsmith, from $2.5 million to $5 million; and John Child1 Ismith, from $2.5 million to $5 million.

with the Davis court's interpretation of the FSIA and holds that those plaintiffs not alive at the time of the bombings cannot recover solatium damages.[6] Hence, the Court dismisses the claims of the following plaintiffs: Jane Child3 Bsmith (born in 1999), Jane Child5 Bsmith (born in 2001), John Child6 Bsmith (born in 2001), Jane Child5 Csmith (died in 1983), John Child4 Dsmith (born in 2001), and John Child5 Dsmith (born in 2003). See Bsmith Report at 6, 14; Report of Special Master John Swanson Concerning John Victim Csmith [ECF No. 38] 3; Report of Special Master John Swanson Concerning John Victim Dsmith [ECF No. 44] 6.

The special master also recommends, based on the evidence, that no damages be awarded to Jane Spouse Esmith, John Ismith, or Jane Ismith, and the Court adopts those recommendations because the record does not contain sufficient evidence to support the award of any damages to those plaintiffs. Esmith Report at 11; Ismith Report at 11.

b. Prejudgment Interest

An award of prejudgment interest at the prime rate is appropriate in this case. See Oldham, 127 F.3d at 54; Forman v. Korean Air Lines Co., Ltd., 84 F.3d 446, 450-51 (D.C. Cir. 1996). Prejudgment interest is appropriate on the whole award, including pain and suffering and solatium, with one exception. See Reed v. Islamic Republic of Iran, 845 F. Supp. 2d 204, 214-15 (D.D.C. 2012) (awarding prejudgment interest on the full award). But see Oveissi v. Islamic Republic of Iran, 768 F. Supp. 2d 16, 30 n.12 (D.D.C. 2011) (declining to award prejudgment interest on solatium damages). Because the economic loss figures recommended by the special master have already been adjusted to reflect present discounted value, see District of Columbia v. Barritaeu, 399 A.2d 563, 568-69 (D.C. 1979), the Court will not apply the prejudgment interest multiplier to the economic loss amounts. See Doe, 943 F. Supp. 2d at 186 (citing Oldham, 127 F.3d at 54); see, e.g., Special Master Report Ex. 1 [ECF No. 36-1] 8. Awards for pain and

[6] This makes sense because such a plaintiff has not actually lost a parent in the bombing.

suffering and solatium are calculated without reference to the time elapsed since the attacks. Because plaintiffs were unable to bring their claims immediately after the attacks, they have lost use of the money to which they were entitled upon incurring their injuries. Denying prejudgment interest on these damages would allow defendants to profit from the use of the money over the last fifteen years. Awarding prejudgment interest, on the other hand, reimburses plaintiffs for the time value of money, treating the awards as if they were awarded promptly and invested by plaintiffs.

The Court will calculate the applicable interest using the prime rate for each year. The D.C. Circuit has explained that the prime rate—the rate banks charge for short-term unsecured loans to creditworthy customers—is the most appropriate measure of prejudgment interest, one "more appropriate" than more conservative measures such as the Treasury Bill rate, which represents the return on a risk-free loan. See Forman, 84 F.3d at 450. Although the prime rate, applied over a period of several years, can be measured in different ways, the D.C. Circuit has approved an award of prejudgment interest "at the prime rate for each year between the accident and the entry of judgment." See id. at 450. Using the prime rate for each year is more precise than, for example, using the average rate over the entire period. See Doe, 943 F. Supp. 2d at 185 (noting that this method is a "substantially more accurate 'market-based estimate'" of the time value of money (citing Forman, 84 F. 3d at 451)). Moreover, calculating interest based on the prime rate for each year is a simple matter.[7] Using the prime rate for each year results in a

[7] To calculate the multiplier, the Court multiplied $1.00 by the prime rate in 1999 (8%) and added that amount to $1.00, yielding $1.08. Then, the Court took that amount and multiplied it by the prime rate in 2000 (9.23%) and added that amount to $1.08, yielding $1.17968. Continuing this iterative process through 2014 yields a multiplier of 2.26185.

multiplier of 2.26185 for damages incurred in 1998.[8] Accordingly, the Court will use this multiplier to calculate the total award.[9]

CONCLUSION

The 1998 embassy bombings shattered the lives of all plaintiffs in this case. Reviewing their personal stories reveals that, even more than fifteen years later, they each still feel the horrific effects of that awful day. Damages awards cannot fully compensate people whose lives have been torn apart; instead, they offer only a helping hand. But that is the very least that these plaintiffs are owed. Hence, it is what Court will facilitate.

A separate Order consistent with these findings has issued on this date.

/s/
JOHN D. BATES
United States District Judge

Dated: March 28, 2014

[8] The Court calculated the multiplier using the Federal Reserve's data for the average annual prime rate in each year between 1998 and 2014. See Bd. of Governors of the Fed. Reserve Sys. Historical Data, available at http://www.federalreserve.gov/releases/h15/data.htm (last visited March 28, 2014). As of the date of this opinion, the Federal Reserve has not posted the annual prime rate for 2014, so the Court will conservatively estimate that rate to be 3.25%, the rate for the previous six years.

[9] The product of the multiplier and the base damages amount includes both the prejudgment interest and the base damages amount; in other words, applying the multiplier calculates not the prejudgment interest but the base damages amount plus the prejudgment interest, or the total damages award.

Annex 49

***Peterson, et al. v. Iran, Bank Markazi, Banca UBAE, Clearstream, JP Morgan Chase Bank,* U.S. District Court for the Southern District of New York, Amended Complaint, 25 April 2014, No. 13-cv-9195-KBF**

Excerpts: pp. 1-18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEBORAH D. PETERSON, Personal Representative of the Estate Of James C. Knipple (Dec.), et al. (see Exhibit A for a Full List of Plaintiffs), Plaintiffs, v. ISLAMIC REPUBLIC OF IRAN; BANK MARKAZI a/k/a CENTRAL BANK OF IRAN; BANCA UBAE SpA; CLEARSTREAM BANKING, S.A.; and JP MORGAN CHASE BANK, N.A., Defendants.	Case No.: 13 CIV 9195 (KBF) [rel. 10 CIV 4518] **FILED UNDER SEAL CONTAINS CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE ORDER** **AMENDED COMPLAINT PURSUANT TO N.Y. C.P.L.R. 5225 AND 5227** **Plaintiffs demand a trial by jury.**

The Plaintiffs/Judgment Creditors listed on the attached Exhibit A ("Plaintiffs"), by their attorneys, allege the following claims based upon information and belief, except those allegations concerning Plaintiffs, which they allege based upon their personal knowledge.

NATURE OF THE CLAIM

1. Plaintiffs are the victims of the deadly Iran-sponsored 1983 terrorist bombing of the U.S. Marine Barracks in Beirut, Lebanon. Plaintiffs include the representatives of the estates of the 241 American servicemen killed in that attack, many survivors of the bombing, and the family members, heirs and representatives of the killed and injured servicemen.

2. By means of this action, Plaintiffs seek to enforce judgments for compensatory damages that they secured against two defendants, the Islamic Republic of Iran ("Iran") and

231580.1

Iran's Ministry of Information and Security ("MOIS" and, collectively with Iran, the "Judgment Debtors"), in 2007.

3. Despite the Judgment Debtors' longstanding, determined efforts to evade collection of the Plaintiffs' judgments, and other judgments obtained by the victims of Iran's ongoing terror campaign, Plaintiffs succeeded in restraining approximately $[redacted] in bonds and cash nominally held by Iran's supposed "central bank," defendant Bank Markazi ("Markazi"). Plaintiffs obtained a judgment of turnover against Clearstream and others of approximately $1.9 billion of those assets (the "Original Assets") on July 9, 2013. The Plaintiffs recently discovered that Clearstream continues in possession and custody of additional assets of Markazi in the form of U.S. dollar denominated bonds that were restrained by Clearstream in 2008 when Plaintiffs caused the restraint of the Original Assets, and that Clearstream's correspondent bank in New York, JP Morgan Chase Bank NA ("JP Morgan"), holds the proceeds of those bonds in a U.S. dollar account of which Markazi is the sole beneficial owner. The Plaintiffs seek by this action to have those additional assets turned over to Plaintiffs in further satisfaction of their judgments.[1]

4. Plaintiffs easily satisfy all of the requirements for collecting a portion of their massive judgments against the Remaining Assets under federal and common law, including the Foreign Sovereign Immunities Act, 28 U.S.C. Section 1602 *et seq.* (the "FSIA") and Section 201 of the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, Title II, §201(a), 116 Stat. 2337 (2002) ("TRIA").

5. Markazi's nominal ownership of the Remaining Assets poses no obstacle to collection because (a) TRIA permits collection of the Plaintiffs' judgments from assets of

[1] The assets described in the Peterson Writ of Execution, annexed hereto as Exhibit B, as well as the cash proceeds collected by Clearstream from bonds that comprised those assets and any interest accrued thereon since the assets were restrained in 2008, to the extent they remain in Clearstream's or JP Morgan's custody or possession, are hereinafter referred to as "Remaining Assets."

agencies and instrumentalities of Iran like Markazi, and (b) Iran dominates and controls Markazi's actions, thereby rendering Markazi a mere alter ego of Iran that follows Iran's directions regarding matters ranging from monetary policy, to financing Iran's continuing acts of international terrorism and efforts to develop weapons of mass destruction ("WMDs"), to evading the enforcement of the Plaintiffs' judgments and other judgments secured by the victims of Iran's terrorism. Indeed, former Iranian President Mahmoud Ahmadinejad publicly and repeatedly boasted of his ability to control Markazi's actions, and other Iranian officials frequently acknowledge the bank's subjugation to Ahmadinejad's whims.

6. Clearstream's presence in this District, and the extensive commercial activity that took place here at the direction and through the agents of Iran and Markazi, to maintain the Remaining Assets for safekeeping, to transfer ownership of those securities and to make interest and principal payments to Markazi, leave no doubt that Markazi and its agents engaged in commercial activity in the United States in relation to the Remaining Assets. Likewise, the presence of Clearstream in this District and the intangible nature of the bonds and the proceeds thereof collected by Clearstream and maintained on deposit at JP Morgan in New York render Defendants' contentions that nothing exists here for Plaintiffs to levy against an exercise in sophistry.

7. Markazi's assertion that 28 U.S.C. Section 1611(b)(1) protects its assets from collection ignores Iran's waiver of any collection immunity otherwise applicable to its agencies and instrumentalities. In any event, Markazi cannot demonstrate that it utilized the Remaining Assets exclusively "for its own account," *i.e.*, solely in connection with legitimate central banking activity, a necessary condition to defeat collection under Section 1611(b)(1).

8. To the contrary, the U.S. Departments of State and Treasury have recently taken the unprecedented step of designating Markazi as the first supposed central bank subject to restrictions under the Patriot Act's provisions related to jurisdictions of "primary money laundering concern." Markazi earned that designation by consistently assisting in Iran's financing of terrorism, efforts to promote nuclear weapons proliferation and evasion of U.S. and international sanctions.

9. As the Treasury Department recognized in announcing the sanctions against Markazi, every transaction in which Markazi engages is inherently suspect, and Markazi has repeatedly demonstrated its willingness to lie and to deceive to advance Iran's illegal activities. Thus, the Remaining Assets are properly seen as the tools of Iran's ongoing violations of U.S. sanctions and international law, not – as Markazi suggests – as ordinary "foreign exchange reserves" maintained by a legitimate "central bank" "for its own account"

10. Finally, the fraudulent conveyances in which Markazi engaged shortly before Plaintiffs succeeded in restraining the Remaining Assets provide no defense to Plaintiffs' right to levy those assets. Iran, Markazi, Clearstream and UBAE (the "Conspirators") jointly agreed in early 2008 to move the Remaining Assets and other Markazi assets from an account that Clearstream maintained in Markazi's name to a new customer account opened by UBAE at Clearstream to house Markazi's bonds (the "UBAE/Markazi Account").

11. Those transfers bear numerous and obvious indicia of fraud. The transfers were made free of payment. The Conspirators embarked on their scheme to transfer the assets just as amendments to the FSIA facilitated the ability of terror victims to collect their judgments against rogue states such as Iran and as other international sanctions threatened Markazi's ability to act freely in the international banking system.

12. Furthermore, inserting UBAE into the middle of Markazi's bond transactions served no legitimate business purpose. UBAE is, by any measure, a small bank that can provide little of value to a massive financial institution like Markazi. From Markazi's perspective, UBAE's sole value was its willingness to serve as a front for Markazi in connection with the bond transactions and thereby impede collection efforts by Iran's creditors and the ability of the U.S. and foreign governments to sanction Markazi and Iran. Because UBAE was controlled by the regime of Libyan strongman Muammar Gaddafi when the Conspirators initiated their scheme, UBAE was uniquely suited for that role.

13. Thus, to the extent that some significance attaches to whether Clearstream or UBAE is the proper garnishee in this action, the Court's equitable powers justify reversing Markazi's fraudulent conveyances of the Remaining Assets, restoring them to Markazi's Clearstream account and permitting Plaintiffs to levy those assets.

14. Moreover, the foregoing facts easily establish Plaintiffs' right to the turnover of the Remaining Assets in the possession and control of JP Morgan and Clearstream.

15. The Court should therefore provide some closure to Plaintiffs' decades-long quest to force Iran to account for its murderous acts on the morning of October 23, 1983 and order Defendants to surrender the Remaining Assets to Plaintiffs.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Sections 1330, 1331, 1605(a)(1), 1605(a)(2), 1605(a)(7), 1605A, 1610, and TRIA. This Court also has jurisdiction under 28 U.S.C. Section 1963 because Plaintiffs obtained their judgments in the United States District Court for the District of Columbia and subsequently registered their

judgments in the Southern District of New York. This proceeding arises under Fed. R. Civ. P. 69(a), which incorporates the applicable law of the State of New York and the United States.

17. This Court has personal jurisdiction over Defendants pursuant to Fed. R. Civ. P. 4, CPLR Sections 301 and 302, and 28 U.S.C. Sections 1605(a)(1), 1605(a)(2), 1605(a)(7), 1605A, 1610 and TRIA.

18. As Plaintiffs particularize herein, Iran has explicitly and by implication waived any right to immunity against suit and execution that Markazi and Iran's other agencies and instrumentalities might otherwise enjoy from the claims that Plaintiffs assert.

19. Iran and its alter ego, Markazi, engaged in substantial commercial activity inside and outside of the United States in connection with their investments in the Remaining Assets, individually and through the Banking Agent Defendants (*i.e.*, UBAE and Clearstream).

20. In particular, Iran, Markazi and the Banking Agent Defendants engaged in commercial activity in the United States by investing in bonds denominated in U.S. dollars, which required participation of various United States financial institutions, including JP Morgan, to make payments of interest and principal and to act as correspondent banks to receive and hold U.S. dollar cash proceeds of the bonds for the benefit of Markazi.

21. When they engaged in those activities, the Banking Agent Defendants operated within the scope of their agency relationship with Iran and Markazi. Moreover, the Banking Agent Defendants engaged in that commercial activity in furtherance of the conspiracy with Iran and Markazi that Plaintiffs describe in detail below.

22. The actions that Markazi and Iran undertook with respect to the Remaining Assets in Iran, including the investment decisions that they made regarding those bonds, had direct effects in the United States, including the payment of substantial interest and principal to

Markazi through payment agents and correspondent banks in the United States, including JP Morgan and HSBC Bank.

23. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391(b), (d) and (f).

PARTIES AND JUDGMENT DEBTORS

24. Plaintiffs are the victims of the deadly Iran-sponsored 1983 terrorist bombing of the U.S. Marine barracks in Beirut, Lebanon. Plaintiffs include the representatives of the estates of the 241 United States servicemen killed in that attack, many survivors of the bombing, and the family members, heirs and representatives of the killed and injured servicemen. All Plaintiffs are United States Citizens residing in the United States, including the State of New York.

25. Defendant and Judgment Debtor the Islamic Republic of Iran ("Iran") is a foreign sovereign and U.S. government-designated state sponsor of terrorism. The Plaintiffs secured judgments for compensatory and punitive damages against Iran for its role in the murderous Marine Barracks attack that killed and injured Plaintiffs.

26. The United States Department of State first designated Iran as a state sponsor of terrorism in 1984 and has reiterated that designation every year since 2000 in its Country Reports on Terrorism.[2] Iran earned that ignominious designation by repeatedly providing support for acts of international terrorism. In addition to financing and lending non-monetary support to terrorist acts, Iran has also actively pursued the development of weapons of mass destruction ("WMD") in violation of international law.

27. The Iranian Ministry of Information and Security ("MOIS") is a Judgment Debtor. MOIS serves as an intelligence organization for the Iranian government. MOIS acted as a conduit for Iran's provision of funds, training and weapons to Hezbollah, the terrorist

[2] *See* "State Sponsors of Terrorism," U.S. Department of State, August 18, 2011 (http://www.state.gov/s/ct/rls/crt/2010/170260.htm).

organization that assisted Iran in conducting the 1983 Beirut Marine Barracks bombing. Among other illicit conduct, MOIS provided explosives to Hezbollah and exercised operational control over Hezbollah's attack upon the Marine Barracks.

28. Defendant Bank Markazi, a/k/a the Central Bank of Iran ("Markazi"), describes itself as Iran's central bank. Markazi was formed under the laws of Iran and maintains its principal place of business in Iran, although it conducts its business operations world-wide, including in the United States.

29. At all relevant times, Markazi served as an agent and instrumentality and alter ego of Iran. Markazi engaged in all of the conduct and actions that Plaintiffs allege at the direction and for the benefit of Iran and as Iran's alter ego. Iran directed Markazi to engage in that conduct and supervised Markazi's performance of the tasks that Iran directed.

30. Because of Markazi's longstanding illegal and deceptive efforts to facilitate Iran's support for global terrorism and pursuit of nuclear and ballistic missile capabilities, the U.S. Departments of State and Treasury took the unprecedented step on November 21, 2011 of applying restrictions applicable to jurisdictions of "primary money laundering concern" to Markazi.[3] Markazi is the only purported central bank of a sovereign nation to be included within the scope of those restrictions.

31. As support for its designation of Markazi as a money launderer, the Department of Treasury found that Markazi and other state-owned Iranian banks "willingly engage in deceptive practices to disguise illicit conduct, evade international sanctions, and undermine the efforts of responsible regulatory agencies." The Department of Treasury also emphasized that Markazi

[3] http://www.treasury.gov/press-center/press-releases/Documents/Iran311Finding.pdf . http://www.nytimes.com/2011/11/22/world/middleeast/iran-stays-away-from-nuclear-talks.html

"provided financing to the UN-sanctioned Khatem al-Anbiya Constructions Headquarters for defense-related projects," *i.e.*, for Iran's nuclear proliferation program.

32. Defendant Banca UBAE SpA ("UBAE") is a banking corporation organized under the laws of Italy that maintains its principal office in Rome, Italy.

33. Working as the agent of Iran and Markazi, UBAE caused Clearstream to transfer the Remaining Assets held for safekeeping by affiliates of United States banks from Markazi's account at Clearstream to the new UBAE/Markazi Account at Clearstream. While the Conspirators agreed that the UBAE/Markazi Account would not bear Markazi's name, UBAE opened that account exclusively for Markazi's benefit and at the direction of Markazi and Iran.

34. UBAE undertook substantial efforts to assist in concealing Markazi's ownership interest in the Remaining Assets. Until Italy's central bank seized control of UBAE in March of 2011 in conjunction with sanctions imposed upon the Libyan regime of the deceased strongman Muammar Gaddafi by the United Nations and the European Union, the Gaddafi regime controlled 67.55% of UBAE's stock.

35. Among other claims, Plaintiffs assert fraudulent conveyance causes of action against UBAE related to its role as the transferee of Markazi's fraudulent conveyances. As the transferee of those fraudulent conveyances, UBAE does not qualify as a necessary party.

36. Defendant Clearstream Banking, S.A. ("Clearstream") is a banking corporation organized under the laws of Grand Duchy of Luxembourg. Clearstream's web site declares that the company "offers its customers the possibility to use Clearstream Banking as a single point of access for the settlement and custody of internationally traded bonds and equities across 51 markets" and that "[m]ore than 1,100 [Clearstream] employees service customers in Europe, the Americas, Asia-Pacific, the Middle East and Africa from our operational centres in Luxembourg,

Germany and Singapore, as well as from representative offices in London, New York, Hong Kong, Dubai and Tokyo." Clearstream is doing business in the County of New York and maintains an office at 55 Broad Street, New York, New York.

37. Working as the agent of Iran, Markazi, acting through UBAE and Clearstream, invested US dollars in bonds that required the services of JP Morgan and other United States banks and their affiliates acting as depositories, paying agents and cash correspondent banks and undertook substantial efforts to assist in concealing Markazi's ownership interest in the bonds that constituted the Remaining Assets.

38. Defendant, JP Morgan is a banking association organized under the laws of the United States, and headquartered at 270 Park Avenue, New York, New York, with an office located at 4 New York Plaza, 15th Floor, New York, NY 10004, where it maintains a correspondent account in the name of Clearstream, in which cash proceeds of the bonds that constituted the Remaining Assets are held for the benefit of Markazi.

THE FACTS AND CIRCUMSTANCES THAT DEMONSTRATE PLAINTIFFS' ENTITLEMENT TO RELIEF

A. Plaintiffs' Judgments against Iran for its Support of Murderous Terrorist Acts

39. Plaintiffs designated in Exhibit A as the "Peterson Judgment Creditors" hold an unsatisfied judgment for compensatory damages in the total amount of $2,656,944,877.00 against the Judgment Debtors, Iran and MOIS. The United States District Court for the District of Columbia, in an action entitled, *Peterson v. Islamic Republic of Iran* (01-2094 and 01-2684(RCL)), entered the Peterson Judgment Creditors' judgment on September 7, 2007. Peterson Judgment Creditors registered their judgment in this Court pursuant to 28 U.S.C. Section 1963 under Docket No. 18 Misc. 302 on March 24, 2008.

40. Plaintiffs designated in Exhibit A as the "Davis Judgment Creditors" hold an unsatisfied judgment for compensatory damages in the total amount of $486,918,005.00 and punitive damages in the total amount of $1,674,997,937.00 against the Judgment Debtors, Iran and MOIS. The United States District Court for the District of Columbia, in an action entitled, *Davis v. Islamic Republic of Iran* (07cv1302(RCL)), entered the Davis Judgment Creditors' judgment on March 30, 2012. Davis Judgment Creditors registered their judgment in this Court pursuant to 28 U.S.C. Section 1963 under Docket No. 13 Misc. 0046 on February 14, 2013.

41. Plaintiffs designated in Exhibit A as the "Valore, Arnold, Spencer and Bonk Judgment Creditors" hold an unsatisfied consolidated judgment for compensatory damages in the total amount of $290,291,092.00 and punitive damages in the total amount of $1,000,000,000.00 against the Judgment Debtors, Iran and MOIS. The United States District Court for the District of Columbia, in consolidated actions entitled, *Valore v. Islamic Republic of Iran* (03-cv-1959), *Arnold v. Islamic Republic of Iran* (06-cv-516), *Spencer v. Islamic Republic of Iran* (06-cv-750) and *Bonk v. Islamic Republic of Iran* (08-cv-1273), entered the Valore, Arnold, Spencer and Bonk Judgment Creditors' judgment on March 31, 2010. Valore, Arnold, Spencer and Bonk Judgment Creditors registered their judgment in this Court pursuant to 28 U.S.C. Section 1963 under Docket No. 11 Misc. 00217-P1 on July 5, 2011.

42. Plaintiffs designated in Exhibit A as the "Bland Judgment Creditors" hold an unsatisfied judgment for compensatory damages in the total amount of $227,805,908.00 and punitive damages in the total amount of $955,652,324.00 against the Judgment Debtors, Iran and MOIS. The United States District Court for the District of Columbia, in an action entitled, *Bland v. Islamic Republic of Iran*, (05-cv-02124 (RCL)), entered the Bland Judgment Creditors' judgment on November 21, 2011. Bland Judgment Creditors registered their judgment in this

Court pursuant to 28 U.S.C. Section 1963 under Docket No. 12 Misc. 373-P1 on November 13, 2012.

43. Plaintiffs designated in Exhibit A as the "Brown Judgment Creditors" hold an unsatisfied judgment for compensatory damages in the total amount of $183,281,294.00 and punitive damages in the total amount of $630,487,651.00 against the Judgment Debtors, Iran and MOIS. The United States District Court for the District of Columbia, in an action entitled, *Brown v. Islamic Republic of Iran*, (07-cv-00531(RCL)), entered the Brown Judgment Creditors' judgment on July 3, 2012. Brown Judgment Creditors registered their judgment in this Court pursuant to 28 U.S.C. Section 1963 under Docket No. 13 Misc. 113-P1 on March 28, 2013.[4]

44. As the United States District Court for the District of Columbia found before issuing the Judgment, MOIS, acting as Iran's agent, committed the Marine Barracks attack within the scope of that agency. A MOIS operative carried out the attack with the assistance of the Iranian-funded Hezbollah terrorist group by detonating powerful explosives at the Marine Barracks.

