

INTERNATIONAL COURT OF JUSTICE

CERTAIN IRANIAN ASSETS

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

REJOINDER

SUBMITTED BY

THE UNITED STATES OF AMERICA

May 17, 2021

ANNEXES

VOLUME III

Annexes 305 through 330

ANNEX 305

THE NATIONAL ARCHIVES
LITTEA SCRIPTA MANET
1934
OF THE UNITED STATES

FEDERAL REGISTER

VOLUME 18 NUMBER 71

Washington, Tuesday, April 14, 1953

TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10444

AMENDMENT OF EXECUTIVE ORDER NO. 8809² OF JUNE 28, 1941, ESTABLISHING THE GOOD CONDUCT MEDAL, AS AMENDED BY EXECUTIVE ORDER NO. 9323² OF MARCH 31, 1943

Executive Order No. 8809 of June 28, 1941, establishing the Good Conduct Medal, as amended by Executive Order No. 9323 of March 31, 1943, is hereby further amended to read as follows:

"By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

"There is hereby established the Good Conduct Medal, which shall include suitable appurtenances. Such medal may be awarded for exemplary behavior, efficiency, and fidelity, under such regulations as the Secretary of the Army and the Secretary of the Air Force shall severally prescribe, to those enlisted men of the Army of the United States and the United States Air Force who on or after August 27, 1940, had or shall have honorably completed three years of active Federal military service, or who after December 7, 1941, have or shall have honorably served one year of active Federal military service while the United States is at war, or who at the time of the termination of their active Federal military service have not previously been awarded a Good Conduct Medal and have completed a period of honorable service of less than three years if any part of that period of service has been performed after June 27, 1950: *Provided*, that no persons, except persons separated from the active Federal military service by reason of physical disability incurred in line of duty, shall be awarded such medal for a period of service of less than one year."

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
April 10, 1953.

[F. R. Doc. 53-3250; Filed, Apr. 10, 1953; 4:37 p. m.]

² 3 CFR, 1943 Cum. Supp., 6 F. R. 3209.

³ 3 CFR, 1943 Cum. Supp.; 8 F. R. 4225.

EXECUTIVE ORDER 10445

RESERVING CERTAIN LANDS ACQUIRED UNDER TITLE III OF THE BANKHEAD-JONES FARM TENANT ACT AS PARTS OF NATIONAL FORESTS

WHEREAS certain lands within the exterior boundaries of national forests have been acquired by the United States through exchange under authority of Title III of the Bankhead-Jones Farm Tenant Act, 50 Stat. 525, as amended (7 U. S. C. 1010-1013) and

WHEREAS it appears that all such lands are suitable for national-forest purposes, and that it would be in the public interest to reserve such lands as parts of the national forests within which they are located; and

WHEREAS it is contemplated that other lands within the exterior boundaries of national forests will be acquired from time to time by the United States through exchange under authority of the said Title III of the Bankhead-Jones Farm Tenant Act; and

WHEREAS it appears that it would be in the public interest to reserve all of such lands that are suitable for national-forest purposes as parts of the national forests within which they are located:

NOW THEREFORE, by virtue of the authority vested in me by section 24 of the act of March 3, 1891, 26 Stat. 1095, 1103, as amended (16 U. S. C. 471) the act of June 4, 1897, 30 Stat. 34, 36 (16 U. S. C. 473) and the said Title III of the Bankhead-Jones Farm Tenant Act, as amended, and upon recommendation of the Secretary of Agriculture, it is hereby ordered as follows:

Except as to lands within the States of Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Washington, and Wyoming, (1) all lands within the exterior boundaries of national forests which have been acquired through exchange by the United States under the authority of the said Title III of the Bankhead-Jones Farm Tenant Act, as amended, are hereby added to and reserved as parts of the respective national forests within which they are located; and (2) all lands within the exterior boundaries of national forests hereafter acquired by the United States through exchange under such authority shall, upon determination by the De-

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(Department Circular No. 750, Revised) If such bond is in order for payment by the paying agent, the owner or coowner, upon establishing his identity to the satisfaction of the paying agent and upon signing the request for payment and adding his home or business address, may receive immediate payment at the appropriate redemption value, as provided in §§ 315.22 and 315.23. Even though the request for payment has been signed, or signed and certified prior to the presentation of the bond, nevertheless the paying agent is required to establish to its satisfaction the identity of the owner or coowner requesting payment and such paying agent may require the owner or coowner to sign again the request for payment. No charge will be made to the owner. This procedure is authorized notwithstanding the provisions of any Treasury Department circulars offering the bonds for sale and notwithstanding any instructions which may be printed on the bond and is optional with individual owners. This procedure is not applicable to deceased owner cases or other cases in which documentary evidence is required or to partial redemption cases.

Compliance with the notice, public procedure, and effective date requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 60 Stat. 237) is found to be impracticable with respect to these amendments. They are matters of fiscal policy and it was deemed inadvisable to make determinations with respect thereto at an earlier date.

(Sec. 22, 49 Stat. 41, as amended; 31 U. S. C. 757c)

[SEAL] G. M. HUMPHREY,
Secretary of the Treasury.

[F. R. Doc. 53-3181; Filed, Apr. 13, 1953; 8:51 a. m.]

**Chapter V—Foreign Assets Control,
Department of the Treasury**

**PART 500—FOREIGN ASSETS CONTROL
REGULATIONS**

MISCELLANEOUS AMENDMENTS

The Foreign Assets Control Regulations, 31 CFR 500.101-500.808, copies of which, as amended, are available on request from the Foreign Assets Control, Treasury Department, Washington 25, D. C. or the Federal Reserve Bank of New York, 33 Liberty St., New York 45, N. Y. are hereby amended as follows:

1. Section 500.201 (b) (1) is amended to read as follows:

§ 500.201 *Transactions involving designated foreign countries or their nationals; effective date.* * * *

(b) (1) All dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and

2. Section 500.204 is amended to read as follows:

§ 500.204 *Importation of and dealings in certain merchandise.* (a) Except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) be means of regulations, or rulings, instructions, licenses, or otherwise, no person subject to the jurisdiction of the United States may purchase, transport, import, or otherwise deal in or engage in any transaction with respect to any merchandise outside the United States if such merchandise is:

(1) Merchandise the country of origin of which is China (except Formosa) or North Korea. Articles which are the growth, produce, or manufacture of China (except Formosa) or North Korea shall be deemed for the purposes of this chapter to be merchandise whose country of origin is China (except Formosa) or North Korea notwithstanding that they may have been subjected to one or any combination of the following in another country: (i) Grading; (ii) testing; (iii) checking; (iv) shredding; (v) slicing; (vi) peeling or splitting; (vii) scraping; (viii) cleaning; (ix) washing; (x) soaking; (xi) drying; (xii)

cooling, chilling, or refrigerating; (xiii) roasting; (xiv) steaming; (xv) cooling; (xvi) curing; (xvii) combining of fur skins into plates; (xviii) blending; (xix) flavoring; (xx) preserving; (xxi) pickling; (xxii) smoking; (xxiii) dressing; (xxiv) salting; (xxv) dyeing; (xxvi) bleaching; (xxvii) tanning; (xxviii) packing; (xxix) canning; (xxx) labeling; (xxxi) carding; (xxxii) combing; (xxxiii) pressing; (xxxiv) any process similar to any of the foregoing. Any article wheresoever manufactured shall be deemed for the purposes of this chapter to be merchandise whose country of origin is China (except Formosa) or North Korea, if there shall have been added to such article any embroidery, needle point, petit point, lace, or any other article of adornment which is the product of China (except Formosa) or North Korea notwithstanding that such addition to the merchandise may have occurred in a country other than China (except Formosa) or North Korea.

(2) Merchandise specified in this subparagraph unless such merchandise is imported directly from a country named as excepted for that type of merchandise:

Type of merchandise	Exceptions
(i) All merchandise, not elsewhere specified in this paragraph, if prior to Dec. 17, 1950, imports thereof into the United States were chiefly of Chinese origin within the meaning of this chapter.	None.
(ii) Aniseed and aniseed oil.....	None.
(iii) Antiques, Chinese type (other than Chinese porcelain which qualifies within the provisions of par. 1811 of the Tariff Act of 1930 and which is decorated with the armorial bearings, crests, monograms, cyphers, or badges of European or American families or societies or bearing motifs based thereon, or with European or American political, memorial, or Masonic scenes or devices or with European or American figures, ships, or other scenes, or with motifs or inscriptions in English, Latin, or any other European language).	None.
(iv) Bamboo, split.....	None.
(v) Beverages, Chinese type.....	None.
(vi) Braids, straw.....	Italy, Japan.
(vii) Bristles, hog, Asiatic (other than Indian) including such bristles in knots or other processed condition.	None.
(viii) Bristles, hog, dyed, including such bristles in knots or other processed condition.	None.
(ix) Carpet wool, Tibetan type.....	None.
(x) Cashmere.....	Iran.
(xi) Cassia.....	Associated states of Cambodia, Laos and Vietnam (formerly known as Indochina), Indonesia.
(xii) Cassia oil.....	None.
(xiii) Drugs, Chinese type.....	None.
(xiv) Firecrackers.....	None.
(xv) Floor coverings, grass and straw, including coagras mats and squares.	Japan.
(xvi) Foodstuffs, Chinese type.....	None.
(xvii) Fur skins: Goat and kid.....	Argentina, Ethiopia (including Eritrea), Iran, Iraq.
Weasel.....	Canada.
(xviii) Gall nuts, including tannic acid.....	None.
(xix) Ginger root, candied or otherwise prepared or preserved.	None.
(xx) Hair, human: Raw, Asiatic.....	None.
Nets and netting.....	None.

RULES AND REGULATIONS

Type of merchandise	Exceptions
(xxi) Hats, unfinished:	
Manila Hemp (Abaca)-----	None.
Palm leaf-----	Mexico, Philippines.
Straw-----	Brazil, Dominican Republic, Italy, Japan, Philippines.
(This subdivision does not include hats of the following types: Lindu, Lintao, Macorra, Panama, Pandan, Raffia, Toquilla, and Yeddo.)	
(xxii) Medicines, prepared, Chinese type-----	None.
(xxiii) Menthol-----	None.
(xxiv) Musk-----	None.
(xxv) Sophora Japonica, including Rutin-----	None.
(xxvi) Tea, Chinese type-----	Formosa.
(xxvii) Tung oil-----	Argentina, Brazil, Paraguay.
(xxviii) Walnuts-----	France, Iran, Italy, Turkey.

(3) Merchandise specified in this subparagraph if such merchandise is located in or is transported from or through Hong Kong, Macao, or any country not in the authorized trade territory.

Type of Merchandise

- (i) Agar Agar.
- (ii) Antimony.
- (iii) Bamboo:
 - Bags, baskets and other manufactures excluding furniture.
 - Poles and sticks.
- (iv) Bismuth.
- (v) Camphor:
 - Natural.
 - Oil.
- (vi) Carpet wool.
- (vii) Carpets.
- (viii) Chinaware.
- (ix) Citronella oil.
- (x) Cotton manufactures:
 - Embroideries and laces.
 - Embroidered and lace articles.
 - Handkerchiefs.
 - Wearing apparel.
- (xi) Cotton waste.
- (xii) Earthenware.
- (xiii) Feathers and down, Asiatic.
- (xiv) Hair, animal.
- (xv) Hardwood manufactures, including furniture.
- (xvi) Hats, paper.
- (xvii) Hides, buffalo, including India water buffalo.
- (xviii) Ivory manufactures.
- (xix) Linen manufactures:
 - Handkerchiefs.
 - Embroideries and laces.
 - Embroidered and lace articles.
 - Other articles excluding wearing apparel.
- (xx) Molybdenum.
- (xxi) Quicksilver.
- (xxii) Ramie.
- (xxiii) Rugs.
- (xxiv) Seagrass and straw manufactures, excluding floor covering.
- (xxv) Sesame, oil and seed.
- (xxvi) Shoes, leather-soled with nonleather uppers.
- (xxvii) Silk:
 - Raw and manufactures.
 - Waste.
- (xxviii) Skins, deer and goat.
- (xxix) Stones, semiprecious and manufactures thereof excluding jewelry.
- (xxx) Tapestries (including needlework tapestries).
- (xxxi) Tapioca and tapioca flour.
- (xxxii) Tin:
 - Alloys.
 - Bars, blocks and pigs.
 - Ore.
- (xxxiii) Tungsten ores and concentrates.

