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 III

17 August 2020

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***Field, et al. v. Bank Markazi et al.,* U.S. District Court for the District of Columbia, 13 October 2017, Case No. 1:17-cv-02126**

Excerpts: pp. 1-12

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

DONALD FIELD, ANGELICA FIELD, SENOVIA FIELD, S.F., a minor, TRACIE ARSIAGA, SYLVIA MACIAS, GILBERT ARSIAGA, GEORGE ARSIAGA, MATTHEW ARSIAGA, ANGEL MUNOZ, ROBI ANN GALINDO, PATRICIA ARSIAGA FOR THE ESTATE OF JEREMY ARSIAGA, TRACIE ARSIAGA FOR THE ESTATE OF ROBERT R. ARSIAGA, CEDRIC HUNT, SR., MIRANDA PRUITT, VELINA SANCHEZ, VELINA SANCHEZ FOR THE ESTATE OF MOSES ROCHA, ALOYSIUS SANCHEZ, SR., ROMMEL ROCHA, PHILLIP SANCHEZ, ALOYSIUS SANCHEZ, JR., ROBERT BARTLETT, TERREL CHARLES BARTLETT, LINDA JONES, SHAWN BARTLETT, RAYMOND MONTGOMERY, PATRICIA MONTGOMERY, BRYAN MONTGOMERY, TONY WOOD, JOEDI WOOD, ADAM WOOD, MEGAN WOOD, LISA RAMACI, ISABELL VINCENT, CHARLES VINCENT, LISA RAMACI FOR THE ESTATE OF STEVEN VINCENT, TAMARA HASSLER, RICHARD E. HASSLER, JOANNE SUE HASSLER, SCOTT HUCKFELDT, KATHRYN HUCKFELDT, ALISHA HUCKFELDT, MATTHEW HUCKFELDT, TIMOTHY NEWMAN, PADRAIC NEWMAN, AMENIA JONAUS, GERNESSOIT JONAUS, AMENIA JONAUS FOR THE ESTATE OF JUDE JONAUS, DAPHNIE JONAUS MARTIN, RICKY JONAUS, MARCKENDY JONAUS, CLARE JONAUS, SHAREN JONAUS MARTIN, GWENDOLYN MORIN-MARENTES, E.M., a minor, AUDREY MORIN, STEVE MORIN, SR., GWENDOLYN MORIN-MARENTES FOR THE ESTATE OF STEVE MORIN, JR., AMY LYNN ROBINSON, FLOYD BURTON ROBINSON, JACOB MICHAEL ROBINSON, LUCAS WILLIAM ROBINSON, AMY ROBINSON AND FLOYD ROBINSON FOR THE ESTATE OF JEREMIAH ROBINSON, ALVIS BURNS, JODEE JOHNSON, JAMES HIGGINS, WENDY COLEMAN, BRIAN RADKE, NOVA RADKE, CLIFFORD L. SMITH, JR., GEORGIANNA STEPHENS-SMITH, ANCIL STREETMAN STEPHENS, CORENA MARTIN, CLIFFORD L. SMITH FOR THE ESTATE OF KEVIN J. SMITH, WILLIAM F. HECKER, JR., NANCY HECKER, JOHN D. HECKER, ROBERT F. MARIANO, DEBRA MARIANO, BOBBIE MARIANO, ROBERT F. MARIANO FOR THE ESTATE OF ROBBIE M. MARIANO, VICKIE MICHAY WHITE, VICKIE MICHAY WHITE FOR THE ESTATE OF STEPHEN J. WHITE, DEBORAH NOBLE, DAVID NOBLE, CHARLES E. MATHENY, III, DEBORAH NOBLE FOR THE ESTATE OF CHARLES E. MATHENY, IV,	:	Case No.: **COMPLAINT**

PATRICK FARR, SILVER FARR, CARROL ALDERETE, :
ANTHONY ALDERETE, CHAD FARR, PATRICK FARR FOR :
THE STATE OF CLAY P. FARR, RAYANNE HUNTER, W.H., :
a minor, T.H., a minor, RAYANNE HUNTER FOR THE :
ESTATE OF WESLEY HUNTER, FABERSHA FLYNT :
LEWIS, LORENZO SANDOVAL, SR., LORENZO :
SANDOVAL, SR. FOR THE ESTATE OF ISRAEL DEVORA- :
GARCIA, LORENZO SANDOVAL, JR., HENRY J. :
BANDHOLD, ALFONSO BANDHOLD, MARIANA :
BANDHOLD, H. JOSEPH BANDHOLD, DONALD C. :
BANDHOLD, HENRY J. BANDHOLD FOR THE ESTATE OF :
SCOTT BANDHOLD, LUKE MURPHY, WILLETTE :
MURPHY, ERIK ROBERTS, E.C.R., a minor, ROBIN :
ROBERTS, JAMES CRAIG ROBERTS, CARA ROBERTS, :
COLIN ROBERTS, MARIA GOMEZ, MARIA GOMEZ FOR :
THE ESTATE OF JOSE GOMEZ, NANETTE SAENZ, JUAN :
SAENZ, NANETTE SAENZ FOR THE ESTATE OF CARLOS :
N. SAENZ, JOAQINA SAENZ CHORENS, LUZ MARIA :
ESTRADA, FRANCES CATHERINE CASTRO, ELVA :
ESPINOZA, JOHN VACHO, ASHLEY VACHO LESLIE, :
JOHN VACHO FOR THE ESTATE OF CAROL VACHO, :
JOHN VACHO FOR THE ESTATE OF NATHAN J. VACHO, :
DONNA ENGEMAN, DONNA ENGEMAN FOR THE :
ESTATE OF JOHN ENGEMAN, JEANETTE WEST, SHELBY :
WEST, JEANETTE WEST FOR THE ESTATE OF ROBERT H. :
WEST, SUZZETTEE LAWSON, C.L., a minor, SUZZETTEE :
LAWSON FOR THE ESTATE OF ISAAC S. LAWSON, ARNE :
EASTLUND, TINA EASTLUND, SVEN EASTLUND, :
TAYLOR EASTLUND, ELIZABETH JO EASTLUND, :
MATTHEW ADAMSON, R.A., a minor, KATHY ADAMSON, :
RICHARD ADAMSON, CHRISTOPHER ADAMSON, :
JEFFREY ADAMSON, JUSTIN ADAMSON, JAMES :
SHEPARD, JOHN P. SKLANEY, III, KATHY STILLWELL, :
M.C., a minor, KATHY STILLWELL FOR THE ESTATE OF :
DANIEL CRABTREE, JUDY ANN CRABTREE, RONALD :
WAYNE CRABTREE, DEBRA WIGBELS, RONALD :
WILLIAM CRABTREE, JUDY HUENINK, SEAN SLAVEN, :
CHASTITY DAWN LAFLIN, NICOLE LANDON, MISTI :
FISHER, JUDY HUENINK FOR THE ESTATE OF :
BENJAMIN SLAVEN, PHILIP ALAN DERISE, FRED FRIGO, :
NANNETTE BYRNE-HAUPT, LYNN FOREHAND, LANCE :
HAUPT, RHONDA HAUPT, TIFANY HAUPT THOMPSON, :
SABRINA CUMBE, WILLIAM WITTE, WILLIAM WITTE :
FOR THE ESTATE OF KEVIN M. WITTE, MICHAEL MOCK, :
TAMMY DORSEY, AMBER HENSLEY, DAVID W. HAINES, :
DAWN HAINES, C.H., a minor, MACKENZIE HAINES, :
HARRY RILEY BOCK, JILL ANN BOCK, MARIAH :

SIMONEAUX, LAWRENCE KRUGER, CAROL KRUGER, DOUGLAS KRUGER, KRISTY KRUGER, GLENN MICHAEL COX, SANGSOON KIM, SEOP KIM, MICHELLE KIM, SEOP KIM FOR THE ESTATE OF JANG HO KIM, HELEN FRASER, RICHARD FRASER, RICHARD FRASER FOR THE ESTATE OF DAVID M. FRASER, TRICIA ENGLISH, N.W.E., a minor, N.C.E., a minor, A.S.E., a minor, TODD DAILY FOR THE ESTATE OF SHAWN ENGLISH, JOSHUA STARKEY, LINDA GIBSON, JOHN GIBSON, STEPHANIE GIBSON WEBSTER, SEAN ELLIOTT, TRAVIS GIBSON, WILLIAM RONALD LITTLE, BRENDA LITTLE, KIRA SIKES, BRENDA LITTLE FOR WILLIAM RONALD LITTLE, JR., JOSH DENMAN, DEBBIE BEAVERS, DENISE VENNIX, JEREMY BLOHM, JEREMY BLOHM FOR THE ESTATE OF CHRIS BLOHM, KIANA BLOHM, JAMES SMITH, MEGAN MAUK, ROBERT VACCARO, JAZMON REYNA, ANGEL GOMEZ, ANDREW MOORES, CHRISTOPHER WATTS, JESSE WILLIAMSON, TYLER LATHAM, ANGEL MAYES, LUKE STIGGINS, DONALD MAYES, and ANGEL MAYES FOR THE ESTATE OF ANTONIO STIGGINS,

Plaintiffs,

-against-

BANK MARKAZI JOMHOURI ISLAMI IRAN
Mirdamad Boulevard
No. 198
Tehran, Iran,

BANK MELLI IRAN
Ferdowsi Avenue
Tehran, Iran,

and

NATIONAL IRANIAN OIL COMPANY
Hafez Crossing
Taleghani Avenue
Tehran, Iran,

Defendants.

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 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.

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[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 IRAN

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 placed under state control, and most remain effectively under the control of the Iranian regime.

17. Bank Melli Iran is wholly owned by Iran.

18. Bank Melli Iran is headquartered at Ferdowsi Avenue, Tehran, Iran.

19. Bank Melli Iran maintains a branch office in Germany, located at Holzbrücke 2, 20459 Hamburg, Germany.

20. Bank Melli Iran is an "agency or instrumentality" of the government of Iran as defined by 28 U.S.C. § 1603(b).

21. According to the U.S. government, between 2004 and 2011, Bank Melli Iran 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.

22. In October 2007 and throughout the remainder of the relevant period, Bank Melli Iran was 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:

[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

> 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.

23. 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.

24. 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.

25. 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.

26. 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."

27. The Treasury Department explained Mahan Air's direct involvement with terrorist operations, personnel movements and logistics on the IRGC-QF's behalf:

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the United States." https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx

> 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.

28. 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.

29. In mid-2007, Bank Melli Iran's branch in Hamburg transferred funds on behalf of Iran's Defense Industries Organization ("DIO").

30. 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

31. 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.

32. NIOC is headquartered at Hafez Crossing, Taleghani Avenue, Tehran, Iran.

33. NIOC is an "agency or instrumentality" of the Government of Iran as defined by 28 U.S.C. § 1603(b).

34. 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]."

35. Pursuant to E.O. 13382, the U.S. Government designated NIOC as an SDN.

36. The U.S. Government has identified NIOC as an agent or affiliate of the IRGC.

37. 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.

38. 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.

39. 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 and section 302 of ITRSHRA. As part of that 2012 certification, NIOC was formally determined to be part of the Government of Iran.

40. 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]

41. After the events giving rise to the claims herein, the U.S. government withdrew this determination as of 2016.[5]

42. NIOC used its oil and natural gas revenues to launder money for the IRGC, often using Defendant CBI for this purpose.

43. 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.

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[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."

44. Thus, NIOC served a critical function in funding and supporting the IRGC's activities.

45. 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

46. 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.

47. 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.

48. 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.

49. For more than 30 years, Iran, through the IRGC, has funded, trained and equipped Hezbollah.

50. 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.

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[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 58

***Peterson, et al. v. Iran, Bank Markazi, Banca UBAE, Clearstream, JP Morgan Chase Bank*, U.S. Court of Appeals for the Second Circuit, Opinion and Order, 21 November 2017, Case 15-0690**

Excerpts: pp. 1-6 and pp. 42-72

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2015

(Argued: June 8, 2016 Decided: November 21, 2017*)

Docket No. 15-0690

Deborah D. Peterson, *et al.*,
Plaintiffs-Appellants,

v.

Islamic Republic of Iran, Bank Markazi, AKA Central Bank of Iran, Banca UBAE, S.p.A., Clearstream Banking, S.A., JPMorgan Chase Bank, N.A.,
Defendants-Appellees.**

Before: POOLER, SACK, and LOHIER, *Circuit Judges*.

The plaintiffs-appellants, judgment creditors of the Islamic Republic of Iran and Iran's Ministry of Intelligence and Security, seek to enforce their underlying judgments by obtaining the turnover of $1.68 billion in bond

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* The decision on this appeal has been delayed for some six months pending the completion of proceedings before the panel with respect to transferring a substantial amount of material in the record that was filed by the parties under seal to the public files of the Court in light of the public's "presumptive right of access to judicial documents." *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 140 (2d Cir. 2004); *see also Joy v. North*, 692 F.2d 880, 893 (2d Cir. 1982).

** The Clerk of Court is respectfully directed to amend the official caption to conform to the caption as it appears above. A complete list of plaintiffs in this appeal is attached as an appendix to this opinion.

proceeds allegedly owned by Bank Markazi, Iran's central bank. The bond proceeds are allegedly held by Clearstream Banking, S.A., a Luxembourg bank that maintains accounts on behalf of both Bank Markazi and Banca UBAE, S.p.A., an Italian bank that engaged in financial transactions on behalf of Iran. The bond proceeds were processed in New York through JPMorgan Chase Bank, N.A. The plaintiffs dispute the nature and location of the bond proceeds, arguing that they are held as United States dollars in New York City and are therefore subject to the Court's execution jurisdiction. The plaintiffs also dispute whether several related non-turnover claims, including several fraudulent-conveyance claims, brought by the plaintiffs against these banks were released pursuant to settlement agreements resolving a previous dispute between some of these parties. In a single decision, the United States District Court for the Southern District of New York (Katherine B. Forrest, *Judge*) granted the banks' motions to dismiss the complaint and for partial summary judgment for the defendants on all claims in dispute. We conclude that the settlement agreements released the plaintiffs' non-turnover claims with respect to some but not all of the banks. We also conclude that the assets at issue are in fact located abroad, but that those assets may nonetheless be subject to turnover under state law pursuant to an

exercise of the court's *in personam* jurisdiction, inasmuch as the district court has the authority under New York State law to direct a non-sovereign in possession of a foreign sovereign's extraterritorial assets to bring those assets to New York State. Those assets will not ultimately be subject to turnover, however, unless the district court concludes on remand that (1) such *in personam* jurisdiction exists and (2) the assets, were they to be recalled, would not be protected from turnover by execution immunity. Accordingly, the district court's judgment is:

AFFIRMED in part, VACATED in part, and REMANDED for further proceedings.

LIVIU VOGEL (James P. Bonner, Patrick L. Rocco, and Susan M. Davies, Stone Bonner & Rocco LLP, *on the brief*), Salon Marrow Dyckman Newman & Broudy LLP, New York, New York, *for Plaintiffs-Appellants.*

DONALD F. LUKE (Bension D. De Funis, *on the brief*), Jaffe & Asher LLP, New York, New York, *for Defendant-Appellee Bank Markazi, AKA Central Bank of Iran.*

UGO COLELLA (John J. Zefutie, Jr., *on the brief*), Thompson Hine LLP, New York, New York, *for Defendant-Appellee Banca UBAE, S.p.A.*

BENJAMIN S. KAMINETZKY (Gerald M. Moody, Jr., *on the brief*), Davis Polk & Wardwell LLP, New York, New York, *for Defendant-Appellee Clearstream Banking, S.A.*

STEVEN B. FEIGENBAUM, Levi Lubarsky Feigenbaum & Weiss LLP, New York, New York, *for Defendant-Appellee JPMorgan Chase Bank, N.A.*

SACK, *Circuit Judge*:

In this litigation, judgment creditors of the Islamic Republic of Iran ("Iran") attempt to execute on $1.68 billion in bond proceeds allegedly owned by Iran's central bank. The Supreme Court has instructed that in an execution proceeding concerning a foreign sovereign's assets, any defense predicated on foreign sovereign immunity must rise or fall on the text of the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1602 *et seq.* *See Republic of Argentina v. NML Capital, Ltd.*, --- U.S. ----, 134 S. Ct. 2250, 2256 (2014). In the same decision, the Court explicitly abrogated decades of pre-existing sovereign immunity common law in light of its background understanding that most courts lack jurisdiction to reach extraterritorial assets in any event. *See id.* at 2257. But that is not so in New York.

The plaintiffs-appellants, judgment creditors of Iran and Iran's Ministry of Intelligence and Security ("MOIS"), obtained federal-court judgments against Iran and MOIS awarding the plaintiffs billions of dollars in compensatory damages. They now seek to enforce their judgments in part by executing on

$1.68 billion in bond proceeds allegedly owned by Bank Markazi ("Markazi"), Iran's central bank. The plaintiffs allege that those bond proceeds were processed by and through a global chain of banks, specifically by Clearstream Banking, S.A. ("Clearstream") through JPMorgan Chase Bank, N.A. ("JPMorgan"), in the name of Banca UBAE, S.p.A. ("UBAE"), on behalf of Markazi (collectively, "the defendants" or "the defendant banks"). The plaintiffs further allege that the bond proceeds are denominated as United States dollars ("USD") and held in cash in Clearstream's account at JPMorgan in New York City, rendering the assets subject to this Court's jurisdiction and a turnover order.[1] The plaintiffs also asserted several related non-turnover claims against the defendant banks, alleging primarily that the defendants effected the foregoing transactions by means of fraudulent conveyances in violation of state law.

The defendant banks respond that there is no cash to turn over: The bond proceeds are in fact recorded as book entries made in Clearstream's Luxembourg offices and reflected as a positive account balance showing a right to payment owed by Clearstream to Markazi through UBAE. The defendants argue that this

[1] A turnover order is "[a]n order by which the court commands a judgment debtor to surrender certain property to a judgment creditor, or to the sheriff or constable on the creditor's behalf." *Turnover Order*, BLACK'S LAW DICTIONARY (10th ed. 2014). In this opinion, we use "turnover" and "turnover order" interchangeably.

fact is fatal to the plaintiffs' turnover claims because federal courts lack jurisdiction to order the turnover of a foreign sovereign's extraterritorial assets. Lastly, the defendants posit that the plaintiffs released their non-turnover claims in separate settlement agreements reached between several of the plaintiffs, on the one hand, and Clearstream or UBAE, on the other.

In a single order, the district court (Katherine B. Forrest, *Judge*) granted the defendants' motions to dismiss and for partial summary judgment in favor of the defendants on all claims in dispute. We affirm that decision in part, vacate it in part, and remand for further proceedings.

BACKGROUND

The plaintiffs-appellants are, or represent persons who have been adjudicated in a federal court to be, victims of Iranian-sponsored terrorism. They obtained judgments from the United States District Court for the District of Columbia against Iran and MOIS pursuant to §§ 1605(a)(7) and 1605A of the FSIA, and were awarded a total of approximately $3.8 billion in compensatory damages. Confidential Appendix ("C.A."[2]) at 679-81. The plaintiffs have since

[2] "C.A." refers to the sealed "Confidential Joint Appendix" filed in this Court on June 1, 2015. On November 8, 2017, we ordered the parties to unseal their briefs and the C.A., allowing only redactions we concluded were justified despite the presumptively public

and whatever the parties meant to define as UBAE "beneficiaries," it seems clear that Markazi was not included.

The district court therefore erred by dismissing the plaintiffs' non-turnover claims, including the fraudulent-conveyance claims, brought against Markazi. Accordingly, we vacate that part of the district court's order and remand the case to the district court for further proceedings with respect to the plaintiffs' non-turnover claims brought against Markazi.

C. The Turnover Claims

The plaintiffs seek to enforce their underlying judgments against Iran and MOIS by executing on $1.68 billion of Markazi-owned bond proceeds. The plaintiffs' claims seeking a turnover order to that effect rest, as an initial matter, on the nature and location of the bond proceeds. The plaintiffs contend that they are denominated as USD and held as cash in New York City at Clearstream's correspondent account at JPMorgan. The defendants argue that there is no cash; at most, Markazi owns, through UBAE, a right to payment from Clearstream in the amount of $1.68 billion as reflected on book entries located in Luxembourg. Whether the plaintiffs can obtain an order compelling one or several of the defendants to turn over the assets at issue depends first on the nature and

location of the assets, and second on the court's jurisdiction for execution of those assets, whatever and wherever they are.

1. The Nature and Location of the Assets

The plaintiffs insist that Clearstream holds the bond proceeds in New York City as cash in its correspondent account at JPMorgan. The district court disagreed, finding sufficient record evidence that the bond proceeds are not held as cash in New York City but are recorded as a right to payment in Luxembourg. *Peterson II*, 2015 WL 731221, at *6, 2015 U.S. Dist. LEXIS 20640, at *20 ("[JPMorgan] received proceeds relating to the [bonds], which it credited to a Clearstream account at [JPMorgan]. Whether it should have or should not have, Clearstream in turn credited amounts attributable to the [bonds] to the UBAE/Bank Markazi account in Luxembourg. The [JPMorgan] records are clear that whatever happened to the proceeds, they are gone."). We agree.

It is undisputed that Clearstream's correspondent account at JPMorgan was a general "operating account," C.A. at 1863, used to service transactions on behalf of many customers who are not parties to this litigation, *id*. at 1973-74, 2541; *see also id*. at 2834-35. Although Clearstream received bond proceeds into this general account, *id*. at 685, the account's USD holdings were not segregated

by customer, *id.* at 2537-39. Moreover, no cash attributable to the Markazi-owned bond proceeds was transferred from Clearstream's correspondent account at JPMorgan to Markazi or UBAE. *Id.* at 1976. Clearstream instead used its general pool of cash to meet other obligations. *Id.* at 1865-66. As a result, approximately seven to nine billion dollars flowed in and out of the Clearstream correspondent account each day. *Id.* at 1973. Indeed, JPMorgan records show that this account frequently had a near-zero or negative end-of-day balance.[14] *Id.* at 1864, 1959.

The plaintiffs' putative expert, Peter U. Vinella, attributed minuscule or negative end-of-day balances to industry-standard "[s]weeps." C.A. at 2422. Under this theory, JPMorgan commandeered the Clearstream correspondent account at the close of business, "invested [its funds] in very short-dated USD investments[,] and subsequently redeposited . . . the USD [in the] JPMorgan [a]ccount the next day . . . , essentially refilling the bucket." *Id.* (internal

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[14] A footnote in the plaintiffs' brief challenges Jonckheere's declarations as hearsay. *See* Pls.' Br. at 49 n.4. Even ignoring the significant record evidence that is independent and corroborative of Jonckheere's statements, the plaintiffs' challenge is meritless. "[W]e afford district courts wide latitude in determining whether evidence is admissible," and "review . . . evidentiary rulings for abuse of discretion, reversing only if we find manifest error." *United States v. Miller*, 626 F.3d 682, 687-88 (2d Cir. 2010) (internal quotation marks and ellipsis omitted). The district court did not abuse its discretion by considering declarations executed by Jonckheere, the JPMorgan account manager who conducted a "regular[] review" of Clearstream's correspondent account. C.A. at 2535.

quotation marks omitted). Vinella opined that these sweeps "are not generally reflected on the customer's statement" so that "the funds remain in the bank account from the customer's perspective." *Id.* JPMorgan acknowledged that it indeed "employ[ed] an investment sweep mechanism during the 2008-2012 period that enabled it to pay overnight interest to Clearstream." *Id.* at 2541.

We nonetheless agree with the district court that "Vinella's argument that the money is somehow still there [does not] really work[]." J.A. at 88 (raising this concern during the September 19, 2014 argument). Even assuming that JPMorgan's sweeps used all cash holdings in the Clearstream correspondent account, JPMorgan established through bank records that "the end-of-day balances in the account that were available for overnight investment were never more than a small fraction of the $1.68 billion that make up the [assets at issue]." C.A. at 2541. In fact, the Clearstream correspondent account rarely had an end-of-day balance greater than $300 million, far short of the $1.68 billion sought by the plaintiffs. *See* J.A. at 80. JPMorgan may have swept all cash in the Clearstream correspondent account, but the plaintiffs have offered no evidence that those sweeps were performed specifically with *Markazi's* cash.

Moreover, Jonckheere, the JPMorgan account manager for Clearstream, offered an undisputed explanation for Clearstream's near-zero end-of-day account balances: "[JPMorgan] and Clearstream have an arrangement under which [JPMorgan] will at its discretion advance a very significant amount of intra-day liquidity to Clearstream to allow Clearstream's [correspondent account] to be overdrawn and thereby ensure that the account operates smoothly at all times." C.A. at 2539. This explanation and Vinella's sweep theory are not mutually exclusive. And both are consistent with the district court's finding that $1.68 billion in cash attributable to Markazi's bond proceeds is not sitting in Clearstream's correspondent account at JPMorgan in New York City.

Vinella separately posited that "Clearstream cannot hold or process USD in Luxembourg in any material amount." *Id.* at 2408. Maybe so. But it does not follow that Clearstream must be holding $1.68 billion in cash in New York City. Vinella's observation is entirely consistent with the undisputed record evidence that Clearstream received cash payments into a general pool, which was drawn down on a daily basis to service many customers' demands. Clearstream then caused a corresponding credit to be reflected in the Markazi, and later UBAE,

account in Luxembourg as a right to payment equivalent to the bond proceeds that Clearstream received and processed in New York.

The location of that right to payment is determined by state law. *See Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 313 F.3d 70, 83 (2d Cir. 2002); *see also EM Ltd. v. Republic of Argentina*, 389 F. App'x 38, 44 (2d Cir. 2010) (summary order) (relying on state law to determine the location of property). Under New York law, the situs of an intangible property interest, such as the right to payment relevant here, is "the location of the party of whom performance is required by the terms of the contract." *ABKCO Indus., Inc. v. Apple Films, Inc.*, 39 N.Y.2d 670, 675, 350 N.E.2d 899, 902 (1976) (noting that where an intangible property interest is represented by a negotiable instrument, the physical location of that instrument determines the location of the property interest); *see also Hotel 71 Mezz Lender LLC v. Falor*, 14 N.Y.3d 303, 315, 926 N.E.2d 1202, 1210 (2010) ("[W]here a creditor seeks to attach a debt (an intangible form of property) solely for security purposes (i.e., the debtor is subject to the court's personal jurisdiction), the situs of the debt is wherever the debtor is present."). In this case, the right to payment is reflected as a book entry or account balance

maintained in Luxembourg by Clearstream, a Luxembourg entity. Thus, the asset the plaintiffs seek—a right to payment—is located in Luxembourg.

The plaintiffs advance several rebuttals, each presuming the validity of their position that Clearstream holds a segregated pool of $1.68 billion in cash traceable to the bond proceeds in New York. For example, the plaintiffs argue that "the empty act of making book entries to a Luxembourg account without an accompanying transfer did not alter the location of the Markazi-owned assets." Pls.' Br. at 49. That is neither controversial nor surprising: There was no accompanying transfer of cash to Markazi or UBAE. For similar reasons, the plaintiffs' contention that fraudulent conveyances have no legal effect is of no moment. This argument presumes "that [the] [d]efendants moved the [b]ond [p]roceeds to Luxembourg." *Id.* at 51. Not so. No bond proceeds were "moved," at least not as envisaged by the plaintiffs. Rather, cash flowed into the Clearstream correspondent account at JPMorgan, which was then used to meet other customers' demands. Markazi was made whole by its interest in the recordation of an equivalent right to payment in Luxembourg.

The plaintiffs argue that under the Uniform Commercial Code ("UCC"), Clearstream "must maintain a corresponding financial asset (*i.e.*, USD) sufficient

to satisfy . . . entitlements [owed to Markazi and UBAE]," and "those USD[] must be segregated from Clearstream's assets." *Id.* at 49. We need not, and therefore do not, comment on the propriety of Clearstream's banking practices under the UCC, assuming that it applies.[15] Even if the bond proceeds should have been segregated and held as cash, they were not; there is not, therefore, property in New York subject to turnover. Contrary to the plaintiffs' suggestion, *see* Pls.' Br. at 40, this position is not inconsistent with *Peterson I*, in which the district court concluded that a separate set of bond proceeds—held at a different bank that is not party to this litigation—were both located in New York and owned by Markazi for reasons wholly unrelated to the UCC. *Peterson I*, 2013 WL 1155576, at *30-31, 2013 U.S. Dist. LEXIS 40470, at *121-24. In any event, the question whether the UCC governs Markazi's ownership interest in and rights to the bond proceeds is unrelated to the nature and location of those assets.

The nature and location of the asset here—a right to payment located in Luxembourg—distinguishes this case from *Peterson I*, where it was "undisputed" that Clearstream held a segregated pool of "$1.75 billion in cash proceeds of the bonds . . . in an account at Citigroup in New York." *Id.* at *2, 2013 U.S. Dist.

[15] Clearstream asserts that it does not. *See* Clearstream Br. at 34-37.

LEXIS 40470, at *42. Indeed, in *Peterson I* the district court specifically found that "nearly $2 billion in bond proceeds [traceable to Markazi] is sitting in an account in New York at Citibank," which the court determined was far from a "fleeting or ephemeral interest[]." *Id.* at *24, 2013 U.S. Dist. LEXIS 40470, at *103. Here, by contrast, there never was a traceable or segregated pool of Markazi-owned bond proceeds held as cash in Clearstream's correspondent account at JPMorgan in New York City.

We conclude that the assets at issue are, therefore, represented by a right to payment in the possession of Clearstream located in Luxembourg. Accordingly, the district court properly granted JPMorgan's motion for partial summary judgment because JPMorgan is not in possession of any assets subject to turnover. Similarly, neither Markazi nor UBAE possesses any assets subject to turnover here because the asset at issue is in fact held by Clearstream and represented as a positive account balance in a "sundry blocked account" to which neither Markazi nor UBAE has access. C.A. at 684. We therefore turn to whether the principal asset at issue, a right to payment held by Clearstream and located in Luxembourg, is subject to execution.

2. *Jurisdiction for Execution*

The district court concluded that it lacked jurisdiction to order turnover because the principal asset at issue—a right to payment recorded and held in Luxembourg—is located outside the United States and, therefore, absolutely immune from execution under the FSIA. *Peterson II*, 2015 WL 731221, at *10, 2015 U.S. Dist. LEXIS 20640, at *31-32. Although the district court's assumption was reasonable in light of many judicial decisions suggesting as much, we think it was incorrect.

Before the FSIA, foreign sovereigns were generally afforded broad immunity from the jurisdictional reach of American courts. *NML Capital*, 134 S. Ct. at 2255. Foreign sovereign immunity was offered as "a matter of grace and comity . . . not a restriction imposed by the Constitution." *Id.* (quoting *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 486 (1983)). Pursuant to this discretionary practice, "the United States gave absolute immunity to foreign sovereigns from," in particular, "the execution of judgments."[16] *Autotech Techs. v.*

[16] As Justice Scalia explained for the Court in *NML Capital*, this was long at the behest of the executive branch, "which typically requested immunity in all suits against friendly foreign states." *NML Capital*, 134 S. Ct. at 2255. That changed in 1952, when "the State Department embraced (in the so-called Tate Letter) the restrictive theory of sovereign immunity, which holds that immunity shields only a foreign sovereign's

Integral Research & Dev. Corp., 499 F.3d 737, 749 (7th Cir. 2007). "This rule required plaintiffs who successfully obtained a judgment against a foreign sovereign to rely on voluntary repayment by that State." *Id.*

The prevailing regime changed in 1976 with the enactment of the FSIA, a "comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state." *Verlinden*, 461 U.S. at 488. Since its enactment, courts have held that "the FSIA provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country." *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989); *see also Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 47 (2d Cir. 2010) ("The [FSIA] provides the exclusive basis for subject matter jurisdiction over all civil actions against foreign state defendants, and therefore for a court to exercise subject matter jurisdiction over a defendant the action must fall within one of the FSIA's exceptions to foreign sovereign immunity." (citation omitted)).

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public, noncommercial acts." *Id.* (internal quotation marks omitted). It has been observed that this shift "thr[ew] immunity determinations into some disarray" because "political considerations sometimes led the [State] Department to file suggestions of immunity in cases where immunity would not have been available under the restrictive theory." *Republic of Austria v. Altmann*, 541 U.S. 677, 690 (2004) (internal quotation marks omitted). "Congress abated the bedlam in 1976" with the FSIA. *NML Capital*, 134 S. Ct. at 2255.

Section 1604 of the FSIA provides in general terms for foreign sovereign immunity: "[A] foreign state shall be immune from the jurisdiction of the courts of the United States and of the States." 28 U.S.C. § 1604. The law then subjects this limit on *in personam* jurisdiction to several exceptions. *See id.* §§ 1605-07. In this case, for example, the plaintiffs obtained their judgments against Iran and MOIS pursuant to § 1605A, C.A. at 1673-75,[17] which vitiates 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 torture, extrajudicial killing, . . . or the provision of material support or resources for such an act," 28 U.S.C. § 1605A(a)(1).

In addition to jurisdictional immunity, the FSIA also provides foreign sovereigns so-called "execution immunity": Section 1609 states that, generally, "the property in the United States of a foreign state shall be immune from

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[17] The plaintiffs also obtained their underlying judgments pursuant to § 1605(a)(7), a since-repealed provision of the FSIA that similarly suspended jurisdictional immunity where "money damages [were] sought against a foreign state for personal injury or death that was caused by an act of torture [or] extrajudicial killing." 28 U.S.C. § 1605(a)(7) (2006); *see also Weinstein*, 609 F.3d at 48 n.4 ("In 2008, Congress repealed § 1605(a)(7) and created a new section [§ 1605A] specifically devoted to the terrorism exception to the jurisdictional immunity of a foreign state." (citing Pub. L. No. 110-181, § 1083, 122 Stat. 3, 341 (2008))). As relevant here, § 1605(a)(7) provided the same exception to jurisdictional immunity as does § 1605A.

attachment arrest and execution." *Id.* § 1609. Execution immunity is also subject to several exceptions, *id.* §§ 1610-11, three of which the plaintiffs argue permit execution here: first, § 1610(a), which permits execution against "property in the United States of a foreign state . . . used for a commercial activity in the United States . . . if . . . the judgment relates to a claim for which the foreign state is not immune under [§ 1605A]," *id.* § 1610(a)(7); second, § 1610(g), which authorizes execution against "the property of a foreign state against which a judgment is entered under [§ 1605A] . . . upon that judgment as provided in this section," *id.* § 1610(g)(1); and third, TRIA § 201(a), codified as a note to FSIA § 1610, which reads:

> 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 [28 U.S.C. § 1605A], 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.

TRIA, Pub. L. No. 107-297, § 201(a), 116 Stat. 2322, 2337-40 (2002) (codified at 28 U.S.C. § 1610 note); *see also Kirschenbaum v. 650 Fifth Ave. & Related Props.*, 830 F.3d 107, 131 (2d Cir. 2016) ("The TRIA provides jurisdiction for execution and

attachment proceedings to satisfy a judgment for which there was original jurisdiction under the FSIA if certain statutory elements are satisfied.").

The FSIA framework of immunities and exceptions is "comprehensive," *NML Capital*, 134 S. Ct. at 2255-56; *see also Republic of Austria v. Altmann*, 541 U.S. 677, 699 (2004); *Verlinden*, 461 U.S. at 493, and, therefore, supersedes the "pre-existing common law" of foreign sovereign immunity, *Samantar v. Yousuf*, 560 U.S. 305, 313 (2010). As the Supreme Court wrote in *NML Capital*, "any sort of immunity defense made by a foreign sovereign in an American court must stand on the Act's text. Or it must fall." 134 S. Ct. at 2256.

Comprehensive though it may be with respect to immunities and exceptions, the FSIA does not specify "the circumstances and manner of attachment and execution proceedings." *EM Ltd. v. Republic of Argentina*, 473 F.3d 463, 474 n.10 (2d Cir. 2007); *see also Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1130 (9th Cir. 2010) ("The 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.").[18] Accordingly, "[i]n attachment

[18] FSIA § 1610(c) does, however, enumerate broad limitations on "attachment or execution," viz., "[n]o attachment or execution . . . shall be permitted until the court has

actions involving foreign states, federal courts . . . apply Fed. R. Civ. P. 69(a)." *Karaha Bodas Co.*, 313 F.3d at 83. Under that Rule, "a district court has the authority to enforce a judgment by attaching property in accordance with the law of the state in which the district court sits." *Koehler v. Bank of Berm. Ltd.*, 544 F.3d 78, 85 (2d Cir. 2008).

In New York, that law is C.P.L.R. § 5225,[19] which provides in pertinent part:

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ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of [the FSIA]." 28 U.S.C. § 1610(c).

[19] The plaintiffs brought their state-law turnover claims under C.P.L.R. §§ 5225, 5227. The former concerns the turnover of "property," including "money or other personal property," N.Y. C.P.L.R. § 5225; the latter concerns the turnover of "debts owed to the judgment debtor," *id.* § 5227. Our analysis turns on § 5225. "Although New York law draws a line between a debt owed to a judgment debtor and property owned by the judgment debtor but in the possession of another, that line can at times become too fine to distinguish." *Alliance Bond Fund, Inc. v. Grupo Mexicano de Desarrollo, S.A.*, 190 F.3d 16, 21 (2d Cir. 1990) (internal quotation marks and alteration omitted). We think that Iran's right to payment, held by Clearstream, falls on the "property" side of that blurred line. In *ABKCO*, the Court of Appeals held that a judgment debtor's right to payment under a licensing agreement was "property" because, like Markazi's interest in the right to payment held by Clearstream, it was an assignable interest. *ABKCO*, 39 N.Y.2d at 674-75, 350 N.E.2d at 900-02. And at least one New York court has confirmed that a bank account—like the Markazi, UBAE, and blocked sundry accounts at Clearstream in Luxembourg—was subject to turnover because "[t]he property of the depositor is the indebtedness of the bank to it." *Gryphon Domestic VI, LLC v. APP Int'l Fin. Co., B.V.*, 41 A.D.3d 25, 36, 836 N.Y.S.2d 4, 12 (N.Y. App. Div. 1st Dep't 2007) (internal quotation marks omitted).

> Property not in the possession of judgment debtor. Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest . . . where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment to a designated sheriff.

N.Y. C.P.L.R. § 5225(b).

Relying on this provision, the plaintiffs seek turnover of Iran's right to payment in the amount of $1.68 billion, represented as a positive account balance and recorded on the books of Clearstream in Luxembourg. The district court concluded that this asset's location in Luxembourg is fatal to the plaintiffs' turnover claims. *Peterson II*, 2015 WL 731221, at *10, 2015 U.S. Dist. LEXIS 20640, at *31 ("The FSIA does not allow for attachment of property outside of the United States."). We disagree.

The FSIA does not by its terms provide execution immunity to a foreign sovereign's extraterritorial assets. *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 . . . ." (emphasis added)). In *NML Capital*, the Supreme Court squarely

rejected the argument that any common law execution immunity afforded to "a foreign state's extraterritorial assets" survived the enactment of the FSIA:

> [We identify] no case holding that, before the Act, a foreign state's extraterritorial assets enjoyed absolute execution immunity in United States courts. No surprise there. Our courts generally lack authority in the first place to execute against property in other countries, so how could the question ever have arisen?

134 S. Ct. at 2257 (holding that § 1609 does not immunize "a foreign sovereign's extraterritorial assets" from post-judgment discovery).

Notwithstanding the Supreme Court's rhetorical observation, the question whether courts sitting in New York have the authority to execute against property in other countries arose in *Koehler*, 544 F.3d 78, in which we were asked to decide whether C.P.L.R. § 5225(b) applies extraterritorially. There, a judgment creditor sought to execute against stock certificates owned by a judgment debtor but held in Bermuda by a third-party garnishee. *Id.* at 80-81. "The district court concluded that stock certificates in general must be located within the state in order to be attached . . . ." *Id.* at 86. On appeal, however, we found that this raised an important and unsettled question of state law; accordingly, we certified the issue to the New York Court of Appeals. *Id.* at 87-88.

The Court of Appeals accepted certification and, closely divided, "h[e]ld that a New York court with personal jurisdiction over a defendant may order him to turn over out-of-state property regardless of whether the defendant is a judgment debtor or a garnishee." *Koehler v. Bank of Berm. Ltd.*, 12 N.Y.3d 533, 541, 911 N.E.2d 825, 831 (2009). The court observed that "CPLR article 52 contains no express territorial limitation barring the entry of a turnover order that requires a garnishee to transfer money or property into New York from another state or country." *Id.* at 539, 911 N.E.2d at 829. Turning to recent legislative amendments, the court determined that the New York State "[l]egislature intended CPLR article 52 to have extraterritorial reach." *Id.* The court's holding turned on the exercise of *in personam* jurisdiction; a court sitting in New York with personal jurisdiction over a party may order that party "to bring property into the state." *Id.* at 540, 911 N.E.2d at 830 ("[T]he key to the reach of the turnover order is personal jurisdiction over a particular defendant.").

Following *NML Capital*, 134 S. Ct. at 2256-57, the FSIA appears to be no impediment to an order issued pursuant to *Koehler* directing Clearstream—should the court have personal jurisdiction over it—to bring the Markazi-owned asset held in Luxembourg to New York State. Section 1604's grant of

jurisdictional immunity applies only to "a foreign state," which Clearstream of course is not. 28 U.S.C. § 1604. Section 1609's grant of execution immunity applies only to assets located "in the United States," which the Luxembourg right to payment is not. 28 U.S.C. § 1609. And, as noted, the Supreme Court's view set forth in *NML Capital* appears unequivocal: "[A]ny sort of immunity defense made by a foreign sovereign in an American court must stand on the Act's text. Or it must fall." 134 S. Ct. at 2256.

Each of the many cases cited by the defendants for the proposition that a foreign sovereign's extraterritorial assets are absolutely immune from execution were decided before the Supreme Court's decision in *NML Capital*, which made clear that such cases predating *NML Capital* are no longer binding on this discrete point. *See EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 208 (2d Cir. 2012) ("We recognize that a district court sitting in Manhattan does not have the power to attach Argentinian property in foreign countries."); *Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120, 130 (2d Cir. 2009) ("[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)). Following *NML Capital*, this body of former case law is of no help to the defendants. As the Supreme

Court instructed, "even if [the defendants] were right about the scope of the common-law execution-immunity rule, then it would be obvious that the terms of § 1609 execution immunity are narrower, since the text of that provision immunizes only foreign-state property '*in the United States*.'" *NML Capital*, 134 S. Ct. at 2257 (emphasis in original).

NML Capital and *Koehler* do not, however, affect our long-standing view that "[t]he FSIA provides the exclusive basis for obtaining subject matter jurisdiction *over a foreign state*." *Kirschenbaum*, 830 F.3d at 122 (emphasis added); *see also NML Capital*, 134 S. Ct. at 2256-58 (concerning execution jurisdiction). Here, though, the putative exercise of *in personam* jurisdiction concerns Clearstream—the party in possession of the asset at issue—which is not itself a sovereign and therefore does not possess sovereign immunity.

Nonetheless, *NML Capital* and *Koehler*, when combined, do authorize a court sitting in New York with personal jurisdiction over a non-sovereign third party to recall to New York extraterritorial assets owned by a foreign sovereign. Had *Koehler* arisen in the context of an exercise of *in personam* jurisdiction over a foreign sovereign—it did *not*—the FSIA's grant of jurisdictional immunity would supersede contrary state law. *See Peterson*, 627 F.3d at 1130 (applying state law

"insofar as it does not conflict with the FSIA"). As it was decided, however, *Koehler* does not appear to us to be inconsistent with the FSIA as interpreted by the Supreme Court in *NML Capital*.

At least one of our sister circuits has, without considering the issue in any detail, suggested the contrary conclusion: that even after *NML Capital,* a foreign sovereign's extraterritorial assets remain absolutely immune from execution. In *Rubin v. Islamic Republic of Iran*, 830 F.3d 470 (7th Cir. 2016), the Seventh Circuit remarked that before a foreign sovereign's assets are "even potentially subject to attachment and execution," it must be shown that the assets are "within the territorial jurisdiction of the district court." *Id.* at 475 (citing *NML Capital*, 134 S. Ct. at 2257 ("Our courts generally lack authority in the first place to execute against property in other countries . . . ."). The Seventh Circuit's comment is unavailing to the defendants here. As an initial matter, it is not evident that an exercise of *in personam* jurisdiction over a non-sovereign pursuant to *Koehler* is inconsistent with the Seventh Circuit's statement concerning the exercise of "territorial jurisdiction" in the context of an *in rem* proceeding. *Id.*; *see also Rubin v. Islamic Republic of Iran*, 33 F. Supp. 3d 1003, 1006 (N.D. Ill. 2014) ("Plaintiffs now seek to collect on [judgments against Iran] *by attaching* alleged assets of Iran . . . ."

(emphasis added)), *aff'd*, 830 F.3d 470 (7th Cir. 2016), *cert. granted*, 137 S. Ct. 2326 (2017).

Moreover, we do not understand the Supreme Court's observation that "[o]ur courts generally lack authority in the first place to execute against property in other countries," *NML Capital*, 134 S. Ct. at 2257, to foreclose that possibility.[20] Indeed, Justice Scalia's observation was made in the context of noting that no court had ever before held that "a foreign state's extraterritorial assets enjoyed absolute execution immunity in United States courts." *Id.* And as we have noted, even if such a rule had existed at common law, "it would be obvious that the terms of § 1609 execution immunity are narrower, since the text of that provision immunizes only foreign-state property '*in the United States*.'" *Id.* (emphasis in original). "So . . . § 1609 execution immunity . . . [does] not shield . . . a foreign sovereign's extraterritorial assets." *Id.*

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[20] The Supreme Court observed that "a writ of execution . . . can be served anywhere within the state in which the district court is held." *NML Capital*, 134 S. Ct. at 2257 (alteration omitted) (quoting 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure § 3013, p. 156 (2d ed. 1997) [hereinafter "Wright & Miller"]). That statement of law pertains to service and is not a barrier to a court's exercise of jurisdiction in accordance with the jurisdictional boundaries established by the state in which the court resides. *See* Wright & Miller § 3012 ("Many questions that arise in the enforcement of a money judgment will not be answered in the federal statutes and resort must be had to state law. The relevant law is that of the state in which the district court is held.").

We think that the Supreme Court's decision in *NML Capital* counsels in favor of part of the reasoning suggested by the Ninth Circuit's decision in *Peterson*, 627 F.3d 1117, itself a pre–*NML Capital* case. There, judgment creditors of Iran sought to execute against "Iran's rights to payment from CMA CGM," a French shipping company indebted to Iran. *Id.* at 1121. The Ninth Circuit held that the right to payment was not "property in the United States" within the meaning of § 1610(a) and was, therefore, "immune from execution." *Id.* at 1130. The court appeared to reach that conclusion based on the FSIA itself, *see id.* (citing 28 U.S.C. § 1610(a)), which reasoning, as explained, was vitiated by *NML Capital*.

But the Ninth Circuit also turned to state law as directed by Federal Rule of Civil Procedure 69(a). *Id.* at 1130-31 (noting that "California enforcement law authorizes a court to 'order the judgment debtor to assign to the judgment creditor . . . all or part of a right to payment due or to become due'" (quoting Cal. Civ. Proc. Code § 708.510(a))). In particular, the Ninth Circuit relied on *Philippine Export & Foreign Loan Guar. Corp. v. Chuidian*, 218 Cal. App. 3d 1058, 267 Cal. Rptr. 457 (6th Dist. 1990), for the proposition that "the location of a right to payment . . . is the location of the debtor," *Peterson*, 627 F.3d at 1131 (citing

Philippine Export, 218 Cal. App. 3d 1058, 267 Cal. Rptr. 457). The state appellate court's decision in *Philippine Export* also held that California's state execution law does not apply extraterritorially. *Philippine Export*, 218 Cal. App. 3d at 1099, 267 Cal. Rptr. at 481. Citing that decision, the Ninth Circuit concluded that "a foreign state defendant's rights to payment from third-party debtors are assignable only if those 'debtors [] reside in the United States.'" *Peterson*, 627 F.3d at 1131 (quoting *Philippine Export*, 218 Cal. App. 3d at 1099, 267 Cal. Rptr. at 481).

Although the Ninth Circuit's decision appears to have rested on its pre-*NML Capital* understanding of the FSIA, its decision and citation to *Philippine Export* suggest an alternative approach that is in step with our reconciliation of *NML Capital* and *Koehler*. Were one to except the part of the Ninth Circuit's opinion that did not survive *NML Capital*, the principal difference between the Ninth Circuit's decision in *Peterson* and our disposition of this case might be viewed as one of state law. *Compare Philippine Export*, 218 Cal. App. 3d at 1099, 267 Cal. Rptr. at 480 (declining to exercise extraterritorial personal jurisdiction because, under California law, "the limits which generally exist upon the right to execute . . . apply in a judgment debtor proceeding such as this" (citing Cal. Civ. Proc. Code § 708.510 cmt. (West 1987) (Legislative Committee Comments,

Assembly, 1982 Addition))), *with Koehler*, 12 N.Y.3d at 539, 911 N.E.2d at 829 (determining that the New York State "[l]egislature intended CPLR article 52 to have extraterritorial reach").

On remand, the district court should determine in the first instance whether it has personal jurisdiction over Clearstream.[21] If it answers that question in the affirmative, then the court should determine if a barrier exists to an exercise of *in personam* jurisdiction to recall to New York State the right to payment held by Clearstream in Luxembourg, whether for reasons of, *inter alia*, state law,[22] federal law, international comity,[23] or for any other reason.

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[21] Although the district court concluded in *Peterson I* that it had general personal jurisdiction over Clearstream, *Peterson I*, 2013 WL 1155576, at *18-19, 2013 U.S. Dist. LEXIS 40470, at *87-91 (finding both general and specific personal jurisdiction), the district court explicitly declined in *Peterson II* to decide whether it did here, *Peterson II*, 2015 WL 731221, at *1, 2015 U.S. Dist. LEXIS 20640, at *4. We think it prudent for the district court to decide in the first instance whether personal jurisdiction over Clearstream exists in the context of the events relevant to this case.

[22] Such barriers might include the "separate entity" doctrine. *See Motorola Credit Corp. v. Standard Chartered Bank*, 24 N.Y.3d 149, 21 N.E.3d 223 (2014).

[23] For example, "in the event that the district court concludes [on remand] that the exercise of personal jurisdiction over [Clearstream] is appropriate," the court may "undertake a comity analysis before ordering [Clearstream] to comply with the [putative order]." *Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 138 (2d Cir. 2010). Such an analysis would likely follow "the framework provided by . . . the Restatement (Third) of Foreign Relations Law." *Id.* at 139. We leave it to the parties to develop and the district court to review the requisite record indicating whether "a court order will infringe on sovereign interests of a foreign state." *Id.*

Should that asset be recalled, it may, upon being produced in New York, qualify as an asset "*in the United States* of a foreign state" and, if so, it would be afforded execution immunity as such. 28 U.S.C. § 1609 (emphasis added). Accordingly, the district court will likely be required to determine, if and when it reaches that juncture, whether the asset that comes to be "in the United States" is subject to the execution-immunity exceptions relied on by the plaintiffs, 28 U.S.C. § 1610(a)(7), (g)(1); TRIA § 201(a). The defendants should, of course, be permitted to raise appropriate rebuttals at that time if they so choose.

We are cognizant of the conundrum apparently posed by *NML Capital* and *Koehler* when read in tandem. The FSIA "aimed to facilitate and depoliticize litigation against foreign states and to minimize irritations in foreign relations arising out of such litigation." *Cargill Int'l S.A. v. M/T Pavel Dybenko*, 991 F.2d 1012, 1016 (2d Cir. 1993) (internal quotation marks omitted). We are not at all sure that *NML Capital* when read in light of the law established by *Koehler* furthers that goal. But if we are correct in our analysis, any such problem is one for the Supreme Court or the political branches—not this Court—to resolve.[24]

[24] The Supreme Court noted that its decision in *NML Capital* might present "worrisome international-relations consequences," "provoke reciprocal adverse treatment of the United States in foreign courts," or "threaten harm to the United States' foreign relations

Here, we attempt only to apply the law as we find it: The authority of courts sitting in New York with personal jurisdiction over a non-sovereign third party to order that third-party garnishee to produce in New York an extraterritorial asset seems clear enough. *Koehler*, 12 N.Y.3d at 540, 911 N.E.2d at 830. Whether that extraterritorial asset is owned by a foreign sovereign is of no moment, because the FSIA's grant of execution immunity does not extend to assets located abroad. *NML Capital*, 134 S. Ct. at 2257.

Moreover, we think that the two-step process called for by these cases—first recalling the asset at issue, and second, proceeding with a traditional FSIA analysis—is unlikely to open the proverbial floodgates to a wave of turnover claims seeking to execute against heretofore-unreachable extraterritorial assets. Even if those assets are in the possession of a third party over whom or which a court sitting in New York has personal jurisdiction, those assets still must not be subject to execution immunity upon being recalled to New York State. In that respect, the FSIA contains several limiting principles, such as the requirement that any asset subject to execution must have been "used for a commercial

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more generally." *NML Capital*, 134 S. Ct. at 2258 (internal quotation marks omitted). It nonetheless expressed the view that "[t]hese apprehensions are better directed to that branch of the government with authority to amend the Act." *Id.* We are similarly constrained.

activity in the United States." 28 U.S.C. § 1610(a). Similarly, the TRIA contains its own limiting provisions, including the requirement that any asset subject to turnover be "blocked," a term of art imbued with precise meaning. TRIA § 201(a); *see also Smith v. Fed. Reserve Bank of N.Y.*, 346 F.3d 264, 267-69 (2d Cir. 2003) (defining "blocked" in the context of the TRIA). These and other constraints have frequently proven to be barriers to execution on foreign sovereign assets. *See, e.g., Calderon-Cardona v. Bank of N.Y. Mellon*, 770 F.3d 993, 999 (2d Cir. 2014) (holding that attachment was unavailable under the TRIA because North Korea was not "designated as a state sponsor of terrorism under . . . the Export Administration Act of 1979 . . . or . . . the Foreign Assistance Act of 1961" at the time of judgment (internal quotation marks omitted)); *Hausler v. JP Morgan Chase Bank, N.A.*, 770 F.3d 207, 212 (2d Cir. 2014) (per curiam) (determining that the property at issue did not qualify as the "blocked asset of" a foreign sovereign); *Aurelius Capital Partners*, 584 F.3d at 130-31 (holding that assets were not subject to execution under the FSIA because the assets at issue were not "used for a commercial activity," as required by the Act); *Bank of N.Y. v. Rubin*, 484 F.3d 149, 150 (2d Cir. 2007) (per curiam) (concluding that the assets at issue were not "blocked assets" subject to turnover under the TRIA).

Indeed, these or other limitations may ultimately prevent the plaintiffs in this case from obtaining turnover of the asset at issue, should it be recalled to New York State pursuant to an exercise of the court's *in personam* jurisdiction. As but one example, one of the defendants argues on appeal that the asset at issue does not qualify for the execution-immunity exceptions enumerated in 28 U.S.C. § 1610(a) because it was not "used for a commercial activity in the United States." UBAE Br. at 37-39. Whether that is so is independent of whether the asset comes to be located "in the United States." *See* 28 U.S.C. § 1610(a) ("The property in the United States of a foreign state, . . . used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, . . . if [additional specified requirements are satisfied]."). While we need not, and therefore do not, consider the applicability of these barriers at this time, we wish to make clear that the plaintiffs are by no means assured success upon remand.

CONCLUSION

To summarize, for the foregoing reasons, we conclude as follows:

1. Plain error as to the application of the Clearstream settlement agreement to those plaintiffs who were not parties to *Peterson I* requires

vacatur of the judgment of dismissal and remand with respect to those plaintiffs' non-turnover claims brought against Clearstream.

2. Excepting those plaintiffs who were not parties to *Peterson I*, the Clearstream settlement agreement released the plaintiffs' non-turnover claims brought against Clearstream. The district court therefore properly dismissed those claims.

3. Whether the UBAE settlement agreement is applicable to the plaintiffs' non-turnover claims brought against UBAE is, under the language of the agreement, unclear. Those claims were, therefore, dismissed by the district court in error. Accordingly, we vacate and remand that part of the district court's judgment of dismissal.

4. The UBAE settlement agreement did not release the plaintiffs' non-turnover claims brought against Markazi. Accordingly, we vacate and remand that part of the district court's judgment of dismissal.

5. The district court correctly determined that the asset at issue is a right to payment held by Clearstream in Luxembourg. It also, therefore, properly dismissed JPMorgan from this action.

6. The district court prematurely dismissed the amended complaint for lack of subject-matter jurisdiction. *Cf. Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250 (2014); *Koehler v. Bank of Berm. Ltd.*, 12 N.Y.3d 533, 911 N.E.2d 825 (2009). On remand the district court should consider whether it has personal jurisdiction over Clearstream. If the court answers that question in the affirmative, then it should determine whether any provision of state or federal law prevents the court from recalling, or the plaintiffs from receiving, the asset.

Accordingly, we AFFIRM the district court's judgment in part, VACATE it in part, and REMAND for further proceedings consistent with this opinion.

Annex 59

***Rubin, et al. v. Islamic Republic of Iran, et al.,* U.S. Supreme Court, 21 February 2018, Case No. 16-534**

SUPREME COURT OF THE UNITED STATES

No. 16–534

JENNY RUBIN, ET AL., PETITIONERS *v.* ISLAMIC REPUBLIC OF IRAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[February 21, 2018]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

The Foreign Sovereign Immunities Act of 1976 (FSIA) grants foreign states and their agencies and instrumentalities immunity from suit in the United States (called jurisdictional immunity) and grants their property immunity from attachment and execution in satisfaction of judgments against them. See 28 U. S. C. §§1604, 1609. But those grants of immunity are subject to exception.

Petitioners hold a judgment against respondent Islamic Republic of Iran pursuant to one such exception to jurisdictional immunity, which applies where the foreign state is designated as a state sponsor of terrorism and the claims arise out of acts of terrorism. See §1605A. The issue presented in this case is whether certain property of Iran, specifically, a collection of antiquities owned by Iran but in the possession of respondent University of Chicago, is subject to attachment and execution by petitioners in satisfaction of that judgment. Petitioners contend that the property is stripped of its immunity by another provision of the FSIA, §1610(g), which they maintain provides a blanket exception to the immunity typically afforded to

the property of a foreign state where the party seeking to attach and execute holds a §1605A judgment.

We disagree. Section 1610(g) serves to identify property that will be available for attachment and execution in satisfaction of a §1605A judgment, but it does not in itself divest property of immunity. Rather, the provision's language "as provided in this section" shows that §1610(g) operates only when the property at issue is exempt from immunity as provided elsewhere in §1610. Petitioners cannot invoke §1610(g) to attach and execute against the antiquities at issue here, which petitioners have not established are exempt from immunity under any other provision in §1610.

I

A

On September 4, 1997, Hamas carried out three suicide bombings on a crowded pedestrian mall in Jerusalem, resulting in the deaths of 5 people and injuring nearly 200 others. Petitioners are United States citizens who were either wounded in the attack or are the close relatives of those who were injured. In an attempt to recover for their harm, petitioners sued Iran in the District Court for the District of Columbia, alleging that Iran was responsible for the bombing because it provided material support and training to Hamas. At the time of that action, Iran was subject to the jurisdiction of the federal courts pursuant to 28 U. S. C. §1605(a)(7) (1994 ed., Supp. II), which rescinded the immunity of foreign states designated as state sponsors of terrorism with respect to claims arising out of acts of terrorism. Iran did not appear in the action, and the District Court entered a default judgment in favor of petitioners in the amount of $71.5 million.[1]

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[1]Congress amended the FSIA in 2008 and replaced 28 U. S. C. §1605(a)(7) with a separate, more expansive provision addressing the foreign sovereign immunity of foreign states that are designated as

When Iran did not pay the judgment, petitioners brought this action in the District Court for the Northern District of Illinois to attach and execute against certain Iranian assets located in the United States in satisfaction of their judgment. Those assets—a collection of approximately 30,000 clay tablets and fragments containing ancient writings, known as the Persepolis Collection—are in the possession of the University of Chicago, housed at its Oriental Institute. University archeologists recovered the artifacts during an excavation of the old city of Persepolis in the 1930's. In 1937, Iran loaned the collection to the Oriental Institute for research, translation, and cataloging.[2]

Petitioners maintained in the District Court, *inter alia*, that §1610(g) of the FSIA renders the Persepolis Collection subject to attachment and execution. The District Court concluded otherwise and held that §1610(g) does not deprive the Persepolis Collection of the immunity typically afforded the property of a foreign sovereign. The Court of Appeals for the Seventh Circuit affirmed. 830 F. 3d 470 (2016). As relevant, the Seventh Circuit held that the text of §1610(g) demonstrates that the provision serves to identify the property of a foreign state or its agencies or

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state sponsors of terrorism, §1605A. See National Defense Authorization Act for Fiscal Year 2008 (NDAA), §1083(a), 122 Stat. 338–341. Shortly thereafter, petitioners moved in the District Court for an order converting their judgment under §1605(a)(7) to one under the new provision, §1605A, which the District Court granted. See *Rubin* v. *Islamic Republic of Iran*, 563 F. Supp. 2d 38, 39, n. 3 (DC 2008).