45. Plaintiffs' Judgments were based upon claims brought under 28 U.S.C. Section 1605(a)(7) and 1605A of the Foreign Sovereign Immunities Act ("FSIA").

B. Plaintiffs' Successful Efforts to Prevent Defendants from Disposing of the Remaining Assets

46. In response to a subpoena served in aid of Plaintiffs' efforts to collect upon their Judgment, Plaintiffs received a June 11, 2008 letter from the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). That letter stated that information available to OFAC demonstrated that "an Iranian government client" maintained an interest in bonds constituting the Original Assets with a face amount of $[redacted] that were held on

[4] The judgments held by the Plaintiffs are herein collectively referred to as the "Judgments."

Clearstream's books and "custodized in the United States" in a sub-custodial account with Citibank.

47. In response to a later subpoena, Plaintiffs obtained additional information from OFAC concerning the Original Assets in an April 23, 2010 letter. That letter disclosed that the bonds constituting the Original Assets were "apparently owned by the Central Bank of Iran."

48. On June 12, 2008, The Peterson Judgment Creditors obtained issuance of an Execution by the Clerk of this Court (the "First Execution") describing the bonds that constituted the Original Assets and filed it with the Office of the United States Marshal Service in this District for execution on the goods and chattels of Iran.

49. That First Execution specifically identified the assets in the custody of Citibank and Clearstream that OFAC listed in its June 11, 2008 letter. The United States Marshal's Service served the First Execution on Clearstream on June 9, 2010 and on Citibank on June 13, 2008.

50. On October 27, 2008, the United States Marshal's Service served Clearstream with an additional execution secured by the Peterson Judgment Creditors on the goods and chattels of Iran (the "Second Execution"), which also covered the Original Assets.

51. Peterson Judgment Creditors served Clearstream with a restraining notice under CPLR Section 5222 on June 16, 2008 and with an amended restraining notice correcting a minor defect on June 23, 2008.

52. By means of a July 13, 2009 Order, the Court extended the restraining notice served upon Clearstream. The restraining notice remains in effect pending further Order of the Court.

53. At the time the First and Second Executions and restraining notices were served on Citibank and Clearstream, they had the effect of restraining the Original Assets as well as the

Remaining Assets that had been transferred from Markazi's Clearstream Account to the UBAE/Markazi Account, for the benefit of Markazi.

54. The Remaining Assets, bonds also denominated in U.S. Dollars, were sub-custodized by Clearstream in banks that are foreign branches or affiliates of United States banks located outside the United States. Correspondence discovered from UBAE indicates that Clearstream blocked the Remaining Assets of its own accord, allegedly upon learning that Iran was the beneficial owner thereof, after Plaintiffs served restraining notices in June, 2008.

55. In such correspondence, Clearstream notified UBAE that any bonds held for Iran's benefit that may involve the services of a U.S. financial institution or its foreign affiliate, and the proceeds thereof, would be blocked by Clearstream to avoid violation of the Iranian Transaction Regulations issued by the U.S. Treasury Department. Specifically, on June 5, 2009, Clearstream wrote to UBAE as follows:

56. The typical terms of the prospectuses of the bonds that constituted the Remaining Assets are set forth in the prospectus for the bond issued by the United Kingdom bearing International Securities Identification Number XS0171740961, which states in relevant part as follows:

> Ownership of beneficial interests in the Global Notes will be limited to persons that have accounts with Euroclear, Clearstream, Luxembourg or DTC or persons that may hold interests through such accountholders. Beneficial interests in the Global Notes will be shown on, and transfers thereof will be effected only through, records maintained in book-entry form by Euroclear, Clearstream, Luxembourg or DTC and their accountholders, as applicable.
>
> * * *
>
> Payments shall be made in U.S. dollars by cheque drawn on a bank in New York City and mailed to the holder (or to the first named of joint holders) of such Notes at its address appearing in the Register. Upon application by the holder to the specified office of the Registrar before the Record Date, such payment may be made by transfer to a U.S. dollar account maintained by the payee with a bank in New York City.
>
> * * *
>
> Each of the persons shown in the records of Euroclear, Clearstream, Luxembourg or DTC as the holder of a Note represented by a Global Note must look solely to Euroclear, Clearstream, Luxembourg or DTC (as the case may be) for his share of each payment made by H.M. Treasury to the holder of such Global Note and in relation to all other rights arising under the Global Note, subject to and in accordance with the respective rules and procedures of Euroclear, Clearstream, Luxembourg or DTC (as the case maybe).

57. The bonds that constituted the Remaining Assets were held by Markazi in book entry form through Clearstream. Clearstream was the holder of the notes or bonds in book entries maintained by the issuers of the bonds or the depositories at which the bonds were

immobilized. In accordance with the terms of the bonds, electronic funds transfer payment instructions given by the issuers of the bonds or their agents named Clearstream as the payment beneficiary, because Clearstream was the named holder of the notes or bonds on the books of the issuer and/or its agent making the payment. As required by the terms of the bonds, such U.S. dollar payment instructions named Clearstream's correspondent bank in the United States, JP Morgan, as the payment beneficiary's bank.

58. As required by the terms of the bonds and because all of the bonds that constituted the Remaining Assets were denominated in U.S. dollars, transfers of bond income and redemptions to Clearstream for Bank Markazi's benefit passed through the United States Federal Reserve system to Clearstream's U.S. dollar correspondent bank, JP Morgan in New York, where Clearstream's correspondent account was credited with the amount received from the bond issuers. In the absence of the block Clearstream imposed effective in June, 2008, Clearstream would have credited the UBAE/Markazi Account with the amount received for Markazi's benefit in Clearstream's correspondent account at JP Morgan.

59. In the absence of Clearstream's block of the Remaining Assets, UBAE, at Markazi's request, would have then instructed Clearstream to withdraw the U.S. dollar funds from the UBAE/Markazi Account. This would in turn have resulted in another transfer through the Federal Reserve system by debiting Clearstream's correspondent account at JP Morgan and crediting UBAE's correspondent account at HSBC Bank in New York.

60. Because Clearstream blocked withdrawals of the Remaining Assets after June, 2008, the proceeds from the bonds that constituted the Remaining Assets received since then have remained credited to Clearstream's correspondent account at JP Morgan in New York.

61. Beginning in June, 2008, Clearstream opened a sundry blocked account number [redacted] to which Clearstream diverted and credited payments of interest and redemptions on the bonds in the amounts and on the dates set forth in the scheduled annexed hereto as Exhibit D. Since June, 2008, Clearstream has not credited any of these amounts to the UBAE/Markazi Account and UBAE and Markazi have no access to the funds held in account number 13675.

62. Under the terms of Clearstream's agreement with UBAE as agent for Markazi regarding the UBAE/Markazi Account and under applicable law, including New York Uniform Commercial Code §8-504 and §8-505, Clearstream is obligated to secure payments of money due under the bonds from the issuers thereof and to hold the money as financial assets for the benefit of Markazi until Clearstream pays the money to UBAE as agent for Markazi.

63. Because the proceeds of the bonds were blocked and never credited to the UBAE/Markazi Account, Clearstream's obligation with respect to the underlying financial asset that Clearstream was required to maintain on behalf of UBAE and Markazi remains outstanding. Clearstream is required to maintain sufficient financial assets to satisfy UBAE's and Markazi's security entitlements with respect to the Remaining Assets. The Remaining Assets in Clearstream's Account at JP Morgan constitute financial assets in which only Markazi has a beneficial interest. The credits made to Clearstream's correspondent account at JP Morgan Chase in New York for each payment or distribution received from issuers of the bonds are required to remain on Clearstream's books as a financial asset.

64. The money received and held in Clearstream's correspondent account at JP Morgan in New York that corresponds to the payments listed in the schedule annexed hereto as Exhibit D, is a financial asset held by Clearstream for the benefit of UBAE acting as Markazi's agent.

65. Markazi is the sole beneficial owner of the Remaining Assets held by JP Morgan in the form of cash proceeds from the U.S. dollar denominated bonds that Clearstream had purchased for Markazi's benefit. The Remaining Assets held by JP Morgan are not the property of Clearstream.

66. Since restrained by Clearstream, the bonds constituting the Remaining Assets have matured and Clearstream continues to hold a credit representing their cash proceeds frozen in account number [redacted], having a balance of $[redacted] as of May 31, 2013.

C. President Obama's Executive Order 13599 Effective February 6, 2012

67. Effective February 6, 2012 by way of Executive Order 13599 and pursuant to the powers vested in the President of the United States of America under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) ("IEEPA"), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) ("NDAA"), and section 301 of title 3, United States Code, the President, in light of the "deceptive practices of the Central Bank of Iran and other Iranian banks to conceal transactions of sanctioned parties, the deficiencies in Iran's anti-money laundering regime and the weaknesses in its implementation, and the continuing and unacceptable risk posed to the international financial system by Iran's activities" ordered, in pertinent part:

> a. *All property and interests in property of the Government of Iran, including the Central Bank of Iran*, that are in the United States, that hereafter come within the United States, *or that are or 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.
>
> b. *All property and interests in property of any Iranian financial institution, including the Central Bank of Iran*, that are in the United States, that hereafter come within the United States, *or that are or hereafter come*

Annex 50

***Peterson, et al. v. Iran, Bank Markazi, Banca UBAE, Clearstream, JP Morgan Chase Bank,* U.S. District Court for the Southern District of New York, Opinion and Order, 20 February 2015, No. 13-cv-9195-KBF**

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: ____________
DATE FILED: February 20, 2015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--X

DEBORAH D. PETERSON et al.,

Plaintiffs,

-v-

ISLAMIC REPUBLIC OF IRAN; BANK MARKAZI a/k/a CENTRAL BANK OF IRAN; BANCA UBAE SpA; CLEARSTREAM BANKING, S.A.; and JP MORGAN CHASE BANK, N.A.,

Defendants.

--X

13-cv-9195 (KBF)

OPINION & ORDER

KATHERINE B. FORREST, District Judge:

On December 30, 2013, plaintiffs—judgment-creditors of the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS")—commenced the instant action against Iran, Bank Markazi a/k/a Central Bank of Iran ("Bank Markazi" or "Markazi"), Banca UBAE S.p.A. ("UBAE"), Clearstream Banking, S.A. ("Clearstream"), and JP Morgan Chase Bank, N.A. ("JPM"). (ECF No. 1.)[1] Deborah Peterson, the first listed plaintiff, is just one of the numerous plaintiffs who were victims, or are family members of victims, of the 1983 bombing of the U.S. Marine Barracks in Beirut, Lebanon.[2] Each plaintiff group has obtained a judgment against Iran and MOIS as sponsors of the Beirut bombing, in

[1] Plaintiffs filed an amended complaint, dated April 25, 2014, on July 24, 2014. (ECF No. 104 ("Am. Compl.").)

[2] The full list of plaintiffs is set forth at Exhibit A to the Amended Complaint.

amounts ranging from more than $800 million to over $2 billion. Each of the judgments has been duly registered in this district. (See Am. Compl. ¶¶ 39-43.)

Plaintiffs assert the following claims in the Amended Complaint:

- Count One: against Bank Markazi for a declaratory judgment;
- Counts Two and Three: against all defendants except for JPM for rescission of fraudulent conveyances;
- Counts Four, Five, and Six: against all defendants for turnover;
- Count Seven: against Clearstream and Bank Markazi for rescission of fraudulent conveyance; and
- Count Eight: against all defendants for equitable relief.

Plaintiffs allege that Clearstream is in possession of assets valued at over $1.6 billion, representing proceeds of bonds beneficially owned by Bank Markazi. (See Am. Compl. ¶ 3; Declaration of Liviu Vogel dated July 11, 2014 ("Vogel Decl.") ¶ 3.) According to plaintiffs, JPM in New York received the bond proceeds into one of its accounts, and these proceeds legally remain on deposit with JPM and are therefore subject to turnover. Defendant JPM alleges that it never knew that any proceeds with which it credited Clearstream were connected to Bank Markazi, and that in any event the money is long gone and JPM has no role in this dispute. Clearstream argues that plaintiffs previously settled with Clearstream whatever claims they may have had as to these funds and the account against which they were credited, and that in all events, it does not maintain any of the funds with which JPM once credited it in New York—all funds have been transferred and all

client transactions relating to the proceeds are on Clearstream's books in Luxembourg. Bank Markazi asserts that its account is with UBAE outside of the United States and that this Court therefore lacks jurisdiction over Bank Markazi under the Foreign Sovereign Immunities Act ("FSIA"). Finally, UBAE argues that it also previously entered into a settlement releasing the instant claims, and that while it holds an account for Bank Markazi's benefit with Clearstream, such account is maintained in Luxembourg, and this Court lacks any basis for personal jurisdiction over UBAE in this district.

Before the Court are motions by each defendant for dismissal. While the parties raise numerous arguments, there is really little complexity to this matter: plaintiffs released the instant claims against Clearstream and UBAE, there is nothing left in the Clearstream account at JPM for JPM to "turn over," and this Court lacks subject-matter jurisdiction over Bank Markazi as to assets located abroad. Accordingly, as set forth below, defendants' motions are GRANTED.

I. FACTUAL BACKGROUND

Plaintiffs have substantial outstanding judgments against Iran and MOIS. They have been pursuing collection on those judgments in this and other courts in various jurisdictions since those judgments were obtained. This action arises from these ongoing collection efforts.

In June 2008, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") responded to a subpoena served in connection with plaintiffs' efforts to collect on their judgments against Iran. (Am. Compl. ¶ 46.) OFAC's

response indicated that "an Iranian government client" maintained an interest in bonds with a face amount of $2,003,000,000. (Id.) Referred to as the "Original Assets" in this litigation, the subject bonds were held on Clearstream's books and records and maintained in a sub-custodial account with Citibank.[3] (See id.) Subsequent information provided by OFAC in April 2010 indicated that the subject bonds were "apparently owned by the Central Bank of Iran." (Id. ¶ 47.) Plaintiffs sought and obtained turnover of the Original Assets (amounting to approximately $1.75 billion) in a judgment entered by this Court on July 9, 2013, and affirmed by the Second Circuit on July 9, 2014.

The instant lawsuit relates specifically to additional assets plaintiffs allege are also present in New York, referred to here as the "Remaining Assets." Plaintiffs assert that the Remaining Assets amount to over $1.6 billion in proceeds attributable to bonds (the "Remaining Bonds") which Bank Markazi maintained with Clearstream and which Clearstream had in turn sub-custodized with JPM in New York. (See Am. Compl. ¶ 3.) The parties do not contest that the Remaining Assets exist in approximately the amount alleged, that Bank Markazi is the Central Bank of Iran, that it was also the beneficial owner of the Remaining Bonds and is

---

[3] The Peterson Judgment Creditors immediately sought and obtained issuance of an Execution upon these bonds (the "First Execution"); a Second Execution was served on Clearstream on October 27, 2008. (See Am. Compl. ¶¶ 48, 50.) Plaintiffs served Clearstream with a restraining notice in June 2008; that restraining notice was extended in July 2009 and remains in effect. (See id. ¶¶ 51, 52.) The effect of the First and Second Executions and restraining notices was to restrain the Original Assets. (See id. ¶ 53.) Plaintiffs obtained a turnover order as to the Original Assets in 2013, affirmed by the Second Circuit on July 9, 2014. See Peterson v. Islamic Republic of Iran, No. 10 CIV. 4518 KBF, 2013 WL 1155576 (S.D.N.Y. Mar. 13, 2013) ("Peterson I"), recons. denied, 2013 WL 2246790 (S.D.N.Y. May 20, 2013); Peterson v. Islamic Republic of Iran, 758 F.3d 185 (2d Cir. 2014).

now the beneficial owner of the Remaining Assets. Finally, the parties do not dispute that UBAE has an account with Clearstream in Luxembourg which it maintains for Bank Markazi.[4] The parties vigorously dispute whether the Remaining Assets are in a Clearstream account maintained by JPM in New York; whether the Remaining Assets are anything more than book entries maintained by Clearstream in Luxembourg; and finally, whether if, once JPM credited Clearstream with the Remaining Assets (which occurred at various times) Clearstream did in fact manage to transfer them from New York to Luxembourg via book entry, it should now be required to reverse those entries. The mechanics of the actions relating to the Remaining Assets are as follows:

Prior to February 2012, approximately $1.4 billion in proceeds relating to the Remaining Bonds was paid to JPM and JPM in turn credited that amount to Clearstream. Approximately $104 million was later also transferred in the same manner. (See Vogel Decl. ¶ 12.) The banking transactions occurred in various steps. As an initial matter, the Remaining Bonds were issued by sovereigns such as the European Investment Bank. (Am. Compl. ¶ 137.) Owners of beneficial interests in the types of bonds that constituted the Remaining Assets generally do not receive physical certificates evidencing their interest. (Id. ¶ 139.) Rather, the owner's interest is reflected in book-entry form. (Id.)

---

[4] Plaintiffs allege that Clearstream, Bank Markazi, and UBAE agreed to transfer the Remaining Assets from Bank Markazi to UBAE prior to changes in U.S. law which restricted the movement and transfer of Iranian assets. According to plaintiffs, Clearstream opened an account for UBAE in Luxembourg for this purpose. (See Am. Compl. ¶¶ 10-11.)

The prospectuses for the Remaining Bonds required Clearstream, as custodian for its customers who held the beneficial interests in those bonds, to accept payment of interest and redemption proceeds into an account at a bank located in New York. (Vogel Decl. ¶ 3(a).) The prospectus for one of the Remaining Bonds states:

> Beneficial interests in the Global Notes will be shown on, and transfers thereof will be effected only through, records maintained in book-entry form by . . . Clearstream, Luxembourg . . . .
>
> Payments shall be made in U.S. dollars by cheque drawn on a bank in New York City and mailed to the holder . . . .
>
> Each of the persons in the records of . . . Clearstream, Luxembourg . . . as the holder of a Note represented by a Global Note must look solely to . . . Clearstream, Luxembourg . . . for his share of each payment made by H.M. Treasury to the holder of such Global Note and in relation to all other rights arising under the Global Note . . . .

(Id. ¶ 38.)

Clearstream maintains an account at JPM into which it receives funds on behalf of numerous clients; over the course of a four-year period spanning from 2008 into 2012, proceeds relating to the Remaining Bonds went into this account. (See Declaration of Gauthier Jonckheere dated August 5, 2014 ("Jonckheere Decl.") ¶ 4.)

On January 17, 2008, Markazi opened an account with UBAE to act as its custodial bank in connection with its securities positions at Clearstream. (See Vogel Decl. ¶ 19.) The next day, UBAE sent an "URGENT" electronic message to Clearstream instructing it to open a new account in UBAE's name.[5] (Id.)

[5] Prior to this instruction, UBAE had maintained a single account with Clearstream which it had opened in 1973. (Vogel Decl. ¶ 19.)

Clearstream opened account no. 13061 for UBAE that same day. (Id.) Thereafter, Markazi instructed Clearstream to transfer $4.6 billion in securities from its account at Clearstream to UBAE's 13061 account.[6] (Id.) Among the assets transferred in this manner were those which are the subject of the instant lawsuit. (Id.)

On June 16, 2008, plaintiffs served a restraining notice on Clearstream, which should have had the effect of preventing Clearstream from transferring any property in which Bank Markazi had an interest out of the United States. (See Am. Compl. ¶¶ 51, 53.)

On June 5, 2009, Clearstream informed UBAE that, due to laws passed in the United States, it could no longer process transactions for bonds held on behalf of Iran using the services of a U.S. person—that is, JPM. (Vogel Decl. ¶ 29.) Clearstream stated that, as a result, it had opened up a "sundry blocked account 13675" and that this account would hold cash payments received by Clearstream in connection with the Markazi securities it held. (See id.)

Thereafter, Clearstream credited the 13675 account with proceeds relating to the Remaining Bonds—totaling $1,683,184,679.47 as of May 2013. (See id. ¶ 32.) It is evident from records produced by Clearstream that these proceeds are denominated in U.S. dollars. (See id.) No party disputes that in the absence of the

[6] Plaintiffs assert that such transfer was made free of any payment by UBAE. (See Am. Compl. ¶ 11; Vogel Decl. ¶ 19.) As UBAE does not contest that the securities in the UBAE account are held for Markazi's benefit (see UBAE's Objections and Responses to Plaintiffs' Interrogatories ¶ 8, Vogel Decl. Ex. 25), the existence of payment or other form of consideration is irrelevant to the instant motions.

block that Clearstream had imposed, Clearstream would have credited UBAE's 13061 account with the same proceeds. But nor can any party dispute that this is counterfactual; proceeds from the Remaining Bonds were never credited to the 13061 account and were instead credited and blocked in the 13675 account. No party disputes that neither UBAE nor Markazi has received any of these funds and that Clearstream's obligation with respect to the underlying financial assets associated with the Remaining Bonds remains outstanding. (See id. ¶ 42.)

UBAE is organized under the laws of Italy and operates principally as a trade bank. (Declaration of Mario Sabato dated July 18, 2014 ("Sabato Decl.") ¶ 2.) As of December 2013, when this lawsuit was first filed,[7] UBAE did not transact business, have customers, advertise, solicit business, or market services in New York or anywhere else in the United States. (Id. ¶ 3.) As of that date, it did not have any employees, officers, or directors in the United States. (Id.) UBAE was not listed on any U.S. stock exchange. (Id.) Until 2009, UBAE had maintained an account with HSBC in New York and used that account to facilitate international transactions or money transfers for itself and its customers. (Id. ¶ 5.) This HSBC account was one of the bases for this Court's determination in Peterson I that UBAE was amenable to jurisdiction. See Peterson, 2013 WL 1155576, at *16-18; Peterson, 2013 WL 2246790, at *6. The HSBC account was closed on September 25, 2009. (Sabato

---

[7] Personal jurisdiction is determined as of the date the original complaint was served. See Indymac Mortgage Holdings, Inc. v. Reyad, 167 F. Supp. 2d 222, 232 (D. Conn. 2001) ("It is well established that jurisdiction is to be determined by examining the conduct of the defendants as of the time of service of the complaint." (quoting Greene v. Sha-Na-Na, 637 F. Supp. 591, 595 (D. Conn. 1986)) (internal quotation marks omitted)); see also Ginsberg v. Gov't Properties Trust, Inc., No. 07 CIV. 365 CSHECF, 2007 WL 2981683, at *6 (S.D.N.Y. Oct. 11, 2007).

Decl. ¶ 6.) None of the transactions at issue in the Amended Complaint occurred via the HSBC account. (Id. ¶ 5.) All of UBAE's acts in relation to the Remaining Bonds and Remaining Assets have occurred with Clearstream in Luxembourg. (Id.)

On January 23, 2012, UBAE opened a correspondent account with JPM in New York. (Id. ¶ 6.) None of the transactions at issue in the instant lawsuit went through that account. (Id.)

II. DISCUSSION

Clearstream and UBAE seek dismissal on the basis that plaintiffs' claims were released as part of separate settlements in connection the Peterson I litigation. They are correct. While the settlement agreements entered into between plaintiffs and these two parties differ in certain respects, the ultimate result is the same: plaintiffs' claims here are foreclosed. As to UBAE, plaintiffs released it from any action save a turnover action. Since the Remaining Assets are no longer in this district, turnover is not an available remedy. As to Clearstream, plaintiffs entered into a covenant not to sue with regard to any assets in the 13675 account; they may only sue for turnover and a ministerial action in connection therewith—which is far from the claims pursued here.

A. Clearstream

On October 23, 2013,[8] Clearstream and the plaintiffs settled all claims, with a limited exception discussed below. The Clearstream Settlement Agreement contains the following WHEREAS clauses:

> WHEREAS, on June 16, 2008, Citibank moved for an order to show cause why the Restraints should not be vacated, and on June 27, 2008, the Court vacated the Restraints with respect to certain Assets nominally valued at approximately $250,000,000 that were no longer in the possession of Citibank (the "Transferred Assets"), but left the Restraints in place with respect to assets valued at approximately $1,750,000,000 (the "Restrained Assets"); and
>
> . . .
>
> WHEREAS, on June 8, 2010, the Peterson Plaintiffs filed a complaint . . . seeking, inter alia, turnover of the Restrained Assets . . .
>
> ...
>
> WHEREAS, certain Plaintiffs have asserted claims in Peterson for avoidance or damages against Clearstream with regard to the Transferred Assets, including, but not limited to, claims for fraudulent conveyance, tortious interference with the collection of a money judgment, and prima facie tort (the "Peterson Direct Claims"); and
>
> ...
>
> WHEREAS, on February 28, 2013, the Court issued an Opinion and Order that, inter alia, granted the Turnover Motion . . .

(See Settlement Agreement ("Clearstream Agr.") at 1-2, Vogel Decl. Ex. 6.)

The Clearstream Settlement Agreement also recited the then-pending appeal to the Second Circuit of the Court's February 28 Opinion & Order (as well the

[8] The Clearstream Settlement Agreement was signed earlier, but it became effective on October 23, 2013, after being ratified by a specified number of plaintiffs. (Memorandum of Law in Support of Clearstream's Motion to Dismiss the Amended Complaint at 2 n.1, ECF No. 98.)

Court's denial of a motion for reconsideration). (Id. at 2-3.) The final WHEREAS clause states:

> WHEREAS, Plaintiffs and Clearstream wish to resolve all of the disputes and claims between them for good and valuable consideration . . .