3. Section 500.409 is amended to read as follows:

§ 500.409 *Certain payments to designated foreign countries and nationals through third countries.* Section 500.201 prohibits any request or authorization

made by or on behalf of a bank or other person within the United States to a bank or other person outside of the United States as a result of which request or authorization such latter bank or person makes a payment or transfer of credit either directly or indirectly to a designated national.

4. Section 500.533 (b) (1) is amended to read as follows:

§ 500.533 *Transactions incident to exportations to designated countries.*

(b) (1) The financing of any transaction from any blocked account;

5. Section 500.536 is amended to read as follows:

§ 500.536 *Certain transactions with respect to merchandise affected by § 500.204.* (a) With respect to merchandise the importation of which is prohibited by § 500.204, all Customs transactions are authorized except the following:

- (1) Entry for consumption (including any appraisement entry or entry of goods imported in the mails, regardless of value, but excluding other informal entries);
- (2) Entry for immediate exportation;
- (3) Entry for transportation and exportation;
- (4) Withdrawal from warehouse;
- (5) Transfer or withdrawal from a foreign-trade zone; or
- (6) Manipulation or manufacture in a warehouse or in a foreign-trade zone.

(b) Paragraph (a) of this section is intended solely to allow certain restricted disposition of merchandise which is imported without proper authorization. Paragraph (a) of this section does not authorize the purchase or importation of any merchandise.

(c) The purchase outside the United States for importation into the United States of merchandise specified in § 500.204 (other than merchandise to which § 500.204 (a) (1) is applicable) and the importation of such merchandise into the United States (including transactions listed in paragraph (a) of this section) are authorized if the merchandise is shipped to the United States directly or on a through bill of lading from Hong Kong, Japan, Taiwan (Formosa) or the Republic of Korea, provided that there is presented to the collector of customs in connection with such importation the original of an appropriate certificate of origin as defined in paragraph (d) of this section.

(d) A certificate of origin is appropriate for the purposes of this section only if

(1) It is a certificate of origin which (i) In the case of merchandise shipped from Hong Kong is issued by the Hong Kong Department of Commerce and Industry and termed a "comprehensive" certificate of origin;

(ii) In the case of merchandise shipped from Japan is issued by the Japanese Ministry of International Trade and Industry;

(iii) In the case of merchandise shipped from Taiwan (Formosa) is issued by the Ministry of Economic Affairs of the Republic of China, and

(iv) In the case of merchandise shipped from South Korea is issued by the Ministry of Commerce and Industry of the Republic of Korea, and

(2) It bears a statement by the issuing agency referring to the Foreign Assets Control Regulations and stating that the certificate has been issued under procedures agreed upon with the United States Government.

6. Section 500.537 is amended to read as follows:

§ 500.537 *Financing of merchandise affected by § 500.204.* (a) To the extent that the financing of merchandise is prohibited by § 500.204, such financing by any bank is authorized except as provided in paragraph (b) of this section.

(b) This section does not authorize financing (including the opening, advising, or confirming of, or any transaction under, any letter of credit) in connection with:

(1) Any merchandise outside of the United States to which § 500.204 (a) (1) is applicable;

(2) The shipment of any merchandise to the United States unless

(i) The purchase of the merchandise is authorized by § 500.536 (c) and

(ii) The bank is advised in writing by the person seeking the financing of such merchandise that the commodity is one to which the certification procedure specified in § 500.536 (c) applies and that the purchase and importation of the merchandise are authorized by that paragraph; or

(3) The shipment of any merchandise from or through Hong Kong, Macao, or any country not in the authorized trade territory, except as provided in subparagraph (2) of this paragraph.

7. Section 500.808 is amended to read as follows:

§ 500.808 *Customs procedures; merchandise specified in § 500.204.* (a) With respect to merchandise specified in § 500.204, whether or not such merchandise has been imported into the United States, collectors of customs shall not accept or allow any:

(1) Entry for consumption (including any appraisement entry or entry of goods imported in the mails, regardless of value, but excluding other informal entries);

(2) Entry for immediate exportation;

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Transfer or withdrawal from a foreign-trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign-trade zone, until either:

(i) A specific license pursuant to this chapter is presented,

(ii) Instructions from the Foreign Assets Control, either directly or through the Federal Reserve Bank of New York, authorizing the transaction are received, or

(iii) The original of an appropriate certificate of origin as defined in § 500.536 (d) is presented.

(b) Whenever a specific license is presented to a collector of customs in accordance with this section, two additional legible copies of the entry, withdrawal or other appropriate document with respect to the merchandise involved shall be filed with the collector of customs at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the two additional copies, shall bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license shall be presented to the collector in respect of each such transaction and shall bear a notation in ink by the licensee or person presenting the license showing the description, quantity, and value of the merchandise to be entered, withdrawn or otherwise dealt with. This notation should be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its issuance. If the license in fact authorizes the entry, withdrawal or other transaction with regard to the merchandise the collector, or other authorized customs employee, shall verify the notation by signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person presenting it and the two additional copies of the entry, withdrawal or other appropriate document shall be forwarded by the collector to the Federal Reserve Bank of New York.

(c) (1) Whenever the original of an appropriate certificate of origin as defined in § 500.536 (d) is presented to a collector of customs in accordance with this section, two additional legible copies of the entry, withdrawal or other appropriate document with respect to the merchandise involved shall be filed with the collector of customs at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the two additional copies, shall bear plainly on its face the following statement: "This document is presented under the provisions of § 500.536 (c) of the Foreign Assets Control Regulations." The original of the certificate of origin shall not be returned to the person presenting it. It shall be securely attached to one of the two additional copies required by this subparagraph and both additional copies (one of which will have the certificate of origin attached) shall be promptly forwarded by the collector to the Federal Reserve Bank of New York.

(2) If the original of an appropriate certificate of origin is properly presented to a collector of customs with respect to a transaction which is the first of a series of transactions which may be allowed in connection therewith under subdivision (iii) of paragraph (a) (6) of this section (as, for example, where merchandise has been entered in a bonded warehouse and on appropriate certificate of origin is presented which relates to all of the merchandise entered therein but the importer desires to withdraw only part of the merchandise in the first transaction) the collector shall take up the original of the appropriate certificate of origin and promptly forward it to the Federal Reserve Bank of New York together with two additional copies of the withdrawal or other appropriate document relating to the transaction pursuant to subparagraph (1) of this paragraph. In addition, the collector shall endorse his pertinent records so as to record what merchandise is covered by the appropriate certificate of origin presented. The collector may thereafter allow subsequent authorized transactions without presentation of a further certificate of origin. In this case, however, the collector shall, with respect to each such subsequent transaction, demand two additional copies of each withdrawal or other appropriate document, which copies shall be promptly forwarded by the collector to the Federal Reserve Bank of New York with an endorsement thereon reading: "This document has been accepted pursuant to § 500.808 (c) (2) of the Foreign Assets Control Regulations."

(d) Whenever a person shall present an entry, withdrawal or other appropriate document affected by this section and shall assert that no specific Foreign Assets Control license or appropriate certificate of origin as defined in § 500.536 (d) is required in connection therewith, the collector of customs shall withhold action thereon and shall advise such person to communicate directly with the Federal Reserve Bank of New York to request that instructions be issued to the collector to authorize him to take action with regard thereto.

(Sec. 5, 40 Stat. 415, as amended; 50 U. S. C. App. 5; E. O. 9193, July 8, 1942, 7 F. R. 5205, 3 CFR, 1943 Cum Supp., E. O. 9369, Aug. 20, 1948, 13 F. R. 4891, 3 CFR, 1948 Supp.)

[SEAL] G. M. HUMPHREY,
Secretary of the Treasury.

[P. R. Doc. 53-3200; Filed, Apr. 13, 1953; 8:55 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

PART 578—DECORATIONS, MEDALS, RIBBONS, AND SIMILAR DEVICES

GOOD CONDUCT MEDAL

EDITORIAL NOTE: For order affecting the regulations in § 578.27, see Executive Order 10444, *supra*, amending Executive Order 8809 of June 28, 1941, establishing the Good Conduct Medal.

Chapter VII—Department of the Air Force

PART 878—DECORATIONS AND AWARDS

GOOD CONDUCT MEDAL

EDITORIAL NOTE: For order affecting the regulations in § 878.46, see Executive Order 10444, *supra*, amending Executive Order 8809 of June 28, 1941, establishing the Good Conduct Medal.

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans' Administration

PART 3—VETERANS CLAIMS

PART 4—DEPENDENTS AND BENEFICIARIES CLAIMS

MISCELLANEOUS AMENDMENTS

1. In Part 3, § 3.0 (a) is amended to read as follows:

§ 3.0 *World Wars I and II and service on or after June 27, 1950, and prior to the delimiting date contained in Public Law 28, 82d Congress.* (a) The beginning and termination dates of World War I are April 6, 1917, and November 11, 1918, but as to service in Russia the ending date is April 1, 1920. Except as to emergency officers retirement pay, reenlistment in the military or naval service on or after November 12, 1918, and before July 2, 1921 (August 28, 1919, as to service in the United States Coast Guard) where there was prior active service between April 6, 1917, and November 11, 1918, shall be considered as World War I service under the laws providing compensation or pension for World War I veterans and their dependents.

2. In § 3.1, paragraph (s) is amended to read as follows:

§ 3.1 *Persons included in the acts in addition to commissioned officers and enlisted men.* * * *

(s) *Coast Guard.* Active service rendered by officers and enlisted men of the United States Coast Guard on and after January 28, 1915, while serving under the jurisdiction of either the Treasury Department or the Navy Department, is compensable and pensionable on the same basis as active service in the Army, Air Force, Navy, or Marine Corps with the exception that reenlistments on and after November 12, 1918, and before August 28, 1919, where there was prior active service between April 6, 1917 and November 11, 1918, shall be considered World War I service. See § 3.0 (a) *Provided*, That no award of compensation under Public Law 182, 77th Congress, to former personnel of the United States Coast Guard who served on or after January 28, 1915, and prior to July 2, 1930, shall be effective prior to the date of receipt on or after July 18, 1941, of an acceptable application, formal or informal, as required in claims generally.

ANNEX 306

624 F.Supp.2d 272
United States District Court,
E.D. New York.

Susan WEINSTEIN, individually, as
co-administrator of the Estate of Ira
William Weinstein, and as natural
guardian of plaintiff David Weinstein,
et al., Plaintiffs–Judgment Creditors,
v.

The ISLAMIC REPUBLIC OF IRAN,
et al., Defendants–Judgment Debtors.

No. Misc. 02–237.

|
June 5, 2009.

Synopsis

Background: Judgment creditors moved for appointment of receiver, pursuant to federal and New York law, to sell property located in New York and owned by Iran's national bank, to satisfy judgment in underlying action against Republic of Iran, Iranian Ministry of Information, and several senior Iranian officials. Judgment debtors moved to dismiss.

Holdings: The District Court, Wexler, J., held that:

veil piercing authorized by Terrorism Risk Insurance Act (TRIA) did not violate Treaty of Amity between United States and Iran;

attachment and sale of property did not constitute taking under Fifth Amendment or Treaty of Amity; and

attachment and sale of property did not violate Algiers Accords.

Motion to appoint receiver granted and motion to dismiss denied.

Attorneys and Law Firms

*273 Jaroslawicz & Jaros, LLC, by Robert Tolchin, Esq., New York, NY, for Plaintiffs–Judgment Creditors.

Berliner, Corcoran & Rowe, L.L.P., by Thomas G. Corcoran and Laina C. Wilk, Esqs., Washington, D.C., Rosen Greenberg Blaha, LLP, by John N. Romans, Esq., New York, NY, for Defendants–Judgment Debtors.