[2] Petitioners also sought to execute the judgment against three other collections that are no longer at issue in this case: the Chogha Mish Collection, the Oriental Institute Collection, and the Herzfeld Collection. The Chogha Mish Collection has been removed from the territorial jurisdiction of the federal courts, and the Court of Appeals for the Seventh Circuit determined that the Oriental Institute Collection and Herzfeld Collection are not property of Iran. See 830 F. 3d 470, 475–476 (2016). Petitioners do not challenge that decision here.

instrumentalities that are subject to attachment and execution, but it does not in itself divest that property of immunity. The Court granted certiorari to resolve a split among the Courts of Appeals regarding the effect of §1610(g).[3] 582 U. S. ___ (2017). We agree with the conclusion of the Seventh Circuit, and therefore affirm.

B

We start with a brief review of the historical development of foreign sovereign immunity law and the statutory framework at issue here, as it provides a helpful guide to our decision. This Court consistently has recognized that foreign sovereign immunity "is a matter of grace and comity on the part of the United States." *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 486 (1983); *Schooner Exchange* v. *McFaddon,* 7 Cranch 116, 136 (1812). In determining whether to exercise jurisdiction over suits against foreign sovereigns, courts traditionally "deferred to the decisions of the political branches . . . on whether to take jurisdiction over actions against foreign sovereigns." *Verlinden*, 461 U. S., at 486.

Prior to 1952, the State Department generally held the position that foreign states enjoyed absolute immunity from all actions in the United States. See *ibid.* But, as foreign states became more involved in commercial activity in the United States, the State Department recognized that such participation "makes necessary a practice which will enable persons doing business with them to have their rights determined in the courts." J. Tate, Changed Policy

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[3] Compare *Bennett* v. *Islamic Republic of Iran*, 825 F. 3d 949, 959 (CA9 2016) (holding that §1610(g) provides a freestanding exception to attachment and execution immunity); *Weinstein* v. *Islamic Republic of Iran*, 831 F. 3d 470, 483 (CADC 2016) (same); *Kirschenbaum* v. *650 Fifth Avenue and Related Properties*, 830 F. 3d 107, 123 (CA2 2016) (same), with 830 F. 3d, at 481 (concluding that §1610(g) does not create a freestanding exception to immunity).

Concerning the Granting of Sovereign Immunity to Foreign Governments, 26 Dept. State Bull. 984, 985 (1952). The Department began to follow the "restrictive" theory of foreign sovereign immunity in advising courts whether they should take jurisdiction in any given case. Immunity typically was afforded in cases involving a foreign sovereign's public acts, but not in "cases arising out of a foreign state's strictly commercial acts." *Verlinden*, 461 U. S., at 487.

In 1976, Congress enacted the FSIA in an effort to codify this careful balance between respecting the immunity historically afforded to foreign sovereigns and holding them accountable, in certain circumstances, for their actions. 90 Stat. 2891, as amended, 28 U. S. C. §1602 *et seq.* "For the most part, the Act" tracks "the restrictive theory of sovereign immunity." *Verlinden*, 461 U. S., at 488. As a default, foreign states enjoy immunity "from the jurisdiction of the courts of the United States and of the States." §1604. But this immunity is subject to certain express exceptions. For example, in line with the restrictive theory, a foreign sovereign will be stripped of jurisdictional immunity when a claim is based upon commercial activity it carried out in the United States. See, *e.g.*, §1605(a)(2). The FSIA also provides that a foreign state will be subject to suit when it is designated as a state sponsor of terrorism and damages are sought as a result of acts of terrorism. See §1605A(a).

With respect to the immunity of property, the FSIA similarly provides as a default that "the property in the United States of a foreign state shall be immune from attachment arrest and execution." §1609. But, again, there are exceptions, and §1610 outlines the circumstances under which property will not be immune. See §1610. For example, subsection (a) expressly provides that property "shall not be immune" from attachment and execution where, *inter alia*, it is "used for a commercial activity in the

United States" and the "judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based." §1610(a)(7).

Prior to 2008, the FSIA did not address expressly under what circumstances, if any, the agencies or instrumentalities of a foreign state could be held liable for judgments against the state. Faced with that question in *First Nat. City Bank* v. *Banco Para el Comercio Exterior de Cuba*, 462 U. S. 611 (1983) (*Bancec*), this Court held that "government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such." *Id.,* at 626–627. Thus, as a default, those agencies and instrumentalities of a foreign state were to be considered separate legal entities that cannot be held liable for acts of the foreign state. See *id.,* at 628.

Nevertheless, the Court recognized that such a stringent rule should not be without exceptions. The Court suggested that liability would be warranted, for example, "where a corporate entity is so extensively controlled by [the state] that a relationship of principal and agent is created," *id.,* at 629, or where recognizing the state and its agency or instrumentality as distinct entities "would work fraud or injustice," *ibid.* (internal quotation marks omitted). See *id.,* at 630. But the Court declined to develop a "mechanical formula for determining" when these exceptions should apply, *id.,* at 633, leaving lower courts with the task of assessing the availability of exceptions on a case-by-case basis. Over time, the Courts of Appeals coalesced around the following five factors (referred to as the *Bancec* factors) to aid in this analysis:

"(1) the level of economic control by the government;

"(2) whether the entity's profits go to the government;
"(3) the degree to which government officials manage the entity or otherwise have a hand in its daily affairs;
"(4) whether the government is the real beneficiary of the entity's conduct; and
"(5) whether adherence to separate identities would entitle the foreign state to benefits in United States courts while avoiding its obligations." *Walter Fuller Aircraft Sales, Inc.* v. *Republic of Philippines*, 965 F. 2d 1375, 1380, n. 7 (CA5 1992); see also *Flatow* v. *Islamic Republic of Iran*, 308 F. 3d 1065, 1071, n. 9 (CA9 2002).

In 2008, Congress amended the FSIA and added §1610(g). See NDAA §1083(b)(3)(D), 122 Stat. 341–342. Section 1610(g)(1) provides:

"(g) Property in Certain Actions.—
"(1) In general. [T]he property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—
"(A) the level of economic control over the property by the government of the foreign state;
"(B) whether the profits of the property go to that government;
"(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;
"(D) whether that government is the sole beneficiary in interest of the property; or

> "(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations."

Subparagraphs (A) through (E) incorporate almost verbatim the five *Bancec* factors, leaving no dispute that, at a minimum, §1610(g) serves to abrogate *Bancec* with respect to the liability of agencies and instrumentalities of a foreign state where a §1605A judgment holder seeks to satisfy a judgment held against the foreign state. The issue at hand is whether §1610(g) does something more; whether, like the commercial activity exception in §1610(a)(7), it provides an independent exception to immunity so that it allows a §1605A judgment holder to attach and execute against *any* property of the foreign state, regardless of whether the property is deprived of immunity elsewhere in §1610.

II

We turn first to the text of the statute. Section 1610(g)(1) provides that certain property will be "subject to attachment in aid of execution, and execution, upon [a §1605A] judgment *as provided in this section*." (Emphasis added.) The most natural reading is that "this section" refers to §1610 as a whole, so that §1610(g)(1) will govern the attachment and execution of property that is exempted from the grant of immunity as provided elsewhere in §1610. Cf. *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U. S. 471, 487 (1999) (noting that the phrase "[e]xcept as provided in this section" in one subsection serves to incorporate "the rest of" the section in which the subsection appears).

Other provisions of §1610 unambiguously revoke the immunity of property of a foreign state, including specifically where a plaintiff holds a judgment under §1605A, provided certain express conditions are satisfied. For example, subsection (a) provides that "property in the

United States . . . used for a commercial activity in the United States . . . shall not be immune" from attachment and execution in seven enumerated circumstances, including when "the judgment relates to a claim for which the foreign state is not immune under section 1605A . . . ." §1610(a)(7). Subsections (b), (d), and (e) similarly set out circumstances in which certain property of a foreign state "shall not be immune."[4] And two other provisions within §1610 specifically allow §1605A judgment holders to attach and execute against property of a foreign state, "[n]otwithstanding any other provision of law," including those provisions otherwise granting immunity, but only with respect to assets associated with certain regulated and prohibited financial transactions. See §1610(f)(1)(A); Terrorism Risk Insurance Act of 2002 (TRIA), §201(a), 116 Stat. 2337, note following 28 U. S. C. §1610.

Section 1610(g) conspicuously lacks the textual markers, "shall not be immune" or "notwithstanding any other provision of law," that would have shown that it serves as an independent avenue for abrogation of immunity. In fact, its use of the phrase "as provided in this section" signals the opposite: A judgment holder seeking to take advantage of §1610(g)(1) must identify a basis under one of §1610's express immunity-abrogating provisions to attach and execute against a relevant property.

Reading §1610(g) in this way still provides relief to judgment holders who previously would not have been able to attach and execute against property of an agency or instrumentality of a foreign state in light of this Court's decision in *Bancec*. Suppose, for instance, that plaintiffs obtain a §1605A judgment against a foreign state and seek

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[4]Section 1610(b), for example, provides that "any property . . . of [the] agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune" from attachment and execution in satisfaction of a judgment on a claim for which the agency or instrumentality is not immune under §1605A. §1610(b)(3).

to collect against the assets located in the United States of a state-owned telecommunications company. Cf. *Alejandre* v. *Telefonica Larga Distancia de Puerto Rico, Inc.*, 183 F. 3d 1277 (CA11 1999). Prior to the enactment of §1610(g), the plaintiffs would have had to establish that the *Bancec* factors favor holding the agency or instrumentality liable for the foreign state's misconduct. With §1610(g), however, the plaintiffs could attach and execute against the property of the state-owned entity regardless of the *Bancec* factors, so long as the plaintiffs can establish that the property is otherwise not immune (*e.g.*, pursuant to §1610(a)(7) because it is used in commercial activity in the United States).

Moreover, our reading of §1610(g)(1) is consistent "with one of the most basic interpretive canons, that [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley* v. *United States*, 556 U. S. 303, 314 (2009) (internal quotation marks omitted). Section 1610 expressly references §1605A judgments in its immunity-abrogating provisions, such as 28 U. S. C. §§1610(a)(7), (b)(3), (f)(1), and §201 of the TRIA, showing that those provisions extend to §1605A judgment holders' ability to attach and execute against property. If the Court were to conclude that §1610(g) establishes a basis for the withdrawal of property immunity any time a plaintiff holds a judgment under §1605A, each of those provisions would be rendered superfluous because a judgment holder could always turn to §1610(g), regardless of whether the conditions of any other provision were met.[5]

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[5]To the extent petitioners suggest that those references to §1605A were inadvertent, see Brief for Petitioners 41–44, the statutory history further supports the conclusion that §1610(a)(7) applies to §1605A judgment holders, as the reference to §1605A was added to §1610(a)(7) in the same Act that created §§1605A and 1610(g). See NDAA §§1083(a), (b)(3), 122 Stat. 338–342.

The Court's interpretation of §1610(g) is also consistent with the historical practice of rescinding attachment and execution immunity primarily in the context of a foreign state's commercial acts. See *Verlinden*, 461 U. S., at 487–488. Indeed, the FSIA expressly provides in its findings and declaration of purpose that

> "[u]nder international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities." §1602.

This focus of the FSIA is reflected within §1610, as subsections (a), (b), and (d) all outline exceptions to immunity of property when that property is used for commercial activity. The Court's reading of §1610(g) means that individuals with §1605A judgments against a foreign state must primarily invoke other provisions revoking the grant of immunity for property related to commercial activity, including §1610(a)(7), unless the property is expressly carved out in an exception that applies "[n]otwithstanding any other provision of law," §1610(f)(1)(A); §201(a) of the TRIA. That result is consistent with the history and structure of the FSIA.

Throughout the FSIA, special avenues of relief to victims of terrorism exist, even absent a nexus to commercial activity. Where the FSIA goes so far as to divest a foreign state or property of immunity in relation to terrorism-related judgments, however, it does so expressly. See §§1605A, 1610(a)(7), (b)(3), (f)(1)(A); §201(a) of the TRIA. Out of respect for the delicate balance that Congress struck in enacting the FSIA, we decline to read into the statute a blanket abrogation of attachment and execution immunity for §1605A judgment holders absent a clearer indication of Congress' intent.

III

A

Petitioners resist that the phrase "as provided in this section" refers to §1610 as a whole and contend that Congress more likely was referencing a specific provision within §1610 or a section in the NDAA. That explanation is unpersuasive.

Petitioners first assert that "this section" might refer to procedures contained in §1610(f). Section 1610(f) permits §1605A judgment holders to attach and execute against property associated with certain regulated and prohibited financial transactions, §1610(f)(1), and it provides that the United States Secretary of State and Secretary of the Treasury will make every effort to assist in "identifying, locating, and executing against the property of [a] foreign state or any agency or instrumentality of such state," §1610(f)(2). Petitioners point out that paragraph (1) of subsection (f) has never come into effect because it was immediately waived by the President after it was enacted, pursuant to §1610(f)(3).[6] So, the argument goes, it would make sense that Congress created §1610(g) as an alternative mechanism to achieve a similar result.[7]

This is a strained and unnatural reading of the phrase "as provided in this section." In enacting §201(a) of the TRIA, which, similar to 28 U. S. C. §1610(f), permits attachment and execution against blocked assets, Congress signaled that it was rescinding immunity by permitting attachment and execution "[n]otwithstanding any other provision of law." See §201(a) of the TRIA. Had

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[6] Section 1610(f)(3) authorizes the President to waive paragraph (1) of subsection (f) "in the interest of national security." President Clinton immediately waived the provision, and the waiver has never been withdrawn. See Pres. Determ. No. 99–1, 63 Fed. Reg. 59201 (1998); Pres. Determ. No. 2001–03, 65 Fed. Reg. 66483 (2000).

[7] Petitioners reference the decision of the Court of Appeals for the Ninth Circuit in *Bennett*, 825 F. 3d 949, in support of this position.

Congress likewise intended §1610(g) to have such an effect, it knew how to say so. Cf. *Bank Markazi* v. *Peterson*, 578 U. S. ___, ___, n. 2 (2016) (slip op., at 4, n. 2) (noting that "[s]ection 1610(g) does not take precedence over 'any other provision of law,' as the TRIA does").

Petitioners fare no better in arguing that Congress may have intended "this section" to refer only to the instruction in §1610(f)(2) that the United States Government assist in identifying assets. Section 1610(f)(2) does not provide for attachment or execution at all, so petitioners' argument does not account for the lack of textual indicators that exist in provisions like §§1610(a)(7) and (f)(1) that unambiguously abrogate immunity and permit attachment and execution.

Finally, petitioners assert that "this section" could possibly reflect a drafting error that was intended to actually refer to §1083 of the NDAA, the Public Law in which §1610(g) was enacted. This interpretation would require not only a stark deviation from the plain text of §1610(g), but also a departure from the clear text of the NDAA. Section 1083(b)(3) of the NDAA provides that "Section 1610 of title 28, United States Code, is amended . . . by adding at the end" the new subsection "(g)." 122 Stat. 341. The language "this section" within (g), then, clearly and expressly incorporates the NDAA's reference to "Section 1610" as a whole. There is no basis to conclude that Congress' failure to change "this section" in §1610(g) was the result of a mere drafting error.

B

In an effort to show that §1610(g) does much more than simply abrogate the *Bancec* factors, petitioners argue that the words "property of a foreign state," which appear in the first substantive clause of §1610(g), would otherwise be rendered superfluous because the property of a foreign state will never be subject to a *Bancec* inquiry. By its

plain text, §1610(g)(1) permits enforcement of a §1605A judgment against both the property of a foreign state and the property of the agencies or instrumentalities of that foreign state. Because the *Bancec* factors would never have applied to the property of a foreign state, petitioners contend, those words must signal something else: that §1610(g) provides an independent basis for the withdrawal of immunity.

The words "property of a foreign state" accomplish at least two things, however, that are consistent with the Court's understanding of the effect of §1610(g). First, §1610(g) serves to identify in one place all the categories of property that will be available to §1605A judgment holders for attachment and execution, whether it is "property of the foreign state" or property of its agencies or instrumentalities, and commands that the availability of such property will not be limited by the *Bancec* factors. So long as the property is deprived of its immunity "as provided in [§1610]," all of the types of property identified in §1610(g) will be available to §1605A judgment holders.

Second, in the context of the entire phrase, "the property of a foreign state against which a judgment is entered under section 1605A," the words "foreign state" identify the type of judgment that will invoke application of §1610(g); specifically, a judgment held against a foreign state and entered under §1605A. Without this opening phrase, §1610(g) would abrogate the *Bancec* presumption of separateness in all cases, not just those involving terrorism judgments under §1605A. The words, "property of a foreign state," thus, are not rendered superfluous under the Court's reading because they do not merely identify a category of property that is subject to §1610(g) but also help inform when §1610(g) will apply in the first place. Indeed, §1610(g) would make no sense if those words were removed.

C

All else aside, petitioners contend that any uncertainty in §1610(g) should be resolved by giving full effect to the legislative purpose behind its enactment. Petitioners posit that Congress enacted §1610(g) "with the specific purpose of removing the remaining obstacles to terrorism judgment enforcement." Brief for Petitioners 26. In support of that position, they reference a brief discussion of §1610(g) in a footnote to the Court's decision in *Bank Markazi*, 578 U. S. ___, that notes that Congress "expand[ed] the availability of assets for postjudgment execution" when it added §1610(g) by making "available for execution the property (whether or not blocked) of a foreign state sponsor of terrorism, or its agency or instrumentality, to satisfy a judgment against that state." *Id.*, at ___, n. 2 (slip op., at 4, n. 2). But *Bank Markazi*'s characterization of §1610(g) simply mirrors the text of §1610(g) and is entirely consistent with the Court's holding today that §1610(g) expands the assets available for attachment and execution by abrogating this Court's decision in *Bancec* with respect to judgments held under §1605A. Beyond their citation to *Bank Markazi*, petitioners have not directed us to any evidence that supports their position that §1610(g) was intended to divest all property of a foreign state or its agencies or instrumentalities of immunity.

IV

For the foregoing reasons, we conclude that 28 U. S. C. §1610(g) does not provide a freestanding basis for parties holding a judgment under §1605A to attach and execute against the property of a foreign state, where the immunity of the property is not otherwise rescinded under a separate provision within §1610. The judgment of the Seventh Circuit is affirmed.

It is so ordered.

JUSTICE KAGAN took no part in the consideration or decision of this case.

Annex 60

***Peterson, et al. v. Iran, Bank Markazi, Banca UBAE, Clearstream, JP Morgan Chase Bank,* U.S. Court of Appeals for the Second Circuit, Bank Markazi's Motion to Stay the Mandate, 26 February 2018, Case 15-0690-cv**

15-0690-cv

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

DEBORAH D. PETERSON, et al.,
Plaintiffs-Appellants,

v.

ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI, AKA CENTRAL BANK OF IRAN, BANCA UBAE S.p.A., CLEARSTREAM BANKING, S.A., JPMORGAN CHASE BANK, N.A.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BANK MARKAZI'S MOTION TO STAY THE MANDATE

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Bank Markazi, AKA Central Bank of Iran

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Pursuant to Federal Rule of Appellate Procedure 41(d)(2), Defendant-Appellee Bank Markazi respectfully moves to stay this Court's mandate pending the filing and disposition of a petition for a writ of certiorari.

ARGUMENT

On November 21, 2017, this Court ruled that certain assets held in Luxembourg by Clearstream Banking S.A. allegedly for the benefit of Bank Markazi are not entitled to immunity under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§1602 *et seq.* App. Dkt. 322. On February 12, 2018, Clearstream moved to stay this Court's mandate pending the filing of a petition for a writ of certiorari. App. Dkt. 342. The stay of the mandate, if granted, would have afforded relief as to all defendants, allowing sufficient time for each of them to seek review. Bank Markazi thus had no reason to file a separate motion repeating Clearstream's arguments, which amply demonstrate both a "substantial question" for review and "good cause" for a stay as required by Rule 41(d)(2).

Plaintiffs' opposition, filed on February 22, 2018, nonetheless singles out Bank Markazi's decision not to file redundant papers, arguing that it somehow implies a lack of merit to Clearstream's submission. *See, e.g.,* App. Dkt. 344 at 2 (asserting that "[t]he failure of Markazi—the real party in interest—to file its own motion to stay the mandate underscores the absence of any irreparable injury"). To

avoid any possible doubt, Bank Markazi respectfully submits this separate motion to make its position clear.

Bank Markazi agrees with Clearstream that a petition for a writ of certiorari from this Court's judgment would present a substantial question for precisely the reasons Clearstream sets forth. Bank Markazi expects to file its own petition for a writ of certiorari seeking review of this Court's decision on grounds similar to those Clearstream identifies.

The threat of irreparable harm absent a stay is likewise clear. Clearstream and Bank Markazi claim that the assets at issue are protected by sovereign immunity. It is well-established that a denial of immunity constitutes irreparable harm that cannot be remedied by later review in the case—and thus, *a fortiori*, "good cause" sufficient to justify a stay of the mandate. *See, e.g.*, *Mitchell v. Forsyth*, 472 U.S. 511, 526-527 (1985) (denial of immunity "effectively unreviewable on appeal from a final judgment"); *Rein v. Socialist People's Libyan Arab Jamahiriya*, 162 F.3d 748, 756 (2d Cir. 1998) (when sovereign immunity is at stake, "appeal from final judgment cannot repair the damage that is caused by requiring the defendant to litigate"). Clearstream properly asserted that immunity interest as the custodian of the assets at issue. *See Rubin v. Islamic Republic of Iran*, 637 F.3d 783, 801 (7th Cir. 2011) ("party in possession of the property" may invoke immunity).

The threat to immunity looms large here. Whether or not the district court ultimately distributes the assets to plaintiffs, a mere order directing Clearstream to transfer the assets to the United States would itself be a significant restraint on the use of the property and thus an infringement of Bank Markazi's sovereign immunity. *See, e.g.*, *Stephens v. Nat'l Distillers & Chem. Corp.*, 69 F.3d 1226, 1229-30 (2d Cir. 1995) (order requiring sovereign to post security was a forbidden "attachment" within the meaning of the FSIA because it would "force [the] foreign sovereign . . . to place some of [its] assets in the hands of the United States courts for an indefinite period"). That threatened harm to sovereign interests amply supports a stay of the mandate.

CONCLUSION

For the foregoing reasons and those advanced earlier by Clearstream, Bank Markazi's motion to stay the mandate should be granted.

Dated: February 26, 2018
New York, New York

Respectfully submitted,

/s/ Donald F. Luke

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Marjory T. Herold
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Bank Markazi, AKA Central Bank of Iran

Annex 61

***Hoglan, et al. v. The Islamic Republic of Iran, et al.,* U.S. District Court for the Southern District of New York, Restraining Notice to Clearstream Banking S.A., 26 March 2018, Case Nos. 1:11-cv-07550 and 1:03-md-01570**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALICE HOGLAN, *et al.*,

Plaintiffs-Judgment Creditors,

v.

THE ISLAMIC REPUBLIC OF IRAN *et al*,

Defendants-Judgment Debtors.

Case Nos.
1:11-cv-07550 (GBD)(SN)
1:03-md-01570 (GBD)(SN)

RESTRAINING NOTICE

TO: Clearstream Banking, S.A.
1155 Avenue of the Americas, 19th Floor
New York, NY 10036

WHEREAS, in an action in the United States District Court for the Southern District of New York captioned as *Hoglan, et al. v. Islamic Republic of Iran.*, Case No. 1:11-cv-07550 (GBD)(FM) which is part of the multi-district litigation *In re: Terrorist Attacks on September 11, 2001*, 1:03-md-01570 (GBD)(SN), between Alice Hoglan and the other judgment creditors listed in Exhibit A hereto (the "*Hoglan* Judgment Creditors"), as plaintiffs, and the Islamic Republic of Iran, Ayatollah Ali Hosseini Khamenei, Ali Akbar Rafsanjani, the Iranian Ministry of Information and Security, the Islamic Revolutionary Guard Corps, 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 Central Bank of Iran, *a.k.a.* Bank Markazi, the National Iranian Petrochemical Company, the National Iranian Oil Company, the National Iranian Tanker Company, the National Iranian Gas Company, Iran Air, and Hezbollah (collectively, the "Judgment Debtors"), as defendants, who are all the parties named in said action, a judgment (a copy of which is annexed hereto as Exhibit B) was entered pursuant to 28 U.S.C. § 1605A on February 26, 2018, in favor of *Hoglan* Judgment Creditors and against Judgment Debtors in the amount of $3,325,549,005.58 in compensatory damages, which sum includes pre-judgment interest at the rate of 4.96% per year awarded on the pain-and-suffering and solatium portions of the compensatory damages (collectively $1,372,375,000) from September 11, 2001 through October 31, 2016, in the amount of $1,483,708,970.58, plus post-judgment interest on the total sum of compensatory damages from October 31, 2016 through the date of this Restraining Notice in the amount of $69,805,972.43, for a total amount of $3,395,354,978.01, of which $3,263,329,149.28 remains uncollected, due, and unpaid; and

WHEREAS, it appears that you owe a debt to the Islamic Republic of Iran, a political subdivision of the Islamic Republic of Iran, or an agency or instrumentality of the Islamic Republic of Iran, including but not limited to any Judgment Debtor ("any Restrained Entity") or are in possession of or have custody of property in which any Restrained Entity has an interest including, without limitation, the financial assets described in 22 U.S.C. Section 8772 as amended by the National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, 113 Stat. 1198 (December 20, 2019);

TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 69(a) and New York

Civil Practice Law and Rules § 5222(b), which is set forth below, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any property in which a Judgment Debtor, or other agencies or instrumentality of the Islamic Republic of Iran, have an interest, except as therein provided, including but not limited to any property held in accounts (a) in the name of the Central Bank of Iran *a.k.a.* Bank Markazi ("Bank Markazi"); (b) in the name of Banca UBAE, S.p.A. for the benefit of Bank Markazi; or (c) in any blocked account containing property in which Bank Markazi, or any other Judgment Debtor, has an economic or beneficial interest.

TAKE FURTHER NOTICE that this notice also covers all property in which any Restrained Entity has an interest hereafter coming into your possession or custody, and all debts hereafter coming due from you to any Restrained Entity.

SECTION 5222(b) OF THE NEW YORK CIVIL PRACTICE LAW AND RULES

Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt of court.

Date: March 26, 2020

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Attorneys for the Hoglan Judgment Creditors

EXHIBIT A

Estates of 9/11 Decedents

Estate of Siew Nya Ang
Estate of Mark Kendall Bingham
Estate of Joyce Ann Carpeneto
Estate of Wayne T. Davis
Estate of Timmy Grazioso
Estate of LeRoy W. Homer, Jr.
Estate of Hweidar Jian
Estate of Leon Lebor
Estate of Christopher E. Lunder
Estate of Joseph D. Mistrulli
Estate of Louis Nacke
Estate of Sandra Wright-Cartledge
Estate of Marc Scott Zeplin

Solatium Plaintiffs

Alice Hoglan *a.k.a.* Hoagland
Kui Liong Lee
Winnee Lee
Jeanee Lee
Arline Peabody-Bane
Brian Major
Brenda E. Jobe
Joseph Carpento
Dian Dembinski
Loretta Haines
Stephen Bradish
Jack Bradish
Geraldine Deborah Spaeter
Nicholas Chirchirillo
Michael Chirchirillo
JoanAnn Coale
Leslie Coale Brown
Estate of Jeanette Coffey
Estate of Daniel F. Coffey, Jr.
Colleen McDonald
Estate of Beverly Sutton
Carolyn Sutton
Vicki Lynn Michel
Keith Bradkowski

Kathryn Collman
Charles Gengler
Steven Gengler
Susan Bohan
Tanya Davis
Gabrielle Hunter Davis
Malachai Roarke Davis
Noverta Davis-Dean
Jason Diehl
Jeannette Diehl
Emma Fernandez Regan
Cirilo Fernandez
Richard Fernandez
Renee L. Gamboa
Estate of Ranulf Gamboa
Maria Joule
Rachel G. Malubay
Estate of James Bond Godshalk
Jane G. Haller
Aleese Hartmann
Kathryn Grazioso
Kristen Grazioso
Michael Grazioso
Sandra Grazioso
Carolee Azzarello
Karen Ventre
Krysty Grazioso
Deborah Grazioso
Sandra Grazioso
Carolee Azzarello
Lauren Grazioso
Briana Grazioso
Karen Ventre
Krysty Grazioso
Douglas Halvorson
Estate of Evelyn Halvorson
Kate Halvorson
Michaela Havlish
Lea Michaela Bitterman
Sean Bitterman
Derrick Hobin
Melodie Homer
Laurel Homer

Ju-Hsiu Jian
William Jian
Kevin Jian
Audrey R. Jones
John R. Jones
Robert A. Jones
Candy Moyer
Anita Korsonsky
Dina LaFond
Estate of Emily Lavelle
Patricia Caloia
Barbara Dziadek
Kathleen Palacio
Paul Lavelle
Estate of Bessie Lebor
Barbara Lurman
Joy *a.k.a* Rina Kaufman
Stephanie Giglio
Estate of Carmello Joseph LoGuidice
Joseph Lostrangio, Jr.
Cathryn Lostrangio
James Lostrangio
Karen Lunder
Erich Maerz
Ramon Melendez
Ricky Melendez
Jesse Melendez
Tyler Melendez
Florence Rosario
Margaret Montanez
Peter C. Milano
Jessica Milano
Alfred Milano
Frank Milano
Maureen Racioppi
Thomas Milano
Philomena Mistrulli
MaryAnn Mistrulli
Joseph Mistrulli
Angela Mistrulli Cantone
Estate of Ann Mistrulli
Maria Lambert
Johnny Mistrulli

Rolando Ruben Moreno
Leiana Moreno
Noelia Moreno
Amy Martinez
Eric Nunez
Neal Green
Theresa Papasso
Salvatore Papasso
Vincent Papasso
James Perry
Joel R. Perry
Janice Perry
Estate of Claudia Stallworth
Reginald Simpson
Roosevelt Stallworth
Carl Stallworth
Cynthia Watts
Angela Stallworth-Blunt
Brian Christian
Amanda Rogers
Gary Reiss
Adam Reiss
Jordan Reiss
Jonathan Reiss
Jennifer Reiss
Estate of Carmen Romero
Issac Romero
Diana Diaz
Estate of Evan Rosenthal
Estate of Seth Rosenthal
Estate of Leonard Rosenthal
Estate of Florence Rosenthal
Audrey Model
Victor Santillan
Raymond Santillan
Kirsten Saracini
Brielle Saracini
Lori Brody
Ellen Schertzer
Roy-Yetkutiel Shefi
Naomi-Ruth Shefi
Patricia Sloan
Matt Sloan

Sarah Funk
Raymond Smith, Jr.
Carl Smith
Kevin Smith
Korry Smith
Tanya Warren
Latricia Smith
Elaine Smith
Christine Jackson
Barbara Hargrove
Estate of Deborah Sallad
Estate of Marion Thomas
Timothy P. Soulas, Jr.
Andrew J. Soulas
Christopher Soulas
Matthew Soulas
Nicole Soulas
Daniel Soulas
Frederick Soulas
Stephen Soulas
Frederick Soulas III
Dan Soulas
Michelle Donlan
Darren Steiner
Jordan Steiner
Meridith Reverdito
Estate of Wilma Steiner
Robert Steiner
George Steiner
Kathleen Stergiopoulos
George Stergiopoulos, Jr.
Aaron Straub
Jonathan Straub
Michael Straub
Samuel Straub
Edward Straub
Stanley Straub
Matthew Straub
Salvatore Tino, Jr.
Jeffrey Tino
Salvatore Tino, III
Joseph Nicklo
Mellanie Chafe

Christopher Barton
John Barton
Estate of Susanne Ward-Baker
Jeanne McDermott
Debra Zeplin
Ryan Zeplin
Ethan Zeplin

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

***IN RE* TERRORIST ATTACKS ON SEPTEMBER 11, 2001**

FINAL ORDER AND JUDGMENT ON COMPENSATORY DAMAGES

1:03 MDL 1570 (GBD)(SN)

This Document Relates to
Hoglan v. Iran
1:11-cv-07550 (GBD)(SN)

WHEREAS, evidence as to liability in this matter was submitted by Plaintiffs in filings with this Court on July 10, 2015;

WHEREAS, a hearing on liability was held on August 17, 2015, at which evidence was presented, including the evidence previously 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, in addition to supplemental evidence filed with this Court, including extensive evidence filed confidentially under seal, and the July 10, 2015 evidence referenced above, all of which was admitted into evidence in this case;

WHEREAS, on August 31, 2015, this Court entered Findings of Fact and Conclusions of Law and further, on that same date, issued an Order of Judgment based on such Findings of Fact and Conclusions of Law, the evidence presented in support thereof, and the entire record in this case, thereby entering final judgment as to liability in favor of Plaintiffs and against the following Defendants:

1. Islamic Republic of Iran;
2. Ayatollah Ali Hoseini-Khamenei;

3. Ali Akbar Hashemi Rafsanjani;

4. Iran's Ministry of Information and Security;

5. Islamic Revolutionary Guard Corps;

6. Iran's Ministry of Petroleum;

7. National Iranian Oil Corporation;

8. National Iranian Tanker Corporation;

9. National Iranian Gas Company;

10. National Iranian Petrochemical Company;

11. Iran's Ministry of Commerce;

12. Iran's Ministry of Economic Affairs and Finance;

13. Iran's Ministry of Defense and Armed Forces Logistics;

14. Iran Airlines;

15. Central Bank of Iran; and,

16. Hezbollah;

WHEREAS, United States Magistrate Judge Sarah Netburn issued Reports and Recommendations on October 12, 2016, October 14, 2016, October 24, 2016, and August 8, 2017, with regard to the award of damages;

WHEREAS, this Court adopted these four Reports and Recommendations in Orders dated October 31, 2016, June 21, 2017, and November 17, 2017, respectively;

WHEREAS, this Court entered Partial Final Judgments dated October 31, 2016, June 21, 2017, and November 17, 2017;

WHEREAS, Plaintiffs have requested that a single Final Judgment with regard to compensatory damages and prejudgment interest for all of the successful Plaintiffs, and naming

each of the liable Defendants, be entered in this case, for purposes of clarity for any judgment enforcement action;

It is HEREBY

ORDERED that the final compensatory damages judgment is entered in favor of Plaintiffs, comprised of the thirteen (13) Decedent's Estate Plaintiffs and the two hundred, three (203) Individual Family Members Plaintiffs listed in this Order and Judgment, and against all sixteen (16) Defendants listed above; and, it is FURTHER

ORDERED that such Plaintiffs are awarded: *(1)* economic compensatory damages to the thirteen (13) Decedent's Estate Plaintiffs in the aggregate amount of $469,465,035, as more specifically set forth below; *(2)* compensatory damages for pain and suffering of $2,000,000 per Decedent's Estate Plaintiff for a total of $26,000,000, as more specifically set forth below; *(3)* compensatory damages for solatium to the Individual Family Members Plaintiffs totaling $1,346,375,000, as more specifically set forth herein below; and, *(4)* prejudgment interest on the amount of $1,372,375,000 awarded herein for compensatory pain and suffering and solatium damages from September 11, 2001, to the date of judgment at the rate of 4.96 percent per annum, compounded annually; and, it is FURTHER

ORDERED that each and every one of the Defendants is jointly and severally liable for the entire JUDGMENT on compensatory damages; and, it is FURTHER

ORDERED that Plaintiffs' request for punitive damages is DENIED WITHOUT PREJUDICE to being considered in conjunction with the same issue in other cases in the multi-district litigation captioned *In Re: Terrorist Attacks on September 11, 2001*, 1:03 MDL 1570 (GBD)(SN); and, it is FURTHER

ORDERED that the economic compensatory damages and non-economic compensatory damages awarded to the thirteen (13) Decedent's Estate Plaintiffs are as follows:

DECEDENT	ECONOMIC LOSS	PAIN & SUFFERING	TOTAL AWARD
Estate of Siew Nya Ang	$7,407,342	$2,000,000	**$9,407,342**
Estate of Mark Kendall Bingham	$7,617,663	$2,000,000	**$9,617,663**
Estate of Joyce Ann Carpeneto	$1,926,378	$2,000,000	**$3,926,378**
Estate of Wayne T. Davis	$9,388,123	$2,000,000	**$11,388,123**
Estate of Timmy Grazioso	$307,289,003	$2,000,000	**$309,289,003**
Estate of LeRoy W. Homer, Jr.	$9,281,150	$2,000,000	**$11,281,150**
Estate of Hweidar Jian	$10,108,875	$2,000,000	**$12,108,875**
Estate of Leon Lebor	$747,568	$2,000,000	**$2,747,568**
Estate of Christopher E. Lunder	$34,961,894	$2,000,000	**$36,961,894**
Estate of Joseph D. Mistrulli	$4,999,143	$2,000,000	**$6,999,143**
Estate of Louis Nacke	$8,185,357	$2,000,000	**$10,185,357**
Estate of Sandra Wright-Cartledge	$1,132,626	$2,000,000	**$3,132,626**
Estate of Marc Scott Zeplin	$66,419,913	$2,000,000	**$68,419,913**
TOTAL	**$469,465,035**	**$26,000,000**	**$495,465,035;**

AND IT IS FURTHER ORDERED that compensatory damages for solatium for the Individual Family Members Plaintiffs are awarded as follows:

DECEDENT	PLAINTIFF	RELATIONSHIP	SOLATIUM
Mark Kendall Bingham	Alice Hoglan *a/k/a* Hoagland	Parent	$8,500,000
Siew Nya Ang	Kui Liong Lee	Spouse	$12,500,000
Siew Nya Ang	Winnee Lee	Child	$8,500,000
Siew Nya Ang	Jeanee Lee	Child	$8,500,000
Michael Bane	Arline Peabody-Bane	Step-Parent	$4,250,000
Michael Bane	Brian Major	Step-Sibling	$2,125,000
Michael Bane	Brenda E. Jobe	Step-Sibling	$2,125,000
Joyce Ann Carpento	Joseph Carpento	Sibling	$4,250,000
Sandra Wright Cartledge	Dian Dembinski	Sibling	$4,250,000
Sandra Wright Cartledge	Loretta Haines	Sibling	$4,250,000
Sandra Wright Cartledge	Stephen Bradish	Sibling	$4,250,000
Sandra Wright Cartledge	Jack Bradish	Sibling	$4,250,000
Sandra Wright Cartledge	Geraldine Deborah Spacter	Sibling	$4,250,000
Peter Chirchirillo	Nicholas Chirchirillo	Child	$8,500,000
Peter Chirchirillo	Michael Chirchirillo	Child	$8,500,000
Jeffrey Coale	JoanAnn Coale	Parent	$8,500,000
Jeffrey Coale	Leslie Coale Brown	Sibling	$4,250,000

Daniel M. Coffey	Jeanette Coffey	Parent	$8,500,000
Daniel M. Coffey	Estate of Daniel F. Coffey, Jr.	Parent	$8,500,000
Jason Coffey	Colleen McDonald	Fiancee	$12,500,000
Jeffrey Collman	Estate of Beverly Sutton	Parent	$8,500,000
Jeffrey Collman	Carolyn Sutton	Sibling	$4,250,000
Jeffrey Collman	Vicki Lynn Michel	Sibling	$4,250,000
Jeffrey Collman	Keith Bradkowski	Spouse	$12,500,000
Jeffrey Collman	Kathryn Collman	Step-Parent	$4,250,000
Jeffrey Collman	Charles Gengler	Step-Sibling	$2,125,000
Jeffrey Collman	Steven Gengler	Step-Sibling	$2,125,000
Jeffrey Collman	Susan Bohan	Step-Sibling	$2,125,000
Wayne T. Davis	Tanya Davis	Spouse	$12,500,000
Wayne T. Davis	Gabrielle Hunter Davis	Child	$8,500,000
Wayne T. Davis	Malachai Roarke Davis	Child	$8,500,000
Wayne T. Davis	Noverta Davis-Dean	Parent	$8,500,000
Michael Diehl	Jason Diehl	Child	$8,500,000
Michael Diehl	Jeannette Diehl	Child	$8,500,000
Judy Fernandez	Emma Fernandez Regan	Sibling	$4,250,000
Judy Fernandez	Cirilo Fernandez	Parent	$8,500,000
Judy Fernandez	Richard Fernandez	Sibling	$4,250,000
Ronald Gamboa	Renee L. Gamboa	Parent	$8,500,000
Ronald Gamboa	Estate of Ranulf Gamboa	Parent	$8,500,000
Ronald Gamboa	Maria Joule	Sibling	$4,250,000
Ronald Gamboa	Rachel G. Malubay	Sibling	$4,250,000
William Godshalk	James Bond Godshalk	Parent	$8,500,000
William Godshalk	Jane G. Haller	Sibling	$4,250,000
William Godshalk	Aleese Hartmann	Fiancee	$12,500,000
John Grazioso	Kathryn Grazioso	Child	$8,500,000
John Grazioso	Kristen Grazioso	Child	$8,500,000
John Grazioso	Michael Grazioso	Child	$8,500,000
John Grazioso	Sandra Grazioso	Parent	$8,500,000
John Grazioso	Carolee Azzarello	Sibling	$4,250,000
John Grazioso	Karen Ventre	Sibling	$4,250,000
John Grazioso	Krysty Grazioso	Sibling	$4,250,000
Timmy Grazioso	Deborah Grazioso	Spouse	$12,500,000
Timmy Grazioso	Sandra Grazioso	Parent	$8,500,000
Timmy Grazioso	Carolee Azzarello	Sibling	$4,250,000
Timmy Grazioso	Lauren Grazioso	Child	$8,500,000
Timmy Grazioso	Briana Grazioso	Child	$8,500,000
Timmy Grazioso	Karen Ventre	Sibling	$4,250,000
Timmy Grazioso	Krysty Grazioso	Sibling	$4,250,000
James Halvorson	Douglas Halvorson	Child	$8,500,000
James Halvorson	Estate of Evelyn Halvorson	Parent	$8,500,000

James Halvorson	Kate Halvorson	Sibling	$4,250,000
Donald J. Havlish	Michaela Havlish	Child	$8,500,000
Donald G. Havlish	Lea Michaela Bitterman	Step-Child	$8,500,000
Donald G. Havlish	Sean Bitterman	Step-Child	$8,500,000
James Jeffery Hobin	Derrick Hobin	Child	$8,500,000
LeRoy W. Homer, Jr.	Melodie Homer	Spouse	$12,500,000
LeRoy W. Homer, Jr.	Laurel Homer	Child	$8,500,000
Hweidar Jian	Ju-Hsiu Jian	Spouse	$12,500,000
Hweidar Jian	William Jian	Child	$8,500,000
Hweidar Jian	Kevin Jian	Child	$8,500,000
Donald W. Jones	Audrey R. Jones	Parent	$8,500,000
Donald W. Jones	John R. Jones	Parent	$8,500,000
Donald W. Jones	Robert A. Jones	Sibling	$4,250,000
Donald W. Jones	Candy Moyer	Sibling	$4,250,000
Jeanette LaFond-Menchino	Anita Korsonsky	Sibling	$4,250,000
Jeanette LaFond-Menchino	Dina LaFond	Parent	$8,500,000
Denis Lavelle	Estate of Emily Lavelle	Parent	$8,500,000
Denis Lavelle	Patricia Caloia	Sibling	$4,250,000
Denis Lavelle	Barbara Dziadek	Sibling	$4,250,000
Denis Lavelle	Kathleen Palacio	Sibling	$4,250,000
Denis Lavelle	Paul Lavelle	Sibling	$4,250,000
Leon Lebor	Bessie Lebor	Parent	$8,500,000
Leon Lebor	Barbara Lurman	Child	$8,500,000
Leon Lebor	Joy a.k.a Rina Kaufman	Sibling	$4,250,000
Robert Levine	Stephanie Giglio	Child	$8,500,000
Catherine Lisa LoGuidice	Estate of Carmello Joseph LoGuidice	Parent	$8,500,000
Joseph Lostrangio	Joseph Lostrangio, Jr.	Child	$8,500,000
Joseph Lostrangio	Cathryn Lostrangio	Child	$8,500,000
Joseph Lostrangio	James Lostrangio	Parent	$8,500,000
Christopher E. Lunder	Karen Lunder	Spouse	$12,500,000
Noell Maerz	Erich Maerz	Sibling	$4,250,000
Mary Melendez	Ramon Melendez	Child	$8,500,000
Mary Melendez	Ricky Melendez	Child	$8,500,000
Mary Melendez	Jesse Melendez	Child	$8,500,000
Mary Melendez	Tyler Melendez	Child	$8,500,000
Mary Melendez	Florence Rosario	Sibling	$4,250,000
Mary Melendez	Margaret Montanez	Sibling	$4,250,000
Peter T. Milano	Peter C. Milano	Child	$8,500,000
Peter T. Milano	Jessica Milano	Child	$8,500,000
Peter T. Milano	Alfred Milano	Sibling	$4,250,000
Peter T. Milano	Frank Milano	Sibling	$4,250,000
Peter T. Milano	Maureen Racioppi	Sibling	$4,250,000

Peter T. Milano	Thomas Milano	Sibling	$4,250,000
Joesph D. Mistrulli	Philomena Mistrulli	Spouse	$12,500,000
Joesph D. Mistrulli	MaryAnn Mistrulli	Child	$8,500,000
Joesph D. Mistrulli	Joseph Mistrulli	Child	$8,500,000
Joesph D. Mistrulli	Angela Mistrulli Cantone	Child	$8,500,000
Joesph D. Mistrulli	Ann Mistrulli	Parent	$8,500,000
Joesph D. Mistrulli	Maria Lambert	Sibling	$4,250,000
Joesph D. Mistrulli	Johnny Mistrulli	Sibling	$4,250,000
Yvette Moreno	Rolando Ruben Moreno	Sibling	$4,250,000
Yvette Moreno	Leiana Moreno	Sibling	$4,250,000
Yvette Moreno	Noelia Moreno	Sibling	$4,250,000
Louis Nacke	Amy Martinez	Spouse	$12,500,000
Brian Nunez	Eric Nunez	Sibling	$4,250,000
Brian Nunez	Neal Green	Sibling	$4,250,000
Salvatore T. Papasso	Theresa Papasso	Parent	$8,500,000
Salvatore T. Papasso	Salvatore Papasso	Parent	$8,500,000
Salvatore T. Papasso	Vincent Papasso	Sibling	$4,250,000
John Perry	James Perry	Parent	$8,500,000
John Perry	Joel R. Perry	Sibling	$4,250,000
John Perry	Janice Perry	Sibling	$4,250,000
Marsha Ratchford	Claudia Stallworth	Parent	$8,500,000
Marsha Ratchford	Reginald Simpson	Sibling	$4,250,000
Marsha Ratchford	Roosevelt Stallworth	Sibling	$4,250,000
Marsha Ratchford	Carl Stallworth	Sibling	$4,250,000
Marsha Ratchford	Cynthia Watts	Sibling	$4,250,000
Marsha Ratchford	Angela Stallworth-Blunt	Sibling	$4,250,000
Marsha Ratchford	Brian Christian	Sibling	$4,250,000
Marsha Ratchford	Amanda Rogers	Sibling	$4,250,000
Joshua Reiss	Gary Reiss	Parent	$8,500,000
Joshua Reiss	Adam Reiss	Sibling	$4,250,000
Joshua Reiss	Jordan Reiss	Sibling	$4,250,000
Joshua Reiss	Jonathan Reiss	Sibling	$4,250,000
Joshua Reiss	Jennifer Reiss	Sibling	$4,250,000
Elvin Romero	Estate of Carmen Romero	Parent	$8,500,000
Elvin Romero	Issac Romero	Parent	$8,500,000
Elvin Romero	Diana Diaz	Sibling	$4,250,000
Richard Rosenthal	Estate of Evan Rosenthal	Child	$8,500,000
Richard Rosenthal	Seth Rosenthal	Child	$8,500,000
Richard Rosenthal	Estate of Leonard Rosenthal	Parent	$8,500,000
Richard Rosenthal	Estate of Florence Rosenthal	Parent	$8,500,000
Richard Rosenthal	Audrey Model	Sibling	$4,250,000
Maria Theresa Santillan	Victor Santillan	Sibling	$4,250,000
Maria Theresa Santillan	Raymond Santillan	Sibling	$4,250,000

EXEMPTION NOTICE

as required by New York Law

YOUR BANK ACCOUNT IS RESTRAINED OR "FROZEN"

The attached Restraining Notice or notice of Levy by Execution has been issued against your bank account. You are receiving this notice because a creditor has obtained a money judgment against you, and one or more of your bank accounts has been restrained to pay the judgment. A money judgment is a court's decision that you owe money to a creditor. You should be aware that FUTURE DEPOSITS into your account(s) might also be restrained if you do not respond to this notice.

You may be able to "vacate" (remove) the judgment. If the judgment is vacated, your bank account will be released. Consult an attorney (including free legal services) or visit the court clerk for more information about how to do this.

Under state and federal law, certain types of funds cannot be taken from your bank account to pay a judgment. Such money is said to be "exempt."

DOES YOUR BANK ACCOUNT CONTAIN ANY OF THE FOLLOWING TYPES OF FUNDS?

1. Social security;

2. Social security disability (SSD);

3. Supplemental security income (SSI);

4. Public assistance (welfare);

5. Income earned while receiving SSI or public assistance;

6. Veterans benefits;

7. Unemployment insurance;

8. Payments from pensions and retirement accounts;

9. Disability benefits;

10. Income earned in the last 60 days (90% of which is exempt);

11. Workers' compensation benefits;

12. Child support;

13. Spousal support or maintenance (alimony);

14. Railroad retirement; and/or

15. Black lung benefits.

If YES, you can claim that your money is exempt and cannot be taken. To make the claim, you must

(a) complete the EXEMPTION CLAIM FORM attached;

(b) deliver or mail the form to the bank with the restrained or "frozen" account; and

(c) deliver or mail the form to the creditor or its attorney at the address listed on the form.

You must send the forms within 20 DAYS of the postmarked date on the envelope holding this notice. You may be able to get your account released faster if you send to the creditor or its attorney written proof that your money is exempt. Proof can include an award letter from the government, an annual statement from your pension, pay stubs, copies of checks, bank records showing the last two months of account activity, or other papers showing that the money in your bank account is exempt. If you send the creditor's attorney proof that the money in your account is exempt, the attorney must release that money within seven days. You do not need an attorney to make an exemption claim using the form.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALICE HOGLAN, *et al.*, Plaintiffs-Judgment Creditors, v. THE ISLAMIC REPUBLIC OF IRAN *et al*, Defendants-Judgment Debtors.	Case Nos. 1:11-cv-07550 (GBD)(SN) 1:03-md-01570 (GBD)(SN) **EXEMPTION CLAIM FORM**

NAME AND ADDRESS OF JUDGMENT CREDITOR OR ATTORNEY

ADDRESS A:

Timothy B. Fleming, of counsel
Wiggins Childs Pantazis Fisher Goldfarb PLLC
1211 Connecticut Avenue, N.W.
Suite 420
Washington, D.C. 20036

NAME AND ADDRESS OF FINANCIAL INSTITUTION

ADDRESS B:

Clearstream Banking, S.A.
1155 Avenue of the Americas, 19th Floor
New York, NY 10036

Directions: To claim that some or all of the funds in your account are exempt, complete both copies of this form, and make one copy for yourself. Mail or deliver one form to ADDRESS A and one form to ADDRESS B within twenty days of the date on the envelope holding this notice. **If you have any documents, such as an award letter, an annual statement from your pension, paystubs, copies of checks or bank records showing the last two months of account activity, include copies of the documents with this form. Your account may be released more quickly.

I state that my account contains the following type(s) of funds (check all that apply):

.... Social security

.... Social security disability (SSD)

.... Supplemental security income (SSI)

.... Public assistance

.... Wages while receiving SSI or public assistance

.... Veterans benefits

.... Unemployment insurance

.... Payments from pensions and retirement accounts

.... Income earned in the last 60 days (90% of which is exempt)

.... Child support

.... Spousal support or maintenance (alimony)

.... Workers' compensation

.... Railroad retirement or black lung benefits

.... Other (describe exemption):_____

I request that any correspondence to me regarding my claim be sent to the following address:

(FILL IN YOUR COMPLETE ADDRESS)

I certify under penalty of perjury that the statement above is true to the best of my knowledge and belief.

DATE

_____
SIGNATURE OF JUDGMENT DEBTOR

NOTICE TO JUDGMENT DEBTOR OR OBLIGOR

Required by NY CPLR 5222(e)

Money or property belonging to you may have been taken or held in order to satisfy a judgment or order which has been entered against you. Read this carefully.

YOU MAY BE ABLE TO GET YOUR MONEY BACK

State and federal laws prevent certain money or property from being taken to satisfy judgments or orders. Such money or property is said to be "exempt". The following is a partial list of money which may be exempt:

1. Supplemental security income, (SSI);

2. Social security;

3. Public assistance (welfare);

4. Spousal support, maintenance (alimony) or child support;

5. Unemployment benefits;

6. Disability benefits;

7. Workers' compensation benefits;

8. Public or private pensions;

9. Veterans benefits;

10. Ninety percent of your wages or salary earned in the last sixty days;

11. Twenty-five hundred dollars of any bank account containing statutorily exempt payments that were deposited electronically or by direct deposit within the last forty-five days, including, but not limited to, your social security, supplemental security income, veterans benefits, public assistance, workers' compensation, unemployment insurance, public or private pensions, railroad retirement benefits, black lung benefits, or child support payments;

12. Railroad retirement; and

13. Black lung benefits.

If you think that any of your money that has been taken or held is exempt, you must act promptly because the money may be applied to the judgment or order. If you claim that any of

your money that has been taken or held is exempt, you may contact the person sending this notice.

Also, YOU MAY CONSULT AN ATTORNEY, INCLUDING ANY FREE LEGAL SERVICES ORGANIZATION IF YOU QUALIFY. You can also go to court without an attorney to get your money back. Bring this notice with you when you go. You are allowed to try to prove to a judge that your money is exempt from collection under New York civil practice law and rules, sections fifty-two hundred twenty-two-a, fifty-two hundred thirty-nine and fifty-two hundred forty. If you do not have a lawyer, the clerk of the court may give you forms to help you prove your account contains exempt money that the creditor cannot collect. The law (New York civil practice law and rules, article four and sections fifty-two hundred thirty-nine and fifty-two hundred forty) provides a procedure for determination of a claim to an exemption.

Annex 62

***Hartwick, et al. v. Iran, et al.*, U.S. District Court for the District of Columbia, Complaint, 7 July 2018, Case No. 1:18-cv-01612**

Excerpts: p. 1, pp. 50-53 & pp. 67-75

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ESTATE OF ROBERT P. HARTWICK, HALEY RUSSELL, HANNAH HARTWICK, LINDA K. HARTWICK, SHARON SCHINETHA STALLWORTH, ANDREW JOHN LENZ, ARAGORN THOR WOLD, CATHERINE S. WOLD, CLINTON CHARLES SPRINGER, II, CORY ROBERT HOWARD, DALE M. HINKLEY, MARK HOWARD BEYERS, DENISE BEYERS, EARL MCCRACKEN , JASON THOMAS WOODLIFF, JIMMY OWEKA OCHAN, JOSHUA CRUTCHER, LARRY CRUTCHER, JOSHUA ROUNTREE, LEIGH ROUNTREE, KADE L. HINKHOUSE, RICHARD HINKHOUSE, SUSAN HINKHOUSE, TROY HINKHOUSE, BRANDON HINKHOUSE, CHAD HINKHOUSE, LISA BIZAN, LATHAN HILL, LARRY HILL, CATHLEEN HOLY, EDWARD PULIDO, KAREN PULIDO, K.P., A MINOR CHILD, MANUEL PULIDO, ANGELA PULIDO, MANUEL "MANNIE" PULIDO, YADIRA HOLMES, MATTHEW GOWIN, AMANDA GOWIN, SHAUN D. GARRY, S.D., A MINOR CHILD, SUSAN GARRY, ROBERT GARRY, PARTICK GARRY, MEGHAN GARRY, BRIDGET GARRY, GILBERT MATTHEW BOYNTON, SOFIA T. BOYNTON, BRIAN MICHAEL YORK , JESSE D. CORTRIGHT, JOSEPH CORTRIGHT, DIANA HOTALING, HANNA CORTRIGHT, MICHEALA CORTRIGHT, LEONDRAE RICE, ESTATE OF NICHOLAS WILLIAM BAART BLOEM, ALCIDES BLOEM, JR., DEBRA BLOEM, ALCIDES BLOEM, SR., VICTORIA BLOEM, FLORENCE BLOEM, CATHERINE BLOEM, SARAH BLOEM, R.B., A MINOR CHILD, S.B., A MINOR CHILD, CHRISTINA CHARLSON, JULIANA SMITH, RANDALL JOSEPH BENNETT, II, STACEY DARRELL RICE,	§ §	**PLAINTIFFS' COMPLAINT** **Case No.: 18-1612** **Hon.**

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, by

---

[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."

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, MOIS, 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 separate acts of international terrorism that occurred throughout Iraq between 2003 and 2011.

II. JURISDICTION AND VENUE

15. Jurisdiction and venue are proper in this Court.

1. 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.

A. 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 provision of

[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).

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.

4. 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, P.O. Box: 15875/7177.

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"):

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[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.

> 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.

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.

5. 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, Building 10, 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.

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[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 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 and 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.

6. 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 Roodsar Street No. 18, 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 Central Bank of Iran 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

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[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).

Annex 63

***Estate of Brook Fishbeck, et al. v. Iran, et al.*, U.S. District Court for the District of Columbia, Complaint, 27 September 2018, Case No. 1:18-cv-02248**

Excerpts: p. 1, pp. 73-76 & pp. 90-99

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ESTATE OF CHRISTOPHER BROOK FISHBECK, TONI KAY ATTANASIO, GARY DOUGLAS FISHBECK, RANDI JEAN MARTZ, RENE GUTEL, ANA M. GOMEZ, QUANTE MAURICE EGGLESTON, TANYA M. DIGGS, TERRA SIMONE EGGLESTON, ESTATE OF JUSTIN WILLIAM HEBERT, JESSICA MICHELLE HEBERT, WILLIAM LEE NELSON, ALEX PHONGPHACHONE, RYAN MICHAEL PHONGPHACHONE, LAUREN MACEY PHONGPHACHONE, TIMOTHY PADRAC MCKENZIE, SARA JAYNE MCKENZIE, EDWARD RAYMOND YORK, BENTE KRISTIN YORK, ELIZABETH ANNE YORK, DAVID KENNETH WILLIAMS, RICHARD DEWAYNE FOSTER, BRANDON MICHAEL FOSTER, MATTHEW RYAN FOSTER, VICTORIA ELENA PHILLIPPI, MARIA LUISA CASTILLO, TERESITA SAPITULA CASTILLO, WILFREDO RAMIREZ CASTILLO, JAMES MICHAEL LOTT, GAIL FORTNER LOTT, RONALD EVERETT LOTT, SALVADOR BELTRAN-SOTO, JAMES SALVADOR BELTRAN-DAVES, MARIA BELTRAN, SIDNEY YIENNE PARTIDA, JOSE BELTRAN-SOTO, ALONSO BELTRAN-SOTO, BEATRIZ BELTRAN, VALENTIN BELTRAN, RAMONA BELTRAN, FRANCISCO FELIX BELTRAN, ROBERT FERGUSON, OWEN EUGENE CHISMAR II, CLOTILDE JOY SZELKOWSKI, CARLOS GOMEZ PEREZ, SAMANTHA IZAGUIRRE-GOMEZ, J.C.I-G., A MINOR CHILD, RICHARD LLANCE SCHWAN, M.A.S., A MINOR CHILD, RONALD ALLEN EATON, DIANNA D. TANDE, JOSHUA DIVON TRAVIS, D.R.G., A MINOR CHILD, A.C.J., A MINOR CHILD, J.S.A., A MINOR CHILD, M.D.T., A	§ §	**PLAINTIFFS' COMPLAINT** **Case No.: 1:18-cv-02248**

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, 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, by

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[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."