(Id. at 3.)

Paragraph 1 of the Agreement contains provisions relating to the termination of the litigation to which the Agreement referred in the WHEREAS clauses. (See id. ¶ 1.) Paragraph 2 of the Agreement is entitled "Ratification By Plaintiffs and Covenant Not To Sue." (See id. ¶ 2.) This section consists of a series of provisions reciting that each plaintiff is to execute a "Ratification Agreement." By executing a Ratification Agreement, each plaintiff "ratifies and agrees to be legally bound by the terms" of the Clearstream Settlement Agreement. (Id. ¶ 2(i).) (The UBAE Settlement Agreement contains no equivalent procedure.[9]) In addition, each plaintiff agrees not to sue Clearstream in law or in equity for any claims other than certain defined "Direct Claims." (See id. ¶ 2(ii).) The covenant not to sue concerns enumerated "Covered Subjects." The Covered Subjects include claims in the Peterson I litigation, and:

> (b) any account maintained at Clearstream . . . by or in the name of or under the control of any Iranian Entity . . . or any account maintained at Clearstream or at any Clearstream Affiliate by or in the name of or under the control of UBAE, including but not limited to, accounts numbered . . . 13061 . . . 13675 . . . (each an "Account") or any asset or

[9] The UBAE Settlement Agreement states that it "is entered into by and among the judgment creditors in the actions listed on Annex A (the 'Plaintiffs'), by their attorneys." (Confidential Settlement Agreement ("UBAE Agr.") at 1, Declaration of John J. Zefutie, Jr. dated July 22, 2014 ("Zefutie Decl.") Ex. 2.)

> interest held in an Account in the name of an Iranian Entity (an "Iranian Asset"); [as well as]
>
> (c) any transfer or other action taken by or at the direction of any Clearstream Party, Citibank, or any Iranian Entity, including any transfer or other action in any account, including a securities account or cash account or omnibus account or correspondent account maintained in Clearstream's name or under its control, that in any way relates to any Account or any Iranian Asset.

(Id. ¶ 2(ii)(b), (c).) Paragraph 2 further provides that each plaintiff, independently or through counsel, performed "an independent inquiry as to the facts and law upon which the Actions are based" and "nevertheless wishes to resolve any dispute or claim with the Clearstream Parties," and such resolution will be unaffected by later discovery of any new facts. (Id. ¶ 2(iii).) The key issue here is whether this broad covenant encompasses the claims in the instant action. This is resolved by reference to the carve-out provision contained in paragraph 4 of the Agreement. That paragraph provides:

> **Garnishee Actions**. Notwithstanding the provisions of paragraph 2 of this Agreement, the Covenant shall not bar any action or proceeding regarding (a) the rights and obligations arising under this Agreement, or (b) efforts to recover any asset or property of any kind, including proceeds thereof, that is held by or in the name, or under the control, or for the benefit of, Bank Markazi or Iran . . . in an action against a Clearstream Party **solely** in its capacity as a garnishee (a "Garnishee Action.") Such a Garnishee Action may include, without limitation, an action in which a Clearstream Party is named solely for the purpose of seeking an order directing that a Clearstream Party perform an act that will have the effect of reversing a transfer between other parties that is found to have been a fraudulent transfer under any legal or equitable theory, **provided however** that such a Garnishee Action shall not seek an award of damages against a Clearstream Party.

(Id. ¶ 4 (emphasis in original).)

Plaintiffs argue that the Clearstream Settlement Agreement specifically carves the claims against Clearstream in the instant action out of the settlement. Paragraph 4 carves out one type of claim—a "Garnishee Action." As defined in that Agreement, such an action could include a request for an order that Clearstream take an action to reverse a transfer between other parties that is found to have been a fraudulent conveyance. This provision does not allow plaintiffs to bring a fraudulent conveyance or equitable action.[10] Indeed, the wording with respect to the fraudulent conveyance action is in the past tense—indicating that a Garnishee Action, with the requested order, would follow a prior determination of fraudulent conveyance. Accordingly, the claims plaintiffs assert against Clearstream in Counts Two, Three, Seven, and Eight must be dismissed for this reason alone.[11]

The turnover claims against Clearstream—asserted in Counts Four, Five, and Six—also fail. As a matter of law, a turnover action must be brought against a party who is "in possession or custody" of money or other personal property in which a creditor has an interest. See N.Y. C.P.L.R. § 5225; Commonwealth of N. Mariana Islands v. Canadian Imperial Bank of Commerce, 990 N.E.2d 114, 116-17 (N.Y. 2013). It is a classic in rem action. See RCA Corp. v. Tucker, 696 F. Supp. 845, 851 n.4 (E.D.N.Y. 1988) ("[T]urnover proceedings . . . are in fact actions in rem."). The Court may not direct an entity to "turn over" assets that are not in its actual

---

[10] Count Eight asserts a claim for equitable relief.

[11] Notably, the language regarding plaintiffs' ability to seek an order directing Clearstream to reverse a transfer refers to a fraudulent conveyance found between "other parties." In the instant lawsuit, plaintiffs seek to assert fraudulent conveyance claims against Clearstream itself.

possession or custody, even if the assets may be said to be within its "control." See Commonwealth of N. Mariana Islands, 990 N.E.2d at 116-17. An action which seeks an order granting relief with regard to potential assets, including to reverse transfers which would result in the presence of assets, is not a turnover action.

In the instant case, the records before the Court are clear: JPM received proceeds relating to the Remaining Bonds, which it credited to a Clearstream account at JPM. Whether it should have or should not have, Clearstream in turn credited amounts attributable to the Remaining Bonds to the UBAE/Bank Markazi account in Luxembourg. The JPM records are clear that whatever happened to the proceeds, they are gone. There are numerous days in which the Clearstream account at JPM showed a zero or a negative balance. (See Jonckheere Decl. ¶ 5.) As a matter of law, there is no asset in this jurisdiction to "turn over." Could this Court require Clearstream to reverse its own transfer? Not under the Settlement Agreement; such an action is not the type of action as to "others" anticipated by paragraph 4 of the Clearstream Settlement Agreement.

Plaintiffs have a slightly more nuanced argument with regard to proceeds which JPM received on Clearstream's behalf subsequent to issuance of Executive Order ("E.O.") 13599 on February 5, 2012.[12] Section 1 of that E.O. states, in relevant part:

> (a) All property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including

[12] The E.O went into effect on February 6, 2012.

> any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.
>
> (b) All property and interests in property of any Iranian financial institution, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or 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. 13599, 77 Fed. Reg. 6659, 6659 (2012).

There is no dispute that $104 million of the Remaining Proceeds was credited by JPM to Clearstream subsequent to the issuance of this Executive Order. It may be, therefore, that when Clearstream received that $104 million, which related to interests of Iran (via its central bank, Bank Markazi), it should not have credited account 13675 outside of the United States, and that in so doing it violated this Executive Order. However, plaintiffs have no private right of action for a violation of this Executive Order. Section 12 of the E.O. explicitly states that it does not "create any right or benefit, substantive or procedural, enforceable at law or in equity" against any person. Exec. Order. No. 13599, 77 Fed. Reg. at 6661. The Second Circuit has also held that "Executive Orders cannot be enforced privately unless they were intended by the executive to create a private right of action." Zhang v. Slattery, 55 F.3d 732, 748 (2d Cir. 1995) (citations omitted). In any event, an action to enforce E.O. 13599 is not a type of action anticipated by paragraph 4 of the Clearstream Settlement Agreement. The Agreement is unambiguous that plaintiffs released all claims to accounts 13061 and 13675 except for a Garnishee Action. A claim as to a violation of the E.O. is not that.

Plaintiffs also assert that because of the existence of E.O. 13599, the book entries Clearstream made on its Luxembourg books for the benefit of UBAE and Bank Markazi are void; and—the argument goes—since they are "void," that $104 million is, as a matter of law, deemed to be within Clearstream's JPM account in New York. Plaintiffs refer to 31 C.F.R. § 560.212(a), which provides that transfers of blocked property shall be deemed null and void.[13] However, if a transferor meets certain requirements set forth in subpart (d) of that section, they are not null and void. See id. § 560.212(d).[14]

Whether plaintiffs may sue for a declaration that such transfers are void, or sue based on the assumption that such transfers are void, is irrelevant to the outcome of this motion because the covenant not to sue encompasses such claims. In effect, plaintiffs want to assert an action against Clearstream in two steps: (1) seek a declaration that any transfer made to UBAE's account in Luxembourg is void, and (2) once the transfer is deemed void, the assets would revert to the United States and be subject to turnover. The first of these two steps is necessary—and it is foreclosed by the covenant not to sue. The first step directly implicates the

---

[13] 31 C.F.R. § 560.212(a) states:

> Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 560.211, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

[14] In accordance with § 560.212(d), JPM sent a letter to OFAC "reporting its limited knowledge of the circumstances underlying the transfer of the Blocked Proceeds out of Clearstream's operating account on October 15, 2012, and explaining why [JPM] could not have known that that transfer may have been subject to Iranian sanctions regulations." (Jonckheere Decl. ¶ 14.) As of December 12, 2014, OFAC has not responded to JPM's letter.

transfer into account 13675—the very account as to which plaintiffs agreed not to sue. (See Clearstream Agr. ¶ 2(ii)(b).) The Direct Claims which are released are those concerning account 13675. Moreover, paragraph 2(ii)(c) of the Clearstream Settlement Agreement explicitly grants a release concerning "any transfer or other action taken by or at the direction of any Clearstream Party . . . including any transfer or other action in any account . . . maintained in Clearstream's name or under its control, that in any way relates to any Account or any Iranian Asset." (Id. ¶ 2(ii)(c).)

To the extent plaintiffs seek to simply assert, without any legal declaration, that a Clearstream transfer violated § 560.212 and the Court may assume that is correct, that is wishful thinking. To establish how the transfer occurred, to what it related and where it occurred as a matter of law, are all aspects of what would need to be reviewed in connection with such a legal/judicial determination. Plaintiffs released their right to seek such a declaration. Only after a legal determination has been made that Clearstream in fact violated E.O. 13599 could such a Garnishee Action be ripe. As it stands, the number of steps to arrive at the point at which Clearstream would have to unwind—or be deemed to unwind—any transfer are many and are outside of the scope of the carve-out provision.

In addition, insofar as plaintiffs' claim would then be one for damages against Clearstream—for violating the E.O. and removing the $104 million from this jurisdiction—plaintiffs specifically settled that claim as well. In this regard, paragraph 4 of the Clearstream Settlement Agreement states, "provided however

that such a Garnishee Action shall not seek an award of damages against a Clearstream Party." (Clearstream Agr. ¶ 4.)

Following full briefing and oral argument on this motion, plaintiffs raised a new argument with regard to the Clearstream Settlement Agreement: that certain plaintiffs herein have not signed the required Ratification Agreements. This argument is clearly an afterthought and is without merit. Counsel for all plaintiffs signed the Clearstream Settlement Agreement. As of the date of this Opinion & Order, plaintiffs have informed Clearstream that they have received Ratification Agreements from 93% of all plaintiffs. (See Letter from Liviu Vogel dated October 2, 2014, ECF No. 150.) Counsel for plaintiffs and Clearstream have both represented to the Court that while all plaintiffs have not yet executed the Ratification Agreements, none of them has declined to do so. (See Letter from Karen E. Wagner dated September 29, 2014, ECF No. 140; Stipulation and Order at 3 ("[C]ounsel for plaintiffs has represented and warranted to Clearstream that no Plaintiff . . . has indicated that he or she does not intend to execute a Ratification Agreement."), ECF No. 552 in 10-cv-4518.) Several months have passed since the last letter on this subject, and the Court has not received any different information. Receipt of fully executed Ratification Agreements appears to be a matter of logistics. It is clear is that the parties to the Clearstream Settlement Agreement are proceeding on the assumption that the Agreement is binding—though the instant dispute indicates a difference of view as to scope. Plaintiffs have not so much as suggested that a single plaintiff has refused to sign the Ratification Agreement, and

it is undisputed that the percentage of Ratification Agreements which needed to have been received in order for the settlement to become effective has been received.

B. UBAE

Plaintiffs settled with UBAE on November 28, 2013. The UBAE Settlement Agreement does not contain a provision for separate ratification; it was entered into by counsel on behalf of their respective clients. The Agreement was effective upon execution.

The UBAE Settlement Agreement also contains a series of WHEREAS clauses. Importantly, it specifically acknowledges that "the Parties agree that certain assets remain in an account at Clearstream in a UBAE customer account, that are beneficially owned by Bank Markazi (the 'Remaining Assets')." (UBAE Agr. at 2.) In this Agreement, plaintiffs agreed to release:

> UBAE and all of its past, present, and future affiliates, owners, directors, members, officers, employees, law firms, attorneys, predecessors, successors, beneficiaries, assigns, agents, and representatives from any and all liability, claims, causes of action, suits, judgments, costs, expenses, attorneys' fees, or other incidental or consequential damages of any kind, whether known or unknown, arising out of or related to the Plaintiffs' Direct Claims against UBAE, except for the obligations stated in this Settlement Agreement.

(Id. ¶ 1.) There is no dispute that Bank Markazi constitutes a "beneficiary" of UBAE. Plaintiffs have made that assertion repeatedly. (See, e.g., Am. Compl. ¶ 12 ("UBAE's sole value was its willingness to serve as a front for Markazi."); id. ¶ 33 ("UBAE opened [the UBAE/Markazi Account] exclusively for Markazi's benefit and at the direction of Markazi and Iran.").) Thus, the release encompasses Bank Markazi to the same extent that it does UBAE. Moreover, in the UBAE Settlement

Agreement, plaintiffs further agreed that "any future claim against UBAE for the Remaining Assets shall be limited to turnover only, and Plaintiffs waive all other claims against UBAE for any damages regarding the Remaining Assets whether arising in contract, tort, equity, or otherwise." (UBAE Agr. ¶ 5.)

The instant lawsuit contains numerous claims not purporting to be turnover: Count One seeks a declaratory judgment; Counts Two, Three, and Seven seek rescission of fraudulent conveyances;[15] Count Eight seeks equitable relief. These counts are explicitly barred by the UBAE Settlement Agreement. Only Counts Four through Six are denominated as turnover claims.

As a matter of law, a turnover action is one in which an asset is both within the jurisdiction of the Court[16] and in the possession or custody of the party against whom turnover is sought. There is no assertion that UBAE maintains any bank account within this Court's jurisdiction into which any of the Remaining Assets

---

[15] Plaintiffs have entitled these counts as claims for "rescission" for fraudulent conveyance, presumably to try and fit within paragraph 4 of the Clearstream Settlement Agreement (which allows for a claim that Clearstream take an action to reverse a transfer). Rescission is a remedy, not an independent cause of action. See Zola v. Gordon, 685 F. Supp. 354, 374 (S.D.N.Y. 1988). Read liberally, these counts instead assert claims for fraudulent conveyance. Such an action is not a "Garnishee Action" as defined in paragraph 4. As explained above, the "action" that plaintiffs may seek to require Clearstream to take under paragraph 4 must follow a separate judicial determination of fraudulent conveyance. (See Clearstream Agr. ¶ 4 (permitting an action to direct a Clearstream Party to "perform an act that will have the effect of reversing a transfer between other parties that is found to have been a fraudulent transfer").)

[16] The fact that "turnover actions" are carved out of the UBAE Settlement Agreement cannot eliminate the requirement that sufficient facts support this Court's subject-matter jurisdiction. As discussed in Section II.C infra with regard to the FSIA, the fact that the Remaining Assets are credited to an account located in Luxembourg places those assets outside of the reach of the FSIA. See 28 U.S.C. § 1609; EM Ltd. v. Republic of Argentina, 695 F.3d 201, 208 (2d Cir. 2012), aff'd sub nom., Republic of Argentina v. NML Capital, Ltd., 134 S. Ct. 2250 (2014); Aurelius Capital Partners, LP v. Republic of Argentina, 584 F.3d 120, 130 (2d Cir. 2009). The same fact—a lack of assets in this jurisdiction—is a basis for dismissal of the turnover claims against UBAE.

were deposited or against which they were credited. The facts in this regard are quite clear: whatever account UBAE maintains for Bank Markazi is in Luxembourg. Thus, any Remaining Assets which it may possess or as to which it has rights or an interest, are in Luxembourg. Plaintiffs' assertions to the contrary are without merit and without basis in fact. Thus, on this basis alone, UBAE is dismissed from this lawsuit.

C. Bank Markazi

Plaintiffs seek a variety of relief against Bank Markazi. As discussed above, the release that plaintiffs provided to UBAE covers Bank Markazi (as UBAE's beneficiary). Thus, plaintiffs' claims must be dismissed as to Bank Markazi for this reason alone.

But perhaps more importantly, this Court lacks subject-matter jurisdiction over Bank Markazi. It is undisputed that Bank Markazi is the Central Bank of Iran. Thus, the Court's subject-matter jurisdiction must be found within the FSIA. One fact alone disposes of claims against Bank Markazi: it does not maintain the assets that plaintiffs seek in the United States. The evidence in the record is clear that any assets in which Bank Markazi has an interest, and which are at issue in this action, are in Luxembourg. The FSIA does not allow for attachment of property outside of the United States. 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." (emphasis added)); Republic of Argentina, 695 F.3d at 208 ("We recognize that a district court sitting in

Manhattan does not have the power to attach Argentinian property in foreign countries."); Aurelius, 584 F.3d at 130 ("[T]he property that is subject to attachment and execution must be property in the United States of a foreign state." (internal quotation marks omitted)). Accordingly, the Court cannot entertain the instant claims against Bank Markazi.

D. JPM

Plaintiffs assert claims against JPM in Counts Four through Six for turnover and in Count Eight for equitable relief. JPM has proffered records which make it clear that it has no assets in which Bank Markazi has an interest. (See Jonckheere Decl. ¶¶ 5-11, 13 & Exs. A, B, C.) Indeed, in their complaint, plaintiffs acknowledge this fact in all practical respects by referring to the fact that Clearstream credited the 13675 account with the Remaining Assets. (See Am. Compl. ¶ 61, 66.) Plaintiffs assert that if one accepts the legal proposition that Clearstream's transfer of such proceeds out of its account with JPM was in violation of E.O. 13599, then any such transfer is void, and therefore JPM still has the assets. This is fiction. If the transaction is ever, in some other action, found to be void, that will be at some future point in time. As matters stand now, there is simply nothing for JPM to turn over.

Plaintiffs spend a significant amount of briefing on whether, as a matter of law, Clearstream's account at JPM must be deemed to have within it the Remaining Assets. The rather intricate way in which plaintiffs assert this could be so is creative—but mind numbing. The reality is far simpler: JPM simply lacks that as

to which plaintiffs seek turnover. JPM must therefore be dismissed—and this Court need not reach the series of banking law and U.C.C.–related questions which plaintiffs raise.[17]

III. CONCLUSION

For the reasons set forth above, defendants' motions are GRANTED. Plaintiffs' motion for writs of execution is DENIED as moot, and this action is dismissed. The Clerk of Court is directed to terminate the motions at ECF Nos. 97, 109, and 116, and to terminate this action.

SO ORDERED.

Dated: New York, New York
February 19, 2015

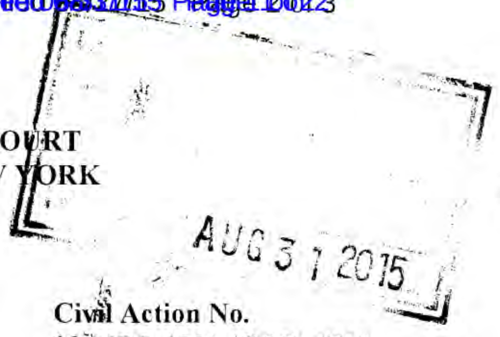
KATHERINE B. FORREST
United States District Judge

[17] Further, it is undisputed that JPM does not have an account for UBAE or Bank Markazi. The account at issue is in Clearstream's name and the evidence is unrebutted that Clearstream uses the account into which the Remaining Assets were credited in its own name as a general-purpose account. So far as JPM is concerned, as a matter of law, any assets it may have in an account for Clearstream are Clearstream's and no one else's. See NML Capital, Ltd. v. Banco Cent. de la Republica Argentina, 652 F.3d 172, 192 (2d Cir. 2011) ("'[U]nder fundamental banking law principles, a positive balance in a bank account reflects a debt from the bank to the depositor' and no one else." (citation omitted)). Further, for funds to be considered those of a foreign central bank, they must be in the name of the foreign central bank. Cf. id. Finally, the law is clear that a judgment creditor may not reach assets in which a judgment debtor has no legal interest. See Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 313 F.3d 70, 83 (2d Cir. 2002). If a judgment debtor cannot assign or transfer an asset, then a creditor of the judgment debtor may not enforce a judgment against such asset. See Bass v. Bass, 140 A.D.2d 251, 253 (N.Y. App. Div. 1988).

Annex 51

***Hoglan, et al. v. Iran, et al.,* U.S. District Court for the Southern District of New York, Plaintiffs Proposed Findings of Fact and Conclusions of Law in Support of Motion for Entry of Default Judgment, 31 August 2015, and Order of Judgment, 31 August 2015, Case No. 1:11 Civ. 7550 (GBD)**

Excerpts: Order of Judgment & pp. 1-12 & 48-60 of the Plaintiffs Proposed Findings of Fact and Conclusions of Law in Support of Motion for Entry of Default Judgment



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: TERRORIST ATTACKS ON SEPTEMBER 11, 2001	:	**Civil Action No. 03 MDL 1570 (GBD) (FM)**
This document applies to:	:	
Hoglan, et al. v. The Islamic Republic of Iran, et al.	:	
1:11-cv-07550-GBD	:	

ORDER OF JUDGMENT

Upon consideration of the evidence submitted by the Plaintiffs in filings with this Court on July 10, 2015, the evidence presented at the August 17, 2015 hearing on liability (including the evidence submitted by Plaintiffs in *Havlish, et al. v. bin-Laden, et al*, 03-cv-09848 (GBD) (FM) on May 19, 2011, July 13, 2011, August 19, 2011 and December 15, 2011 which was presented and admitted into evidence at the August 17, 2015 hearing), supplemental evidence filed with this court, together with the entire record in this case, it is hereby;

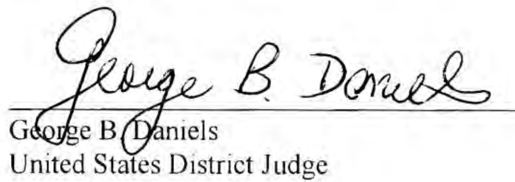
ORDERED that Plaintiffs' Motion for Entry of Default Judgment by the Court against Sovereign Defendants, The Islamic Republic of Iran, Ayatollah Ali Hoseini-Khamenei, Ali Akbar Hashemi Rafsanjani, Iranian Ministry of Information and Security, The Islamic Revolutionary Guard Corps, Hezbollah, The Iranian Ministry of Petroleum, The National Iranian Tanker Corporation, The National Iranian 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, and The Central Bank of the Islamic Republic of Iran (collectively "Iranian

Defendants") is **GRANTED** and final judgment on liability is entered in favor of all Plaintiffs and against all Iranian Defendants;

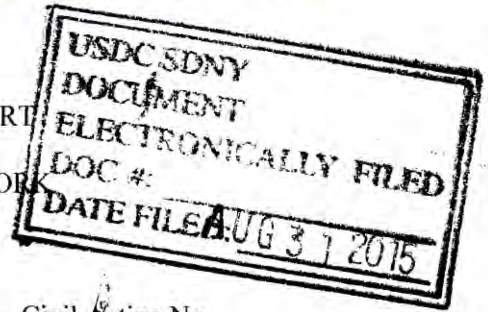
ORDERED that the Plaintiffs are hereby referred to Magistrate Judge Frank Maas to resolve any remaining issues, including but not limited to damages both compensatory and punitive.

SO ORDERED:

DATED: AUG 3 1 2015



George B. Daniels
United States District Judge



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---x

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001

Civil Action No. 1:03 MDL 1570 (GBD) (FM)

---x

ALICE HOGLAN, *a.k.a.* ALICE HOAGLAND, individually and as Personal Representative of the Estate of **Mark Kendall Bingham**, Deceased, *et al.*,

Plaintiffs,

v.

THE ISLAMIC REPUBLIC OF IRAN,

AYATOLLAH ALI HOSEINI KHAMENEI,

ALI AKBAR HASHEMI RAFSANJANI,

IRANIAN MINISTRY OF INFORMATION AND SECURITY,

THE ISLAMIC REVOLUTIONARY GUARD CORPS,

HEZBOLLAH,

THE IRANIAN MINISTRY OF PETROLEUM,

THE NATIONAL IRANIAN TANKER CORPORATION,

THE NATIONAL IRANIAN OIL CORPORATION,

THE NATIONAL IRANIAN GAS COMPANY,

IRAN AIRLINES,

This Document Relates to
1:11 Civ. 7550 (GBD) (FM)

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF MOTION FOR ENTRY OF DEFAULT JUDGMENT

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.	:

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. 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. Plaintiffs who are not U.S. nationals have asserted claims under the Alien Tort Claims Act (the "ATCA"), 28 U.S.C. §1350.[1]

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*

---

[1] Please see Plaintiffs' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ENTRY OF DEFAULT BY THE COURT for additional details of jurisdiction, as well as the details of Plaintiffs' compliance with the service requirements of the FSIA and ATCA. 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).