MEMORANDUM AND ORDER

WEXLER, District Judge.

Plaintiffs-judgment creditors (“plaintiffs”) move for the appointment of a receiver pursuant to Federal Rule of Civil Procedure (“FRCP”) 69 and New York Civil Practice Law & Rules (“CPLR”) § 5228(a) to sell property located at 135 Puritan Avenue, Forest Hills, New York (the “Property”) owned by Bank Melli to satisfy their judgment in the underlying action against defendants-judgment debtors the Islamic Republic of Iran (“Iran”), the Iranian Ministry of Information, and three senior Iranian officials. Plaintiffs assert that the Property is subject to attachment under the Terrorism Risk Insurance Act of 2002 (“TRIA”), Pub. L. No. 107–297, 116 Stat. 2322, 28 U.S.C. § 1610 note. Bank Melli moves to dismiss this proceeding and to stay the appointment of a receiver pending resolution of its motion to dismiss. Plaintiffs oppose Bank Melli's motion to dismiss.¹ The Court, having granted Bank Melli's motion to stay, now denies Bank Melli's motion to dismiss and grants plaintiffs' motion to appoint a receiver.

I. BACKGROUND

For purposes of this proceeding, the relevant background has been summarized sufficiently in the Court's earlier decision in *Weinstein v. Islamic Republic of Iran*, 299 F.Supp.2d 63 (E.D.N.Y.2004) (“*Weinstein I*”). and will not be repeated here, except as necessary to this decision. In *Weinstein I*, this Court held that Bank Melli's assets were not, at that time, “blocked” under §§ 202 and 203 of the International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. §§ 1701, 1702, and, therefore, not subject to attachment under the TRIA. *Weinstein I*, 299 F.Supp.2d at 74–75. However, as plaintiffs assert, on October 25, 2007, the United States Department of Treasury, Office of Foreign Assets Control

("OFAC") designated Bank Melli as a proliferator of weapons of mass destruction under Executive Order 13,382. *See* Exec. Order 13,382, 70 Fed.Reg. 38,567 (June 28, 2005). Executive Order 13,382, which the President issued pursuant to the IEEPA, provides that "all property and interests in property" of persons listed in the order or subsequently designated by the Treasury Department "that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, are blocked and may not be transferred, paid, exported, withdrawn *274 or otherwise dealt in." *Id.* (emphasis added). As a result of Bank Melli's designation, according to plaintiffs, the Property is blocked and subject to attachment under the TRIA, which authorizes attachment of the "blocked assets" of not only a terrorist party, such as Iran, but the assets of its agencies and instrumentalities, such as Bank Melli. In this respect, TRIA § 201(a) provides:

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

TRIA § 201(a), 116 Stat. at 2337 (emphasis added). Thus, plaintiffs claim, they are entitled to enforce their judgment against the Property because the Property is a "blocked asset" under the TRIA and Bank Melli is an "agency or instrumentality" of Iran.

Although Bank Melli concedes that the Property is a "blocked asset" under the TRIA and that Bank Melli is an "agency or instrumentality" of Iran, it argues: (1) that the attachment and sale of the Property would violate the "Treaty of Amity" between the United States and Iran, *see* Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, Aug. 15, 1955, 8 U.S.T. 899, T.I.A.S. No. 3853, 1957 WL 52887 ("Treaty of Amity"); (2) that the attachment and sale would constitute a "taking" not for public purpose and without just compensation in violation of the Treaty of Amity and the Fifth Amendment of the United States Constitution; (3) that the Treasury Department's blocking of Bank Melli's assets, including the Property, violates the "Algiers Accords," *see* Declaration of the Government of the Democratic and

Popular Republic of Algeria, Jan. 19, 1981, *reprinted in* 20 I.L.M. 224 (1981) ("Algiers Accords"); and (4) that a Court order permitting the attachment and sale would put the United States in further breach of the Algiers Accords.

II. DISCUSSION

A. Bank Melli's Motion to Dismiss

1. Treaty of Amity Article III(1)

Bank Melli argues that the attachment and sale of the Property would violate Article III(1) of the Treaty of Amity, which provides:

Companies constituted under the applicable laws and regulations of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party. It is understood, however, that recognition of juridical status does not of itself confer rights upon companies to engage in the activities for which they are organized. As used in the present Treaty, 'companies' means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit.

Treaty of Amity art. III(1). According to Bank Melli, the Treaty of Amity "adopts an established principle of customary international law," namely, that the separate juridical status of an Iranian company must be respected. Memorandum of Law in Support of Bank Melli's Motion to Dismiss ("Bank Melli Mem."), at 15. In Bank *275 Melli's view, this principle prohibits the statutory veil-piercing authorized by TRIA § 201(a). This "presumption of separateness," according to Bank Melli, may only be overcome under circumstances specified in *First National City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 103 S.Ct. 2591, 77 L.Ed.2d 46 (1983) ("*Bancec*"). Under *Bancec*, to pierce the corporate veil distinguishing a foreign state and from its agencies and instrumentalities, a judgment-holder must show that the agency or instrumentality is "so extensively controlled by [the foreign state] that a relationship of principal and agent is created" or that recognizing the entity as separate "would work fraud or injustice." *See id.* In other words, under *Bancec*, plaintiffs cannot recover on their judgment against defendants by executing on Bank Melli's blocked assets unless they overcome the presumption that treats Iran's agencies and instrumentalities as entities juridically separate from Iran.

Plaintiffs argue that the veil piercing authorized by TRIA § 201(a) obviates application of *Bancec* and does not violate the Treaty of Amity. This Court agrees. Neither the language nor purpose of Article III(1) of the Treaty of Amity supports Bank Melli's position. As Bank Melli points out, the Treaty of Amity between Iran and the United States is one of a number of friendship, commerce, and navigation ("FCN") treaties negotiated by the United States following WWII. Bank Melli Mem. at 3. As plaintiffs point out, "most if not all of these FCN treaties contain [corporation] provisions substantively identical to Article III(1)." Plaintiff–Judgment Creditor's Memorandum in Opposition to Bank Melli's Motion to Dismiss and Reply in Further Support of Motion for Appointment of a Receiver Pursuant to CPLR § 5228(a), at 7–9 (citing treaties). As the Supreme Court has recognized, "the primary purpose of the corporation provisions of the Treaties was to give corporations of each signatory legal status in the territory of the other party, and to allow them to conduct business in the other country on a comparable basis with domestic firms." *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185–86, 102 S.Ct. 2374, 72 L.Ed.2d 765 (1982). Indeed, "the purpose of the Treaties was not to give foreign corporations greater rights than domestic companies, but instead to assure them the right to conduct business on an equal basis without suffering discrimination based on their alienage." *Id.* at 187–88, 102 S.Ct. 2374. There is nothing in the language or purpose of Article III(1) of the Treaty of Amity that precludes the veil-piercing authorized by TRIA § 201(a).

In any event, to the extent that TRIA § 201(a) may conflict with Article III(1) of the Treaty of Amity, the TRIA would "trump" the Treaty of Amity. See *United States v. Yousef*, 327 F.3d 56, 110 (2d Cir.2003) (recognizing Supreme Court holdings that subsequent "legislative acts trump treaty-made international law"). Indeed, the Supreme Court has held explicitly that "when a statute which is subsequent in time [to a treaty] is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null." *Breard v. Greene*, 523 U.S. 371, 376, 118 S.Ct. 1352, 140 L.Ed.2d 529 (1998) (internal quotations omitted); see also *Whitney v. Robertson*, 124 U.S. 190, 194, 8 S.Ct. 456, 31 L.Ed. 386 (1888) (holding that if treaty and federal statute conflict, "the one last in date will control the other").

As for the applicability of *Bancec*, Judge Victor Marrero of the United States District Court for the Southern District of New York, in a persuasive analysis, concluded that the plain language and legislative history of TRIA §

201(a) demonstrate a clear expression to make agencies and *276 instrumentalities substantively liable for the debts of their related foreign governments, overriding the *Bancec* presumption of independent status for the agencies and instrumentalities of terrorist parties. See *Weininger v. Castro*, 462 F.Supp.2d 457, 484–87 (S.D.N.Y.2006). For the same reasons, this Court concludes that TRIA § 201(a) obviates the application of *Bancec* to a determination of whether the blocked assets of Bank Melli (admittedly an agency or instrumentality of a terrorist party) are available satisfy the judgment against defendants (terrorist parties). That there was no FCN treaty at issue in *Weininger* (Cuba does not have such treaty with the United States) is not significant, given this Court's determination that Article III(1) of the Treaty of Amity does not preclude the veil piercing authorized by TRIA § 201(a).

Accordingly, this ground for dismissal is rejected.

2. Treaty of Amity Article IV(2) and the Fifth Amendment

Bank Melli further argues that the attachment and sale would constitute a "taking" not for public purpose and without just compensation in violation of Article IV(2) of the Treaty of Amity and the Fifth Amendment of the United States Constitution. Article IV(2) of the Treaty of Amity provides, in relevant part: "Property of nationals and companies of either High Contracting Party ... shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation." Treaty of Amity art. IV(2). The Fifth Amendment prohibits the taking of "private property ... for public use, without just compensation." U.S. Const. amend. V.

The parties primarily dispute whether there is a "taking" for Fifth Amendment purposes. Plaintiffs rely on the decision in *Paradissiotis v. United States*, 304 F.3d 1271 (Fed.Cir.2002), for their argument that there is no "taking" of Bank Melli's Property under the circumstances. In that case, the plaintiff, Paradissiotis, was a Cypriot national with close affiliations to the government of Libya. Based on those affiliations, OFAC listed him as a "Specially Designated National" under OFAC's "Libyan Sanctions Regulations." As a result of that designation, Paradissiotis was treated "as an agent of the government of Libya" and his assets within the United States were "frozen." *Id.* at 1273. Among Paradissiotis's frozen assets in the United States were stock options in a Delaware corporation. Due to the blocking order, and OFAC's denial of his requests for a license to sell or exercise his stock options, Paradissiotis was unable to sell or exercise the

stock options. Eventually those options expired and became worthless. Paradissiotis brought suit in the Court of Federal Claims against the United States, asserting that the freezing of his assets and the destruction of the value of his stock options was an unconstitutional “taking.”² The Court of Federal Claims rejected this argument, and the Federal Circuit affirmed, stating:

On several occasions, this court has addressed Fifth Amendment takings claims raised by persons or entities that have been adversely affected by actions *277 taken for national security reasons to freeze the assets of, or prohibit transactions by, foreign entities, and on each occasion we have held that the actions have not violated the Takings Clause. With specific reference to the Libyan Sanctions Regulations, we have held that those regulations substantially advance the national security of the United States and that the frustration of contract rights resulting from the application of those regulations does not constitute a Fifth Amendment taking.

The principle underlying those decisions was articulated by the Supreme Court in the *Legal Tender Cases* (*Knox v. Lee*), 79 U.S. (12 Wall.) 457, 551, 20 L.Ed. 287 (1870), where the Court explained:

A new tariff, an embargo, a draft, or a war may inevitably bring upon individuals great losses; may, indeed, render valuable property almost valueless. They may destroy the worth of contracts. But whoever supposed that, because of this, a tariff could not be changed, or a non-intercourse act, or an embargo be enacted, or a war be declared? ... [W]as it ever imagined this was taking private property without compensation or without due process of law?

While takings law has changed significantly since those words were written, the language used by the Supreme Court has often been quoted, and the principle remains sound. Thus, valid regulatory measures taken to serve substantial national security interests may adversely affect individual contract-based interests and expectations, but those effects have not been recognized as compensable takings for Fifth Amendment purposes. As applied to economic sanctions such as orders blocking transactions and freezing assets, that principle disposes of any suggestion that the United States could freeze Libyan assets in this country only if it were prepared to pay the cost of any losses resulting from the

freeze. Economic sanctions would hardly be sanctions if the foreign targets of the sanctions could simply stand in line to be compensated for the losses those sanctions caused them.