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, MOIS, 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 separate acts of international terrorism that occurred throughout Iraq between 2003 and 2011.

II. JURISDICTION AND VENUE

15. Jurisdiction and venue are proper in this Court.

1. 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.

A. 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 provision of

[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).

the Iranian state itself.[16]

90. Defendant Iran authorized, ratified, and approved the acts of Defendant MOIS.

91. Accordingly, Defendant Iran is vicariously liable for the acts of Defendant MOIS.

4. BANK MARKAZI JOMHOURI ISLAMI IRAN

92. 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]

93. CBI is headquartered in Tehran, Iran at Mirdamad Boulevard, No. 198, P.O. Box: 15875/7177.

94. 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.)

95. According to the United States' Financial Crimes Enforcement Network ("FinCEN"):

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[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.

> 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.

96. 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.

97. Defendant Iran authorized, ratified and approved the acts of Defendant CBI.

98. Accordingly, Defendant Iran is vicariously liable for the acts of Defendant CBI.

5. BANK MELLI IRAN

99. Bank Melli Iran was established in 1927 by order of the Iranian Parliament. It is one of the largest banks in Iran.

100. 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.

101. Bank Melli Iran is headquartered at Ferdowsi Avenue, Building 10, Tehran, Iran.

102. Bank Melli Iran maintains a branch office in Germany, located at Holzbrücke 2, 20459 Hamburg, Germany.

103. Bank Melli Iran is an "agency or instrumentality" of the government of Iran as defined by 28 U.S.C. § 1603(b).

104. As discussed in detail below, Bank Melli Iran is owned 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).

105. Melli Bank Plc in London was established in January 2002 as a wholly-owned

subsidiary of Bank Melli Iran.

106. Melli Bank Plc was headquartered at 98a Kensington High Street, London, W8 4SG, United Kingdom and, in 2016, moved its head office to Dubai.

107. The Chairman of Bank Melli Iran serves as the Chairman of the Board of Directors of Melli Bank Plc.

108. Bank Melli Iran appoints all members of the Board of Directors of Melli Bank Plc.

109. 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, and its property is subject to and available to satisfy any final judgment in this matter pursuant to 28 U.S.C. § 1610.

110. 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.

111. 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.

112. 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.

113. 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.

114. According to the U.S. government, Bank Melli Iran 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.

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[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. 26, 2018).

115. 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.

116. During the Relevant Time Period, Bank Melli Iran financed transactions that purposefully evaded U.S. sanctions on behalf of Mahan Air (an SDGT) and Iran's Ministry of Defense and Armed Forces Logistics.

117. 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.

118. 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."

119. 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.

120. 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.

121. 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").

122. 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 and fuses for 60 millimeter and 81 millimeter mortars).

123. Defendant Iran authorized, ratified, and approved the acts of Defendant Bank Melli Iran.

124. Accordingly, Defendant Iran is vicariously liable for the acts of Defendant Bank Melli Iran.

6. NATIONAL IRANIAN OIL COMPANY

125. 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.

126. NIOC is headquartered at Roodsar Street No. 18, Tehran, Iran.

127. NIOC is an "agency or instrumentality" of the Government of Iran as defined by 28 U.S.C. § 1603(b).

128. 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]."

129. Pursuant to E.O. 13382, the U.S. Government designated NIOC as an SDN.

130. The U.S. Government has identified NIOC as an agent or affiliate of the IRGC.

131. 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.

132. 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.

133. 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.

134. 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]

135. After the events giving rise to the claims herein, the U.S. government withdrew this determination as of 2016.

136. NIOC used its oil and natural gas business to launder money for the IRGC, often using Defendant Central Bank of Iran for this purpose.

137. 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.

[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).

138. Thus, NIOC served a critical function in funding and supporting the IRGC's activities.

139. NIOC also obtained letters of credit from western banks to provide financing and credit to the IRGC.[20]

140. Defendant Iran authorized, ratified, and approved the acts of Defendant NIOC.

141. Accordingly, Defendant Iran is vicariously liable for the acts of Defendant NIOC.

V. FACTUAL ALLEGATIONS

142. 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]

143. 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.

144. Iran committed and continues to commit violent attacks against U.S. nationals. Iran commits these attacks via proxy terrorist organizations.

145. 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 revolutionary ideals.[23]

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[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).

[23] Central Intelligence Agency, Directorate of Intelligence, *Iran: The Uses of Terror*, (Oct. 22, 1987 (approved for release June 1999)),

146. Further, Iran supports and directs terrorist operations by Hezbollah and desires to keep the United States and U.S. nationals as primary terrorist targets.[24]

147. In June 2007, U.S. Department of State spokesman, Sean McCormack, delivered a press briefing on Iran and its ties to international terrorism. When asked what changes he was looking for concerning Iran and its ties to terrorism, he responded, "Well, for starters, stop supplying *money, technology, and training* for people who are trying to kill [U.S. nationals]..."[25] (Emphasis added).

1. IRAN'S LONG HISTORY OF MATERIALLY SUPPORTING AND ENCOURAGING ACTS OF INTERNATIONAL TERRORISM

148. For decades Iran has made the funding of terrorist organizations (including the Special Groups and other terrorists that perpetrated the Terrorist Attacks) and the commodification of international acts of terrorism its business.

149. Iran has a history of financing, supporting and training terrorists and their affiliates in the perpetration of terrorist attacks against the United States, its citizens and its allies. For example, Hon. Judge John D. Bates found in a lawsuit brought by U.S. victims of the bombing of the U.S. embassies in Nairobi and Dar es Salaam that, "[s]upport from Iran and Hezbollah was critical to al Qaeda's execution of the 1998 embassy bombings…Prior to its meetings with Iranian officials and agents, al Qaeda did not possess the technical expertise required to carry out the embassy bombings."[26]

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https://www.cia.gov/library/readingroom/docs/DOC_0000259360.pdf.

[24] *Id.*

[25] U.S. Department of State, *Sean Womack Daily Press Briefing* (June 27, 2007), http://site-894736.bcvp0rtal.com/detail/videos/archive/video/1807599216/daily-briefing---june-27-2007.

[26] *Wamai v. Republic of Sudan et. al*., No. 1:08-cv-01349-JDB-JMF (D. D.C. Nov. 30, 2011), Memorandum Opinion at 13–14, ECF No. 55.

Annex 64

***Bennett, et al. v. The Islamic Republic of Iran, et al.*, U.S. District Court for the Northern District of California, Order Granting Motion for Summary Judgment, Granting Motion for Stay, 19 December 2018, Case 3:11-cv-05807-CRB**

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL BENNETT, et al.,

Plaintiffs,

v.

FRANKLIN RESOURCES, INC., et al.,

Defendants.

Case No. 11-cv-05807-CRB

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT, GRANTING MOTION FOR STAY

In this case, four groups of judgment creditors ("Plaintiffs" or "Judgment Creditors") who hold judgments against Iran seek to recover $17.6 million in assets ("the Blocked Assets") held by Third Party Plaintiffs Visa and Franklin. Although the assets are "due and owing to" Bank Melli, an Iranian instrumentality, they are blocked by executive orders issued by the President and regulations issued by the Department of the Treasury, Office of Foreign Assets Control ("OFAC"). The time has come for summary judgment. As the Court indicated at the motion hearing, it now GRANTS Plaintiffs' Motion for Summary Judgment (dkt. 172), and GRANTS Bank Melli's Motion to Stay (dkt. 180).

I. BACKGROUND

A. The Judgment Creditors

The Judgment Creditors are United States citizens, or representatives of their estates, who hold unsatisfied money judgments against Iran for injuries sustained in multiple terror attacks carried out with Iran's material support and assistance. See Acosta v. Islamic Republic of Iran, 574 F. Supp. 2d 15 (D.D.C. 2008); Estate of Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229 (D.D.C. 2006); Greenbaum v. Islamic Republic of

genuine issue for trial, the court does not weigh the evidence, assess the credibility of witnesses, or resolve issues of fact. Id. at 249.

B. Stay

Pursuant to Federal Rule of Civil Procedure 62(b) (formerly 62(d)[2]), "[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security." When a litigant complies with the rule by appealing "and post[ing] a supersedeas bond with the district court, it [is] entitled to a stay as a matter of right." See American Civil Liberties Union of Nevada v. Masto, 670 F.3d 1046, 1066 (9th Cir. 2012).

III. DISCUSSION

Plaintiffs argue that Bank Melli's legal challenges have been resolved, that all of the requirements of TRIA have been satisfied, and that the time has come for the Court to enter judgment in their favor. See generally MSJ. Bank Melli opposes, arguing that the Court should deny summary judgment because (A) the Blocked Assets are not "assets of" Bank Melli; (B) the Blocked Assets are not validly blocked; (C) there are other arguments that Bank Melli would like the Supreme Court to address; and (D) even if the Court is inclined to grant summary judgment, the Court should stay enforcement pending appellate review. See generally Opp'n to MSJ; Reply re Stay. This Order addresses each argument in turn, finding persuasive only the argument for a stay.

A. "Assets of" Bank Melli

Bank Melli's first argument opposing summary judgment is that TRIA requires ownership, and that Plaintiffs have not met their burden of demonstrating ownership here, because (1) there is a dispute over the ownership of the funds; and (2) Bank Melli's

[2] See Fed. R. Civ. P. advisory committee note to 2018 amendment ("Subdivisions (a), (b), (c), and (d) of former Rule 62 are reorganized. . . . Subdivision 62(b) carries forward in modified form the supersedeas bond provisions of former Rule 62(d).").

intangible right to receive payment is not a property right subject to this Court's jurisdiction. See Opp'n to MSJ at 7–11. The Court rejects both points.

1. Dispute over Ownership of Funds

Bank Melli argues that the Court cannot grant summary judgment for Plaintiffs because there is a genuine factual dispute about who owns the funds in the Court's Registry. See id. at 7–8. Bank Melli argues that "TRIA permits execution only against 'blocked assets of [a] terrorist party,'" and that the "evidence produced in discovery makes clear that Visa, not Bank Melli, is the owner of the funds." Id. at 7 (citing TRIA § 201(a)). It bolsters this argument by adding that Visa's repeated assertion that the funds are "due and owing" to Bank Melli "necessarily means that Bank Melli does not already own them." Id. at 8 (citing United States v. Rodrigues, 159 F.3d 439 (9th Cir. 1998), amended on denial of reh'g, 170 F.3d 881 (9th Cir. 1999); Broad. Music, Inc. v. Hirsch, 104 F.3d 1163, 1166 (9th Cir. 1997)).[3]

Bank Melli has asserted repeatedly that it owns the funds. See, e.g., Opp'n to Fees Mot. at 12 (arguing that Visa and Franklin should not be awarded legal fees from the Blocked Assets because Visa an Franklin's "legal fees . . . should be borne by them—not by Bank Melli"); Opp'n to MSJ at 19 (emphasis added) (seeking stay because if Blocked Assets "in the Court's registry are distributed to the hundreds of Judgment Creditors in this case, as a practical matter Bank Melli will never be able to recover them"); Bailey Decl. Ex. 4 (emphasis added) (Bank Melli 1/25/04 letter to Visa: "our funds for acquiring transactions made by VISA cardholders in Iran from 6/6/95 till cease of operations are $11,587,627.02 which are held with [Visa International]."). Visa, for its part, "claims no beneficial ownership in the $17,648,962.76 (and any interest thereon) in the Court's Registry." See Bailey Decl. ¶ 13.

[3] The Court already rejected this authority at the motion to dismiss phase, ruling that these cases "support[] the uncontroversial point that having an interest in property is not necessarily the same thing as owning property." See Order Denying MTD at 14.

Moreover, the Ninth Circuit held unambiguously at the motion to dismiss phase of the case that Bank Melli owns the funds. See Bennett, 825 F.3d at 963 ("The blocked assets are property of Bank Melli"; discussing Bank Melli argument "that TRIA § 201(a) . . . [does] not permit attachment of the assets here because Visa and Franklin own the blocked assets" and concluding under California and federal law that "those assets are property of Bank Melli and may be assigned to judgment creditors."). That ruling took into account Bank Melli's argument that the money is only "due and owing" and not currently in Bank Melli's possession. See id. at 963–64 (discussing California law re right to funds "that are due or will become due" and "money owed to Bank Melli").

That two Annual Reports list Visa as the "owner" of the funds does not undermine the conclusion that the Blocked Assets are Bank Melli's property. Those same reports identify the accounts as holding Bank Melli funds—explicitly in the 2010 report, and by referencing the same account name and value in the 2011 report. See Bailey Decl. Exs. 6, 7. Indeed, this Court just held, in granting discharge to Visa and Franklin, that "Bank Melli's contention that Visa is the true owner of the funds is foreclosed by the Ninth Circuit's ruling . . . and by a common sense reading of the Annual Reports." See Order re Discharge and Fees at 6. Put in terms of summary judgment, there is no genuine dispute about the ownership of the funds, because a reasonable jury could not find that they belong to Visa. See Anderson, 477 U.S. at 248.

2. Intangible Property Rights

Bank Melli next argues that even if it has a "contractual right to obtain payments from Visa and Franklin," which is a type of property that satisfies TRIA, "that would not mean that the blocked assets . . . are property of Bank Melli." Opp'n to MSJ at 8–9. Bank Melli asserts that this is an interpleader action relating only to the Blocked Assets—and that its "intangible property right" is beyond the jurisdiction of an interpleader. Opp'n to MSJ at 9–10 (citing, inter alia, State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 534 (1967) ("the fund itself is the target of the claimants")). It maintains that even if "an

intangible right to receive payment could be seized in some other case, that would not support the relief sought here," because this is an interpleader. Id. at 9.

There are a few problems with this argument. As a threshold matter, the contention that Bank Melli's "contractual right to obtain payments" does "not mean that the blocked assets" are Bank Melli's property, see id. at 8–9, flies in the face of the Ninth Circuit holding to the contrary. See Bennett, 825 F.3d at 963. Needless to say, the Judgment Creditors are not trying to seize an intangible property right; they are trying to seize the $17,648,962.76 in the Court's Registry. See MSJ at 7 ("The Blocked Assets are subject to execution in partial satisfaction of the Judgment Creditors' judgments."). As for Visa and Franklin's interpleader complaint, it does not separate out Bank Melli's "right . . . to receive payment," see Opp'n to MSJ at 10, from the Blocked Assets themselves; rather, it defines the Blocked Assets as "funds due and owing by contract to Bank Melli pursuant to a contractual relationship with that bank," see Compl. ¶ 16. This definition did not trouble the Ninth Circuit, which held that the Blocked Assets are the property of Bank Melli because "Bank Melli has a contractual right to obtain payments from Visa and Franklin" and "[u]nder California law, those assets are property of Bank Melli and may be assigned to judgment creditors." See Bennett, 825 F.3d at 964.

A further problem is that the State Farm case that Bank Melli relies on (the only controlling authority it cites), which held that "the fund itself is the target," was explaining that the district court could not take the occasion of an interpleader to enjoin claimants from litigating related suits in different forums. See State Farm, 386 U.S. at 533; see also id. at 535 (interpleader "cannot be used to solve all the vexing problems of multiparty litigation arising out of a mass tort."). The Court cautioned that "the mere existence of such a fund cannot, by use of interpleader, be employed to accomplish purposes that exceed the needs of orderly contest with respect to the fund." Id. at 534. Here, of course, the only thing taking place is a contest with respect to the fund. The Bennett Judgment Creditors filed a complaint in this Court seeking a turnover of the Blocked Assets, held in this district by Visa and Franklin for the benefit of Iran, see Bennett Compl. (dkt. 1); 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 [the Blocked Assets] to satisfy their judgments or their claims," Compl. ¶ 4; and the Greenbaum Judgment Creditors, Acosta Judgment Creditors, and Heiser Judgment Creditors all filed answers asserting their own entitlement to the Blocked Assets, see Answers (dkts. 40, 41, 91). As Plaintiffs point out, Bank Melli's authority does not stand for the proposition "that a district court presiding over an interpleader proceeding lacks authority to decide whether particular claimants to a fund are entitled to those funds . . . where they have voluntarily decided to litigate their rights as part of that proceeding." See Reply re MSJ at 5–6. The Court therefore rejects Bank Melli's argument that there is no interpleader jurisdiction.

Bank Melli also argues that its "intangible right to receive payment" is beyond the Court's territorial jurisdiction, because that right is located outside of the United States. Opp'n to MSJ at 10–11 (quoting Rubin v. Islamic Republic of Iran, 830 F.3d 470, 475 (7th Cir. 2016) ("property subject to execution 'must be within the territorial jurisdiction of the district court.'"). Relying on two Fifth Circuit cases, Bank Melli contends that where there is "'an overriding national concern,' federal law may require that the situs 'be in still a different place.'" Id. at 11 (citing Tabacalera Severiano Jorge, S.A. v. Standard Cigar Co., 392 F.2d 706, 714–15 (5th Cir. 1968); Callejo v. Bancomer, S.A., 764 F.2d 1101, 1122 (5th Cir. 1985)). Bank Melli contends that, like the act of state doctrine at issue in Tabacalera and Callejo, sovereign immunity implicates an overriding national concern, and so the Court should find that the situs of the debt is Iran. Id.

A Ninth Circuit case forecloses Bank Melli's territorial jurisdiction argument. In Peterson v. Islamic Republic of Iran, 627 F.3d 1117, 1130 (9th Cir. 2010), a case arising under FSIA, the Ninth Circuit addressed the question of whether "Iran's rights to payment from [a French debtor] constitute 'property in the United States.'" The court explained that "[e]nforcement proceedings in federal district court are governed by the law of the state in which the court sits" unless there is an applicable federal law. Id. The court then explained that California law holds that "the location of a right to payment . . . is the

location of the debtor," and that therefore a right to payment is "assignable only if [the debtor resides] in the United States." Id. at 1131. Because the debtor in that case was a French corporation, "the debt obligation it owe[]d to Iran [was] located in France." Id. Here, because Visa International, Bank Melli's debtor, resides in the United States, see Bailey Decl. ¶ 3, Bank Melli's ownership interest in the Blocked Assets is located in the United States. The Court therefore rejects Bank Melli's argument that there is no territorial jurisdiction.

B. Funds Invalidly Blocked

Bank Melli next argues that "TRIA allows execution only against 'blocked assets'" and that the funds here have not been not validly blocked. Opp'n to MSJ at 11 (quoting TRIA § 201(d)(2)). It argues that EO 13,382 is no longer in effect, and that EO 13,599 violates its due process rights. Id. at 11–15. It did not respond to Plaintiffs' assertion in their Reply brief that EO 13,244 is a separate and independent ground for the Court to find the Blocked Assets blocked under TRIA. See Reply re MSJ at 14–15. The Court holds that the funds are validly blocked.

1. Executive Order 13,382 and Section 544.402

First, Plaintiffs concede that "Bank Melli's Executive Order 13,382 designation was removed," but they argue that it still has effect in this case, because of OFAC regulation 31 C.F.R. § 544.402. See MSJ at 12. Section 544.402 provides:

> Unless otherwise specifically provided, any . . . revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such . . . revocation.

31 C.F.R. § 544.402 (emphasis added). Plaintiffs' interpretation of section 544.402 is that the revocation of an order does not affect a pending civil suit, like this one. See MSJ at 12. Bank Melli's interpretation of the same section is that it applies "only to revocation of orders by OFAC." See Opp'n to MSJ at 14. It argues that EO 13,382 was not revoked by

OFAC, but as a result of the Joint Comprehensive Plan of Action ("JCPOA"). Id. (citing JCPOA annex II, § 4.8.1 & attach. 3).

The section is not altogether clear, but it does not matter. While the JCPOA was the means by which the United States "commit[ted] to cease the application of, and to seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, all nuclear-related sanctions," such as Bank Melli's 13,382 designation, see JCPOA annex II, §§ 4, 4.8.2 & attach. 3, available at https://www.state.gov/documents/organization/245320.pdf, it was OFAC that effectuated the revocation, see Changes to Sanctions Lists Administered by the Office of Foreign Assets Control on Implementation Day Under the Joint Comprehensive Plan of Action, 81 Fed. Reg. 13,562, 13,562 (Mar. 14, 2016) ("On January 16, 2016, OFAC determined," among other things, that Bank Melli "was no longer blocked pursuant to . . . E.O. 13382."). Accordingly, even Bank Melli's interpretation of 544.402 has been met.

Bank Melli argues, however, that section 544.402 is "ineffective as contrary to TRIA." Id. (quoting Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842–43 (1984) ("agency regulation has no effect when it conflicts with the 'unambiguously expressed intent of Congress.'")). It contends that TRIA states only that "blocked assets" are subject to execution, but says nothing about "formerly blocked assets." Id. No matter. If assets are blocked pursuant to Executive Order 13,382 and then remain blocked by operation of section 544.402, then they remain "blocked assets," not "formerly blocked assets." There is no conflict.

Accordingly, the Blocked Assets are blocked by EO 13,382.

2. Executive Order 13,599

Second, Plaintiffs contend that EO 13,599 also operates to block the funds at issue here. See MSJ at 11–12. The same day that Bank Melli's EO 13,382 designation was removed, OFAC identified Bank Melli on the EO 13,599 List as an entity whose property was blocked. See 81 Fed. Reg. at 13,562 n.1, 13,591 ("The purpose of the E.O. 13599 list

is to clarify that, regardless of their removal from the SDN list, persons that OFAC previously identified as meeting the definition of the terms 'Government of Iran' or 'Iranian financial institution' continue to meet those definitions and continue to be persons whose property and interests in property are blocked pursuant to Executive Order 13599. . . ."); see also 60 Fed. Reg. at 40,884 (identifying Bank Melli as a bank "determined to be owned and controlled by the Government of Iran."). Bank Melli argues that EO 13,599 is invalid, however, because it violates Bank Melli's due process rights. See Opp'n to MSJ at 12–13. It argues that EO 13,599 "left the President no discretion at all," "did not result from any OFAC determination," "was not based on any findings unique to Bank Melli," and denied Bank Melli a chance to contest its designation. Id. at 13.

Plaintiffs demonstrate that the applicable blocking provision here, blocking "property and interests in property of the Government of Iran," is actually not the blocking provision that Congress mandated. See Reply re MSJ at 10 (citing EO 13599, 77 Fed. Reg. at 6660, § 7(d); 22 U.S.C. § 8513a(c) ("The President shall . . . block and prohibit all transactions in all property and interests in property of an Iranian financial institution.")). This does away with Bank Melli's discretion argument. Moreover, it appears that various entities did make findings specific to Bank Melli. See id. at 10–11 (collecting quotations from Congress, Secretary of Treasury, President Obama). Even the language cited above reflects that Bank Melli's 13,599 designation is based on OFAC's previous determination that Bank Melli continued to meet the definition of "Government of Iran" or "Iranian financial institution." See 81 Fed. Reg. at 13,562 n.1, 13,591. Particularly illogical is Bank Melli's complaint that it was denied a chance to contest its designation: there is no dispute that Bank Melli is an instrumentality of the Government of Iran. Bank Melli admitted as much in its Answer in this case. See Mechling Ex. D (Answer) ¶ 7 ("Bank Melli admits that it is currently wholly owned by the Islamic Republic of Iran and that it is an instrumentality of the Islamic Republic of Iran within the meaning of [FSIA] § 1603(b).").

Accordingly, the Blocked Assets are blocked by EO 13,599.

3. Executive Order 13,224

Third, Plaintiffs also assert that the very recent EO 13,224 blocks the assets in this case. See Reply re MSJ at 14–15. This is also true. See Mechling Reply Decl. Ex. A (dkt. 184-2) at 2 ("Bank Melli is being designated pursuant to E.O. 13224 for assisting in, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, the IRGC-QF, which was previously designated pursuant to E.O. 13224 on October 25, 2007."); 66 F.R. 49079 (blocking "all property and interests in property of the following persons. . ." in light of "grave acts of terrorism . . . constitut[ing] an unusual and extraordinary threat"). EO 13,224 is therefore a third independent basis for finding that the Blocked Assets are validly blocked.

C. Other Reasons

Bank Melli next argues that there are numerous arguments it could make for why the Court should deny summary judgment, but that the Ninth Circuit has already rejected those arguments. See Opp'n to MSJ at 15–17. "Bank Melli acknowledges that this Court is bound by the Ninth Circuit's decision." Id. at 15. It lists the arguments nonetheless to preserve them for Supreme Court review. Id. at 16. Accordingly, this Court does not reach Bank Melli's "Other Reasons."

Because Plaintiffs have satisfied the requirements of TRIA, and because Bank Melli's arguments are unpersuasive, the Court GRANTS summary judgment for Plaintiffs.

D. Stay of Enforcement

Lastly, Bank Melli asks the Court to stay any enforcement or execution until after appellate and Supreme Court review. See Mot. to Stay at 17–20. Bank Melli argues that it is entitled to a stay as a matter of right, and, in the alternative, that the Court should grant a discretionary stay. Id.

The Court does not grant a discretionary stay, nor would it. But Bank Melli is entitled to a stay as a matter of right. Rule 62(b) states that "[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes

effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security." When a litigant complies with that rule by appealing "and post[ing] a supersedeas bond with the district court, it [is] entitled to a stay as a matter of right." See Masto, 670 F.3d at 1066; see also Matter of Combined Metals Reduction Co., 557 F.2d 179, 193 (9th Cir. 1977) ("[s]ince no bond was posted, the grant or denial of the stays was a matter strictly within the judge's discretion.").

Bank Melli argues that "the funds already deposited in the Court's registry satisfy [the Rule's] bond requirement." Mot. to Stay at 17 (citing Rachel v. Banana Republic, Inc., 831 F.2d 1503, 1505 n.1 (9th Cir. 1987) ("purpose of a supersedeas bond is to secure the appellees from a loss resulting from the stay of execution")). Plaintiffs do not really disagree. See Opp'n to Mot. to Stay at 16 (conceding that "ordinarily, courts waive the posting of a supersedeas bond where the funds at issue in a litigation are deposited with the Court's Registry."). Indeed, Rule 62(b) makes explicit that something like a bond— a "bond or other security"—will do. See Fed. R. Civ. P. 62(b). Plaintiffs argue, however, that ordinarily the party requesting the stay claims to own the funds deposited with the court, and that, "[b]ecause Bank Melli refuses to acknowledge any ownership interest in or right to the Blocked Assets . . . the Court should deny Bank Melli's motion for a stay." Opp'n to Mot. to Stay at 16.

But the Rule does not actually require that the party seeking a stay be, or claim to be, the "owner" of the contested funds. See Fed. R. Civ. P. 62(b). What is important is that the funds deposited with the Court be sufficient to protect Plaintiffs from loss while the execution is stayed. See Rachel, 831 F.2d at 1505 n.1. The Blocked Assets in the Registry will do so, to the same extent that a supersedeas bond would.[4] Yes, there remains the possibility, however remote, that some future operation of law will retroactively undo all three of the Executive Orders that the Court today holds are blocking the funds. See 31

[4] At the motion hearing, the Court raised the question of Plaintiffs' fees on appeal. However, in the absence of an applicable fee-shifting statute, Bank Melli need not deposit additional funds to cover such fees.

C.F.R. § 544.402. But it strikes the Court that if that indeed takes place, then Plaintiffs would not be entitled to the funds. The Court is sympathetic to Plaintiffs' argument that they are presently entitled to the funds and that such entitlement should not be jeopardized through delay, but the Court cannot short-circuit the appellate process or the requirements of civil procedure. Because Rule 62(b) is met, see Masto, 670 F.3d at 1066, the Court GRANTS the motion to stay execution until after appellate and Supreme Court review.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS the Motion for Summary Judgment and GRANTS the Motion to Stay.

IT IS SO ORDERED.

Dated: December 19, 2018

CHARLES R. BREYER
United States District Judge

United States District Court
Northern District of California

Annex 65

***In Re: Terrorist Attacks on September 11, 2001, Ray, et al. v. Iran, et al.,* U.S. District Court for the Southern District of New York, Complaint (made pursuant to, *inter alia*, the FSIA, 28 U.S.C. §§ 1605A and 1605B), 9 January 2019, Case No. 1:19-cv-00012**

Excerpts: p. 1, pp. 35-38 & pp. 55-56

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In Re:	:
	:
TERRORIST ATTACKS ON SEPTEMBER 11, 2001	:
	:
	:
_____	:
	:
HERMAN RAY, surviving Sibling of Denease Conley	:
	:
HERMAN RAY, as Personal Representative of the **ESTATE OF DENEASE CONLEY, Deceased**	:
	:
CHERRIE L. ALLEN, surviving Sibling of Denease Conley	:
	:
IRMA JOYCE FLETCHER, surviving Sibling of Denease Conley	:
	:
IRMA JOYCE FLETCHER, as Personal Representative of the **ESTATE OF EARL RAY, Deceased**, a surviving Sibling of Denease Conley	:
	:
BARBARA HAYNES-JENKINS, surviving Sibling of Denease Conley	:
	:
HERMAN RAY, as Personal Representative of the **ESTATE OF JAMES RAY, Deceased,** a surviving Sibling of Denease Conley	:
	:
STANLEY RAY, surviving Sibling of Denease Conley	:
	:
AARON ADLER, surviving Sibling of Lee Alan Adler	:
	:
ALICE DOERGE ADLER, the surviving Spouse of Lee Alan Adler	:
	:
ALICE DOERGE ADLER, as Personal	:

1

through these affiliated entities, generates substantial money that is used by the Iranian government to fund its terrorist activities, including its support of Defendant Hezbollah and al-Qaeda.

The Instrumentality Defendants

86. The following Defendants are instrumentalities of the Islamic Republic of Iran:

(a) Central Bank of Iran, a/k/a Bank Markazi ("CBI"), is a financial institution owned and controlled by the Iranian government. The main offices of the CBI are located at No. 144, Mirdamad Boulevard, Tehran, Iran. CBI, as a government-controlled entity, maintains a presence in the United States through the Permanent Representative of the Islamic State of Iran to the United Nations, 360 Lexington Avenue, 11th Floor, New York, NY10017, or through the Iranian Interest Section c/o the Embassy of Pakistan, 2204 Wisconsin Avenue, NW, Washington, D.C. 20007. The main offices of the CBI are located at No. 198 Mirdamad Boulevard, Tehran, Iran. CBI keeps accounts for, grants loans to and otherwise funnels funds to the Iranian government with knowledge that the Iranian government uses those funds to support its own terrorist activities as well as those of Defendant Hezbollah and al-Qaeda.

(b) National Iranian Oil Company ("NIOC") is an Iranian corporation owned and controlled by the Iranian government located at the National Iranian Oil Company Building, Hafez Crossing, Taleghani Avenue, Tehran, Iran. NIOC, as a government-controlled entity, maintains a presence in the United States through the Permanent Representative of the Islamic Republic of Iran to the United Nations 622 Third Avenue, 34th Floor New York, N.Y. 10017, or through the Iranian Interest Section c/o the Embassy of Pakistan, 2204 Wisconsin Avenue, NW, Washington, D.C. 20007. NIOC funnels funds

to the Iranian government with knowledge that the Iranian government uses those funds to support its own terrorist activities as well as those of Defendant Hezbollah and al-Qaeda.

(c) National Iranian Tanker Company ("NITC") is an Iranian corporation owned and controlled by the Iranian government located at 65 Shahid Atefi Street, Africa Expressway, Tehran, Iran. NITC, as a government-controlled entity, maintains a presence in the United States through the Permanent Representative of the Islamic Republic of Iran to the United Nations 622 Third Avenue, 34th Floor New York, N.Y. 10017, or through the Iranian Interest Section c/o the Embassy of Pakistan, 2204 Wisconsin Avenue, NW, Washington, D.C. 20007. NITC funnels funds to the Iranian government with knowledge that the Iranian government uses those funds to support its own terrorist activities as well as those of Defendant Hezbollah and al-Qaeda.

(d) National Iranian Gas Company ("NIGC") is an Iranian corporation owned and controlled by the Iranian government located at National Iranian Gas Company Building, South Aban Street, Karimkhan Blvd., P.O. Box 15875, Tehran, Iran. NIGC, as a government-controlled entity, maintains a presence in the United States through the Permanent Representative of the Islamic Republic of Iran to the United Nations 622 Third Avenue, 34th Floor New York, N.Y. 10017, or through the Iranian Interest Section c/o the Embassy of Pakistan, 2204 Wisconsin Avenue, NW, Washington, D.C. 20007. NIGC funnels funds to the Iranian government with knowledge that the Iranian government uses those funds to support its own terrorist activities as well as those of Defendant Hezbollah and al-Qaeda.

(e) National Iranian Petrochemical Company ("NIPC") is an Iranian corporation owned and controlled by the Iranian government located at No. 144, North

Sheikh Bahaie Avenue, P.O. Box 19395-6896, Tehran, Iran. NIPC, as a government-controlled entity, maintains a presence in the United States through the Permanent Representative of the Islamic Republic of Iran to the United Nations 622 Third Avenue, 34th Floor New York, N.Y. 10017, or through the Iranian Interest Section c/o the Embassy of Pakistan, 2204 Wisconsin Avenue, NW, Washington, D.C. 20007. NIPC funnels funds to the Iranian government with knowledge that the Iranian government uses those funds to support its own terrorist activities as well as those of Defendant Hezbollah and al-Qaeda.

(i) Iran Airlines, a/k/a Iran Air ("Iran Air"), is an Iranian corporation owned and controlled by the Iranian government located at Mehrabad Airport, P.O. Box 13185-775, Tehran, Iran. Iran Air, as a government-controlled entity, maintains a presence in the United States through the Permanent Representative of the Islamic Republic of Iran to the United Nations 622 Third Avenue, 34th Floor New York, N.Y. 10017, or through the Iranian Interest Section c/o the Embassy of Pakistan, 2204 Wisconsin Avenue, NW, Washington, D.C. 20007. Iran Air funnels funds to the Iranian government with knowledge that the Iranian government uses those funds to support its own terrorist activities as well as those of Defendant Hezbollah and al-Qaeda. In addition, Iran Air knowingly assists Iran's efforts to export terrorism by transporting individual terrorists to destinations for the purpose of committing terrorist acts in foreign countries.

(j) Hezbollah (alternatively spelled "Hizballah") is a surrogate of Iran's MOIS through which the Iranian government executes many of its terrorist plans. The goal of Hezbollah was to bring the ideals of the Islamic Revolution in Iran to Lebanon. Hezbollah is funded, directed and controlled by the Iranian government. President Clinton issued Executive Order 12947 on January 23, 1997, which named Hezbollah a Specially

Designated Terrorist, along with 11 other organizations which had committed, or posed a significant risk of committing, acts of violence which threatened to disrupt the Middle East peace process. *See* 60 Fed. Reg. 5079 (Jan. 23, 1997). On October 8, 1997, the U.S. Department of State further designated Hezbollah as a Foreign Terrorist Organization pursuant to the Immigration and Nationality Act, 8 U.S.C. §1189. *See* 62 Fed. Reg. 52650 (Oct. 8, 1997). A Foreign Terrorist Organization is one that engages in terrorist activity, retains the capability and intent to engage in terrorist activity, and whose terrorist activity threatens the security of U.S. nationals or the United States. In the wake of the attacks of September 11, 2001, which serve as the basis of this Complaint, President Bush issued Executive Order 13224, which identified 12 individuals and 15 entities which were a continuing and immediate threat to the security of U.S. nationals and the United States. *See* 66 Fed. Reg. 49079 (Sept. 23, 2001). Pursuant to this Order, the U.S. Department of State listed Hezbollah as a Specially Designated Global Terrorist. *See* Fed. Reg. 12633 (Mar. 19, 2002). Hezbollah, as a government agency, maintains a presence in the United States through the Permanent Representative of the Islamic State of Iran to the United Nations, 360 Lexington Avenue, 11th Floor, New York, NY 10017, or through the Iranian Interest Section c/o the Embassy of Pakistan, 2204 Wisconsin Avenue, NW, Washington, D.C. 20007, or through the Permanent Representative of Lebanon to the United Nations, 866 United Nations Plaza, Room 531-533, New York, NY 10017.

At all relevant times, Iran used the Instrumentality Defendants to further its funding and support of terrorist activities against the United States and its citizens, including its support for Defendant Hezbollah and al-Qaeda.

"under an agreement between al-Qaeda and the Iranian government."

154. One member of this network is Atiyah Abd al-Rahman ("Rahman"). The documents captured in the safe house occupied by Osama bin Laden at the time of his capture identify Rahman as bin Laden's top deputy. According to the Treasury Department, Rahman is al-Qaeda's "overall commander in Pakistan's tribal areas and as of late 2010, the leader of al- Qaeda in North and South Waziristan, Pakistan." The Treasury Department adds: "Rahman was previously appointed by Osama bin Laden to serve as al-Qaeda's emissary in Iran, a position which allowed him to travel in and out of Iran with the permission of Iranian officials." For several years after 9/11, Rahman was protected by the Iranian regime. He is one of the senior al- Qaeda leaders supposedly held under a loose form of "house arrest" in Iran.

155. The Iran-based al-Qaeda network is headed by another terrorist, Ezedin Abdel Aziz Khalil (a/k/a Yasin al Suri). The Treasury Department's designation notes that "Iranian authorities maintain a relationship with Khalil and have permitted him to operate within Iran's borders." Khalil's activities include moving "money and recruits from across the Middle East into Iran, then on to Pakistan," where they serve senior al-Qaeda leaders.

156. According to David S. Cohen, Under Secretary of Treasury for Terrorism and Financial Intelligence, "There is an agreement between the Iranian government and al-Qaeda to allow this network to operate. There's no dispute in the intelligence community on this."

Defendants Are Liable to Plaintiffs for Their Material Support of al-Qaeda

157. The Iranian Defendants instructed, trained, directed, financed and otherwise supported and assisted al-Qaeda, or conspired in the instruction, training, direction, financing, and support of al- Qaeda, in connection with al-Qaeda's terrorist plans. In furtherance of those plans, the al-Qaeda hijackers deliberately caused planes to crash into the World Trade Center Towers,

the Pentagon and a field in Shanksville, Pennsylvania on September 11, 2001.

158. As a direct and proximate result of the intentional, willful, reckless, and careless actions of the Iranian Defendants, Plaintiffs have suffered severe and permanent personal injuries, damages, and losses, including one or more of the following:

(a) Decedents' fear of death prior to the crash into and collapse of the World Trade Center Towers, the crash into the Pentagon and the crash of United Airlines flight 93;

(b) the severe mental anguish suffered by the Decedents and all Plaintiffs;

(c) the severe pain and suffering suffered by the Decedents and all Plaintiffs;

(d) the inability of all Decedents to perform the usual household and personal activities that they normally would have performed through the remainder of their natural life expectancies;

(e) loss of Decedents' earnings and future earning potential;

(f) loss of Decedents' life and life's pleasures;

(g) loss of consortium, solatium and/or companionship;

(h) costs relating to managing the estates of all Decedents; and

(i) death of the Decedents as a result of the Defendants' conduct and that of their co-conspirators.

159. The aforementioned deaths, personal injuries and losses experienced by the Plaintiffs were caused by the intentional, outrageous, reckless, and careless acts of the Iranian Defendants, acting individually and in concert, and of their agents, servants, employees, agencies and instrumentalities, acting within and during the course and scope of their employment, authority, or apparent authority.

Annex 66

***Wise, et al. v. Bank Markazi, et al*., U.S. District Court for the District of Columbia, Complaint, 9 April 2019, Case No. 1:19-cv-00995**

Excerpts: p. 1 & pp. 6-14

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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VICTOR RAY WISE, II, MAXINE E. CROCKETT, *individually and on behalf of the* ESTATE OF RICKY LEON CROCKETT, MARVISE L. CROCKETT, STEVEN GREENWOOD, STEPHEN W. HILLER, *individually and on behalf of the* ESTATE OF STEPHEN DUSTIN HILLER, INGRID FISHER, *individually and on behalf of the* ESTATE OF STEVEN SCOTT FISHER, KRISTIN WALKER, STEVEN T. FISHER, KATHLEEN GRAMKOWSKI, GLORIA NESBITT, *individually and on behalf of the* ESTATE OF DEFOREST L. TALBERT, D.J.H., *a minor*, CHIQUITA TALBERT, TAWANNA TALBERT DARRING, LATASHA MARBLE, JAMES TALBERT, GLORIA P. REYNOSO, *individually and on behalf of the* ESTATE OF YADIR G. REYNOSO, JASMIN REYNOSO, PATRICIA REYNOSO, JOSE REYNOSO, ASHLEY WELLS SIMPSON, *individually and on behalf of the* ESTATE OF LARRY LLOYD WELLS, CHAD WELLS, CRYSTAL STEWART, CHASITY WELLS-GEORGE, CANDICE MACHELLA, BILLY DOAL WELLS, HOPE ELIZABETH VEVERKA, DONNA JEAN HEATH, *individually and on behalf of the* ESTATE OF DAVID MICHAEL HEATH, LOLA JEAN MODJESKA, JOHN DAVID HEATH, OLGA LYDIA GUTIERREZ, *individually and on behalf of the* ESTATE OF JACOB DAVID MARTIR, ISMAEL MARTIR, VICTORIA M. FOLEY, *individually and on behalf of the* ESTATE OF ALEXANDER SCOTT ARREDONDO, NATHANIEL FOLEY, MICHAEL SCOTT DEWILDE, STEVEN MORRIS, DANIELLE DECHAINE-MORRIS, NICHOLAS MORRIS, K.M., *a minor*, ROBERTO AARON ARIZOLA, ROBERTO ARIZOLA, SR., CECILIA ARIZOLA, DANNY ARIZOLA, RICARDO ARIZOLA, MARIA VIDAL, MASINA TULIAU, BRIANNA RENEE NAVEJAS, MARGARITO A. MARTINEZ, JR., ADAM MATTIS, TERRANCE PETERSON, III, PETRA SPIALEK, RICHELLE HECKER *on behalf of the* ESTATE OF WILLIAM F. HECKER, III, GLADYS E. REYES CENTENO, VERONICA LOPEZ REYES, *individually and on behalf of the* ESTATE OF JASON LOPEZ REYES, ZORAIMA LOPEZ, KENNY LEE, TOM B. LEE, LING P. LEE, SUSANNA LEE PAULUS, JUDY COLLADO, KAIYA COLLADO, JUSTIN WALDECK,

Case No.: 19-cv-995

COMPLAINT

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 ("FTO") (as that term is defined in 8 U.S.C. § 1189) Hezbollah; the Islamic Revolutionary Guard Corps ("IRGC"), a U.S.-designated Specially Designated Global Terrorist ("SDGT") whose subdivision known as the Islamic Revolutionary Guard Corps-Qods Force ("IRGC-QF") is also a U.S.-designated SDGT; the Iranian Ministry of Information and Security ("MOIS"); the U.S.-designated Specially Designated National ("SDN") Ministry of Defense and Support For The Armed Forces of The Islamic Republic of Iran ("MODAFL"); 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 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.

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[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 IRAN

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 placed under state control, and most remain effectively under the control of the Iranian regime.

17. Bank Melli Iran is wholly owned by Iran.

18. Bank Melli Iran is headquartered at Ferdowsi Avenue, Tehran, Iran.

19. Bank Melli Iran maintains a branch office in Germany, located at Holzbrücke 2, 20459 Hamburg, Germany.

20. Bank Melli Iran is an "agency or instrumentality" of the government of Iran as defined by 28 U.S.C. § 1603(b).

21. According to the U.S. government, between 2004 and 2011, Bank Melli Iran 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.

22. In October 2007 and throughout the remainder of the relevant period, Bank Melli Iran was 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:

[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

> 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.

23. 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.

24. 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.

25. 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.

26. 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."

27. The Treasury Department explained Mahan Air's direct involvement with terrorist operations, personnel movements and logistics on the IRGC-QF's behalf:

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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

> 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.

28. 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.

29. In mid-2007, Bank Melli Iran's branch in Hamburg transferred funds on behalf of Iran's Defense Industries Organization ("DIO").

30. 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

31. 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.

32. NIOC is headquartered at Hafez Crossing, Taleghani Avenue, Tehran, Iran.

33. NIOC is an "agency or instrumentality" of the Government of Iran as defined by 28 U.S.C. § 1603(b).

34. 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]."

35. Pursuant to E.O. 13382, the U.S. Government designated NIOC as an SDN.

36. The U.S. Government has identified NIOC as an agent or affiliate of the IRGC.

37. 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.

38. 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.

39. 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 and section 302 of ITRSHRA. As part of that 2012 certification, NIOC was formally determined to be part of the Government of Iran.

40. 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]

41. After the events giving rise to the claims herein, the U.S. government withdrew this determination as of 2016.[5]

42. NIOC used its oil and natural gas revenues to launder money for the IRGC, often using Defendant CBI for this purpose.

43. 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.

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[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."

44. Thus, NIOC served a critical function in funding and supporting the IRGC's activities.

45. 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

46. 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.

47. 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.

48. 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.

49. For more than 30 years, Iran, through the IRGC, has funded, trained and equipped Hezbollah.

50. 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 (explained in further detail below), anti-tank guided missiles, RPG-29 armor

[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 67

***Henkin, et al. v. Iran, et al.*, U.S. District Court for the District of Columbia, Complaint, 24 April 2019, Case No. 1:19-cv-01184**

Excerpts: 1-11 and p. 30

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ESTATE OF EITAM HENKIN, by its legal representatives, Yoav Armoni and David Jackson,

ESTATE OF NAAMA HENKIN, by its legal representatives, Yoav Armoni and David Jackson,

I.Z.H., a minor, by his guardians ad litem YOAV ARMONI and DAVID JACKSON,

M.H.H., a minor, by his guardians ad litem YOAV ARMONI and DAVID JACKSON,

N.E.H., a minor, by his guardians ad litem YOAV ARMONI and DAVID JACKSON,

N.Y.H., a minor, by his guardians ad litem YOAV ARMONI and DAVID JACKSON,

Plaintiffs,

v.

THE ISLAMIC REPUBLIC OF IRAN
The Ministry of Foreign Affairs
Imam Khomeini Ave., United Nations St.
Tehran, Iran,

ISLAMIC REVOLUTIONARY GUARD CORPS
Armed Forces Headquarters
Zone 7 – Shariati
Ghoddoosi Square (Ghaar)
Tehran, Iran,

IRANIAN MINISTRY OF INTELLIGENCE AND SECURITY
(a/k/a Vezarat-e Ettela'at Va Amniat-e Keshvar a/k/a VEKAK a/k/a VAJA)
Second Negarestan St., Pasdaran Ave.
Tehran, Iran,

COMPLAINT

Civil Action No. 1:19-cv-1184

BANK MARKAZI JOMHOURI ISLAMIC IRAN
a/k/a Central Bank of the Islamic Republic of Iran
No 198, Mirdamad Boulevard
Tehran, Iran,

BANK MELLI IRAN
Ferdowsi Avenue
10 Building
P.O. Box 11365-144
Tehran, Iran,

BANK SADERAT IRAN
43 Somayeh Ave.,
P.O. Box 15745-631
Tehran, Iran,

and

THE SYRIAN ARAB REPUBLIC
Ministry of Foreign Affairs
Damascus, Syria,

Defendants.

COMPLAINT

Plaintiffs the Estate of Eitam Henkin, the Estate of Naama Henkin, and their four minor children I.Z.H., M.H.H., N.E.H., N.Y.H. (collectively, "Plaintiffs") bring this Complaint under the terrorism exception to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605A, against the Islamic Republic of Iran ("Iran"), the Islamic Revolutionary Guard Corps ("IRGC") including its Quds Force, the Iranian Ministry of Intelligence and Security ("MOIS"), Bank Merkazi Jomhouri Islamic Iran a/k/a Central Bank of the Islamic Republic of Iran ("Bank Merkazi"), Bank Melli Iran ("Bank Melli"), Bank Saderat Iran ("Bank Saderat"), and the Syrian Arab Republic ("Syria"), jointly and severally, and allege as follows:

INTRODUCTION

1. On the evening of October 1, 2015, Eitam Simon Henkin (a U.S. national) was driving his wife, Naama Henkin, and their four minor children, I.Z.H., M.H.H., N.E.H., in the West Bank when their car was overtaken by another vehicle containing three Palestinian men.

2. The three men were part of a terrorist group that had committed terrorist acts before, and this time, they decided to kidnap a Jewish resident in the West Bank—a tactic used by terrorists to barter the hostage in exchange for prisoners and gain leverage in negotiations with the Israeli government.

3. As they overtook the Henkins' car, one of the terrorists leaned out of the window and sprayed automatic gunfire at the Henkin Family. Wounded and bleeding, Eitam Henkin was forced to stop the car.

4. Two of the three terrorists exited their car and approached on either side of the Henkins' car. One opened the driver's side door and attempted to kidnap Eitam.

5. Eitam fought back. Although he was wounded by gunfire, Eitam bravely attempted to defend his family and began disarming one of the terrorists while yelling for his family to run. He succeeded—but only for a short time. The terrorist on the opposite side of the Henkins' car saw that Eitam was fighting back and shot Eitam with an automatic weapon, killing him.

6. Even though her husband had just been brutally murdered right in front of her, Naama courageously fought to defend her young family. She too was killed. Shot dead at point blank range.

7. The four Henkin children, then ages nine, seven, four, and ten months, endured and bore witness to this horrific attack (the "Attack")—the hail of automatic gunfire and the shocking murder of their parents—all from the backseat of the Henkins' car.

8. After murdering Eitam and Naama, the terrorists abandoned their kidnapping plot. They fled the scene, and with the help of a co-conspirator, they hid. The Israeli Army apprehended the attackers several days later, together with other individuals who helped them plan and execute the Attack. The three attackers, and another terrorist who recruited the squad's members and furnished them with weapons, admitted their roles in the Attack and in one other attack. They also admitted their membership in an illegal, terrorist organization—Harakat al-Muqawamah al-Islamiyyah, also known as "Hamas." An Israeli military court sentenced them to two life sentences plus thirty (30) years.

9. The terrorists also admitted that the Attack was authorized, directed, and supported by Hamas, which praised the brutal Attack as "heroic" and called for more "high-quality attacks."[1]

10. Hamas is a radical terrorist organization dedicated to the destruction of Israel and the creation of an Islamic state in the territory of Israel, Gaza, and the West Bank. Hamas openly and publicly embraces violence, and has committed numerous terrorist attacks in Israel, the Gaza Strip, and the West Bank, killing many civilians, including U.S. nationals, and injuring many more. Hamas's terror campaign continues to this day.

11. Iran and Syria share with Hamas one animating principle: the violent destruction of Israel. Hamas relies on Iran and Syria for material support, including but not limited to, training, weapons, and financing. Iran provides logistical and military support to Hamas through Defendants IRGC (including its Quds Force), and MOIS, and Iran funnels much of its financial sponsorship of Hamas through Defendants Bank Markazi, Bank Melli, and Bank Saderat. Indeed, "but for the support provided by Iran and Syria, Hamas would not have been able to develop into

[1] The Times of Israel, *Israeli mother and father shot dead in West Bank terror attack* (Oct. 1, 2015), http://www.timesofisrael.com/two-seriously-wounded-in-west-bank-terror-attack/.

the cohesive, organized, and deadly organization that it is today."[2] Defendant Iran was designated a State Sponsor of Terrorism in 1984, and Defendant Syria was designated a State Sponsor of Terrorism in 1979. Both Iran and Syria remain designated to this day.

12. Plaintiffs are the estate of the murdered U.S. national Eitam Henkin, the estate of his spouse Naama Henkin, and their four minor children, who are trying to cope with experiencing the brutal Attack. They bring this action under the Foreign Sovereign Immunities Act ("FSIA") against Defendants Iran, together with various agencies or instrumentalities of Iran, and Syria for the wrongful death and related serious injuries arising from the attempted hostage taking and the extrajudicial killing of Eitam Henkin, including economic damages, solatium, pain and suffering, and punitive damages.

JURISDICTION AND VENUE

13. The Court has jurisdiction over this matter and over the Defendant pursuant to 28 U.S.C. §§ 1330(a), 1331, and 1605A(a).

14. The Court has subject matter jurisdiction over claims for wrongful death, personal injury, and related torts against a foreign state that is a State Sponsor of Terrorism and also against any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, where the victim was a national of the United States. 28 U.S.C. § 1605A(a).

15. Defendants Iran and Syria were designated State Sponsors of Terrorism at all relevant times and are therefore subject to the Court's jurisdiction. 28 U.S.C. § 1605A(a).

[2] *Fraenkel v. Islamic Republic of Iran*, 248 F. Supp. 3d 21, 40 (D.D.C. 2017) (subsequent history omitted).

16. As pleaded below, the IRGC and MOIS are political subdivisions of Iran, and Banks Melli, Merkazi, and Saderat are agencies and instrumentalities of Iran. Accordingly, these Defendants are considered a foreign state. 28 U.S.C. § 1603.

17. Plaintiff Eitam Henkin was a national of the United States, and accordingly, the Court has subject matter jurisdiction over his estate's claims. 28 U.S.C. § 1605A(a)(2)(A)(ii)(I). Those claims are governed by federal law. 28 U.S.C. § 1605A(c).

18. The Court also has subject matter jurisdiction over the claims of the immediate family member Plaintiffs, who are not U.S. nationals (or the legal representative of U.S. nationals), the Estate of Naama Henkin (Eitam's spouse) and the minor children of Eitam Henkin (I.Z.H., M.H.H., N.E.H., and N.Y.H.), because one of the Attack's victims, Eitam Henkin, was a national of the United States. 28 U.S.C. § 1605A(a)(2)(A)(ii)(I). Their claims are governed by the common and statutory laws of the District of Columbia or the State of Israel.

19. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(f)(4), which provides that a civil action against a foreign state, its political subdivisions, and/or any agency or instrumentality of a foreign state may be brought in the United States District Court for the District of Columbia.

PARTIES

A. Plaintiffs

20. ***Estate of Eitam Henkin***. Eitam Henkin, a national of the United States, was killed in the Attack. The Estate of Eitam Henkin brings its claims through its court-appointed "estates managers"—*i.e.*, personal representatives—Yoav Armoni and David Jackson.

21. ***Estate of Naama Henkin***. Naama Henkin was the spouse of Eitam Henkin and was also killed in the Attack. The Estate of Naama Henkin brings its claims through its court-appointed "estates managers"—*i.e.*, personal representatives—Yoav Armoni and David Jackson.

22. ***I.Z.H.***, a minor, is the son of Eitam and Naama Henkin. I.Z.H.'s claims are brought by his guardians *ad litem*, Yoav Armoni and David Jackson.

23. ***M.H.H.***, a minor, is the son of Eitam and Naama Henkin. M.H.H.'s claims are brought by his guardians *ad litem*, Yoav Armoni and David Jackson.

24. ***N.E.H.***, a minor, is the son of Eitam and Naama Henkin. N.E.H.'s claims are brought by his guardians *ad litem*, Yoav Armoni and David Jackson.

25. ***N.Y.H.***, a minor, is the son of Eitam and Naama Henkin. N.Y.H.'s claims are brought by his guardians *ad litem*, Yoav Armoni and David Jackson.

B. Defendants

26. ***Iran***. Iran is, and was at all relevant times, a foreign state as defined by the FSIA, 28 U.S.C. § 1603. Since 1984, Iran has been designated the by United States as a State Sponsor of Terrorism pursuant to Section 6(j) of the Export Administration Act of 1979, previously codified at 50 U.S.C. § 4605(j), Section 620A of the Foreign Assistance Act, 22 U.S.C. § 2371, and Section 40(d) of the Arms Export Control Act, 22 U.S.C. § 2780(d). At all relevant times, Iran provided Hamas with material support, training, weapons, money, and resources for acts of extrajudicial killings and hostage taking, as those terms are used in the FSIA, 28 U.S.C. § 1605A(a)(1), that enabled Hamas to be a terrorist organization capable of recruiting terrorists and carrying out terrorist acts, like the Attack.

27. ***IRGC (and the Quds Force)***. The IRGC and the Quds Force, which is a branch of the IRGC, are subdivisions of the state of Iran and are therefore treated as Iran itself.[3] The IRGC was founded after Iran's 1979 Islamic revolution. It functions as an intelligence organization

[3] *Fritz v. Islamic Republic of Iran*, 320 F. Supp. 3d 48, 77, 85 (D.D.C. 2018); *Akins v. Islamic Republic of Iran*, 332 F. Supp. 3d 1, 33 (D.D.C. 2018).

whose role is to defend the Islamic fundamentalist revolution within Iran and to export the revolution's principles throughout the world, including through acts of terrorism. As this Court has held, the IRGC "is the military arm of a kind of shadow government answering directly to the Ayatollah and the mullahs who hold power in Iran. It is similar to the Nazi party's SA organization prior to World War II."[4]

28. The IRGC also holds a controlling number of positions in the Iranian government and its economy. IRGC veterans have served as governors of many of Iran's thirty-one provinces. The IRGC also controls many companies spanning a wide range of industries, including petroleum production, construction, nuclear power, banking, and others—some of the proceeds from which the IRGC uses for illicit purposes, including funding terrorism. Although some public sector companies were or are being "privatized," most public sector companies marked for "privatization" have ended up, or are expected to end up, in the hands of the IRGC and its individual commanders. The IRGC has played a central role in Iran's becoming the world's foremost state sponsor of terror and has recently been designated a Foreign Terrorist Organization under section 219 of the Immigration and Nationality Act, 8 U.S.C. § 1189.

29. The Quds Force is a branch of the IRGC and is Iran's primary tool for exporting the Iranian Islamic revolution beyond Iran's borders. The Quds force does so by setting up and operating armed terrorist cells, establishing educational systems for indoctrination, and otherwise acting to subvert secular, pro-Western Arab-Muslim regimes. It also provides material support to terrorist organizations, including Hamas. In 2007, the Quds Force was designated a terrorist entity pursuant to Executive Order 13224—which authorizes the U.S. government to designate and block

[4] *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 47 (D.D.C. 2006).

the assets of foreign individuals and entities that commit, or pose a significant risk of committing, acts of terrorism—and remains designated to this day.

30. ***MOIS***. MOIS is the Iranian intelligence service. It supports Iran's international terrorist activities by providing material support, including resources and intelligence, for the commission of acts of extrajudicial killing and hostage taking. This Court has consistently found MOIS to be a political subdivision of Iran for purposes of liability and damages under the FSIA.[5] Further, in 2012, the United States designated MOIS as a terrorist organization under E.O. 13224 (and two other executive orders specific to human rights abuses in Iran and Syria, E.O. 13553 and E.O. 13572, respectively), stating, "we are designating the MOIS for its support to terrorist groups, including al Qa'ida, al Qa'ida in Iraq, Hizballah and HAMAS, again exposing the extent of Iran's sponsorship of terrorism as a matter of Iranian state policy."[6]

31. ***Bank Markazi***. Bank Markazi is Iran's central bank and is wholly owned by the Iranian government. According to Bank Markazi itself, it is "responsible for the design and implementation of the monetary and credit policies with due regard to the general economic policy of the country."[7] Accordingly, Bank Markazi is an agency or instrumentality of Iran.[8]

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[5] *See, e.g.*, *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 721-722 (D.D.C. 2010); *Bennett v. Islamic Republic of Iran*, 507 F. Supp.2d 117, 125 (D.D.C. 2007) ("Defendant MOIS is considered to be a division of state of Iran, and is treated as a member of the state of Iran itself."); *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d 105, 116 (D.D.C. 2005).

[6] U.S. Treasury Department, *Treasury Designates Iranian Ministry of Intelligence and Security for Human Rights Abuses and Support for Terrorism* (Feb. 16, 2012), https://www.treasury.gov/press-center/press-releases/Pages/tg1424.aspx.

[7] Central Bank of the Islamic Republic of Iran, *General Information*, http://www.cbi.ir/Page/GeneralInformation.aspx (last visited Apr. 18, 2019).

[8] *In re Terrorist Attacks on Sept. 11, 2001*, 2011 WL 13244047, at *7 (S.D.N.Y. Dec. 22, 2011) ("[T]he Central Bank of the Islamic Republic of Iran [is an] agenc[y] and instrumentalit[y] of the state of Iran. [It] has a legal corporate existence outside the government and core functions which are commercial, not governmental, in nature. [It] is, however, tightly connected to the government of Iran, and [it] is an organ of the government and/or has been owned, directed, and controlled by the Iranian state.").