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).

In support of their motion, Plaintiffs submitted to the Court in *Havlish, et al. v. bin Laden, et al.*, 1:03-cv-09848 (GBD) (FM), expert affidavits, fact affidavits, videotaped witness testimony and other exhibits. Such proofs are 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:

PROPOSED 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, Banisadr testimony, 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 Khamenei and 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. 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. The 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, Banisadr testimony, 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, Banisadr testimony, 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, Banisadr testimony, 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, Banisadr testimony, 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. Witness 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, Banisadr testimony, 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. The 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. Prior to 2004, 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 Witness X (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, Banisadr testimony, 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.

PROPOSED CONCLUSIONS OF LAW

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

1. 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).

2. 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).

3. 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,* 826 f.Supp.2d 128 (D.D.C. 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

4. 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.

5. 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).

6. 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 (C.A.2 Nov. 7, 2011).

7. 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.[2] *Id.*

8. 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,* 999 F.Supp. at 11.[3]

9. 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).

10. 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. These plaintiffs have satisfied the jurisdictional requirement of §1605A(a)(2)(A)(ii).

2. Jurisdiction for Claims of Non-U.S. Citizens: the Alien Tort Statute and the FSIA's Noncommercial Tort Exception

11. This action includes claims against Iran under the Alien Tort Claims Act asserted by certain Plaintiffs who are not U.S. citizens, whose claims derive from a decedent who is not a U.S. national and who do not otherwise satisfy the requirements of 28 U.S.C. §

---

[2] 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).

[3] 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.

1605A(a)(2)(A)(ii). The ATCA states that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. §1350.

12. In addition to the jurisdiction conferred under the ATCA, this Court may exercise jurisdiction over the claims of non-citizen plaintiffs against Iran under the FSIA's noncommercial tort exception found at 28 U.S.C. §1605(a)(5) The text of the noncommercial tort exception provides jurisdiction for cases that (1) are noncommercial, (2) seek "money damages," (3) for "personal injury or death, or damage to or loss of property," (4) that "occur[ed] in the United States," and (5) that was "caused by the tortious act," (6) "of [a defendant] foreign state or [its] employee ... acting within the scope of his ... employment," unless (7) the claim is based on a discretionary act or (8) it is for "malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." *Doe v. Bin Laden*, 2011 WL 5301586 at *2 (C.A.2 Nov. 7, 2011)(citing 28 U.S.C. § 1605(a)(5)).

13. The requirements of the noncommercial tort exception are satisfied here. Plaintiffs do not assert claims for malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. This is a noncommercial case where plaintiffs seek money damages for personal injury or death that occurred in the United States. The terrorist acts giving rise to the harms at issue—aircraft sabotage, extrajudicial killing, and conspiracy to support the same—are all torts. *Doe* at *2. Plaintiffs have established that these acts were carried out as part of Iran's policy and were therefore not "discretionary acts." This Court's exercise of jurisdiction over the ATCA claims of non-citizen plaintiffs under the FSIA's noncommercial tort exception is appropriate.

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

14. 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. Section 1608 of the FSIA prescribes four (4) methods of service of process on a foreign state or a political subdivision of a foreign state, and three (3) methods of service of process upon an agency and instrumentality of a foreign state. 28 U.S.C. §1608(a)(1)-(4); 28 U.S.C. §1608(b)(1)-(3). These methods of service are listed in the FSIA in descending order of preference.

    b. The first two methods of service of original process on a foreign state, or a political subdivision of a foreign state, are "in accordance of a special arrangement for service between the plaintiff and the foreign state" or, if no special arrangement exists, by delivery of original process "in accordance with an applicable international convention on service of

judicial documents." 28 U.S.C. §1608(a)(1)-(2); 28 U.S.C. §1608(b)(1)-(2).

i. No "special arrangement" for service of the Second Amended Complaint exists between the *Hoglan* Plaintiffs and the Islamic Republic of Iran.

ii. With regard to §1608(a)(2), Iran is not a signatory to any "applicable international convention on service of judicial documents."

c. If original service of process cannot be made by the first two methods authorized by statute, the FSIA permits a plaintiff to request that the Clerk of Court send the requisite documents to perfect service "by any form of mail requiring a signed receipt ... to the head of the ministry of foreign affairs of the foreign state concerned" or, in the case of an agency or instrumentality, directly to the agency or instrumentality itself. 28 U.S.C. §§1608(a)(3), (b)(3)(B).

i. As set forth in the Findings of Fact, ¶¶232-233, *supra*, Plaintiffs attempted to serve all of the Iranian Defendants pursuant to 28 U.S.C. §§1608(a)(3), (b)(3)(B), utilizing an OFAC license and the international courier DHL.

ii. All of the shipments of service documents were delivered on or about August 4, 2013, to, and refused, Iran's Ministry of Foreign Affairs on that same date, and all the service documents were returned to counsel for the Plaintiffs on or about August 27, 2013.

d. In the event that service cannot be perfected through 28 U.S.C. §1608(a)(3), the FSIA allows for transmission of the necessary documents by the Clerk of Court to the Department of State in Washington, D.C. for service upon a foreign state, or a political subdivision of a foreign state, via diplomatic channels. 28 U.S.C. § 1608(a)(4).

e. In a case of service via diplomatic means upon an agency and instrumentality of a foreign state, there is a statutory condition precedent that letters rogatory requesting international judicial assistance must first be obtained prior to service. 28 U.S.C. §1608(b)(3)(A).

f. Because the United States and Iran have no diplomatic relations, diplomatic notes for service of legal process on Iran, or a political subdivision of Iran, may be sent to Tehran, Iran, through the U.S. Embassy in Bern, Switzerland, which transmits the notes to the Swiss Confederation. The Swiss authorities then forward any such diplomatic transmissions to their Foreign Interests Section at the Swiss Embassy in

Tehran, Iran, which, in turn, serves the notes on the Ministry of Foreign Affairs of the Islamic Republic.

g. For service upon an agency or instrumentality of the Islamic Republic via the U.S. Department of State, the documents to be served are likewise placed into the hands of the Swiss Confederation along with the letters rogatory requesting international judicial assistance. The Iranian authorities are then charged with executing the letters rogatory by forwarding the materials to the appropriate agency or instrumentality to be served.

h. Following refusal by Iran's Ministry of Foreign Affairs to accept service of the Second Amended Complaint via DHL Express, the *Hoglan* Plaintiffs requested that the Clerk of Court attempt service via the final method of service prescribed by the FSIA, which involves transmission of the necessary documents by the Clerk of Court to the Department of State in Washington, D.C. for service via diplomatic channels. 28 U.S.C. §1608(a)(4). Plaintiffs again hand-delivered to the Clerk of Court the requisite documents for service upon the eight (8) Iranian Defendants in the *Hoglan* action that are the foreign state or a political subdivision of the foreign state, along with a cashier's check in the amount of $2,275.00 for each such Defendant to be served. The Clerk of Court dispatched the documents on Plaintiffs' behalf to Washington, D.C. on October 8 and October 9, 2013.

i. The *Hoglan* Plaintiffs also filed a Motion for Issuance of Letters Rogatory in this Court so that the remaining eight (8) Iranian Defendants who are considered agencies and instrumentalities of the Islamic Republic of Iran could be served via diplomatic means. The Department of State requires that letters rogatory be issued as a condition precedent for service upon these persons and entities in accordance with §1608(b)(3)(A). This Court granted the *Hoglan* Plaintiffs' Motion via an Order (Document 66) entered by Magistrate Judge Frank Maas on November 27, 2013. Plaintiffs subsequently hand-delivered to the Clerk of Court the letters rogatory and requisite documents for service upon the eight (8) Iranian Defendants in the *Hoglan* action that are agencies and instrumentalities of the Islamic Republic of Iran, along with a cashier's check in the amount of $2,275.00 for each such Defendant to be served. The Clerk of Court dispatched the documents, on Plaintiffs' behalf, to Washington, D.C. on December 13, 2013.

j. On February 16, 2014, the Foreign Interests Section of the Embassy of Switzerland in Iran served the Ministry of Foreign Affairs of the Islamic Republic of Iran with the Second Amended Complaint, and other materials required by law to perfect service, for the eight (8) Iranian Defendants that are the Islamic Republic of Iran or a political subdivision

thereof. The Ministry of Foreign Affairs refused service of these materials on that same date.

k. On February 16, 2014, the Foreign Interests Section of the Embassy of Switzerland in Iran served the Ministry of Foreign Affairs of the Islamic Republic of Iran with the Second Amended Complaint, and other materials required by law to perfect service, for the eight (8) Iranian Defendants that are an agency and instrumentality of the Islamic Republic. The Ministry of Foreign Affairs refused service of these materials on that same date.

15. The *Hoglan* Plaintiffs properly served all sixteen (16) of the Iranian Defendants in this case, as set forth in the Findings Of Fact, ¶¶234-41, *supra*, and service was perfected upon all of the Iranian Defendants via diplomatic means pursuant to the FSIA.

16. Under the FSIA, service is perfected via diplomatic means upon a foreign state, or a political subdivision of a foreign state, "as of the date of transmittal in the certified copy of the diplomatic note." 28 U.S.C. § 1608(c)(1).

17. Section 1608(d) of the FSIA requires that "a foreign state, a political subdivision thereof, or an agency and instrumentality of a foreign state shall serve an answer or other responsive pleading to a complaint within sixty days" after a method of service proscribed by the FSIA is perfected. 28 U.S.C. § 1608(d).

18. Following the receipt of this letter, the *Hoglan* Plaintiffs filed an Application with the Clerk of Court pursuant to SDNY Local Civil Rule 55.2(b) for the issuance of a Certificate of Default with respect to the Iranian Defendants. A Certificate of Default was issued by the Clerk on March 17, 2015.

19. Plaintiffs properly effected service on all the Iranian Defendants, and the Iranian Defendants did not respond or make an appearance within 60 days. None of the Iranian Defendants have responded to the Second Amended Complaint, nor entered any appearance in this case, in more than one and a quarter year's time since being served process. The Islamic Republic of Iran has *never* appeared to defend itself during the liability phase of any action premised on the state sponsor of terrorism exception to foreign sovereign immunity in this Court or any other court. See *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 85 (D.D.C. 2009) (Lamberth, C.J.). Iran has failed to appear to defend itself in every liability proceeding brought under the state sponsor of terrorism exception to sovereign immunity since such claims became actionable in 1996.

20. Because the Iranian Defendants received notice through proper service in accordance with § 1608, this Court has personal jurisdiction over them.

B. *Havlish* and *Hoglan* are Related Actions, and the Court Takes Judicial Notice in *Hoglan* of the Evidence Admitted in *Havlish*

21. Federal Rule of Civil Procedure 55(b)(2) requires that, in a bifurcated proceeding such as this in which the amount of damages is yet to be determined, that the Court itself, rather than the Clerk, formally enter a default against the Iranian Defendants. See Fed. R. Civ. P. 55(b)(2).

22. Unlike a typical civil action between private parties, the FSIA requires that a plaintiff proceeding under the state sponsor of terrorism exception to sovereign immunity present "evidence satisfactory to the court" prior to entry of a default judgment. 28 U.S.C. § 1608(e).

23. When multiple, related actions arising out of the same terrorist attack are brought pursuant to the state sponsor of terrorism exception to the FSIA, a court "may take judicial notice of related proceedings and records in cases before the same court." *Valore v. Islamic Republic of Iran*, 700 F.Supp.2d 52 (D.D.C. 2010) *quoting Brewer v. Islamic Republic of Iran*, 664 F.Supp.2d 43 (D.D.C. 2009). The FSIA does not require a court to re-litigate issues that have already been settled in previous decisions. *Brewer*, 664 F.Supp.2d at 54. "Instead, the Court may review evidence considered in an opinion that is judicially noticed, without necessitating the re-presentment of such evidence." *Valore*, 700 F.Supp.2d at 60 *quoting Heiser v. Islamic Republic of Iran*, 466 F.Supp.2d 229, 264 (D.D.C. 2006).

24. The instant lawsuit is a "related action" to *Havlish v. bin Laden* as defined by §1083(c)(3) of the National Defense Authorization Act for Fiscal Year 2008. Like *Havlish*, the instant *Hoglan* action also arises out of the terrorist attacks of September 11, 2001, and involves the same Iranian Defendants. The *Havlish* litigation was commenced under the original state sponsor of terrorism exception to foreign sovereign immunity codified at the former §1605(a)(7), and the *Hoglan* action was filed within the prescribed period for bringing subsequent lawsuits arising out of the same terrorist act. See National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110–181, div. A, title X, §1083(c), Jan. 28, 2008, 122 Stat. 342.

25. The *Hoglan* Plaintiffs have moved this Court to take judicial notice of, and/or to adopt and incorporate herein, the evidence admitted in *Havlish*. The Court finds that it is appropriate to do so and finds that the evidence admitted in Havlish is also admitted in its entirety in *Hoglan*. This Court takes judicial notice of the evidence admitted in *Havlish* in considering the liability of the Iranian Defendants to the *Hoglan* Plaintiffs in the instant action.

26. 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.

27. On December 22, 2011, following an evidentiary hearing, this Court in *Havlish v. bin Laden*, 03-CV-9848 –GBD, entered Findings and Fact and Conclusions of Law with respect to the liability of the Iranian Defendants in providing direct material aid and support to al Qaeda in carrying out the terrorist attacks of September 11, 2001. These Findings of Fact and Conclusions of Law were based upon the evidence submitted by the *Havlish* plaintiffs, which were derived from a ten-year investigation by counsel for the *Havlish* plaintiffs, and which were admitted into the record in *Havlish*. The evidence comprised, *inter alia*, thirty hours of sworn testimony by former intelligence operatives of the defendant MOIS and defendant IRGC, documentary exhibits tendered by those witnesses, testimony of the former president of Iran, Abolhassen Bani Sadr, affidavits of

ten (10) expert witnesses, including two staff members of the *National Commission on Terrorist Attacks upon the United States* (commonly known as the "9/11 Commission"), and other documentary and affidavit evidence. Based upon that evidence, on December 22, 2011, this Court entered Findings of Fact and Conclusions of Law and an Order of Judgment with respect to liability in *Havlish v. bin Laden*. Documents 294 and 295.

28. All of these Iranian Defendants have failed to appear in this Court and have taken no action whatsoever to defend the *Hoglan* action or present any evidence contrary to the evidence presented by Plaintiffs, or that contradict in any way the Findings of Fact and Conclusions of Law entered by this Court in *Havlish v. bin Laden*.

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

29. 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.

30. 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).

31. 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).

32. 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.

33. 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,[4] expert advice or assistance, safehouses, false documentation or identification, and/or transportation.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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

[4] Plaintiffs established that the Iranian government both trained al Qaeda members and authorized the provision of training by Hizbollah. 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").

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 money, lodging, training, expert advice or assistance, safehouses, false documentation or identification, and/or transportation.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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)*).

46. 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.

47. 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.

48. 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.

49. 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.

50. 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).

D. Defendants Are Liable for Damages to Non-Citizen Plaintiffs Under the ATCA

51. This case includes the claims of a small number of Plaintiffs who cannot recover under the §1605A of the FSIA because they are not U.S. nationals and their claims derive from a decedent who was not a U.S. national. These Plaintiffs have asserted claims against defendants under the Alien Tort Claims Act which provides for the recovery of compensatory and punitive damages in "any civil action by an alien for a tort only,

committed in violation of the law of nations or a treaty of the United States.'" *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 103-04 (2nd Cir. 2000).

52. "[T]he law of nations . . . has always been part of the federal common law . . . ," *Filartiga v. Pena-Irala*, 630 F.2d 876 (2nd Cir. 1980), and the Supreme Court has recognized that a claim for violation of an "international norm" is actionable under the ATCA where the norm has not "less definite content and acceptance among civilized nations than the historical paradigms familiar when §1350 was enacted [in 1789]." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004), citing favorably *Filartiga, supra*, at 890 ("[F]or purposes of civil liability, the torturer has become — like the pirate and slave trader before him — *hostis humani generis*, an enemy of all mankind"); *Tel-Oren* v. *Libyan Arab Republic*, 726 F. 2d 774, 781 (D.C. Cir. 1984)(Edwards, J., concurring)(suggesting that the "limits of section 1350's reach" be defined by "a handful of heinous actions — each of which violates definable, universal and obligatory norms"); and *In re Estate of Marcos Human Rights Litigation*, 25 F. 3d 1467, 1475 (9th Cir. 1994)("Actionable violations of international law must be of a norm that is specific, universal, and obligatory").

53. In addition to vesting jurisdiction in this Court, the ATCA creates a substantive cause of action. *Burnett v. Al Baraka Investment and Development Corporation*, 274 F.Supp.2d 86, 99 (D.D.C. 2003)(citing *Kadic v. Karadzic*, 70 F.3d 232, 241 (2d Cir.1995)).

54. The elements of a claim under the ATCA are that (1) the plaintiff is an alien; (2) the claim is for a tort; and (3) the tort is committed in violation of the law of nations or a treaty of the United States. *Kadic*, 70 F.3d at 238; *Burnett*, 274 F.Supp.2d at 99-100.

55. In addition to applying to torts committed by foreign sovereigns, the ATCA also may be applied to actions of private, non-state actors. *Kadic*, 70 F.3d at 239 ("[C]ertain forms of conduct violate the law of nations whether undertaken by those acting under the auspices of a state or only as private individuals").

56. Although no defendant in this case is sued as a direct perpetrator of a tort committed in violation of the law of nations, proof that they were accomplices, aiders and abetters, or co-conspirators supports a finding of liability under the ATCA. *See, e.g., Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F.Supp.2d 289, 321 (S.D.N.Y. 2003) (joining other courts in holding that "ATCA suits [may] proceed based on theories of conspiracy and aiding and abetting"); *Mehinovic v. Vuckovic*, 198 F.Supp.2d 1322, 1355 (N.D.Ga. 2002) ("United States courts have recognized that principles of accomplice liability apply under the ATCA to those who assist others in the commission of torts that violate customary international law").

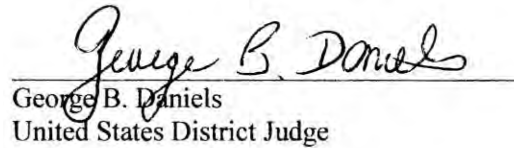
57. Plaintiffs who are not U.S. citizens have presented evidence that satisfies each element of their ATCA claim. The September 11 attacks began with the hijacking of four airplanes, and aircraft hijacking is generally recognized as a violation of international law of the type that gives rise to liability under the ATCA. *Burnett, supra*, at 100; *See also United States v. Yunis*, 924 F.2d 1086, 1092 (D.C.Cir. 1991) ("Aircraft hijacking may well be one of the few crimes so clearly condemned under the law of nations that states may

assert universal jurisdiction to bring offenders to justice, even when the state has no territorial connection to the hijacking and its citizens are not involved").

58. Plaintiffs have presented evidence sufficient to establish that each of the Defendants was an accomplice, aider and abetter, or co-conspirator in the 9/11 attacks and are therefore liable for the resulting damages under the ATCA.

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

DATED AUG 3 1 2015



George B. Daniels
United States District Judge

Annex 52

***Ashton, et al. v. al Qaeda Islamic Army, et al.*, U.S. District Court for the Southern District of New York, Amended Order of Judgment, 8 March 2016**
Case No. 02-cv-6977 (GBD)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (GBD) (FM) ECF Case

This document relates to:

Ashton et al. v. al Qaeda Islamic Army, et al., 02-CV-6977 (GBD)(FM)

AMENDED ORDER OF JUDGMENT

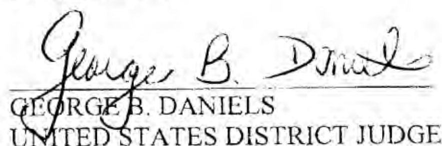
Upon consideration of the evidence and arguments submitted by wrongful death Plaintiffs in the *Ashton* cases referenced above and the Judgment by Default Against the Islamic Republic of Iran entered on 08/26/2015, together with the entire record in this case, it is hereby;

ORDERED that judgment is entered on behalf of all *Ashton* wrongful death Plaintiffs in *Ashton et al.* v. *Al Qaeda Islamic Army et al.*, 02-CV-6977 (GBD) (FM) for the estates of the decedents identified in the attached Exhibit A against the Islamic Republic of Iran; and it is

ORDERED that the 844 *Ashton* wrongful death estates of the decedents identified in the attached Exhibit A are awarded: (1) compensatory damages for conscious pain and suffering in the amount of $2,000,000 each for a total of $1,688,000,000; (2) punitive damages for conscious pain and suffering in the amount of $6,880,000 each for a total of $5,806,720,000; and (3) prejudgment interest on the compensatory damages awards for conscious pain and suffering of each decedent to be calculated at the rate of 9% per annum from September 11, 2001 until today.

Dated: New York, New York
MAR 08 2016, 2016

SO ORDERED:



GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE

Exhibit A – Decedents in *Ashton et al.*

#	Decedent
001	Estate of Thomas Ashton
002	Estate of David Alger
003	Estate of Eric Allen
004	Estate of Jean Andrucki
005	Estate of Patrick Aranyos
006	Estate of David Arce
007	Estate of Barbara Argestgui
008	Estate of Adam P. Arias
009	Estate of Jack C. Aron
010	Estate of John Badagliacca
011	Estate of Michael Baksh
012	Estate of Gerald Barbara
013	Estate of Colleen Barkow
014	Estate of Durrell Pearsall
015	Estate of Evan Baron
016	Estate of Carlton Bartels
017	Estate of Alan Beaven
018	Estate of Carl Bedigian
019	Estate of Steven Berger
020	Estate of John Bergin
021	Estate of Shimmy D. Biegeleisen
022	Estate of Carl Bini
023	Estate of Craig Blass
024	Estate of Richard M. Blood
025	Estate of Nicholas Bogdan
026	Estate of Larry Boisseau
027	Estate of Richard Edward Bosco
028	Estate of Gary Box
029	Estate of Michael Boyle
030	Estate of Sandra J. Conaty-Brace
031	Estate of David B. Brady
032	Estate of Carol K. Demitz
033	Estate of Jonathan E. Briley
034	Estate of Herman C. Broghammer
035	Estate of Richard Bruehert
036	Estate of Rachel Tamares
037	Estate of Patrick Buhse
038	Estate of Donald Burns
039	Estate of Scott W. Cahill
040	Estate of Thomas J. Cahill
041	Estate of Edward Calderon
042	Estate of Dominick Calia
043	Estate of Brian Cannizzaro
044	Estate of Peter J. Carroll
045	Estate of Thomas Casoria
046	Estate of Harry Taback
047	Estate of Richard G. Catarelli
048	Estate of Jason 'Jake' Cayne
049	Estate of Robert Chin
050	Estate of Christopher Ciafardini
051	Estate of Thomas Clark
052	Estate of Gregory A. Clark
053	Estate of Robert D. Colin
054	Estate of Thomas J. Collins
055	Estate of Joseph J. Jr. Coppo
056	Estate of John Coughlin
057	Estate of Angela Rosario
058	Estate of Grace Cua
059	Estate of Laurence 'Larry' Curia
060	Estate of Patricia Cushing
061	Estate of David Defeo
062	Estate of Andrea 'Ann' Della Bella
063	Estate of Colleen Ann Deloughery
064	Estate of Jerry Devito
065	Estate of Lourdes Janet Galletti
066	Estate of Rena Dinnoo
067	Estate of Joseph Dipilato
068	Estate of Brendan Dolan
069	Estate of Raymond M. Downey
070	Estate of Christopher J. Dunne
071	Estate of Paul Eckna
072	Estate of Michael Esposito
073	Estate of Michelle Eulau
074	Estate of Robert Evans
075	Estate of Douglas Farnum
076	Estate of John Farrell
077	Estate of Syed Abdul Fatha
078	Estate of Peter Feidelberg
079	Estate of Alan Feinberg
080	Estate of Michael Fiore
081	Estate of Christina Flannery
082	Estate of Andre Fletcher
083	Estate of CAROL FLYZIK
084	Estate of Jane Folger
085	Estate of Claudia Foster
086	Estate of Arthur Jones
087	Estate of Alan W. Friedlander