Paradissiotis, 304 F.3d. at 1274–75 (citations omitted).

Moreover, the Federal Circuit noted that Paradissiotis's loss of the stock options was the entirely foreseeable result of his own voluntary conduct:

Mr. Paradissiotis's stock options were in no jeopardy until 1990, when he took the step that ultimately resulted in his loss—serving as a director of a Libyan-controlled corporation. At that time, the consequences of his conduct were entirely foreseeable. The Libyan Sanctions Regulations had been in effect for four years, it was clear that his position made him subject to those regulations, and it was clear that exercising his stock options would be a prohibited transaction under the regulations. The pertinent date for considering Mr. Paradissiotis's expectations was 1990, when he took the step that subjected him to regulations that otherwise would have had no effect on him. As of that date, he had clear notice of what the consequences of his actions would be. Mr. Paradissiotis took the risk—a big risk, in light of the high visibility of the Libyan sanctions regime—that his involvement with a Libyan-controlled corporation would result in loss of access to his United States assets. The fact that his risk-taking turned out badly for him does not render it a taking in violation of the Fifth Amendment.

*278 *Paradissiotis*, 304 F.3d. at 1276 (citation omitted).

This Court agrees with plaintiffs that, based on the reasoning in *Paradissiotis*, the blocking and attachment of the Property in the circumstances presented here does not constitute a “taking” of Bank Melli's assets under the Fifth Amendment. As plaintiffs argue, Bank Melli's property in the United States was placed in jeopardy because the bank itself acted to proliferate weapons of mass destruction, which in turn lead to its designation and the blocking of its assets—a designation it does not challenge here. Like Paradissiotis, Bank Melli had “clear notice of what the consequences of [its] actions would be”—i.e., designation and the blocking of its assets, thereby subjecting its assets to execution under the TRIA. Indeed, since enactment of the TRIA in 2002, one of the risks and consequences of a designation under IEEPA is that the designated entity's assets will be subject to execution under the TRIA. Bank Melli presumably knew this well, since it was subject to TRIA litigation in this Court shortly after the TRIA was passed. *See Weinstein I*, 299 F.Supp.2d 63. Bank Melli took the risks that its involvement

with Iran's proliferation of weapons of mass destruction would result in the very consequences it now faces under the Iranian sanctions programs. That those consequences may have led to the attachment of its Property—a blocked asset—does not make it a taking under the Fifth Amendment. *See Paradissiotis*, 304 F.3d. at 1276 (“The fact that his risk-taking turned out badly for him does not render it a taking in violation of the Fifth Amendment.”). For similar reasons, there is no “taking” under the Treaty of Amity.

Accordingly, this ground for dismissal is rejected.³

3. *Algiers Accords*

Bank Melli also argues that the blocking of the Property violates the Algiers Accords. As detailed in *Weinstein I*, on November 14, 1979, President Carter issued Executive Order 12,170 in response to Iran's seizure of the U.S. Embassy in Tehran, Iran and the resulting hostage crisis. In Executive Order 12,170, the President directed:

I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.

Exec. Order 12,170, 44 Fed. Reg. 65,729 (Nov. 14, 1979). Eventually, on January 19, 1981, the United States and Iran, through the efforts of the government of Algeria, reached an agreement, commonly known as the Algiers Accords, ending the hostage crisis. Under the Algiers Accords, the United States agreed, *inter alia*, to “restore the financial position of Iran, insofar as possible, to that which existed prior to November 14, 1979,” and to “commit itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction.” Algiers Accords, 20 I.L.M. at 224. The United States further agreed (with some exceptions) to “arrange, subject *279 to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad.” *Id.* at 227. As further detailed in *Weinstein I*, pursuant to the Algiers Accords, most Iranian assets were unblocked. *See Weinstein I*, 299 F.Supp.2d at 67–68.

According to Bank Melli, the Property has been an asset within the United States prior to November 14, 1979, making the blocking by Executive Order 13,382 a breach of the Algiers Accords. This argument is without merit.

As plaintiffs argue, and as noted above, under the Algiers Accords, the United States had obligations, *inter alia*, to “ensure the mobility and free transfer of all Iranian assets within its jurisdiction,” to “commit itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction,” and to “arrange ... for the transfer to Iran of all Iranian properties which are located in the United States and abroad.” These obligations were fulfilled by the series of executive orders and regulations releasing restraints on Iranian property, presumably including the Property. *See Weinstein I*, 299 F.Supp.2d at 67–68. Presumably, Bank Melli was then free to use and dispose of the Property as it saw fit, at least until the Property was blocked on October 25, 2007. Bank Melli fails to explain how the United States has violated the Algiers Accords by subsequently imposing blocking sanctions on Iranian property (including property of Iran's agencies and instrumentalities) based on subsequent Iranian conduct (including the conduct of its agencies and instrumentalities) or how an order of this Court permitting the attachment and sale would put the United States in further breach of the Algiers Accords.

Accordingly, these grounds for dismissal are rejected.

Based on the Court's rejection of the grounds raised by Bank Melli, the motion to dismiss is denied.

B. *Plaintiffs' Motion to Appoint a Receiver*

As for plaintiffs' motion to appoint a receiver, the Court concludes that the Property is subject to attachment under the TRIA. Accordingly, plaintiffs' motion for the appointment of a receiver is granted.

III. CONCLUSION

For the above reasons. Bank Melli's motion to dismiss is denied and plaintiffs' motion to appoint a receiver is granted. Nevertheless, the Court stays this proceeding during the pendency of an appeal by Bank Melli, should it choose to appeal. The Clerk of Court is directed to administratively close this matter without prejudice to the right to reopen following the expiration of the time to appeal or, if an appeal is taken, upon the determination of the appeal.

SO ORDERED.

All Citations

624 F.Supp.2d 272

Footnotes

- 1 By letter (docket number 72), plaintiffs seek leave to submit a one-page surreply, purportedly to correct a misstatement in Bank Melli's reply papers. The request is granted. In addition, the Court notes that the United States Department of Justice has declined to make a submission on the issues raised by the parties, despite an invitation from the Court.
- 2 Paradissiotis originally brought an action in the United States District for the Southern District of Texas challenging the denial of a license to sell or exercise the options and asserting, *inter alia*, a Fifth Amendment takings claim. *Paradissiotis*, 304 F.3d. at 1273. The district court granted summary judgment dismissing his action, including his takings claim, just two days before the stock options expired. *Id.* The Fifth Circuit affirmed, except as to the takings claim, holding that the Court of Federal Claims had exclusive jurisdiction over that issue. *Id.* at 1273–74.
- 3 Bank Melli also argues that attachment and sale of the Property will violate Treaty of Amity Articles IV(1), IV(4), and V(1) by failing to treat "Iranian companies ... in the same manner as U.S. companies, that is without discrimination and without interference into their internal affairs and property interests." Bank Melli Mem. at 20. Bank Melli offers virtually no support for this argument. Accordingly, this ground for dismissal is rejected.

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ANNEX 307

299 F.Supp.2d 63
United States District Court,
E.D. New York.

Susan WEINSTEIN, individually, as Co-
Administrator of the Estate of Ira William
Weinstein, and as natural guardian of
plaintiff David Weinstein, et al., Plaintiffs,

v.

The ISLAMIC REPUBLIC
OF IRAN, et al., Defendants.

The Bank of New York, Petitioner,

v.

Susan Weinstein, individually, as
Co-Administrator of the Estate
of Ira William Weinstein, and as
natural guardian of plaintiff David
Weinstein, et al., Respondents.

No. Misc.02-237.

Jan. 13, 2004.

Synopsis

Background: American bank brought declaratory judgment action, seeking clarification of the rights to bank accounts belonging to three Iranian banks, which the widow and estate of an American citizen, killed in a suicide bombing in Jerusalem, sought to attach under Terrorism Risk Insurance Act (TRIA), after award of judgment, 184 F.Supp.2d 13, in their wrongful death action, under Foreign Sovereign Immunities Act (FSIA), against the Islamic Republic of Iran.

Holding: The District Court, Wexler, J., held that accounts were not “blocked assets” within meaning of TRIA.

Ordered accordingly.

Attorneys and Law Firms

*63 Pillsbury Winthrop LLP by: Leo T. Crowley and Daniel Z. Mollin, Esqs., New York City, for Petitioner Bank of New York.

Westerman Ball Ederer Miller & Sharfstein, LLP by: Jeffrey A. Miller and Philip J. Campisi, Esqs., New York City, for Plaintiffs-Respondents.

Patterson Belnap Webb & Tyler LLP by: John D. Winter, Esq., New York City, for Respondent Bank Melli Iran.

Law Offices of Steven W. Kerekes by: Steven W. Kerekes, Esq., Beverly Hills, CA, for Respondent Bank Saderat Iran.

John D. Ashcroft, Attorney General of the United States, United States Department of Justice by: Anthony J. Coppolino, Esq., Senior Trial Counsel, Civil Division, Washington, DC, for United States.

MEMORANDUM AND ORDER

WEXLER, District Judge.

Petitioner Bank of New York (“BNY”) brings this matter for determination of the respective rights of respondents in certain bank accounts maintained by BNY belonging to three of the respondents—Bank Melli Iran (“Bank Melli”), Bank Saderat Iran (“Bank Saderat”), and Bank Sepah Iran (“Bank Sepah”), all of which are Iranian *64 banks (collectively, the “Banks”). The remaining respondents are the judgment plaintiffs in the underlying action—decendent Ira Weinstein's widow, children and the co-administrators of his estate (the “plaintiffs”). Plaintiffs assert that the assets in the Banks' BNY accounts are subject to attachment under the Terrorism Risk Insurance Act of 2002 (“TRIA”) § 201 and available to satisfy plaintiffs' judgment in the underlying action against the defendants—the Islamic Republic of Iran (“Iran”), the Iranian Ministry of Information, and three senior Iranian officials (the “defendants”). The Banks argue that the assets in their BNY accounts are not subject to attachment under the TRIA.¹ The United States Department of Justice (“DOJ”) submits a statement of interest in this matter, with a declaration from the director of the Office of Foreign Assets Control (“OFAC”) of the United States Treasury Department (“Treasury Department”), asserting that the Banks' assets are not subject to attachment under the TRIA.

I. BACKGROUND

For purposes of this motion, the relevant background can be summarized as follows.

A. *The Underlying Action and Judgment*

On February 25, 1996, United States citizen and New York native Ira Weinstein was severely injured in a suicide bombing by the Hamas terrorist organization in Jerusalem, Israel. On April 13, 1996, Ira Weinstein died from those injuries.

On October 27, 2000, plaintiffs filed a civil action for wrongful death and related torts in the United States District Court for the District of Columbia against defendants under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605(a)(7).² On February 6, 2002, the district court entered judgment in plaintiffs' favor, finding that defendants had provided tens of millions of dollars to Hamas for the execution of terrorist attacks and had trained Hamas terrorists in bomb-making and other related tactics, and holding defendants liable to plaintiffs for approximately \$183.2 million, consisting of \$33.2 million in compensatory damages and \$150 million in punitive damages. *See Weinstein v. Islamic Republic of Iran*, 184 F.Supp.2d 13 (D.D.C.2002).

B. *The Restraining Notices*

On October 10, 2002, plaintiffs registered and filed their judgment in this district *65 and served an information subpoena with a restraining notice on BNY to aid in the enforcement of the judgment. The October restraining notice sought information about, and required BNY to restrain, the accounts of Iran and any instrumentality of Iran maintained at BNY. Pursuant to this notice, BNY identified and restrained three accounts, one held by each of the Banks. BNY notified the Banks of its action by letter and requested that they contact legal counsel.

The Banks purportedly threatened legal action against BNY if the restraints were not removed. In response, BNY released the restraints on the accounts. Plaintiffs contend they were never notified of the communications between BNY and the Banks, of the existence of the subject accounts, or of BNY's decision to lift the restraints without court order. In addition, plaintiffs assert that BNY never responded to plaintiffs' October 10 information subpoena.