32. ***Bank Melli***. Bank Melli is Iran's largest commercial bank. It was established in 1927 by order of the Iranian Parliament and has remained a state-owned bank thereafter. Bank Melli describes itself as "a powerful arm of the government."[9] Bank Melli most notably provides banking services to entities involved in Iran's nuclear and ballistic missile programs, but relevant here, Bank Melli also provides banking and financial services to the IRGC and the Quds Force and is one of Iran's main conduits for funding Hamas. Accordingly, Bank Melli is an agency or instrumentality of Iran.[10]

33. ***Bank Saderat***. Bank Saderat was established in 1952 and became a commercial state-owned bank of Iran in 1979 after the revolutionary government nationalized the bank. It has approximately 3,200 branch offices, and has been used by the Government of Iran to channel funds to terrorist organizations, including Hamas. 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 Hizballah fronts in Lebanon that support acts of violence. Hizballah has used Bank Saderat to send money to other terrorist organizations, including millions of dollars on occasion, to support the activities of Hamas. Further, as of early 2005, Hamas had substantial assets deposited in Bank Saderat. On October 25, 2007, the Treasury Department designated Bank Saderat under E.O. 13224 as a terrorist financier, specifically noting that the reason for the designation was Bank Saderat's provision of financial services to designated terrorist groups,

[9] Bank Melli Iran, *History of Bank Melli Iran*, http://bmi.ir/En/BMIHistory.aspx?smnuid=10011 (last visited Apr. 17, 2019).

[10] *Bennett v. Islamic Republic of Iran*, 825 F.3d 949, 954-957 (9th Cir. 2016); *Estate of Heiser v. Bank of Tokyo Mitsubishi UFJ, New York Branch*, 919 F. Supp. 2d 411, 418-19 (S.D.N.Y. 2013).

Hizballah and Hamas. Although Bank Saderat claims to have been "privatized" in 2009, this Court has since held that Bank Saderat is still an agency or instrumentality of Iran.[11]

34. ***The Syrian Arab Republic.*** Syria is, and was at all relevant times, a foreign state as defined by the FSIA, 28 U.S.C. § 1603. Since 1979, Syria has been designated by the United States as a State Sponsor of Terrorism pursuant to Section 6(j) of the Export Administration Act of 1979, previously codified at 50 U.S.C. § 4605(j). Syria has long provided Hamas with material support, training, weapons, money, safe-haven, and other resources for acts of extrajudicial killings and hostage taking as those terms are defined in the FSIA, 28 U.S.C. § 1605A(a)(1). During the Syrian civil war, Syria's support for Hamas declined, but Syria's deep and long-standing support enabled Hamas to be the cohesive, organized, and deadly organization that it is today, capable of conducting terror campaigns, including the Attack.

FACTS

A. Hamas

35. Hamas is a violent terrorist organization. Because of its history of conducting terror attacks, the United States Government designated Hamas as a Specially Designated Terrorist (1995), under E.O. 12947, a Foreign Terrorist Organization (1997), under 8 U.S.C. § 1189, and a Specially Designated Global Terrorist (2001), under E.O. 13224. Hamas has remined designated to this day. These designations of Hamas were public events, well known to the entire international community, including Defendants. In addition, numerous Hamas leaders and fundraisers are designated by the United States Government as Specially Designated Nationals whose assets have been frozen as a result of their activities for Hamas.

[11] *Shoham v. Islamic Republic of Iran,* 2017 WL 2399454, at *8 (D.D.C. June 1, 2017) (holding that Bank Saderat is an instrumentality of Iran), *appeal dismissed*, 2019 WL 1270405 (D.C. Cir. Feb. 25, 2019).

107. By providing myriad avenues along which to direct, support, incite and fund terrorist activities, Defendants Iran, IRGC, MOIS, Bank Markazi, Bank Melli, Bank Saderat, and Syria provided material support for Hamas. Each Defendant, collaborated, designed, directed, incited, financed, provided material support, aided, abetted, conspired, and executed acts of terror with Hamas. Defendants knew or should have known that the material support would be used to fund, incite, and perpetrate terrorism against Jews, Israelis, Americans and others in Israel, as this was the stated goal of Hamas—a goal shared by Defendants. As such, Defendants are directly, jointly, and severally liable for the injuries suffered by Plaintiffs and should, therefore, be held accountable.

COUNT I

WRONGFUL DEATH
(Under 28 U.S.C. § 1605A(c) or, in the alternative, the laws of the District of Columbia or Israeli Law)

108. The allegations set forth in the preceding paragraphs are incorporated by reference as though fully set forth herein.

109. Iran is a foreign state that, since 1984, has been designated as a state sponsor of terrorism within the meaning of 28 U.S.C. § 1605A.

110. Syria is a foreign state that, since 1979, has been designated as a state sponsor of terrorism within the meaning of 28 U.S.C. § 1605A.

111. The attempted kidnapping and murder was an act of hostage taking and extrajudicial killing within the meaning of 28 U.S.C. § 1605A.

112. Plaintiffs, are the Estate of Eitam Henkin, the minor children of Eitam Henkin, I.Z.H., M.H.H., N.E.H., and N.Y.H., (by their guardians *ad litem*), and the Estate of Eitam's spouse, Naama Henkin.

Annex 68

***Deborah D. Peterson, et al. v. Islamic Republic of Iran*, et al., Application of Fund Trustee Pursuant to Section 5.6 of the Fund Agreement for Approval of Settlement with Citibank, N.A. on Claim to Recover Costs Assessed Against the Segregated Account and for Approval of Trustee's Counsel's Application for Attorney's Fees, 17 May 2019, Case No 1:10-cv-04518**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), et al., Plaintiff, 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.	Case No. 10 Civ. 4518 (KBF) **CONSOLIDATED** **FILED UNDER SEAL** **(REDACTED VERSION)**

APPLICATION OF FUND TRUSTEE PURSUANT TO SECTION 5.6 OF THE FUND AGREEMENT FOR APPROVAL OF SETTLEMENT WITH CITIBANK, N.A. ON CLAIM TO RECOVER COSTS ASSESSED AGAINST THE SEGREGATED ACCOUNT AND FOR APPROVAL OF TRUSTEE'S COUNSEL'S APPLICATION FOR ATTORNEY'S FEES

Stanley Sporkin, as Fund Trustee (the "Trustee"), through his counsel, Heller, Horowitz & Feit, P.C., respectfully files this Application for an order, pursuant to Section 5.6 of the Agreement for the Peterson Fund, dated June 27, 2013 and filed in this Court on July 9, 2013 ("the Fund Agreement") (ECF Nos. 462, 463), authorizing and approving settlement of the Trustee's dispute with Citibank, N.A. ("Citibank").[1] The facts underlying this dispute and the parties' respective positions are set forth in the various declarations submitted by Citibank (ECF Nos. 443, 444, 993, 995, 996) (as redacted) and by the Trustee (ECF Nos. 981, 1003) (as redacted), and are briefly summarized herein. (Unredacted copies of these submissions were provided to the Court.)

[1] Section 5.6 of the Fund Agreement requires that the Trustee obtain prior approval of the Court to settle claims on behalf of the Fund.

Under the proposed settlement, the Trustee will resolve his claim to recover from Citibank the sum of a [redacted][2] in the amount of [redacted] (plus interest), for $1,162,500. In addition, the Trustee, on his behalf and on behalf of the Fund, will deliver a General Release to Citibank. As more fully set forth herein, the Trustee believes that the settlement is fair and reasonable and in the best interests of the Peterson Plaintiffs (the beneficiaries of the Qualified Settlement Fund or "Fund"). Moreover, while we do not believe that the Fund Agreement requires that our Firm's fee be approved, in the interests of full disclosure, we seek approval of our fee in accordance with our firm's agreement with the Trustee.[3]

I. PROCEDURAL AND FACTUAL BACKGROUND

In June 2008, the Peterson Judgment Creditors served a Writ of Execution and Restraining Notice upon Citibank with respect to the certain security entitlements and related cash held by Clearstream Banking, S.A. ("Clearstream") in its omnibus account at Citibank. Citibank properly restrained the assets that were at issue (approximately $1.75 billion), and held them in a Segregated Account until directed by the Court, in 2013, to turn over those funds to the Peterson Fund. Citibank neither assessed operational or administrative fees with respect to the Segregated Account nor sought reimbursement of any legal fees related to its role as a neutral stakeholder in the extended proceedings. The entire balance of the Segregated Account was

[2] The abbreviations and defined terms from the June 20, 2013 filings, ECF 443-444 (Redacted), are used herein.

[3] While this Application is made by the Trustee, we have transmitted a copy to Citibank before filing, and have been advised that Citibank consents to the requested relief and to the contents of this Application, which has been reviewed and approved by Citibank's counsel. Both parties, of course adhere to the arguments previously made on the issues in prior filings and are consenting to the contents of the Application only for settlement purposes. If for any reason the settlement is not approved, nothing herein shall be deemed an admission against either party.

turned over to the Trustee in August 2013. The *only* charge to the Segregated Account was a [redacted]. Although Citibank turned over the entire corpus to the Fund, including any accretions to value, Citibank deducted the [redacted].[4]

The issue of Citibank's entitlement to deduct the [redacted] was raised at the time the Segregated Account was turned over to the Trustee in July 2013 and was "carved out and just lopped off for the moment" from the Turnover Order to expedite turnover of the Restrained Assets. In March 2018, the Trustee retained our Firm to review the matter and, if appropriate, to commence appropriate proceedings to recover the [redacted] on behalf of the Fund. Thereafter, the Trustee, through the undersigned counsel, again affirmatively raised the issue with Citibank. When we were unable to resolve the matter with Citibank the parties contacted the Court and respective memoranda of law and declarations were submitted.

II. THE PARTIES' RESPECTIVE ARGUMENTS CONCERNING THE [redacted]

The Trustee believes, given the uncertainty and expense of litigation, that compromise of the Trustee's claim to recover the [redacted] for a payment of $1,162,500 is appropriate. (As noted above, the Trustee will also provide a General Release to Citibank; the Trustee is not aware of any other claims that the Trustee or the Fund has against Citibank.) The parties' respective positions are summarized below to enable the Court to assess whether the

[4] While the restrained assets were in its possession, Citibank [redacted]

proposed settlement "is fair, equitable and in the best interests of the estate." *In re Chemtura Corp.*, 439 B.R. 561, 593 (Bk., S.D.N.Y. 2010). As noted earlier, the parties' positions are fully set forth in their respective declarations and memoranda of law submitted to the Court.[5]

First, Citibank argued the Trustee waived and/or abandoned his right to seek from Citibank the [redacted] assessed against the Segregated Account. Although Judge Forrest "carved-out" the issue of the reasonableness of the [redacted] to expedite turnover and partial final judgment, Judge Forrest anticipated and understood, based upon the statements of counsel for the Peterson Plaintiffs, that opposition – if any – to Citibank's initial submission on the issue would be filed shortly, and addressed by the Court then. Instead, the Trustee did not raise the issue for approximately five years. In light of that delay, Citibank argued that the Trustee had waived its right to now seek to recover [redacted].[6]

In response, the Trustee stated there was no specific time for the submission of responsive papers, the absence of any actual prejudice to Citibank from the delay, and the failure of Citibank to demand any response on the part of the Trustee to Citibank's submission regarding the assessment of this cost.

Second, Citibank asserted that the additional [redacted]

[5] We have attempted to set forth the parties' respective positions in a neutral manner. In the event that this Court for any reason declines to approve the proposed settlement, nothing in this Application should be deemed or understood to modify or limit the parties' respective positions, as expressed in their submissions.

[6] The Trustee also requested an award of pre-judgment interest, computed from July 2015 to the present, at the statutory rate of 9% per annum under CPLR 5001. Citibank argued that the Court should exercise its discretion to deny such interest, given the Trustee's delay in filing his claim and [redacted]

[redacted]. Moreover, Citibank argued that the Trustee cannot claim that *Citibank* was required to bear the [redacted]. The Trustee, Citibank argued, cannot have it both ways.

The Trustee rejects the distinction between the [redacted]. The Trustee noted that under CPLR 5222(b) the restraints encompass any monies that were generated by the restrained assets and which subsequently come into the possession of the garnishee, and which then comprised part of the *res* that was subject to the original restraint. For that reason, and others, the Trustee argued that Clearstream had absolutely no right to make any agreements with respect to assets that had already been restrained by the Judgment Debtors.

Third, the July 9 Order authorized Citibank to deduct "reasonable fees calculated [on the Restrained Assets]." Citibank contended that its pass-through of [redacted] was proper, given that the Segregated Account consisted of more than $1.75 billion, so that the total fees were less than [redacted] of the overall restrained assets. Citibank also noted that it could have, but did not, ask for an award of attorneys' fees incurred in addressing the Turnover Order, pursuant to Section 17 of the July 9, 2013 Order and did not otherwise deduct fees or costs from the compensation paid on into the Segregated Account or charged to or assessed against the account. [7]

[7] As part of the proposed settlement, Citibank has agreed that it will not make any claim to attorneys' fees or costs (although the Trustee believes that the time to make such a claim has in any event expired under the July 9, 2013 Order)

The Trustee contended that irrespective of the amount on deposit in the Segregated Account [redacted] cannot be considered a "reasonable fee" for doing no more than (i) holding the levied-upon Bonds; (ii) creating a Segregated Account; (iii) ultimately delivering the cash value of those Bonds to the Fund, (iv) and Citibank, while permitted to pass-along the cost [redacted] to its customers did not mandate such a pass-through. (Citibank argued that this was not a fair summary of what it "did", as it failed to take into account the capital costs, operating costs and FDIC charges it bore in order to maintain a $1.75 billion deposit for the parties' benefit.) The Trustee also argued, among other things, that Citibank cited no authority that supported a bank's deduction of [redacted] of dollars from a customer's account; and that Citibank was essentially trying to pass its cost of doing business on to assets that were already subject to a restraint by a judgment creditor.

III. THE TRUSTEE'S SETTLEMENT WITH CITIBANK IS FAIR AND REASONABLE AND IN THE BEST INTERESTS OF THE PETERSON PLAINTIFFS, IN LIGHT OF THE SUBSTANTIAL LITIGATION RISKS ASSOCIATED WITH THE TRUSTEE'S CLAIM.

In determining whether the Trustee's proposed settlement with Citibank should be approved, the case law concerning judicial approval of a bankruptcy settlement under Bankruptcy Rule 9019 is instructive.

Under Bankruptcy Rule 9019 the court reviews the settlement to determine if it "is fair, equitable and in the best interests of the estate." *In re Chemtura Corp.*, 439 B.R. 561, 593 (Bk., S.D.N.Y. 2010); *in re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493, 496 (Bk., S.D.N.Y. 1991). In making that determination, "a court's responsibility is to canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *In re Motors Liquidation Company*, 555 B.R. 355, 365-66 (Bk., S.D.N.Y. 2016), quoting *in re W.T. Grant, Co.*, 699 F.2d 599, 608 (2d Cir. 1983). While the court may rely upon the opinions of the parties

and their counsel supporting the settlement, the court must, at the end of the day, "independently evaluate the reasonableness of the settlement." *Motors*, *supra*, quoting *in re Rosenberg*, 419 B.R. 532, 536 (Bk., E.D.N.Y. 2009).

The Second Circuit has articulated seven factors that should be considered by a court in deciding whether to approve a proposed settlement by a bankruptcy trustee. *Motorola, Inc. v. Official Committee of Unsecured Creditors (in re Iridium Operating, LLC)*, 478 F.3d 452, 462 (2d Cir. 2007), citing TMT Trailer Ferry, Inc., 390 U.S. 414 (1968). See *in re Motors Liquidation Company, supra*; *in re MF Global, Inc.*, 2102 WL 3242533 at *6 (Bk., S.D.N.Y. 2012). To be sure, a number of the Motorola factors are not applicable to our situation.[8] But the ones that are relevant indicate that the proposed settlement should be approved. In this regard, "the most important consideration in determining whether a settlement should be approved is the likelihood of success compared to the benefits of the settlement." *In re Copperfield Investments, LLC*, 401 B.R. 87, 91 (Bk., E.D.N.Y. 2009). Accord, *in re Adelphia Communications Corp.*, 327 B.R. 143, 160 (Bk., S.D.N.Y. 2005); *in re Handler*, 386 B.R. 411, 421 (Bk., E.D.N.Y. 2005).

While the Trustee and his counsel believe that the Trustee's position had substantial merit, there was, of course, a very real and serious risk that the Court would see things differently, and that Citibank would prevail on one or more of its justifications for deducting the [redacted] on the Segregated Account—especially since the Fund obtained a "net benefit" of [redacted]. In addition, the quite lengthy delay in asserting the Trustee's claim (from July 2013 through May 2018) was potentially problematic. For these reasons, the Trustee and his counsel believe that the final negotiated settlement of $1,162,500 [redacted]

[8] For example, the ones that focus on the separate interests of the classes of creditors and the scope of the releases to be obtained by officers and directors, and whether other parties in interest support the settlement. (*Iridium*, *supra*).

[redacted] was entirely fair and appropriate, and certainly falls well within the "range of reasonableness."[9]

Simply put, were Citibank able to convince the Court that, for example, (1) the passed through [redacted] was "fair and reasonable" under Section 3 of the July 9 Order, (2) that the [redacted] which was not subject to the Restraining Notice or Execution, and that the Fund received a "net benefit" [redacted], or (3) that the almost five year delay in affirmatively proceeding with the claim effected a waiver or other bar to maintenance of the claim, the Fund would have received nothing. This is a risk that the Trustee did not believe was worth running by "rolling the dice" and permitting the matter to be decided by the Court.[10]

IV. THE FEES EARNED BY HELLER, HOROWITZ & FEIT, P.C. ARE EMINENTLY REASONABLE AND SHOULD BE APPROVED.

The Fund Agreement authorizes the Trustee (in Section 5.4) to retain attorneys "to assist with…the administration of the Fund Estate." While there is no specific requirement for Court approval of the retained attorney's fee, we nevertheless wish to disclose our fee arrangement with the Trustee in this matter and explain why we believe our fee is eminently reasonable and appropriate.

---

[9] There can be no suggestion that the settlement was the product of anything other than "the product of arms-length bargaining." (*Iridium, supra*). The only other potentially relevant *Iridium* factors are "the likelihood of complex and protracted litigation" and "the competency and experience of counsel."

[10] The only other potentially relevant *Iridium* factors are "the likelihood of complex and protracted litigation" and "the competency and experience of counsel." As to the first, while it is unlikely that the dispute would drag on for an extended period of time, that means that the Trustee, if he "guessed wrong", could lose his claim immediately. As to the second, each of the principals of our Firm has been practicing commercial litigation for forty years and, by virtue of our partial contingency arrangement (see below), had every incentive to maximize the recovery from Citibank (separate and apart from our professional obligation to do so).

Pursuant to the March 15, 2018 Retainer Agreement, our Firm presented to the Trustee three options for our representation: (i) a pure time-based retention at the rate of $525 per hour; (ii) a pure contingency, of between 10% and 20% of the recovery, depending on the stage at which the matter was resolved; and (iii) a "blended hourly and contingency" arrangement, under which our Firm would be paid a discounted hourly rate of $375 per hour and would receive 10% of any recovery. The Trustee elected the third option.

To date, we have devoted approximately 80.5 hours to this matter, including legal research concerning such matters as Article 52 of the CPLR and the FDIC insurance program, the preparation of a detailed claim letter, an application for authorization to commence litigation, an initial memorandum in opposition to Citibank's submission, and a reply memorandum. We have also engaged, as noted above, in extensive settlement discussions with Citibank's counsel, and have prepared this Application for approval of the settlement (which was preceded by extensive discussions with Citibank's counsel as to the contents of the Application). Our total time charges to date are approximately $30,187.50. In addition, pursuant to the Retainer, we are entitled to receive 10% of the recovery, or $116,500. Our total fee is thus approximately $146,687.50, or approximately 12.6% of the overall recovery for the Fund. [11]

We respectfully submit that both our hourly arrangement ($375 per hour) and our contingency fee (only 10%) are fair and reasonable and should be approved. We also note that we have conferred a significant benefit on the Fund by increasing the amount available for distribution to the Peterson Plaintiffs by approximately $1 million.

[11] We have sent the Trustee monthly invoices with respect to the hourly portion of the Retainer, and have been paid under those invoices for such hourly portion.

CONCLUSION

For the reasons stated above, the Fund Trustee respectfully requests the Court's entry of an order a) approving the Trustee's settlement of his claim with Citibank, and b) approving payment of legal fees to Heller Horowitz & Feit, P.C., pursuant to the terms of the Retainer. A proposed order is annexed as Exhibit "A."

Dated: April 9, 2019
MAY 17

Respectfully submitted,

HELLER, HOROWITZ & FEIT, P.C.

By: _____
Eli Feit

By: _____
Stuart A. Blander

260 Madison Avenue
New York, New York 10016
(212) 685-7600
Counsel for Stanley Sporkin, Fund Trustee

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.	Case No. 10 Civ. 4518 (KBF) **CONSOLIDATED**

ORDER GRANTING TRUSTEE'S APPLICATION FOR ORDER PURSUANT TO SECTION 5.6 OF FUND AGREEMENT APPROVING SETTLEMENT WITH CITIBANK, N.A. ON CLAIM TO RECOVER COSTS ASSESSED AGAINST THE SEGREGATED ACCOUNT AND APPROVAL OF TRUSTEE'S COUNSEL'S ATTORNEYS' FEES

The Fund Trustee's Application for Order Pursuant to Section 5.6 of Fund Agreement Approving the Trustee's Application for an Order Approving the Trustee's Settlement With Citibank, N.A. on Claim to Recover Costs Assessed Against the Segregated Account and for Approval of Trustee's Counsel's Fees is GRANTED.

IT IS FURTHER ORDERED that Citibank shall, within thirty (30) days of receipt from the Trustee of:

1) the fully executed General Release, and

2) a W-9 from the Qualified Settlement Fund's ("QSF") Trustee and wire instructions, transfer the approved settlement amount to the QSF's account at UBS Wealth Management (Americas); and

IT IS FURTHER ORDERED that the legal fees to be received by the Fund Trustee's counsel, Heller, Horowitz & Feit, P.C., from the Trustee, for representing the Trustee in this matter, pursuant to the Retainer, dated March 15, 2018, is approved, in the amount of $_____; and it is

IT IS FURTHER ORDERED, that the entirety of the remaining funds of the settlement, after payment, by the Trustee, of the legal fees to Heller, Horowitz & Feit, P.C., shall be distributed by the Trustee to the Plaintiffs without any further deduction of any kind.

SO ORDERED:

Dated: New York, New York
_____, 2019

_____
LORETTA B. PRESKA
United States District Judge

4826-0709-0825v.2 0067486-000011

Annex 69

***Christie, et al. v. Islamic Republic of Iran, the Islamic Revolutionary Guard Corps, and Iranian Ministry of Intelligence & Security,* U.S. District Court for the District of Columbia, Second Amended Complaint, 28 May 2019, Case No. 1:19-cv-01289**

Excerpts: pp. 1-3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GLENN TYLER CHRISTIE, JANET LOUISE CHRISTIE, CLAYTON OMAR ZOOK, SANDRA OLIVIA BOUSE, JANET LYNN DOUGLASS, GREGORY ANTHONY RUSSELL, CRYSTAL LYNN LOVE, RICKY LEE MORSE, CHRISTOPHER PIUS NAGEL, RAEANN BETH NAGEL, BERNARDINE CLEMENTINE NAGEL, TERESE MARIE HUNNEL, GERARD PAUL NAGEL, MICHAEL JOHN NAGEL, MARY MARGARET WILMES, PATRICK JAMES NAGEL, ROBERT CHARLES NAGEL, CAROLYN ANN NAGEL, WILLIAM CHRISTIAN NEVINS, KRISTINA NEVINS, SCOTT ELLIOTT RIKARD, BRYANT KEITH WHITE, GEORGIANA WHITE, JOSEPH MARTIN JACKSON, SHEILA LYNN JACKSON, WILLIAM RICHARD JACKSON, MELISSA DAWN JACKSON, TIMOTHY MICHAEL SCHOMAKER, STEVEN NEAL WILSON, KIMBERLY MICHELLE WILSON,	§ §		**PLAINTIFFS' FIRST AMENDED COMPLAINT** **Case No.: 1:19-cv-01289-BAH** **Hon. Beryl A. Howell**

NATHAN FREDERICK	§		
BALOY,	§		
	§		
JACKIE DOUGLAS	§		
SWOGGER,	§		
JACKIE DOUGLAS	§		
SWOGGER,	§		
	§		
CHAD ALLEN	§		
MCCULLOUGH	§		
	§		
AND	§		
	§		
LESANDRO E. SANTIAGO	§		
	§		
(Addresses filed under Seal)	§		
	§		
Plaintiffs,	§		
v.	§		
THE ISLAMIC REPUBLIC OF	§		
IRAN	§		
The Ministry of Foreign Affairs	§		
Imam Khomeini Street	§		
Imam Khomeini Square	§		
District 12	§		
Tehran, Iran	§		
1136914811	§		
	§		
THE ISLAMIC	§		
REVOLUTIONARY GUARD	§		
CORPS	§		
Dowshan Tappeh	§		
Jaddeh-ye-Makhsus-e-Qasr-e-	§		
Firuzeh, District 14	§		
Tehran, Iran	§		
	§		
IRANIAN MINISTRY OF	§		
INTELLIGENCE & SECURITY	§		
(a/k/a Vezarat-e Ettela'at Va	§		
Amniat-e Keshvar a/k/a VEVAK	§		
a/k/a VAJA)	§		
Second Negarestan Street	§		
Pasdaran Avenue	§		
Tehran, Iran	§		
	§		
Defendants.	§		

I. FIRST AMENDED COMPLAINT

Plaintiffs bring this action under the terrorism exception to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605A ("FSIA") against Defendants the Islamic Republic of Iran, the Iranian Islamic Revolutionary Guards Corps ("IRGC") and the Iranian Ministry of Intelligence and Security ("MOIS") for damages arising out of the June 25, 1996, terrorist attack on the Khobar Towers complex in Dhahran, Saudi Arabia ("Terrorist Attack"). On that day, Hizbollah terrorists, acting at the direction and with the material support of Defendants Iran and its agents the IRGC and MOIS detonated a 5,000-pound truck bomb outside the complex, which housed United States military personnel.[1] The blast from this bomb sheared off the entire face of the Khobar Towers complex and shattered windows more than a half a mile away. The blast killed nineteen air force servicemen and injured many others. This Court has previously recognized liability for the Terrorist Attack by these Defendants and co-conspirators. [2]

Plaintiffs are thirteen (14) injured members of the armed forces who survived the blast and twenty-one (21) of their immediate family members. They seek compensatory and punitive damages under the 28 U.S.C. §1605A (c), and under applicable state and federal law, against Defendants the Islamic Republic of Iran, the Iranian Ministry of Intelligence and Security and the Islamic Revolutionary Guard Corps, jointly and severally, and in support of their Complaint allege as follows:

---

[1] The pronunciation and spelling of "Hizbollah" ("Hezbollah," "Hizballah," "Hizbu'llah"), is based on region and dialect, but all translate to the "Party of Allah."
[2] *Blais v Islamic Republic of Iran*, 459 F. Supp. 2d 49 (D.D.C. 2006); *Estate of Heiser v Islamic Republic of Iran*, 466 F. Supp. 2d 229 (D.D.C. 2006); *Rimkus v Islamic Republic of Iran*, 575 F. Supp. 2d 181 (D.D.C. 2008).

Annex 70

***Arias, et al. v. The Islamic Republic of Iran*, U.S. District Court for the Southern District of New York, Order of Judgment as to Liability, 9 September 2019, Case No. 1:19-cv-00041**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Terrorist Attacks on September 11, 2001	03-md-1570 (GBD)(SN) ECF Case
This document relates to: *Arias, et al. v. The Islamic Republic of Iran*	19-cv-41 (GBD)(SN) ECF Case

ORDER OF JUDGMENT AS TO LIABILITY AND FOR PARTIAL FINAL DEFAULT JUDGMENTS ON BEHALF OF ARIAS PLAINTIFFS IDENTIFIED AT EXHIBIT A

Upon consideration of the evidence and arguments submitted by Plaintiffs through their Motion for Entry of Partial Final Default Judgments Against the Islamic Republic of Iran as to Liability and Damages (the "Motion"), who are each a spouse, parent, child, or sibling (or the estate of a spouse, parent, child, or sibling), of a victim killed in the terrorist attacks on September 11, 2001, together with the entire record in this case, it is hereby:

ORDERED that the Motion is granted and default judgment as to liability is entered in favor of all plaintiffs in *Arias, et al. v. The Islamic Republic of Iran*, Case No. 19-cv-41 (GBD)(SN) against the Islamic Republic of Iran; and it is

ORDERED that partial final judgment is entered against the Iran Defendants and on behalf of the Plaintiffs in *Arias, et al. v. The Islamic Republic of Iran.*, 19-cv-41, as identified in the attached Exhibit A, who are each a spouse, parent, child, or sibling (or the estate of a spouse, parent, child, or sibling) of individuals killed in the terrorist attacks on September 11, 2001, as indicated in Exhibit A, and it is

ORDERED that Plaintiffs identified in Exhibit A are awarded: solatium damages of $12,500,000 per spouse, $8,500,000 per parent, $8,500,000 per child, and $4,250,000 per sibling, as set forth in Exhibit A; and it is

ORDERED that Plaintiffs identified in Exhibit A are awarded prejudgment interest of 4.96 percent per annum, compounded annually, running from September 11, 2001 until the date of judgment; and it is

ORDERED that Plaintiffs identified in Exhibit A may submit an application for punitive damages, economic damages, or other damages (to the extent such awards have not previously been ordered) at a later date consistent with any future rulings made by this Court on this issue, and it is

ORDERED that the remaining *Arias* Plaintiffs not appearing on Exhibit A, may submit in later stages applications for damages awards, and to the extent they are for solatium or by estates for compensatory damages' for decedents pain and suffering from the September 11 attacks, they will be approved consistent with those approved herein for the Plaintiffs appearing on Exhibit A.

Dated: New York, New York
SEP 09 2019 2019

SO ORDERED:

George B. Daniels

GEORGE B. DANIELS
United States District Judge

EXHIBIT

A

EXHIBIT A										
#	DECEDENT FIRST NAME	DECEDENT MIDDLE NAME	DECEDENT LAST NAME	SUFFIX	PLAINTIFF FIRST NAME	PLAINTIFF MIDDLE NAME	PLAINTIFF LAST NAME	PLAINTIFF SUFFIX	RELATIONSHIP TO DECEDENT	SOLATIUM
1	Susan	Clancy	Conlon		John	Patrick	Conlon		Spouse	$ 12,500,000.00
2	Adam	P.	Arias		Thomas	S.	Arias		Parent	$ 8,500,000.00
3	Susan	Clancy	Conlon		Kimberly	Patrice	Conlon		Child	$ 8,500,000.00
4	Lucy		Fishman		Mary		Dwyer		Sibling	$ 4,250,000.00
5	Lucy		Fishman		Samantha		Fishman		Child	$ 8,500,000.00
6	Lucy		Fishman		Jeanene		McGregor		Sibling	$ 4,250,000.00
7	Harvey	Joseph	Gardner	III	Joseph	W.	Gardner		Sibling	$ 4,250,000.00
8	Steven	L.	Glick		Colin	Glick	Stuart		Child	$ 8,500,000.00
9	Steven	L.	Glick		Courtney	Glick	Stuart		Child	$ 8,500,000.00
10	Ralph	Michael	Licciardi		Jo-Ann		Licciardi		Parent	$ 8,500,000.00
11	Timothy	M.	O'Brien		Sean	Patrick	O'Brien		Sibling	$ 4,250,000.00
12	Gregory	M.	Preziose		Jake	D.	Preziose		Child	$ 8,500,000.00
13	Gregory	M.	Preziose		Anthony	G.	Preziose		Child	$ 8,500,000.00
14	Gregory	M.	Preziose		Gabrielle	M.	Preziose		Child	$ 8,500,000.00
										$ 106,000,000.00

Annex 71

***Baxter, 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 (Liability), 27 September 2019, Case No. 11-2133**

Excerpts: p. 1 & pp. 17-33

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM "JACK" BAXTER, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civil No. 11-2133 (RCL)**
	)	
ISLAMIC REPUBLIC OF IRAN, *et al.*,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

Plaintiffs bring this action under the Foreign Sovereign Immunities Act ("FSIA") against the Islamic Republic of Iran and the Iranian Ministry of Information and Security ("MOIS"). They seek damages for injuries suffered as a result of ten terrorist attacks committed between December 2001 and September 2004. Pending before the Court is plaintiffs' motion for default judgment as to liability. ECF No. 30. For the reasons that follow, the Court will grant plaintiffs' motion and appoint a special master to receive all other evidence necessary to determine each plaintiff's entitlement to damages.

I. PROCEDURAL HISTORY

Plaintiffs filed their complaint on November 30, 2011, pleading causes of action against Iran and MOIS. Compl., ECF No. 1.[1] Their causes of action and the jurisdiction of this Court are premised on section 1605A of the FSIA. Iran and MOIS were served with process on September

[1] Plaintiffs' complaint also pleads causes of action against the Syrian Arab Republic and Syrian Air Force Intelligence ("SAFI"). Because plaintiffs had been unable to confirm service of process on these two Syrian defendants and plaintiffs' claims against the Iranian defendants were ripe for consideration on the merits—and in the interest of bringing an expeditious conclusion to this litigation—the Court severed plaintiffs' claims against Syria and SAFI on May 3, 2018. ECF No. 31. Those claims now form the basis of a separate suit before this Court, *Baxter v. Syrian Arab Republic*, Civil Action No. 18-1078 (RCL). All references to "defendants" in this opinion refer only to Iran and MOIS.

2017.state.gov/documents/organization/10319.pdf. That year, Ayatollah Khamenei continued to state his view that Israel is a "cancerous tumor" requiring removal, vividly illustrating the sort of hostility underlying Iran's support for Hamas. *Id.* The State Department made similar findings in its 2002, 2003, and 2004 reports. *See* U.S. Dep't of State, *Patterns of Global Terrorism 2002* 77 (April 2003), https://2009-2017.state.gov/documents/organization/20177.pdf; U.S. Dep't of State, *Patterns of Global Terrorism 2003* 88 (April 2004), https://2009-2017.state.gov/documents/organization/31912.pdf; U.S. Dep't of State, *Country Reports on Terrorism 2004* 88–89 (April 2005), https://2009-2017.state.gov/documents/organization/45313.pdf.

The Court is confident that defendants' continuous and generous support of Hamas between 2001 and 2004—as well as other years—enabled Hamas to commit numerous atrocities, including the ten attacks at issue here. As such, the Court finds that Iran and MOIS provided logistical and financial support to Hamas during the relevant time frame and may be held liable for plaintiffs' claims.

III. CONCLUSIONS OF LAW

A. Jurisdiction and Sovereign Immunity

The FSIA is the "sole basis for obtaining jurisdiction over a foreign state in our courts." *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989). The statute codifies the concept of foreign sovereign immunity, something which is "a matter of grace and comity on the part of the United States, and not a restriction imposed by the Constitution." *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134, 140 (2014) (quoting *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 486 (1983)). The FSIA sets forth exceptions to foreign sovereign immunity that provide the only authority for a district court to assert subject matter

jurisdiction over claims against a foreign state. *Odhiambo v. Republic of Kenya*, 764 F.3d 31, 34 (D.C. Cir. 2014). "[I]f no exception applies, the district court has no jurisdiction." *Id.*

Because subject matter jurisdiction is premised on the existence of an exception to foreign sovereign immunity, a district court considering a claim against a foreign state must decide whether an exception to immunity applies "even if the foreign state does not enter an appearance to assert an immunity defense." *Verlinden*, 461 U.S. at 493 n.20. This is in keeping with the general rule that "[s]ubject-matter jurisdiction can never be waived or forfeited;" thus, when jurisdictional questions arise in a suit, "courts are obligated to consider *sua sponte* issues that the parties have disclaimed or have not presented." *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012).

1. Original jurisdiction

Federal district courts have original jurisdiction over FSIA cases by virtue of 28 U.S.C. § 1330. It provides that original jurisdiction will exist over (1) nonjury civil actions (2) for claims seeking relief *in personam* (3) against a foreign state (4) when the foreign state is not entitled to immunity either under sections 1605 to 1607 of the FSIA or under any applicable international agreement. 28 U.S.C. § 1330(a). Section 1604 of the FSIA reinforces element four, stating that foreign states are presumptively immune from jurisdiction in federal and state courts except to the extent provided in sections 1605 to 1607. 28 U.S.C. § 1604.

All of section 1330(a)'s requirements are met in this case. First, plaintiffs have not demanded a jury trial. This is, therefore, a nonjury civil action. Second, this suit is against defendants as legal persons, not against property. The claims, therefore, seek relief *in personam*. *Cf. Gang Luan v. United States*, 722 F.3d 388, 399 n.15 (D.C. Cir. 2013) ("*In personam* jurisdiction is jurisdiction over the defendant. *In rem* jurisdiction is jurisdiction over the property.").

Third, this suit is against a "foreign state." One defendant, Iran, is plainly a foreign state. The status of MOIS requires greater consideration. The FSIA defines a foreign state at section 1603(a) as including "a political subdivision of a foreign state." 28 U.S.C. § 1603(a). The D.C. Circuit has adopted a "categorical approach" to determining the legal status of foreign government-related entities for purposes of the FSIA's jurisdiction and service of process provisions: "if the core functions of the entity are governmental, it is considered the foreign state itself; if commercial, the entity is an agency or instrumentality of the foreign state." *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 234 (D.C. Cir. 2003). This Court has previously concluded that MOIS is the intelligence organization of Iran and is a conduit of Iranian funds to terrorist organizations. *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46, 53 (D.D.C. 2003); *see also Valencia v. Islamic Republic of Iran*, 774 F. Supp. 2d 1, 7 (D.D.C. 2010). Intelligence gathering and operations are not commercial in nature; they are governmental functions. MOIS, thus, may be treated as itself a "foreign state" for purposes of section 1603(a). *See Oveissi v. Islamic Republic of Iran*, 879 F. Supp. 2d 44, 51 (D.D.C. 2012) (finding that MOIS was a foreign state for purposes of those proceedings because the evidence established it was a "division of the state" itself).

a. Sovereign immunity

The final requirement for jurisdiction under section 1330(a)—that there be an exception to sovereign immunity as to the defendants—requires more substantial explanation. The exception to foreign sovereign immunity relevant to this suit is codified at 28 U.S.C. § 1605A, the state-sponsored terrorism exception. That section establishes that a foreign state has no immunity

> in any case . . . [1] in which money damages are sought [2] against a foreign state [3] for personal injury or death that was [4] caused by [5] 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.

28 U.S.C. § 1605A (numbering added). The Court now considers each of these requirements for waiver of sovereign immunity.

First, the complaint identifies and seeks only monetary remedies for plaintiffs' injuries. Second, as established above, both defendants are foreign states as defined by the statute. Third, plaintiffs have proven various instances of personal injury or death and all claims arise from these instances. Under section 1605A, such injury or death "must merely be the bases of a claim for which money damages are sought." *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 66 (D.D.C. 2010). Jurisdiction is not restricted to physical injury suffered directly by each claimant. *Id.* Thus, plaintiffs' various claims for emotional injuries to the victims' family members—all of which spring from the attacks perpetrated by Hamas—also constitute the type of claims required for jurisdiction.

The fourth element, causation, is established by showing "some reasonable connection between the act or omission of the defendant and the damages which the plaintiff has suffered." *Id.* (internal citation omitted). Plaintiffs need not show that their injuries would not have occurred "but for" defendants' actions. *See Kilburn v. Socialist People's Libyan Arab Jamahiriya*, 376 F.3d 1123, 1128 (D.C. Cir. 2004) (interpreting the similarly worded causation requirement of the former state-sponsored terrorism exception to foreign sovereign immunity, section 1605(a)(7), as requiring only "proximate cause").

Plaintiffs have sufficiently demonstrated a "reasonable connection" between defendants' acts and their damages. The facts found by the Court demonstrate that defendants (1) provided substantial support to Hamas through provision of money and training and (2) encouraged the escalation of terrorist activities, including against Israeli targets. These acts have a reasonable

connection to the attacks ultimately carried out by Hamas. This is sufficient for the relatively low proximate cause bar imposed by the FSIA.

Finally, plaintiffs' claims must arise out of "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). This act or provision of material support must be engaged in by an officer, employee, or agent of the foreign state within the scope of the actor's office, employment, or agency. *Id.*

In this context, provision of material support or resources has the same meaning as it is given in section 2339A of Title 18 of the U.S. Code. 28 U.S.C. § 1605A(h)(3). That section defines "material support or resources" as

> 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 (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.

18 U.S.C. § 2339A(b)(1).

Extrajudicial killing has the same meaning as it is given in section 3 of the Torture Victim Protection Act of 1991. 28 U.S.C. § 1605A(h)(7). That section defines extrajudicial killing as "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples." *See* Torture Victim Protection Act of 1991, Pub. L. No. 102-256, § 3(a), 106 Stat. 73 (excluding from the definition killings that are lawful under international law).

The ten attacks caused the deaths of numerous innocent civilians, including the deceased victims, and injured many more. Those who perished were killed not according to the judgment of a regularly constituted court but instead the malicious design of the Hamas terrorists who carried

out the attacks. The ten attacks were thus extrajudicial killings as defined by the FSIA. Defendants provided "material support or resources" for these acts by their provision of money and training to Hamas and its members. Finally, this provision of material support or resources was within the scope of the provider's office, employment, or agency. As set forth above, MOIS, treated as the foreign state itself, was the primary conduit for the provision of funds and training to Hamas. MOIS' provision of support to Hamas would have required the approval of officials at the highest level of Iran's government.

Thus, the final element for waiver of sovereign immunity under section 1605A is met and defendants are not entitled to sovereign immunity. Because all of section 1330(a)'s requirements for jurisdiction are satisfied, the Court possesses original jurisdiction over this matter.

2. Requirements for a claim to be heard

Section 1605A only applies if three conditions are met: (1) the foreign state was designated a state sponsor of terrorism at the time of the act giving rise to liability or was so designated in response to such act and remains so designated, (2) the claimant or victim was a national of the United States at the time of the act waiving sovereign immunity,[9] and (3) in cases where the act occurred in the foreign state against whom suit has been brought, the foreign state was afforded a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration. 28 U.S.C. § 1605A(a)(2). Each of these conditions is met here.

First, Iran was designated by Secretary of State George P. Shultz on January 23, 1984, in accordance with the Export Administration Act of 1979, as a "country which has repeatedly provided support for acts of international terrorism." 49 Fed. Reg. 2836-02 (Jan. 23, 1984) (statement of Secretary of State George P. Shultz). This designation meets section 1605A's

[9] Two other categories of claimants or victims that would meet section 1605A's requirements are not relevant here.

definition of "state sponsor of terrorism." 28 U.S.C. § 1605A(h)(6). Iran continues to be designated as a state sponsor of terrorism to this day. *State Sponsors of Terrorism*, U.S. Dep't of State, http://www.state.gov/j/ct/list/c14151.htm (last visited Sept. 24, 2019). Because Iran was a designated state sponsor of terror at the time of the incidents underlying plaintiffs' claims and because it continues to be so designated, the first condition for a claim to be heard is met.

Plaintiffs should meet the second requirement because they allege that all claimants or victims are or were United States citizens when each attack occurred.[10] Pls.' Mot. Def. J. 5. Finally, plaintiffs have met the third requirement because the "act[s]" described in subsection (a)(1)—i.e. the extrajudicial killings—occurred in Israel, not the defendant state. Thus, plaintiffs were not required by statute to afford defendants a reasonable opportunity to arbitrate.

3. Personal jurisdiction

Federal courts have personal jurisdiction over a foreign state if (1) the court has jurisdiction pursuant to section 1330(a) and (2) service has been properly made under section 1608 of the FSIA. 28 U.S.C. § 1330(b). As established above, the requirements for jurisdiction under section 1330(a) are met in this case. The Court next proceeds to an analysis of section 1608's requirements for service.

Section 1608(a) requires that service upon a foreign state or a political subdivision of a foreign state—such as MOIS—be completed in one of four ways. 28 U.S.C. § 1608(a). The methods are presented in order of preference; a method of service must be unavailable or unsuccessful for a party to attempt service under a later method. *Id.* The first three methods are: (1) delivery of a copy of the summons and complaint in accordance with any special arrangement

[10] The Court does not presently have sufficient proof before it to establish the citizenship of each plaintiff. To the extent that any plaintiffs are unable to present proof of citizenship at the time of the attacks to the special master, their claims shall be dismissed.

for service between plaintiff and the foreign state, (2) delivery of the same documents in accordance with an applicable international convention on service of judicial documents, or (3) delivery of the same documents as well as a notice of suit, all translated into the foreign state's official language, by mail, return receipt requested. 28 U.S.C. § 1608(a)(1)–(3). The Court is not aware of any special arrangement for service between these parties and no international convention on service applies. Plaintiffs were thus authorized to attempt service under subsection 3. Their attempt was unsuccessful.

Therefore, plaintiffs were authorized to effect service under section 1608(a)(4). That provision authorizes service

> by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

28 U.S.C. § 1608(a)(4). The Clerk of the Court certified mailing the specified documents, translated as required, to the State Department on July 3, 2012. ECF No. 13. The State Department subsequently confirmed transmission of the documents to the Iranian Ministry of Foreign Affairs by way of the Foreign Interests Section of the Embassy of Switzerland in Tehran, Iran. ECF No. 15. Certified copies of the diplomatic notes showing the date of transmission—September 16, 2012—were attached thereto. *Id.* In light of these filings, the Court concludes that plaintiffs have complied with section 1608(a)(4) and have, therefore, properly served defendants in accordance with the FSIA. The Court may exercise personal jurisdiction over defendants.[11]

[11] The Court also notes that no minimum contacts threshold must be met as to the defendants, either as a matter of constitutional or customary international law. *See Valore*, 700 F. Supp. 2d at 70–71 (concluding that neither Iran nor MOIS, as foreign states, were protected by the Fifth Amendment's Due Process Clause and that customary

B. Timeliness

Section 1605A includes a limitations provision, at subsection (b), setting out a series of time periods within which an action under the section "may be brought or maintained." 28 U.S.C. § 1605A(b). This Court has held that section 1605A's limitations provision is not jurisdictional. *See Worley v. Islamic Republic of Iran*, 75 F. Supp. 3d 311, 328 (D.D.C. 2014). Nonetheless, the Court shall briefly explore the matter because it concludes that plaintiffs have complied with the statute of limitations.

Section 1605A(b) provides that an action may be brought no later than "10 years after the date on which the cause of action arose." 28 U.S.C. § 1605A(b)(2). The attacks giving rise to this action began on December 1, 2001. Plaintiffs' first cause of action arose on that date. *Cf. Amobi v. District of Columbia Dep't of Corr.*, 755 F.3d 980, 994 (D.C. Cir. 2014) (internal citation omitted) (holding that under District of Columbia law, the statute of limitations usually begins running when a plaintiff "sustains a tortious injury"). Plaintiffs filed their complaint on November 30, 2011, less than 10 years from the date their first cause of action arose. Their claims are timely under section 1605A of the FSIA.

C. FSIA Liability

The state-sponsored terrorism exception provides a private right of action. The action is available to, among others, nationals of the United States and the legal representatives of such persons. 28 U.S.C. § 1605A(c). Foreign states that meet subsection (a)(2)(A)(i)'s requirements as state sponsors of terrorism may be held liable under subsection (c). *Id.*

Section 1605A's private right of action has four basic elements. A plaintiff must prove: (1) "an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of

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international law did not come into play because it cannot prevail over a contrary federal statute). Satisfaction of section 1330(b) is all that is required for assertion of personal jurisdiction over defendants.

material support or resources for such an act" where (2) the act was committed, or the material support was provided, by the foreign state or agent of the foreign state, and the act (3) caused personal injury or death (4) "for which courts of the United States may maintain jurisdiction under this section for money damages." *Id.* § 1605A (a)(1), (c).

1. Threshold determination of plaintiffs' and defendants' statuses

The Court first determines whether the parties are such that subsection (c)'s cause of action may be pursued.

a. Defendants are state sponsors of terrorism

Defendants, for the reasons stated above in Part III.A.2, are state sponsors of terrorism within the meaning of section (a)(2)(A)(i) and may be held liable.

b. Entitlement of plaintiffs to bring section 1605A(c) action

All of the plaintiffs may pursue section 1605A(c)'s private right of action. All plaintiffs claim to be citizens of the United States and, therefore, should—subject to the special master's determination—fall within subsection (c)(1)'s ambit.

c. Standing of estate plaintiffs

Estate plaintiffs seeking to recover on behalf of the deceased victims as their personal representatives for injuries they suffered during life must establish their standing before they may recover. *Taylor v. Islamic Republic of Iran*, 811 F. Supp. 2d 1, 12 (D.D.C. 2011) (noting that "recovery for pain and suffering . . . is not universally available to estate-plaintiffs"). The determination of whether an estate may maintain a cause of action for injuries suffered during the decedent's life is a question "governed by the law of the state which also governs the creation of the estate." *Id.* State law governs this issue because it is not related to the extent and nature of the

claims, but instead involves a threshold question regarding the "power of the estate to bring and maintain legal claims." *Id.*

The Court does not presently have sufficient proof before it to establish each estate plaintiff's standing under applicable state law to recover on behalf of the deceased victims. To the extent that any estate plaintiffs seeking to recover such damages are unable to present proof of standing under applicable state law to the special master, their claims shall be dismissed.

2. Act

For the reasons stated in part III.A.1.*a*, the Court finds that the acts giving rise to this case are of the type for which a foreign state may be held liable under section 1605A(c). Specifically, the evidence establishes that acts of extrajudicial killing were committed by members of Hamas and that defendants provided material support in furtherance of those acts.

3. Actor

Defendants may be held liable under section 1605A(c) only if they or their agents committed the extrajudicial killings or provided material support for them. 28 U.S.C. § 1605A(c). The facts found by the Court show that MOIS was Iran's conduit for the provision of funding and training to Hamas and its membership. Therefore, Iran itself is treated as having provided material support. *See Roeder*, 333 F.3d at 234 (holding that the actions of a political subdivision of a foreign state are attributable to the foreign state itself because they are treated as legally the same under the FSIA).

4. Theory of recovery—causation and injury

The elements of causation and injury under section 1605A(c) require plaintiffs "to prove a theory of liability" which justifies holding defendants culpable for the injuries that plaintiffs have allegedly suffered. *Valore*, 700 F. Supp. 2d at 73; *see also Rimkus*, 750 F. Supp. 2d at 175–76

("[P]laintiffs in § 1605A actions . . . must articulate the justification for such recovery, generally through the lens of civil tort liability."). While section 1605A(c) requires courts to determine the substantive basis for liability arising under it, the court is not given the authority (or duty) to articulate "federal common law." *Valore*, 700 F. Supp. 2d at 76. Instead, because liability under section 1605A(c) is based on "statutory rights," federal judges are instructed to "find the relevant law, not to make it." *Bettis v. Islamic Republic of Iran*, 315 F.3d 325, 333 (D.C. Cir. 2003). Thus, judges may not "fashion a complete body of law" in considering claims under section 1605A(c). *Id.* Based on the D.C. Circuit's guidance, courts in this jurisdiction "rely on well-established principles of law, such as those found in the Restatement (Second) of Torts and other leading treatises, as well as those principles that have been adopted by the majority of state jurisdictions" to define the elements and scope of these theories of recovery. *Oveissi*, 879 F. Supp. 2d at 54 (quoting *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 61 (D.D.C. 2009)). Plaintiffs seek to recover economic damages arising from the deceased victims' wrongful deaths, survival damages for their pain and suffering prior to death, solatium damages for intentional infliction of emotional distress ("IIED"), battery damages on behalf of the injured victims, assault damages on behalf of the injured victims, and punitive damages on behalf of all plaintiffs.[12] The Court will consider each theory of recovery below.

a. Wrongful death

Plaintiffs seek recovery for economic losses accruing to the estates of the deceased victims under Count II of the Complaint. This Court has previously determined that a decedent's heirs at law, through the decedent's estate, may bring a wrongful death action under section 1605A(c) "for

[12] Count I states vague and duplicative claims for relief, most of which can be dealt with in Counts II-VI. Count I also mentions attorneys' fees, but the Court will address that matter in a post-judgement motion pursuant to Federal Rule of Civil Procedure 54(d)(2). The Court will not direct plaintiffs to schedule a post-judgment conference in accordance with Local Civil Rule 54.2(a) because defendants have not appeared in this case.

economic losses which result from a decedent's premature death." *Valore*, 700 F. Supp. 2d at 78 (internal citation omitted). Where defendants are liable for a decedent's extrajudicial killing, as these defendants are, they may be held "liable for the economic damages caused to decedents' estates." *Id.* Plaintiffs have sufficiently proved the validity of their wrongful death theory of recovery against defendants.

b. Survival claim for pain and suffering

Plaintiffs seek damages for the deceased victims' pain and suffering between the moment of the attacks and their deaths under Count III of the Complaint. A survival claim is one "that could have been brought by the decedent, had he lived to bring it." *Valore*, 700 F. Supp. 2d at 77 (citing Restatement (Second) of Torts § 926). The recovery is limited, however, to harms suffered before death. Restatement (Second) of Torts § 926(a).

The Court is thus constrained by the rule that "[i]f death was instantaneous there can be no recovery . . . for pain and suffering" of the decedent. *Elahi v. Islamic Republic of Iran*, 124 F. Supp. 2d 97, 112 (D.D.C. 2000) (citation omitted); *cf. Eisenfeld v. Islamic Republic of Iran*, 172 F. Supp. 2d 1, 8 (D.D.C. 2000) (awarding damages to estates of decedents who endured several minutes of pain and suffering prior to death); *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 29 (D.D.C. 1998) (awarding damages to estates of decedents who endured several hours of pain and suffering prior to death). The Court does not presently have sufficient proof before it to establish each individual plaintiff's right to recover on these bases. To the extent that any plaintiffs seeking pain and suffering damages are unable to present proof of the deceased victims' pain and suffering to the special master, their claims shall be dismissed.

c. Intentional infliction of emotional distress

Plaintiffs seek to recover solatium damages for defendants' intentional infliction of emotional distress under Count IV of the Complaint. Relying principally on the Restatement (Second) of Torts, this Court has set out the following standard for recovery on a theory of IIED in section 1605A(c) cases: "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." *Estate of Heiser v. Islamic Republic of Iran*, 659 F. Supp. 2d 20, 26 (D.D.C. 2009) (quoting Restatement (Second) of Torts § 46(1)).

An actor may also be liable for IIED to a party against whom the extreme and outrageous conduct was not directed if that party is (1) a member of the victim's immediate family and (2) was present at the time of the extreme and outrageous conduct. *See Murphy v. Islamic Republic of Iran*, 740 F. Supp. 2d 51, 75 (D.D.C. 2010) (citing Restatement (Second) of Torts § 46(2)(a)). The "immediate family" requirement is strictly construed in FSIA cases; generally, only spouses, parents, siblings, and children are entitled to recover. *Id.* As to the issue of presence, this Court has previously held that one "need not be present at the time of a terrorist attack upon a third person to recover for severe emotional injuries suffered as a result." *Valore*, 700 F. Supp. 2d at 80. This is because terrorism is sufficiently extreme and outrageous to demonstrate that it is intended to inflict severe emotional harm on even those not present at the site of the act. *Id.*

The plaintiffs have stated a valid theory of recovery as to their IIED claims. As this Court has previously held, "[a]cts of terrorism are by their very definition extreme and outrageous and intended to cause the highest degree of emotional distress." *Murphy*, 740 F. Supp. 2d at 74 (quoting *Belkin*, 667 F. Supp. 2d at 22). The evidence establishes that "Iran intentionally provided material support to Hamas, and did so with the intent that Hamas would carry out attacks that

would cause severe emotional distress." *Greenbaum v. Islamic Republic of Iran*, 451 F. Supp. 2d 90, 104 (D.D.C. 2006). Furthermore, the requirement imposed on family members to have been present at the site of the attack is not imposed when the extreme and outrageous conduct is a terrorist attack.

Finally, the Court does not presently have sufficient proof before it to establish each family member's right to recover on these bases. To the extent that any family members are unable to establish that they are members of the victims' immediate family to the special master, their claims shall be dismissed.

d. Assault and battery

Survivors of the attacks seek to recover damages for assault and battery under Counts V and VI of the Complaint. A defendant is liability for assault in a section 1605A(c) case if "(1) it acted 'intending to cause a harmful contact with . . . , or an imminent apprehension of such a contact' by, those attacked and (2) those attacked were 'thereby put in such imminent apprehension.'" *Valore*, 700 F. Supp. 2d at 76 (alteration in original) (quoting Restatement (Second) of Torts § 21(1)). Liability for battery arises when a defendant "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 result[ed].'" *Id.* at 77 (alteration in original) (quoting Restatement (Second) of Torts § 13).

The Court concludes that element one of both assault and battery have been sufficiently proved because "acts of terrorism are, by their very nature, intended to harm and to terrify by instilling fear of further harm." *Id.* As for element two of each theory, the Court does not presently have sufficient proof before it to establish each individual plaintiff's right to recover on these

bases. To the extent that any plaintiffs alleging assault or battery are unable to present proof of their injuries to the special master, their claims shall be dismissed.

e. Punitive damages

Finally, plaintiffs seek punitive damages under Count VII of the Complaint. The FSIA specifically permits an award of punitive damages for personal injury or death resulting from an act of state-sponsored terrorism. 28 U.S.C. § 1605A(c). Punitive damages is not an independent cause of action. *Estate of Botvin v. Islamic Republic of Iran*, 604 F. Supp. 2d 22, 25 (D.D.C. 2009). This is not the end of the matter, however. Plaintiffs have alleged several independent claims for which punitive damages may be an appropriate remedy. *Cf. Rimkus*, 750 F. Supp. 2d at 175–76 (allowing a "claim" for punitive damages to proceed because it was supported by sufficiently specific allegations of a cause of action under section 1605A). The Court will treat plaintiffs' punitive damages count as, in effect, a request for punitive damages as a remedy for their other claims against defendants. *See Park v. Hyatt Corp.*, 436 F. Supp. 2d 60, 66 (D.D.C. 2006) (treating a claim for punitive damages as "part of an ad damnum clause"). The Court will consider the proper measure of punitive damages, if any, at the time it considers the special master's recommendations regarding compensatory damages.

5. Personal injury

For the reasons stated in part III.A.1.*a*, this suit is one for "person injury or death." This element of section 1605A(c)'s private right of action is also met.

6. Jurisdiction

For the reasons laid out above in part III.A.1, the Court "may maintain jurisdiction" over this suit. In light of plaintiffs' satisfaction of subsection (c)'s requirements, the Court concludes that defendants may be held liable to them on the basis of this statute.

IV. SPECIAL MASTER

Section 1605A authorizes federal courts to "appoint special masters to hear damage claims brought under this section." 28 U.S.C. § 1605A(e)(1). Although the Court today makes legal conclusions regarding defendants' liability, it does not have sufficient evidence before it to ascertain the amount of damages to which each plaintiff may be entitled. The Court will, therefore, invoke its power under the FSIA to appoint a special master for the purpose of taking evidence and filing a report and recommendation regarding the amount of individual damages for which defendants may be liable to each plaintiff.

V. CONCLUSION

For the foregoing reasons, the Court finds that defendants Iran and MOIS are jointly and severally liable for the ten attacks and the death and destruction that they caused. The Court will grant plaintiff's motion for default judgment as to liability and appoint a special master to receive all other evidence necessary to determine each plaintiff's entitlement to damages. A separate order follows.

Date: September 27, 2019

/s/
Royce C. Lamberth
United States District Judge

Annex 72

***Bennett, et al. v. The Islamic Republic of Iran et al.*, U.S. Court of Appeals for the Ninth Circuit, Memorandum, 30 September 2019, No. 3:11-cv-05807-CRB**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL BENNETT, Co-Administrators of the Estate of Marla Ann Bennett; LINDA BENNETT, as Co-Administrators of the Estate of Maria Ann Bennett, Plaintiffs-Appellees, v. THE ISLAMIC REPUBLIC OF IRAN; THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, Defendants, v. FRANKLIN RESOURCES, INC.; VISA INC., Third-party-plaintiffs-Appellees, v. BANK MELLI, Third-party-defendant-Appellant,	No. 19-15101 D.C. No. 3:11-cv-05807-CRB MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

ESTATE OF MEIR KAHANE; et al.,

Third-party-defendants-
Appellees.