088	Estate of Andrew Friedman
089	Estate of Richard Gabriel
090	Estate of Richard Gabrielle
091	Estate of Michael Stewart
092	Estate of Peter J. Ganci
093	Estate of Andrew Garcia
094	Estate of Marlyn C. Garcia
095	Estate of Thomas Gardner
096	Estate of Gary Geidel
097	Estate of Peter V. Jr. Genco
098	Estate of Dennis Germain
099	Estate of Ronnie E. Gies
100	Estate of Paul J. Gill
101	Estate of Rodney Gillis
102	Estate of Steven A. Giorgetti
103	Estate of Salvatore Gitto
104	Estate of Thomas Glasser
105	Estate of Harry Glenn
106	Estate of John T. Gnazzo
107	Estate of Brian Goldberg
108	Estate of Lydia E. Bravo
110	Estate of Donald Greene
111	Estate of James Greenleaf
112	Estate of Peter Vega
113	Estate of Thomas Foley
114	Estate of Gary Haag
115	Estate of Andrea L. Haberman
116	Estate of Frederick K. Han
117	Estate of Thomas Hannafin
118	Estate of Harvey Harrell
119	Estate of John C. Hartz
120	Estate of Emeric J. Harvey
121	Estate of Scott O'Brien
122	Estate of Phillip T. Hayes
123	Estate of William Haynes
124	Estate of Michael Healey
125	Estate of Ronnie Lee Henderson
126	Estate of Neil Hinds
127	Estate of Tara Hobbs
128	Estate of Thomas W. Jr. Hohlweck
129	Estate of Joseph Holland
130	Estate of Darryl L. Mckinney
131	Estate of Thomas P. Holohan
132	Estate of Joseph L. Howard
133	Estate of Joseph G. Hunter
134	Estate of Robert R. Hussa

135	Estate of Jonathan Ielpi
136	Estate of Stephanie Irby
137	Estate of John Iskyan
138	Estate of Ariel Jacobs
139	Estate of Maria Jakubiak
140	Estate of Karl H. Joseph
141	Estate of Scott Mcgovern
142	Estate of Chandler Keller
143	Estate of Peter R. Kellerman
144	Estate of Joseph P. Kellett
145	Estate of Thomas R. Kelly
146	Estate of Rosemary A. Smith
147	Estate of Yvonne Kennedy
148	Estate of Robert King
149	Estate of Richard J. Klares
150	Estate of Julie Lynn Zipper
151	Estate of Michael P. Laforte
152	Estate of Alan Lafrance
153	Estate of Juan Lafuente
154	Estate of Amy Lamonsoff
155	Estate of Carlos Cortes
156	Estate of Robert Leblanc
157	Estate of David R. Leistman
158	Estate of Joseph A. Lenihan
159	Estate of Paul Battaglia
160	Estate of Robert M. Levine
161	Estate of Sherry Ann Bordeaux
162	Estate of Jacqueline Norton
163	Estate of Robert G. Norton
164	Estate of Gary W. Lozier
165	Estate of Marianne Macfarlane
166	Estate of James P. O'Brien
167	Estate of Jennieanne Maffeo
168	Estate of Joseph Maggitti
169	Estate of Jason M. Sekzer
170	Estate of Alfred Marchand
171	Estate of Brian E. Martineau
172	Estate of Joseph Mascali
173	Estate of Charles A. Mauro
174	Estate of Robert Mayo
175	Estate of Daniel Mcginley
176	Estate of Thomas Mcginnis
177	Estate of Michael Mcginty
178	Estate of Barry McKeon
179	Estate of John F. Jr. Mcdowell
180	Estate of Ann Mcgovern

181	Estate of Damien Meehan
182	Estate of George L. Merino
183	Estate of Lukasz Milewski
184	Estate of Karen Juday
185	Estate of Henry Miller
186	Estate of Robert Alan Miller
187	Estate of Louis J. Minervino
188	Estate of Louis Modafferi
189	Estate of Manuel Mojica
190	Estate of Krishna Moorthy
191	Estate of Linda Oliva
192	Estate of Marco Motroni
193	Estate of Matthew T. O'Mahony
194	Estate of Patrick Murphy
195	Estate of Mildred R. Naiman
196	Estate of Karen S. Navarro
197	Estate of Theresa Nelson-Risco
198	Estate of Michael Noeth
199	Estate of Robert W. Noonan
200	Estate of Brian C. Novotny
201	Estate of Diana O'Connor
202	Estate of James A. O'Grady
203	Estate of Edward 'Eddie' Oliver
204	Estate of Betty Ann Ong
205	Estate of Jeffery Palazzo
206	Estate of John Paolillo
207	Estate of Suzanne H. Passaro
208	Estate of Anthony Perez
209	Estate of Christopher Pickford
210	Estate of Arturo Sereno
211	Estate of Shawn Powell
212	Estate of Vincent Princiotta
213	Estate of John F. Puckett
214	Estate of Sonia M. Puopolo
215	Estate of Patrick Quigley
216	Estate of Eugene J. Raggio
217	Estate of Alfred Todd Rancke
218	Estate of Adam D. Rand
219	Estate of Amenia Rasool
220	Estate of Roger Rasweiler
221	Estate of Christopher Regenhard
222	Estate of Leah Oliver
223	Estate of Clarin S. Schwartz
224	Estate of Anthony Rodriguez
225	Estate of Brooke D. Rosenbaum
226	Estate of Lloyd Rosenberg

227	Estate of Andrew Rosenblum
228	Estate of Richard Ross
229	Estate of Bart Ruggiere
230	Estate of Gilbert Ruiz
231	Estate of Steven Russin
232	Estate of Edward Ryan
233	Estate of Matthew Ryan
234	Estate of Thierry Saada
235	Estate of Carmen Rodriguez
236	Estate of Nicholas Rossomando
237	Estate of Dennis Scauso
238	Estate of Jeffery Schreier
239	Estate of Joseph P. Shea
240	Estate of John A. Sherry
241	Estate of Mark Shulman
242	Estate of David Silver
243	Estate of Michael J. Simon
244	Estate of Khamladai Singh
245	Estate of Muriel F. Siskopoulos
246	Estate of James G. Smith
247	Estate of Astrid Sohan
248	Estate of Mary Trentini
249	Estate of James A. Trentini
250	Estate of Donald F. Jr. Spampinato
251	Estate of Laurence T. Stack
252	Estate of Lisa Terry
253	Estate of Brian Sweeney
254	Estate of Sean Patrick Tallon
255	Estate of Alan Tarasiewicz
256	Estate of Jody Tepedino Nicholo
257	Estate of Goumatie Thackurdeen
258	Estate of Thomas F. Jr. Theurkauf
259	Estate of Nigel Thompson
260	Estate of Mary E. Tiesi
261	Estate of Terrance Aiken
262	Estate of Robert T. Twomey
263	Estate of Tyler Ugolyn
264	Estate of Elsy C. Osorio
265	Estate of Carlton F. II Valvo
266	Estate of Celeste Torres Victoria
267	Estate of Sharon Christina Millan
268	Estate of Chantal Vincelli
269	Estate of Lawrence J. Virgilio
270	Estate of Honor Elizabeth Waino
271	Estate of Glen Wall
272	Estate of Christine Barbuto

273	Estate of Todd C. Weaver
274	Estate of Timothy Welty
275	Estate of Karen E. Hagerty
276	Estate of David Wiswall
277	Estate of Christopher Wodenshek
278	Estate of Elkin Yuen
279	Estate of Michael H. Waye
280	Estate of Joseph J. Zuccala
281	Estate of Andrew Zucker
282	Estate of Alan J. Lederman
283	Estate of Angelo Amaranto
284	Estate of Michael Arczynski
285	Estate of Brian P. Dale
286	Estate of James W. Barbella
287	Estate of Joshua Birnbaum
288	Estate of Sean Booker
289	Estate of Kimberly S. Bowers
290	Estate of Alfred Braca
291	Estate of Michelle L. Robatham
292	Estate of Michael T. Carroll
293	Estate of Ruth Lapin
294	Estate of Robert Cruikshank
295	Estate of Mannie L. Clark
296	Estate of Christopher Dincuff
297	Estate of Irina Buslo
298	Estate of Valerie S. Ellis
299	Estate of William Erwin
300	Estate of George J. Ferguson
301	Estate of Kevin Frawley
302	Estate of Cynthia Giugliano
303	Estate of Joseph Grillo
304	Estate of Raul Hernandez
305	Estate of Bradely Hoorn
306	Estate of Milagros Hromada
307	Estate of Thomas Hughes
308	Estate of Daniel Ilkanayev
309	Estate of Harold Lizcano
310	Estate of James Mcalary
311	Estate of Robert McCarthy
312	Estate of Timothy Mcsweeney
313	Estate of Linda C. Mair Grayling
314	Estate of Gerald Thomas O'Leary
315	Estate of Michael Opperman
316	Estate of David Angell
317	Estate of Lynn Angell
318	Estate of Manish Patel
319	Estate of Gregory Reda
320	Estate of Isaias Rivera
321	Estate of David E. Rivers
322	Estate of Earl Shanahan
323	Estate of Sandra Taylor
324	Estate of David Tirado
325	Estate of Jon Vandevander
326	Estate of Simon V. Weiser
327	Estate of Louis C. III Williams
328	Estate of Pauline Tull-Franics
329	Estate of Edelmiro Abad
330	Estate of Terence Jr. Adderley
331	Estate of David Agnes
332	Estate of Joanne Ahladiotis
333	Estate of Jon L. Albert
334	Estate of Dominick J. Berardi
335	Estate of William R. Bethke
336	Estate of Harry A. Jr. Blanding
337	Estate of Edward Brennan
338	Estate of Mark Bruce
339	Estate of Thomas Daniel Burke
340	Estate of Thomas M. Butler
341	Estate of John Cahill
342	Estate of Philip Calcagno
343	Estate of Vincent A. Cangelosi
344	Estate of Louis Caporicci
345	Estate of Dennis Carey
346	Estate of Thomas E. III Sinton
347	Estate of Jeremy Carrington
348	Estate of Leonard M., Jr. Castrianno
349	Estate of Jason Cefalu
350	Estate of Delrose Cheatham
351	Estate of Michael Clarke
352	Estate of Eugene Clark
353	Estate of Susan M. Clyne
354	Estate of Steven Coakley
355	Estate of Joseph Corbett
356	Estate of Conrod Cottoy
357	Estate of Andrew Gilbert
358	Estate of Denise Crant
359	Estate of James L. Crawford
360	Estate of Lucy Crifasi
361	Estate of Dennis A. Cross
362	Estate of Eduvigis Jr. Reyes
363	Estate of Beverly Curry
364	Estate of Thomas P. Deangelis

365	Estate of James V. Deblase
366	Estate of Anthony Demas
367	Estate of Francis Deming
368	Estate of Christain Desimone
369	Estate of Robert Jr. Devitt
370	Estate of Michael Diagostino
371	Estate of Douglas Distefano
372	Estate of Lisa Egan
373	Estate of Samantha Egan
374	Estate of John B. Eagleson
375	Estate of Fanny Espinoza
376	Estate of William Fallon
377	Estate of Anthony Fallone
378	Estate of John Fanning
379	Estate of Clyde Jr. Frazier
380	Estate of Peter L. Freund
381	Estate of Arlene Fried
382	Estate of Peter Fry
383	Estate of John Gallagher
384	Estate of Edmund Glazer
385	Estate of Rocco N. Gargano
386	Estate of James Gartenberg
387	Estate of Peter Gelinas
388	Estate of Steven Geller
389	Estate of Joseph Giaccone
390	Estate of Calvin Gooding
391	Estate of Wade Brian Green
392	Estate of Douglas B. Gurian
393	Estate of Dana K. Hannon
394	Estate of James Haran
395	Estate of Stewart D. Harris
396	Estate of Monica E. Dejesus
397	Estate of Thomas Hobbs
398	Estate of Marcia Hoffman
399	Estate of Johnathan Hohmann
400	Estate of George Howard
401	Estate of Virginia Jablonski
402	Estate of Brook A. Jackman
404	Estate of Shari Kandell
405	Estate of John Katsimatides
406	Estate of Richard Keane
407	Estate of Timothy C. Kelly
408	Estate of Joseph A. Kelly
409	Estate of Brian Warner
410	Estate of Karen Klitzman
411	Estate of Hamiduo S. Larry
412	Estate of Neil Leavy
413	Estate of Richard Lee
414	Estate of Anthony Hawkins
415	Estate of Adrianna Legro
416	Estate of Jeffery E. Leveen
417	Estate of Marie Lukas
418	Estate of Michael Lunden
419	Estate of Laura A. Giglio
420	Estate of Keithroy Maynard
421	Estate of Justin McCarthy
422	Estate of Michael McCarthy
423	Estate of Matthew Mcdermott
424	Estate of John T. Mcerlean
425	Estate of William J. Mcgovern
426	Estate of George III Mclaughlin
427	Estate of Martin Michelstein
428	Estate of George Merkouris
429	Estate of John Monahan
430	Estate of George Morell
431	Estate of Dennis Moroney
432	Estate of William Moskal
433	Estate of Charles A. Murphy
434	Estate of Brian Murphy
435	Estate of Richard Myhre
436	Estate of Kerene Gordon
437	Estate of Cano Gallo
438	Estate of Jeffery Nussbaum
439	Estate of Dennis Jr. O'Connor
440	Estate of Richard O'Connor
441	Estate of Lesley Thomas
442	Estate of Sean O'Neill
443	Estate of Ruben Ornedo
444	Estate of Alexander Steinman
445	Estate of James Ostrowski
446	Estate of Jason Oswald
447	Estate of Michael C. Ou
448	Estate of Peter Owens
449	Estate of Angel Pabon
450	Estate of Victor Hugo Gutierrez Paz
451	Estate of Stacey Peak
452	Estate of Mike Pelletier
453	Estate of Michael Berkeley
454	Estate of Joseph Perroncino
455	Estate of Edward Perrotta
456	Estate of Joanne Cregan
457	Estate of Gregory Richards

458	Estate of Richard Prunty
459	Estate of Joseph R. Riverso
460	Estate of Paul Rizza
461	Estate of Donald Robson
462	Estate of Peter Bielfeld
463	Estate of Scott W. Rohner
464	Estate of Luis E. Torres
465	Estate of Eric Sand
466	Estate of Susan Santo
467	Estate of Robert Scandole
468	Estate of Sean Schielke
469	Estate of Marisa Dinardo
470	Estate of Mark Schwartz
471	Estate of Adrianne Scibetta
472	Estate of Arthur Scullin
473	Estate of Khalid Shahid
474	Estate of Jayesh Shah
475	Estate of Gary Shamay
476	Estate of Leonard Snyder
477	Estate of Saranya Srinuan
478	Estate of Alexandru Stan
479	Estate of James J. Straine
480	Estate of John F. Swaine
481	Estate of Keiji Takahashi
482	Estate of Andrew Kates
483	Estate of Diane T. Lipari
484	Estate of Daniel Trant
485	Estate of William P. Tselepis
486	Estate of Jonathan Uman
487	Estate of Joseph Vilardo
488	Estate of Lisa Karen Orfi-Ehrlich
489	Estate of Frank Wisniewski
490	Estate of William J. Wik
491	Estate of Katherine Wolf
492	Estate of Martin Wortley
493	Estate of Michael Zinzi
494	Estate of Charles A. Zion
495	Estate of James M. Amato
496	Estate of John P. Burnside
497	Estate of Patricia Colodner
498	Estate of John Fischer
499	Estate of Thomas PALAZZO
500	Estate of William G. Minardi
501	Estate of James B. Reilly
502	Estate of Paul F. Sarle
503	Estate of Daniel J. Shea

504	Estate of Robert W. Jr. Spear
505	Estate of Anthony Starita
506	Estate of Keiichiro Takahashi
507	Estate of Japhet Aryee
508	Estate of Gregg A. Atlas
509	Estate of Inna Basin
510	Estate of Graham Berkeley
511	Estate of David S. Berry
512	Estate of Gennady Boyarsky
513	Estate of Sandra W. Bradshaw
514	Estate of Kevin Colbert
515	Estate of William Dean
516	Estate of Neil Wright
517	Estate of Eugene Kniazev
518	Estate of Arkady Zaltsman
519	Estate of David Brandhorst
520	Estate of Peter Goodrich
521	Estate of Tawanna Griffin
522	Estate of Shannon L. Adams
523	Estate of Abraham Ilowitz
524	Estate of Boris Khalif
525	Estate of Hyun Joon Lee
526	Estate of Andrew Kim
527	Estate of Irina Kolpakov
528	Estate of Pendyala Vamsikrishna
529	Estate of Prasanna Kalahasthi
530	Estate of Alexey Razuvaev
531	Estate of Joseph Maio
532	Estate of Bernard Mascarenhas
533	Estate of Joel Miller
534	Estate of Nancy Morgenstern
535	Estate of Marc A. Murolo
536	Estate of Kathleen Shearer
537	Estate of Kathleen A. Nicosia
538	Estate of Kaleen Pezzuti
539	Estate of Todd Reuben
540	Estate of Tatiana Ryjova
541	Estate of Carlos Lillo
542	Estate of Phillip Rosenzweig
543	Estate of Jonathan S. Ryan
544	Estate of David J. Statkevicus
545	Estate of Michael Tarrou
546	Estate of Lorisa Taylor
547	Estate of Frederick III Rimmele
548	Estate of Anna Debarrera
549	Estate of Michele Reed

550	Estate of Soledi Colon
551	Estate of Robert Higley
552	Estate of Mark Ludvigsen
553	Estate of Andrew Knox
554	Estate of Nicholas Lassman
555	Estate of Yang Der Lee
556	Estate of Karen A. Martin
557	Estate of Steve Mercado
558	Estate of Michael J. Pascuma
559	Estate of Horan Passananti
560	Estate of Kevin Pfeifer
561	Estate of Laurence Polatsch
562	Estate of Donald Regan
563	Estate of John A. Reo
564	Estate of Christopher Santoro
565	Estate of Deepika Sattaluri
566	Estate of Lance Tumulty
567	Estate of Kui Fai Kwok
568	Estate of Ivelin Ziminski
569	Estate of Joseph J. Angelini
570	Estate of Faustino Apostol
571	Estate of Nina P. Bell
572	Estate of Larry Bowman
573	Estate of Mark Carney
576	Estate of Vincent Danz
577	Estate of Amy O'Doherty
578	Estate of Joseph Della Pietra
579	Estate of David T. Fontana
580	Estate of William Gardner
581	Estate of John Giordano
582	Estate of Florence M. Gregory
583	Estate of Leonard Hatton
584	Estate of Andrew LaCorte
585	Estate of Charles Jones
586	Estate of Robert Kennedy
587	Estate of James P. Ladley
588	Estate of Stephen Lamantia
589	Estate of Gary E. Lasko
590	Estate of Margaret Lewis
591	Estate of Michael Lynch
592	Estate of Thomas J. Mccann
593	Estate of Charles A. Mccrann
594	Estate of Mirna A. Daurte
595	Estate of Lorraine Lisi
596	Estate of Robert Shearer
597	Estate of Thomas G. O'Hagan

598	Estate of Maureen Olson
599	Estate of Alexander Ortiz
600	Estate of Deepa Pakkala
601	Estate of Bettina Browne-Radburn
602	Estate of Angel Perez
603	Estate of Benito Valentin
604	Estate of Norman Rossinow
605	Estate of Christina S. Ryook
606	Estate of Joseph Sacerdote
607	Estate of Eric Eisenberg
608	Estate of Kevin Smith
609	Estate of Norma Taddei
610	Estate of Jorge Velazquez
611	Estate of Joanne F. Weil
612	Estate of Debbie Williams
613	Estate of Brian P. Williams
614	Estate of Joseph Zaccoli
615	Estate of Mark Zangrilli
616	Estate of Prokopias Zois
617	Estate of Neil Levin
618	Estate of Carmen Fernandez
619	Estate of Vincent Laieta
620	Estate of Waleska Martinez
621	Estate of Luke Rambousek
622	Estate of Steven Weinberg
623	Estate of Martin Wohlforth
624	Estate of Paul Beyer
625	Estate of Ruben Correa
626	Estate of Suzanne Geraty
627	Estate of Brian Hickey
628	Estate of Thomas Mingione
629	Estate of Michael Mullan
630	Estate of Kevin Reilly
631	Estate of Frederick Ill
632	Estate of James Leahy
633	Estate of William Johnson
634	Estate of Gregory Saucedo
635	Estate of Stanley Smagala
636	Estate of Ramon Suarez
637	Estate of Michael Roberts
638	Estate of Gerald Atwood
639	Estate of Richard Aronow
640	Estate of Charles Burlingame
641	Estate of Maria Abad
642	Estate of David Barkway
643	Estate of Kenneth Basnicki

644	Estate of Kris Bishundat
645	Estate of Michael Bocchino
646	Estate of Bruce Boehm
647	Estate of Francisco Bourdier
648	Estate of Ronald Breitweiser
649	Estate of Peter Brennan
650	Estate of Vincent Brunton
651	Estate of Anthony Coladonato
652	Estate of James Cove
653	Estate of Neil Cudmore
654	Estate of Scott Davidson
655	Estate of Donald Delapenha
656	Estate of Joseph Dickey
657	Estate of Eddie Dillard
658	Estate of William Dimmling
659	Estate of James Domanico
660	Estate of Mary Dowling
661	Estate of Charles Droz
662	Estate of Robert Eaton
663	Estate of Christopher Faughnan
664	Estate of Henry Fernandez
665	Estate of Bradley Fetchet
666	Estate of Michael Finnegan
667	Estate of Giann Gamboa
668	Estate of James Geyer
669	Estate of Andrew Golkin
670	Estate of Ian Gray
671	Estate of Barbara Habib
672	Estate of Michele Heidenberger
673	Estate of Kristin Ryan
674	Estate of Aram Iskenderian
675	Estate of Mark Jardim
676	Estate of Robert Jordan
677	Estate of Ann Judge
678	Estate of Frederick Kelley
679	Estate of James Kelly
680	Estate of Vanessa Kolpak
681	Estate of David Kovalcin
682	Estate of Brendan Lang
683	Estate of Roseann Lang
684	Estate of Scott Larsen
685	Estate of Joseph Leavey
686	Estate of Robert Lenoir
687	Estate of Vincent Litto
688	Estate of Daniel Lopez
689	Estate of Farrell Lynch

690	Estate of Brian Magee
691	Estate of Edward Maloney
692	Estate of Terence Manning
693	Estate of Francis Mcguinn
694	Estate of Thomas Mchale
695	Estate of Robert Mclaughlin
696	Estate of Laura Morabito
697	Estate of Kathleen Moran
698	Estate of Christopher M. Morrison
699	Estate of Michael Mullan
701	Estate of Christopher Newton
702	Estate of Christopher Newton-Carter
703	Estate of Timothy O'Brien
705	Estate of Jane Orth
706	Estate of Emilio Ortiz
707	Estate of Christopher Panatier
708	Estate of Bernard Patterson
709	Estate of James Quinn
710	Estate of Howard Reich
711	Estate of James Riches
712	Estate of Marjorie Salamone
713	Estate of John Salerno
714	Estate of Frank Salvaterra
715	Estate of Michael San Phillip
716	Estate of Michael Seaman
717	Estate of Craig Silverstein
718	Estate of Barry Simowitz
719	Estate of Christopher Slattery
720	Estate of Robert Sliwak
721	Estate of Heather Smith
722	Estate of Robert Spencer
723	Estate of William Steckman
724	Estate of Kevin Szocik
725	Estate of Nichola Thorpe
726	Estate of Richard Todisco
727	Estate of Vladimir Tomasevic
728	Estate of Stephen Tompsett
729	Estate of Michael Tucker
730	Estate of Ronald Vauk
731	Estate of Garo Voskerijian
732	Estate of John Wallice
733	Estate of Dinah Webster
734	Estate of David Weiss
735	Estate of Deborah Welsh
736	Estate of Jennifer Wong
737	Estate of John Works

738	Estate of Swede Chevalier
739	Estate of Carlos Dominguez
740	Estate of Laura Gilly
741	Estate of Won-Hyeong Song
742	Estate of Michael Taddonio
743	Estate of Gregory Buck
744	Estate of Pamela Chu
745	Estate of Mary D'Antonio
746	Estate of Thomas Dennis
747	Estate of Enrique Gomez
748	Estate of Jose Gomez
749	Estate of Elvira Granitto
750	Estate of H. Joseph Heller
751	Estate of Joseph Henry
752	Estate of Joon Kang
753	Estate of Brian Kinney
754	Estate of John Kren
755	Estate of John Levi
756	Estate of Richard Lynch
757	Estate of James Maounis
758	Estate of James Martello
759	Estate of Teddington Moy
760	Estate of Frank Naples
761	Estate of Peter Ortale
762	Estate of Sonia Ortiz
763	Estate of Todd Pelino
764	Estate of Steven Pollicino
765	Estate of Eric Ropiteau
766	Estate of Carlos Samaniego
767	Estate of Selina Sutter
768	Estate of Brian Terrenzi
769	Estate of Kenneth Waldie
770	Estate of Richard Fitzsimons
771	Estate of Dennis O'Berg
772	Estate of Frank Palombo
773	Estate of Eric Evans
774	Estate of Mary Booth
775	Estate of Mari-Rae Sopper
776	Estate of Sean Lynch
777	Estate of Edmund Mcnally
778	Estate of Patricia Mickley
779	Estate of Daphne Pouletsos
780	Estate of Rajesh Mirpuri
781	Estate of Jeffrey Mladenik
782	Estate of Jack Punches
783	Estate of Janice Scott
784	Estate of Mathew Gianna
785	Estate of Gerard Rauzi
786	Estate of William Wilson
787	Estate of William Wren
788	Estate of Charles Mathers
789	Estate of Francois Jean-Pierre
790	Estate of Rodney Wotton
791	Estate of W. David Bauer
792	Estate of Colin Bonnett
793	Estate of Thomas Bowden
794	Estate of Shawn Bowman
795	Estate of John Candela
796	Estate of Steven Schlag
797	Estate of Kevin Murphy
798	Estate of Salvatore Zisa
799	Estate of Donald Jones
800	Estate of Scott Vasel
801	Estate of David Meyer
802	Estate of Vincenzo Gallucci
803	Estate of Ronald Orsini
804	Estate of Kevin Hannaford
805	Estate of Steven Goldstein
806	Estate of Ronald Magnuson
807	Estate of Jack D'Ambrosi
808	Estate of Jay Magazine
809	Estate of Daniel Maher
810	Estate of Kristen Montanaro
811	Estate of Michael Tanner
812	Estate of Edward Carlino
813	Estate of Anil Bharvaney
815	Estate of Milton Bustillo
816	Estate of Carl Difranco
817	Estate of Catherine Macrae
818	Estate of Nancy Mauro
819	Estate of Stacey Sanders
820	Estate of Jean Peterson
821	Estate of Edward Felt
822	Estate of Joseph Keller
823	Estate of Jeremy Glick
824	Estate of Linda Gronlund
825	Estate of David Dimeglio
826	Estate of Bryan Jack
827	Estate of Donna Giordano
828	Estate of David Vargas
829	Estate of Thomas Swift
830	Estate of Todd Beamer

831	Estate of Thomas Brennan
832	Estate of Paul Beatini
833	Estate of Patrick Danahy
834	Estate of Alan Wisniewski
835	Estate of Michael Cunningham
836	Estate of Sean Rooney
837	Estate of John Ryan
838	Estate of Howard Kane
839	Estate of Joseph Sisolak
840	Estate of Scott Johnson
841	Estate of Adam Lewis
842	Estate of Noel Foster
843	Estate of Kevin York
844	Estate of Kenneth Tarantino
845	Estate of Daniel Smith
846	Estate of Jan Schneider
847	Estate of Stephen Dimino
848	Estate of Esmerlin Salcedo
849	Estate of Jonathan Connors
850	Estate of Gerard Baptiste
851	Estate of Daniel Crisman

[1] Decedent's 109, 403, 574, 574, 700, 704, 814 have been omitted due to the circumstances outlined in our cover letter.