On November 27, 2002, plaintiffs served a second information subpoena and restraining notice on BNY, following the November 26, 2002 passage of the TRIA, Pub.L. No. 107-297, § 201(a), 116 Stat. 2322 (Nov. 26, 2002). The restraining notice was similar in nature to the October restraining notice, differing only with respect to references to the TRIA. BNY again restrained the Banks' accounts and notified plaintiffs of its action, identifying the accounts and their balances as of December 3, 2002. In this respect, the account balances were approximately \$203,500 for Bank Melli; \$6,500 for Bank Saderat; and \$19,000 for Bank Sepah. After correspondence between plaintiffs and BNY, plaintiffs served another information subpoena on BNY, and BNY provided a response indicating that the account balances as of December 13, 2002 were approximately \$149,900 for Bank Melli; \$5,400 for Bank Saderat; and \$12,100 for Bank Sepah. According to plaintiffs, BNY acknowledged that all balance decreases between December 3rd and December 13th would be replaced.

C. *The TRIA and Iranian Sanctions Programs*

Section 201(a) of Title II of the TRIA provides:

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

TRIA § 201(a), 116 Stat. at 2337. The TRIA defines a "blocked asset" as "any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C.App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702)." *Id.* § 201(d)(2)(A), 116 Stat. at 2339.

As for the referenced provision of the Trading With the Enemy Act, 50 U.S.C.App. § 5(b), the parties agree that it does not apply to Iran; therefore, it does not apply to this matter.

On the other hand, §§ 202 and 203 of the International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. §§ 1701 and 1702, do apply to Iran. These sections grant the President of the United States, *66 *inter alia*, broad authority to regulate foreign assets in appropriate circumstances:

(a)(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States

50 U.S.C. § 1702(a)(1)(A), (B); *see also id.* § 1701(b) (“The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose.”).

In 1979, President Carter exercised the authority granted in the IEEPA against Iran. In this respect, on November 14, 1979, President Carter issued Executive Order (“EO”) 12170 pursuant to the authority provided in the IEEPA, 50 U.S.C. § 1701 *et seq.*, in response to Iran’s seizure of the U.S. Embassy in Tehran, Iran and the resulting hostage crisis. In EO 12170, the President directed:

I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.

EO 12170, 44 Fed.Reg. 65,729 (Nov. 14, 1979). The President also ordered the Secretary of the Treasury Department to carry out the provisions of the order. *Id.*

In response, the Treasury Department, through the OFAC, issued the Iranian Assets Control Regulations (“IACR”), 45 Fed.Reg. 24,432, (Apr. 9 1980), codified at 31 C.F.R. Part 535. IACR § 535.201, in particular, provides:

No property subject to the jurisdiction of the United States or which is in the possession of or control of persons subject to the jurisdiction of the United States in which on or after the effective date Iran has any interest of any nature whatsoever may be transferred, paid, exported, withdrawn or otherwise dealt in except as authorized.

31 C.F.R. § 535.201. According to the DOJ, approximately \$12 billion in Iranian government bank deposits, gold, and other property were blocked pursuant to EO 12170. Declaration of R. Richard Newcomb, Director, OFAC (“Newcomb Decl.”) ¶ 9.

*67 In April 1980, the President issued EO 12205, which prohibited specified financial transactions and the sale, supply or transfer by persons subject to United States jurisdiction of certain items to Iran. *See* EO 12205, 45 Fed.Reg. 24099 (April 7, 1980) (amended by EO 12211, 45 Fed.Reg. 26685 (Apr. 17, 1980)).

On January 19, 1981, the United States and Iran, through the efforts of the government of Algeria, reached an agreement, commonly known as the Algiers Accords, ending the crisis. Under the Algiers Accords, the United States agreed, *inter alia*, to “restore the financial position of Iran, insofar as possible, to that which existed prior to November 14, 1979,” and to “commit itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction.” Declaration of the Government of the Democratic and Popular Republic of Algeria. Jan. 19, 1981, para. A (Newcomb Decl., Exh. C).

Pursuant to the Algiers Accords, most Iranian assets were unblocked. The Algiers Accords, several executive orders, and OFAC regulations directed the marshaling and transfer

of the majority of once-blocked assets to Iran and to escrow accounts to facilitate settlement of claims involving Iran under a claims settlement process provided for in the Algiers Accords. Newcomb Decl. ¶ 12.³ One of these executive orders was EO 12282, entitled “Revocation of Prohibitions Against Transactions Involving Iran.” EO 12282, 46 Fed.Reg. 7925 (Jan. 19, 1981). EO 12282 explicitly revoked, *inter alia*, EO 12205 and EO 12211, but not EO 12170 nor IACR § 535.201, which the parties concede have never been expressly revoked or repealed. According to the DOJ, IACR § 535.201 remains in effect for two reasons: (1) some Iranian blocked property—primarily diplomatic and consular property—remains in the United States, subject to the blocking order and the IACR; and (2) the claims settlement process before the Iran–U.S. Claims Tribunal at The Hague, established under the Accords, has not been completed. Newcomb Decl. ¶ 13 & Exh. D (noting Treasury Department report to Congress that \$23.2 million in blocked Iranian assets remain in United States, primarily diplomatic and consular property).

To implement EO 12282, the OFAC repealed certain provisions of the IACR and promulgated a “general license” authorizing transactions with Iran, codified at 31 C.F.R. § 535.579.⁴ The general license provides:

(a) Transactions involving property in which Iran or an Iranian entity has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of any person subject to the jurisdiction of the *68 United States after January 19, 1981, or

(2) The interest in the property of Iran or an Iranian entity (e.g. exports consigned to Iran or an Iranian entity) arises after January 19, 1981.

31 C.F.R. § 535.579(a). According to the DOJ, transactions authorized by this general license were no longer subject to the blocking prohibition in IACR § 535.201. Indeed, § 535.502(c) provides that a “license authorizing a transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions in Subpart B from the transaction.” 31 C.F.R. § 535.502(c). Thus, the general license of § 535.579(a) removed the prohibition of § 535.201.

Beginning in October 1987, further sanctions programs were implemented regarding Iran. In this respect, on October 29, 1987, President Reagan issued EO 12613, pursuant to the

International Security and Development Cooperation Act (“ISDCA”), 22 U.S.C. § 2349aa–9, and 3 U.S.C. Title 301, prohibiting Iranian imports, with certain exceptions. *See* EO 12613, 52 Fed.Reg. 41940 (Oct. 29, 1987). EO 12613 specifies that it was issued solely in response to conditions occurring after the conclusion of the Algiers Accords. EO 12613 § 5. Pursuant to EO 12613, on November 17, 1987, OFAC issued the Iranian Transaction Regulations (“ITR”), 31 C.F.R. pt. 560, 52 Fed.Reg. 44076 (Nov. 17, 1987). The ITR prohibited, *inter alia*, the importation of goods and services from Iran and the exportation, reexportation, and sale or supply of goods, technology or services to Iran. *See* 31 C.F.R. §§ 560.201; 560.204.

On March 15, 1995, President Clinton issued EO 12957, declaring a national emergency regarding actions and policies of Iran and imposing additional sanctions against Iran, invoking the authority of, *inter alia*, the IEEPA. *See* EO 12957, 60 Fed.Reg. 14615 (Mar. 15, 1995). EO 12957 prohibited, *inter alia*, the entry into or performance by a United States person of a contract that includes responsibility for the development of petroleum resources located in Iran or a contract for the financing of the development of petroleum resources located in Iran. *Id.* § 1.

Then, on May 6, 1995, President Clinton issued EO 12959, expanding the scope of the sanctions imposed in EO 12613 and EO 12957, invoking the authority of, *inter alia*, the IEEPA and the ISDCA. *See* EO 12959, 60 Fed.Reg. 24757 (May 6, 1995). EO 12959 specifies that the measures were taken solely in response to conditions occurring after the conclusion of the Algiers Accords. *Id.* § 7. EO 12959, prohibited, *inter alia*, new investment in Iran or property owned or controlled by the government of Iran; import, export, and reexport trade with Iran, the government of Iran, or any entity owned or controlled by the government of Iran; and financing or brokering transactions by a United States person relating to goods or services of Iranian origin or owned or controlled by the government of Iran. *Id.* § 1.

On August 19, 1997, President Clinton issued EO 13059 to clarify and consolidate the provisions of EOs 12613, 12957, and 12959, once again invoking the authority of, *inter alia*, the IEEPA and the ISDCA. *See* EO 13059, 62 Fed.Reg.44531 (Aug. 19, 1997). EO 13059 specifically indicated that the measures were taken solely in response to conditions occurring after the conclusion of the Algiers Accords. *Id.* § 9. Thereafter, the ITR were amended to reflect the broader prohibitions imposed by EOs 12613,

12957, 12959, and 13059, regarding Iran and affecting goods, technology, services and related financial transactions, and new investment. See 31 C.F.R. §§ 560.204–208.

69 D. *The Banks and their BNY Accounts

As for the Banks and their BNY accounts, Bank Melli asserts that it is an Iranian corporation, founded in 1927 and organized under the banking laws of Iran. It claims to have more than 2,600 branches in Iran, as well as branches, representative offices and subsidiaries throughout the Middle East, Europe, Asia and New York. The government of Iran owns the stock of Bank Melli, although Bank Melli asserts that it is run and managed as an independent corporate entity by its board of directors, which appoints its officers and oversees its policies and affairs. Bank Melli has a chairman, who is also a managing director. The managing director and all but one of the other directors is appointed through a process culminating with the approval of Iran's "General Meeting of the Banks." Affidavit of Gholamreza Rahi ("Rahi Aff.") ¶ 7. Bank Melli further asserts that its activities consist primarily of loan and investment matters, letters of credit, credit collections, and payment order transactions. In the United States, however, Bank Melli claims to operate as a representative office under New York State banking law, performing only research about banking and financial issues, not commercial banking activities, such as accepting deposits and making loans. In this respect, Bank Melli asserts, its BNY account is "operated pursuant to a license issued by OFAC in 1996" and is "used to pay the operating expenses" of its representative office in New York. *Id.* ¶ 24 & Exh. K (copy of license). The specific license,⁵ issued by OFAC under the authority of, *inter alia*, the IEEPA and the ISDCA, and signed by Director Newcomb on March 29, 1996, authorizes Bank Melli's representative office "to conduct activities related to research in the United States" and "to act as a liaison with United States holders of correspondent bank accounts." *Id.* Exh. K. The restrained funds were wire transferred into Bank Melli's account on November 25, 2002. *Id.* ¶ 25.

As for Bank Saderat, it submits materials from an earlier, unrelated federal court action in the Southern District of California, *Flatow v. Islamic Republic of Iran*, No. 99-MC-250, indicating that it is an Iranian corporation, founded in 1952 and organized under the banking laws of Iran. These materials indicate that, as of 1999, Bank Saderat had more than 3,000 branches in Iran, as well as branches in the Middle East, Europe and New York. The government of Iran owns the stock of Bank Saderat,

although Bank Saderat asserts that its operations are governed by a board of directors, which appoints its officers and oversees its policies and affairs. Its managing director and other directors are appointed by the "General Assembly of Banks." Declaration of Mohammedreza Moghadasi, dated January 2000, ¶ 12 (see Letter Brief of Steven W. Kerekes, Counsel for Bank Saderat, Exh. E). Bank Saderat's activities purportedly consist primarily of loan and investment matters, letters of credit, credit collections, and payment order transactions. In the United States, however, Bank Saderat operates as a representative office under New York State banking law, meaning it does not provide any commercial banking activities, such as accepting deposits and making loans; rather, it provides information about Bank Saderat's international banking services. Prior to 1997, Bank Saderat purportedly had an agency license for the *70 New York branch which allowed it to perform commercial banking functions. As for its BNY account, Bank Saderat's account is also maintained under a specific license issued to it by OFAC on March 29, 1996, similar to the specific license issued to Bank Melli. See Affidavit of Jeffrey A. Miller ("Miller Aff."), Exh. L.