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Argued and Submitted September 23, 2019
San Francisco, California

Before: THOMAS, Chief Judge, and GRABER and BERZON, Circuit Judges.

This case comes before us for the second time. We previously affirmed the denial of Bank Melli's motion to dismiss. We recognized that, for blocked assets "to be subject to execution or attachment" under § 201(a) of the Terrorism Risk Insurance Act ("TRIA"), "the blocked assets must be 'assets of' the instrumentality." Bennett v. Islamic Republic of Iran, 825 F.3d 949, 963 (9th Cir. 2016), abrogated on other grounds by Rubin v. Islamic Republic of Iran, 138 S. Ct. 816 (2018). As relevant here, we then held that, on the facts alleged, the blocked assets in dispute are property of Bank Melli and so may be assigned to judgment creditors. Id. at 963–64.

Subsequently, the district court granted Plaintiffs' motion for summary judgment, holding that the funds that Visa deposited in the district court's registry are Bank Melli's property and, therefore, are subject to attachment under TRIA § 201(a). On Bank Melli's timely appeal from the resulting judgment, we affirm.

Bank Melli argues that a genuine issue of material fact exists as to whether it "owns" the funds, because two of Visa's regulatory filings listed Visa as "owner" of the funds. That argument is unavailing for two reasons.

First, that issue of fact is not material. Bank Melli does not dispute any of the facts alleged in the complaint, on which we rested our holding that the blocked assets are property of Bank Melli. For example, Bank Melli has a contractual right to obtain payments from Visa. Bank Melli concedes that it has "an interest in the funds" and a "right to receive payment of the debt that Visa owes." Our previous holding is now the law of the circuit, and it controls here. See Gonzalez v. Arizona, 677 F.3d 383, 389 n.4 (9th Cir. 2012) (en banc) (holding that exceptions to the law of the case doctrine do not apply when the prior decision was a published opinion from this circuit, "which must be followed unless and until overruled by a body competent to do so" (internal quotation marks omitted)).

Second, even if we were to consider the "ownership" facts to be material, the documents on which Bank Melli relies do not create a genuine issue of fact.

Reading the documents as a whole and in context, they describe the accounts as "hold[ing] Bank Melli funds."

Given our disposition of this issue, we need not reach the remaining arguments.

AFFIRMED.

Annex 73

***Blank, et al. v. The Islamic Republic of Iran,* U.S. District Court for the District of Columbia, Complaint, 6 December 2019, Case No. 1:19-cv-036545**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDITH BLANK)
CHRISTINE CRAMBLETT)
JIM GAYDOS)
DAVID MACKENZIE)
JUDITH A. MACKENZIE)
)
Plaintiffs,)
)
v.) Case No. 2019-cv-_____
)
THE ISLAMIC REPUBLIC OF IRAN)
c/o Ministry of Foreign Affairs,)
Khomeini Avenue)
United Nations Street)
Tehran, Iran)
)
)
Defendant.)

COMPLAINT

Plaintiffs bring this case against Defendant The Islamic Republic of Iran for damages arising out of the June 25, 1996, terrorist attack on the Khobar Towers complex in Dhahran, Saudi Arabia. On that day, Hizballah terrorists detonated a 5,000-pound truck bomb outside the complex, which housed United States military personnel. The blast from this bomb sheared off the entire face of one building of the Khobar Towers complex and shattered windows up to a half mile away. The blast killed nineteen Air Force servicemen and injured many others, some severely.

Plaintiffs here are the immediate family members of three individual Air Force servicemen who were severely injured in the terrorist attack. They seek damages under the Foreign Sovereign Immunities Act, 28 U.S.C. Section 1605A(c), and under other applicable state and federal law, and move for judgment against Defendant The Islamic Republic of Iran, and in support of their Complaint allege as follows:

I.

JURISDICTION and VENUE

1. This Court has jurisdiction over this matter and over Defendant pursuant to 28 U.S.C. Sections 1330-1332 and 1605A.

2. This District is the proper venue pursuant to 28 U.S.C. Section 1391(f)(4).

II.

THE PARTIES

Plaintiffs

3. Plaintiff Edith Blank is a resident of Texas. She is the mother of Charles Blank, who was injured in the Khobar Towers attack. Charles Blank was a plaintiff in *Akins v. Islamic Republic of Iran*, 332 F. Supp.3d 1 (D.D.C. 2018), and this Court awarded him substantial compensatory damages for his injuries. Edith Blank learned of the Khobar Towers attack while she was at work, and was horrified when she saw the images on television news of the destruction. She was extremely concerned about her son. She had just lost her husband four months before that, and felt that if she had lost her son also that would be too much to bear. It

took too long for her to learn that Charles Blank had survived, and the time before she heard was filled with fear and anxiety. She is and was at all relevant times a United States citizen.

4. Plaintiff Christine Cramblett is a resident of Texas. She is a sister of Charles Blank, who was injured in the Khobar Towers attack. Charles Blank was a plaintiff in *Akins v. Islamic Republic of Iran*, 332 F. Supp.3d 1 (D.D.C. 2018), and this Court awarded him substantial compensatory damages for his injuries. Ms. Cramblett was very close with her brother Charles and loved and admired him. She was traveling in Japan when she first heard news of the Khobar Towers attack. She was immediately deeply concerned and anxious, and did not learn for a day or two that her brother survived the attack. She is and was at all relevant times a United States citizen.

5. Plaintiff Jim Gaydos is a resident of South Carolina. He is a brother of John Gaydos, who was injured in the Khobar Towers attack. John Gaydos was a plaintiff in *Akins v. Islamic Republic of Iran*, 332 F. Supp.3d 1 (D.D.C. 2018), and this Court awarded him substantial compensatory damages for his injuries. Jim Gaydos was fourteen and still living at home when he heard of the Khobar Towers attack from his parents. He was very concerned and suffered anxiety and distress when he heard news of the attack. After John Gaydos returned from Saudi Arabia and was released from the military hospital where he was treated, Jim went to live with John's family and helped look after him and John's children. He is and was at all relevant times a United States citizen.

6. Plaintiff Judith A. MacKenzie is a resident of Virginia. She is the mother of Nicholas MacKenzie, who was injured in the Khobar Towers attack. Nicholas MacKenzie was a plaintiff in *Akins v. Islamic Republic of Iran*, 332 F. Supp.3d 1 (D.D.C. 2018), and this Court awarded him substantial compensatory damages for his injuries. Judith MacKenzie remembers that when

she came home from work on the day of the attack, her husband was on the phone with her son Nicholas' service records spread out before him. Her heart sank and she feared the worst. She learned from her husband exactly what had happened, and that they had no way of knowing yet whether Niccholas had survived. She felt fear and despair, and described it as the worst day of her life. It took another day or two before they received another phone call letting them know that Nicholas had been injured but would likely survive. She is and was at all relevant times a United States citizen.

7. Plaintiff David MacKenzie is a resident of Virginia. He is an older brother of Nicholas MacKenzie. Nicholas Mackenzie was a plaintiff in *Akins v. Islamic Republic of Iran*, 332 F. Supp.3d 1 (D.D.C. 2018), and this Court awarded him substantial compensatory damages for his injuries. David was close to his younger brother Nicholas and had always played a protective role toward him. When he heard that Nicholas' residence was attacked he felt helpless and angry. Like his mother Judith MacKenzie, he had to wait a day or two to learn that his brother Nicholas had survived. He is and was at all relevant times a United States citizen.

Defendant

8. Defendant the Islamic Republic of Iran (hereinafter also referred to as "Iran"), is a foreign state that has been designated a state sponsor of international terrorism within the meaning of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) and section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) and section 40 of the Arms Export Control Act, 22 U.S.C. § 2780, since January 19, 1984. The Islamic Republic of Iran provides material support and resources to Hezbollah, a politico-paramilitary terrorist organization, by providing it with funding, direction and training for its terrorist activities.

9. The Islamic Republic of Iran has been found to be liable as a foreign state supporting international terrorism under the predecessor statute to 28 USC Section 1605A, 28 U.S.C. § 1605(a)(7), to victims of state sponsored terrorism for the acts and actions of defendant Hezbollah in cases before this Court, including *Anderson v. The Islamic Republic of Iran,* 90 F. Supp. 2d 107 (D.D.C. 2000) and *Cicippio v. The Islamic Republic of Iran,* 18 F. Supp. 2d 62 (D.D.C. 1998). Iran has also been found liable for the same terrorist attack of June 25, 1996, at the Khobar Towers at issue here. *Blais v. Islamic Republic of Iran, et al.*, 459 F. Supp. 2d 40 (D.D.C. 2006); *Estate of Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229 (D.D.C. 2006). *Rimkus v. Islamic Republic of Iran*, 750 F. Supp. 2d 163 (D.D.C. 2010); *Akins v. Islamic Republic of Iran*, 332 F. Supp.3d 1 (D.D.C. 2018); *Schooley v. Islamic Republic of Iran*, 17-cv-1376(BAH) (D.D.C. June 27, 2019). Accordingly, defendant the Islamic Republic of Iran is collaterally estopped in this action from denying that it is liable for the acts and actions of Hezbollah in carrying out the terrorist attack at issue here.

10. Defendant Iran sometimes acted through its political subdivision and instrumentality the Iranian Islamic Revolutionary Guard Corps, also known as Pasdaran or IRGC (hereinafter referred to as "IRGC"), which is a military organization and a branch of the Islamic Republic of Iran. The IRGC has evolved into one of the most powerful organizations in Iran. The IRGC functions as an intelligence organization, both within and outside the country of Iran. The IRGC exerts considerable influence on the government policies of Iran. In addition, the IRGC has become a powerful military instrument for defending the Islamic fundamentalist revolution and Islamic Republic of Iran and is dedicated to the export of Islamic Fundamentalism principles throughout the world through acts of terrorism. The IRGC is the arm through which Iran prepared and oversaw the actions relating to the bomb attack on the Khobar Towers of Dhahran,

Saudi Arabia on June 25, 1996. The IRGC, as an agent and political arm of the Islamic Republic of Iran, performed acts within the scope of its agency, each within the meaning of 28 U.S.C. § 1605A, as a conduit for the Islamic Republic of Iran's provision of funds, training and direction to defendant Hezbollah for its terrorist activities in Saudi Arabia that caused the injuries to plaintiffs herein. The IRGC has been found to be liable as a foreign state supporting international terrorism under former 28 U.S.C. § 1605(a)(7) to victims of state sponsored terrorism for the acts and actions of defendant Hezbollah in the cases of Higgins v. The Islamic Republic of Iran, Civ. No. 99-377(RCL) (D.D.C. Sept. 21, 2000), and Surette v. Islamic Republic of Iran, Case No. 01-570 (D.D.C. November 1, 2002). Moreover, it has been found liable by this Court for the same terrorist attack at issue here. Blais v. Islamic Republic of Iran, et al., 459 F. Supp. 2d 40 (D.D.C. 2006); Estate of Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229 (D.D.C. 2006).

11. Hezbollah was formed by Iran utilizing IRGC assets as an organization to export Islamic fundamentalism to other Middle Eastern countries and the world through acts of terrorism, including, but not limited to, the actions relating to the bomb attack in the Khobar section of Dhahran, Saudi Arabia on June 25, 1996. Hezbollah, acting as an agent of the Islamic Republic of Iran and of IRGC, performed acts within the scope of its agency, within the meaning of 28 U.S.C. § 1605A, that caused the injuries to the Plaintiffs herein.

III.

STATEMENT OF FACTS

12. Several years before the terrorist attack at issue here, the Islamic Republic of Iran had begun a program of carefully planned acts of terrorism designed to destabilize governments in the Middle East and export principles of Islamic fundamentalism. Its principal agents and

political subdivisions and arms in this regard were the Iranian Ministry of Information and Security ("MOIS") and the Pasdaran or Iranian Islamic Revolutionary Guard Corps ("IRGC").

13. In the early 1980's Iran, through MOIS and the IRGC, established Hezbollah in Lebanon as a terrorist organization employing tactics such as kidnapping, torture and murder. The MOIS and the IRGC provided funding, training and equipment to Hezbollah enabling it to pursue and achieve its mission of terrorism. By the early 1990's, the activities of Hezbollah were no longer limited to Lebanon. Its operatives were now operating in a number of countries utilizing the tactics taught to them in Iran and the Bekaa Valley in Lebanon at facilities established, operated and supported by the defendant.

14. In this period, the presence of United States personnel in Saudi Arabia was viewed by the Iranian government as supportive of a Saudi monarchy, which was closely allied with Western governments. In Iran's view, a large-scale terrorist operation designed to kill Americans would expose the corruption of the house of Al-Saud and result in a revolution and the establishment of an Islamic Republic in Saudi Arabia. The Iranian government, acting through MOIS, IRGC, Hezbollah, and Osama bin Laden, began preparations for a bombing of a target associated with American interests. In 1995, the defendant began months of preparation for such an operation. Hezbollah operatives began to scout potential Arabian targets. Small shipments of explosives were smuggled into Saudi Arabia and stored. An elaborate professional intelligence network was established to carry out the mission.

15. By June of 1996, the bomb components had arrived in Saudi Arabia, including high explosives, incendiary materials, and sophisticated fuses as well as the tools for the bomb assembly. The Defendant selected and approved a target in Dhahran to be detonated by Hezbollah agents.

16. In the evening of June 25, 1996, two men drove a stolen Mercedes Benz tanker truck containing the bomb into the Saudi compound that surrounded the American sector at the al-Khobar military area near Dhahran. They parked the truck 80-100 feet from a building which housed the American personnel. The men drove away in a waiting Chevrolet Caprice, which had also been stolen as a getaway vehicle. A few minutes later, the bomb exploded. The explosion killed dozens of persons including nineteen American servicemen. Hundreds of others were injured and burned. The blast caused structural damage in buildings a quarter mile away.

17. The servicemen and women who were present at the time suffered personal injury and great emotional distress as a result of the terrorist explosion. For most, the psychological wounds continue to this day. Plaintiffs who are close family members suffered great emotional distress when they learned of the attack on their loved ones and in the years afterwards, as well as loss of consortium and solatium damages.

COUNT I

ACTION FOR DAMAGES UNDER 28 U.S.C. SECTION 1605A

18. Plaintiffs repeat and incorporate by reference the allegations of all prior paragraphs as though fully set forth herein.

19. Defendant provided material support and resources to Hezbollah, within the meaning of 28 U.S.C. Section 1605A(a), which caused, enabled and facilitated the terrorist attack at the Khobar Towers.

20. That terrorist attack, which resulted in nineteen deaths, was an extrajudicial killing within the meaning of Section 1605A, and also caused great personal injury and damage to many others.

21. Plaintiffs herein are immediate family members of three servicemen injured in the attack. All suffered severe harm, including emotional distress, mental anguish, pain and suffering, loss of companionship and society, and loss of consortium.

22. The conduct of Iran was criminal in nature, outrageous, extreme, wanton, willful, malicious, and constitutes a threat to the public warranting an award of punitive damages under 28 U.S.C. Section 1605A(c).

23. Iran is therefore liable for the full amount of plaintiffs' damages and for punitive damages under 28 U.S.C. 1605A(c), jointly and severally.

COUNT II

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(28 USC Sections 1605A and 1606**)**

24. Plaintiffs incorporate by reference all prior paragraphs as if fully set forth at length.

25. The act of terrorism in detonating a bomb outside of the Khobar Towers complex in Dhahran, Saudi Arabia, with the intent to kill and maim Americans and which in fact did kill and severely injure Americans, including Plaintiffs' family members, constituted extreme and outrageous conduct on the part of defendant Iran and Hizballah members and agents. The extensive planning and preparation which went into the attack further underscores the malicious and heinous nature of the terrorism involved.

26. As a direct and proximate result of the willful, wrongful, intentional, and reckless acts of Hizballah members, whose acts were funded and directed by Iran and by the IRGC, all Plaintiffs herein suffered severe emotional distress, including extreme mental anguish, emotional distress, and pain and suffering.

27. Defendant is directly and vicariously responsible for Hizballah's actions because it funded, trained, and directed Hizballah and acted in concert with Hizballah in sponsoring the terrorist attack on Khobar Towers. It is responsible under state and federal substantive law as made applicable by 28 U.S.C. Section 1606 as well as under 28 U.S.C. Section 1605A.

28. All Plaintiffs were intended and directly affected victims of defendant's plan to intentionally inflict emotional distress on the victims of their terrorist acts, and are entitled to compensation under applicable law.

29. For the reasons stated above, Defendant is liable to all Plaintiffs for intentional infliction of emotional distress.

WHEREFORE, Plaintiffs demand that judgment be entered against Defendant in an amount to be determined at trial.

Count III

SOLATIUM, PAIN AND SUFFERING AND LOSS OF CONSORTIUM

28 USC SECTION 1605A(c)

30. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth at length.

31 As a direct and proximate result of the willful, wrongful, intentional, and reckless acts of Hizbollah members, whose acts were funded, directed and materially supported and assisted by defendant Iran and by the IRGC, Plaintiffs who were immediate family members of the servicemen injured in the Khobar Towers attack were deprived of the assistance, society and companionship of their family members for extended periods of time. Plaintiffs suffered severe

emotional distress and mental anguish as a result of the injuries to their loved ones and as a result of being deprived of their companionship. They are still deprived of the assistance, society, and companionship of the healthy and vibrant young men they knew and loved prior to the terrorist attack described above. This has caused them to suffer, among other things, extreme mental anguish and emotional and physical pain and suffering.

32. As a result, all plaintiffs herein are entitled to damages for solatium and/or loss of consortium under applicable law.

33. For these reasons, Defendant is liable to plaintiffs in an amount to be determined at trial.

Count IV

PUNITIVE DAMAGES

28 USC Section 1605A (c)

34. Plaintiffs incorporate by reference all prior paragraphs above as if fully set forth at length.

35. The actions of defendant acting in concert with IRGC and Hizballah to carry out their unlawful objectives were malicious and willful, wanton and reckless in their disregard for human life and limb, and caused severe injuries to Plaintiffs and untold pain and suffering to those Plaintiffs who were the immediate family members and loved ones of the injured servicemen and servicewomen.

36. The actions of Hizballah were undertaken at such time as they were operating for and in the service of Defendant Iran and the IRGC, and in concert with them, and which are therefore both vicariously and directly liable to plaintiffs.

37. For the reasons stated above, Defendant Iran is liable to plaintiffs for punitive damages. Plaintiffs demand an award of punitive damages against defendant in an amount to be determined by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court grant judgment in their favor and against Defendant Iran on Counts I through IV, and grant Plaintiffs:

A. Compensatory damages in favor of Plaintiffs as against Defendant in amounts to be determined by the Court;

B. Punitive Damages in favor of Plaintiffs as against defendant in an amount to be determined by the Court;

C. Reasonable costs and expenses;

D. Reasonable attorneys' fees; and

E. Such other and further relief as the Court may determine to be just and equitable in the circumstances.

Respectfully submitted,

/s/ Paul G. Gaston
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Attorney for Plaintiffs

DATED: December 6, 2019

Annex 74

***Clearstream Banking, Banca UBAE, Bank Markazi v. Peterson, et al.,* U.S. Supreme Court, Summary Disposition Granting Petition for Certiorari, 13 January 2020, Cases 17-1529, 17-1530, 17-1534**

(ORDER LIST: 589 U.S.)

MONDAY, JANUARY 13, 2020

CERTIORARI -- SUMMARY DISPOSITIONS

17-1529) CLEARSTREAM BANKING S.A. V. PETERSON, DEBORAH D., ET AL.
)
17-1530) BANCA UBAE, S.P.A. V. PETERSON, DEBORAH D., ET AL.
)
17-1534) BANK MARKAZI V. PETERSON, DEBORAH D., ET AL.

The petitions for writs of certiorari are granted. The judgment is vacated, and the cases are remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-__ (S. 1790).

18-9325 JEFFERSON, DAVION L. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Tenth Circuit for the court to consider the First Step Act of 2018, Pub. L. No. 115-391 (2018).

ORDERS IN PENDING CASES

19M81 FENSTERMAKER, RUSSELL J. V. HALVORSON, WARDEN

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

19M82 MORROW, DeANNA V. WEST CENTRAL GEORGIA WORKFORCE

The motion to direct the Clerk to file a petition for a writ of certiorari out of time under Rule 14.5 is denied.

19M83 ROACH, JOHN E. V. WASHINGTON

19M84 HARRIS, VERNELL V. CENTRAL STATES SOUTHEAST

19M85 CONNER, ARTHUR V. UNITED STATES

19M86 MARR, TIMOTHY A. V. INCH, SEC., FL DOC

19M87 MONTGOMERY, DONNA V. WALGREEN CO.

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

19M88 LONGMIRE, ERIC A. V. WARSHAW BURSTEIN COHEN

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is denied.

19M89 LLOYD, DOLORES V. PRESBY'S INSPIRED LIFE, ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

141, ORIG. TEXAS v. NEW MEXICO, ET AL.

The Second Interim Report of the Special Master on the motion of Nathan Boyd Estate, et al. for leave to intervene is received and ordered filed. The motion of Nathan Boyd Estate, et al. for leave to intervene is denied.

18-1195 ESPINOZA, KENDRA, ET AL. V. MONTANA DEPT. OF REVENUE, ET AL.

The motion of Agudath Israel of America for leave to file a brief as *amicus curiae* out of time is denied.

18-9546 WILLS, EVERETT C. V. VANNOY, WARDEN

The motion for leave to file an amended petition for a writ of certiorari is denied.

18-9751 NESBITT, THOMAS E. V. FRAKES, DIR., NE DOC

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

19-71 TANZIN, FNU, ET AL. V. TANVIR, MUHAMMED, ET AL.

19-108) UNITED STATES V. BRIGGS, MICHAEL J.
)
19-184) UNITED STATES V. COLLINS, RICHARD D.

The motions of petitioners to dispense with printing the joint appendices are granted.

19-416) NESTLé USA, INC. V. DOE I, JOHN, ET AL.
)
19-453) CARGILL, INC. V. DOE I, JOHN, ET AL.

The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

19-638 N. B. D. V. KY CABINET FOR HEALTH & FAMILY

The motion of Nelida Maribel Diaz Juarez for leave to intervene as a petitioner is granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

19-6447 DONELSON, CHARLES V. HARDY, DARRISE, ET AL.

19-6593 FORD, DESHAY D. V. WHITE, TIMOTHY P., ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until February 3, 2020, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

18-415 HP INC. V. BERKHEIMER, STEVEN E.

18-817 HIKMA PHARMACEUTICALS, ET AL. V. VANDA PHARMACEUTICALS

18-926 PUTNAM INVESTMENTS, LLC, ET AL. V. BROTHERSTON, JOHN, ET AL.

18-1140 AVCO CORP. V. SIKKELEE, JILL, ET AL.

18-1222) VIALVA, CHRISTOPHER A. V. UNITED STATES
)
18-6992) BERNARD, BRANDON V. UNITED STATES

18-9495 JONES, JASON V. UNDERWOOD, WARDEN

18-9645 BLACK, VICTOR J. V. DAVIS, DIR., TX DCJ

18-9750 CURRY, JOHN G. V. LOPEZ, ASSOC. JUDGE, ET AL.

19-35	MOJICA, BRANDON L. V. UNITED STATES
19-43	POWER ANALYTICS CORPORATION V. OPERATION TECHNOLOGY, INC.
19-44	DEOCAMPO, RAUL M. V. BARR, ATT'Y GEN.
19-51	BRANCH, BEN, ET AL. V. MA DEPT. OF LABOR, ET AL.
19-52	WALKER, ALFRED J. V. ENGLISH, WARDEN
19-61	MARITIME LIFE CARIBBEAN LTD. V. UNITED STATES
19-62	CARTER, MICHELLE V. MASSACHUSETTS
19-64	LILLEY, HEIDI C., ET AL. V. NEW HAMPSHIRE
19-102	BACA, LEROY V. UNITED STATES
19-125	ZAMORE, GALE V. DEUTSCHE BANK, ET AL.
19-156	ISLAS, DIEGO B. V. TEXAS
19-208	BECKHAM, MARK A. V. UNITED STATES
19-224	STROTHER, BRYAN J. V. BALDWIN, DAVID S., ET AL.
19-268	PARK PROPERTIES ASSOC., ET AL. V. UNITED STATES
19-288	SANCHEZ, JAVIER, ET AL. V. UNITED STATES
19-312	EKHLASSI, ALI V. NATIONAL LLOYDS INSURANCE CO.
19-329	WINSTON-SALEM INDUS. FOR BLIND V. PDS CONSULTANTS, INC., ET AL.
19-331	SEQUOIA CAPITAL OPERATIONS, LLC V. GINGRAS, JESSICA, ET AL.
19-337	REGENTS OF UNIVERSITY OF MN V. LSI CORP., ET AL.
19-343	NY REPUBLICAN STATE COMMITTEE V. SEC
19-352	BRINDLE, ROBIN, ET AL. V. DELTA AIRLINES, INC., ET AL.
19-358	PEREZ-CAZUN, LESBIA N., ET AL. V. BARR, ATT'Y GEN.
19-361	SMITH, RENADO, ET AL. V. UNITED STATES
19-376	THOMPSON, DENNIS T. V. SAUL, ANDREW M.
19-385	QORANE, ABDIFATAH G. V. BARR, ATT'Y GEN.
19-386	MONROE CTY. COMM'N V. A.A. NETTLES PROPERTIES, ET AL.
19-387	AMBAC ASSURANCE CORPORATION V. FINANCIAL OVERSIGHT BD., ET AL.
19-391	ASSURED GUARANTY CORP., ET AL. V. FINANCIAL OVERSIGHT BD., ET AL.

19-400	GARMIN USA, INC., ET AL. V. CELLSPIN SOFT, INC.
19-403	AL-COUSHATTA TRIBE OF TX V. TEXAS
19-409	CLEVELAND, OH, ET AL. V. JACKSON, RICKY, ET AL.
19-428	COURTADE, RYAN V. UNITED STATES
19-430	ATHENA DIAGNOSTICS, INC., ET AL. V. MAYO COLLABORATIVE, ET AL.
19-435	SIH PARTNERS LLLP V. CIR
19-464	VETERANS CONTRACTING GROUP, INC. V. UNITED STATES
19-490	METCALF, JONATHAN S. V. FITZGERALD, MICHAEL, ET AL.
19-493	MAKSIMUK, JAMES J. V. CONNOR SPORT COURT INT'L, LLC
19-502	BAATZ, RICHARD, ET AL. V. COLUMBIA GAS TRANSMISSION, LLC
19-503	APACHE CORPORATION V. RHEA, BIGIE L.
19-505	RUPERT, WILLIAM V. BOND, SUSAN, ET AL.
19-509	DOE, JANE V. DARDANELLE SCHOOL DISTRICT
19-523	WILLIAMS, VICTOR B. V. BAPTIST HEALTH, ET AL.
19-525	COOLEY, STEVE, ET AL. V. NATIONAL ABORTION FEDERATION
19-526	EDWARDS, DEXTER V. GENEX COOPERATIVE, INC.
19-529	TURNER, ROBERT S. V. THOMAS, AL, ET AL.
19-531	LEVIN, OFRA V. JPMORGAN CHASE BANK, ET AL.
19-537	THOMAS, JEFFREY G. V. SOLOMON, NORMAN, ET AL.
19-539	OFFICE OF RECOVERY SERVICES V. LATHAM, JOHN R.
19-542	JARRETT, ROBERT L. V. STATE BAR OF CA
19-543	LUSK, JEFFREY W. V. CROWN POINTE CARE CENTER, ET AL.
19-548	MULLINS, JOSEPH R. V. CORCORAN, JOSEPH E., ET AL.
19-552	SALZWEDEL, WILLIAM A. V. CALIFORNIA, ET AL.
19-554	50 MURRAY STREET ACQUISITION LLC V. KUZMICH, JOHN, ET AL.
19-555	FULMER, R. RAY V. FIFTH THIRD EQUIPMENT FINANCE
19-556	NEWNAM, LUCAS A. V. PENNSYLVANIA
19-558	MONTVILLE TOWNSHIP BD. OF ED. V. ZURICH AMERICAN INSURANCE CO.

19-559 REARDON, JOHN E. V. HILLMAN, NOEL

19-561 ROSIER, GAIL V. STROBEL, JEFFREY

19-562 BURKE, BRIAN V. NY CITY TRANSIT AUTH., ET AL.

19-565 PASSARO, ANTONIO V. VIRGINIA, ET AL.

19-567 PIERRE, GERTRUDE J. V. MACY'S INC., ET AL.

19-570 ELOFSON, GREG S. V. BIVENS, STEPHANIE, ET AL.

19-577 LAMPRELL, TAMRA L. V. STUCKEY, REX E.

19-578 HALE, SANDRA G. V. UNITED STATES, ET AL.

19-580 XIAO, JUN V. REGENTS OF UNIV. OF MN, ET AL.

19-581 DOVIN, PAUL, ET UX. V. SWEITZER, KENNETH L., ET AL.

19-583 ESTATE OF CUNNINGHAM, ET AL. V. McGUIRE, MARK

19-584 NUVO PHARMACEUTICALS, ET AL. V. DR. REDDY'S LABORATORIES, ET AL.

19-588 MADDEN-GRAMMER, LORI V. INDUSTRIAL CLAIM APPEALS, ET AL.

19-589 RIMINI STREET, INC. V. ORACLE USA, INC., ET AL.

19-590 DEEM, MICHAEL A. V. COLANGELO, JOHN P., ET AL.

19-591 CHESTNUT HILL SOUND INC. V. APPLE INC., ET AL.

19-593 CAMDEN, NJ V. FORREST, ALANDA

19-596 HALE, SANDRA G. V. UNITED STATES, ET AL.

19-598 SPURR, JOY V. POPE, MELISSA L., ET AL.

19-599 MOHORNE, SAMUEL C. V. BEAL BANK, ET AL.

19-602 SAUNDERS, CHESLEY E. V. INCH, SEC., FL DOC, ET AL.

19-606 UKRAINE V. PAO TATNEFT

19-610 MUSHKIN, INC. V. ANZA TECHNOLOGY, INC.

19-615 WARD, ELAINE V. NEW YORK, NY, ET AL.

19-620 NARKIEWICZ-LAINE, CHRISTIAN K. V. DOYLE, KEVIN C., ET AL.

19-625 GUERRERO, RITA V. BNSF RAILWAY CO.

19-628 MICHAEL CETTA, INC. V. NLRB

19-630 HURST, KYLE R. V. UNITED STATES, ET AL.

19-641	)	CO DEPT. OF LABOR V. DAMI HOSPITALITY, LLC
	)	
19-719	)	DAMI HOSPITALITY, LLC V. CO DEPT. OF LABOR
19-647		CORBETT, JONATHAN V. TSA
19-652		COX, NORMAN D. V. MONEY SOURCE, INC.
19-653		ORTLOFF, THERESA V. TRIMMER, DAVE, ET AL.
19-657		BREWER, VIRGIL V. MYERS, KRISTINA
19-662		SANDER, THOMAS V. DICKINSON, ND, ET AL.
19-663		WILSON, ROBERT J. V. STATE BAR OF TX
19-664		WILLIAMS, EUGENE H. V. UNITED STATES
19-665		DOE, JOHN V. UNITED STATES
19-668		BIRD, COURTNEY V. HAWAII, ET AL.
19-671		GROVER, DANIEL A. V. OPM
19-686		SNODGRASS-KING PEDIATRIC, ET AL. V. DENTAQUEST USA INSURANCE CO.
19-709		MAKO ONE CORPORATION, ET AL. V. CEDAR RAPIDS BANK AND TRUST CO.
19-727		KEEPERS, INC. V. MILFORD, CT
19-733		METRO-NORTH COMMUTER RAILROAD V. MURPHY, JAMEY
19-742		BAILEY-SNYDER, JAMES V. UNITED STATES
19-776		AMONETT, JAMES W. V. VIRGINIA
19-5129		STARKS, KENDELL L. V. UNITED STATES
19-5154		QUARY, JAMES W. V. ENGLISH, WARDEN
19-5241		DYAB, ZACK Z. V. ENGLISH, WARDEN
19-5384		ROTHENBERG, DAVID V. UNITED STATES
19-5458		WINTER, SAMANTHA V. UNITED STATES
19-5490		ACEITUNO, DARIO M. V. BARR, ATT'Y GEN.
19-5526		LAKE, FRANCES W. V. WILKIE, SEC. OF VA
19-5582		LAM, TUAN D. V. UNITED STATES
19-5596		LATHAM, ERIC T. V. UNITED STATES
19-5633		JOHNSON, JAMES F. V. TISCHNER, DIR., CSOSA, ET AL.

19-5653	BUSBY, EDWARD L. V. DAVIS, DIR., TX DCJ
19-5671	LYLE, JAMES V. UNITED STATES
19-5697	VINAGRE-HERNANDEZ, FELIPE V. UNITED STATES
19-5719	RAY, ROBERT K. V. COLORADO
19-5806	BRADHAM, JOHN V. UNITED STATES
19-5817	TAYLOR, KENDRICK V. LOUISIANA
19-5820	RABY, CHARLES D. V. DAVIS, DIR., TX DCJ
19-5848	HARRIS, SAQUAWN V. UNITED STATES
19-5924	HENNESSEE, JAMES V. UNITED STATES
19-5929	RAMIREZ-ANGUIANO, ABISANI V. UNITED STATES
19-5936	LOPEZ-RAMOS, CESAR R. V. MINNESOTA
19-5948	VALDEZ-ARAIZA, MARIA M. V. UNITED STATES
19-5949	MARTINEZ, MARCELINO V. UNITED STATES
19-5958	HELM, THOMAS R. V. HAUSER, LISA L.
19-5967	THOMAS, CAMERON V. NEVADA
19-5968	CUESTA-RODRIGUEZ, C. V. CARPENTER, WARDEN
19-5998	FREIN, ERIC M. V. PENNSYLVANIA
19-6039	VARGAS, CAMILO A. V. UNITED STATES
19-6054	HEMBY, JOHN V. UNITED STATES
19-6056	HERNANDEZ, MICHAEL R. V. UNITED STATES
19-6076	LEE, TAMELA M. V. UNITED STATES
19-6100	SPROWSON, MELVYN P. V. NEVADA
19-6108	KIDD, COREY V. UNITED STATES
19-6120	RODRIGUEZ, RAUL V. UNITED STATES
19-6125	HERNANDEZ, FRANCIS G. V. DAVIS, WARDEN
19-6190	COOK, JERMAINE G., ET AL. V. UNITED STATES
19-6195	MARTINEZ, ALEJANDRO V. UNITED STATES
19-6233	POWELL, ALSHAQAH T. V. UNITED STATES

19-6271 LEWIS, GARY P. V. MICHIGAN

19-6273 LUCAS, HENRY C. V. FLORIDA

19-6286 BIRAPAKA, VARA V. ARMY RESEARCH LABORATORY, ET AL.

19-6287 MARTINEZ, SEFERINO V. UNITED STATES

19-6298 GARDNER, JOHN S. V. DAVIS, DIR., TX DCJ

19-6300 STOKES, JOHN P., ET UX. V. LSF 8 MATSER PARTICIPATION TRUST

19-6304 LARA, MARTIN N. V. TEXAS

19-6319 BOGAN, ANTONIO V. GERMAN, JEFFREY, ET AL.

19-6321 PRANCE, MICHAEL J. V. INCH, SEC., FL DOC, ET AL.

19-6324 YANG, TAENG V. McNEILL, MICHAEL, ET AL.

19-6325 BARNES, DEWAYNE V. SENTRY MANAGEMENT, INC., ET AL.

19-6326 VERBLE, MICHAEL K. V. SAN DIEGO, CA

19-6327 LORTA, LORENZO V. SHERMAN, WARDEN

19-6328 BROWN, ANTONIO L. V. DAVIS, DIR., TX DCJ

19-6329 BOYD, JACKIE L. V. MONROE, CAROL, ET AL.

19-6330 CORONA, VICKI V. GASPARYAN, MARIYAM

19-6337 BIRCH-MIN, MONICA V. MIDDLESEX COUNTY BOARD, ET AL.

19-6339 MILES, JACKSON V. AZAR, SEC. OF H&HS

19-6342 SHAVERS, MICHAEL V. SHARP, DEPUTY WARDEN, ET AL.

19-6346 MALONE, PAUL V. DAVIS, DIR., TX DCJ

19-6349 BRINKLEY, JARVAS J. V. REWERTS, WARDEN

19-6359 NIVENS, STEPHEN V. MARYLAND

19-6365 DAVIS, DEONTAE T. V. MACLAREN, WARDEN

19-6369 DUTTON, KELLY V. AMERICAN BANKERS INSURANCE CO.

19-6374 MOSS, KIM V. MICHIGAN

19-6381 BROWN, ANTHONY T. V. MICHIGAN

19-6382 MARTINEZ-COVARRUBIAS, MANUEL V. BARR, ATT'Y GEN.

19-6386 HE, XUE J. V. GUTTENBERG NJ POLICE, ET AL.

19-6387 GRIFFIN, TRENT S. V. AMERICAN ZURICH INS. CO., ET AL.

19-6388 VANDERMEULEN, CARY V. RYAN, CHARLES L., ET AL.

19-6395 V. A. C. V. J. L. W.

19-6396 JORDAN, CHARLES V. MAGILL, JOHN, ET AL.

19-6398 TOWNSEND, ARETHA V. NLRB

19-6399 ZAMMIELLO, CARMEN A. V. INCH, SEC., FL DOC, ET AL.

19-6403 CRENSHAW, DAVIN D. V. TEXAS

19-6406 RUSH, CLIFFORD L. V. NEBRASKA

19-6407 SMILEY, DERRAN V. CALIFORNIA

19-6409 REILLY, SEAN V. FLORIDA

19-6412 JONES, DENNIS V. ARIZONA

19-6416 KADAMOVAS, JURIJUS V. CARAWAY, WARDEN, ET AL.

19-6417 WALKER, DORAN W. V. TEXAS

19-6422 BURNS, CALVIN D. V. FLORIDA

19-6425 SANTANA, ANDRES V. SUPERIOR COURT OF CA, ET AL.

19-6427 SMITH, RAY A. V. CHAPDELAINE, WARDEN, ET AL.

19-6430 BLAKE, HAROLD V. INCH, SEC., FL DOC, ET AL.

19-6434 TYLER, LAWRENCE T. V. BUREAU OF PRISONS, ET AL.

19-6437 PEYTON, LEE E. V. CALIFORNIA

19-6439 LOPEZ, ARTHUR V. MUFG UNION BANK, N.A., ET AL.

19-6440 LUDY, MITCHELL L. V. MILLS, JAMES, ET AL.

19-6443 ELANSARI, AMRO A. V. UNIV. OF PA

19-6446 EDWARDS, WILLIAM V. TEXAS

19-6449 BEALER, ANTWOINE M. V. KERN VALLEY STATE PRISON

19-6451 ZARLENGA, LORI V. RI DEPT. OF BEHAVIORAL HEALTH

19-6452 MORAN, DAVID P. V. FLORIDA

19-6453 LANG, JAMES E. V. FLORIDA

19-6454 MORRIS, COREY V. JOHNSON, ADM'R, NJ, ET AL.

19-6457	D. B. V. TX DEPT. OF FAMILY
19-6458	DAVIS, TORRENCE E. V. ARIZONA
19-6459	DuVALL, KENNETH K. V. HERNANDEZ, SUPT., AVERY MITCHELL
19-6460	COPPLE, DANIEL P. V. HALL, COMM'R, MS DOC
19-6462	BUSH, STEPHEN L. V. GRAY, WARDEN, ET AL.
19-6463	ALBERT, MICHAEL A. V. NEW YORK
19-6467	PULLEY, ROBERT G. V. PARAMO, WARDEN, ET AL.
19-6468	OLSON, GLENN V. McCLOUD, SHANNON
19-6469	McFALL, KENNETH N. V. INDIANA
19-6470	MARSHALL, DARRELL L. V. STEEH, GEORGE C., ET AL.
19-6472	LOPEZ, ARTHUR V. CALIFORNIA
19-6473	TOPA, GELU V. MELENDEZ, TEOFILO, ET AL.
19-6475	KAHN, BURTON M. V. RIPLEY, ROBERT
19-6480	RODRIGUEZ, DARIO V. SCOTT, RICK, ET AL.
19-6483	ROBINSON, CARL V. MASON, SUPT., RETREAT
19-6488	YEBRA, JAVIER V. DAVIS, DIR., TX DCJ
19-6493	SCANLAN, THERESA G. V. WASHINGTON
19-6495	SCHWERTZ, BRENT C. V. JENNINGS, WARDEN
19-6498	TOOTLE, ANDREA R. V. BEAUX ART INSTITUTE, ET AL.
19-6499	BERMAN, JOHN V. MODELL, DAVID
19-6506	WHITE, JOSHUA J. V. NOOTH, SUPT., SNAKE RIVER
19-6507	SMITH, KENNETH M. V. SMITH, MELISSA S.
19-6512	CHANNEL, MICHAEL A. V. BRINKER, JOHN, ET AL.
19-6513	HARRIS, DEYOE R. V. UNITED STATES
19-6514	LESCHYSHYN, ALAN V. PATEL, DINESHKUMAR, ET AL.
19-6518	BURGIE, ERIC V. ARKANSAS
19-6519	RAY, CHARLES M. V. FLORIDA
19-6520	McMURRY, PASQUAL A. V. NEVADA

19-6522 SMITH, WILLIAM V. TEXAS

19-6523 McMURRY, PASQUAL A. V. NEVADA

19-6524 BENSON, FRANKLIN E. V. SMITH, WARDEN

19-6528 GOUVEIA, ROYCE C. V. ESPINDA, NOLAN, ET AL.

19-6532 AMARO, PEDRO J. V. BALDERAS, ATT'Y GEN. NM, ET AL.

19-6534 BAHODA, SAAD V. CAMPBELL, WARDEN

19-6535 FRY, CLARENCE V. OHIO

19-6536 McGUIRE, PATT V. ST. LOUIS COUNTY, MO, ET AL.

19-6537 EVERSON, CHRISTOPHER V. LANTZ, THERESA, ET AL.

19-6542 HALL, CHLORIS C. V. AUTHOR SOLUTIONS, ET AL.

19-6543 GAKUBA, PETER V. NEESE, MICHELLE

19-6553 CORONA, VICKI V. LOS ANGELES, CA, ET AL.

19-6558 MELTON, ANTONIO L. V. INCH, SEC., FL DOC, ET AL.

19-6559 JOHNSON, ROBERT W. V. SAUL, ANDREW M.

19-6561 JOSEPH, MAURICE D. V. INCH, SEC., FL DOC, ET AL.

19-6563 WAZNEY, ROBERT W. V. SOUTH CAROLINA

19-6565 WILLIAMS, STEVEN T. V. USDC SD NY

19-6566 KATES, ALEXANDER V. NEW YORK

19-6567 HILL, DANNY L. V. OHIO

19-6568 BOYD, KENISHA S. V. TX. DEPT. OF CRIMINAL JUSTICE

19-6574 GONZALEZ, MARCO V. PANDA RESTAURANT GROUP, INC.

19-6575 ELLIOTT, DOROTHY W. V. FLORIDA

19-6577 SMITH, JOHN G. V. HAYNES, RONALD

19-6578 SMITH, JOHN G. V. WASHINGTON

19-6579 SMITH, DAVID L. V. NORTH CAROLINA, ET AL.

19-6592 GEORGE, MONIR V. METZGER, WARDEN

19-6594 INGRAHAM, DAVID V. FLORIDA

19-6595 HOLMES, RAYMOND T. V. INCH, SEC., FL DOC

19-6599	FAIRLEY, WALTER D. V. KENT, WARDEN
19-6603	BROWN, DIJON R. V. UNITED STATES
19-6605	DONAHUE, SEAN M. V. PENNSYLVANIA
19-6607	STANFORD, ROBERT A. V. CLAYTON, JAY
19-6608	ROMERO, STEVE V. McDONALD, WARDEN
19-6611	SEVERS, WILLIAM V. GREWAL, ATT'Y GEN. OF NJ, ET AL.
19-6612	SMALL, JEROME V. PENNSYLVANIA
19-6614	MARSHALL, JEROME V. WETZEL, SEC., PA DOC, ET AL.
19-6617	MORTON, MELISSA V. UNITED STATES
19-6622	WILLIAMS, HELENE T. V. PRECKWINKLE, TONI, ET AL.
19-6624	LEE, ANDRE D. V. LOUISIANA
19-6628	DONAHUE, SEAN M. V. PENNSYLVANIA
19-6632	CLARK, SAMIER P. V. UNITED STATES
19-6634	MARKLE, KATHRYN W. V. UNITED STATES
19-6636	WILLIAMS, GREGORY V. UNITED STATES
19-6637	COOPER, GREGORY V. POOLE, KATY, ET AL.
19-6638	ARIAS, YANNIER V. UNITED STATES
19-6644	FREEZE, DARRELL V. UNITED STATES
19-6648	BARENZ, RALPH L. V. ALASKA
19-6649	BROOKS, ALFRED L. V. BORDERS, WARDEN
19-6650	RIOS, FIDEL V. UNITED STATES
19-6651	THOMPSON, SHAWN A. V. McGINLEY, SUPT., COAL TOWNSHIP
19-6653	JACKSON, QUINTON O. V. UNITED STATES
19-6654	JOHNSON, TREMAINE B. V. UNITED STATES
19-6656	QUINTELA-GALINDO, FERNANDO V. UNITED STATES
19-6663	HERNANDEZ-MARTINEZ, JOSE, ET AL. V. UNITED STATES
19-6664	KLIKNO, STEVEN V. UNITED STATES
19-6666	THORNTON, CHRISTOPHER V. COYNE-FAGUE, ACTING DIR., RI DOC

19-6667 BROWN, JAMES A. V. UNITED STATES

19-6669 BERRY, DONNIE V. INCH, SEC., FL DOC

19-6673 BROWNING, LASHON V. UNITED STATES

19-6674 MORA, MARGARITA V. UNITED STATES

19-6676 WAGUESPACK, CHRISTOPHER G. V. UNITED STATES

19-6678 VAN SACH, JOSEPH V. UNITED STATES

19-6680 LIPSCOMB, TONY V. UNITED STATES

19-6682 CHEN, ZHAOPENG V. UNITED STATES

19-6692 SIMPSON, KENNETH R. V. UNITED STATES

19-6698 MTAZA, AMON R. V. UNITED STATES

19-6700 NASEER, ABID V. UNITED STATES

19-6703 ARCENEAUX, SHONDOR J. V. UNITED STATES

19-6704 McAFEE, JB FOSTER V. UNITED STATES

19-6706 MALEK, RAMSIN J. V. UNITED STATES

19-6707 TYNDALL, RICKY L. V. UNITED STATES

19-6708 WERT, DANIEL V. HOLT, WARDEN

19-6709 ACOSTA, ADAM L. V. COLORADO

19-6711 DIAZ-CONTRERAS, LUCIANO V. UNITED STATES

19-6712 CAWARD, ADAM S. V. UNITED STATES

19-6715 INGRAM, BRANDON L. V. UNITED STATES

19-6716 ISBELL, ISRAEL C. V. MERLAK, WARDEN

19-6717 GREEN, JESS L. V. MISSISSIPPI

19-6718 PRIDGEN, JAMES D. V. UNITED STATES

19-6719 PALACIO, MAURO C. V. UNITED STATES

19-6721 PARRISH, CHRISTOPHER R. V. UNITED STATES

19-6723 T. B. V. COLORADO

19-6725 WELLBELOVED-STONE, RICHARD A. V. UNITED STATES

19-6729 GRAY, CEDRIC V. UNITED STATES

19-6739 SIMON, MARSHON V. UNITED STATES

19-6746 MITCHELL, MICHAEL A. V. UNITED STATES

19-6748 ADAMS, STEVEN A. V. UNITED STATES

19-6752 WALKER, JEMONE L. V. UNITED STATES

19-6753 MOODY, BENITEZ A. V. UNITED STATES

19-6756 TORRES, RENE V. UNITED STATES

19-6758 ANDERSON, MICHAEL T. V. UNITED STATES

19-6760 KHAN, IJAZ V. UNITED STATES

19-6761 KABBAJ, YOUNES V. UNITED STATES

19-6764 McCREA, NICOLE R. V. DC POLICE & FIREFIGHTER'S BD.

19-6766 NICHOLS, MILES B. V. UNITED STATES

19-6774 ALLEN, ALBERT V. UNITED STATES

19-6775 BUTCHEE, JAMES M. V. UNITED STATES

19-6776 DAWSON, WILLIAM V. WELLS, BRYAN K.

19-6778 BLACKBURN, MICHAEL D. V. UNITED STATES

19-6784 WHYTE, JERMAINE V. UNITED STATES

19-6790 GERTH, MARK V. WARDEN, ALLEN OAKWOOD C. I.

19-6791 BURNETT, BRYAN L. V. UNITED STATES

19-6793 HERNDON, QUENTIN V. UNITED STATES

19-6797 KREITMAN, HAL M. V. UNITED STATES

19-6798 GILL, COREY E. V. UNITED STATES

19-6799 HAFIZ-THOMPSON, AAMIR A. V. UNITED STATES

19-6802 JACKSON, GARY V. INCH, SEC., FL DOC

19-6806 STOKES, ANTHONY J. V. FLORIDA

19-6809 STRUBBERG, JASON M. V. UNITED STATES

19-6813 ALBERT, LENORE L. V. STATE BAR OF CA

19-6819 OVIES, FRANKIE V. UNITED STATES

19-6820 LEONER-AGUIRRE, RAFAEL V. UNITED STATES

19-6824 HOLCOMBE, THOMAS A. V. UNITED STATES

19-6826 CASTRO, JENNIFER V. UNITED STATES

19-6828 SHAW, REGINALD J. V. UNITED STATES

19-6830 WILSON, DON E. V. UNITED STATES

19-6834 HOPE, LEE V. UNITED STATES

19-6837 BROWN, ANZARA V. METZGER, WARDEN, ET AL.

19-6838 SMITH, JOSHUA V. BUTLER, WARDEN

19-6840 SEVERINO, MANUEL A. V. UNITED STATES

19-6841 SCOTT, ADAM V. UNITED STATES

19-6842 SHAH, VIVEK V. HOLMES, MARCUS

19-6843 RICE, JAMES V. JACKSON-MITCHELL, WARDEN

19-6848 WITTAL, ROBERT M. V. MONTANA

19-6849 WILLIAMS, CEDRIC S. V. UNITED STATES

19-6850 TYLER, LEDELL V. UNITED STATES

19-6859 GREEN, MICHAEL A. V. UNITED STATES

19-6864 MARTIN, CEDIS R. V. UNITED STATES

19-6865 LUNN, DELANTE L. V. UNITED STATES

19-6868 LePON, LEIGH L. V. IOWA

19-6880 BARTUNEK, GREGORY V. UNITED STATES

19-6881 TORRES, APRIL V. UNITED STATES

19-6883 WINBERG, DONALD B., ET UX. V. UNITED STATES

19-6885 ESCOBAR, ANTONIO V. UNITED STATES

19-6896 ANTONIO, JEFFREY V. UNITED STATES

19-6898 THOMAS, DEMICKO B. V. MILLER-STOUT, WARDEN, ET AL.

19-6899 MEZA-LOPEZ, JOSE L. V. UNITED STATES

19-6902 BENAMOR, SAMIR V. UNITED STATES

19-6907 HENDRICKS, ROBERT V. UNITED STATES

19-6921 JONES, BRIAN H. V. UNITED STATES

The petitions for writs of certiorari are denied.

18-9506 GADSDEN, KENYON R. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor, with whom Justice Ginsburg joins, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. ___ (2018) (Sotomayor, J., dissenting).

18-9807 WILSON, ROBERT V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

19-266 MORRIS, SEANTREY V. MEKDESSIE, JOSEPH, ET AL.

The motion of TASC, Inc. for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

19-414 MEDTRONIC, INC. V. BARRY, MARK A.

The motion of R Street Institute for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

19-516 ESPINDA, NOLAN, ET AL. V. GOUVEIA, ROYCE C.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

19-634 SUDAN, ET AL. V. OWENS, JAMES, ET AL.

The petition for a writ of certiorari is denied. Justice Kavanaugh took no part in the consideration or decision of this petition.

19-5219 PULLEN, BOBBY G. V. UNITED STATES

19-5307 BRIGMAN, JAMES D. V. UNITED STATES

The petitions for writs of certiorari are denied. Justice Gorsuch took no part in the consideration or decision of these petitions. Justice Sotomayor, with whom Justice Ginsburg joins, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. ___ (2018) (Sotomayor, J., dissenting).

19-5315 AGUILAR, RAYMOND V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor, with whom Justice Ginsburg joins, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. ___ (2018) (Sotomayor, J., dissenting).

19-5316 BRONSON, ABELEE V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition. Justice Sotomayor, with whom Justice Ginsburg joins, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. ___ (2018) (Sotomayor, J., dissenting).

19-6285 TRAN, LINH T. V. STAN THE HOT WATER MAN

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

19-6291 MUA, JOSEPHAT V. O'NEAL FIRM, LLP

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly

abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

19-6336 JENNINGS, EDDIE V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

19-6379 HOLZ, TIMOTHY E. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

19-6435 ODUOK, IYANG P. V. FULTON DeKALB HOSPITAL, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

19-6492 AUTREY, TYLAN T. V. UNITED STATES

19-6510 DOUGLAS, TIMOTHY L. V. UNITED STATES

The petitions for writs of certiorari are denied. Justice Sotomayor, with whom Justice Ginsburg joins, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. ___ (2018) (Sotomayor, J., dissenting).

19-6516 VETETO, RONALD D. V. GRIFFIN, JUDGE, ETC., ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is

dismissed. See Rule 39.8.

19-6521 SIMMONS, MARCUS T. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor, with whom Justice Ginsburg joins, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. ___ (2018) (Sotomayor, J., dissenting).

19-6544 CUNNINGHAM, BRADLY M. V. COLUMBIA PICTURES INDUS., ET AL.

19-6545 CUNNINGHAM, BRADLY M. V. WASHINGTON COUNTY, OR, ET AL.

The motions of petitioner for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

19-6548 RAVEN, JULIAN M. V. UNITED STATES, ET AL.

The petition for a writ of certiorari is denied. The Chief Justice took no part in the consideration or decision of this petition.

19-6613 RODRIGUEZ, JAIME, ET AL. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

19-6629 KING, JACQUELINE M. V. DISTRICT OF COLUMBIA

19-6631 DREVALEVA, TATYANA E. V. SUPERIOR COURT OF CA, ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

19-6661 BERNIER, JEAN V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this

petition.

19-6735 CHOW, KWOK C. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Breyer took no part in the consideration or decision of this petition.

19-6846 RILEY, JAMES W. V. METZGER, WARDEN, ET AL.

19-6856 RILEY, JAMES W. V. DELAWARE

The petitions for writs of certiorari are denied. Justice Alito took no part in the consideration or decision of these petitions.

19-6884 CLAY, GLEN B. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

HABEAS CORPUS DENIED

19-6831 IN RE FREDRICK WROTEN

19-6854 IN RE ALEXANDER PALOMAREZ

19-6887 IN RE BRAD K. EDMONDS

19-6889 IN RE JOEL LAW

19-6993 IN RE AUGUSTUS L. LUNDY

The petitions for writs of habeas corpus are denied.

19-6946 IN RE MICHAEL C. REYNOLDS

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the

petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

MANDAMUS DENIED

19-544 IN RE TODD C. BANK

19-6556 IN RE THERIAN WIMBUSH, ET VIR

19-6580 IN RE MARCUS SIMPSON

The petitions for writs of mandamus are denied.

19-6526 IN RE DAVID P. WORTHINGTON

The petition for a writ of mandamus and/or prohibition is denied.

19-6564 IN RE WEI ZHOU

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of mandamus is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

PROHIBITION DENIED

19-6659 IN RE ARTURO R. ORNALEZ

The petition for a writ of prohibition is denied.

REHEARINGS DENIED

18-7571 VALENCIA, GABRIEL C. V. DAVEY, WARDEN

18-8818 REYNOLDS, CORNELL D. V. HEPP, WARDEN

18-9153 RANDOLPH, ALBERT V. TEXAS

18-9247	OMBE, HITOSHI V. MARTINEZ, SUSANA, ET AL.
18-9269	REYNOLDS, DARRELL V. CIRCUIT COURT OF KY
18-9285	SCHWARTZMILLER, DEAN A. V. CALIFORNIA
18-9308	SCRANAGE, CLARENCE V. UNITED STATES
18-9317	LASHER, LENA V. BUCHWALD, JUDGE
18-9338	CORBITT, NOAH F. V. USDC SD GA
18-9345	DRAKE, BILLY G. V. PARISH, WARDEN
18-9439	ADDISON, DANEA M. V. INDIANA
18-9441	LEWIS, REGINA V. NEWBURGH HOUSING AUTH., ET AL.
18-9443	CAMPBELL, ARTHUR L. V. CAMPBELL, WARDEN
18-9447	BROWN, QUINTIN I. V. VIRGINIA
18-9455	DUMMERT, SCOTT W. V. NGO, RENEE
18-9486	ABSHIRE, CLIFFORD V. LA DOC
18-9491	TRUDEAU, WILLIAM A. V. UNITED STATES
18-9508	SCOTT, FLOYD D. V. JIMENEZ, I.
18-9582	IN RE E. EDWARD ZIMMERMANN
18-9623	WAZNEY, ROBERT W. V. JPMORGAN CHASE BANK, N.A.
18-9624	WAZNEY, ROBERT W. V. JPMORGAN CHASE BANK, N.A.
18-9715	BEDGOOD, JOHNNY C. V. UNITED STATES
18-9736	KINNEY, DARIUS V. OHIO
18-9741	BROWN, QUINTIN I. V. RICHMOND, VA
18-9766	LEWIS, RAYMOND V. FARMER, SHERIFF, ET AL.
18-9814	WAZNEY, ROBERT V. WAZNEY, SHARON
19-25	ROSAS, IRMA V. ARCHDIOCESE OF CHICAGO
19-166	ROSENWASSER, MATTHEW J. V. FORDHAM UNIVERSITY, ET AL.
19-252	BOOTH, MICHAEL A. V. NISSAN NORTH AMERICA, INC.
19-332	DAVIS, STEVEN E., ET AL. V. BANK OF AMERICA CORP., ET AL.
19-479	KAM, CAROL M. V. PEYTON, JOHN B.

19-553	DIARRA, MOUSSA V. NEW YORK, NY
19-5016	SALAZAR, MICHAEL A. V. HEB GROCERY CO., LP, ET AL.
19-5109	ENGLISH, WAYNE V. ROADHOUSE HOLDING INC., ET AL.
19-5117	HUDSON, ANTONIO V. HOOD, CHIEF JUDGE, USDC ED MI
19-5140	RAGHUBIR, VINODH V. USDC ED FL
19-5148	RAGHUBIR, VINODH V. INCH, SEC., FL DOC, ET AL.
19-5174	LEWIS, WILLIAM C., ET AL. V. ESTATE OF ROBERT A. LEWIS, ET AL.
19-5206	SAWICKY, CHRISTINE V. AMC NETWORKS INC.
19-5226	CALDWELL, PATRICK D. V. AZ DEPT.OF PUBLIC SAFETY, ET AL.
19-5229	MARZAN, SALDY V. CORECIVIC CORR. CENTER, ET AL.
19-5248	WEST, GARRY R. V. BRYANT, WARDEN
19-5276	TAYLOR, MARVIN F. V. NEAL, SUPT., IN
19-5337	BUSSEY, ARTHUR S. V. ALLEN, WARDEN
19-5461	PIERCE, ANTHONY L. V. GARRETT, LISA, ET AL.
19-5463	DEAN, JESSE V. UNITED STATES
19-5475	TAEBEL, MITCHELL V. MARICOPA CTY. ATTORNEY, ET AL.
19-5488	JACKSON, LORETTA V. BARLA, JOSEPH, ET AL.
19-5556	LEWIS, REGINA V. UNITED STATES
19-5590	SPENCE, LEVAR L. V. McGINLEY, SUPT., COAL TOWNSHIP
19-5606	ENOW, NDOKLEY P. V. FOXWELL, WARDEN, ET AL.
19-5616	ROPE, RUSSELL V. FACEBOOK, INC., ET AL.
19-5626	IN RE VINODH RAGHUBIR
19-5627	IN RE VINODH RAGHUBIR
19-5662	STEPHENS, CARTER V. GOMEZ, MARCELO B., ET AL.
19-5684	IN RE KENDALL DEAN MITCHELL
19-5692	COCHRUN, LARRY D. V. DOOLEY, WARDEN
19-5708	PHILLIPS, RELONZO V. DeKALB COUNTY, ET AL.
19-5725	ROCHESTER, CHARLES V. FORTUNE SOCIETY

19-5748 MITCHELL, SETH V. MACY'S INC.