Annex 53

Hake, et al. v. Bank Markazi et al., **U.S. District Court for the District of Columbia, Complaint, 17 January 2017, Case No. 1:17-cv-00114**

Excerpts: pp. 1-15

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

-- x

KELLI D. HAKE, DENICE YORK, RUSSEL YORK, PETER HAKE, JILL HAKE, G.H., a minor, ZACHARY HAKE, KERI HAKE, SKYLAR HAKE, KELLI D. HAKE FOR THE ESTATE OF CHRISTOPHER M. HAKE, BRENDA HABSIEGER, MICHAEL HABSIEGER, JACOB MICHAEL HABSIEGER, MARIA E. CALLE, CYNTHIA DELGADO, CYNTHIA DELGADO FOR THE ESTATE OF GEORGE DELGADO, TABITHA MCCOY, L.M., a minor, R.M., a minor, TABITHA MCCOY FOR THE ESTATE OF STEVE A. MCCOY, JOANNE GUTCHER, CHARLOTTE FREEMAN, KATHLEEN SNYDER, RANDOLPH FREEMAN, G.F., a minor, I.F., a minor, CHARLOTTE FREEMAN FOR THE ESTATE OF BRIAN S. FREEMAN, DANNY CHISM, RUSSELL J. FALTER, LINDA FALTER, MICHAEL LUCAS, RUSSELL J. FALTER FOR THE ESTATE OF SHAWN P. FALTER, SHANNON MILLICAN, MITCHELL MILLICAN, SHANNON MILLICAN FOR THE ESTATE OF JOHNATHON M. MILLICAN, BILLY WALLACE, STEFANIE WALLACE, AUSTIN WALLACE, DEVON WALLACE, C.W., a minor, EVAN KIRBY, JOHNNY WASHBURN, MARVIN THORNSBERRY, CYNTHIA THORNSBERRY, A.B., a minor, M.T., a minor, N.T., a minor, L.T., a minor, TRACY ANDERSON, JEFFREY ANDERSON, ADAM G. STOUT, ANASTASIA FULLER, ANASTASIA FULLER FOR THE ESTATE OF ALEXANDER H. FULLER, A.F., a minor, SAMANTHA BALSLEY, SAMANTHA BALSLEY FOR THE ESTATE OF MICHAEL C. BALSLEY, L.R.-W., a minor, ANNE F. HARRIS, PAUL D. HARRIS, HYUNJUNG GLAWSON, YOLANDA M. BROOKS, CURTIS GLAWSON, SR., KIERRA GLAWSON, CORTEZ GLAWSON, RYAN SABINISH, R.J.S., a minor, S.J.S., a minor, ANN CHRISTOPHER, ANN CHRISTOPHER FOR THE ESTATE OF KWESI CHRISTOPHER, NANCY FUENTES, NANCY FUENTES FOR THE ESTATE OF DANIEL A. FUENTES, ARMANDO FUENTES, JULIO FUENTES, T.F., a minor, EMMA MCGARRY ON BEHALF OF D.J.F., a minor,

COMPLAINT

LINDSAY YOUNG, LINDSAY YOUNG FOR THE :
ESTATE OF BRETT A. WALTON, S.W., a minor, :
MICHELLE KLEMENSBERG, MICHELLE :
KLEMENSBERG FOR THE ESTATE OF LARRY :
R. BOWMAN, SCOTT LILLEY, FRANK LILLEY, :
JOLENE LILLEY, MATTHEW LILLEY, AVA :
TOMSON, RICHARD TOMSON, :
BRADLEY STARCEVICH, GLENDA :
STARCEVICH, ARIANA STARCEVICH, :
TRENTON STARCEVICH, SAMANTHA :
TOMSON, ANDREW TOMSON, AVA TOMSON :
FOR THE ESTATE OF LUCAS V. STARCEVICH, :
KAREN FUNCHEON, ROBERT FUNCHEON, :
KAREN FUNCHEON FOR THE ESTATE OF :
ALEXANDER J. FUNCHEON, HOLLY BURSON- :
GILPIN, HOLLY BURSON-GILPIN FOR THE :
ESTATE OF JEROME POTTER, NANCY :
UMBRELL, MARK UMBRELL, NANCY :
UMBRELL AND MARK UMBRELL FOR THE :
ESTATE OF COLBY J. UMBRELL, CASEY :
BOEHMER, SHIRLEY STEARNS, JOHN :
STEARNS, KAREN HALL, MARILYN HAYBECK, :
M.S., a minor, JAMES COLE ON BEHALF OF :
B.C., a minor, SHIRLEY STEARNS FOR THE :
ESTATE OF MICHELLE R. RING, DANIEL :
DIXON, DANIEL DIXON FOR THE ESTATE OF :
ILENE DIXON, DANIEL DIXON FOR THE :
ESTATE OF ROBERT J. DIXON, DAVID DIXON, :
REBECCA J. OLIVER, DANIEL C. OLIVER, :
KIMBERLEE AUSTIN-OLIVER, TIFFANY M. :
LITTLE, K.L., a minor, SHELLEY ANN SMITH, :
DAKOTA SMITH-LIZOTTE, SHYANNE SMITH- :
LIZOTTE, TIFFANY M. LITTLE FOR THE :
ESTATE OF KYLE A. LITTLE, WILLIAM :
FARRAR, SR., WILLIAM FARRAR, SR. FOR THE :
ESTATE OF WILLIAM A. FARRAR, TONYA K. :
DRESSLER, ARDITH CECIL DRESSLER, :
MELISSA DRESSLER, ELIZABETH BROWN, :
ELIZABETH BROWN FOR THE ESTATE OF :
JOSHUA D. BROWN, DANIELLE SWEET, A.B., a :
minor, G.B., a minor, DANIELLE SWEET FOR THE :
ESTATE OF RYAN A. BALMER, DONNA :
KUGLICS, LES KUGLICS, EMILY ADAMS, :
DONNA KUGLICS FOR THE ESTATE OF :
MATTHEW J. KUGLICS, SCOTT HOOD, FLORA :
HOOD, STEPHANIE HOWARD, DIXIE FLAGG, :
CHEYENNE FLAGG, WILLIAM PARKER, :

MEGHAN PARKER-CROCKETT, RAYMOND :
NIGEL SPENCER, SR., SYLVIA JOHNSON :
SPENCER, AMANDA B. ADAIR, JOHN D. LAMIE, :
DONNA LEWIS, DONNA LEWIS FOR THE :
ESTATE OF JASON DALE LEWIS, J.L., a minor, :
J.L., a minor, G.L., a minor, JEAN MARIANO, :
KATHERINE MCRILL-FELLINI, BRETT COKE, :
BRIAN COKE, RENE POOL, PAULA C. BOBB- :
MILES, JOHNNY JAVIER MILES, SR., JOHNNY :
JAVIER MILES, JR., RACQUEL ARNAE BOBB :
MILES, PAULA C. BOBB-MILES FOR THE :
ESTATE OF BRANDON K. BOBB, URSULA ANN :
JOSHUA, URSULA ANN JOSHUA FOR THE :
ESTATE OF RON J. JOSHUA, JR., JESSICA :
HEINLEIN, JESSICA HEINLEIN FOR THE :
ESTATE OF CHARLES T. HEINLEIN, JR., :
CHARLES HEINLEIN, SR., JODY LYN :
HEINLEIN, MARICEL MURRAY, J.M., a minor, :
MARICEL MURRAY FOR THE ESTATE OF :
JOEL L. MURRAY, BRYAN S. SHELTON, :
AMANDA SHELTON, BRYAN T. SHELTON, :
BRYAN S. SHELTON FOR THE ESTATE OF :
RANDOL S. SHELTON, TAMMY VANDERWAAL, :
A.L.R., a minor, PRESTON S. REECE, SHAYLYN :
C. REECE, ASHLEY GUDRIDGE HOUPPERT, :
JOSHUA SCHICHTL, MARK SCHICHTL, :
KATHARINE PROWSE, NICHOLAS PROWSE, :
H.S., a minor, S.S., a minor, C.S., a minor, A.S., a :
minor, MARION CRIMENS, TIMOTHY W. :
ELLEDGE, CHRISTOPHER LEVI, ERIC LEVI, :
DEBRA LEVI, EMILY LEVI, KIMBERLY VESEY, :
KIM MILLER, MICHAEL J. MILLER, WALTER :
BAILEY, CASSANDRA BAILEY, KACEY :
GILMORE, TERRELL GILMORE, JR., KYNESHA :
DHANOOLAL, KYNESHA DHANOOLAL FOR :
THE ESTATE OF DAYNE D. DHANOOLAL, :
MERLESE PICKETT, HARRY CROMITY, :
MARLEN PICKETT, KEMELY PICKETT, VIVIAN :
PICKETT, KYSHIA SUTTON, MERLESE PICKETT :
FOR THE ESTATE OF EMANUEL PICKETT, :
RACHEL M. GILLETTE, REBEKAH SCOTT, :
LEONARD WOLFER, ESTHER WOLFER, :
PATRICIA SMITH, MICHAEL SMITH, :
JACQUELINE A. SMITH, THOMAS SMITH, :
DAVID WADE HARTLEY, DAVID WADE :
HARTLEY FOR THE ESTATE OF JEFFERY :
HARTLEY, DAVID WAYNE HARTLEY, KAYLEE :

HARTLEY, LISA DUNCAN, ALLEN SWINTON, :
TEMIKA SWINTON, T.S., a minor, T.S., a minor, :
T.B., a minor, LINDA PRITCHETT, WILLIAM :
ALLMON, MARY JANE VANDEGRIFT, MARY :
JANE VANDEGRIFT FOR THE ESTATE OF :
MATTHEW R. VANDEGRIFT, MARY JANE :
VANDEGRIFT FOR THE ESTATE OF JOHN :
VANDEGRIFT, PAM MARION, DONNIE :
MARION, ADRIAN MCCANN, DON JASON :
STONE, RUSSEL HICKS, SR., RUSSEL HICKS, :
JR., WESLEY WILLIAMSON, MAX W. HURST, :
LILIAN HURST, CHRISTOPHER HURST, MARK :
HURST, MAX W. HURST FOR THE ESTATE OF :
DAVID R. HURST, DANIEL MENKE, PAULA :
MENKE, MATTHEW MENKE, NICHOLE :
LOHRIG, DANIEL MENKE FOR THE ESTATE OF :
JONATHAN D. MENKE, JESSICA H. WILLIAMS, :
J.H., a minor, J.H., a minor, J.H., a minor, JESSICA :
H. WILLIAMS FOR THE ESTATE OF JAMES M. :
HALE, ROSEMARIE ALFONSO, K.B., a minor, :
CHARLES JAMES SHAFFER, CHARLES L. :
SHAFFER, JR., MICHELLE BENAVIDEZ, DANIEL :
BENAVIDEZ, CHRISTINA BIEDERMAN, DANIEL :
BENAVIDEZ, JR., JENNIFER MORMAN, :
MICHELLE BENAVIDEZ FOR THE ESTATE OF :
KENNITH W. MAYNE, CHRISTOPHER MILLER, :
ANGELINE JACKSON, KAYTRINA JACKSON, :
SHILYN JACKSON, TONY GONZALES, :
MARLYNN GONZALES, TAMARA RUNZEL, :
MEGAN PEOPLE, SHAULA SHAFFER, KARI :
CAROSELLA, GREGORY BAUER, KARI :
CAROSELLA FOR THE ESTATE OF JUSTIN :
BAUER, ANDREW BRADLEY, JULIE SALHUS, :
KRISTEN GALEN, ROBERTO ANDRADE, SR., :
SANDRA VALENCIA, VERONICA ANDRADE :
PENA, ANGELICA ANDRADE, VERONICA D. :
ANDRADE, ROBERTO ANDRADE, SR. FOR THE :
ESTATE OF ROBERTO ANDRADE, JR., :
THERESA DAVIS, RHONDA KEMPER, ROBERT :
CANINE, JANET JONES, CALVIN CANINE, :
JAMES CANINE, RHETT MURPHY, LINDA :
DAVID, MICHAEL DAVID, CHRISTOPHER :
DAVID, LINDA DAVID FOR THE ESTATE OF :
TIMOTHY A. DAVID, TIMOTHY KARCHER, :
ALESIA KARCHER, A.K., a minor, AUDREY :
KARCHER, ANNA KARCHER, KENNETH J. :
DREVNICK, MEGAN MARIE RICE, R.N.R, a :

minor, TONYA LATTO, JERRY L. MYERS, JEFFREY D. PRICE, MEGAN MARIE RICE FOR THE ESTATE OF ZACHARY T. MYERS, CASSIE COLLINS, DEBORAH SMITH, JAMES SMITH, CORY SMITH, CHRISTINA SMITH, CASSIE COLLINS FOR THE ESTATE OF SHANNON M. SMITH, NICHOLAS BAUMHOER, GEORGE D. WHITE, NATALIA WHITE, KRISTIN WHITE, GEORGE J. WHITE, EDNA LUZ BURGOS, JOHN MCCULLY, STEPHANIE MCCULLY, T.M., a minor, R.M., a minor, B.D., a minor, THERESA HART, WAYNE NEWBY, NATHAN NEWBY, VERONICA HICKMAN, DAVID EUGENE HICKMAN, and DEVON FLETCHER HICKMAN

Plaintiffs,

-against-

BANK MARKAZI JOMHOURI ISLAMI IRAN
Mirdamad Boulevard
No. 198
Tehran, Iran

BANK MELLI IRAN
Ferdowsi Avenue
Tehran, Iran

MELLI BANK PLC
98a Kensington High Street
London W8 4SG
United Kingdom

and

NATIONAL IRANIAN OIL COMPANY,
Hafez Crossing
Taleghani Avenue
Tehran, Iran

Defendants.

-- x

Plaintiffs, by and through their attorneys, allege the following:

I. NATURE OF THE ACTION

1. This is a civil action pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq*. ("FSIA") for wrongful death, personal injury and related torts, by the estates and families of United States nationals (as defined in 8 U.S.C. § 1101(a)(22)) and/or members of the U.S. armed forces (as defined in 10 U.S.C. § 101) who were killed or injured by agents of the Islamic Republic of Iran ("Iran") in Iraq from 2004 to 2011.

2. Iran's aforementioned agents included the U.S.-designated Foreign Terrorist Organization (as that term is defined in 8 U.S.C. § 1189) Hezbollah; the Islamic Revolutionary Guard Corps ("IRGC"), whose subdivision known as the Islamic Revolutionary Guard Corps-Qods Force ("IRGC-QF") is a U.S.-designated Specially Designated Global Terrorist ("SDGT"); and other terrorist agents that included a litany of Iraqi Shi'a terror groups referred to herein collectively as "Special Groups."

3. Both before and during the U.S. occupation of Iraq and its subsequent peacekeeping mission, Iran supported a terror campaign against U.S. troops, civilian personnel and Iraqi civilians.

4. Throughout this same period of time, 2004-2011 (the "relevant period"), Iran was under stringent international sanctions that limited its access to the U.S. financial system and U.S. export-controlled technologies, spare parts and raw materials.

5. In order to fund its terror campaign in Iraq and other nefarious activities, Iran directed its state owned and/or operated banks, including Defendants Bank Markazi Jomhouri Islami Iran ("Bank Markazi," "Central Bank of Iran" or "CBI"), Bank Melli Iran, Melli Bank PLC, and the state owned and operated National Iranian Oil Company ("NIOC") to conspire with an assortment of Western financial institutions willing to substantially assist Iran to evade U.S. and

international economic sanctions, conduct illicit trade-finance transactions, and disguise financial payments to and from U.S. dollar-denominated accounts.

6. As detailed below, the Defendants herein directed millions of U.S. dollars in arms, equipment and materiel to Hezbollah, the IRGC, and the IRGC-QF, which, in turn, trained, armed, supplied and funded Iran's terrorist agents in Iraq in carrying out their attacks against Plaintiffs and their family members.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter and over the Defendants pursuant to 28 U.S.C. §§ 1330(a), 1330(b), 1331, 1332(a)(2), and the FSIA, 28 U.S.C. § 1605A(a)(2), which create subject-matter and personal jurisdiction for civil actions for wrongful death and personal injury against "foreign states" that have been designated as State Sponsors of Terrorism and their officials, employees and agents.[1]

8. The United States officially designated Iran a State Sponsor of Terrorism on January 19, 1984, pursuant to § 6(j) of the Export Administration Act, § 40 of the Arms Export Control Act, and § 620A of the Foreign Assistance Act.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(f).

[1] 28 U.S.C. § 1603(b) defines "foreign state" to include "a political subdivision of a foreign state or an agency or instrumentality of a foreign state." The statute defines an "agency or instrumentality" as any entity (1) which is a separate legal person, corporate or otherwise, and (2) which is an organ of the foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by the 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), nor created under the laws of any third country.

III. FACTUAL ALLEGATIONS

A. DEFENDANTS

1. BANK MARKAZI JOMHOURI ISLAMI IRAN

10. Bank Markazi Jomhouri Islami Iran is the central bank of Iran. The Central Bank of Iran was established in 1960, and, according to its website, CBI is responsible for the design and implementation of Iran's monetary and credit policies.[2]

11. CBI is headquartered at Mirdamad Boulevard, No. 198, Tehran, Iran.

12. CBI has provided millions of dollars to terrorist organizations via other Iranian-owned and controlled banks. For example, in a press release issued by the U.S. Treasury Department in 2007 regarding the designation of the Iranian-owned Bank Saderat as an SDGT, the U.S. Government noted that:

> Bank Saderat, which has approximately 3200 branch offices, has been used by the Government of Iran to channel funds to terrorist organizations, including Hezbollah and EU-designated terrorist groups Hamas, PFLP-GC, and Palestinian Islamic Jihad. For example, from 2001 to 2006, Bank Saderat *transferred $50 million from the **Central Bank of Iran** through its subsidiary in London to its branch in Beirut for the benefit of Hezbollah fronts in Lebanon that support acts of violence*. (Emphasis added.)

13. According to the United States' Financial Crimes Enforcement Network ("FinCEN"):

> The Central Bank of Iran, which regulates Iranian banks, has assisted designated Iranian banks by transferring billions of dollars to these banks in 2011. In mid-2011, the CBI transferred several billion dollars to designated banks, including Saderat, Mellat, EDBI and Melli, through a variety of payment schemes. In making these transfers, the CBI attempted to evade sanctions by minimizing the direct involvement of large international banks with both CBI and designated Iranian banks.

---

[2] http://www.cbi.ir/page/GeneralInformation.aspx.

14. CBI is an alter-ego and instrumentality of the Iranian government and its Supreme Leader, and it has routinely used Iranian banks like the other Defendant Iranian banks as conduits for terror financing and weapons proliferation on behalf of the Iranian regime.

2. BANK MELLI AND MELLI BANK PLC

15. Bank Melli Iran, one of the largest banks in Iran, was established in 1927 by order of the Iranian Parliament.

16. Following the Iranian Revolution in 1979, all banks in Iran were nationalized, and, as discussed below, even now most are effectively controlled by the Iranian regime.

17. Bank Melli Iran is headquartered at Ferdowsi Avenue, Tehran, Iran.

18. Bank Melli Iran maintains a branch office in Germany, located at Holzbrücke 2, 20459 Hamburg, Germany.

19. Bank Melli Iran is an "agency or instrumentality" of the government of Iran as defined by 28 U.S.C. § 1603(b).

20. As discussed in detail below, Bank Melli Iran is dominated and controlled by Iran to such an extent that it rightfully can be considered an organ of the state as defined by 28 U.S.C. § 1603(b)(2).

21. Melli Bank Plc in London was established in January 2002 as a wholly-owned subsidiary of Bank Melli.

22. Melli Bank Plc is headquartered at 98a Kensington High Street, London, W8 4SG, United Kingdom.

23. The Chairman of Bank Melli Iran serves as the Chairman of the Board of Directors of Melli Bank Plc.

24. Bank Melli Iran appoints all members of the Board of Directors of Melli Bank Plc.

25. Accordingly, and as discussed in detail below, Melli Bank Plc is dominated and controlled by Iran to such an extent that it rightfully can be considered an organ of the state as defined by 28 U.S.C. § 1603(b)(2).

26. According to the U.S. government, from 2004-2011, Bank Melli Iran and Melli Bank Plc in London transferred approximately $100 million USD to the IRGC-QF, which trained, armed, and funded terrorist groups that targeted and killed and maimed American and Iraqi forces and civilians.

27. Specifically, according to the U.S. government:

> Islamic Revolutionary Guards Corps (IRGC) and IRGC-Qods Force, who channel funds to militant groups that target and kill Coalition and Iraqi forces and innocent Iraqi civilians, have used Bank Melli and other Iranian banks to move funds internationally. Bank Melli used deceptive banking practices to obscure its involvement from the international banking system by requesting that its name be removed from financial transactions when handling financial transactions on behalf of the IRGC.

28. In October 2007 and throughout the remainder of the relevant period, Bank Melli Iran and Melli Bank Plc were each designated as a Specially Designated National ("SDN") pursuant to Executive Order ("E.O.") 13382, and included on the Office of Foreign Assets Control's SDN list.[3] The U.S. Treasury Department press release announcing the designation stated:

> Bank Melli also provides banking services to the [Iranian Revolutionary Guard Corps] and the Qods Force. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services. From 2002 to 2006, Bank Melli was used to send at least $100 million to the Qods Force. When handling financial transactions on behalf of the IRGC, Bank Melli has employed deceptive banking practices to obscure its involvement

[3] "The Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States." https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx

> from the international banking system. For example, Bank Melli has requested that its name be removed from financial transactions.

29. A State Department diplomatic cable from March 2008 noted that:

> Bank Melli and the Central Bank of Iran also provide crucial banking services to the Qods Force, the IRGC's terrorist supporting arm that was headed by UNSCR 1747 designee Commander Ghassem Soleimani. Soleimani's Qods Force leads Iranian support for the Taliban, Hezbollah [sic], Hamas [sic] and the Palestinian Islamic Jihad. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services. From 2002 to 2006, Bank Melli was used to send at least $100 million to the Qods Force. Bank Melli use of Deceptive Banking Practices .... When handling financial transactions on behalf of the IRGC, Bank Melli has employed deceptive banking practices to obscure its involvement from the international banking system. For example, Bank Melli has requested that its name be removed from payment instructions for US dollar denominated transactions.

30. According to the U.S. government, Bank Melli provided banking services to the IRGC-QF which trained, armed, and funded terrorist groups that targeted, killed and maimed American and Iraqi forces and civilians.

31. Specifically, according to the U.S. government in a November 10, 2009 diplomatic cable:

> [The] Islamic Revolutionary Guards Corps (IRGC) and IRGC-Qods Force, who channel funds to militant groups that target and kill Coalition and Iraqi forces and innocent Iraqi civilians, have used Bank Melli and other Iranian banks to move funds internationally. Bank Melli used deceptive banking practices to obscure its involvement from the international banking system by requesting that its name be removed from financial transactions when handling financial transactions on behalf of the IRGC.