As for Bank Sepah's BNY account, that account is also maintained under a specific license issued to it by OFAC on March 29, 1996, similar to the specific licenses issued to Bank Melli and Bank Saderat. *Id.*

According to the OFAC, the Banks are subject to the Iranian sanctions programs discussed above. As the OFAC explains—and the parties do not dispute—when the November 1979 blocking order was issued, "the Banks operated as 'agencies' of their Iranian-headquartered offices, providing services to other banks and businesses, primarily relating to trade transactions." Newcomb Decl. ¶ 25. After the 1979 blocking, OFAC "issued specific licenses to the Banks authorizing them to provide very limited services, relating mostly to the processing of remittances to Iranian students in the United States." *Id.* As a result, "[a]ccounts of the Banks that existed in the United States prior to January 19, 1981 were exempted by specific license from the marshaling and transfer directives set forth in the Algiers Accords, executive orders and OFAC regulations that otherwise would have applied." *Id.* Following the Algiers Accords on January 18, 1981, OFAC repealed certain provisions of the IACR and promulgated the "general license" codified at 31 C.F.R. § 535.579, which removed the prohibition of § 535.201. *Id.* ¶ 26 (citing 31 C.F.R. § 535.502(c), providing that a "license authorizing a transaction otherwise prohibited under this part has the effect

of removing a prohibition or prohibitions in Subpart B from the transaction.”).

Furthermore, the OFAC explains, after EOs 12957 and 12959 were issued in March and May 1995, respectively, as discussed above, the Banks' activities were subject to significant new restrictions. The OFAC notes that it has determined that the Banks are “owned or controlled by the Government of Iran,” *id.* ¶ 28 & Exh. F (citing 31 C.F.R. Part 560, App. A), making them subject to the prohibitions of ITR §§ 560.201 and 560.204 regarding Iran and affecting goods, technology, services and related financial transactions, and new investment. *Id.* (citing 31 C.F.R. §§ 560.201; 560.204). Moreover, U.S. banks, such as BNY, that hold accounts in the name of Government of Iran-controlled entities, such as the Banks, purportedly “require specific licenses from OFAC to actively operate such accounts, as opposed to merely posting interest to them.” *Id.* (citing §§ 560.517; 560.319; and 560.320).

The OFAC maintains that the Banks' assets in the BNY accounts are not “blocked assets” under the TRIA. As the OFAC explains:

[T]he funds held by U.S. institutions, here, [BNY], are not blocked, or frozen. Significantly, [the Banks] have a one-time right to close their accounts and receive a lump sum transfer of those funds. *See* 31 C.F.R. § 560.517(a)(3). By contrast, in a blocking regime, neither the account-holder nor the bank that is holding the blocked account has a general authorization, such as the general license set forth at section 560.517(a)(3), to transfer, or otherwise deal in, those assets.

The effect of the prohibitions in sections 560.201 and 560.204 was to place the Banks in a position where they could not conduct banking operations or receive goods or services, of any kind, from a U.S. person, although U.S. depository institutions were authorized to *71 maintain the Banks' accounts, and pay interest to them. *See* section 560.517(a)(3). However, on June 13, 1995, OFAC granted the Banks specific licenses allowing them to cover overhead expenses and fulfill obligations in existence on June 6, 1995 (“1995 licenses”). The Banks were authorized to deposit funds and receive wire transfers to specific operating accounts in order to fulfill obligations in existence on June 6, 1995, but were not otherwise authorized to engage in banking business after June 6, 1995. For example, they were not allowed to process student remittances.

The Banks were given until March, 1996 to complete transactions relating to obligations that pre-dated the imposition of a broad trade embargo in May–June 1995. In March, 1996, OFAC issued a further round of specific licenses to the Banks (“1996 license”). The 1996 licenses required the closing of accounts authorized by the 1995 licenses and allowed the Banks to open specified new accounts for payroll and overhead expenses. The licenses limited the activities which [the Banks] may engage, namely, they can conduct research and act as a liaison with United States holders of correspondent bank accounts. In effect, the Banks are permitted to maintain skeletal presence in the United States as “representative” offices. (They had expressed to OFAC their concern that, if forced to close operations entirely under the ITR, they would lose their licenses to operate under New York banking law).

Although it is possible that the accounts licensed in 1995 included accounts that had once been subject to the 1979 blocking order, any accounts that the Iranian banks established after January 19, 1981, or funds credited to their accounts after January 19, 1981, were not blocked. *See* 31 C.F.R. § 535.579. That is, transactions relating to the Banks' accounts or funds regulated under the [ITR], 31 C.F.R. Part 560, but the accounts or funds are not seized or frozen. Indeed, as noted, the general license set forth at 31 C.F.R. § 560.517 authorizes the closure of the accounts at the request of the account party.

Newcomb Decl. ¶¶ 28–31 & Exhs. H and I (citations and paragraph numbers omitted).

II. DISCUSSION

The parties urge the Court to determine, on the record presented, whether the TRIA allows plaintiffs to enforce their judgment against the assets in the Banks' BNY accounts. Plaintiffs argue that they are entitled to enforce their judgment against these assets under the TRIA because the Banks' accounts hold “blocked assets” and each of the Banks is an “agency or instrumentality” of Iran. The Banks argue that the assets in their BNY accounts are not “blocked assets” and that, in any event, none of the Banks is an “agency or instrumentality” of Iran under the TRIA. The government supports the Banks' assertion that the Banks' assets in question are not “blocked assets” under the TRIA and, therefore, not subject to attachment under the TRIA.

A. Blocked Assets

The parties do not dispute that the Banks' BNY accounts are covered by the general license authorizing transactions with Iran under IACR § 535.579, as the assets undisputedly came within U.S. jurisdiction after January 19, 1981; and that the accounts are authorized by the specific licenses issued in March 1996. Rather, the parties dispute, *inter alia*, the effect of the general and specific licenses on the status of the assets in the Banks' accounts *72 for purposes of determining whether they are "blocked assets" under the TRIA.

Plaintiffs argue that all Iranian assets which entered U.S. jurisdiction on or after November 14, 1979 are "blocked assets," and that all Iranian assets "regulated" or "licensed" by the OFAC under the IEEPA are "blocked assets" under the TRIA. In plaintiffs' view, although most Iranian assets blocked in 1979 were returned to Iran following the Algiers Accord in 1981, "all remaining assets and any thereafter that became subject to U.S. jurisdiction continue to be 'blocked.' Iran's use of the assets is regulated and authorized by U.S. treasury license or licenses. The licenses do not eliminate the fact that the assets are blocked, [they] only regulate their use." Plaintiffs-Respondents' Supplemental Memorandum of Law ("Pls.' Supp. Mem."), at 2; *id.* at 8 ("The assets remain blocked, title remains with Iran, but the use of the assets are regulated and authorized by [IACR § 535.579]."); Plaintiffs-Respondents' Memorandum in Reply to the Statement of Interest of the United States ("Pls.' Reply Mem."), at 9 ("[A]ll assets subject to an IEEPA blocking order are 'blocked assets' within the meaning of TRIA, whether licensed or not." (emphasis omitted)). According to plaintiffs, the general license vitiates the "practical effect" of EO 12170 (*i.e.*, the 1979 blocking order) but not the "legal effect" of EO 12170 on the "legal status of Iranian assets in the United States." Pls.' Reply Mem. at 9 (emphasis omitted).

As for plaintiffs' argument that assets "regulated" or "licensed" by the OFAC under the IEEPA are "blocked assets," plaintiffs note that the ITR were promulgated in part under the IEEPA; that the OFAC defines "blocking" as a form of "controlling" assets; and that a "blocked account" is an "account with respect to which payments, transfers, withdrawals or other dealings may not be made except as licensed by OFAC." Plaintiffs-Respondents' Memorandum of Law Pursuant to CPLR § 5239 ("Pls.' Mem."), at 22-23 (quoting U.S. Treasury Dep't, *Foreign Assets Control Regulations for the Financial Community*, at 4 (Dec. 27, 2002)). It follows, plaintiffs reason, that "a 'blocked' account is an account *regulated* by OFAC" with transfers, withdrawals

and other dispositions carried out pursuant to an OFAC license. *Id.* at 23 (emphasis in original). According to plaintiffs, the ITR do not have any effect on EO 12170 (the 1979 blocking order) or IACR § 535.579 (the general license), but merely "limit the effect of the general license contained in § 535.579, by creating a new regimen to regulate transactions. The ITR operates in parallel to, and does not in any way effect [sic], the provisions of the IACR." Pls.' Supp. Mem. at 8.

Plaintiffs further claim that their interpretation of the TRIA is supported by FSIA § 1610(f)(1)(A). That provision was added to the FSIA in 1998 to authorize enforcement of a judgment against a terrorist state by attachment or execution of "any property with respect to which financial transactions are prohibited or regulated pursuant to ... sections 202 and 203 of the [IEEPA]" 28 U.S.C. § 1610(f)(1)(A). At the same time that provision was added to the FSIA, however, Congress authorized the President to waive the requirements of that provision; and the President immediately issued a waiver on the grounds that the provision "would impede the ability of the President to conduct foreign policy in the interest of national security and would, in particular, impede the effectiveness of such prohibitions and regulations upon financial transactions." See Presidential Determination No. 99-1, 63 Fed.Reg. 59201 (Oct. 21, 1998). The President issued a new waiver on October 28, 2000 as part of the "Victim's *73 of Trafficking and Violence Protection Act of 2000." See Presidential Determination No. 2001-03, 65 Fed.Reg. 66483 (Oct. 28, 2000).

Bank Melli argues, *inter alia*, that the blocking prohibition imposed by EO 12170 and IACR § 535.201 was removed on most Iranian assets pursuant to the Algiers Accords and relevant executive orders and OFAC regulations, including IACR § 535.579; that Bank Melli's account was never "blocked" under the IACR because the account was not opened until 1996 and the restrained funds were not placed in the account until November 2002; and that the ITR is not a "blocking program," as is the IACR, and therefore the ITR does not "block" or "freeze" assets.

The government disagrees with plaintiffs' arguments and largely agrees with Bank Melli's arguments. In the government's view, the accounts do not hold "blocked assets" because the accounts were established long after the 1979 blocking order (*i.e.*, EO 12170) and long after the general license in IACR § 535.579 removed the effect of that blocking order on funds entering the United States after January 19, 1981; and the regulations under which the Banks operate

their representative offices do not freeze or block assets, but expressly authorize the Banks to close the accounts at the request of the account holder. In addition, the government disagrees with plaintiffs' argument that assets "regulated" or "licensed" by the OFAC under the IEEPA are "blocked assets" as that term is clearly defined in the TRIA to mean an asset "seized or frozen."

Bank Saderat also argues that its BNY account does not hold "blocked assets," basing its argument on the grounds that a Senior Compliance Officer with the OFAC, in the *Flatow* case in February 2000, asserted that she was "not aware of any assets of Bank Saderat Iran in the United States that are currently treated by OFAC as blocked assets under Executive Order No. 12170 (November 14, 1979), or the Iranian Assets Control Regulations, 31 C.F.R. Part 535." Declaration of Lorraine B. Lawlor, Senior Compliance Officer, OFAC, dated February 10, 2000, ¶ 5 (see Letter Brief of Steven W. Kerekes, Counsel for Bank Saderat, Exh. A).

Bank Melli further argues that its BNY assets are expressly excluded from the definition of blocked assets by § 201(d)(2)(B)(i) of the TRIA. Section 201(d)(2)(B)(i) provides that the term "blocked assets" does not include property that

is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of such license has been specifically required by statute other than the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) or the United Nations Participation Act of 1945 (22 U.S.C. 287 *et seq.*).

TRIA § 201(d)(2)(B)(i), 116 Stat. at 2339–40. According to Bank Melli, this provision exempts the assets in its BNY account because that account is subject to a specific license issued under not only IEEPA but also ISDCA—a statute "other than" IEEPA. In response, plaintiffs argue that because some licensed assets are excluded by § 201(d)(2)(B)(i) from the definition of "blocked assets," all assets subject to a license under IEEPA—even if subject to a license issued under some other statute—fall outside the exclusion and within the category of "blocked assets." In the government's view, even though Congress excluded certain blocked property that has been licensed for final payment or transfer *74 under statutes other than IEEPA, that does not mean that all types of licensed property under IEEPA are blocked property. Statement of Interest of the United States ("Gov't's Statement"), at 24.