19-5759 JENKINS, TRAVIS L. V. UNITED STATES

19-5850 YAMANO, YURIE V. HI STATE JUDICIARY, ET AL.

19-5880 LARSON, ANDREW J. V. PACHECO, WARDEN

19-5896 DINNERSTEIN, MITCHELL V. BURLINGTON COUNTY COLLEGE

19-5898 HOWELL, DANNY V. SOUTHERLAND, DUANE, ET AL.

19-5899 HOUSE, WILLIE H., ET UX. V. EGLAND, EILEEN, ET AL.

19-5935 BROWN, RACHEL C. V. CIVIL SERVICE COMMISSION

19-5973 SHEPPARD, WILFRED W. V. TEXAS

19-6003 CHRISTIAN, PATRICK V. DADMUN, WILLIAM H., ET AL.

19-6045 SUMMERHAYS, SCOTT H. V. UNITED STATES

19-6127 VILLALONA, STEVEN J. V. UNITED STATES

19-6150 CUTLER, CHAD M. V. ILLINOIS

19-6284 CABRERA-COSME, JOSE L. V. UNITED STATES

19-6338 NELSON, GERALD V. CIR

The petitions for rehearing are denied.

18-9203 THOMAS, LESLIE E. V. COURT OF COMMON PLEAS OF PA

The petition for rehearing is denied. Justice Alito took no part in the consideration or decision of this petition.

19-83 OGUNSULA, VERONICA W. V. STAFFING NOW, INC.

The petition for rehearing is denied. Justice Kavanaugh took no part in the consideration or decision of this petition.

18-9516 PALMER, STARQUINESHIA V. FLORIDA

The motion for leave to file a petition for rehearing is denied.

ATTORNEY DISCIPLINE

D-3054 IN THE MATTER OF DISCIPLINE OF SEAN REGAN HANOVER

Sean Regan Hanover, of Fairfax, Virginia, is suspended from

the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3055 IN THE MATTER OF DISCIPLINE OF BARRY N. FRANK

Barry N. Frank, of Ridgefield, New Jersey, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3056 IN THE MATTER OF DISCIPLINE OF MICHAEL L. JAMES

Michael L. James, of Louisville, Kentucky, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3057 IN THE MATTER OF DISCIPLINE OF NEAL JONATHAN BLAHER

Neal Jonathan Blaher, of Orlando, Florida, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3058 IN THE MATTER OF DISCIPLINE OF DOUGLAS L. ROMERO

Douglas L. Romero, of Denver, Colorado, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

Annex 75

***Estate of Brown, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security,* U.S District Court for the Southern District of New York, Restraining Notice to Garnishee, 30 January 2020, Case No. 1:13-MC-113**

Excerpts: pp. 1-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Estate of ANTHONY K. BROWN, *et al.*, Plaintiffs-Judgment Creditors, v. ISLAMIC REPUBLIC OF IRAN and IRANIAN MINISTRY OF INFORMATION AND SECURITY, Defendants-Judgment Debtors.	Case No. 1:13-MC-113 **RESTRAINING NOTICE TO GARNISHEE**

TO: Clearstream Banking, S.A.
1155 Avenue of the Americas, 19th Floor
New York, NY 10036

WHEREAS, in an action in the United States District Court for the District of Columbia captioned as *Estate of Anthony K. Brown, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security*, Case No. 1:08-cv-531(RCL), between Vara Brown as the Personal Representative of the Estate of Anthony K. Brown and the other judgment creditors listed in **Exhibit A** hereto (the "Brown Judgment Creditors"), as plaintiffs, and ISLAMIC REPUBLIC OF IRAN and the IRANIAN MINISTRY OF INFORMATION AND SECURITY (the "Judgment Debtors"), as defendants, who are all the parties named in the said action, a judgment (a copy of which is annexed hereto as Exhibit A) was entered pursuant to 28 U.S.C. § 1605A on July 3, 2012 in favor of Brown Judgment Creditors and against Judgment Debtors in the amount of $183,281,294 in compensatory damages, of which $115,573,304, together with interest thereon from July 3, 2012 in the amount of $2,473,225, for a total amount of **$118,046,529** remains uncollected, due, and unpaid; and

WHEREAS, on March 28, 2013, the Brown Judgment Creditors registered the Judgment in this District Court in the above-captioned proceeding; and

WHEREAS, it appears that you owe a debt to a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN, or are in possession or in custody of property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an interest including, without limitation, the financial assets described in 22 U.S.C. Section 8772 as amended by the National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, 113 Stat. 1198 (December 20, 2019),

TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 69(a) and New York Civil Practice Law and Rules § 5222(b), which is set forth below, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an interest, except as therein provided.

TAKE FURTHER NOTICE that this notice also covers all property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an

interest hereafter coming into your possession or custody, and all debts hereafter coming due from you to a Judgment Debtor.

SECTION 5222(b) OF THE NEW YORK CIVIL PRACTICE LAW AND RULES

Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt of court.

Dated: New York, New York
January 30, 2020

FLEISCHMAN BONNER & ROCCO LLP

By: _____
Susan M. Davies (sdavies@fbrllp.com)
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Attorneys for Brown Judgment Creditors

Annex 76

***Valore, et al. v. The Islamic Republic of Iran and Iranian Ministry of Information and Security,* U.S. District Court for the Southern District of New York, Restraining Notice to Garnishee, 30 January 2020, Case No. 1:11-MC-217**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Terance J. VALORE, *et al.*, Plaintiffs-Judgment Creditors, v. ISLAMIC REPUBLIC OF IRAN and IRANIAN MINISTRY OF INFORMATION AND SECURITY, Defendants-Judgment Debtors.	Case No. 1:11-MC-217 **RESTRAINING NOTICE TO GARNISHEE**

TO: Clearstream Banking, S.A.
1155 Avenue of the Americas, 19th Floor
New York, NY 10036

WHEREAS, in consolidated actions in the United States District Court for the District of Columbia captioned as *Valore, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security*, Case No. 1:03-cv-1959(RCL), *Arnold, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security*, Case No. 1:06-cv-516(RCL), *Spencer, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security*, Case No. 1:06-cv-750(RCL) and *Bonk, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security*, Case No. 1:08-cv-1273(RCL), between the Plaintiffs listed in Exhibit A hereto (the "Valore Judgment Creditors"), as plaintiffs, and ISLAMIC REPUBLIC OF IRAN and the IRANIAN MINISTRY OF INFORMATION AND SECURITY (the "Judgment Debtors"), as defendants, who are all the parties named in the said consolidated actions, a judgment under 28 U.S.C. § 1605A (a copy of which is annexed hereto as Exhibit A) was entered on September 20, 2010 in favor of Valore Judgment Creditors and against Judgment Debtors in the amount of $290,291,092 in compensatory damages, of which $183,051,417, together with interest thereon from March 31, 2010 in the amount of $8,489,008, for a total amount of **$191,540,425**, remains uncollected, due, and unpaid; and

WHEREAS, on July 5, 2011, the Valore Judgment Creditors registered the September 20, 2010 Judgment in this District Court in the above-captioned proceeding; and

WHEREAS, it appears that you owe a debt to a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN, or are in possession or in custody of property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an interest including, without limitation, the financial assets described in 22 U.S.C. Section 8772 as amended by the National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, 113 Stat. 1198 (December 20, 2019),

TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 69(a) and New York Civil Practice Law and Rules § 5222(b), which is set forth below, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an interest, except as therein provided.

TAKE FURTHER NOTICE that this notice also covers all property in which a

Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an interest hereafter coming into your possession or custody, and all debts hereafter coming due from you to a Judgment Debtor.

SECTION 5222(b) OF THE NEW YORK CIVIL PRACTICE LAW AND RULES

Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt of court.

Dated: New York, New York
January 30, 2020

FLEISCHMAN BONNER & ROCCO LLP

By: _____

Susan M. Davies (sdavies@fbrllp.com)
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Attorneys for Valore Judgment Creditors

Annex 77

***Davis, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security,* U.S. District Court for the Southern District of New York, Restraining Notice to Garnishee, 30 January 2020, Case No. 1:13-MC-00046**

Excerpts: pp. 1-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Carolyn DAVIS, *et al.*, Plaintiffs-Judgment Creditors, v. ISLAMIC REPUBLIC OF IRAN and IRANIAN MINISTRY OF INFORMATION AND SECURITY, Defendants-Judgment Debtors.	Case No. 1:13-MC-00046 **RESTRAINING NOTICE TO GARNISHEE**

TO: Clearstream Banking, S.A.
1155 Avenue of the Americas, 19th Floor
New York, NY 10036

WHEREAS, in an action in the United States District Court for the District of Columbia captioned as *Davis, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security*, Case No. 1:07-cv-1302(RCL), between Carolyn Davis and the other judgment creditors listed in **Exhibit A** hereto (the "Davis Judgment Creditors"), as plaintiffs, and ISLAMIC REPUBLIC OF IRAN and the IRANIAN MINISTRY OF INFORMATION AND SECURITY (the "Judgment Debtors"), as defendants, who are all the parties named in the said action, a judgment (a copy of which is annexed hereto as Exhibit A) was entered pursuant to 28 U.S.C. § 1605A on March 30, 2012 in favor of Davis Judgment Creditors and against Judgment Debtors in the amount of $486,918,005 in compensatory damages, of which $307,040,186, together with interest from March 30, 2012 in the amount of $6,512,432, for a total amount of **$313,552,618**, remains uncollected, due, and unpaid; and

WHEREAS, on February 14, 2013, the Davis Judgment Creditors registered the March 30, 2012 judgment in this District Court in the above-captioned proceeding; and

WHEREAS, it appears that you owe a debt to a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN, or are in possession or in custody of property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an interest including, without limitation, the financial assets described in 22 U.S.C. Section 8772 as amended by the National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, 113 Stat. 1198 (December 20, 2019),

TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 69(a) and New York Civil Practice Law and Rules § 5222(b), which is set forth below, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an interest, except as therein provided.

TAKE FURTHER NOTICE that this notice also covers all property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an

interest hereafter coming into your possession or custody, and all debts hereafter coming due from you to a Judgment Debtor.

SECTION 5222(b) OF THE NEW YORK CIVIL PRACTICE LAW AND RULES

Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt of court.

Dated: New York, New York
January 30, 2020

FLEISCHMAN BONNER & ROCCO LLP

By: _____
Susan M. Davies (sdavies@fbrllp.com)
James P. Bonner (jbonner@fbrllp.com)
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Attorneys for Davis Judgment Creditors

Annex 78

***Estate of Stephen B. Bland, et al. v. Islamic Republic of Iranian Ministry of Information and Security,* U.S. District Court for the Southern District of New York, Restraining Notice to Garnishee, 30 January 2020, Case No. 1:12-MC-373**

Excerpts: pp. 1-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Estate of STEPHEN B. BLAND, *et al.*,

Plaintiffs-Judgment Creditors,

v.

ISLAMIC REPUBLIC OF IRAN and IRANIAN MINISTRY OF INFORMATION AND SECURITY,

Defendants-Judgment Debtors.

---x

Case No. 1:12-MC-373

RESTRAINING NOTICE TO GARNISHEE

TO: Clearstream Banking, S.A.
1155 Avenue of the Americas, 19th Floor
New York, NY 10036

WHEREAS, in an action in the United States District Court for the District of Columbia captioned as *Estate of Stephen B. Bland, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security*, Case No. 1:05-cv-2124(RCL), between Ruth Ann Bland as the Personal Representative of the Estate of Stephen B. Bland and the other judgment creditors listed in **Exhibit A** hereto (the "Bland Judgment Creditors"), as plaintiffs, and ISLAMIC REPUBLIC OF IRAN and the IRANIAN MINISTRY OF INFORMATION AND SECURITY (the "Judgment Debtors"), as defendants, who are all the parties named in the said action, a judgment (a copy of which is annexed hereto as Exhibit A) was entered pursuant to 28 U.S.C. § 1605A on December 21, 2011 in favor of Bland Judgment Creditors and against Judgment Debtors in the amount of $277,805,908 in compensatory damages, of which $175,178,524, together with interest from December 21, 2011 in the amount of $2,120,067, for a total amount of **$177,298,591** remains uncollected, due and unpaid; and

WHEREAS, on November 13, 2012, the Bland Judgment Creditors registered the Judgment in this District Court in the above-captioned proceeding; and

WHEREAS, it appears that you owe a debt to a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN, or are in possession or in custody of property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an interest including, without limitation, the financial assets described in 22 U.S.C. Section 8772 as amended by the National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, 113 Stat. 1198 (December 20, 2019),

TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 69(a) and New York Civil Practice Law and Rules § 5222(b), which is set forth below, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an interest, except as therein provided.

TAKE FURTHER NOTICE that this notice also covers all property in which a Judgment Debtor or an agency or instrumentality of the ISLAMIC REPUBLIC OF IRAN has an

interest hereafter coming into your possession or custody, and all debts hereafter coming due from you to a Judgment Debtor.

SECTION 5222(b) OF THE NEW YORK CIVIL PRACTICE LAW AND RULES

Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt of court.

Dated: New York, New York
January 30, 2020

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Annex 79

***Aceto, et al. v. Islamic Republic of Iran,* U.S. District Court for the District of Columbia, Memorandum Opinion, 7 February 2020, Case No. 1:19-cv-00464**

Excerpts: pp. 1-4, pp. 26-38 & pp. 48-49

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN ACETO, *et al.*, Plaintiffs, v. ISLAMIC REPUBLIC OF IRAN, Defendant.	Civil Action No. 19-464 (BAH) Chief Judge Beryl A. Howell

MEMORANDUM OPINION

This action arises out of the bombing on June 25, 1996 of the Khobar Towers apartment complex in Dhahran, Saudi Arabia, which housed United States military personnel, including the seven service-member plaintiffs in this case. *See* Compl. ¶ 20. Nineteen U.S. Air Force personnel were killed, and hundreds more were injured. *Id.* at ¶¶ 20, 30. Also among the 31 plaintiffs are family members of service-member plaintiffs and others injured in the bombing. *See id.* ¶ 41. Plaintiffs' complaint alleges that the defendant, the Islamic Republic of Iran, is liable under the terrorism exception to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605A, for "provid[ing] material support and resources . . . which caused, enabled, and facilitated the terrorist attack at the Khobar Towers," Compl. ¶ 23. Although the plaintiffs have complied with FSIA's requirements for service on the defendant, Iran has failed to enter an appearance or otherwise defend against this action. *See* 28 U.S.C. § 1608(a)(4); Return of Service/Affidavit of Summons and Complaint Executed, ECF No. 19; Clerk's Entry of Default, ECF No. 25. The plaintiffs now seek the entry of a default judgment against the defendant as to liability and damages. Pls.' Mot. to Take Judicial Notice of Evid. in Prior Related Cases and for

Entry of Default J. as to Liability and Damages ("Pls.' Mot."), ECF No. 23. For the reasons detailed below, the plaintiffs' motion is granted in part and denied in part.

I. BACKGROUND

Several prior decisions of this Court have found the defendant liable for the Khobar Towers bombing: *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 46–51 (D.D.C. 2006) (Lamberth, J.); *Estate of Heiser v. Islamic Republic of Iran* (*Heiser I*), 466 F. Supp. 2d 229, 248 (D.D.C. 2006) (Lamberth, J.); *Rimkus v. Islamic Republic of Iran*, 750 F. Supp. 2d 163, 167 (D.D.C. 2010) (Lamberth, J.); *Akins v. Islamic Republic of Iran*, 332 F. Supp. 3d 1, 10 (D.D.C. 2018) (Howell, C.J.); *Schooley v. Islamic Republic of Iran*, No. CV 17-1376 (BAH), 2019 WL 2717888 (D.D.C. June 27, 2019) (Howell, C.J.). In *Blais* and *Heiser I*, the Court heard evidence and witness testimony. *See Blais*, 459 F. Supp. 2d at 46 n.4; *Heiser I*, 466 F. Supp. 2d at 250. In *Heiser I* alone, the plaintiffs' examination of witnesses, including seven expert witnesses, and offering of evidence took 17 days. *See* 466 F. Supp. 2d at 250.[1] *Rimkus*, *Akins*, and *Schooley* concluded that judicial notice of the findings of fact in *Blais* and *Heiser I* was appropriate, *see Rimkus*, 750 F. Supp. 2d at 167; *Akins*, 332 F. Supp. 3d at 9; *Schooley*, 2019 WL 2717888, at *2, and the plaintiffs here request that this Court "take judicial notice of prior findings of fact and supporting evidence imposing liability under [the FSIA] . . . on Iran" for the Khobar Towers bombing, Pls.' Mem. Supp. Mot. to Take Judicial Notice of Evid. in Prior Related Cases and for Entry of Default J. as to Liability and Damages ("Pls.' Mem.") at 7, ECF No. 24.

[1] The expert witnesses in *Heiser I* were: (1) Louis Freeh, the former Director of the Federal Bureau of Investigation ("FBI"); (2) Dr. Patrick Clawson, a scholar of Middle Eastern politics who has frequently provided expert testimony regarding Iran's involvement in sponsoring terrorism' (3) Dr. Bruce Tefft, a founding member of the CIA's Counterterrorism Bureau and regular consultant on issues of terrorism; (4) Dale Watson, the former Deputy Counterterrorism Chief of the FBI, *see Heiser I*, 466 F. Supp. 2d at 260–65; (5) Dr. Thomas Parsons, a medical examiner, *see id.* at 268; (6) Dr. Dana Cable, a licensed psychologist and expert on grief process, *see id.* at 269–70; and (7) Dr. Herman Miller, an economic consultant, *see id.* at 273–74.

Rule 201 of the Federal Rules of Evidence authorizes a court to "judicially notice" adjudicative facts that are "not subject to reasonable dispute because" they "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b).[2] In this Court, Rule 201 has been applied frequently to judicially notice factual evidence developed in other FSIA proceedings "involving the same conduct by the same defendant[]," *Akins*, 332 F. Supp. 3d at 11, "even when those proceedings have taken place in front of a different judge," *Foley v. Syrian Arab Republic*, 249 F. Supp. 3d 186, 191 (D.D.C. 2017) (citing *Brewer v. Islamic Republic of Iran*, 664 F. Supp. 2d 43, 54 (D.D.C. 2009). This avoids "the formality of having that evidence reproduced." *Harrison v. Republic of Sudan*, 882 F. Supp. 2d 23, 31 (D.D.C. 2012) (quoting *Taylor v. Islamic Republic of Iran*, 811 F. Supp. 2d 1, 7 (D.D.C. 2011)); *see also Oveissi v. Islamic Republic of Iran*, 879 F. Supp. 2d 44, 50 (D.D.C. 2012) (Lamberth, J.) (finding courts permitted "in subsequent related cases to rely upon the evidence presented in earlier litigation"); *Estate of Botvin v. Islamic Republic of Iran*, 873 F. Supp. 2d 232, 237 (D.D.C. 2012) (Lamberth, J.) (taking "judicial notice of the evidence presented in the earlier cases"). Taking judicial notice of prior findings "does not conclusively establish the facts found in those cases" in the later FSIA case. *Foley*, 249 F. Supp. 3d at 191. Rather, "based on judicial notice of the evidence presented in the earlier cases[,] . . . courts may reach their own independent findings of fact." *Anderson v. Islamic Republic of Iran*, 753 F. Supp. 2d 68, 75 (D.D.C. 2010) (Lamberth, J.); *see also Rimkus*, 750 F. Supp. 2d at 172 ("[C]ourts in FSIA litigation have adopted a middle-ground approach that permits courts in

[2] "[A]djudicative facts are simply the facts of the particular case." *Nat'l Org. for Women, Wash., D.C. Chapter v. Social Sec. Admin.*, 736 F.2d 727, 737 n.95 (D.C. Cir. 1984) (Robinson, J., concurring) (quoting FED. R. EVID. 201, Advisory Committee Note). The Rule does not govern judicial notice of "legislative facts," FED. R. EVID. 201(a), which are "those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body," *Nat'l Org. for Women*, 736 F.2d 727 at 737 n.95 (quoting FED. R. EVID. 201, Advisory Committee Note).

subsequent related cases to rely upon the evidence presented in earlier litigation — without necessitating the formality of having that evidence reproduced — to reach their own, independent findings of fact in the cases before them.").[3]

Persuaded that this approach is both "efficient and sufficiently protective of the absent defendant[]'s interests," *Akins*, 332 F. Supp. 3d at 11, this Court will adopt it and grant the plaintiffs' request to take judicial notice of the evidence presented in *Heiser I, Blais, Rimkus, Akins*, and *Schooley*, *see id.* (stating that factual evidence developed in other cases "involving the same conduct by the same defendant[] . . . admissible and may be relied upon in this case."). The evidence regarding the Khobar Towers bombing is summarized below, followed by an overview of the procedural history of this case.

A. The Attack on Khobar Towers

The Khobar Towers residential complex in Dhahran, Saudi Arabia "housed the coalition forces," including the U.S. military forces, "charged with monitoring compliance with [United Nations] security council resolutions." *Blais*, 459 F. Supp. 2d at 47. About 10 minutes before 10:00 pm on June 25, 1996, "a large gasoline tanker truck pulled up" and parked "alongside the perimeter wall of the Khobar Towers complex." *Heiser I*, 466 F. Supp. 2d at 252; *see also* Compl. ¶ 20. Security guards near the top of one of the towers, Building 131, "started to give warnings about the unusual vehicle location," but the truck exploded "within about 15 minutes." *Heiser I*, 466 F. Supp. 2d at 252; *see also* Compl. ¶ 21. The blast "sheared off the face of Building 131," *Heiser I*, 466 F. Supp. 2d at 252, and "shattered windows up to half a mile away,"

[3] The D.C. Circuit has endorsed the use of judicial notice to establish facts in FSIA terrorism cases. In *Han Kim v. Democratic People's Republic of Korea*, 774 F.3d 1044, 1049 (D.C. Cir. 2014), the D.C. Circuit held that the plaintiffs had "met their burden of producing evidence 'satisfactory to the court'" to establish subject matter jurisdiction under the FSIA, where the only evidence linking North Korea to the victim's disappearance was a South Korean court's conviction of a North Korean agent, of which the district court had taken judicial notice, *id.*; *see also Owens v. Republic of Sudan*, 864 F.3d 751, 789 (D.C. Cir. 2017).

(D.C. Cir. 2017)), as "the courts are granted broad discretion to determine what degree and kind of evidence is satisfactory," *Maalouf*, 923 F.3d at 1114 (citing *Han Kim*, 774 F.3d at 1047; *Owens*, 864 F.3d at 785). In particular, "[i]n a FSIA default proceeding, a factual finding is not deemed clearly erroneous if there is an adequate basis in the record for inferring that the district court . . . was satisfied with the evidence submitted." *Owens*, 864 F.3d at 785 (second alteration in original) (internal quotation marks omitted).

III. DISCUSSION

A default judgment may be entered when (1) the court has subject-matter jurisdiction over the claims, (2) personal jurisdiction is properly exercised over the defendant, (3) the plaintiffs have presented satisfactory evidence to establish their claims against the defendant, and (4) the plaintiffs have satisfactorily proven that they are entitled to the monetary damages they seek. These requirements are addressed in order below.

A. Subject-Matter Jurisdiction under the FSIA

"The district courts . . . have original jurisdiction" over "any nonjury civil action against a foreign state" seeking "relief *in personam* with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title." 28 U.S.C. § 1330(a). The plaintiffs seek *in personam* relief, so the question is whether the defendant is entitled to immunity.[7]

"[T]he FSIA establishes a general rule granting foreign sovereigns immunity from the jurisdiction of United States courts," *Mohammadi v. Islamic Republic of Iran*, 782 F.3d 9, 13 (D.C. Cir. 2015) (citing 18 U.S.C. § 1604), but "that grant of immunity is subject to a number of exceptions," *id.* at 13–14. The plaintiffs assert jurisdiction based on the FSIA's terrorism

[7] This suit falls beyond the ten-year statute of limitations for actions brought under the FSIA's terrorism exception, *see* 28 U.S.C. § 1605A(b), but the "limitation period in § 1605A(b) is not jurisdictional," and the defendants have "forfeited [their] affirmative defense . . . by failing to raise it in" this Court, *Owens*, 864 F.3d at 804; *see also Maalouf*, 923 F.3d at 1115 (holding that a district court may not *sua sponte* raise a forfeited statute of limitations defense under 28 U.S.C. § 1605A(b)).

exception, 28 U.S.C. § 1605A, *see* Compl. ¶ 1, which abrogates a foreign state's immunity in cases where a plaintiff seeks "money damages" 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 "engaged in by an official, employee, or agent of such foreign state," 28 U.S.C. § 1605A(a)(1). That exception also requires that "the foreign country was designated a 'state sponsor of terrorism at the time of the act,'" *Mohammadi*, 782 F.3d at 14 (quoting 28 U.S.C. § 1605A(a)(2)(A)(i)(I)), and that, at that time, "the 'claimant or the victim was' a 'national of the United States,'" *id.* (quoting 28 U.S.C. § 1605A(a)(2)(A)(ii)(I)), or was a member of the armed forces, 28 U.S.C. § 1605A(a)(2)(A)(ii)(II).[8]

The plaintiffs have satisfactorily proven the applicable elements here. As already stated, Iran has been designated a state sponsor of terrorism since 1984, before the 1996 Khobar Towers bombing. Thirty of the 31 plaintiffs have averred in sworn declarations that they were United States citizens at the time of the attack.[9] Plaintiff Monika Prier, Denny Prier's mother, is German citizen, M. Prier Decl. ¶ 2, but there is jurisdiction over her claims because § 1605A waives immunity where "the claimant *or the victim*" — *i.e.*, Denny Prier — was "a national of the United States" at the time of the attack, 28 U.S.C. § 1605A(2)(A)(ii) (emphasis added); *see also La Reunion Aerienne v. Socialist People's Libyan Arab Jamahiriya*, 533 F.3d 837, 844

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[8] Finally, the provision requires proof that, "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)(A)(iii), but the attack took place in Saudi Arabia, not Iran, so this requirement does not apply.

[9] *See* Aceto Decl. ¶ 2 (attesting to the declarant's United States citizenship); Snow Decl. ¶ 2 (same); Scheidel Decl. ¶ 23 (same); Burgess Decl. ¶ 2 (same); Fitzhugh Decl. ¶ 2 (same); James H. Burgess Decl. ¶ 2 (same); Dafphanie Burgess Decl. ¶ 2 (same); Brandi Burgess Decl. ¶ 2 (same); Caldwell Decl. ¶ 2 (same); Blanton Decl. ¶ 2 (same); Cohen Decl. ¶ 2 (same); Louisos Decl. ¶ 2 (same); Burnside Decl. ¶ 2 (same); Prier Decl. ¶ 2 (same); Vicki Prier Decl. ¶ 2 (same); Thomas O. Prier Decl. ¶ 2 (same); Woods Decl. ¶ 2 (same); Wilson Decl. ¶ 2 (same); Sanders-Clahar Decl. ¶ 2 (same); Lindsay O'Neil Decl. ¶ 2 (same); Estate of Mary O'Neil Decl. ¶ 4 (same); Brian Wilson Decl. ¶ 2 (same); Jenny Sills Decl. ¶ 2 (same); Frank Sills, Jr. Decl. ¶ 2 (same); Achilles Decl. ¶ 2 (same); Kimbro Decl. ¶ 2 (same); Semlinger Decl. ¶ 2 (same); Cynthia Hurst Decl. ¶ 2 (same); Estate of James Hurst Decl. ¶ 5 (same); Ziegler Decl. ¶ 2 (same).

(D.C. Cir. 2008) (interpreting the former version of the terrorism exception to mean that "if either the claimant or the victim is a national of the United States, then immunity is waived"); *Leibovitch v. Islamic Republic of Iran*, 697 F.3d 561, 570 (7th Cir. 2012) (interpreting the current statute to mean that "[t]he claimant and victim need not both be American citizens."); *Flanagan v. Islamic Republic of Iran*, 190 F. Supp. 3d 138, 168 (D.D.C. 2016) (same).

Finally, the plaintiffs seek damages "for personal injury . . . that was caused by an . . . extrajudicial killing" for which the defendant and its agents provided "material support or resources." 28 U.S.C. § 1605A(a)(1); *see also Owens*, 864 F.3d at 778 ("[T]he plain meaning of § 1605A(a) grants . . . jurisdiction over claims against designated state sponsors of terrorism that materially support extrajudicial killings committed by nonstate actors."). To elaborate, the truck bombing that plaintiffs allege caused their injuries was manifestly an "extrajudicial killing," defined as "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Pub. L. No. 102-256, § 3(a), 106 Stat. 73, 73 (1992) (codified at 28 U.S.C. § 1350 note § 3(a)); *see also* 28 U.S.C. § 1605A(h)(7) (stating that the term "extrajudicial killing" in the FSIA's terrorism exception has the "meaning given" in the statute just quoted, "the Torture Victim Protection Act of 1991"). The defendant and its agents, the IRGC and MOIS, provided "material support or resources" for this extrajudicial killing, as the evidence presented in *Blais* and *Heiser I*, of which the Court has taken judicial notice, demonstrates. The evidence in those cases, described above, proves that the defendant and its agents authorized, "organized and sponsored" the Khobar Towers attack. *Heiser*, 466 F. Supp. 2d at 262. Further, this evidence showing that Iran helped to recruit, train, fund, supply, and direct Saudi Hezbollah establishes that the defendant's actions were "a 'substantial factor' in the

sequence of events that led to the plaintiff[s'] injur[ies]" and that the injuries were "'reasonably foreseeable or anticipated as a natural consequence of' the defendant's conduct." *Owens*, 864 F.3d at 206 (quoting *Rothstein v. UBS*, 708 F.3d 82, 91 (2d Cir. 2013)) (explaining that the jurisdictional standard for causation under the FSIA's terrorism exception" is proximate cause).

Accordingly, under 28 U.S.C. § 1605A, the defendant is not immune from this suit, and subject-matter jurisdiction may be properly exercised. *See* 28 U.S.C. § 1330(a).

B. Personal Jurisdiction under the FSIA

"Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction . . . where service has been made under section 1608 of [the FSIA]." 28 U.S.C. § 1330(b). Here, service was ultimately made under § 1608(a)(4).

Section 1608 first prescribes two methods by which service shall ordinarily be made, *see* 28 U.S.C. § 1608(a)(1)–(2), but these methods were "not available" to plaintiffs in this action, *Holladay v. Islamic Republic of Iran*, No. CV 17-915 (RDM), 2019 WL 4602142, at *4 (D.D.C. Sept. 23, 2019); *see also Frost v. Islamic Republic of Iran*, 383 F. Supp. 3d 33, 49 (D.D.C. 2019), as "[t]he defendants have neither made a special arrangement for service with the plaintiffs, nor entered into any international convention governing service," *Braun v. Islamic Republic of Iran*, 228 F. Supp. 3d 64, 78 (D.D.C. 2017).

Thus, the plaintiffs initially attempted service under paragraph (a)(3) of § 1608 by sending one copy of the summons, complaint, and notice of suit, along with a Farsi translation, via DHL to the Foreign Minister of Iran. *See* Certificate of Mailing, ECF No. 8. The DHL delivery was returned, *see* Mail Returned, ECF No. 9, so plaintiffs, following § 1608(a)(4), transmitted the summons, complaint, and notice of suit, along with Farsi translations, "through diplomatic channels," *see* 28 U.S.C. § 1608(a)(4) (allowing resort to this method "if service

cannot be made within 30 days under paragraph (3)"). By this method, Iran was served on July 3, 2019. *See* Aff. of Service at 1, ECF No. 19.[10] There is personal jurisdiction over Iran.

C. The Defendants' Liability

The seven service-member plaintiffs bring claims for assault and battery, Compl. ¶¶ 28–32 (Count II), and intentional infliction of emotional distress ("IIED"), *id.* ¶¶ 34–39 (Count III). The 25 family-member plaintiffs bring claims for intentional infliction of emotional distress, *id.*, and seek damages for solatium, pain and suffering, and loss of consortium, *id.* ¶ 40–43 (Count IV). All claims are brought under FSIA § 1605A(c), which creates a "[p]rivate right of action . . . for personal injury or death," and provides that, "[i]n any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages." 28 U.S.C. § 1605A(c).

Section 1605A(c) does not guide courts on the substantive bases for liability that determine plaintiffs' entitlement to damages. Consequently, courts "may rely on well-established statements of common law, found in state reporters, the Restatement of Torts, and other respected treatises, in determining damages under § 1605A(c)." *Fraenkel*, 892 F.3d at 353; *see Estate of Heiser v. Islamic Republic of Iran* (*Heiser II*), 659 F. Supp. 2d 20, 24 (D.D.C. 2009) (applying "general principles of tort law," such as the Restatement (Second) of Torts, to determine liability); *see also Roth*, 78 F. Supp. 3d at 399 (citing *Oveissi*, 879 F. Supp. 2d at 54); *Worley v. Islamic Republic of Iran*, 75 F. Supp. 3d 311, 335 (D.D.C. 2014). The defendant's liability is discussed in detail below, starting with the service-member plaintiffs.

[10] Specifically, on July 25, 2019, the United States Department of State certified in an Affidavit of Service that it had met the requirements for diplomatic service under section 1608(a)(4) by causing delivery of a Summons, Complaint, and Notice of Suit to Iran on July 3, 2019. *See* Aff. of Service at 1; Aff. of Service, Ex. 1, Diplomatic Notes at 2, ECF 19-1.

1. *Service-Member Plaintiffs*

All seven of the service-member plaintiffs — Steven Aceto, James Burgess, Greg Cassidy Caldwell, Shelley Cohen, Denny Prier, Jennifer Scheidel, and Roger Wilson — bring claims under the theories of assault, battery, and intentional infliction of emotional distress. As is discussed in the damages section, these plaintiffs may recover under only one theory, *see e.g.*, *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 297 (2002) ("[I]t 'goes without saying that the courts can and should preclude double recovery by an individual" (quoting *Gen. Tel. Co. of the Nw. v. EEOC*, 446 U.S. 318, 333 (1980)), but each theory of liability is nevertheless evaluated.

a. Assault and Battery

Battery requires an act "intending to cause a harmful or offensive contact . . . or an imminent apprehension of such a contact," and that such a contact in fact "directly or indirectly results." RESTATEMENT (SECOND) OF TORTS § 13. "Harmful contact" causes a "physical impairment of the condition of another's body, or physical pain or illness." *Id.* § 15; *see also Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 76 (D.D.C. 2010) (defining these terms). Iran acted with the intent to cause harmful contact with the residents of the Khobar Towers when it materially supported the truck bombing. *See, e.g.*, *Gill v. Islamic Republic of Iran*, 249 F. Supp. 3d 88, 102 (D.D.C. 2017) (defining material support for terrorist attacks as acts intending to cause harm). Each of the six service-member plaintiffs who was in the Khobar Towers complex at the time of the bombing avers that some harmful physical contact resulted from the bomb, so the defendant is liable to these six plaintiffs for battery.[11]

[11] *See* Aceto Decl. ¶¶ 11–12 (cuts and PTSD); Burgess Decl. ¶¶ 9, 13 (glass in forearm); Caldwell Decl. ¶¶ 7, 15 (bruised sternum and PTSD); Cohen Decl. ¶ 9 (cuts); Prier Decl. ¶ 10, 15 (glass in leg and trauma disorder); Wilson Decl. ¶ 10 (cut on forehead).

Assault occurs where a defendant "acts intending to cause a harmful or offensive contact with the person of the other . . . or an imminent apprehension of such a contact, and . . . the other is thereby put in such imminent apprehension." RESTATEMENT (SECOND) OF TORTS § 21(1). "[A]cts of terrorism are, by their very nature, intended to harm and to terrify by instilling fear of further harm," so where plaintiffs averred "that they did, in fact, fear such harm because of the attack," Iran may be held liable for assault. *Murphy v. Islamic Republic of Iran*, 740 F. Supp. 2d 51, 73 (D.D.C. 2010); *see also Valore*, 700 F. Supp. 2d at 76 (same). Scheidel, who was at the Dhahran Air Force Base miles from the Khobar Towers complex at the time of the bombing, feared that the base would be attacked next when she felt and saw the blast, Scheidel Decl. ¶ 10, but her distance from the blast is inconsistent with "imminent apprehension." *See* RESTATEMENT (SECOND) OF TORTS § 29 cmt. 2 (defining imminence as "so close to striking distance that he can reach the other almost at once"). The six service-member plaintiffs who were present at Khobar Towers were in imminent apprehension of harm, and Iran is liable to those plaintiffs for assault.

b. Intentional Infliction of Emotional Distress

"[O]ne who by extreme and outrageous conduct intentionally or recklessly cause[d] severe emotional distress to" the plaintiffs is liable for intentional infliction of emotional distress. RESTATEMENT (SECOND) OF TORTS § 46(1); *see also Heiser II*, 659 F. Supp. 2d at 26. "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); *see also Valore*, 700 F. Supp. 2d at 77 (same). Further, all seven of the service-member plaintiffs have demonstrated, through their sworn declarations and corroborating submissions, that they suffered severe emotional and psychological distress as a result of the attack. Four service members have been formally diagnosed with PTSD or a related trauma disorder, *see* Aceto Decl. ¶¶ 22–23 (PTSD); Scheidel Decl. ¶¶ 22–23; Caldwell Decl. ¶ 15 (PTSD); Prier

Decl., Att. (Benefits Letter from VA, dated May 24, 2019) (noting "other specified trauma or stressor related disorder). The declarations of the other three service-member plaintiffs demonstrate their significant emotional distress, both acute and chronic, resulting from having been targets of the attack. *See* Burgess Decl. ¶ 13 (describing lasting emotional distress); Cohen Decl. ¶ 17 (describing feelings of helplessness); Wilson Decl. ¶ 15 (listing psychological effects). The defendant is liable to the seven service members for IIED.

2. *Victims' Family Members*

The remaining plaintiffs seek to collect damages as family members of service members present in Saudi Arabia for the Khobar Towers bombing. Seventeen of these plaintiffs — Brandi Burgess, Dafphanie Burgess, James H. Burgess, Kendall Renee Burnside, Sandra Caldwell Blanton, Beverly Fitzhugh, Barbara Ann Louisos, Lindsay O'Neil, the estate of Mary O'Neil, Monika Prier, Thomas Prier, Vicki Prier, Annie Sanders-Clahar, Jennifer Scheidel, Diane Snow, Brian Wilson, and Tene Woods — are family members of service-member plaintiffs to this suit. Seven of the family-member plaintiffs — Brian Achilles, Cynthia Hurst, the estate of James Hurst, Shannon Kimbro, Kimberly Semlinger, Frank Sills, Jr., Jenny Sills, and Kaylee Ziegler — are related to service members injured at the bombing who were awarded damages in *Akins*.

The family members' theory of liability is IIED. *See* Compl. ¶¶ 34–39 (Count II). The Restatement permits recovery for those who were not a direct target of a defendant's conduct if (1) "the defendants' conduct is sufficiently outrageous and intended to inflict severe emotional harm upon a person [who] is not present" and (2) the claimant is a member of a victim's immediate family, *Heiser II*, 659 F. Supp. 2d at 26–27 (quoting DAN B. DOBBS, THE LAW OF TORTS § 307 (2000)), or the functional equivalent of an immediate family member, *see Bettis v. Islamic Republic of Iran*, 315 F.3d 325, 337 (D.C. Cir. 2003) (extending liability under the FISA for IIED to "members of the victim's household" who were also "viewed as the functional

equivalent of immediate family members"); *see also* RESTATEMENT (SECOND) OF TORTS § 46, cmt. l (leaving "open the possibility of situations in which presence . . . may not be required").

Seventeen of the plaintiffs are plainly immediate family members — parents, siblings, spouses, and children — of victims. *See Fritz*, 324 F. Supp. 3d at 63 (observing that the "strict meaning" of immediate family is "one's spouse, parents, siblings, and children" (quoting *Heiser II*, 659 F. Supp. 2d at 28)). Five of the plaintiffs — Annie Sanders-Clahar, Lindsay O'Neil, Brian Wilson, Brian Achilles, and Shannon Kimbro — do not fall neatly into these traditional categories. O'Neil, Wilson, Achilles, and Kimbro are the functional equivalents of immediate family members and are therefore able to maintain claims for IIED. Half-siblings like Wilson, Achilles, and Kimbro "are presumed to recover" as full siblings would, *id.* (quoting *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 52 (D.D.C. 2007)), and the evidence here supports application of that presumption: Wilson, Achilles, and Kimbro all attest to their close relationships with their half siblings. Achilles grew up with his half-brother Frank Sills. *See* Achilles Decl. ¶ 3. Shannon Kimbro and Frank Sills, who share a father, did not grow up in the same house, but "were very close" as children — they "frequently got together for vacations and family events" and she spent "many happy days . . . sleeping over at their house." Kimbro Decl. ¶ 4. Brian Wilson also did not grow up in the same house as his half-brother Roger Wilson, but Brian "often visited Roger and his mother" in North Carolina, B. Wilson Decl. ¶ 5, and when Brian struggled as a teenager, he traveled "back East . . . to spend time with Roger," *id.* ¶ 6-7. Finally, plaintiff Lindsay O'Neil, although not Wilson's biological or adoptive father, was the "functional equivalent" because he lived with Wilson, as Wilson's mother's husband, and took on parental responsibilities from the time Wilson was two years old. *See* L. O'Neil Decl. ¶ 4.

Sanders-Clahar, however, was not the functional equivalent of a spouse to Roger Wilson. *Bettis*' "functional equivalent" requirement comes from *Surette v. Islamic Republic of Iran*, 231 F. Supp. 2d 260 (D.D.C. 2002), which "allowed recovery for intentional infliction of emotional distress to a woman who, although not legally married to the victim, had lived with him for over 20 years in a 'bond that was the functional equivalent of marriage.'" *Bettis*, 315 F.3d at 337 (quoting *Surette*, 231 F. Supp. 2d at 270). Here, by contrast, Sanders-Clahar and Wilson met in "1994 or 1995," just a year or two before the bombing, and "dated for about a year and a half" before moving in together in 1996. Sanders-Clahar Decl. ¶ 4. When Wilson returned after the bombing, he continued to live with Sanders-Clahar for an unknown period of time before their marriage plans dissolved. *Id.* ¶ 10, 12; *see also* Wilson Decl. ¶ 14. In *Surette*, the relationship between Beverley Surette and the victim, William Buckley, "was recognized by Buckley's family, his colleagues and his employer," some of whom attested to the "longstanding, loving, loyal, and trusting relationship" between Buckley and Surette. *Surette*, 231 F. Supp. at 270. Although Wilson introduced Sanders-Clahar to his family as his fiancée before he deployed to Saudi Arabia in 1996, the declarations of Wilson's family members do not mention Sanders-Clahar, *see* L. O'Neil Decl; M. O'Neil Decl; B. Wilson Decl., and the Air Force did not recognize the relationship as a marriage, *see* Sanders-Clahar Decl. ¶ 7 (observing that "no one from the Air Force called" her because she and Wilson "were not yet formally married"). Sanders-Clahar suffered real emotional distress as a result of the bombing, *see* Sanders-Clahar Decl. ¶¶ 7, 10, but "it is not within [this court's] authority to extend liability for intentional infliction of emotional distress beyond what has been allowed by the common law or authorized by the statute," *Bettis*, 315 F.3d at 337.

Iran is liable for IIED to the 24 remaining family-member plaintiffs, now called the immediate–family member plaintiffs. In this case, the defendant's conduct in materially supporting Saudi Hezbollah was "sufficiently outrageous and intended to inflict severe emotional harm upon a person who is not present," such that a victim's immediate family members need not have been at the bombing to recover for their emotional distress. *Heiser II*, 659 F. Supp. 2d at 27 (quoting DAN B. DOBBS, THE LAW OF TORTS § 307, at 834); *see Schooley*, 2019 WL 2717888, at *73 (concluding the same); *Akins*, 332 F. Supp. 3d at 38 (same). Finally, the 24 immediate–family member plaintiffs have shown, through their uncontested declarations, that they did suffer significant emotional consequences from the attack, in the days spent waiting for news of their loved ones and in the years after the attack.[12]

* * *

As just outlined, the service-member plaintiffs and the immediate–family member plaintiffs have established the defendant's liability under the federal private right of action against state sponsors of terrorism, 28 U.S.C. § 1605A(c), for the torts of assault, battery, and intentional infliction of emotional distress.

[12] *See* Snow Decl. ¶¶ 14–15 (attesting to emotional distress stemming from her experience as a result of the bombing); Scheidel Decl. ¶¶ 22–23 (same); Fitzhugh Decl. ¶ 12 (same); J.H. Burgess Decl. ¶ 15 (same); D. Burgess Decl. ¶¶ 11, 13 (same); B. Burgess Decl. ¶¶ 7, 9 (same); Blanton Decl. ¶ 14, 18 (same); Louisos Decl. ¶¶ 10, 16 (same); Burnside Decl. ¶¶ 10, 17 (same); V. Prier Decl. ¶ 13 (same); T. Prier ¶ 16 (same); M. Prier ¶¶ 9, 10 (same); Woods Decl. ¶¶ 9–10 (same); L. O'Neil Decl. ¶¶ 10, 15 (same); M. O'Neil Decl. ¶¶ 6–7 (same); Wilson Decl. ¶¶ 8–9 (same); Jenny Sills Decl. ¶¶ 13, 21 (same); Frank Sills, Jr. Decl. ¶¶ 9, 16 (same); Achilles Decl. ¶¶ 6, 8 (same); Kimbro Decl. ¶¶ 7, 13 (same); Semlinger Decl. ¶¶ 10, 14 (same); C. Hurst Decl. ¶¶ 10, 17 (same); J. Hurst Decl. ¶¶ 4, 11 (same); Ziegler Decl. ¶ 6 (same).

D. Damages

Turning to the allowable damages, the plaintiffs seek to recover economic, pain and suffering, and solatium damages, *see* Compl. ¶¶ 28–43 (Counts I–IV), and the damage award to which each plaintiff is entitled is described below.[13]

1. *Legal Standard for Damages under Section 1605A(c)*

In actions brought under the FSIA's terrorism exception, foreign states may be liable for money damages, including "economic damages, solatium, pain and suffering and punitive damages." 28 U.S.C. § 1605A(c). To recover, the plaintiffs "must prove that the consequences of the foreign state's conduct were reasonably certain (*i.e.*, more likely than not) to occur, and must prove the amount of damages by a reasonable estimate." *Roth*, 78 F. Supp. 3d at 402 (internal quotation marks omitted); *see also Fraenkel*, 892 F.3d at 353 (stating the same). Courts may look to expert testimony and prior awards in determining whether the amount of damages has been proven by a reasonable estimate. *Reed v. Islamic Republic of Iran*, 845 F. Supp. 2d 204, 214 (D.D.C. 2012); *Acosta v. Islamic Republic of Iran*, 574 F. Supp. 2d 15, 29 (D.D.C. 2008). The D.C. Circuit "review[s] the District Court's FSIA damages awards for abuse of discretion." *Fraenkel*, 892 F.3d at 356.

The evidence presented in *Blais* and *Heiser I*, of which this Court has taken judicial notice and reviewed above, has satisfactorily shown that the plaintiffs' injuries were reasonably certain and were the intended consequences of the defendants' material support of Saudi Hezbollah. *See Schooley*, 2019 WL 2717888, at *74 (concluding the same); *Akins*, 332 F. Supp.

[13] The plaintiffs' complaint also sought punitive damages, *see* Compl. ¶¶ 44–47 (Count V), but the plaintiffs withdrew this demand because "the allowability *vel non* of punitive damages imposed retroactively for events prior to enactment in 2008 of 28 U.S.C. § 1605A(c), *see* National Defense Authorization Act for Fiscal Year 2008 (NDAA), Pub. L. No. 110-181, Div. A, Tit. X, § 1083(a)(1), 122 Stat. 338, is a question on which the Supreme Court has granted certiorari. *Opati v. Republic of Sudan*, 139 S. Ct. 2771 (2019)." Pls.' Notice of Voluntary Withdrawal of Punitive Damages Demand at 1, ECF No. 27.

3d at 39 (same). Having concluded this, whether plaintiffs have shown the amount of economic, pain and suffering, and solatium damages by a reasonable estimate will be considered next.

2. *Economic Losses and Medical Expenses*

The seven service-member plaintiffs seek to recover for "medical expenses" and "economic losses." Compl. ¶ 33. This demand is unaccompanied by any documentation of medical bills or payments or by any evidence of lost wages or other economic injury, and so plaintiffs have failed to prove the amount of economic or medical expenses damages by a reasonable estimate. *See Moradi v. Islamic Republic of Iran*, 77 F. Supp. 3d 57, 71 (D.D.C. 2015) (concluding the same where plaintiff had estimated his economic loss without documentation); *Kaplan v. Hezbollah*, 213 F. Supp. 3d 27, 41 (D.D.C. 2016) (denying economic damages where plaintiffs did not provide documents "lending credence" to their claims of lost income); *Akins*, 332 F. Supp. 3d at 39–40 (denying economic losses for failure to support claims with sufficient evidence). "Unlike damages for pain and suffering, lost earnings" and incurred medical expenses "are not hard to quantify, and the Court will not excuse plaintiffs' failure to support the claim for lost earnings" and medical expenses "with competent evidence." *Moradi*, 77 F. Supp. 3d at 71. Plaintiffs' claims for economic losses and medical expenses are denied.

3. *Pain and Suffering*

As discussed, the defendant is liable to the seven service-member plaintiffs for battery, assault, and intentional infliction of emotional distress, but the bar on multiple recoveries allows plaintiffs to recover only under one theory, for the single underlying harm. *See, e.g.*, *Valore*, 700 F. Supp. 2d at 77 ("The Court notes that these plaintiffs who have claimed assault, battery, and IIED may recover under only one of any such theories, as multiple recovery is prohibited."). Within this single-recovery framework, the "baseline assumption" applied in previous cases under the FSIA's terrorism exception is that "persons suffering injuries in terrorist attacks are

no downward departure for proportionality is required. Within the *Heiser* framework, these siblings of injured service members are each entitled to an award of $1,250,000. *See Akins*, 332 F. Supp. 3d at 45 (awarding a baseline amount of $1,250,000 to siblings of injured service members).

E. Attorneys' Fees and Costs and Expenses

The plaintiffs also seek "[r]easonable costs and expenses" and "[r]easonable attorneys' fees," Compl. at 19 (Prayer for Relief), but because the plaintiffs have not provided any information regarding the fees and costs sought, the request is denied without prejudice. The plaintiffs may file post-judgment motions for attorneys' fees in accordance with Federal Rule of Civil Procedure 54(d)(2)(B) and for costs in accordance with Federal Rule of Civil Procedure 54(d)(1).

IV. CONCLUSION

The plaintiffs' motion for default judgment is granted in part and denied in part. The defendant is liable for the pain and suffering inflicted on the seven service-member plaintiffs and for the emotional distress inflicted on the 24 immediate–family member plaintiffs.

The plaintiffs are awarded monetary damages in the following amounts:

- Service-member plaintiff Roger Wilson is entitled to $7,000,000 in pain and suffering damages;
- Service-member plaintiffs Greg Cassidy Caldwell and Denny Prier are each entitled to $6,000,000 in pain and suffering damages;
- Service-member plaintiffs Steven Aceto, James A. Burgess, and Shelley Cohen are each entitled to $3,000,000 in pain and suffering damages;

- Service-member plaintiff Jennifer Scheidel is entitled to $1,500,000 in pain and suffering damages. Jennifer Scheidel is also entitled to $1,500,000 in solatium damages, for a total award of $3,000,0000.
- Plaintiff-spouse Vicki Prier is entitled to $4,000,000 in solatium damages;
- Plaintiff-spouse Dafphanie Burgess is entitled to $2,000,000 in solatium damages;
- Plaintiff-parents Sandra Caldwell Blanton, Monika Prier, Thomas Prier, Lindsay O'Neil, the estate of Mary O'Neil, Jenny Sills, and Frank Sills, Jr. are each entitled to an award of $2,500,000.
- Plaintiff-parents Diane Snow, Beverly Fitzhugh, James H. Burgess, and Barbara Ann Louisos are each entitled to $1,875,000 in solatium damages;
- Plaintiff-parents Cynthia Hurst and the estate of James Hurst are each entitled to $1,250,000 in solatium damages;
- Plaintiff-child Kaylee Ziegler is entitled to $1,500,000 in solatium damages;
- Plaintiff-children Brandi Burgess and Kendall Burnside are each entitled to $750,000 in solatium damages;
- Plaintiff-siblings and half-siblings Tene Woods, Brian Wilson, Brian Achilles, Shannon Kimbro, and Kimberly Semlinger are each entitled to $1,250,000 in solatium damages.

Thus, the total damages award is $ 73,750,000.

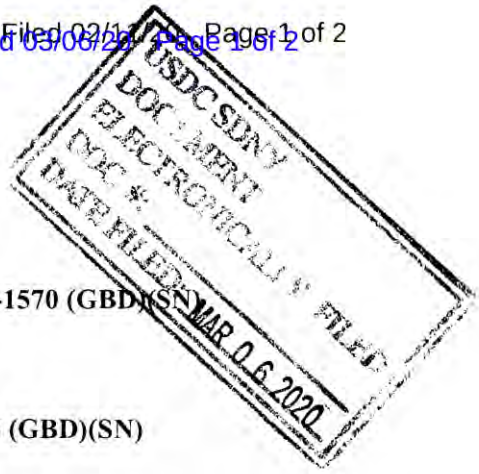
An appropriate Order accompanies this Memorandum Opinion.

Date: February 7, 2020

BERYL A. HOWELL
Chief Judge

Annex 80

Ryan, et al. v. Islamic Republic of Iran, et al., **U.S. District Court for the Southern District of New York, Order of Partial Final Default Judgments, 6 March 2020, Case No. 1:20-cv-00266**



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: TERRORIST ATTACKS ON SEPTEMBER 11, 2001 : **03-MDL-1570 (GBD)(SN)**

This Document Relates To:
***Ryan, et al. v. Islamic Republic of Iran, et al.*, 1:20-cv-00266 (GBD)(SN)**

ORDER OF PARTIAL FINAL DEFAULT JUDGMENTS

Upon consideration of the evidence and arguments submitted by Plaintiffs, the Estate of John J. Ryan and the Estate of Daniel L. Maher, in the action styled *Ryan, et al. v. The Islamic Republic of Iran, et al.*, 1:20-cv-00266 (GBD)(SN), who are each the estate of a victim of the terrorist attacks on September 11, 2001 who was killed either on September 11, 2001 or in the immediate aftermath of September 11, 2001, and the Judgment by Default for liability entered against the Islamic Republic of Iran on August 31, 2015, *sub. nom. Ashton, et al v. al Qaeda Islamic Army, et al.*, 02-cv-6987 (GBD)(FM)(1:03-md-01570, Doc. No. 3014), together with the entire record in this case, it is hereby:

ORDERED that service of process was effected upon the Islamic Republic of Iran in accordance with 28 U.S.C. § 1608(a) for sovereign defendants and 28 U.S.C. § 1608(b) for agencies and instrumentalities of sovereign defendants;

ORDERED that partial final judgment is entered against the Islamic Republic of Iran and on behalf of Plaintiffs, the Estate of John J. Ryan and the Estate of Daniel L. Maher, in the action styled *Ryan, et al. v. The Islamic Republic of Iran, et al.*, 1:20-cv-00266 (GBD)(SN), who are each the estate of a victim of the terrorist attacks on September 11, 200; and it is

ORDERED that Plaintiffs, the Estate of John J. Ryan and the Estate of Daniel L. Maher, were granted a Default Judgment against the Islamic Republic of Iran (1:03-md-01570, Doc. No. 3014), and were awarded compensatory damages of $2,000,000.00 for conscious pain and suffering (1:03-md-01570, Docs. No. 3226, dated March 8, 2016; 1:03-md-01570, Doc. No. 3229, dated March 9, 2016); and it is

ORDERED that Plaintiff, the Estate of John J. Ryan, is awarded economic damages in the amount of $21,160,744.00 to be added to the existing judgment for $2,000.000.00 for pain and suffering as supported by the expert reports and analyses submitted by Dr. Stan V. Smith as Exhibit A to the Pantazis Declaration; and it is

ORDERED that the Estate of Daniel L. Maher is awarded economic damages in the amount of $7,662,835.00 to be added to the existing judgment for $2,000.000.00 for pain and suffering, as supported by the expert reports and analyses submitted by Dr. Stan V. Smith as Exhibit A to the Pantazis Declaration; and it is

ORDERED that Plaintiffs, the Estate of John J. Ryan and the Estate of Daniel L. Maher, are awarded prejudgment interest of 4.96 percent per annum, compounded annually, running from September 11, 2001 until the date of judgment; and it is

ORDERED that Plaintiffs, the Estate of John J. Ryan and the Estate of Daniel L. Maher, may submit an application for punitive damages or other damages (to the extent such awards have not previously been ordered) at a later date consistent with any future rulings made by this Court on this issue.

Dated: New York, New York

MAR 06 2020, 2020

SO ORDERED:

George B. Daniels

GEORGE B. DANIELS
United States District Judge

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Annex 81

***Leibovitch, et al. v. Islamic Republic Iran, et al.*, 9 March 2020, 297 F. Supp. 3d 816 (N.D. Ill. 2018)**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHLOMO LEIBOVITCH, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	**No. 08 C 1939**
v.	)	
	)	**Chief Judge Rubén Castillo**
ISLAMIC REPUBLIC OF IRAN, *et al.*,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

In this long-running case, Shlomo Leibovitch and several of his family members ("Plaintiffs") seek to recover for injuries they suffered as a result of an act of terrorism committed with the support of the Islamic Republic of Iran and the Iranian Ministry of Information ("Defendants"). Presently before the Court is Plaintiffs' motion to compel discovery from non-party The Boeing Company ("Boeing"), as well as Boeing's cross-motion to quash Plaintiffs' discovery requests.[1] (R. 232, Pls.' Mot.; R. 245, Boeing's Mot.) For the reasons stated below, Plaintiffs' motion to compel is granted in part and denied in part, and Boeing's cross-motion is denied.

BACKGROUND

The facts of this case have been fully set forth in several prior opinions of this Court and the U.S. Court of Appeals for the Seventh Circuit. *See Leibovitch v. Islamic Republic of Iran*,

[1] With the Court's permission, a number of documents related to the present dispute have been filed under seal. (*See* R. 246, Order; R. 251, Min. Entry.) Although Boeing submitted a number of supporting declarations under seal, (*see* R. 247), it referenced and quoted from those sealed declarations in its publicly filed memorandum. (*See, e.g.*, R. 245-1, Boeing's Mem. at 7 (citing R. 247-1, Larson Decl.); *id.* at 8 (citing R. 247-2, Bentrott Decl.).) Where that occurred, the Court has referenced the information contained in the declarations. Additionally, Plaintiffs filed their entire reply brief under seal without submitting a public, redacted version as required by the Local Rules. *See* N.D. ILL. L.R. 26.2. Much of the material contained in Plaintiffs' reply brief is not sensitive or has already been disclosed in other publicly filed documents. Throughout this opinion, the Court has taken pains to keep sensitive information out of the public record while also bearing in mind that "[w]hat happens in the halls of government is presumptively open to public scrutiny." *In Re Matter of Krynicki*, 983 F.2d 74, 75 (7th Cir. 1992).

852 F.3d 687 (7th Cir. 2017); *Leibovitch v. Islamic Republic of Iran*, 697 F.3d 561 (7th Cir. 2012); *Leibovitch v. Islamic Republic of Iran*, 188 F. Supp. 3d 734 (N.D. Ill. 2016); *Leibovitch v. Syrian Arab Republic*, 25 F. Supp. 3d 1071 (N.D. Ill. 2014). In brief, the tragic facts underlying the case began in 2003, when the Leibovitch family was driving on a highway in Jerusalem and their minivan "was shot up by members of Palestine Islamic Jihad, a terrorist group supported by the government of Iran." *Leibovitch*, 852 F.3d at 688-89. Seven-year-old Noam Leibovitch was killed and her three-year-old sister Shira Leibovitch (an American citizen) was permanently injured. *Id.* The surviving family members, as well as Noam's estate, filed this action for damages against Defendants pursuant to the Antiterrorism Act ("ATA"), 18 U.S.C. § 2333, and the state-sponsored terrorism exception to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605A. *Id.* at 689. Defendants were served through diplomatic channels in Tehran but never answered or otherwise appeared. *Leibovitch*, 188 F. Supp. 3d at 741, 753. After "protracted proceedings" in both the district and appellate courts, the Court entered a default judgment of $67 million against Defendants. *Leibovitch*, 852 F.3d at 689.