32. In addition, during the relevant time period, Bank Melli Iran financed evasions of U.S. sanctions on behalf of Mahan Air (an SDGT) and Iran's Ministry of Defense and Armed Forces Logistics.

33. For example, Bank Melli issued a Letter of Credit to Mahan Airlines (an Iranian airline) in August 2004 to help Mahan Airlines illegally acquire aircraft engines subject to the U.S. embargo.

34. Bank Melli's financial support and assistance to Mahan Airlines is particularly significant because on October 12, 2011, the United States designated Mahan Air as an SDGT for "providing financial, material and technological support to the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF). Based in Tehran, Mahan Airlines provides transportation, funds transfers and personnel travel services to the IRGC-QF."

35. The Treasury Department explained Mahan Airline's direct involvement with terrorist operations, personnel movements and logistics the IRGC-QF's behalf:

> Mahan Air [has] facilitated the covert travel of suspected IRGC-QF officers into and out of Iraq by bypassing normal security procedures and not including information on flight manifests to eliminate records of the IRGC-QF travel.
>
> Mahan Air crews have facilitated IRGC-QF arms shipments. Funds were also transferred via Mahan Air for the procurement of controlled goods by the IRGC-QF.
>
> In addition to the reasons for which Mahan Air is being designated today, Mahan Air also provides transportation services to Hezbollah, a Lebanon-based designated Foreign Terrorist Organization. Mahan Air has transported personnel, weapons and goods on behalf of Hezbollah and omitted from Mahan Air cargo manifests secret weapons shipments bound for Hezbollah.

36. Mahan Airlines was also later identified as the conduit to Iran of *thousands* of radio frequency modules recovered by Coalition Forces in Iraq from Improvised Explosive Devices ("IEDs") and Explosively Formed Penetrators ("EFPs") that were used to target U.S. and Coalition Forces.

37. In mid-2007, Bank Melli Iran's branch in Hamburg ("Bank Melli-Hamburg") transferred funds on behalf of Iran's Defense Industries Organization ("DIO").

38. DIO is an Iranian government-owned defense manufacturer whose name, logo and/or product tracking information was stamped on munitions found in weapons caches that were seized from the Special Groups in Iraq; including large quantities of weapons produced by DIO in 2006 and 2007 (for example, 107-millimeter artillery rockets, as well as rounds and fuses for 60 millimeter and 81 millimeter mortars).

3. NATIONAL IRANIAN OIL COMPANY

39. The National Iranian Oil Company ("NIOC"), owned and overseen by the Government of Iran through its Ministry of Petroleum, is responsible for the exploration, production, refining, and export of oil and petroleum products in Iran.

40. NIOC is headquartered at Hafez Crossing, Taleghani Avenue, Tehran, Iran.

41. NIOC is an "agency or instrumentality" of the Government of Iran as defined by 28 U.S.C. § 1603(b).

42. In 2008, the Treasury Department identified NIOC (and other Iranian agencies) as "centrally involved in the sale of Iranian oil, as entities that are owned or controlled by the [Government of Iran]."

43. Pursuant to E.O. 13382, the U.S. Government designated NIOC as an SDN.

44. The U.S. Government has identified NIOC as an agent or affiliate of the IRGC.

45. In September 2012, the U.S. Treasury Department handed its report to Congress regarding its determination that NIOC is an agent or affiliate of the IRGC. The report provided that:

> Recently, the IRGC has been coordinating a campaign to sell Iranian oil in an effort to evade international sanctions, specifically those imposed by the European Union that prohibit the import, shipping, and purchase of Iranian oil, which went into full effect on July 1, 2012. NIOC, which is owned by the Government of Iran through the Ministry of Petroleum, is responsible for the exploration, production, refining, and export of oil and petroleum products in Iran.

> Under the current Iranian regime, the IRGC's influence has grown within National Iranian Oil Co. For example, on August 3, 2011, Iran's parliament approved the appointment of Rostam Qasemi, a Brigadier General in the IRGC, as Minister of Petroleum. Prior to his appointment, Qasemi was the commander of Khatam Al-Anbia, a construction and development wing of the IRGC that generates income and funds operations for the IRGC. Even in his new role as Minister of Petroleum, Qasemi has publicly stated his allegiance to the IRGC.

46. As the IRGC has become increasingly influential in Iran's energy sector, Khatam Al-Anbia has obtained billions of dollars' worth of contracts with Iranian energy companies, including NIOC, often without participating in a competitive bidding process.

47. Under the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHRA), the U.S. government determined that that NIOC is an agent or affiliate of the IRGC under section 104(c)(2)(E)(i) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) and section 302 of ITRSHRA. As part of that 2012 certification, NIOC was formally determined to be part of the Government of Iran.

48. In addition, the ITRSHRA provided that:

> It is the sense of Congress that the National Iranian Oil Company and the National Iranian Tanker Company are not only owned and controlled by the Government of Iran but that those companies provide significant support to Iran's Revolutionary Guard Corps and its affiliates.[4]

49. After the events giving rise to the claims herein, the U.S. government withdrew this determination as of 2016.[5]

---

[4] *See*, https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf.

[5] On January 16, 2016 as part of "Implementation Day" for the U.S. government's understanding with Iran relating to its nuclear weapons program, the U.S. Treasury Department "determined that NIOC is no longer an agent or affiliate of the IRGC."

50. NIOC used its oil and natural gas revenues to launder money for the IRGC, often using Defendant CBI for this purpose.

51. In 2009, West Point's Combating Terrorism Center published a report on the role of NIOC, particularly in the Maysan province in Iraq (Southeast border between Iran and Iraq), and its role in studying U.S. troops movements:

> The establishment of a new U.S. and Iraqi [Forward Operating Base] on the Iranian border has resulted in three waves of attacks in an area that was formerly devoid of incidents .... The incident occurred in the same district as the February 2007 EFP attack on a British aircraft at a Buzurgan dirt airstrip, itself a reaction by Special Groups to UK long-range patrolling of the Iranian border. This part of the border is increasingly the scene of U.S. and Iranian countermoves to support their proxies and patrol the frontier; Iranian intelligence gathering takes place using National Iranian Oil Company helicopters and border guards, while U.S.-Iraqi helicopter-borne joint patrols provide moral and material support to isolated Iraqi border posts and local communities.

52. Thus, NIOC served a critical function in funding and supporting the IRGC's activities.

53. NIOC also obtained letters of credit from western banks to provide financing and credit to the IRGC.[6]

B. <u>IRAN'S LONG HISTORY OF SUPPORTING AND FINANCING TERRORISM</u>

54. Since the Iranian Revolution in 1979, Iran has been a principal source of extremism and terrorism throughout the Middle East and the rest of the world, responsible for bombings, kidnappings and assassinations across the globe.

---

[6] The Superseding Indictment filed in *U.S. v. Zarrab* (filed in the S.D.N.Y (1:15-cr-00867)) demonstrates that, as late as 2013, NIOC continued to illegally launder U.S. dollars through U.S. financial institutions.

Annex 54

***Thomas Burnett, Sr., et al. v. The Islamic Republic of Iran, et al.*, US District Court for the Southern District of New York, Plaintiffs' Motion for Judgment by Default against the Islamic Republic of Iran, The Islamic Revolutionary Guard, and the Central Bank of the Islamic Republic of Iran (the "Sovereign Defendants") and Order of Judgment dated 31 January 2017 granting Plaintiffs Motion**

Case 1:15-cv-09903-GBD-SN Document 69-3 Filed 12/06/16 Page 1 of 1

ELECTRONICALLY FILED
JAN 31 2017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Thomas Burnett, Sr., et al. v. The Islamic Republic of Iran, et al.	15-cv-9903 (GBD) ECF Case

ORDER OF JUDGMENT

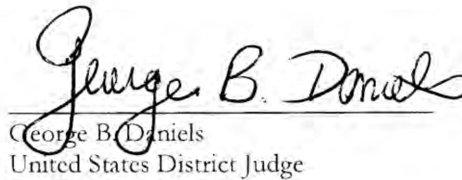
Upon consideration of the evidence submitted by the Plaintiffs in filings with this Court on May 19, 2011, July 13, 2011, and August 19, 2011, and the evidence presented at the December 15, 2011 hearing on liability, together with the entire record in the 03 MDL 1570 case, it is hereby;

ORDERED that Plaintiffs' [Amended] Motion for Judgment by Default Against the Sovereign Defendants, The Islamic Republic of Iran, The Islamic Revolutionary Guard, and the Central Bank of the Islamic Republic of Iran (the "Sovereign Defendants") is GRANTED and final judgment on liability is entered in favor of all Plaintiffs and against all Sovereign Defendants;

ORDERED that Plaintiffs are hereby referred to Magistrate Judge Netburn to resolve any remaining issues, including but not limited to damages both compensatory and punitive.

SO ORDERED

DATED JAN 31 2017



George B. Daniels
United States District Judge

Annex 55

***Brooks, et al. v. Bank Markazi et al.,* U.S. District Court for the District of Columbia, Complaint, 20 April 2017, Case No. 1:17-cv-00737**

Excerpts: pp. 1-11.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

---x

JOSHUA BROOKS, JOYCE BROOKS, DANNY BROOKS, DANIEL TYLER BROOKS, LARK ADAMS, DELILAH BROWN, SHEILA TRACY, SHEILA TRACY FOR THE ESTATE OF JACOB TRACY, DONALD TRACY, NICHOLE SWEENEY, CHRISTINA SHERIDAN, MATTHEW BENSON, MELISSA BENSON, C.B., a minor, B.B., a minor, DANIEL P. BENSON, CAROL BENSON, DANIEL R. BENSON, DREW EDWARDS, DONIELLE EDWARDS, SEAN HARRINGTON, MARGARITA ARISTIZABAL, MARGARITA ARISTIZABAL FOR THE ESTATE OF ALFRED H. JAIRALA, J.J., a minor, SEBASTIAN NIUMAN, TYLER GINAVAN, BELINDA GARCIA, JENNIFER ROOSE, NATHAN RICHARDS, and ROADY LANDTISER,

Case No.:

Plaintiffs,

-against-

COMPLAINT

BANK MARKAZI JOMHOURI ISLAMI IRAN
Mirdamad Boulevard
No. 198
Tehran, Iran

BANK MELLI IRAN
Ferdowsi Avenue
Tehran, Iran

MELLI BANK PLC
98a Kensington High Street
London W8 4SG
United Kingdom

and

NATIONAL IRANIAN OIL COMPANY
Hafez Crossing
Taleghani Avenue
Tehran, Iran

Defendants.

---x

Plaintiffs, by and through their attorneys, allege the following:

I. NATURE OF THE ACTION

1. This is a civil action pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605A ("FSIA"), for wrongful death, personal injury and related torts, by the estates and families of United States nationals and/or members of the U.S. armed forces who were killed or injured in Iraq by agents of the Islamic Republic of Iran ("Iran") between 2004 and 2011.

2. Iran's aforementioned agents included the U.S.-designated Foreign Terrorist Organization (as that term is defined in 8 U.S.C. § 1189) Hezbollah; the Islamic Revolutionary Guard Corps ("IRGC"), whose subdivision known as the Islamic Revolutionary Guard Corps-Qods Force ("IRGC-QF") is a U.S.-designated Specially Designated Global Terrorist ("SDGT"); and other terrorist agents that included a litany of Iraqi Shi'a terror groups referred to herein collectively as "Special Groups."

3. Both before and during the U.S. occupation of Iraq and its subsequent peacekeeping mission, Iran supported a terror campaign against U.S. troops, civilian personnel and Iraqi civilians.

4. During the period of 2004 through 2011 (the "relevant period"), Iran was under stringent international sanctions that limited its access to the U.S. financial system and U.S. export-controlled technologies, spare parts and raw materials.

5. In order to fund its terror campaign in Iraq and other nefarious activities, Iran directed its state owned and/or operated banks, including Defendants Bank Markazi Jomhouri Islami Iran ("Bank Markazi," "Central Bank of Iran" or "CBI"), Bank Melli Iran, Melli Bank PLC, and the state owned and operated National Iranian Oil Company ("NIOC") to conspire with an assortment of Western financial institutions willing to substantially assist Iran in evading U.S. and

international economic sanctions, conducting illicit trade-finance transactions and disguising financial payments to and from U.S. dollar-denominated accounts.

6. As detailed below, the Defendants herein directed millions of U.S. dollars in arms, equipment and materiel to Hezbollah, the IRGC and the IRGC-QF, which, in turn, trained, armed, supplied and funded Iran's terrorist agents in Iraq in carrying out their attacks against Plaintiffs and their family members.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter and over the Defendants pursuant to 28 U.S.C. §§ 1330(a), 1330(b), 1331, 1332(a)(2), and the FSIA, 28 U.S.C. § 1605A(a)(2), which create subject-matter and personal jurisdiction for civil actions for wrongful death and personal injury against "foreign states" that have been designated as State Sponsors of Terrorism and their officials, employees and agents.[1]

8. The United States officially designated Iran a State Sponsor of Terrorism on January 19, 1984, pursuant to § 6(j) of the Export Administration Act, § 40 of the Arms Export Control Act, and § 620A of the Foreign Assistance Act.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(f).

[1] 28 U.S.C. § 1603(b) defines "foreign state" to include "a political subdivision of a foreign state or an agency or instrumentality of a foreign state." The statute defines an "agency or instrumentality" as any entity (1) which is a separate legal person, corporate or otherwise, and (2) which is an organ of the foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by the 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), nor created under the laws of any third country.

III. FACTUAL ALLEGATIONS

A. DEFENDANTS

1. BANK MARKAZI JOMHOURI ISLAMI IRAN

10. Bank Markazi Jomhouri Islami Iran is the central bank of Iran. The Central Bank of Iran was established in 1960, and, according to its website, CBI is responsible for the design and implementation of Iran's monetary and credit policies.[2]

11. CBI is headquartered at Mirdamad Boulevard, No. 198, Tehran, Iran.

12. CBI has provided millions of dollars to terrorist organizations via other Iranian-owned and controlled banks. For example, in a press release issued by the U.S. Treasury Department in 2007 regarding the designation of the Iranian-owned Bank Saderat as an SDGT, the U.S. Government noted that:

> Bank Saderat, which has approximately 3200 branch offices, has been used by the Government of Iran to channel funds to terrorist organizations, including Hezbollah and EU-designated terrorist groups Hamas, PFLP-GC, and Palestinian Islamic Jihad. For example, from 2001 to 2006, Bank Saderat *transferred $50 million from the* ***Central Bank of Iran*** *through its subsidiary in London to its branch in Beirut for the benefit of Hezbollah fronts in Lebanon that support acts of violence*. (Emphasis added.)

13. According to the United States' Financial Crimes Enforcement Network ("FinCEN"):

> The Central Bank of Iran, which regulates Iranian banks, has assisted designated Iranian banks by transferring billions of dollars to these banks in 2011. In mid-2011, the CBI transferred several billion dollars to designated banks, including Saderat, Mellat, EDBI and Melli, through a variety of payment schemes. In making these transfers, the CBI attempted to evade sanctions by minimizing the direct involvement of large international banks with both CBI and designated Iranian banks.

[2] http://www.cbi.ir/page/GeneralInformation.aspx.

14. CBI is an alter-ego and instrumentality of the Iranian government and its Supreme Leader, and it has routinely used Iranian banks like the other Defendant Iranian banks as conduits for terror financing and weapons proliferation on behalf of the Iranian regime.

2. BANK MELLI AND MELLI BANK PLC

15. Bank Melli Iran, one of the largest banks in Iran, was established in 1927 by order of the Iranian Parliament.

16. Following the Iranian Revolution in 1979, all banks in Iran were nationalized, and, as discussed below, even now most are effectively controlled by the Iranian regime.

17. Bank Melli Iran is headquartered at Ferdowsi Avenue, Tehran, Iran.

18. Bank Melli Iran maintains a branch office in Germany, located at Holzbrücke 2, 20459 Hamburg, Germany.

19. Bank Melli Iran is an "agency or instrumentality" of the government of Iran as defined by 28 U.S.C. § 1603(b).

20. As discussed in detail below, Bank Melli Iran is dominated and controlled by Iran to such an extent that it rightfully can be considered an organ of the state as defined by 28 U.S.C. § 1603(b)(2).

21. Melli Bank Plc in London was established in January 2002 as a wholly-owned subsidiary of Bank Melli.

22. Melli Bank Plc is headquartered at 98a Kensington High Street, London, W8 4SG, United Kingdom.

23. The Chairman of Bank Melli Iran serves as the Chairman of the Board of Directors of Melli Bank Plc.

24. Bank Melli Iran appoints all members of the Board of Directors of Melli Bank Plc.

25. Melli Bank Plc is dominated and controlled by Iran to such an extent that it rightfully can be considered an organ of the state as defined by 28 U.S.C. § 1603(b)(2).

26. According to the U.S. government, between 2004 and 2011, Bank Melli Iran and Melli Bank Plc in London transferred approximately $100 million USD to the IRGC-QF, which trained, armed and funded terrorist groups that targeted, killed and maimed American and Iraqi forces and civilians.

27. In October 2007 and throughout the remainder of the relevant period, Bank Melli Iran and Melli Bank Plc were each designated as a Specially Designated National ("SDN") pursuant to Executive Order ("E.O.") 13382, and included on the Office of Foreign Assets Control's SDN list.[3] The U.S. Treasury Department press release announcing the designations stated:

> Bank Melli also provides banking services to the [Iranian Revolutionary Guard Corps] and the Qods Force. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services. From 2002 to 2006, Bank Melli was used to send at least $100 million to the Qods Force. When handling financial transactions on behalf of the IRGC, Bank Melli has employed deceptive banking practices to obscure its involvement from the international banking system. For example, Bank Melli has requested that its name be removed from financial transactions.

28. A State Department diplomatic cable from March 2008 noted that:

> Bank Melli and the Central Bank of Iran also provide crucial banking services to the Qods Force, the IRGC's terrorist supporting arm that was headed by UNSCR 1747 designee Commander Ghassem Soleimani. Soleimani's Qods Force leads Iranian support for the Taliban, Hezbollah, Hamas and the Palestinian Islamic Jihad. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services.

---

[3] "The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States." https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx

29. In addition, during the relevant time period, Bank Melli Iran financed evasions of U.S. sanctions on behalf of the Iranian-owned airline and SDGT, Mahan Airlines ("Mahan Air") and Iran's Ministry of Defense and Armed Forces Logistics.

30. For example, Bank Melli issued a Letter of Credit to Mahan Air in August 2004 to help Mahan Air illegally acquire aircraft engines subject to the U.S. embargo.

31. Bank Melli's financial support and assistance to Mahan Air is particularly significant because on October 12, 2011, the United States designated Mahan Air as an SDGT for "providing financial, material and technological support to the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF). Based in Tehran, Mahan Airlines provides transportation, funds transfers and personnel travel services to the IRGC-QF."

32. The Treasury Department explained Mahan Air's direct involvement with terrorist operations, personnel movements and logistics on the IRGC-QF's behalf:

> Mahan Air [has] facilitated the covert travel of suspected IRGC-QF officers into and out of Iraq by bypassing normal security procedures and not including information on flight manifests to eliminate records of the IRGC-QF travel.
>
> Mahan Air crews have facilitated IRGC-QF arms shipments. Funds were also transferred via Mahan Air for the procurement of controlled goods by the IRGC-QF.
>
> In addition to the reasons for which Mahan Air is being designated today, Mahan Air also provides transportation services to Hezbollah, a Lebanon-based designated Foreign Terrorist Organization. Mahan Air has transported personnel, weapons and goods on behalf of Hezbollah and omitted from Mahan Air cargo manifests secret weapons shipments bound for Hezbollah.

33. Mahan Air was also later identified as the conduit to Iran of *thousands* of radio frequency modules recovered by Coalition Forces in Iraq from Improvised Explosive Devices

("IEDs") and Explosively Formed Penetrators ("EFPs") that were used to target U.S. and Coalition Forces.

34. In mid-2007, Bank Melli Iran's branch in Hamburg transferred funds on behalf of Iran's Defense Industries Organization ("DIO").

35. DIO is an Iranian government-owned defense manufacturer whose name, logo and/or product tracking information was stamped on munitions found in weapons caches that were seized from the Special Groups in Iraq, including large quantities of weapons produced by DIO in 2006 and 2007 (*i.e.*, 107 millimeter artillery rockets, as well as rounds and fuses for 60 millimeter and 81 millimeter mortars).

3. NATIONAL IRANIAN OIL COMPANY

36. The National Iranian Oil Company, owned and overseen by the Government of Iran through its Ministry of Petroleum, is responsible for the exploration, production, refining and export of oil and petroleum products in Iran.

37. NIOC is headquartered at Hafez Crossing, Taleghani Avenue, Tehran, Iran.

38. NIOC is an "agency or instrumentality" of the Government of Iran as defined by 28 U.S.C. § 1603(b).

39. In 2008, the Treasury Department identified NIOC (and other Iranian agencies) as "centrally involved in the sale of Iranian oil, as entities that are owned or controlled by the [Government of Iran]."

40. Pursuant to E.O. 13382, the U.S. Government designated NIOC as an SDN.

41. The U.S. Government has identified NIOC as an agent or affiliate of the IRGC.

42. In September 2012, the U.S. Treasury Department handed its report to Congress regarding its determination that NIOC is an agent or affiliate of the IRGC. The report provided that:

> Recently, the IRGC has been coordinating a campaign to sell Iranian oil in an effort to evade international sanctions, specifically those imposed by the European Union that prohibit the import, shipping, and purchase of Iranian oil, which went into full effect on July 1, 2012.
>
> Under the current Iranian regime, the IRGC's influence has grown within National Iranian Oil Co. For example, on August 3, 2011, Iran's parliament approved the appointment of Rostam Qasemi, a Brigadier General in the IRGC, as Minister of Petroleum. Prior to his appointment, Qasemi was the commander of Khatam Al-Anbia, a construction and development wing of the IRGC that generates income and funds operations for the IRGC. Even in his new role as Minister of Petroleum, Qasemi has publicly stated his allegiance to the IRGC.

43. As the IRGC has become increasingly influential in Iran's energy sector, Khatam Al-Anbia has obtained billions of dollars' worth of contracts with Iranian energy companies, including NIOC, often without participating in a competitive bidding process.

44. Under the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHRA), the U.S. government determined that NIOC is an agent or affiliate of the IRGC under section 104(c)(2)(E)(i) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) and section 302 of ITRSHRA. As part of that 2012 certification, NIOC was formally determined to be part of the Government of Iran.

45. In addition, the ITRSHRA provided that:

> It is the sense of Congress that the National Iranian Oil Company and the National Iranian Tanker Company are not only owned and controlled by the Government of Iran but that those companies provide significant support to Iran's Revolutionary Guard Corps and its affiliates.[4]

46. After the events giving rise to the claims herein, the U.S. government withdrew this determination as of 2016.[5]

---

[4] *See* https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf.

[5] On January 16, 2016, as part of "Implementation Day" for the U.S. government's understanding with Iran relating to its nuclear weapons program, the U.S. Treasury Department "determined that NIOC is no longer an agent or affiliate of the IRGC."

47. NIOC used its oil and natural gas revenues to launder money for the IRGC, often using Defendant CBI for this purpose.

48. In 2009, the Combatting Terrorism Center at West Point published a report on the role of NIOC, particularly in the Maysan province in Iraq (situated along the southeast border between Iran and Iraq), and its role in studying U.S. troop movements:

> The establishment of a new U.S. and Iraqi [Forward Operating Base] on the Iranian border has resulted in three waves of attacks in an area that was formerly devoid of incidents .... The incident occurred in the same district as the February 2007 EFP attack on a British aircraft at a Buzurgan dirt airstrip, itself a reaction by Special Groups to UK long-range patrolling of the Iranian border. This part of the border is increasingly the scene of U.S. and Iranian countermoves to support their proxies and patrol the frontier; Iranian intelligence gathering takes place using National Iranian Oil Company helicopters and border guards, while U.S.-Iraqi helicopter-borne joint patrols provide moral and material support to isolated Iraqi border posts and local communities.

49. Thus, NIOC served a critical function in funding and supporting the IRGC's activities.

50. NIOC also obtained letters of credit from western banks to provide financing and credit to the IRGC.[6]

B. IRAN'S LONG HISTORY OF SUPPORTING AND FINANCING TERRORISM

51. Since the Iranian Revolution in 1979, Iran has been a principal source of extremism and terrorism throughout the Middle East and the rest of the world, responsible for bombings, kidnappings and assassinations across the globe.

---

[6] The Superseding Indictment filed in *U.S. v. Zarrab* (filed in the S.D.N.Y (1:15-cr-00867)) demonstrates that, as late as 2013, NIOC continued to illegally launder U.S. dollars through U.S. financial institutions.

52. As noted above, the United States designated Iran a State Sponsor of Terrorism on January 19, 1984. That designation has remained in force throughout the relevant period to this action.

53. Iran has had a long, deep, strategic partnership with the Lebanese-based Foreign Terrorist Organization ("FTO") Hezbollah, which historically has served as Iran's proxy and agent, enabling Iran to project extremist violence and terror throughout the Middle East and around the globe.