In determining whether the Banks' assets maintained at DNY are "blocked assets," the Court starts with the language of the statute. See *In re Edelman*, 295 F.3d 171, 177 (2d Cir.2002). As is relevant here, the TRIA defines a "blocked asset" as any asset "seized or frozen" by the United States under IEEPA §§ 202 and 203. Unfortunately, these terms are not further defined in the TRIA. And the terms "seized" and "frozen" do not appear in §§ 202 and 203 of the IEEPA, 50 U.S.C. §§ 1701 and 1702. According to plaintiffs, the Court should therefore resort to the legislative history of the statute for interpretation. In plaintiffs' view, the legislative history of the TRIA demonstrates that the term "blocked assets" under the TRIA is an "omnibus term encompassing all Iranian assets which have been blocked, frozen, seized, restricted or otherwise regulated by any proclamation, order, regulation or license issued pursuant to IEEPA." Pls.' Mem. at 21. In support of this interpretation, plaintiffs refer to, *inter alia*, the following statements by Senator Tom Harkin, a co-author of Title II of the TRIA:

[T]he term "blocked asset" has been broadly defined to include any asset of a terrorist party that has been seized or frozen by the United States in accordance with law. This definition includes any asset with respect to which financial transactions are prohibited or regulated by the U.S. Treasury under any blocking order under the Trading With the Enemy Act, the International Emergency Economic Powers Act, or any proclamation, order, regulation, or license.

Senate Proceedings and Debates of the 107th Congress, Second Session, 148 Cong. Rec. S11528 (daily ed. Nov. 19, 2002) (statement of Sen. Harkin).

Upon consideration, the Court rejects plaintiffs' arguments that all Iranian assets which entered U.S. jurisdiction after the 1979 blocking order, *i.e.*, EO 12170, are "blocked assets" within the meaning of the TRIA, and that the term "blocked assets" includes all assets "regulated" or "licensed" under IEEPA by OFAC. Although, as the parties agree, EO 12170 has not been revoked, the blocking prohibition imposed by that order was removed on most Iranian assets pursuant to the Algiers Accords and relevant executive orders and OFAC regulations, including IACR § 535.579, which removed the blocking prohibition on property entering into U.S. jurisdiction after January 19, 1981. Contrary to plaintiffs' argument that the general license merely authorized the use of such assets but did not change the status of those assets, § 535.502(c) specifically provides that the license "has the effect of removing a prohibition," *i.e.*, the blocking prohibition. See IACR § 535.502(c) (providing that a "license

authorizing a transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions in Subpart B from the transaction”). Thus, assets subject to the general license that entered into U.S. jurisdiction after January 19, 1981 are not necessarily “blocked.” Indeed, as the government points out, the general license allows the Banks to close their accounts and remove the assets from U.S. jurisdiction, *see* 31 C.F.R. § 560.517(a)(3).

Moreover, the Court does not agree with plaintiffs that the term “blocked assets,” as defined, must be construed as an “omnibus” term extending to all assets “regulated” or “licensed” by the OFAC under the *75 IEEPA. Plaintiffs’ interpretation of “blocked assets” ignores the limitation imposed by the definition itself. The TRIA limits the definition of “blocked assets” to those that are “seized or frozen” by the United States under specified statutes, one of which is the IEEPA. The IEEPA authorizes the president to take various actions regarding property in which a foreign country or person has an interest, including “investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit.” *See* 50 U.S.C. § 1702(a)(1)(B). Even before the phrase “block during the pendency of an investigation” was added to the IEEPA in the USA Patriot Act,⁶ the Supreme Court recognized that the President has the authority to issue blocking orders under the IEEPA. *See Dames & Moore v. Regan*, 453 U.S. 654, 673, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981); *Smith v. Federal Reserve Bank of New York*, 346 F.3d 264, 268 n. 2 (2d Cir.2003). Nevertheless, the term “block” is not defined; nor are the terms “seize” or “freeze.” “Blocking” is defined, however, by OFAC as a “freezing” of assets that imposes an “across-the-board prohibition against transfers or transactions of any kind with regard to the property.” U.S. Treasury Dep’t, *Foreign Assets Control Regulations for the Financial Community*, at 4 (Dec. 27, 2002). And while neither the parties nor the government point to an OFAC definition of the term “seize,” the Second Circuit, in construing the TRIA, recently observed that “[t]o seize or freeze assets transfers *possessory* interest in the property.” *Smith*, 346 F.3d at 272 (emphasis in original). Similarly, as used in the law, the word “seize,” in relevant context, means “to forcibly take possession of ... property.” *Black’s Law Dictionary* 1363 (7th ed.1999). Given that not every type of action authorized by the IEEPA necessarily involves a seizing or freezing of property, it follows that not every action regarding property under the authority of the IEEPA, including assets that may be “regulated” or “licensed,” results in the property being “blocked” under the TRIA. As noted, the term “blocked”

under the TRIA is specifically limited to assets that are “seized or frozen”—a limitation that this Court cannot ignore. *Cf. Smith*, 346 F.3d at 271–72 (concluding that “the term ‘blocked assets’ reaches broadly to include any property seized or frozen by the United States. But it does not reach so broadly as to encompass confiscated property. To seize or freeze assets transfers *possessory* interest in the property. But confiscation, pursuant to IEEPA § 203(a)(1)(C) [*i.e.*, 50 U.S.C. § 1702(a)(1)(C)], transfers *ownership* of terrorist property by vesting right, title, and interest as the President deems appropriate.” (citation omitted)).

Furthermore, plaintiffs’ reliance on FSIA § 1610(f)(1)(A) is misplaced, as that provision contains a notably different definition of attachable assets than specified in the TRIA. That provision, unlike the TRIA provision, clearly authorizes attachment or execution of property “regulated” under the IEEPA.

Moreover, although, as plaintiffs assert, there is legislative history to the TRIA indicating that the term “blocked asset” includes any asset “regulated” by the Treasury Department, the seemingly clear statutory text does not reasonably allow that broader interpretation, nor compel resort to legislative history for interpretation. *See West Virginia Univ. Hosps. Inc. v. Casey*, 499 U.S. 83, 98, 111 S.Ct. 1138, 113 L.Ed.2d 68 (1991); *In re Edelman*, 295 F.3d at 177.

*76 Consequently, the Court also rejects plaintiffs’ interpretation of the § 201(d)(2)(B)(i) exception, as that interpretation would necessarily require a broader definition of “blocked asset” than is provided. There is no indication in the TRIA, as the government argues, that this exception sweeps into the definition of “blocked assets” all licensed transactions, even as to property that has never been “seized or frozen.”

Plaintiffs have advised the Court that the Senate recently passed a proposed amendment to the TRIA on July 11, 2003, entitled “Clarification of Blocked Assets for Purposes of Terrorism Risk Insurance Act of 2002,” 149 Cong. Rec. S9256. *See* Letter from Jeffrey A. Miller, Esq., Counsel for Plaintiffs, dated July 30, 2003. Under the proposed amendment, “blocked asset” is defined to further include “any asset or property that in any respect is subject to any prohibition, restriction, regulation or license pursuant to chapter V of title 31, Code of Federal Regulations (including parts 515, 535, 550, 560, 575, 595, 596, and 597 of such title), or any other asset or property of a terrorist party.” According

to plaintiffs, this amendment “clarifies” the existing meaning of the term “blocked asset.” In response, Bank Melli disputes the significance of the proposed amendment, arguing, *inter alia*, that the proposal, in fact, recognizes that the current definition does not equate “regulated” assets with “blocked assets,” and urging the Court to decide the matter based on the law as it presently exists, not a proposal. *See* Letter from John D. Winter, Esq., Counsel for Bank Melli, dated August 4, 2003.

Despite plaintiffs’ arguments, this proposed amendment would add to, not merely clarify, the current definition, as it would significantly alter the limiting language in the present law. Moreover, as Bank Melli urges, the Court is obliged to decide this matter on the law as it presently exists, not upon a proposed amendment. *See Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 227, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1985); *Walsche v. First Investors Corp.*, 981 F.2d 649, 653 (2d Cir.1992).

B. Agency or Instrumentality

Footnotes

- 1 Bank Sepah has not appeared in this matter. However, the parties provide no basis for distinguishing between the Banks. Accordingly, the Court will treat the Banks similarly for purposes of discussion.
- 2 Section 1605(a)(7) provides that

a foreign state shall not be immune from the jurisdiction of courts of the United States or of the States 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, aircraft sabotage, hostage taking, or the provision of material support or resources ... for such an act if such act or provision of material support 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. § 1605(a)(7).

This provision was designed to permit United States citizens to bring civil actions against specifically-designated foreign state sponsors of terrorism, including Iran. *See, e.g., Sutherland v. Islamic Republic of Iran*, 151 F.Supp.2d 27 (D.D.C.2001) (holding Iran liable for American kidnaped and tortured by Hizbollah); *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1 (D.D.C.2000) (holding Iran liable for death of American students in bombing by Hamas); *Flatow v. Islamic Republic of Iran* 999 F.Supp. 1 (D.D.C.1998) (holding Iran liable for death of American student in bombing by Islamic Jihad).
- 3 For instance, EOs 12276 and 12277 directed establishment of the escrow accounts and transfer of blocked Iranian government assets to the escrow accounts. *See* EO 12276, 46 Fed.Reg. 7913 (Jan. 19, 1981) (entitled, “Direction Relating to Establishment of Escrow Accounts”); EO 12277, 46 Fed.Reg. 7915 (Jan. 19, 1981) (entitled, “Direction to Transfer Iranian Government Assets”); *see also* EO 12278, 46 Fed.Reg. 7917 (Jan. 19, 1981) (entitled, “Direction to Transfer Iranian Government Assets Overseas”); EO 12279, 46 Fed.Reg. 7919 (Jan. 19, 1981) (entitled, “Direction to Transfer Iranian Government Assets Held by Domestic Banks”); EO 12280, 46 Fed.Reg. 7921 (Jan. 19, 1981) (entitled, “Direction to Transfer Iranian Government Financial Assets Held by Non-Banking Institutions”).
- 4 OFAC defines a “general license” as “[a] regulatory provision authorizing certain transactions without the filing of an application with OFAC.” U.S. Treasury Dep’t, *Foreign Assets Control Regulations for the Financial Community*, at 4 (Dec. 27, 2002).

Given the Court’s conclusion that the Banks’ assets at issue are not “blocked assets” under the TRIA, the Court need not determine whether the Banks are “agencies or instrumentalities” for purposes of attachment under the TRIA.⁷

III. CONCLUSION

For the above reasons, the Court concludes that the Banks’ assets in their BNY accounts are not subject to attachment under the TRIA. The Court will contact the parties regarding submission of an appropriate order, including a provision for a stay pending any appeal.

SO ORDERED.

All Citations

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- 5 OFAC defines a "specific license" as "[a] permit issued by OFAC on a case-by-case basis to a specific ... company allowing an activity that would otherwise be prohibited by the embargo or sanctions program." U.S. Treasury Dep't, *Foreign Assets Control Regulations for the Financial Community* at 4 (Dec. 27, 2002).
- 6 See Pub. L No. 107-56, § 106, 115 Stat. 272, 277 (Oct. 26, 2001).
- 7 In addition, given the Court's determination that the Banks' assets at issue are not subject to attachment under the TRIA, the Court need not reach Bank Melli's additional argument that the second restraining notice is void because it was served without court order.

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ANNEX 308

609 F.3d 43
United States Court of Appeals,
Second Circuit.

Susan WEINSTEIN, individually as
Co–Administrator of the Estate of Ira William
Weinstein, and as Natural Guardian of plaintiff
David Weinstein, Jeffrey A. Miller, as
Co–Administrator of the Estate of Ira William
Weinstein, Joseph Weinstein, Jennifer Weinstein
Hazi & David Weinstein, Jennifer Weinstein Hazi,
Plaintiffs–Appellees,
Bank of New York, Plaintiff,

v.