Since that time, Plaintiffs have been engaged in the arduous task of trying to collect on their judgment. *See id.* at 689-90. To that end, in December 2016 they served Boeing, a corporation headquartered in Chicago, with a citation to discover assets pursuant to Federal Rule of Civil Procedure 69 and 735 ILL. COMP. STAT. 5/2-1402, as well as discovery requests under Rule 45 seeking to identify Iranian assets "which are or may be held by Boeing." (R. 233, Pls.' Mem. at 2.) Specifically, Plaintiffs seek information about a contract—which has been widely reported in the media—between Boeing and the Airline of the Islamic Republic of Iran ("Iran Air"), under which Boeing is to provide Iran Air with 80 commercial airplanes worth approximately $16 billion over a period of years. (*See, e.g.*, R. 234-7, News Article.) This deal

was made possible by the Joint Comprehensive Plan of Action ("JCPOA"), commonly referred to as the "Iran Nuclear Deal," which was brokered in July 2015 among the E3/EU+3 nations[2] and Iran. (R. 245-3, Iran Nuclear Deal at 4.) The goal of the Iran Nuclear Deal was to ensure that Iran's nuclear program is "exclusively peaceful." (*Id.*) As part of the deal, the United States (through former President Barack Obama) agreed to lift various commercial sanctions against Iran and to "allow for the sale of commercial passenger aircraft and related parts and services to Iran[.]" (*Id.* at 13.) Consistent with this obligation, in September 2016 the U.S. Office of Foreign Asset Control ("OFAC") licensed Boeing's future sale of commercial airplanes to Iran Air. (R. 245-1, Boeing's Mem. at 7; R. 247-1, Larson Decl. ¶ 12.) Boeing thereafter entered into an agreement with Iran Air, dated December 11, 2016, to sell 80 commercial airplanes to Iran Air. (R. 245-1, Boeing's Mem. at 8; R. 247-1, Larson Decl. ¶¶ 2-3.) This deal was the first major commercial transaction between American and Iranian companies in four decades. (R. 245-1, Boeing's Mem. at 8; R. 247-2, Bentrott Decl. ¶ 6.)

The present motions stem from Plaintiffs' efforts to learn the details of the airplane deal. Plaintiffs seek "information about assets of the judgment debtors against which they can enforce their judgments, either in the United States or elsewhere." (R. 233, Pls.' Mem. at 4-5.) Their Rule 45 document subpoena contains eight separate document requests. They ask for a copy of the contract itself, as well as all "ancillary documents . . . that would identify[] the parties and their obligations as well as documents concerning the financial institutions involved in the transaction, the financing arrangements, [and the manner of] payment and delivery." (*Id.* at 5; *see also* R. 234-3, Doc. Subpoena.) Plaintiffs further request "all correspondence, notices, written inquiries, letters, or writings of any nature . . . between Boeing, Iran Air and/or the Islamic

[2] The E3/EU+3 nations are China, France, Germany, the Russian Federation, the United Kingdom, and the United States, along with the High Representative of the European Union for Foreign Affairs and Security Policy. (R. 245-3, Iran Nuclear Deal at 4.)

Republic of Iran, in respect to the Contract and the parties' respective obligations and payments under the Contract." (R. 243-4, Doc. Subpoena ¶ 6.) They also seek production of "[a]ny and all correspondence" between Boeing and OFAC, or any other department or agency of the U.S. government, "relating to assets or property of the Islamic Republic of Iran, including without limitation the Contract." (*Id.* ¶ 7.) Plaintiffs also served Boeing with a Rule 45 deposition subpoena, requiring Boeing to designate a corporate representative pursuant to Rule 30(b)(6) to testify on a variety of matters, including the details of the contract and the details of any communications between Boeing and Iran Air, or Boeing and the U.S. government, broadly relating to the contract or any asset of Iran. (R. 234-4, Dep. Subpoena ¶¶ 1-7.)

In response, Boeing has not produced any documents or designated a corporate representative pursuant to Rule 30(b)(6).[3] Instead, Boeing moves to quash the subpoenas and dismiss the citation in its entirety. (R. 245, Boeing's Mot.) In Boeing's view, ordering the requested relief would require the Court to resolve "nonjusticiable political questions" and violate principles of international comity; Boeing believes that granting these discovery requests would cause "significant harm to the goals of the United States and its European allies" and "risk destabilizing the purpose of the JCPOA to provide for regional and international peace and security." (R. 245-1, Boeing's Mem. at 12-13 (internal quotation marks omitted)). Boeing also argues that Plaintiffs' discovery requests "seek irrelevant information and are disproportionate to the needs of the case," because the contract, as currently drafted, will not result in any Iranian assets being subject to attachment in the United States. (*Id.* at 16-17.)

Plaintiffs argue in reply that their discovery requests do not raise any non-justiciable political questions or trigger international comity concerns. (R. 252, Pls.' Reply at 2-6.) In their

[3] Boeing has provided certain basic information about the contract in a declaration filed under seal by one of its directors. (*See* R. 247-1, Larson Decl.)

view, Boeing is essentially asking this Court "to afford Iran and Iran Air, and by extension their business partner Boeing, protections and immunities that are not mentioned in either [the Iran Nuclear Deal] or the [FSIA]." (*Id.* at 3.) Plaintiffs believe that the Iran Nuclear Deal "did nothing to prohibit the victims of terror from continuing to exercise their rights under the FSIA." (*Id.* at 5.) In response to Boeing's relevancy and proportionately argument, Plaintiffs argue that Boeing has skewed the inquiry by suggesting that Plaintiffs must demonstrate that they are able to execute on specific assets before they are permitted any discovery related to those assets. (*Id.* at 8-9.)

After reviewing the parties' submissions, the Court found it prudent to obtain a statement from the U.S. government as to whether, in its view, "permitting the discovery sought by Plaintiffs will, as Boeing argues, interfere with U.S. foreign policy toward Iran by obstructing a key component of the international nuclear deal." (R. 258, Min. Entry (citation and internal quotation marks omitted).) The government, through the U.S. Department of Justice on behalf of the Executive Branch, has now filed a statement of interest, and represents that "the United States does not take a position on whether the Court should order the requested discovery." (R. 265, Gov't's Statement at 3.) According to the statement, the United States is "implementing its JCPOA commitments," and "those commitments do not require the Executive Branch to take any specific action with respect to efforts by judgment creditors of Iran to pursue post-judgment discovery or other enforcement proceedings."[4] (*Id.*) The government urges only that if discovery is ordered, the Court "supervise such discovery carefully, taking into account the sensitive nature

[4] The government's statement makes no mention of the fact that in October 2017, President Trump announced that he "cannot and will not make [the] certification," as required by the Iran Nuclear Agreement Review Act, 42 U.S.C. § 2160e, that "suspension of sanctions under the deal is appropriate and proportionate to . . . measures taken by Iran to terminate its illicit nuclear program." *See* Press Release, Remarks by President Donald J. Trump on Iran Strategy (Oct. 13, 2017), *available at* https://www.whitehouse.gov/briefings-statements/remarks-president-trump-iran-strategy. The parties' briefs were filed before this announcement was made, and so they have not weighed in on the matter either. Without guidance from the government or the parties, this Court declines to speculate how this pronouncement might impact the airplane deal.

of discovery into the property of foreign states and their agencies and instrumentalities."[5] (*Id.* at 4.)

ANALYSIS

"[F]oreign sovereign immunity is a matter of grace and comity on the part of the United States." *Rubin v. Islamic Republic of Iran*, No. 16-534, 2018 WL 987348, at *4 (U.S. Feb. 21, 2018) (citation omitted). For much of our nation's history, courts "deferred to the decisions of the political branches" regarding whether immunity applied in a given situation. *Id.* (citation omitted). In the 1970s, "Congress enacted the FSIA in an effort to codify th[e] careful balance between respecting the immunity historically afforded to foreign sovereigns and holding them accountable, in certain circumstances, for their actions." *Id.* One such exception to foreign sovereign immunity is Section 1605A of the FSIA, under which "American nationals may file suit against state sponsors of terrorism in the courts of the United States."[6] *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1317 (2016). Specifically, terror victims can seek money damages against a foreign state for personal injury or death caused by an act of terrorism, including "torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support" to terrorist activities. *Id.* (quoting 28 U.S.C. § 1605A(a)(1)).

Yet terror victims who prevail under the FSIA "have often faced practical and legal difficulties at the enforcement stage." *Id.* at 1317-18 (citation omitted). Several legal principles limit the ability of a prevailing plaintiff from attaching assets of a foreign state. *Id.* at 1318. Subject to a few narrow exceptions, "the FSIA shields foreign-state property from execution."

[5] The government further states that it "will continue to monitor this proceeding and if necessary may file a further Statement of Interest at a later stage." (R. 265, Gov't's Statement at 6.)

[6] The statute leaves to the Executive Branch to determine which countries should be designated as a "state sponsor of terrorism." 28 U.S.C. § 1605A(h)(6). At present, only four countries are so designated: North Korea, Iran, Syria, and Sudan. 31 C.F.R. § 596.201; *see also* Dep't of State, *State Sponsors of Terrorism*, *available at* https://www.state.gov/j/ct/list/c14151.htm (last visited Feb. 26, 2018).

Id.; *see also Rubin*, 2018 WL 987348, at *5 (observing that the FSIA "provides as a default that the property in the United States of a foreign state shall be immune from attachment arrest and execution" (citation and internal quotation marks omitted)). Courts in the United States also "generally lack authority . . . to execute against property in other countries[.]" *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2257 (2014). But other foreign-state property is potentially available to plaintiffs who obtain a judgment under the FSIA. *Bank Markazi*, 136 S. Ct. at 1318. Attachable assets include "foreign-state property located in the United States" that is "used for a commercial activity." *Id.* (citation omitted). Additionally, the Terrorism Risk Insurance Act of 2002 ("TRIA") authorizes execution of judgments obtained under the FSIA's state-sponsored terrorism exception against "the blocked assets" of a terrorist party, its agencies, or its instrumentalities. *Id.* A "blocked asset" is defined as "any asset seized by the Executive Branch pursuant to either the Trading with the Enemy Act (TWEA), or the International Emergency Economic Powers Act (IEEPA)." *Id.* (citations omitted).

The FSIA does not specifically address what post-judgment discovery procedures are available to plaintiffs seeking execution of a judgment obtained against a foreign state. *NML Capital*, 134 S. Ct. at 2256 ("There is no . . . provision forbidding or limiting discovery in aid of execution of a foreign-sovereign judgment debtor's assets."). However, the Federal Rules of Civil Procedure apply to such proceedings, and the rules governing post-judgment discovery are "quite permissive." *Id.* at 2254. Specifically, Federal Rule of Civil Procedure 69 provides that "[i]n aid of the judgment or execution," a judgment creditor "may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located." FED. R. CIV. P. 69(a)(2). Plaintiffs here are invoking Federal Rule of Civil Procedure 45, pertaining to third-party discovery, and 735 ILL. COMP. STAT. 5/2-

1402(a), which "enables a judgment creditor to discover assets or income of the debtor[.]" *Shales v. T. Manning Concrete, Inc.*, 847 F. Supp. 2d 1102, 1111 (N.D. Ill. Mar. 13, 2012) (citation and internal quotation marks omitted); *see also* 735 ILL. COMP. STAT. 5/2-1402(a) (providing that "[a] judgment creditor . . . is entitled to prosecute supplementary proceedings for the purposes of examining the judgment debtor or any other person to discover assets or income of the debtor not exempt from the enforcement of the judgment"). A citation served under the Illinois statute can also be used to compel "the application of non-exempt assets or income" of the debtor in the hands of a third party to be paid toward the judgment. 735 ILL. COMP. STAT. 5/2-1402(a). Service of a citation has the effect of creating a lien on all "nonexempt personal property, including money, choses in action, and effects of the judgment debtor . . . in the possession or control of the third party[.]" 735 ILL. COMP. STAT. 5/2-1402(m). This "restraining provision" is "intended to forestall the judgment debtor or a third party from frustrating the supplementary proceedings before the judgment creditor has had an opportunity to reach assets." *Shales*, 847 F. Supp. 2d at 1111 (citation, internal quotation marks, and alteration omitted). With this background in mind, the Court turns to Boeing's arguments.

I. Political Question Doctrine

Boeing first argues that Plaintiffs' motion to compel should be denied because "enforcing Plaintiffs' [discovery] requests would require the Court to resolve nonjusticiable political questions." (R. 245-1, Boeing's Mem. at 12.) Specifically, Boeing argues that "[i]n committing the United States to the JCPOA, the President (with congressional acquiescence) made a political judgment to undertake certain obligations, including allowing Iran to acquire commercial airplanes from U.S. companies, in exchange for securing a diplomatic solution to the problem posed by Iran's nuclear program." (*Id.*) In Boeing's view, "Plaintiffs . . . seek to use this Court to

substitute their own policy judgments of the President and Congress" by "frustrating a central element of the JCPOA and undermining the finality of the United States' foreign policy choices[.]" *Id.* at 13.

"In general, the Judiciary has a responsibility to decide cases properly before it, even those it would gladly avoid." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194 (2012) (citation omitted). One "narrow exception" to that rule is the "political question doctrine." *Id.* at 195. "The political-question doctrine identifies a class of questions that either are not amenable to judicial resolution because the relevant considerations are beyond the courts' capacity to gather and weigh, . . . or have been committed by the Constitution to the exclusive, unreviewable discretion of the executive and/or legislative—the so-called 'political'—branches of the federal government." *Judge v. Quinn*, 624 F.3d 352, 358 (7th Cir. 2010) (citations and internal quotation marks omitted); *see also Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986) ("The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch."). The doctrine embodies a recognition that "courts are fundamentally underequipped to formulate national policies or develop standards for matters not legal in nature." *Japan Whaling*, 476 U.S. at 230 (citation omitted). The Supreme Court has set forth several factors to guide courts in identifying a political question:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of

> embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. 186, 217 (1962). A case is not barred by the political question doctrine "[u]nless one of these formulations is inextricable from the case[.]" *Id.*

In general, "matters relating to the conduct of foreign relations . . . are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Haig v. Agee*, 453 U.S. 280, 292 (1981) (citation and internal quotation marks omitted); *see also United States v. Pink*, 315 U.S. 203, 222-23 (1942) ("[T]he conduct of foreign relations is committed by the Constitution to the political departments of the Federal Government; . . . the propriety of the exercise of that power is not open to judicial inquiry[.]"). However, the Court must make a careful inquiry when deciding if the doctrine applies, because there is a distinction between "political questions" and "political *cases*," and not "every case or controversy which touches foreign relations lies beyond judicial cognizance." *Baker*, 369 U.S. at 211, 217 (emphasis added). Put simply, "it is emphatically the province and duty of the judicial department to say what the law is," *Zivotofsky*, 566 U.S. at 196 (citation and internal alteration omitted), and the Court "cannot shirk this responsibility merely because [its] decision may have significant political overtones." *Japan Whaling Ass'n*, 478 U.S. at 230. Because the doctrine is largely driven by separation of powers concerns, the Court must employ additional scrutiny when the doctrine is invoked by a private party rather than a "coordinate branch of the United States government." *McMahon v. Presidential Airways, Inc.*, 502 F.3d 1331, 1359-60 (11th Cir. 2007).

In considering these principles, the Court agrees with Plaintiffs that Boeing's reliance on the political question doctrine is misplaced. This Court is being called to decide a discovery dispute, plain and simple. Although the discovery sought certainly has "political overtones,"

Japan Whaling Ass'n, 478 U.S. at 230, the Court is not deciding any issue at this juncture that is committed to some other branch of the government or for which there are no judicially manageable standards for resolving.[7] *Compare Zivotofsky*, 566 U.S. at 194-96 (concluding that action by parents seeking permanent injunction requiring Secretary of State to identify child's place of birth as "Jerusalem, Israel" was not barred under political question doctrine, even though the Executive Branch has the sole power to determine the political status of Jerusalem) *and Japan Whaling Ass'n*, 476 U.S. at 230 (concluding that political question doctrine did not bar judicial resolution of controversy over whether federal statute required Executive Branch to make certification in accordance with international treaty) *with Bentzlin v. Hughes Aircraft Co.*, 833 F. Supp. 1486, 1497 (C.D. Cal. 1993) (case presented a political question where resolving plaintiff's claims would "necessarily require inquiry into military strategy").

To the contrary, there are applicable rules and cases addressing the circumstances under which post-judgment discovery may be granted, even when that discovery implicates the interests of a foreign state. *See* FED. R. CIV. P. 26, 30, and 69; *NML Capital*, 134 S. Ct. at 2256 ("There is no [ ] provision forbidding or limiting discovery in aid of execution of a foreign-sovereign judgment debtor's assets."). Nothing decided in this case will demonstrate a lack of respect for a coordinate branch of government, nor is there any potential for "multifarious

[7] In its briefs, Boeing relies heavily on *Spectrum Stores, Inc. v. Citgo Petroleum Corp.*, 632 F.3d 938, 951 (5th Cir. 2011), to argue that this case presents a non-justiciable political question. (*See* R. 245-1, Boeing's Mem. at 13-14; R. 253, Boeing's Reply at 9.) The Court finds that case distinguishable. *Spectrum* was a class action alleging antitrust violations against various oil production companies, most of whom were member nations of the Organization of Petroleum Exporting Countries ("OPEC"). *Id.* at 942-43. In their complaint, the plaintiffs "effectively challenge[d] the structure of OPEC and its relation to the worldwide production of petroleum." *Id.* at 943. The *Spectrum* court observed the district court was "asked essentially to reprimand foreign nations and command them to dismantle their international agreements," which it found wholly inappropriate under the political question and act of state doctrines. *Id.* at 943, 951. Plaintiffs here are not challenging the structure of the JCPOA, nor is this Court being called to reprimand a foreign nation or command another nation to dismantle an international agreement. The Court is merely deciding whether Plaintiffs should be permitted to conduct post-judgment discovery into a commercial transaction between an American company and an Iranian company affiliated with the Iranian government. As the *Spectrum* court itself noted, "it cannot of course be thought that every case or controversy which touches foreign relations lies beyond judicial cognizance." *Id.* at 950 (citation and internal quotation marks omitted).

pronouncements" by different branches of government on the same question. *Baker*, 369 U.S. at 217. Notably, the Court proactively sought the input of the Executive Branch, and it has declined to raise any objection to the discovery requests on grounds of the political question doctrine or similar reason.[8] (*See* R. 265, Gov't's Statement.)

The Court must also consider that Plaintiffs are trying to collect on a valid judgment obtained under FSIA, a statute enacted by another coordinate branch of government—Congress—to provide a mechanism for terrorism victims to recover from foreign states. *See Flatow v. Islamic Rep. of Iran*, 999 F. Supp. 1, 25 (D.D.C. 1998) ("The state-sponsored terrorism exception . . . was enacted explicitly . . . to alter the conduct of foreign states. . . [The author of the bill] was convinced that the only way to accomplish this goal was to impose massive civil liability on foreign state sponsors of terrorism[.]"), *abrogated on other grounds as recognized in Haim v. Islamic Republic of Iran*, 425 F. Supp. 2d 56, 71 n. 2 (D.D.C. 2006). By its very nature, litigation against a foreign state under the FSIA certainly has significant political overtones. But the present dispute does not require the Court to consider the wisdom of the FSIA or the Iran Nuclear Deal,[9] nor is there any conflict between the two for the Court to resolve. In the view of the Executive Branch, the Iran Nuclear Deal does not expressly address the rights of creditors

[8] Courts attach significance to the government's own view of whether a case raises a non-justiciable political question. *See McMahon*, 502 F.3d at 1365 ("The apparent lack of interest from the United States to this point fortifies our conclusion that the case does not yet present a political question."); *Occidental of Umm al Qaywayn, Inc. v. A Certain Cargo of Petroleum Laden Aboard the Tanker Dauntless Colocotronis*, 577 F.2d 1196, 1204 n.14 (5th Cir. 1978) (observing that "whether the state department believes that judicial action would interfere with its foreign relations is germane" to the court's determination of whether a case presents a political question).

[9] Boeing makes a significant effort to impugn the motives of Plaintiffs' attorneys, suggesting that their purpose in pursuing these discovery requests is to derail the Iran Nuclear Deal for political reasons. (*See, e.g.*, R. 245-1, Boeing's Mem. at 13-15; R. 245-6, Shurat HaDin Press Release; R. 245-7, Letter to Boeing Chairman; R. 245-8, *Times of Israel* Article.) The Court is unpersuaded by this argument. If Plaintiffs are entitled to the discovery they seek, the subjective motivations of their counsel are irrelevant. Additionally, by signing the discovery requests, Plaintiffs' lead counsel implicitly certified that the requests were not made "for any improper purpose," such as to "harass" or "cause unnecessary delay." FED. R. CIV. P. 26(g). The Court has no reason to doubt that counsel is complying with his obligations as a member of the bar. The Court must consider additionally that although Boeing purports to be advocating in support of such goals as international comity and respect among coordinate branches of government, it also has a strong financial motivation for ensuring that the airplane deal is consummated.

holding a judgment against Iran under the FSIA.[10] (*See* R. 265, Gov't's Statement at 5.) In short, although this case certainly "touches foreign relations," *Baker*, 369 U.S. at 217, the Court finds that it does not raise any non-justiciable political question.

II. International Comity

Boeing next argues that even if the case does not involve a non-justiciable political question, the Court should nevertheless "abstain" from deciding the discovery motion under principles of international comity. (R. 245-1, Boeing's Mem. at 15.) Boeing's argument on this point is somewhat unclear, but as best as can be discerned, Boeing believes that adjudicating this discovery dispute will "frustrate the purpose" of the Iran Nuclear Deal and offend the other sovereign-nation signatories to the agreement by potentially hindering the airplane deal. (*Id.* at 15-16.)

International comity refers to the "spirit of cooperation in which a domestic tribunal approaches the resolution of cases touching the laws and interests of other sovereign states." *See Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522, 543 n.27 (1987). "[I]t is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." *Id.* (citation omitted). International comity principles require that "American courts . . . demonstrate due respect for any special problem confronted by [a] foreign litigant on account of its nationality or the location of its operations[.]" *Id.* at 546. Additionally, the doctrine "requires the courts of one nation to avoid, where possible, interfering with the

[10] Under the Restatement (Third) of Foreign Relations Law, "great weight" is to be given to the Executive Branch's interpretation of an international agreement. Restatement (Third) of Foreign Relations Law § 326 (1987).

courts of another." *H-D Mich., LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 848 (7th Cir. 2012).

The Court agrees with Plaintiff that international comity principles do not warrant abstention in this case. In resolving this dispute, the Court will be applying well-settled American law governing discovery disputes, not the law of some other nation. *See Volodarskiy v. Delta Airlines, Inc.*, 784 F.3d 349, 356 (7th Cir. 2015) (observing that "asking a U.S. court to wade into an area of [European] law that is fraught with uncertainty risks offending principles of international comity"). Nor is the Court interfering in any way in an ongoing proceeding in a foreign court. *See H-D Mich., LLC*, 694 F.3d at 848; *see also Volodarskiy v. Delta Air Lines, Inc.*, 987 F. Supp. 2d 784, 795 (N.D. Ill. 2013) ("Comity concerns are particularly relevant when there are parallel proceedings in domestic and foreign courts."). If the discovery requests are granted, Boeing would be the only party subject to the Court's order, and Boeing is not a foreign litigant, let alone a foreign sovereign. Instead, Boeing is an American corporation headquartered within the territorial jurisdiction of this Court. Boeing has not argued that the documents sought are located abroad, or that producing them would cause Boeing to violate the laws of some foreign state. These are the usual concerns that would trigger abstention in a discovery dispute, and none of them are present in this case.[11] *See, e.g., Reinsurance Co. of Am. v. Adminstratia Asigurarilor de Stat*, 902 F.2d 1275, 1281-83 (7th Cir. 1990) (concluding that district court properly declined to order Romanian company to produce information that was protected by Romanian law under international comity principles); *Republic Techs. (NA), LLC v. BBK*

[11] It also must be recognized that Plaintiffs are trying to collect a valid judgment they obtained under the FSIA, a statute that itself "embodies basic principles of international law long followed both in the United States and elsewhere." *Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 137 S. Ct. 1312, 1319 (2017); *see also NML Capital*, 134 S. Ct. at 2258 (rejecting argument that international comity concerns precluded court from requiring foreign sovereign to submit to post-judgment discovery, since the FSIA contained no such limitation).

Tobacco & Foods, LLP, No. 16 C 3401, 2017 WL 4287205, at *1 (N.D. Ill. Sept. 27, 2017) (observing that a "potential conflict with French law" required the court to consider principles of international comity before compelling production of documents located in France).

Assuming the Court must conduct any further inquiry under these circumstances, it would look to the Restatement (Third) of Foreign Relations Law ("Restatement"), which provides the following factors for a court to consider in deciding whether to order discovery that implicates international concerns:

> [T]he importance to the investigation or litigation of the documents or other information requested; the degree of specificity of the request; whether the information originated in the United States; the availability of alternative means of securing the information; and the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.

Restatement § 442(1)(c); *see also Aerospatiale*, 482 U.S. at 544 n.28 (considering Restatement factors); *Reinsurance Co. of Am.*, 902 F.2d at 1281-82 (same); *Republic Techs.*, 2017 WL 4287205, at *4 (same).

These factors weigh against abstention.[12] There is no doubt that the documents at issue are important to Plaintiffs, as they present a rare opportunity to gain information about a commercial deal between an American company and an Iranian entity that could potentially lead to executable assets. There is also no doubt that the United States has an interest in providing a post-judgment remedy for victims of terrorism, like Plaintiffs, holding a valid judgment obtained under the FSIA. The request for information is specific, and any concerns about overbreadth can

[12] The Court is not persuaded by Boeing's reliance on a prior opinion issued in this case addressing a different discovery dispute. (*See* R. 245-1, Boeing's Mem. at 16; R. 253, Boeing's Reply at 12.) International comity was of great concern there because the subpoenas were directed at foreign banks—over whom the Court lacked personal jurisdiction—and sought documents that were located abroad, the disclosure of which would have caused the banks to violate the confidentiality laws of their home countries. *See Leibovitch v. Islamic Republic of Iran*, 188 F. Supp. 3d 734, 758 (N.D. Ill. 2016), *aff'd*, 852 F.3d 687 (7th Cir. 2017). None of these concerns are present here.

be addressed by the Court in tailoring the order. There is nothing to suggest that Plaintiffs have some other remedy available outside the United States to obtain this information, which seems unlikely given that Boeing is an American corporation and the other party to the contract, Iran Air, is an instrumentality of a country with no formal diplomatic ties to the United States. The Court also considers that the government has filed a statement of interest in this case and, although it urges caution, it has not identified any international comity concerns that would warrant abstention. (*See* R. 265, Gov't's Statement at 5-6.) Under these circumstances, the Court declines to abstain from deciding Plaintiffs' discovery motions on grounds of international comity.

III. Relevance and Proportionality

Boeing next argues that the discovery requests should be quashed in their entirety because they are "irrelevant to [Plaintiffs'] efforts to satisfy their judgment and disproportionate to the needs of the case." (R. 245-1, Boeing's Mem. at 16.) Without revealing too much about the contract, Boeing believes the discovery requests are improper—or at least premature—because at present it is unclear if the contract will result in any Iranian assets being located in the United States (or some other jurisdiction) where they would be subject to attachment by Plaintiffs. (R. 245-1, Boeing's Mem. at 16-17.) In support, Boeing provides extensive documentation describing the legal difficulties posed by attaching the assets of Iran, particularly an airplane as it travels in international airspace. (*See, e.g.*, R. 247-3, Affaki Decl.; R. 247-5, Hess Decl.; R. 247-7, Layton Decl.; R. 247-9, Stephan Decl.) At bottom, Boeing's argument appears to be that, because it will be difficult or impossible for Plaintiffs to actually collect any money as a result of these discovery requests, the Court should simply deny them as futile.

Boeing misunderstands the nature of this proceeding. It is true that there are limitations on attaching the property of a foreign state. *See Rubin*, 2018 WL 987348, at *5; *Bank Markazi*, 136 S. Ct. at 1318. But Plaintiffs are not actually *attaching* any assets at present; they are only seeking to discover information about potential assets of Iran that *may be* attachable. In *NML Capital*, the defendant, Argentina, raised an argument similar to Boeing's that "if a judgment creditor could not ultimately execute a judgment against certain property, then it has no business pursuing discovery of information pertaining to that property." 134 S. Ct. at 2257. The Supreme Court expressly rejected this argument, explaining as follows:

> [T]he reason for these subpoenas is that NML *does not yet know* what property Argentina has and where it is, let alone whether it is executable under the relevant jurisdiction's law. If, bizarrely, NML's subpoenas had sought only information that could not lead to executable assets in the United States or abroad, then Argentina likely would be correct to say that the subpoenas were unenforceable—*not* because information about nonexecutable assets enjoys a penumbral discovery immunity under the Act, but because information that could not possibly lead to executable assets is simply not relevant to execution in the first place[.] But of course that is not what the subpoenas seek. They ask for information about Argentina's worldwide assets generally, so that NML can identify where Argentina may be holding property that *is* subject to execution. To be sure, that request is bound to turn up information about property that Argentina regards as immune. But NML may think the same property *not* immune. In which case, Argentina's self-serving legal assertion will not automatically prevail; the District Court will have to settle the matter.

Id. at 2257-58 (emphasis in original) (internal citations and quotation marks omitted).

The same reasoning applies here. Plaintiffs should be given the opportunity to obtain information about Iran's "assets generally, so that [they] can identify where [Iran] may be holding property that is subject to execution." *Id.* at 2258. Proceedings to actually attach those assets will come later and, depending on where the assets are located, may not even occur in this

Court.[13] *See Rubin*, 830 F.3d at 475 (observing that to attach property of foreign state, such property "must be within the territorial jurisdiction of the district court"). But Plaintiffs' discovery requests cannot be denied outright simply because Plaintiffs may have difficulty collecting on their judgment at a later stage. In short, the Court is unpersuaded by Boeing's arguments.

IV. Citation Proceedings

Boeing also raises a number of objections that are specific to the citation to discover assets. (R. 245-1, Boeing's Mem. at 21-25.) As a preliminary matter, Boeing argues that a citation can only be used to obtain information about assets and income of "the debtor," and neither Boeing nor Iran Air is the "debtor" in this case. (R. 247-1, Boeing's Mem. at 21.) The Court is unpersuaded by this argument. Boeing's own submission suggests that Iran Air has a very direct link to the government of Iran. (*See* R. 247-3, Affaki Decl. ¶ 10.) Thus, its property may be subject to attachment as an "instrumentality" of Iran. *See* 28 U.S.C. § 1610(b) (providing that "any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution" if certain circumstances are met); 28 U.S.C. § 1603(b) (defining "agency or instrumentality" of a foreign state as a separate legal entity, "corporate or otherwise, . . . 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 a political subdivision thereof"); *see also Comet Enter. Ltd. v. Air-A-Plane Corp.*, 128 F.3d 855, 859 (4th Cir. 1997) (noting that Iran Air is "an entity substantially owned or controlled by the Government of Iran"). Again, the Court is not

[13] As Plaintiffs point out, the information they seek could lead them to other Iranian assets besides airplanes, and even to other assets besides those directly linked to the contract. (*See* R. 252, Pls.' Reply at 11-12.) For example, the discovery sought could lead Plaintiffs to information about where Iran and/or its instrumentalities conduct banking or hold escrow accounts abroad.

deciding whether Plaintiffs can execute on any particular asset at this stage, but only that Plaintiffs are entitled to conduct discovery reasonably calculated to locating assets that may be subject to attachment. *See NML Capital*, 134 S. Ct. at 2257-58. They have met that standard.

Boeing also argues that the Illinois citation statute cannot be used to restrain property outside of Illinois. (R. 245-1, Boeing's Mem. at 21.) Boeing is correct that there are specific rules regarding what property is subject to attachment under the Illinois statute. A citation generally serves to restrain tangible property of the debtor located within Illinois and intangible property located anywhere, as long as the Illinois court has personal jurisdiction over the owner of the debt. *See Park v. Townson & Alexander, Inc.*, 679 N.E.2d 107, 109 (Ill. App. Ct. 1997); *see also Gates v. Syrian Arab Republic*, No. 11 C 8715, 2013 WL 1337214, at *2-3 (N.D. Ill. Mar. 29, 2013) (observing that under Illinois law, intangible property is generally considered to be "located" in the domicile of its owner). There is an added wrinkle here because under the FSIA, this Court can only restrain assets of a foreign sovereign that are "within [its] territorial jurisdiction." *Rubin*, 830 F.3d at 475. Thus, as a practical matter, the citation could not restrain—for example—real property belonging to Iran that is located in Iran. *See Autotech Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 750 (7th Cir. 2007) ("The FSIA did not purport to authorize execution against a foreign sovereign's property, or that of its instrumentality, wherever that property is located around the world.").

But Boeing's concerns are again premature, because at present no assets of Iran have even been identified by Plaintiffs. If and when Plaintiffs do discover such assets, they will have to litigate whether such assets are subject to attachment. The restraining provision of the citation is merely intended to preserve the status quo until the debtor's assets can be discovered. *Shales*, 847 F. Supp. 2d at 1111. Unless and until the Court orders turnover of a particular piece of

property, the restraint imposed by the Illinois statute remains "subject to attack and modification." *In re Marino*, 201 B.R. 234, 248 (Bankr. N.D. Ill. 1996). But without knowing what property exists and where it is located, this Court cannot determine whether such property is subject to attachment, or whether it is exempt under the FSIA. *See Rubin v. The Islamic Republic of Iran*, 637 F.3d 783, 796 (7th Cir. 2011), *as corrected* (Apr. 1, 2011) ("Under the FSIA the only way the court can decide whether it is proper to issue the writ of attachment or execution is if it knows which property is targeted." (citations, internal quotation marks, and alteration omitted)).

The Court also disagrees that Plaintiffs can be required to simply accept Boeing's assertions that no such assets exist or that all available assets are exempt from attachment.[14] *See NML Capital*, 134 S. Ct. at 2257. Instead, Plaintiffs should be permitted to examine the available documents for themselves, and to inquire of an appropriate Boeing employee under oath, to learn the details of the airplane deal and the potential whereabouts of any Iranian assets linked to the deal. *Id.* If Plaintiffs are able to locate any such assets, they will still have to convince this Court—or some other court of competent jurisdiction—that the asset is attachable under the FSIA. But this is not a reason to dismiss the citation outright.

Boeing further argues that using a state statute to "restrain[]the sale of aircraft" to Iran violates "basic principles of federalism" and the Dormant Commerce Clause. (R. 245-1, Boeing's Mem. at 22-24.) This argument appears to be based on Boeing's interpretation of the JCPOA as requiring the U.S. government to actively prevent terror victims holding judgments against Iran from hindering the airplane deal in any manner. (*See* R. 253, Boeing's Reply at 18.)

[14] Boeing offers a rather circular argument that Plaintiffs have "failed to provide any basis for doubting the accuracy or completeness of Boeing's extensive submissions establishing that this transaction will not result in any executable assets[.]" (*See* R. 253, Boeing's Reply at 15-16.) It is unclear to the Court how Plaintiffs could do that without examining the contract and other source documents.

Notably, the Executive Branch does not share this reading of the JCPOA. (*See* R. 265, Gov't's Statement at 5 ("[T]he JCPOA does not require the United States to take any specific action with respect to efforts by judgment creditors of Iran to pursue post-judgment discovery or other enforcement proceedings[.]"). But regardless, this Court is not restraining the sale of an aircraft or ordering the turnover of any asset in this order. The Court is only ordering discovery. If and when the case proceeds to the execution stage, Boeing is free to renew its arguments about the propriety of restraining any particular asset identified by Plaintiffs. However, to the extent Boeing is arguing that a state statute must yield whenever a foreign sovereign is involved, the Seventh Circuit recently held to the contrary. *See Baylay v. Etihad Airways P.J.S.C.*, Nos. 16-4113 & 17-1958, 2018 WL 746534, at *3 (7th Cir. Feb. 7, 2018) ("[T]he [FSIA] preempts any other state or federal law that accords immunity from suit. But it is not intended—and has not been construed—to affect the governing substantive law. Instead, the Act imposes liability on the foreign state in the same manner and to the same extent as a private individual under like circumstances." (citations, internal quotation marks, and emphasis omitted)). For these reasons, Boeing's arguments do not warrant dismissal of the citation.

IV. Scope of Discovery Granted

With all that said, the Court does agree with Boeing that Plaintiffs' discovery requests are very broad. (*See* R. 234-6, Boeing's Disc. Objs.) In their document subpoena, for instance, Plaintiffs broadly seek turnover of any and all communications between Boeing and Iran Air "in respect to the Contract." (R. 234-3, Doc. Subpoena ¶ 6.) They also seek any and all "correspondence, notices, written inquires, letters of direction, reports to monitor compliance with reporting requirements, legal processes or writings of any nature and kind whatsoever" between Boeing and OFAC or other agencies of the federal government broadly relating to the

contract or other Iranian assets. (*Id.* ¶ 7.) Plaintiffs also request that they be allowed to ask questions of a Rule 30(b)(6) witness designated by Boeing on these same broadly defined subjects. (R. 234-4, Dep. Subpoena ¶¶ 1-7.)

These requests must be viewed in context: Plaintiffs are seeking information about a multi-million dollar agreement between two sophisticated companies. Their requests, as drafted, are likely to encompass a vast array of information beyond what is needed for them to trace potential assets of Iran. *See NML Capital*, 134 S. Ct. at 2258. Although the federal discovery rules are permissive, they are not "a ticket to an unlimited . . . exploration of every conceivable matter that captures an attorney's interest." *Sapia v. Bd. of Educ. of the City of Chi.*, No. 14 C 7946, 2017 WL 2060344, at *2 (N.D. Ill. May 15, 2017). All discovery must be relevant and proportional to the needs of the case, FED. R. CIV. P. 26(b)(1), and "judges should not hesitate to exercise appropriate control over the discovery process." *Herbert v. Lando*, 441 U.S. 153, 177 (1979). Given the sensitivity of these particular discovery requests, the Court finds it necessary to proceed cautiously.[15]

Weighing the competing interests at stake, the Court will order the production of documents responsive to Paragraphs 1-5 of Schedule A to Plaintiffs' document subpoena. (R. 234-3, Doc. Subpoena ¶¶ 1-5.) This includes the contract itself and other documents that will reveal the existence of any escrow accounts, the details of payment and delivery, and other matters that could potentially lead Plaintiffs to Iranian assets. (*Id.*) The Court makes one minor alteration to Paragraph 1, in which Plaintiffs request "[a] copy of the final signed contract *and all ancillary or supporting documents*." (*Id.* ¶ 1 (emphasis added).) The Court finds the highlighted language unduly vague. Instead, Boeing will be ordered to produce the final signed contract and

[15] The Court notes that it has already approved an agreed protective order that the parties can invoke to shield confidential or sensitive information from public disclosure. (*See* R. 226, Stipulated Protective Order.)

all exhibits or appendices thereto, if any. As to Paragraph 7, the Court finds the request as drafted extremely broad in subject matter and temporal scope and will limit it as follows: Boeing is ordered to produce any and all written communications between Boeing and OFAC relating to the airplane contract with Iran Air. The Court declines to order production of the documents listed in Paragraph 8 as unduly broad, disproportionate to the needs of this case, and duplicative of other requests that are more narrowly tailored to tracing Iran's assets.

The Court further orders Boeing to designate a Rule 30(b)(6) witness to address the matters designated in Paragraphs 1-5 of Schedule A to Plaintiffs' deposition subpoena, which correspond to the documents the Court has ordered Boeing to disclose.[16] (R. 234-4, Dep. Subpoena ¶¶ 1-5.) The Court finds Paragraph 6 overly broad, disproportionate to the needs of the case, and duplicative of other requests that are more narrowly tailored to tracing potential assets of Iran. As to Paragraph 7, consistent with the modification made above, Plaintiffs shall only be permitted to inquire into the details of communications between Boeing and OFAC relating to the airplane contract with Iran Air. Any other relief requested in Plaintiffs' motion to compel is denied.

[16] Boeing makes a rather cryptic objection that it "does not employ any person who is suitable to serve as a Rule 30(b)(6) representative within 100 miles of the district." (R. 234-5, Boeing's Disc. Objs. at 7.) Boeing does not elaborate on this objection in its briefs, and the objection may have been obviated by the Court's limitation on the scope of the deposition. But Boeing is reminded that under Rule 30(b)(6), "a corporation has a duty . . . to designate an individual to testify who has knowledge responsive to the subjects requested in the Rule 30(b)(6) notice." *In re Fluidmaster, Inc., Water Connector Components Prods. Liab. Litig.*, No. 1:14-CV-05696, 2018 WL 505089, at *6 (N.D. Ill. Jan. 22, 2018) (citation and internal quotation marks omitted). "The persons designated must testify about information known or reasonably available *to the organization*." *Id.* (emphasis in original) (citing FED. R. CIV. P. 30(b)(6)); *see also Fed. Deposit Ins., Corp. v. Giancola*, No. 13 C 3230, 2015 WL 5559804, at *2 (N.D. Ill. Sept. 18, 2015) ("The designating party has a duty to prepare the witness to testify on matters not only known by the deponent, but also as to those that should be reasonably known by the designating party."). If necessary, Boeing must designate multiple witnesses to cover the topics listed. *In re Fluidmaster*, 2018 WL 505089, at *6. The Court trusts that a large, sophisticated corporation like Boeing will comply with its discovery obligations under the Federal Rules.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion to compel (R. 232) is GRANTED in part and DENIED in part as stated herein. The Boeing Company's cross-motion to quash and to dismiss the citation to discover assets (R. 245) is DENIED. Boeing shall disclose all responsive documents as outlined in this order on or before April 2, 2018, and shall submit to a Rule 30(b)(6) deposition on or before May 2, 2018. The citation to discover assets shall remain in effect until further order of the Court. The parties shall appear for a status hearing on May 10, 2018, at 9:45 a.m. They are directed to reconsider their respective positions in light of this order and to exhaust all efforts to reach an agreed resolution of any remaining discovery disputes.

ENTERED: 

Chief Judge Rubén Castillo
United States District Court

Dated: February 27, 2018

Annex 82

***Levinson, et al. v. The Islamic Republic of Iran,* U.S. District Court for the District of Columbia, Memorandum Opinion, 9 March 2020, No. 1:17-cv-00511**

Excerpts: p. 1 & pp. 23-25

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHRISTINE LEVINSON *et al.*,

Plaintiffs,

v.

THE ISLAMIC REPUBLIC OF IRAN,

Defendant.

Civil Action No. 17-511 (TJK)

MEMORANDUM OPINION

Robert Levinson, a retired Special Agent with the FBI and DEA, was looking forward to returning home from an overseas business trip in March 2007. When he returned, he planned to talk to the oldest of his seven children about her career plans. And from abroad, he emailed his youngest daughter, wishing her good luck on her student government election, and his oldest son, promising to get him a new laptop before he started law school in the fall. He planned a brief stop at Kish, an Iranian island in the Persian Gulf. But thirteen years ago today, Levinson was kidnapped while on Kish. He never made it home. And three years later, his family received a video showing him frail, gaunt, and begging for his life. Now no one knows Levinson's fate. If he is alive, he would be the longest-held civilian hostage in American history.

Since the day he was kidnapped, his wife and seven children have not spoken with him. He has been unable to see his children grow up, enjoy professional success, marry, and become parents themselves—as they have many times over. But they have not forgotten him, not by a long shot. On their wedding days, his daughters tied his picture to their bouquets so they could say their father walked them down the aisle. One named a son after him. And his entire family

c. Additional Requirements

The remaining requirements for the last of the four elements of subject-matter jurisdiction are also met. The Levinsons seek "money damages" for "personal injury" to Levinson caused by his hostage taking and torture, 28 U.S.C. § 1605A, and for economic loss and solatium. Compl. at 9–12. And for the reasons explained above, these injuries were caused by—and are the "reasonably foreseeable" consequences of—Iran's nefarious conduct. *Fritz v. Islamic Republic of Iran*, 320 F. Supp. 3d 48, 86 (D.D.C. 2018).

* * *

For all these reasons, the Levinsons have shown that Iran is not immune from suit for Levinson's hostage taking and torture, and that this Court has subject-matter jurisdiction over their claims under the FSIA's terrorism exception.

B. Personal Jurisdiction

To impose judgment on a foreign state under the FSIA, this Court must also have personal jurisdiction. Personal jurisdiction over a foreign government turns on a showing of (1) subject-matter jurisdiction under the FSIA; and (2) proper service under the FSIA. 28 U.S.C. § 1330(b).

28 U.S.C. § 1608(a) lists four methods of serving a foreign government, in the order in which plaintiffs must attempt them:

> (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or
> (2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or
> (3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

> (4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

28 U.S.C. § 1608(a); *see also Fritz*, 320 F. Supp. 3d at 87 ("Section 1608(a) provides four methods of service in descending order of preference." (internal quotation marks omitted)). Because Iran does not have a special arrangement for service with the Levinsons, nor is it party to an international convention on service, the Levinsons did not need to attempt service in accordance with § 1608(a)(1) or (a)(2). *See Fritz*, 320 F. Supp. 3d at 88; *Ben-Rafael v. Islamic Republic of Iran*, 540 F. Supp. 2d 39, 52 (D.D.C. 2008). The Levinsons tried to serve Iran under § 1608(a)(3) on May 18, 2018. ECF No. 24. When that failed, they started service through diplomatic channels under § 1608(a)(4) by diplomatic note forwarded by the Department of State to the American Interests Section of the Swiss Embassy in Tehran. ECF No. 33; ECF No. 39-1. The Swiss Embassy served the Iranian Ministry of Foreign Affairs on October 1, 2018. ECF No. 39-1 at 5. Although Iran refused to accept delivery, service was still proper. *See Fritz*, 320 F. Supp. 3d at 89; *Ben-Rafael*, 540 F. Supp. 2d at 52–53.

Because the Court has subject-matter jurisdiction over the Levinsons' claims, and because they properly served Iran under 28 U.S.C. § 1608(a), the Court has personal jurisdiction over Iran under 28 U.S.C. § 1330(b).

C. Iran's Liability

Having already concluded that the Court possesses subject-matter jurisdiction, little else is required to show that the Levinsons are entitled to relief. 28 U.S.C. § 1605A(c). The private right of action in the FSIA terrorism exception provides that a foreign government is liable to a

U.S. citizen "for personal injury or death caused 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), (c). As a result, "a plaintiff that offers proof sufficient to establish a waiver of foreign sovereign immunity under § 1605A(a) has also established entitlement to relief as a matter of federal law" if the plaintiff is a citizen of the United States. *Fritz*, 320 F. Supp. 3d at 86–87; *see Hekmati*, 278 F. Supp. 3d at 163 ("Essentially, liability under § 1605A(c) will exist whenever the jurisdictional requirements of § 1605A(a)(1) are met.").

As already mentioned, the Levinsons are U.S. citizens. 28 U.S.C. § 1605A(h)(5); 8 U.S.C. § 1101(a)(22). As a result, they may rely on the cause of action in the terrorism exception to establish Iran's liability for their injuries. *See Owens*, 864 F.3d at 809. And because they have proven that the state-sponsored terrorism exception abrogates Iran's sovereign immunity and that this Court has subject-matter and personal jurisdiction over their claims, they have also shown that Iran is liable to them for the dastardly acts of taking Levinson hostage and torturing him.

IV. Conclusion

For all the above reasons, the Court will grant the Levinsons' Motion for Default Judgment, ECF No. 37, in a separate order. The Court will also grant their Motion to Appoint a Special Master, ECF No. 50, in a separate order.

/s/ Timothy J. Kelly
TIMOTHY J. KELLY
United States District Judge

Date: March 9, 2020

Annex 83

***Estate of Michael Heiser, et al. v. Clearstream Banking, S.A.*, U.S. District Court for the Southern District of New York, Granted Motion for Stay of Case, 10 March 2020, No. 19-cv-11114**

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January 27, 2020
VIA ECF

The Honorable Lorna G. Schofield
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: ***Estate of Michael Heiser, et al. v. Clearstream Banking, S.A.,***
Case No. 19-cv-11114

Letter Seeking Stay of Case

Dear Judge Schofield:

This office is counsel to the Estate of Michael Heiser, *et al.*, the Petitioners in the above-referenced action (the "Petitioners"). I am writing on behalf of the Petitioners and the respondent Clearstream Banking, S.A. ("Clearstream").[1] There are currently three other cases pending before Judge Preska which are related judgment enforcement proceedings filed by judgment creditors of the Islamic Republic of Iran ("Iran"): *Peterson et al. v. Islamic Republic of Iran et al.*, No. 13 Civ. 9195 (LAP) ("*Peterson II*"); *Levin et al. v. Clearstream Banking S.A. et al.*, Case No. 1:18-cv-12217 (LAP) ("*Levin*"); and *Havlish et al. v. Clearstream Banking S.A. et al.*, No. 16-cv-8075 (LAP) ("*Havlish*"). All of these cases, including the above-captioned case, seek to execute on the same assets based on similar legal theories. The Petitioners are simultaneously filing a Related Case Statement with respect to *Levin*, *Peterson II*, and *Havlish* and believe that the present matter should be transferred to Judge Preska pursuant to Rule 13 of the Rules for the Division of Business among District Judges.

The oldest of these three cases is *Peterson II*. Clearstream, Bank Markazi, and Banca UBAE, S.p.A. filed petitions for certiorari in the United States Supreme Court seeking review of the United States Court of Appeals for the Second Circuit's decision in *Peterson II*. *See Peterson v. Islamic Republic of Iran*, 876 F.3d 63 (2d Cir. 2017). On March 1, 2018, the Second Circuit stayed the issuance of the mandate in *Peterson II* pending the resolution of these petitions for certiorari. On January 13, 2020, the Supreme Court issued a summary disposition granting the parties' petitions for certiorari, vacating the

[1] By joining in this letter, Clearstream does not waive and expressly preserves all defenses to the claims asserted, including without limitation defenses based upon lack of personal jurisdiction or improper venue.

DLA PIPER

Second Circuit's judgment, and remanding the case to the Second Circuit for further consideration in light of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-___ (S. 1790), which contains provisions concerning the assets identified in *Peterson II*.

The *Havlish* and *Levin* actions have been stayed since their inception in light of the various appellate proceedings in *Peterson II*. The outcome of the ongoing appellate proceedings in *Peterson II* is likely to bear significantly on the conduct of the present matter. For this reason, the parties believe that the present action should be stayed pending resolution of the *Peterson II* appeal.

Petitioners have requested, and Clearstream has agreed, to waive service of the summons. Accordingly, in the absence of the requested stay, the parties agree that Clearstream will have 90 days from today to answer or file a motion under Rule 12. In waiving service, Clearstream retains and preserves all other defenses and objections to the lawsuit, including but not limited to lack of personal jurisdiction and venue.

This office remains available to answer any questions the Court may have.

Respectfully,

Robert C. Santoro

SO ORDERED

LORETTA A. PRESKA
UNITED STATES DISTRICT JUDGE

3/10/20

cc: Benjamin S. Kaminetzky (ben.kaminetzky@davispolk.com)
Gerard McCarthy (gerard.mccarthy@davispolk.com)

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Annex 84

***In re Terrorist Attacks on September 11, 2001, relating to Hoglan, et al. v. Iran, et al.*, U.S. District Court for the Southern District of New York, Order Under 28 U.S.C. § 1610(c) authorizing Enforcement of Judgment, 7 April 2020, Case No. 03 MDL 1570**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

***IN RE* TERRORIST ATTACKS ON SEPTEMBER 11, 2001**

03 MDL 1570 (GBD)(SN)

This Document Relates to:
Hoglan, et al. v. Iran, et al.
1:11-cv-07550 (GBD)(SN)

ORDER UNDER 28 U.S.C. § 1610(c)
AUTHORIZING ENFORCEMENT OF JUDGMENT

After having read and considered the *Hoglan* Plaintiffs' Motion for Order Under 28 U.S.C. § 1610(c) Authorizing Enforcement of Judgment, the Court finds as follows:

1. That on March 19, 2020, this Court previously determined that:

(a) the *Hoglan* Plaintiffs had validly and properly served the Final Judgment entered against the Defendants Islamic Republic of Iran, Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi Rafsanjani, Iran's Ministry of Information and Security, Islamic Revolutionary Guard Corps, Iran's Ministry of Petroleum, Iran's Ministry of Economic Affairs and Finance, Iran's Ministry of Commerce, Iran's Ministry of Defense and Armed Forces Logistics, Central Bank of Iran, *a.k.a.*, Bank Markazi, National Iran's Petrochemical Company, National Iranian Oil Company, National Iranian Tanker Company, National Iranian Gas Company, Iran Air, and Hezbollah (collectively, the "Judgment Debtor Defendants") on each Judgment Debtor Defendant in conformity with the requirements of 28 U.S.C. § 1608(e);

(b) a reasonable period of time had elapsed since entry of the Final Judgment and since service of the Final Judgment on the Judgment Debtor Defendants; and

(c) the *Hoglan* Plaintiffs were authorized to begin enforcing the Final Judgment against assets belonging to the Judgment Debtor Defendants pursuant to 28 U.S.C. §

1610(c) by this Court's Order dated March 19, 2020 (MDL Doc. No. 6092) ("March 18, 2020 Order");

2. That the *Hoglan* Plaintiffs are attempting to enforce the Final Judgment against assets belonging to the Judgment Debtor Defendants and Judgment Debtor Defendants are opposing such enforcement efforts;

3. That, as of the date of the filing of this Motion for an additional order authorizing them to enforce the Final Judgment against specific assets belonging to the Judgment Debtor Defendants, more than sixteen months have passed since the date of service without payment of the Final Judgment by the nation-state and political subdivision Judgment Debtors and more than seven months have passed since the date of service without payment of the Final Judgment by the agency and instrumentality Judgment Debtors; and

4. That the *Hoglan* Plaintiffs have an opportunity to enforce the Final Judgment against assets within the jurisdiction of this Court belonging to the Judgment Debtor Defendants, including, more particularly, assets belonging to the Central Bank of Iran that are currently held by Clearstream Banking, S.A., as more particularly described in 22 U.S.C. § 8772 (2019).

5. That, in accordance with the provisions of 28 U.S.C. § 1610(c), a reasonable period of time has elapsed following the entry of the Final Judgment against the Judgment Debtor Defendants and the giving of notice by service of the Final Judgment upon each of them in accordance with 28 U.S.C. § 1608(e).

6. That, among other procedures available to them under New York law to aid in execution, the *Hoglan* Plaintiffs are authorized to serve Clearstream with restraining notices pursuant to NY CPLR 5222 in aid of their efforts to execute against those assets.

7. That given the unprecedented interruption of normal business and court operations caused by restrictions that federal, state, and local governments have imposed, and

additional measures that many businesses have voluntarily implemented, in an effort to limit the spread of the COVID-19 virus, statutorily identified methods of serving restraining notices by personal service or certified mail, return receipt requested through the United States Post Office pursuant to NY CPLR 5222(a), have been interrupted or become unreliable.

8. That given these circumstances, the *Hoglan* Plaintiffs are authorized to serve a restraining notice on Clearstream by Federal Express courier delivery, signature requested, and by email to the email addresses of officers of Clearstream's New York representative office, Clearstream's New York office customer service department, and Clearstream's attorney.

9. That the *Hoglan* Plaintiffs initiated service of the restraining notice on Clearstream by Federal Express overnight courier delivery on March 26, 2020, and obtained a return receipt establishing proof that Clearstream received the restraining notice on March 27, 2020.

10. That Clearstream has published in a document on its internet website that, at the present time, normal business operations are interrupted due to COVID-19 business restrictions, and, therefore, it is accepting delivery of electronic copies of documents.

11. That the *Hoglan* Plaintiffs sent by email a copy of the restraining notice to the email addresses of officers of Clearstream's New York representative office, Clearstream's New York office customer service department, and Clearstream's attorney on April 1, 2020, and that, as of the date of the *Hoglan* Plaintiffs' motion, none of the emails had been returned as undeliverable, nor has there been any other indication of lack of receipt, and there is no reason to believe such emails have not been delivered to such addressees.

Therefore,

IT IS ORDERED that the *Hoglan* Plaintiffs' Motion for Order Under 28 U.S.C. § 1610(c) Authorizing Enforcement of Judgment is GRANTED, and,

IT IS FURTHER ORDERED that the *Hoglan* Plaintiffs are authorized pursuant to 28 U.S.C. § 1610(c) to enforce the Final Judgment by any lawful means, including attachment of, and execution against, the specific assets against the property held at Clearstream Banking, S.A. that belongs to any of the Judgment Debtor Defendants, including, more particularly, the Central Bank of Iran, *a.k.a.* Bank Markazi, as described and authorized by 22 U.S.C. § 8772 (2019).

IT IS FURTHER ORDERED that the *Hoglan* Plaintiffs are authorized to serve a restraining notice on Clearstream and to serve the notice by Federal Express courier delivery and by email to officers of Clearstream's New York office, Clearstream's New York customer service department, and Clearstream's attorney.

SO ORDERED:

Date: APR 07 2020
New York, New York

George B. Daniels
GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE

Annex 85

Bennett, et al. v. The Islamic Republic of Iran, et al., **U.S. District Court for the Northern District of California, Order Granting Motion to Lift Stay and for Withdrawal, 24 April 2020, No. 3:11-cv-05807-CRB**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL BENNETT, *et al.*,

Plaintiffs,

v.

ISLAMIC REPUBLIC OF IRAN, *et al.*,

Defendants.

No. 11-CV-5807-CRB-RMI

~~[PROPOSED]~~ ORDER GRANTING MOTION TO LIFT STAY AND FOR WITHDRAWAL

VISA INC. and FRANKLIN RESOURCES, INC.,

Third-Party Plaintiffs,

v.

BANK MELLI,

Third-Party Defendants,

and

ESTATE OF MEIR KAHANE, *et al.*,

Third-Party Defendants and Counter-Claimants.

STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane
New York, NY 10038-4982

STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane
New York, NY 10038-4982

Before the Court is a motion to lift stay and for withdrawal filed by Plaintiffs Michael Bennett, *et al.*, Third-Party Defendants and Counter-Claimants Carlos Acosta, *et al.*, Third-Party Defendants and Counter-Claimants Steven Greenbaum, *et al.*, Third-Party Defendants and Counter-Claimants The Estate of Michael Heiser, *et al.*, Third-Party Plaintiff Visa Inc., and Third-Party Plaintiff Franklin Resources, Inc. Upon consideration of the motion, it is hereby:

ORDERED that the motion is **GRANTED**.

IT IS FURTHER ORDERED that the stays entered on December 3, 2018 (Dkt. No. 192), and December 19, 2018 (Dkt. No. 196), are **LIFTED**.

IT IS FURTHER ORDERED that Baker & McKenzie LLP, counsel for Visa Inc. and Franklin Resources, Inc., are hereby authorized to withdraw $324,130.60 from the Court's Registry, to be paid from the $17,648,962.76 wired to the Court's Registry on or about May 8, 2012 (Dkt. No. 89).

IT IS FURTHER ORDERED that Baker & McKenzie LLP shall post notice on the docket in this action within three business days after it receives the $324,130.60 from the Court's Registry referenced above.

IT IS FURTHER ORDERED that Stroock & Stroock & Lavan LLP, counsel for Carlos Acosta, *et al.*, and Steven Greenbaum, *et al.*, are hereby authorized on behalf of Carlos Acosta, *et al.*, Steven Greenbaum, *et al.*, Michael Bennett, *et al.*, and The Estate of Michael Heiser, *et al.*, to withdraw the balance of the $17,648,962.76 wired to the Court's Registry on or about May 8, 2012 (Dkt. No. 89), including interest and return on investment, after Baker & McKenzie LLP posts the notice referenced above.