54. For more than 30 years, Iran, through the IRGC, has funded, trained and equipped Hezbollah.

55. The IRGC-QF's "Department 2000" manages Iran's relationship with Hezbollah, which includes the flow of some of Iran's most sophisticated weapons systems, including military grade EFPs, anti-tank guided missiles, RKG-3 armor penetrating anti-tank grenades and various rockets, such as the Fajr-5.

56. Since the 2003 U.S. overthrow of Saddam Hussein's regime in Iraq, Iran has assiduously worked to expand its influence in Iraq and throughout the region in a variety of ways, including by fomenting violence and terrorism when such activities have served its ambitions.

C. <u>IRAN ORCHESTRATED A TERROR CAMPAIGN IN IRAQ</u>

57. Sometime after the 2003 U.S. invasion of Iraq, Hezbollah created "Unit 3800," an entity dedicated to supporting Iraqi Shi'a terrorist groups targeting Multi National Forces in Iraq ("MNF-I").

58. Unit 3800 was established by Hezbollah leader Hassan Nasrallah at Iran's request.

59. Unit 3800 has trained and advised various Shi'a militias in Iraq, later termed the Special Groups.

Annex 56

Holladay, et al. v. Iran et al., **U.S. District Court for the District of Columbia, Amended Complaint, 14 September 2017, Case No. 1:17-cv-00915**

Excerpts: p. 1, pp. 13-16 & pp. 30-38

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSHUA L. HOLLADAY, SHIRLEY ATKINSON, CRYSTAL HASTINGS, DOMENICK J. ALAGNA, BRIAN CLARK ALLDRIDGE, JOANN ALLDRIDGE, ANDREW CHARLES MAJOR, ASHLEY MEIKEL MAJOR, A.M.M, a minor, RONALD ALLDRIDGE, DIANNA ALLDRIDGE, TODD ALLDRIDGE, TRAVIS R. BASS, HAROLD BASS, MARY L. BASS, ALLEN MILTON, AARON BASS, ADAM C. BASS, LISA LAMBERT, DANIEL BIVENS, GRANT R. BLACKWELL, TERAY A. BUNDY, EVAN W. BYLER, THOMAS M. COE II, HEATHER N. COE, V.T.C., a minor, QUENTIN D. COLLINS, MELIDA COLLINS, SIERA N. COLLINS, SHAWN COLLINS, MICHAEL A. COLLINS, I.C.C., a minor, JAY M. FONDREN, ANNE H. FONDREN, M.J.F, a minor, ANTONIO M. FREDERICK, ERNESTO P. HERNANDEZ III, LAURA F. HERNANDEZ, E.H., a minor, N.H., a minor, ERNESTO I HERNANDEZ II, TINA L. HOUCHINS INDIVIDUALLY, AND FOR THE ESTATE OF AARON D. GAUTIER, GREGORY E. HOGANCAMP, TARA K. HUTCHINSON, JERRALD J. JENSEN, WYMAN H. JONES, IOAN A. KELEMEN, RANDALL L. KLINGENSMITH, JONATHAN F. KUNIHOLM, MICHELE TERESE QUINN, S.K., a minor, BRUCE KUNIHOLM, ELIZABETH KUNIHOLM, ERIN KUNIHOLM, JOHN MAINE, AYAD M. MAJEED, SANA ALI, M.A.M, a minor, M.A.M, a minor, S.M, a minor, HARDY P. MILLS IV, JOSEPH C. MIXSON, VIRGINIA B. MIXSON, JOSEPH JOHNSON MIXSON, KARON MIXSON, ALICIA MIXSON, BALTAZAR MORIN JR., MIRANDA A. HARELSTON, JAMES R. NICHOLS, QUEEN NICHOLS, JAMES	§ §	**PLAINTIFFS' FIRST AMENDED COMPLAINT** **Case No.: 1:17-cv-00915-RDM** **Hon. Randolph D. Moss**

I. NATURE OF THE CASE

1. There can be no question the Islamic Republic of Iran ("Iran") is, and at all relevant times has been, actively engaged in materially supporting and promoting terrorist attacks against U.S. nationals[1] in Iraq, that its efforts began even before the U.S. invasion in 2003, that such support includes the provision of money, weapons, training, and advisors, and that it has solidified an organizational/operational relationship between Lebanese Hizbollah (or "Hezbollah"), Al Qaida, Ansar al Sunna/Ansar al Islam ("Ansar al Islam"), and various "Special Groups."

2. To effectuate its campaign of terror against the citizens of Iraq and the coalition forces serving there, Iran worked hand in glove with its agents and instrumentalities, including its state-owned or state-controlled financial institutions, and government agencies.

3. In order to fund this terror campaign in Iraq, Iran directed its state owned and/or operated banks, including Defendants Bank Markazi Jomhouri Islami Iran ("Bank Markazi," "Central Bank of Iran" or "CBI"), Bank Melli Iran, Melli Bank PLC, and the state- owned and operated National Iranian Oil Company ("NIOC") to conspire with an assortment of Western financial institutions willing to substantially assist Iran to evade U.S. and international economic sanctions, conduct illicit trade-finance transactions, and illegally disguise financial payments to and from U.S. dollar-denominated accounts.

4. Defendant Iran's aforementioned agents included the U.S.-designated Foreign Terrorist Organization ("FTO") (as that term is defined in 8 U.S.C. § 1189 of the Antiterrorism

---

[1] As used herein, the terms "United States' nationals," "nationals of the United States," and "U.S. nationals" shall have the same meaning as set forth in the Immigration and Nationality Act, codified at 8 U.S.C. § 1101(a)(22), which defines the term "national of the United States" as ". . . (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States."

and Effective Death Penalty Act of 1996 ("AEDPA")) Hezbollah;[2] Defendant the Islamic Revolutionary Guard Corps ("IRGC"), whose subdivision known as the Islamic Revolutionary Guard Corps-Qods Force ("IRGC-QF") is a U.S.-designated Specially Designated Global Terrorist ("SDGT"); Iran's Ministry of Intelligence and Security ("MOIS") (an SDGT and Specially Designated National, "SDN"), and other terrorist agents that included a litany of Iraqi Shi'a terror groups referred to herein collectively as "Special Groups."[3]

5. Iran also conspired with and materially supported Sunni FTOs Ansar al Islam ("AAI") and Al Qaida ("AQ") to terrorize the people of Iraq and Coalition Forces, seeking to disrupt the peacekeeping process and prevent the establishment of free and democratic Iraq.[4]

6. The acts of international terrorism[5] at issue in this Action (the "Terrorist Attacks") were perpetrated by agents of Iran- the Special Groups, AAI, AQ, and other terrorists ("Terrorist Groups"), all of whom were materially (and substantially) supported, directly and/or indirectly,

---

[2] The pronunciation and spelling of "Hezbollah" (also known as "Hizbollah" and "Hizbu'llah), is based on region and dialect, but all translate to the "Party of Allah." As used herein, Hezbollah and Hizbollah refer to a Shiite Muslim political party and militant group the United States and European Union consider a foreign terrorist organization.

[3] Discussed in more detail below, Special Groups are terrorist organizations established and funded by Iran.

[4] The U.S. Dept. of State designated Al Qa'ida, Ansar al Islam, and Al-Qa'ida in Iraq ("AQI") as Foreign Terrorist Organizations on October 8, 1999, March 22, 2004, and December 17, 2004, respectively.

[5] As used herein, the term "international terrorism" shall have the same meaning as set forth at 18 U.S.C. § 2331(1), which defines international terrorism as "activities that (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; (B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the person they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum."

by Defendants.

7. The Terrorist Attacks resulted in the deaths, maiming, and/or otherwise injury to Plaintiffs and/or Plaintiffs' family members.

8. This is a civil action pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602–1611 (hereinafter "FSIA") for wrongful death, personal injury and related torts, by the estates and families of United States' nationals and/or members of the U.S. armed forces (as defined in 10 U.S.C. § 101) who were killed or injured by Defendants and/or their agents in Iraq from 2003 to 2011 (the "Relevant Period").

9. None of the Terrorist Attacks were acts occurring in the course of (A) declared war; (B) armed conflict, whether or not war has been declared, between two or more nations; or (C) armed conflict between military forces of any origin.

10. Iran serves as a command, financial and/or logistical conduit for various terrorist groups, including the Terrorist Groups and FTOs named herein, and their terrorist activities, specifically including the Terrorist Attacks which killed or injured Plaintiffs or Plaintiffs' family members. Defendants knew they were supporting terrorists and FTOs.

11. As detailed below, the Defendants herein directed millions of U.S. dollars in arms, equipment and material to Hezbollah, the IRGC, and the IRGC-QF, which, in turn, trained, armed, supplied and funded Iran's terrorist agents in Iraq in carrying out their attacks against Plaintiffs and their family members.

12. At all relevant times, Defendants intentionally, knowingly and/or recklessly provided material support, directly or indirectly, to the Special Groups, Ansar al Islam, Al Qaida and other terrorists, that, at all relevant times, engaged in acts of international terrorism against the United States and nationals of the United States, including Plaintiffs.

13. At all relevant times, Defendants intentionally, knowingly and/or recklessly contributed substantial and material support and/or resources, directly and/or indirectly, to persons and/or organizations that posed a significant risk of committing acts of terrorism that threatened the security of nationals of the United States.

14. Plaintiffs' claims arise from forty-three (43) separate acts of international terrorism that occurred throughout Iraq between approximately December 17, 2003 and November 20, 2009.

II. JURISDICTION AND VENUE

15. Jurisdiction and venue are proper in this Court.

A. THIS COURT HAS JURISDICTION OVER ALL CLAIMS AND ALL PARTIES.

16. This Court has jurisdiction over the subject matter of this Action and Defendants pursuant to 28 U.S.C. § 1330(a)–(b), 1331, 1332(a)(2), and the FSIA, 28 U.S.C. § 1605(a)(2).

17. This Court may exercise personal jurisdiction over all parties to this Action.

1. This Court May Exercise Jurisdiction over the Subject Matter of All Claims Asserted Herein.

18. This Court may exercise its original jurisdiction over claims against the Islamic Republic of Iran pursuant to 28 U.S.C. § 1330(a). This is a nonjury civil action for relief *in personam* in the form of money damages against a foreign state as defined in 28 U.S.C. § 1603(a)[6] for personal injury or death that was caused by an act, extrajudicial killing, or the

[6] 28 U.S.C. § 1603(a) defines "foreign state" to include "a political subdivision of a foreign state or an agency or instrumentality of a foreign state." The statute defines an "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 the foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by the 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), nor created under the laws of any third country." 28 U.S.C. § 1603(a)–(b).

of the Iranian state itself.[16]

87. Defendant Iran authorized, ratified, and approved the acts of Defendant MOIS.

88. Accordingly, Defendant Iran is vicariously liable for the acts of Defendant MOIS.

D. BANK MARKAZI JOMHOURI ISLAMI IRAN

89. Bank Markazi Jomhouri Islami Iran is the Central Bank of Iran. The Central Bank of Iran ("CBI") was established in 1960, and, according to its website, CBI is responsible for the design and implementation of Iran's monetary and credit policies.[17]

90. CBI is headquartered in Tehran, Iran at Mirdamad Boulevard, No. 198.

91. CBI has provided millions of dollars to terrorist organizations via other Iranian-owned and controlled banks. For example, in a press release issued by the U.S. Treasury Department in 2007 regarding the designation of the Iranian-owned Bank Saderat as an SDGT, the U.S. Government noted that:

> Bank Saderat, which has approximately 3200 branch offices, has been used by the Government of Iran to channel funds to terrorist organizations, including Hezbollah and EU-designated terrorist groups Hamas, PFLP-GC, and Palestinian Islamic Jihad. For example, from 2001 to 2006, Bank Saderat *transferred $50 million from the* ***Central Bank of Iran*** *through its subsidiary in London to its branch in Beirut for the benefit of Hezbollah fronts in Lebanon that support acts of violence*. (Emphasis added.)

92. According to the United States' Financial Crimes Enforcement Network ("FinCEN"):

> The Central Bank of Iran, which regulates Iranian banks, has assisted designated Iranian banks by transferring billions of dollars to these banks in

---

[16] *See e.g., 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); and *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d 11, 105, 115–16 (D.D.C. 2005) (Bates, J.) (same).

[17] *Supra* note 14.

> 2011. In mid-2011, the CBI transferred several billion dollars to designated banks, including Saderat, Mellat, EDBI and Melli, through a variety of payment schemes. In making these transfers, the CBI attempted to evade sanctions by minimizing the direct involvement of large international banks with both CBI and designated Iranian banks.

93. CBI is an alter-ego and "agent and instrumentality" of the Iranian government and its Supreme Leader as defined by 28 U.S.C. § 1603, and it has routinely used Iranian banks like the other Defendant Iranian banks as conduits for terror financing and weapons proliferation on behalf of the Iranian regime.

94. Defendant Iran authorized, ratified and approved the acts of Defendant CBI.

95. Accordingly, Defendant Iran is vicariously liable for the acts of Defendant CBI.

E. BANK MELLI & MELLI BANK PLC

96. Bank Melli Iran was established in 1927 by order of the Iranian Parliament. It is one of the largest banks in Iran.

97. Following the Iranian Revolution in 1979, all banks in Iran were nationalized, and, as discussed below, even now most are effectively controlled by the Iranian regime.

98. Bank Melli Iran is headquartered at Ferdowsi Avenue, Tehran, Iran.

99. Bank Melli Iran maintains a branch office in Germany, located at Holzbrücke 2, 20459 Hamburg, Germany.

100. Bank Melli Iran is an "agency or instrumentality" of the government of Iran as defined by 28 U.S.C. § 1603(b).

101. As discussed in detail below, Bank Melli Iran is dominated and controlled by Iran to such an extent that it rightfully can be considered an organ of the state as defined by 28 U.S.C. § 1603(b)(2).

102. Melli Bank Plc in London was established in January 2002 as a wholly-owned subsidiary of Bank Melli.

103. Melli Bank Plc is chartered in the United Kingdom, and until recently was headquartered at 98a Kensington High Street, London, W8 4SG, United Kingdom and in 2016 moved their head office to Dubai. Melli Bank Plc maintains an Agent for service of process in London.

104. The Chairman of Bank Melli Iran serves as the Chairman of the Board of Directors of Melli Bank Plc.

105. Bank Melli Iran appoints all members of the Board of Directors of Melli Bank Plc.

106. Melli Bank Plc. is dominated and controlled by Iran to such an extent that it rightfully can be considered an organ of the state as defined by 28 U.S.C. § 1603(b)(2).

107. According to the U.S. government, from 2004-2011, Bank Melli Iran and Melli Bank Plc in London transferred approximately $100 million USD to the IRGC-QF, which trained, armed, and funded terrorist groups that targeted and killed and maimed American and Iraqi forces and civilians.

108. Specifically, according to the U.S. government:

> Islamic Revolutionary Guards Corps (IRGC) and IRGC-Qods Force, who channel funds to militant groups that target and kill Coalition and Iraqi forces and innocent Iraqi civilians, have used Bank Melli and other Iranian banks to move funds internationally. Bank Melli used deceptive banking practices to obscure its involvement from the international banking system by requesting that its name be removed from financial transactions when handling financial transactions on behalf of the IRGC.

109. In October 2007 and throughout the remainder of the relevant period, Bank Melli Iran and Melli Bank Plc were each designated as a SDN pursuant to Executive Order ("E.O.")

13382, and included on the Office of Foreign Assets Control's SDN list.[18] The U.S. Treasury Department press release announcing the designation stated:

> Bank Melli also provides banking services to the [Iranian Revolutionary Guard Corps] and the Qods Force. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services. From 2002 to 2006, Bank Melli was used to send at least $100 million to the Qods Force. When handling financial transactions on behalf of the IRGC, Bank Melli has employed deceptive banking practices to obscure its involvement from the international banking system. For example, Bank Melli has requested that its name be removed from financial transactions.

110. A State Department diplomatic cable from March 2008 noted that:

> Bank Melli and the Central Bank of Iran also provide crucial banking services to the Qods Force, the IRGC's terrorist supporting arm that was headed by UNSCR 1747 designee Commander Ghassem Soleimani. Soleimani's Qods Force leads Iranian support for the Taliban, Hezbollah [sic], Hamas [sic] and the Palestinian Islamic Jihad. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services. From 2002 to 2006, Bank Melli was used to send at least $100 million to the Qods Force. Bank Melli use of Deceptive Banking Practices .... When handling financial transactions on behalf of the IRGC, Bank Melli has employed deceptive banking practices to obscure its involvement from the international banking system. For example, Bank Melli has requested that its name be removed from payment instructions for US dollar denominated transactions.

111. According to the U.S. government, Bank Melli provided banking services to the IRGC-QF which trained, armed, and funded terrorist groups that targeted, killed and maimed American and Iraqi forces and civilians.

[18] "The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States." *See* U.S. Department of the Treasury, *Terrorism and Financial Intelligence*, https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx (last visited Sept. 12, 2017).

112. Specifically, according to the U.S. government in a November 10, 2009 diplomatic cable:

> [The] Islamic Revolutionary Guards Corps (IRGC) and IRGC-Qods Force, who channel funds to militant groups that target and kill Coalition and Iraqi forces and innocent Iraqi civilians, have used Bank Melli and other Iranian banks to move funds internationally. Bank Melli used deceptive banking practices to obscure its involvement from the international banking system by requesting that its name be removed from financial transactions when handling financial transactions on behalf of the IRGC.

113. During the Relevant Time Period, Bank Melli Iran financed evasions transactions that purposefully evaded U.S. sanctions on behalf of Mahan Air (an SDGT) and Iran's Ministry of Defense and Armed Forces Logistics.

114. For example, Bank Melli issued a Letter of Credit to Mahan Airlines (an Iranian airline) in August 2004 to help Mahan Airlines illegally acquire aircraft engines subject to the U.S. embargo.

115. Bank Melli's financial support and assistance to Mahan Airlines is particularly significant because on October 12, 2011, the United States designated Mahan Air as an SDGT for "providing financial, material and technological support to the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF). Based in Tehran, Mahan Airlines provides transportation, funds transfers and personnel travel services to the IRGC-QF."

116. The U.S. Treasury Department explained Mahan Airline's direct involvement with terrorist operations, personnel movements and logistics on the IRGC-QF's behalf:

> Mahan Air [has] facilitated the covert travel of suspected IRGC-QF officers into and out of Iraq by bypassing normal security procedures and not including information on flight manifests to eliminate records of the IRGC-QF travel.

> Mahan Air crews have facilitated IRGC-QF arms shipments. Funds were also transferred via Mahan Air for the procurement of controlled goods by the IRGC-QF.
>
> In addition to the reasons for which Mahan Air is being designated today, Mahan Air also provides transportation services to Hezbollah, a Lebanon-based designated Foreign Terrorist Organization. Mahan Air has transported personnel, weapons and goods on behalf of Hezbollah and omitted from Mahan Air cargo manifests secret weapons shipments bound for Hezbollah.

117. Mahan Airlines was also later identified as the conduit to Iran of thousands of radio frequency modules that were ultimately recovered by Coalition Forces in Iraq from IEDs and EFPs that were used to target Iraqi civilians, U.S. soldiers, and Coalition Forces, including some Plaintiffs herein.

118. In mid-2007, Bank Melli Iran's branch in Hamburg, Germany ("Bank Melli-Hamburg") transferred funds on behalf of Iran's Defense Industries Organization ("DIO").

119. As is further discussed below, DIO is an Iranian government-owned defense manufacturer whose name, logo, and/or product tracking information was stamped on munitions found in weapons caches that were seized from terrorist organizations in Iraq, including large quantities of weapons produced by DIO in 2006 and 2007 (e.g. 107 millimeter artillery rockets, as well as rounds fuses for 60 millimeter and 81 millimeter mortars).

120. Defendant Iran authorized, ratified, and approved the acts of Defendants Bank Melli and Melli Bank Plc.

121. Accordingly, Defendant Iran is vicariously liable for the acts of Defendants Bank Melli and Melli Bank Plc.

F. NATIONAL IRANIAN OIL COMPANY

122. The National Iranian Oil Company ("NIOC"), owned and overseen by the Government of Iran through its Ministry of Petroleum, is responsible for the exploration,

production, refining, and export of oil and petroleum products in Iran.

123. NIOC is headquartered at Hafez Crossing, Taleghani Avenue, Tehran, Iran.

124. NIOC is an "agency or instrumentality" of the Government of Iran as defined by 28 U.S.C. § 1603(b).

125. In 2008, the Treasury Department identified NIOC (and other Iranian agencies) as "centrally involved in the sale of Iranian oil, as entities that are owned or controlled by the [Government of Iran]."

126. Pursuant to E.O. 13382, the U.S. Government designated NIOC as an SDN.

127. The U.S. Government has identified NIOC as an agent or affiliate of the IRGC.

128. In September 2012, the U.S. Treasury Department handed its report to Congress regarding its determination that NIOC is an agent or affiliate of the IRGC. The report provided that:

> Recently, the IRGC has been coordinating a campaign to sell Iranian oil in an effort to evade international sanctions, specifically those imposed by the European Union that prohibit the import, shipping, and purchase of Iranian oil, which went into full effect on July 1, 2012. NIOC, which is owned by the Government of Iran through the Ministry of Petroleum, is responsible for the exploration, production, refining, and export of oil and petroleum products in Iran.
>
> Under the current Iranian regime, the IRGC's influence has grown within National Iranian Oil Co. For example, on August 3, 2011, Iran's parliament approved the appointment of Rostam Qasemi, a Brigadier General in the IRGC, as Minister of Petroleum. Prior to his appointment, Qasemi was the commander of Khatam Al-Anbia, a construction and development wing of the IRGC that generates income and funds operations for the IRGC. Even in his new role as Minister of Petroleum, Qasemi has publicly stated his allegiance to the IRGC.

129. As the IRGC has become increasingly influential in Iran's energy sector, Khatam Al-Anbiya has obtained billions of dollars' worth of contracts with Iranian energy companies, including NIOC, often without participating in a competitive bidding process.

130. Under the Iran Threat Reduction and Syria Human Rights Act of 2012 ("ITRSHRA"), the U.S. government determined that that NIOC is an agent or affiliate of the IRGC under section 104(c)(2)(E)(i) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") and section 302 of ITRSHRA. As part of that 2012 certification, NIOC was formally determined to be part of the Government of Iran.

131. In addition, the ITRSHRA provided that:

> It is the sense of Congress that the National Iranian Oil Company and the National Iranian Tanker Company are not only owned and controlled by the Government of Iran but that those companies provide significant support to Iran's Revolutionary Guard Corps and its affiliates.[19]

132. After the events giving rise to the claims herein, the U.S. government withdrew this determination as of 2016.

133. NIOC used its oil and natural gas business to launder money for the IRGC, often using Defendant CBI for this purpose.

134. In 2009, West Point's Combating Terrorism Center published a report on the role of NIOC, particularly in the Maysan province in Iraq (Southeast border between Iran and Iraq), and its role in studying U.S. troops movements:

> The establishment of a new U.S. and Iraqi [Forward Operating Base] on the Iranian border has resulted in three waves of attacks in an area that was formerly devoid of incidents .... The incident occurred in the same district as the February 2007 EFP attack on a British aircraft at a Buzurgan dirt airstrip, itself a reaction by Special Groups to UK long-range patrolling of the Iranian border. This part of the border is increasingly the scene of U.S.

[19] U.S. Department of the Treasury, *Sanctions*, *See*, https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf (last visited Sept. 12, 2017).

> and Iranian countermoves to support their proxies and patrol the frontier; Iranian intelligence gathering takes place using National Iranian Oil Company helicopters and border guards, while U.S.-Iraqi helicopter-borne joint patrols provide moral and material support to isolated Iraqi border posts and local communities.

135. Thus, NIOC served a critical function in funding and supporting the IRGC's activities.

136. NIOC also obtained letters of credit from western banks to provide financing and credit to the IRGC.[20]

137. Defendant Iran authorized, ratified, and approved the acts of Defendant NIOC.

138. Accordingly, Defendant Iran is vicariously liable for the acts of Defendant NIOC.

V. FACTUAL ALLEGATIONS

139. International terrorism is a serious and deadly problem that threatens the vital interests of the United States.[21] It affects the interstate and foreign commerce of the United States by harming international trade and market stability, and limiting international travel by United States' citizens, as well as foreign visitors to the United States.[22]

140. The United States has a clear interest in combating terrorism, both within its borders and abroad, and in protecting its nationals at home and abroad.

141. Iran committed and continues to commit violent attacks against U.S. nationals. Iran commits these attacks via proxy terrorist organizations..

142. According to the CIA, Iranian leaders view terrorism as an important instrument of foreign policy they use both to advance national goals and to export the regime's Islamic

---

[20] The Superseding Indictment filed in *U.S. v. Zarrab* (filed in the S.D.N.Y (1:15-cr-00867)) demonstrates that, as late as 2013, NIOC continued to illegally launder U.S. dollars through U.S. financial institutions.

[21] Justice Against Sponsors of Terrorism Act, § 2(a)(1), Pub. L. 114-222 (2016).

[22] *Id.* at § 2(a)(2).