IT IS FURTHER ORDERED that, within three business days after Stroock & Stroock & Lavan LLP receives the balance of the $17,648,962.76 referenced in the immediately preceding paragraph, Stroock & Stroock & Lavan LLP shall transfer portions of those funds to Bond &

Norman Law, PC, counsel for Michael Bennett, *et al.*, and DLA Piper LLP (US), counsel for The Estate of Michael Heiser, *et al.*, as set forth in the Litigation Cooperation and Settlement Agreement, entered into by the Acostas, the Greenbaums, the Bennetts, and the Heisers as of May 1, 2012.

DATED: April 24, 2020

United States District Judge

STROOCK & STROOCK & LAVAN LLP
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Annex 86

***Maalouf, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security,* U.S. Court of Appeals for the District of Columbia Circuit, Opinion, 10 May 2019, Cases No. 18-7052 and 18-7053**

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued February 8, 2019 Decided May 10, 2019

No. 18-7052

HENRI MAALOUF, ET AL.,
APPELLANTS

v.

ISLAMIC REPUBLIC OF IRAN AND IRANIAN MINISTRY OF INFORMATION AND SECURITY,
APPELLEES

Consolidated with 18-7053

Appeals from the United States District Court
for the District of Columbia
(No. 1:16-cv-00280)
(No. 1:16-cv-01507)

Steven M. Schneebaum argued the cause and filed the briefs for appellants Henri Maalouf, et al.

Stuart H. Newberger, *Clifton S. Elgarten*, *Aryeh S. Portnoy*, *John L. Murino*, and *Emily M. Alban* were on the brief for *amici curiae* Smith plaintiffs in support of appellants.

Jonathan S. Massey was on the brief for *amicus curiae* Professor Stephen I. Vladeck supporting plaintiffs-appellants.

complaint was untimely, denied the motion for default judgment, and dismissed the case. *See id.* at 138–44. The plaintiffs appeal.

II. ANALYSIS

A. Standard of Review

Whether courts have discretion to invoke a statute of limitations *sua sponte* is a question of law and is therefore reviewed *de novo*. *See Patchak v. Jewell*, 828 F.3d 995, 1001 (D.C. Cir. 2016); *see also Eriline Co. S.A. v. Johnson*, 440 F.3d 648, 653 (4th Cir. 2006) (identifying *de novo* review as appropriate for this question).

B. Discussion

The only question that we must reach is whether a federal court has discretion to *sua sponte* invoke the terrorism exception's statute of limitations on behalf of defendants who have not entered an appearance or otherwise sought to respond to complaints against them. After reviewing the applicable principles governing the forfeiture of affirmative defenses, and the Supreme Court's instructive jurisprudence on the narrow set of situations in which a court may raise affirmative defenses on its own motion, we conclude that the District Courts erred in taking *sua sponte* action in the cases presented.

1. *Forfeiture of Affirmative Defenses*

We start with fundamental principles governing affirmative defenses, including statutes of limitations. As the Supreme Court has explained, "[o]rdinarily in civil litigation, a statutory time limitation is forfeited if not raised in a defendant's answer or in an amendment thereto." *Day v.*

McDonough, 547 U.S. 198, 202 (2006). This rule derives from Federal Rule of Civil Procedure 8(c), which directs that, "[i]n responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including . . . statute of limitations." Fed. R. Civ. P. 8(c)(1); *see Harris v. Sec'y, U.S. Dep't of Veterans Affairs*, 126 F.3d 339, 343 (D.C. Cir. 1997); *see also Smith-Haynie v. District of Columbia*, 155 F.3d 575, 578 (D.C. Cir. 1998) (clarifying that an affirmative defense may also be raised in a pre-answer motion under Rule 12(b) "when the facts that give rise to the defense are clear from the face of the complaint"). Although the Rules do not explicitly prescribe the consequences of failing to timely raise a defense, *see Harris*, 126 F.3d at 343, the Supreme Court has instructed that "[a]n affirmative defense, once forfeited, is 'exclu[ded] from the case,'" *Wood v. Milyard*, 566 U.S. 463, 470 (2012) (alteration in original) (quoting 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1278 (3d ed. 2004)).

We pause here to note the distinction between forfeiture and waiver, terms which "though often used interchangeably by jurists and litigants . . . are not synonymous." *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 n.1 (2017). "[F]orfeiture is the failure to make the timely assertion of a right[;] waiver is the 'intentional relinquishment or abandonment of a known right.'" *Id.* (alterations in original) (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)). We have clarified that "[f]ailure to plead an affirmative defense under Rule 8(c) constitutes failure to make a timely assertion of the defense." *Harris*, 126 F.3d at 343 n.2. While a party may "intelligently choose to waive a statute of limitations defense," *Day*, 547 U.S. at 210 n.11, "[t]he failure to plead need not be intentional for the party to lose its right to raise the defense," *Harris*, 126 F.3d at 343 n.2.

Some statutes of limitations, of course, are jurisdictional. "When that is so, a litigant's failure to comply with the [time] bar deprives a court of all authority to hear a case." *United States v. Kwai Fun Wong*, 135 S. Ct. 1625, 1631 (2015). Because "[s]ubject-matter jurisdiction can never be waived or forfeited," courts are obligated to raise a *jurisdictional* statute of limitations *sua sponte*, even if "the parties have disclaimed or have not presented" the issue. *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012). Recognizing the "harsh consequences" that a jurisdictional statute of limitations can impose on plaintiffs, however, the Court has established a clear statement rule of statutory interpretation: For a court to conclude that a statute of limitations is indeed jurisdictional, "traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences." *Kwai Fun Wong*, 135 S. Ct. at 1632. As a result, most statutes of limitations are not jurisdictional. *See id.*; *see also Musacchio v. United States*, 136 S. Ct. 709, 716–17 (2016).

In *Owens v. Republic of Sudan*, we applied this searching mode of review to examine 28 U.S.C. § 1605A(b), the FSIA terrorism exception's statute of limitations. *See* 864 F.3d at 801–02. Following the Supreme Court's directives, "[w]e look[ed] for the Congress's intent in 'the text, context, and relevant historical treatment'" of the statute. *Id.* at 801 (quoting *Musacchio*, 136 S. Ct. at 717). After finding nothing in the provision's text "refer[ring] to the 'court's power' to hear a case," *id.* at 802 (quoting *Kwai Fun Wong*, 135 S. Ct. at 1633), and "see[ing] 'no authority suggesting the Congress intended courts to read [§ 1605A(b)] any more narrowly than its terms suggest,'" *id.* at 804 (second alteration in original) (quoting *Simon v. Republic of Iraq*, 529 F.3d 1187, 1196 (D.C. Cir. 2008)), we concluded that § 1605A(b) is not jurisdictional, rejecting the contrary argument by Sudan, *id.*

At issue in *Owens* were eight separate default judgments against Sudan in suits arising from the 1998 embassy bombings. After some of the judgments had been entered, Sudan retained counsel and appeared in the District Court to assert various defenses in motions to vacate, including that three of the suits were untimely. *See id.* at 768. The District Court denied the motions to vacate. *Id.* In its appeal, Sudan argued that the terrorism exception's statute of limitations is jurisdictional, a claim we rejected. *See id.* at 804. We further concluded that, because it had failed to timely raise a statute of limitations defense in the three allegedly untimely suits, Sudan had forfeited that defense. *See id.*; *see also id.* at 801 (citing *Harris*, 126 F.3d at 343). That determination was simply an application of the basic principles articulated above: When a party fails to raise an affirmative defense in responding to a pleading, as Sudan did by defaulting, the defense is forfeited. The same reasoning applies to Iran's absence in the cases now before us.

Iran has failed to enter an appearance or submit a filing at any stage of these cases, let alone timely raise the terrorism exception's statute of limitations. We therefore conclude that it has forfeited the defense. We disagree with assertions and insinuations by appellants and amici supporting them that Iran has *waived* rather than *forfeited* a statute of limitations defense by engaging in a purportedly willful default. Appellants and amici contend that because Iran participates in other litigation in the United States, it has made a deliberate choice in not appearing and asserting any affirmative defenses here. But whatever Iran's decisions with respect to other litigation, we agree with the Appointed Amicus that Iran's complete absence here deprives us of any record or basis upon which to reliably determine that it has intentionally relinquished or abandoned a defense.

We are puzzled, however, by the District Court's statement in *Sheikh* that, in cases of default, "the affirmative defense at issue has not actually been waived, and the normal adversarial model upon which the concept of affirmative defenses is based has broken down." 308 F. Supp. 3d at 52. The court offered this statement to justify its departure from the general rule that, with respect to affirmative defenses, if a defendant fails to "raise the issue early on . . . the issue is forfeited." *Id.* at 51 (citing *Day*, 547 U.S. at 202). We agree that Iran has not "waived" any affirmative defenses. But we reject the District Court's suggestion that Iran's failure to raise the statute of limitations defense did not result in a forfeiture. This suggestion finds no support in the law or in the record of the cases before us.

2. Sua Sponte *Action on Affirmative Defenses*

Having found that Iran forfeited a statute of limitations defense in each of these cases by failing to assert it in response to the pleadings in the District Court, the issue we must address is whether, and under what circumstances, a court may nonetheless raise a forfeited affirmative defense on behalf of an absent defendant. Specifically, does the District Court have authority to raise *sua sponte* the FSIA terrorism exception's statute of limitations when it has been forfeited by a defendant who is entirely absent from the proceedings? We conclude that the answer is no.

It is well established that a statute of limitations, like other affirmative defenses, generally may not be invoked by the court on its own motion. *See, e.g.*, *United States v. Mitchell*, 518 F.3d 740, 748 (10th Cir. 2008) (noting that "all circuits to consider this issue have held so explicitly" and collecting cases). A strong justification for this rule is what courts have long identified as the "primar[y]" purpose of nonjurisdictional

statutes of limitations: "to protect defendants against stale or unduly delayed claims." *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133 (2008). As Justice Marshall explained in more detail some decades ago, "[s]tatutes of limitations are designed to insure fairness to defendants by preventing the revival of stale claims in which the defense is hampered by lost evidence, faded memories, and disappearing witnesses, and to avoid unfair surprise." *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 473 (1975) (Marshall, J., concurring in part and dissenting in part). When a defendant is entirely absent from the litigation and has forfeited its timeliness defense, however, little if any purpose for a statute of limitations remains.

The purpose of a nonjurisdictional statute of limitations is not to shield courts from challenges that may arise in adjudicating cases in which motions for default judgment have been filed. Regardless of the difficulties such cases can present, courts are constrained by the principle of party presentation, which is "basic to our adversary system." *Wood*, 566 U.S. at 472. Under that principle, "we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Greenlaw v. United States*, 554 U.S. 237, 243 (2008); *see also Keepseagle v. Perdue*, 856 F.3d 1039, 1052–55 (D.C. Cir. 2017). "[A]s a general rule, '[o]ur adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.'" *Greenlaw*, 554 U.S. at 244 (second alteration in original) (quoting *Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and concurring in the judgment)).

The Supreme Court has cautioned that freely permitting departures from this foundational norm and allowing courts to

sua sponte raise affirmative defenses as a matter of course would "erod[e] the principle of party presentation so basic to our system of adjudication." *Arizona v. California*, 530 U.S. 392, 413 (2000). The Court has approved the *sua sponte* consideration of forfeited, nonjurisdictional affirmative defenses in a small number of narrow, carefully defined contexts. However, these cabined and rare exceptions to both the party presentation principle and the rules governing forfeiture of affirmative defenses – which otherwise foreclose *sua sponte* action – share a common, defining feature. In each of the cases in which the Court has sanctioned *sua sponte* action by a court to raise a forfeited affirmative defense, the Court has made clear that the circumstances of a case must squarely implicate the institutional interests of the judiciary for such action to be permissible. And in none of these situations was the defendant on whose behalf the court acted entirely absent from the litigation.

Review of the decisions establishing these principles reveals both their narrowness and the common feature that explains the findings made by the Court. We begin with *Day v. McDonough*. In addition to discussing the principles concerning affirmative defenses noted above, the Court in *Day* considered whether a District Court had properly dismissed as untimely a state prisoner's federal habeas corpus petition, even though the respondent state had both answered the petition without raising a statute of limitations defense and had conceded the petition's timeliness. 547 U.S. at 201–04. Finding that the concession was due to the state's inadvertent miscalculation of the filing period, the Court concluded that in these circumstances, the District Court "had discretion to correct the State's error and, accordingly, to dismiss the petition as untimely under AEDPA's one-year limitation," despite the state's forfeiture of the defense. *Id.* at 202. Although it would be "an abuse of discretion to override a State's

deliberate waiver of a limitations defense," the Court clarified, *id.*, "district courts are permitted, but not obliged, to consider, *sua sponte*, the timeliness of a state prisoner's habeas petition," *id.* at 209.

The basis of the Court's judgment in *Day* was its recognition that the AEDPA statute of limitations and "other threshold barriers" facing habeas petitioners "implicat[e] values beyond the concerns of the parties." *Id.* at 205 (alteration in original) (quoting *Acosta v. Artuz*, 221 F.3d 117, 123 (2d Cir. 2000)). Quoting and adopting the reasoning of the Second Circuit's decision in *Acosta*, the Court explained that "[t]he AEDPA statute of limitation promotes judicial efficiency and conservation of judicial resources, safeguards the accuracy of state court judgments by requiring resolution of constitutional questions while the record is fresh, and lends finality to state court judgments within a reasonable time." *Id.* at 205–06 (quoting *Acosta*, 221 F.3d at 123). In other words, the interests of the judiciary that were specially implicated in the context at issue justified departure from the foundational party presentation and forfeiture principles that otherwise would apply and bar *sua sponte* action.

In *Wood v. Milyard*, the Court considered whether *Day*'s holding extends to courts of appeals. In doing so, the Court added further clarity to the rationale underlying its conclusions in *Day* and a predecessor case, *Granberry v. Greer*, 481 U.S. 129 (1987), both of which the Court cited as having "establishe[d] that a court may consider a statute of limitations or other threshold bar the State failed to raise in answering a habeas petition." *Wood*, 566 U.S. at 466. In *Granberry*, the Court explained, it had "recognized a modest exception to the rule that a federal court will not consider a forfeited affirmative defense," there that the habeas petitioner had not exhausted his state remedies. *Wood*, 566 U.S. at 470. The basis for the

outcome in *Granberry* was the Court's determination that "[t]he exhaustion doctrine . . . is founded on concerns broader than those of the parties; in particular, the doctrine fosters respectful, harmonious relations between the state and federal judiciaries." *Id.* at 471. "With that comity interest in mind," the Court concluded that "federal appellate courts have discretion, in 'exceptional cases,' to consider a nonexhaustion argument 'inadverten[tly]' overlooked by the State in the District Court." *Id.* (alteration in original) (quoting *Granberry*, 481 U.S. at 132, 134).

Turning then to *Day*, the Court in *Wood* explained that "[a]ffording federal courts leeway to consider a forfeited timeliness defense was appropriate [in that case] . . . because AEDPA's statute of limitations, like the exhaustion doctrine, 'implicat[es] values beyond the concerns of the parties,'" namely the values that the Second Circuit had identified in *Acosta*. *Id.* at 472 (third alteration in original) (quoting *Day*, 547 U.S. at 205). The Court then reached the question before it, and declared that "[c]onsistent with *Granberry* and *Day*, [it would] decline to adopt an absolute rule barring a court of appeals from raising, on its own motion, a forfeited timeliness defense." *Id.* at 473. The Court recognized that "[t]he *institutional interests* served by AEDPA's statute of limitations are also present when a habeas case moves to the court of appeals, a point *Granberry* recognized with respect to a nonexhaustion defense." *Id.* (emphasis added). The court "accordingly" held that, in the circumstances indicated, "courts of appeals, like district courts, have the authority—though not the obligation—to raise a forfeited timeliness defense on their own initiative." *Id.*

The Supreme Court's analysis in *Wood* thus confirms that the prohibition against *sua sponte* invocation of forfeited affirmative defenses is subject to very narrow exceptions that

may exist when certain institutional interests of the judiciary are implicated and both parties are present in the litigation.

The Court's decision in *Arizona v. California* is consistent with the cases addressing *sua sponte* action in the habeas context. In *Arizona*, the Court stated that it "might be appropriate in special circumstances" for a court to raise *res judicata* defenses on its own motion. 530 U.S. at 412. "[I]f a court is on notice that it has previously decided the issue presented," the Court explained, "[it] may dismiss the action *sua sponte*, even though the defense has not been raised." *Id.* (quoting *United States v. Sioux Nation*, 448 U.S. 371, 432 (1980) (Rehnquist, J., dissenting)). The justification that the Court offered was that institutional judicial interests are involved in "the policies underlying res judicata," which is "not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste." *Id.* (quoting *Sioux Nation*, 448 U.S. at 432 (Rehnquist, J., dissenting)). The contrast with statutes of limitations, which exist "primarily to protect defendants against stale or unduly delayed claims," *John R. Sand & Gravel Co.*, 552 U.S. at 133, is plain.

In all of these decisions, moreover, the defendant was present and participated in the litigation. *See, e.g.*, *Day*, 547 U.S. at 208 (noting that the state respondent belatedly pressed the statute of limitations defense); *Granberry*, 481 U.S. at 130 (noting that the state respondent "for the first time interposed the [exhaustion] defense" on appeal). As a result, before raising the defense *sua sponte*, the court knew that its action was not inconsistent with how the defendant preferred to litigate the matter. After all, the defense is for the defendant to choose to assert (or not) in the first instance. And, as we have already noted, it would be an abuse of discretion for a court to override a defendant's deliberate waiver of a defense. *See Wood*, 566

U.S. at 472–73; *Day*, 547 U.S. at 210 n.11. When a defendant is entirely absent from the proceedings, however, the court cannot reliably assess whether raising the defense *sua sponte* is consistent with how the defendant might choose to litigate the matter. *Cf. Day*, 547 U.S. at 210 ("Of course, before acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their positions."). This is not to say that whenever a forfeited affirmative defense implicates the interests of the judiciary as well as the defendant, the court *must* raise it *sua sponte* if the defendant is present and participates in the litigation. *See id.* at 209; *Wood*, 566 U.S. at 473. All we mean to say is that when the institutional interests of the judiciary are implicated, the defendant's presence matters.

In sum, it is clear that federal courts may depart from the party presentation principle and rules of forfeiture only in distinct and narrow circumstances in which the judiciary's own interests are implicated and the forfeiting party is present in the litigation. We conclude that no such authority exists for a federal court to raise the FSIA terrorism exception's statute of limitations on behalf of an entirely absent defendant. Unlike in the AEDPA context or in the case of a *res judicata* defense, no institutional interests of the judiciary are implicated when a § 1605A claim against an absent defendant proceeds to a default judgment, regardless of who the defendant is or how much time has passed since the terrorist act giving rise to the action took place. We find no merit in the District Courts' conclusions to the contrary or in the Appointed Amicus' arguments in support of the District Courts' rulings.

To begin, the District Courts were mistaken to raise international comity concerns as a justification for acting *sua sponte*. The Supreme Court has held clearly and repeatedly that with the FSIA, Congress established "a comprehensive set of legal standards governing claims of immunity in every civil

action against a foreign state or its political subdivisions, agencies or instrumentalities." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488 (1983). And that "comprehensive framework," *Republic of Austria v. Altmann*, 541 U.S. 677, 699 (2004), including the terrorism exception at § 1605A, strikes a "careful balance between respecting the immunity historically afforded to foreign sovereigns and holding them accountable, in certain circumstances, for their actions," *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 822 (2018).

In other words, as the *Maalouf* and *Bathiard* appellants correctly observe, Congress has already determined the degree of care that courts should show for the interests of foreign sovereigns. Particularly given the Constitution's exclusive assignment of responsibility for international relations to the political branches, *Chi. & S. Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948), there is no room for courts to engage in discretionary, comity-based interest-balancing to decide "whether and when to exercise judicial power over foreign states," *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134, 140 (2014); *see also* Brief of Professor Stephen I. Vladeck as *Amicus Curiae* Supporting Plaintiffs-Appellants and Urging Reversal at 11–13, *Maalouf v. Islamic Republic of Iran*, No. 18-7052 (Aug. 7, 2018). The purpose of the FSIA was to put an end to that method of decisionmaking on questions of foreign sovereign immunity. *See NML Capital*, 573 U.S. at 141–42; *see also Simon v. Republic of Hungary*, 911 F.3d 1172, 1180–81 (D.C. Cir. 2018).

We are unmoved by the Appointed Amicus's argument that foreign nations' treatment in U.S. courts may impact "the reciprocal foreign litigation interests of the United States when it is sued in any foreign court." Brief for Court-Appointed Amicus Curiae in Support of the District Courts' Orders in No. 18-7052, et al., No. 18-7060, et al., and No. 18-7122 at 22–23,

Maalouf v. Islamic Republic of Iran, No. 18-7052 (Dec. 19, 2018) ("Appointed Amicus Br."). This is a concern for the political branches, not the judiciary. As the *Sheikh* appellants note, the Supreme Court has been clear in its FSIA jurisprudence that it is not for the courts "to consider the worrisome international-relations consequences" of adjudicating actions under the FSIA. *NML Capital*, 573 U.S. at 146 (cautioning that any such "apprehensions are better directed to that branch of government with authority to amend [the FSIA]").

In enacting the FSIA, Congress directed the courts to respect the sovereignty of foreign nations who respond when sued and assert timely, valid defenses. However, Congress also made it clear that default judgments may issue in actions arising under the terrorism exception. *See* 28 U.S.C. § 1608(e). It is not the responsibility of the courts to act *sua sponte* to raise affirmative defenses on behalf of defendants who do not appear to defend actions against them.

We disagree with the District Courts and the Appointed Amicus that 28 U.S.C. § 1608(e) provides justification for courts to invoke forfeited affirmative defenses on behalf of absent § 1605A defendants. As we explained in *Owens*, § 1608(e), which prevents entry of default judgments against foreign sovereigns unless the "claimant establishes his claim or right to relief by evidence satisfactory to the court," concerns "the quantum and quality of evidence" that an FSIA plaintiff must offer to demonstrate the merits of her claims before the court may issue a default judgment in her favor. 864 F.3d at 785 (quoting *Alameda v. Sec'y of Health, Educ. & Welfare*, 622 F.2d 1044, 1048 (1st Cir. 1980)). The provision "leaves it to the court to determine precisely how much and what kinds of evidence the plaintiff must provide." *Han Kim v. Democratic People's Republic of Korea*, 774 F.3d 1044, 1047 (D.C. Cir.

2014). It imposes no obligation on plaintiffs to rebut a hypothetical statute of limitations defense, which, as we have explained, is the defendant's responsibility to raise or risk forfeiting. Moreover, an issue regarding a nonjurisdictional statute of limitations has no connection to the quantum or quality of the evidence supporting a plaintiff's "claim or right to relief." 28 U.S.C. § 1608(e). Indeed, as a general matter, a plaintiff whose claims are perhaps untimely but otherwise meritorious is not barred from obtaining a judgment in her favor if a defendant fails to assert the applicable statute of limitations. Why? Because a *forfeited* affirmative defense cannot affect the court's consideration of the merits of a claim.

Nor are there any institutional interests of the judiciary implicated by the obligations that § 1608(e) places on district courts. While the statute directs district courts to perform a screening function to evaluate the merits of a case before issuing a default judgment, this certainly does not justify the *sua sponte* invocation of a statute of limitations defense. An argument that institutional interests are implicated merely because § 1608(e) requires the district courts to assess the merits of a claim before granting default judgment rings hollow. Such a conclusion would permit the "institutional interest" exception to completely swallow the party presentation principle and rules of forfeiture. In addition, given the complexity of the relevant statute of limitations provisions, 28 U.S.C. § 1605A(b) and § 1083(c)(3) of the NDAA, it is far from clear that resolving claims on limitations grounds is easier than assessing the merits. Furthermore, in assessing the merits of a claim under §1608(e), the courts are granted broad discretion to determine what degree and kind of evidence is satisfactory. *See Han Kim*, 774 F.3d at 1047; *Owens*, 864 F.3d at 785. So the burden imposed on district courts is moderated. Moreover, case law shows that District Courts in this circuit routinely perform their § 1608(e) duties in terrorism exception

cases with great effectiveness, even in cases concerning attacks that took place overseas decades ago. *See, e.g.*, *Akins v. Islamic Republic of Iran*, 332 F. Supp. 3d 1 (D.D.C. 2018); *Worley v. Islamic Republic of Iran*, 75 F. Supp. 3d 311 (D.D.C. 2014); *Estate of Doe v. Islamic Republic of Iran*, 808 F. Supp. 2d 1 (D.D.C. 2011).

Furthermore, as noted in *Owens*, § 1608(e) "mirrors a provision in Federal Rule of Civil Procedure 55(d) governing default judgments against the U.S. Government." 864 F.3d at 785. Neither the District Courts nor the Appointed Amicus suggest that Rule 55(d) creates institutional interests justifying *sua sponte* action on affirmative defenses, and we see no reason why the Rule's statutory counterpart for foreign sovereign defendants would either. The Appointed Amicus attempts to draw a distinction by arguing that § 1608(e) imposes a greater responsibility on courts than Rule 55(d) because of the "comity considerations" present in FSIA cases. Appointed Amicus Br. at 30. But, as noted above, international comity concerns do not justify district courts' *sua sponte* actions raising forfeited defenses on behalf of defendants who fail to appear in FSIA cases.

The Appointed Amicus also expresses concern that district courts "bear the brunt of the institutional burden when an untimely claim proceeds to the special procedures for default judgment under Section 1608(e)." *Id.* at 31. We disagree with the assumption that underlies this argument, *i.e.*, that a purportedly untimely § 1605A claim necessarily imposes a greater burden on courts than a timely claim. As we recognized in *Owens*, the significant evidentiary challenge in FSIA terrorism cases with a defaulting defendant is that "firsthand evidence and eyewitness testimony is difficult or impossible to obtain from an absent and likely hostile sovereign." 864 F.3d at 785. This poses a greater problem for plaintiffs who must

gather the evidence than for the courts that must assess it, regardless of how long ago the attack at issue occurred. We fail to see how the expiration of the nonjurisdictional statutory filing period makes any significant difference in a district court's ability to assess the evidence offered by a plaintiff.

Finally, the Appointed Amicus claims that allowing untimely claims to proceed will reduce the payments from the United States Victims of State Sponsored Terrorism Fund, *see* 34 U.S.C. § 20144, made to judgment holders who filed timely complaints. We decline to reach this issue, or to assess the *Maalouf* appellants' contrary arguments, because the Fund was not addressed by the District Courts. We therefore have no record on which to assess the accuracy or import of the parties' claims.

For the reasons indicated above, we hold that the District Courts here lacked authority or discretion to *sua sponte* raise the terrorism exception's statute of limitations to dismiss the six cases before us. As the *Sheikh* appellants cogently observe, approving the approach taken by the District Courts and defended by the Appointed Amicus would be tantamount to giving the courts "*carte blanche* to depart from the principle of party presentation basic to our adversary system," a result that the Supreme Court explicitly warned against in *Wood*. 566 U.S. at 472. We therefore conclude that when an entirely absent defendant has forfeited the FSIA terrorism exception's statute of limitations, the defense is excluded from the case and may not be raised by the court *sua sponte*. No viable institutional interests have been presented in these cases to justify the actions of the District Courts.

3. *Remaining Issues*

Because we find that the District Courts had no authority to act *sua sponte* in these cases, we have no need to reach the parties' arguments concerning the courts' exercise of the discretion that they claimed, the timeliness of the complaints, or the denial of the *Kinyua* plaintiffs' post-judgment motions. We also take no position on the merits of the six cases.

In addition, we need not address whether a district court would lack authority to raise a statute of limitations defense in an FSIA case in which the United States participates in the proceedings and asks the court to rule in favor of an absent foreign sovereign on statute of limitations grounds. Nor do we address whether the correct interpretation of the terrorism exception's timeliness provisions, 28 U.S.C. § 1605A(b) and § 1083(c)(3) of the NDAA, is in fact as straightforward as the District Courts assumed.

III. CONCLUSION

For the foregoing reasons, we reverse the judgments of the District Courts, vacate the dismissals of the complaints, and remand the cases for further proceedings.

So ordered.

Annex 87

Opati, et al. v. Republic of Sudan, et al., **U.S. Supreme Court, 18 May 2020, No. 17-1268**

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

OPATI, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF OPATI, DECEASED, ET AL. *v.* REPUBLIC OF SUDAN ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17–1268. Argued February 24, 2020—Decided May 18, 2020

In 1998, al Qaeda operatives detonated truck bombs outside the United States Embassies in Kenya and Tanzania. Victims and their family members sued the Republic of Sudan under the state-sponsored terrorism exception to the Foreign Sovereign Immunities Act (FSIA), formerly 28 U. S. C. §1605(a)(7), alleging that Sudan had assisted al Qaeda in perpetrating the attacks. At the time, the plaintiffs faced §1606's bar on punitive damages for suits proceeding under any of the §1605 sovereign immunity exceptions. In 2008, Congress amended the FSIA in the National Defense Authorization Act (NDAA). 122 Stat. 3. In NDAA §1083(a), Congress moved §1605(a)(7) to a new section and created an express federal cause of action for acts of terror that also provided for punitive damages. See §1605A(c). In §1083(c)(2), it gave effect to existing lawsuits that had been "adversely affected" by prior law "as if" they had been originally filed under the new §1605A(c). And in §1083(c)(3), it provided a time-limited opportunity for plaintiffs to file new actions "arising out of the same act or incident" as an earlier action and claim §1605A's benefits. Following these amendments, the original plaintiffs amended their complaint to include the new federal cause of action under §1605A(c), and hundreds of others filed new, similar claims. The district court entered judgment for the plaintiffs and awarded approximately $10.2 billion in damages, including roughly $4.3 billion in punitive damages. As relevant here, the court of appeals held that the plaintiffs were not entitled to punitive damages because Congress had included no statement in NDAA §1083 clearly authorizing punitive damages for preenactment conduct.

Syllabus

Held: Plaintiffs in a federal cause of action under §1605A(c) may seek punitive damages for preenactment conduct. Even assuming (without granting) that Sudan may claim the benefit of the presumption of prospectivity—the assumption that Congress means its legislation to apply only to future conduct, see *Landgraf* v. *USI Film Products*, 511 U. S. 244—Congress was as clear as it could have been when it expressly authorized punitive damages under §1605A(c) and explicitly made that new cause of action available to remedy certain past acts of terrorism.

Sudan stresses that §1083(c) does not *itself* contain an express authorization of punitive damages. It does admit that §1083(c) authorizes plaintiffs to bring §1605A(c) claims for preenactment conduct. And it does concede that §1605A(c) allows for damages that "may include economic damages, solatium, [and] pain and suffering" for preenactment conduct. That list in the statute also "include[s] . . . punitive damages," and no plausible account of §1083(c) could be clear enough to authorize the retroactive application of all other §1605A(c) features except punitive damages. Sudan also contends that §1605A(c)'s wording "may include . . . punitive damages" fails the clarity test. But "'the word "may" clearly connotes discretion,'" *Halo Electronics, Inc.* v. *Pulse Electronics, Inc.*, 579 U. S. ___, ___, and simply vests district courts with discretion to determine whether punitive damages are appropriate. In addition, all of the categories of special damages mentioned in §1605A(c) are provided on equal terms. Finally, Sudan suggests that a super-clarity rule should apply here because retroactive punitive damages raise special constitutional concerns. Such an interpretative rule is not reasonably administrable.

This Court declines to resolve other matters raised by the parties outside the question presented. But having decided that punitive damages are permissible for federal claims and that the reasons the court of appeals offered for its contrary decision were mistaken, it follows that the court of appeals must also reconsider its decision concerning the availability of punitive damages for claims proceeding under state law. Pp. 6–12.

864 F. 3d 751, vacated and remanded.

GORSUCH, J., delivered the opinion of the Court, in which all other Members joined, except KAVANAUGH, J., who took no part in the consideration or decision of the case.

SUPREME COURT OF THE UNITED STATES

No. 17–1268

MONICAH OKOBA OPATI, IN HER OWN RIGHT, AND AS EXECUTRIX OF THE ESTATE OF CAROLINE SETLA OPATI, DECEASED, ET AL., PETITIONERS *v.* REPUBLIC OF SUDAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May 18, 2020]

JUSTICE GORSUCH delivered the opinion of the Court.

In 1998, al Qaeda operatives simultaneously detonated truck bombs outside the United States Embassies in Kenya and Tanzania. Hundreds died, thousands were injured. In time, victims and their family members sued the Republic of Sudan in federal court, alleging that it had assisted al Qaeda in perpetrating the attacks. After more than a decade of motions practice, intervening legislative amendments, and a trial, the plaintiffs proved Sudan's role in the attacks and established their entitlement to compensatory and punitive damages. On appeal, however, Sudan argued, and the court agreed, that the Foreign Sovereign Immunities Act barred the punitive damages award. It is that decision we now review and, ultimately, vacate.

*

The starting point for nearly any dispute touching on foreign sovereign immunity lies in *Schooner Exchange* v. *McFaddon*, 7 Cranch 116 (1812). There, Chief Justice Mar-

shall explained that foreign sovereigns do not enjoy an inherent right to be held immune from suit in American courts: "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself." *Id.,* at 136. Still, Chief Justice Marshall continued, many countries had declined to exercise jurisdiction over foreign sovereigns in cases involving foreign ministers and militaries. *Id.,* at 137–140. And, accepting a suggestion from the Executive Branch, the Court agreed as a matter of comity to extend that same immunity to a foreign sovereign in the case at hand. *Id.,* at 134, 145–147.

For much of our history, claims of foreign sovereign immunity were handled on a piecework basis that roughly paralleled the process in *Schooner Exchange.* Typically, after a plaintiff sought to sue a foreign sovereign in an American court, the Executive Branch, acting through the State Department, filed a "suggestion of immunity"—case-specific guidance about the foreign sovereign's entitlement to immunity. See *Verlinden B. V.* v. *Central Bank of Nigeria,* 461 U. S. 480, 487 (1983). Because foreign sovereign immunity is a matter of "grace and comity," *Republic of Austria* v. *Altmann,* 541 U. S. 677, 689 (2004), and so often implicates judgments the Constitution reserves to the political branches, courts "consistently . . . deferred" to these suggestions. *Verlinden,* 461 U. S., at 486.

Eventually, though, this arrangement began to break down. In the mid-20th century, the State Department started to take a more restrictive and nuanced approach to foreign sovereign immunity. See *id.,* at 486–487. Sometimes, too, foreign sovereigns neglected to ask the State Department to weigh in, leaving courts to make immunity decisions on their own. See *id.,* at 487–488. "Not surprisingly" given these developments, "the governing standards" for foreign sovereign immunity determinations over time became "neither clear nor uniformly applied." *Id.,*

at 488.

In 1976, Congress sought to remedy the problem and address foreign sovereign immunity on a more comprehensive basis. The result was the Foreign Sovereign Immunities Act (FSIA). As a baseline rule, the FSIA holds foreign states and their instrumentalities immune from the jurisdiction of federal and state courts. See 28 U. S. C. §§1603(a), 1604. But the law also includes a number of exceptions. See, *e.g.*, §§1605, 1607. Of particular relevance today is the terrorism exception Congress added to the law in 1996. That exception permits certain plaintiffs to bring suits against countries who have committed or supported specified acts of terrorism and who are designated by the State Department as state sponsors of terror. Still, as originally enacted, the exception shielded even these countries from the possibility of punitive damages. See Antiterrorism and Effective Death Penalty Act of 1996 (codifying state-sponsored terrorism exception at 28 U. S. C. §1605(a)(7)); §1606 (generally barring punitive damages in suits proceeding under any of §1605's sovereign immunity exceptions).

Two years after Congress amended the FSIA, al Qaeda attacked the U. S. Embassies in Kenya and Tanzania. In response, a group of victims and affected family members led by James Owens sued Sudan in federal district court, invoking the newly adopted terrorism exception and alleging that Sudan had provided shelter and other material support to al Qaeda. As the suit progressed, however, a question emerged. In its recent amendments, had Congress merely withdrawn immunity for state-sponsored terrorism, allowing plaintiffs to proceed using whatever pre-existing causes of action might be available to them? Or had Congress gone further and created a new federal cause of action to address terrorism? Eventually, the D. C. Circuit held that Congress had only withdrawn immunity without creating a new cause of action. See *Cicippio-Puelo* v. *Islamic*

Republic of Iran, 353 F. 3d 1024, 1033 (2004).

In response to that and similar decisions, Congress amended the FSIA again in the National Defense Authorization Act for Fiscal Year 2008 (NDAA), 122 Stat. 338. Four changes, all found in a single section, bear mention here. First, in §1083(a) of the NDAA, Congress moved the state-sponsored terrorism exception from its original home in §1605(a)(7) to a new section of the U. S. Code, 28 U. S. C. §1605A. This had the effect of freeing claims brought under the terrorism exception from the FSIA's usual bar on punitive damages. See §1606 (denying punitive damages in suits proceeding under a sovereign immunity exception found in §1605 but not §1605A). Second, also in §1083(a), Congress created an express federal cause of action for acts of terror. This new cause of action, codified at 28 U. S. C. §1605A(c), is open to plaintiffs who are U. S. nationals, members of the Armed Forces, U. S. government employees or contractors, and their legal representatives, and it expressly authorizes punitive damages. Third, in §1083(c)(2) of the NDAA, a provision titled "Prior Actions," Congress addressed existing lawsuits that had been "adversely affected on the groun[d] that" prior law "fail[ed] to create a cause of action against the state." Actions like these, Congress instructed, were to be given effect "as if" they had been originally filed under §1605A(c)'s new federal cause of action. Finally, in §1083(c)(3) of the NDAA, a provision titled "Related Actions," Congress provided a time-limited opportunity for plaintiffs to file *new* actions "arising out of the same act or incident" as an earlier action and claim the benefits of 28 U. S. C. §1605A.

Following these amendments, the *Owens* plaintiffs amended their complaint to include the new federal cause of action, and hundreds of additional victims and family members filed new claims against Sudan similar to those in *Owens*. Some of these new plaintiffs were U. S. nationals or federal government employees or contractors who sought

relief under the new §1605A(c) federal cause of action. But others were the foreign-national family members of U. S. government employees or contractors killed or injured in the attacks. Ineligible to invoke §1605A(c)'s new federal cause of action, these plaintiffs relied on §1605A(a)'s state-sponsored terrorism exception to overcome Sudan's sovereign immunity and then advance claims sounding in state law.

After a consolidated bench trial in which Sudan declined to participate, the district court entered judgment in favor of the plaintiffs. District Judge John Bates offered detailed factual findings explaining that Sudan had knowingly served as a safe haven near the two United States Embassies and allowed al Qaeda to plan and train for the attacks. The court also found that Sudan had provided hundreds of Sudanese passports to al Qaeda, allowed al Qaeda operatives to travel over the Sudan-Kenya border without restriction, and permitted the passage of weapons and money to supply al Qaeda's cell in Kenya. See *Owens* v. *Republic of Sudan*, 826 F. Supp. 2d 128, 139–146 (DC 2011).

The question then turned to damages. Given the extensive and varied nature of the plaintiffs' injuries, the court appointed seven Special Masters to aid its factfinding. Over more than two years, the Special Masters conducted individual damages assessments and submitted written reports. Based on these reports, and after adding a substantial amount of prejudgment interest to account for the many years of delay, the district court awarded a total of approximately $10.2 billion in damages, including roughly $4.3 billion in punitive damages to plaintiffs who had brought suit in the wake of the 2008 amendments.

At that point, Sudan decided to appear and appeal. Among other things, Sudan sought to undo the district court's punitive damages award. Generally, Sudan argued, Congress may create new forms of liability for past conduct only by clearly stating its intention to do so. And, Sudan

continued, when Congress passed the NDAA in 2008, it nowhere clearly authorized punitive damages for anything countries like Sudan might have done in the 1990s.

The court of appeals agreed. It started by addressing the plaintiffs who had proceeded under the new federal cause of action in §1605A(c). The court noted that, in passing the NDAA, Congress clearly authorized individuals to use the Prior Actions and Related Actions provisions to bring new federal claims attacking past conduct. Likewise, the law clearly allowed these plaintiffs to collect compensatory damages for their claims. But, the court held, Congress included no statement clearly authorizing *punitive* damages for preenactment conduct. See *Owens* v. *Republic of Sudan*, 864 F. 3d 751, 814–817 (CADC 2017). Separately but for essentially the same reasons, the court held that the foreign-national family member plaintiffs who had proceeded under state-law causes of action were also barred from seeking and obtaining punitive damages. *Id.*, at 817.

The petitioners responded by asking this Court to review the first of these rulings and decide whether the 2008 NDAA amendments permit plaintiffs proceeding under the federal cause of action in §1605A(c) to seek and win punitive damages for past conduct. We agreed to resolve that question. 588 U. S. ___ (2019).

*

The principle that legislation usually applies only prospectively "is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Landgraf* v. *USI Film Products*, 511 U. S. 244, 265 (1994). This principle protects vital due process interests, ensuring that "individuals . . . have an opportunity to know what the law is" before they act, and may rest assured after they act that their lawful conduct cannot be second-guessed later. *Ibid.* The principle serves vital equal protection interests as well: If legislative majorities could too easily make new

laws with retroactive application, disfavored groups could become easy targets for discrimination, with their past actions visible and unalterable. See *id.*, at 266–267. No doubt, reasons like these are exactly why the Constitution discourages retroactive lawmaking in so many ways, from its provisions prohibiting *ex post facto* laws, bills of attainder, and laws impairing the obligations of contracts, to its demand that any taking of property be accompanied by just compensation. See *id.*, at 266.

Still, Sudan doesn't challenge the constitutionality of the 2008 NDAA amendments on these or any other grounds—the arguments we confront today are limited to the field of statutory interpretation. But, as both sides acknowledge, the principle of legislative prospectivity plays an important role here too. In fact, the parties devote much of their briefing to debating exactly how that principle should inform our interpretation of the NDAA.

For its part, Sudan points to *Landgraf*. There, the Court observed that, "in decisions spanning two centuries," we have approached debates about statutory meaning with an assumption that Congress means its legislation to respect the principle of prospectivity and apply only to future conduct—and that, if and when Congress wishes to test its power to legislate retrospectively, it must say so "clear[ly]." *Id.*, at 272. All this is important, Sudan tells us, because when we look to the NDAA we will find no *clear* statement allowing courts to award punitive damages for past conduct.

But if Sudan focuses on the rule, the petitioners highlight an exception suggested by *Altmann*. Because foreign sovereign immunity is a gesture of grace and comity, *Altmann* reasoned, it is also something that may be withdrawn retroactively without the same risk to due process and equal protection principles that other forms of backward-looking legislation can pose. Foreign sovereign immunity's "principal purpose," after all, "has never been to permit foreign

states . . . to shape their conduct in reliance on the promise of future immunity from suit in United States courts." 541 U. S., at 696. Thus, *Altmann* held, "[i]n th[e] *sui generis* context [of foreign sovereign immunity], . . . it [is] more appropriate, absent contraindications, to defer to the most recent decision [of the political branches] than to presume that decision *inapplicable* merely because it postdates the conduct in question." *Ibid.* And, the petitioners stress, once the presumption of prospectivity is swept away, the NDAA is easily read to authorize punitive damages for completed conduct.

Really, this summary only begins to scratch the surface of the parties' debate. Sudan replies that it may be one thing to retract immunity retroactively consistent with *Altmann*, because all that does is open a forum to hear an otherwise available legal claim. But it is another thing entirely to create new rules regulating primary conduct and impose them retroactively. When Congress wishes to do *that*, Sudan says, it must speak just as clearly as *Landgraf* commanded. And, Sudan adds, the NDAA didn't simply open a new forum to hear a pre-existing claim; it also created a new cause of action governing completed conduct that the petitioners now seek to exploit. Cf. *Altmann*, 541 U. S., at 702–704 (Scalia, J., concurring). In turn, the petitioners retort that *Altmann* itself might have concerned whether a new forum could hear an otherwise available and pre-existing claim, but its reasoning went further. According to the petitioners, the decision also strongly suggested that the presumption of prospectivity does not apply at all when it comes to suits against foreign sovereigns, full stop. These points and more the parties develop through much of their briefing before us.

As we see it, however, there is no need to resolve the parties' debate over interpretive presumptions. Even if we assume (without granting) that Sudan may claim the benefit of *Landgraf*'s presumption of prospectivity, Congress was

as clear as it could have been when it authorized plaintiffs to seek and win punitive damages for past conduct using §1065A(c)'s new federal cause of action. After all, in §1083(a), Congress created a federal cause of action that expressly allows suits for damages that "may include economic damages, solatium, pain and suffering, and *punitive damages*." (Emphasis added.) This new cause of action was housed in a new provision of the U. S. Code, 28 U. S. C. §1605A, to which the FSIA's usual prohibition on punitive damages does not apply. See §1606. Then, in §§1083(c)(2) and (c)(3) of the very same statute, Congress allowed certain plaintiffs in "Prior Actions" and "Related Actions" to invoke the new federal cause of action in §1605A. Both provisions specifically authorized new claims for preenactment conduct. Put another way, Congress proceeded in two equally evident steps: (1) It expressly authorized punitive damages under a new cause of action; and (2) it explicitly made that new cause of action available to remedy certain past acts of terrorism. Neither step presents any ambiguity, nor is the NDAA fairly susceptible to any competing interpretation.

Sudan's primary rejoinder only serves to underscore the conclusion. Like the court of appeals before it, Sudan stresses that §1083(c) *itself* contains no express authorization of punitive damages. But it's hard to see what difference that makes. Sudan admits that §1083(c) authorizes plaintiffs to bring claims under §1605A(c) for acts committed before the 2008 amendments. Sudan concedes, too, that §1605A(c) authorizes plaintiffs to seek and win "economic damages, solatium, [and] pain and suffering," for preenactment conduct. In fact, except for the two words "punitive damages," Sudan accepts that *every other* jot and tittle of §1605A(c) applies to actions properly brought under §1083(c) for past conduct. And we can see no plausible account on which §1083(c) could be clear enough to authorize the retroactive application of all other features of

§1605A(c), just not these two words.

Sudan next contends that §1605A(c) fails to authorize retroactive punitive damages with sufficient clarity because it sounds equivocal—the provision says only that awards "may" include punitive damages. But this language simply vests district courts with discretion to determine whether punitive damages are appropriate in view of the facts of a particular case. As we have repeatedly observed when discussing remedial provisions using similar language, "the 'word "may" *clearly* connotes discretion.'" *Halo Electronics, Inc.* v. *Pulse Electronics, Inc.*, 579 U. S. ___, ___ (2016) (slip op., at 8) (quoting *Martin* v. *Franklin Capital Corp.*, 546 U. S. 132, 136 (2005), in turn quoting *Fogerty* v. *Fantasy, Inc.*, 510 U. S. 517, 533 (1994); emphasis added). What's more, all of the categories of special damages mentioned in §1605A(c) are provided on equal terms: "[D]amages *may* include economic damages, solatium, pain and suffering, and punitive damages." (Emphasis added.) Sudan admits that the statute vests the district court with discretion to award the first three kinds of damages for preenactment conduct—and the same can be no less true when it comes to the fourth.

That takes us to Sudan's final argument. Maybe Congress did act clearly when it authorized a new cause of action and other forms of damages for past conduct. But because retroactive damages of the *punitive* variety raise special constitutional concerns, Sudan says, we should create and apply a new rule requiring Congress to provide a super-clear statement when it wishes to authorize their use.

We decline this invitation. It's true that punitive damages aren't merely a form a compensation but a form of punishment, and we don't doubt that applying new punishments to completed conduct can raise serious constitutional questions. See *Landgraf*, 511 U. S., at 281. But if Congress

clearly authorizes retroactive punitive damages in a manner a litigant thinks unconstitutional, the better course is for the litigant to challenge the law's constitutionality, not ask a court to ignore the law's manifest direction. Besides, when we fashion interpretive rules, we usually try to ensure that they are reasonably administrable, comport with linguistic usage and expectations, and supply a stable backdrop against which Congress, lower courts, and litigants may plan and act. See *id.*, at 272–273. And Sudan's proposal promises more nearly the opposite: How much clearer-than-clear should we require Congress to be when authorizing the retroactive use of punitive damages? Sudan doesn't even try to say, except to assure us it knows a super-clear statement when it sees it, and can't seem to find one here. That sounds much less like an administrable rule of law than an appeal to the eye of the beholder.

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With the question presented now resolved, both sides ask us to tackle other matters in this long-running litigation. Perhaps most significantly, the petitioners include a postscript asking us to decide whether Congress also clearly authorized retroactive punitive damages in claims brought by foreign-national family members under state law using §1605A(a)'s exception to sovereign immunity. Sudan insists that, if we take up that question, we must account for the fact that §1605A(a), unlike §1605A(c), does not expressly discuss punitive damages. And in fairness, Sudan contends, we should also resolve whether litigants may invoke state law at all, in light of the possibility that §1605A(c) now supplies the exclusive cause of action for claims involving state-sponsored acts of terror.

We decline to resolve these or other matters outside the question presented. The petitioners chose to limit their petition to the propriety of punitive damages under the federal cause of action in §1605A(c). See Pet. for Cert. i. The

Solicitor General observed this limitation in the question presented at the petition stage. See Brief for United States as *Amicus Curiae* 19, n. 8. The parties' briefing and argument on matters outside the question presented has been limited, too, and we think it best not to stray into new terrain on the basis of such a meager invitation and with such little assistance.

Still, we acknowledge one implication that necessarily follows from our holding today. The court of appeals refused to allow punitive damages awards for foreign-national family members proceeding under state law for "the same reason" it refused punitive damages for the plaintiffs proceeding under §1605A(c)'s federal cause of action. 864 F. 3d, at 818. The court stressed that it would be "puzzling" if punitive damages were permissible for state claims but not federal ones. *Id.*, at 817. Having now decided that punitive damages *are* permissible for federal claims, and that the reasons the court of appeals offered for its contrary decision were mistaken, it follows that the court of appeals must also reconsider its decision concerning the availability of punitive damages for claims proceeding under state law.

The judgment of the court of appeals with respect to punitive damages is vacated. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE KAVANAUGH took no part in the consideration or decision of this case.

Annex 88

***Peterson, et al. v. Iran, Bank Markazi, Banca UBAE, Clearstream, JP Morgan Chase Bank,* U.S. Court of Appeals for the Second Circuit, Opinion, 22 June 2020, Case 15-0690**

15-0690
Peterson v. Islamic Republic of Iran

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2015

(Originally Argued: June 8, 2016 Originally Decided: November 20, 2017)

(Argued upon remand from the Supreme Court: May 27, 2020

Decided upon remand from the Supreme Court: June 22, 2020)

Docket No. 15-0690

Deborah D. Peterson, *et al.*,
Plaintiffs-Appellants,

v.

Islamic Republic of Iran, Bank Markazi, AKA Central Bank of Iran, Banca UBAE SpA, Clearstream Banking, S.A., JPMorgan Chase Bank, N.A.,
Defendants-Appellees.

Before: POOLER, SACK, and LOHIER, *Circuit Judges*.

AFFIRMED in part, VACATED in part, and REMANDED

JAMES P. BONNER, Fleischman Bonner & Rocco LLP, White Plains, New York (Patrick L. Rocco, Susan M. Davies, Fleischman Bonner & Rocco LLP, White Plains, New York, Liviu Vogel, Salon Marrow Dyckman, Newman & Broudy LLC, New York, New York, *on the brief*), *for Plaintiffs-Appellants*;

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Washington, D.C., Donald F. Luke, Jaffe & Asher LLP, New York, New York, *on the brief*), *for Defendant-Appellee Bank Markazi, AKA Central Bank of Iran*;

UGO COLELLA (John J. Zefutie, Jr., *on the brief*), Colella Zefutie LLC, Washington, D.C., *for Defendant-Appellee* Banca UBAE S.p.A.;

BENJAMIN S. KAMINETZKY (Gerard X. McCarthy, *on the brief*), Davis Polk & Wardwell LLP, New York, New York, *for Defendant-Appellee* Clearstream Banking S.A.

PER CURIAM:

PROCEDURAL HISTORY

We first addressed this matter in *Peterson v. Islamic Republic of Iran (Peterson II)*, 876 F.3d 63 (2d Cir. 2017), on appeal from a judgment of the United States District Court for the Southern District of New York, *Peterson v. Islamic Republic of Iran*, Case No. 13-cv-9195, 2015 WL 731221, (KBF) (S.D.N.Y. Feb. 20, 2015). We affirmed in part, vacated in part, and remanded. We summarized our conclusions thus:

> 1. Plain error as to the application of the [defendant] Clearstream settlement agreement to those plaintiffs who were not parties to [a previous related judgment of the United States District Court for the Southern District of New York, *Peterson v. Islamic Republic of Iran* (*Peterson I*), Case No. 10 Civ. 4518 (KBF), 2013 WL 1155576 (S.D.N.Y. Mar. 13, 2013)] requires vacatur of the judgment of dismissal and remand with respect to those plaintiffs' non-turnover claims brought against Clearstream.
>
> 2. Excepting those plaintiffs who were not parties to *Peterson I*, the Clearstream settlement agreement released the plaintiffs' non-turnover claims brought against Clearstream. The district court therefore properly dismissed those claims.

> 3. Whether the UBAE settlement agreement [in *Peterson I*] is applicable to the plaintiffs' non-turnover claims brought against UBAE is, under the language of the agreement, unclear. Those claims were, therefore, dismissed by the district court in error. Accordingly, we vacate and remand that part of the district court's judgment of dismissal.
>
> 4. The UBAE settlement agreement did not release the plaintiffs' non-turnover claims brought against Markazi. Accordingly, we vacate and remand that part of the district court's judgment of dismissal.
>
> 5. The district court correctly determined that the asset at issue is a right to payment held by Clearstream in Luxembourg. It also, therefore, properly dismissed JPMorgan from this action.
>
> 6. The district court prematurely dismissed the amended complaint for lack of subject-matter jurisdiction. *Cf. Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250 (2014); *Koehler v. Bank of Berm. Ltd.*, 12 N.Y.3d 533, 911 N.E.2d 825, 883 N.Y.S.2d 763 (2009). On remand the district court should consider whether it has personal jurisdiction over Clearstream. If the court answers that question in the affirmative, then it should determine whether any provision of state or federal law prevents the court from recalling, or the plaintiffs from receiving, the asset.

Peterson II, 876 F.3d at 96.

The defendants filed petitions for rehearing. We denied them, and in doing so instructed the district court to consider UBAE's personal jurisdiction defense on remand. *See* Order Den. Reh'g, ECF No. 339.

On May 7, 2018, Defendant Bank Markazi filed a petition for certiorari in the Supreme Court of the United States.* On October 1, 2018, the Court sought

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* Defendant Clearstream filed a petition for certiorari on the following day, May 8, 2018.

the views of the Solicitor General of the United States. *See Bank Markazi v. Peterson*, 139 S. Ct. 306 (2018) (Mem.).

The Solicitor General responded more than a year later, on December 9, 2019, and recommended that the petitions for writs of certiorari be denied because, *inter alia*, "both Houses of Congress ha[d] passed separate bills that, if either bec[a]me[] law, could substantially affect the proper disposition of this case." Br. of United States at 10.

Eleven days later, on December 20, 2019, Congress enacted and the President signed into law the National Defense Authorization Act for Fiscal Year 2020 ('NDAA"), Pub. L. No. 116-92, 133 Stat. 1198, a statute specifically directed, at least in part, to this matter. Amending 22 U.S.C. § 8772, it bluntly provides, *inter alia*, that "notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempting any inconsistent provision of State law," financial assets that satisfied certain conditions, including those assets "identified in and the subject of proceedings in the United States District Court for the Southern District [in *Peterson II*]," "shall be subject to execution or attachment in aid of execution, or to an order directing that the asset be brought to the State in which the court is located and subsequently to execution or attachment in aid of execution, . . . without regard to concerns relating to international comity" "in order to satisfy any" terrorism-related judgment for "compensatory damages awarded against Iran." *Id.* § 8772(a)(1), (b)(2). (as amended).

On the same day, the Solicitor General filed a supplemental brief with the Supreme Court arguing that "[i]t now would be appropriate" for the Court "to grant the certiorari petitions, vacate the judgment below, and remand to the court of appeals for further consideration in light of the NDAA." Supp. Br. of United States at 4–5.

On January 13, 2020, the Supreme Court did as the Solicitor General recommended, granting the pending petitions for certiorari, vacating our decision in *Peterson II*, and remanding the matter to this Court. (The procedure is commonly referred to as a "GVR." *See* Aaron-Andrew P. Bruhl, The Supreme Court's Controversial GVRs — And an Alternative, 107 Mich. L. Rev 711 (2009)). In doing so, the Court specifically referred to the NDAA. Its opinion reads in its entirety: "The petitions for writs of certiorari are granted. The judgment is

vacated, and the cases are remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-___ (S. 1790)." *Bank Markazi v. Peterson*, 140 S. Ct. 813 (2020) (Mem.).

Upon return of the matter to us, we ordered further briefing from the parties. On May 27, 2020, we heard argument as to what action this Court should take in the wake of the vacatur by and remand from the Supreme Court.

DISCUSSION

In Part B of the "Discussion" section of *Peterson II*, 876 F.3d at 77–84, we addressed the non-turnover claims at issue in this appeal. As summarized in our conclusion in *Peterson II*, *id.* at 96, quoted above, we affirmed in part and vacated and remanded in part. That portion of our opinion is not challenged by any party to these proceedings at this juncture nor have we reason to doubt its propriety. We therefore readopt that portion of our now vacated decision in *Peterson II* as the decision of this Court.

Part C of the "Discussion" section of *Peterson II* addressed the turnover claim at issue in this appeal:

In subpart 1 of Part C, *id.* at 84–87, we discussed the "Nature and Location of the Assets" that the plaintiffs seek to have the courts require be turned over to them. That portion of the opinion is summarized in Part 5 of our conclusion in *Peterson II*, *id.* at 96, quoted above. We concluded that

> the assets at issue are . . . represented by a right to payment in the possession of Clearstream located in Luxembourg. Accordingly, the district court properly granted JPMorgan's motion for partial summary judgment because JPMorgan is not in possession of any assets subject to turnover. Similarly, neither Markazi nor UBAE possesses any assets subject to turnover here because the asset at issue is in fact held by Clearstream and represented as a positive account balance in a 'sundry blocked account' to which neither Markazi nor UBAE has access.

Id. at 87. That conclusion is similarly uncontested by the parties and we see no reason to question it now. We therefore readopt that portion of the now vacated *Peterson II* as the opinion of this Court.

In subpart C.2 of the "Discussion" section of *Peterson II*, *id.* at 87–95, we considered the "Jurisdiction for Execution" with respect to the turnover assets. That portion of the opinion is summarized in Part 6 of our conclusion in *Peterson II*, *id.* at 96, quoted above. We now reinstate only our judgment that the district court prematurely dismissed the amended complaint for lack of subject-matter jurisdiction and remand for the district court to reconsider that question. We do not, at this time, reinstate our analysis as to whether the common law and *Koehler* provide the district court with jurisdiction over the extraterritorial asset. Based on the enactment of the NDAA, and the language employed by the Supreme Court in vacating and remanding this matter to this Court, however, we respectfully direct the district court, on remand, to address the issues before it pertaining to the NDAA, personal jurisdiction, and, consistent with this opinion, any other matters necessary to the resolution of the case.

Finally, if this matter or any part thereof returns to this Court, in light of the history of this litigation, the vacatur and remand of this Court's judgment by the Supreme Court, and this panel's long-standing familiarity with the matter and the very complex issues to which it gives rise, we respectfully direct the Clerk of this Court to return the matter to this panel for further review and adjudication. *Cf. United States v. Jacobson*, 15 F.3d 19 (2d Cir 1994); *id.* at 22 (citing, *inter alia*, *Gulliver v. Dalsheim*, 739 F.2d 104, 106 (2d Cir.1984), in which "the panel retained jurisdiction in a habeas case while remanding to allow the district court to apply intervening decisions of this court"); *see also Gulliver v. Dalsheim*, 687 F.2d 655, 659 (2d Cir. 1982) (remanding while retaining jurisdiction). From whatever decision the district court makes on remand on any of the issues being remanded for further consideration in this case, the jurisdiction of this Court to consider a subsequent appeal may be invoked by any party by notification to the Clerk of Court within ten days of the district court's decision, *see Jacobson*, 15 F.3d at 21–22, in which event the renewed appeal will be assigned to this panel.

The judgment of the district court is thus affirmed in part, and vacated and remanded in part.