ISLAMIC REPUBLIC OF IRAN, Iranian Ministry
of Information and Security, Ayatollah Ali Hoseini
Khamenei, Ali Akbar Hashemi–Rafsanjani, Ali
Fallahian–Khuzestani, Defendants,
Bank Melli Iran New York Representative Office,
Respondent–Appellant,
Bank Saderat Iran, New York Representative
Office, Bank Sepah Iran, New York Representative
Office, Respondents.*

Docket No. 09–3034–CV.

Argued: Feb. 17, 2010.

Decided: June 15, 2010.

Synopsis

Background: Following entry of default judgment, 184 F.Supp.2d 13, for estate and survivors of American citizen killed in a terrorist bombing in Israel, in their action, under the terrorism exception to the Foreign Sovereign Immunities Act (FSIA), against, inter alia, the Islamic Republic of Iran, plaintiffs, as judgment creditors, moved for appointment, under federal and New York law, of receiver to sell New York property owned by an Iranian bank. Bank moved to dismiss. The United States District Court for the Eastern District of New York, Leonard D. Wexler, J., 624 F.Supp.2d 272, granted creditors' motion, and bank appealed.

Holdings: The Court of Appeals, Jed S. Rakoff, United States District Judge sitting by designation, held that:

Court had jurisdiction to entertain judgment creditors' motion;

appointment of receiver did not violate separation of powers principles;

appointment of receiver did not violate Treaty of Amity between United States and Iran;

attachment and sale of bank property did not constitute a taking under either Fifth Amendment or the Treaty of Amity; and

attachment and sale of bank property did not violate agreement between United States and Iran by which release of hostages taken by Iran was secured.

Affirmed.

Attorneys and Law Firms

*46 Laina C. Lopez, Berliner, Corcoran & Rowe, LLP, Washington, DC (Thomas G. Corcoran, Jr., Berliner, Corcoran & Rowe, LLP, Washington, DC, John N. Romans, Law Office of John N. Romans, Mamaroneck, NY, on the brief), for Respondent–Appellant.

Robert J. Tolchin, Jaroslawicz & Jaros, New York, NY, for Plaintiff–Appellee.

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

Opinion

RAKOFF, District Judge.

On February 25, 1996, Ira Weinstein, a United States citizen and resident of New York, was severely injured during a suicide bombing in Jerusalem organized by the terrorist organization Hamas. On April 13, 1996, Weinstein died from those injuries. See *Weinstein v. Islamic Rep. of Iran*, 184 F.Supp.2d 13, 16–17 (D.D.C.2002). On October 27, 2000, his widow, another administrator of his estate, and his children brought suit for wrongful death and other torts against the Islamic Republic of Iran (“Iran”), the Iranian Ministry of Information and Security, and three Iranian officials, alleging that these defendants had provided substantial monetary support for Hamas’s terrorist attacks. See *id.* at 21–22. After defendants failed to appear, the district court determined that the plaintiffs had established their “claim or right to relief by evidence satisfactory to the court,” 28 U.S.C. § 1608(e), and entered default judgment for

plaintiffs in the amount of approximately \$183,200,000. *See id.* at 16, 22–26.

Plaintiffs registered the judgment in the U.S. District Court for the Eastern District of New York on October 8, 2002, and served an information subpoena on Bank of New York that eventually led to the identification of respondent Bank Melli Iran (“Bank Melli”) as a possible instrumentality of the Iranian state. *See Weinstein v. Islamic Rep. of Iran*, 299 F.Supp.2d 63, 64–65 (E.D.N.Y.2004). The district court found it unnecessary to determine whether Bank Melli was an “agency or instrumentality” for purposes of the Terrorism Risk Insurance Act of 2002 (“TRIA”) because the court determined that Bank Melli’s accounts at the Bank of New York were unattachable. *Id.* at 74–76. However, on October 31, 2007, one of the plaintiff-judgment creditors, Jennifer Weinstein Hazi (“Hazi”), filed a motion in the Eastern District proceeding, seeking appointment of a receiver (pursuant to Rule 69 of the Federal Rules of Civil Procedure and Section 5228(a) of the New York Civil Practice Law and Rules), to sell real property owned by respondent Bank Melli in Forest Hills, Queens, which plaintiff sought to attach and sell in partial satisfaction of the judgment against the defendants. Hazi argued that the Forest Hills property was now subject to attachment pursuant to the TRIA, § 201(a), Pub.L. No. 107–297, 116 Stat. 2322, 2337, codified at 28 U.S.C. § 1610 note, because on October 25, 2007, Bank Melli had been designated by the United States Department of Treasury, Office of Foreign Assets Control (“OFAC”) as a “proliferat[or] of weapons of mass destruction,” and its assets *47 had been frozen. *See Executive Order 13,382*, 70 Fed.Reg. 38,567 (June 28, 2005).¹

On February 21, 2008, Bank Melli moved to dismiss the proceeding against it and to stay the appointment of a receiver pending resolution of its motion to dismiss. In its motion to dismiss, Bank Melli argued, *inter alia*, that attachment and sale of the Forest Hills property would violate the Treaty of Amity between the United States and Iran, that attachment and sale would constitute a taking not for a public purpose and without just compensation in violation of the Takings Clause of both the Fifth Amendment of the United States Constitution and Article IV.2 of the Treaty of Amity, and that the blocking of its assets violated the so-called “Algiers Accords” and thus attachment and sale would constitute a further violation of the Accords. On June 5, 2009, after receiving submissions from both Hazi and Bank Melli,² the district court (Wexler, *Judge*) denied Bank Melli’s motion to dismiss and granted Hazi’s motion to appoint a receiver, but stayed the proceedings pending this appeal.

DISCUSSION

A. JURISDICTION

On this appeal, Bank Melli argues for the first time that the district court lacked ancillary jurisdiction to entertain Hazi’s motion to appoint a receiver. According to Bank Melli, Hazi’s motion was not simply a proceeding to collect on a debtor’s assets, but rather “an independent controversy with a new party in an effort to shift liability,” *Epperson v. Entm’t Express, Inc.*, 242 F.3d 100, 106 (2d Cir.2001); *see also Peacock v. Thomas*, 516 U.S. 349, 357, 116 S.Ct. 862, 133 L.Ed.2d 817 (1996), for which TRIA § 201(a) did not provide an independent source of jurisdiction. Although not raised below, subject matter jurisdiction may be raised at any point, *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 576, 124 S.Ct. 1920, 158 L.Ed.2d 866 (2004); *Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 250 (2d Cir.2008), and so the Court must address this threshold matter.³

The Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. § 1602 *et seq.*, provides the exclusive basis for subject matter jurisdiction over all civil actions against foreign state defendants, and therefore for a court to exercise subject matter jurisdiction over a defendant the action must fall within one of the FSIA’s exceptions to foreign sovereign immunity. *See, e.g., Saudi Arabia v. Nelson*, 507 U.S. 349, 351, 113 S.Ct. 1471, 123 L.Ed.2d 47 (1993); *Argentine Rep. v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434–35, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989); *48 *Verlinden B.V. v. Cent. Bank of Nig.*, 461 U.S. 480, 493, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983). In the underlying action that gave rise to the judgment on which plaintiff now seeks to collect, the district court exercised subject matter jurisdiction over Iran and the other defendants under 28 U.S.C. § 1605(a)(7), which abrogates immunity for those foreign states officially designated as state sponsors of terrorism by the Department of State where the foreign state commits a terrorist act or provides material support for the commission of a terrorist act and the act results in the death or personal injury of a United States citizen.⁴ *See Weinstein*, 184 F.Supp.2d at 20–21. When such an exception applies, “the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances....” 28 U.S.C. § 1606;

see also *Verlinden*, 461 U.S. at 488–89, 103 S.Ct. 1962.

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

Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based on an act of terrorism, or for which a terrorist party is not immune under [28 U.S.C. § 1605(a)(7)], the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in the aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

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

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

Bank Melli contends, however, that the above-quoted language of the TRIA does not provide an independent

basis for jurisdiction over an instrumentality of a sovereign state when the instrumentality was not itself a party to the underlying tort action that gave rise to judgment on which plaintiff now seeks to recover. Rather, Bank Melli argues, Section 201(a) of the TRIA simply provides an additional ground for abrogating immunity from attachment for a party that has been the subject of a valid judgment, but does not *49 provide jurisdiction for a court to permit attachment against a party that was not itself the subject of the underlying judgment.

Although novel,⁵ Bank Melli’s argument is belied by the plain language of Section 201(a), as well as by its history and purpose. Section 201(a) clearly states that “in every case in which a person has obtained a judgment against a terrorist party ..., the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment....” TRIA § 201(a), 116 Stat. at 2337 (emphasis supplied). Under Bank Melli’s interpretation, the parenthetical language in Section 201(a) of the TRIA that permits attachment of funds from agencies and instrumentalities would be rendered superfluous, since the agency or instrumentality would itself have been a “terrorist party” against which the underlying judgment had been obtained. See, e.g., *Corley v. United States*, 556 U.S. 303, —, 129 S.Ct. 1558, 1566, 173 L.Ed.2d 443 (2009) (“[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant”) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004)). Instead, however, the statute clearly differentiates between the party that is the subject of the underlying judgment itself, which can be any terrorist party (here, Iran), and parties whose blocked assets are subject to execution or attachment, which can include not only the terrorist party but also “any agency or instrumentality of that terrorist party.” If this did not constitute an independent grant of jurisdiction over the agencies and instrumentalities, the parenthetical would be a nullity.

Although Bank Melli points out that Section 201(a) of the TRIA has been codified as a note to Section 1610 rather than in the sections of the FSIA more directly addressed to exceptions to jurisdictional immunity, the plain language of the statute cannot be overcome by its placement in the statutory scheme. See *Padilla v. Rumsfeld*, 352 F.3d 695, 721 (2d Cir.2003) (“No accepted canon of statutory interpretation permits ‘placement’ to trump text, especially where, as here, the text is clear and our reading of it is fully supported by the legislative history.”), *rev’d on other grounds by Rumsfeld v. Padilla*, 542 U.S. 426, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004);

see also *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 128 S.Ct. 2326, 2336, 171 L.Ed.2d 203 (2008) (noting that a statutory provision's placement in a particular section "cannot substitute for the operative text of the statute"). This is even more clearly true in this case where the operative language begins with the phrase "[n]otwithstanding any other provision of law," thus making plain that the force of the section extends everywhere.

Any inquiry into the meaning of a statute generally "ceases 'if the statutory language is unambiguous and the statutory scheme is coherent and consistent.'" *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450, 122 S.Ct. 941, 151 L.Ed.2d 908 (2002) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997) (other internal quotation *50 marks omitted)); see also *Universal Church v. Geltzer*, 463 F.3d 218, 223 (2d Cir.2006). But even if, contrary to fact, there were an ambiguity here, it would be resolved in plaintiff's favor by the legislative history. According to Senator Harkin, one of TRIA's sponsors:

The purpose of title II is to deal comprehensively with the problem of enforcement of judgments issued to victims of terrorism in any U.S. court by enabling them to satisfy such judgments from the frozen assets of terrorist parties.... Title II operates to strip a terrorist state of its immunity from execution or attachment in aid of execution by making the blocked assets of that terrorist state, including the blocked assets of any of its agencies or instrumentalities, available for attachment and/or execution of a judgment issued against that terrorist state. Thus, for purposes of enforcing a judgment against a terrorist state, title II does not recognize any juridical distinction between a terrorist state and its agencies or instrumentalities.

148 Cong. Rec. S11524, at S11528 (Nov. 19, 2002) (statement of Sen. Harkin). Senator Harkin further stated that TRIA "establishes once and for all, that such judgments are to be enforced against any assets available

in the U.S., and that the executive branch has no statutory authority to defeat such enforcement under standard judicial processes, except as expressly provided in this act." *Id.*

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

B. CONSTITUTIONALITY OF TRIA

The underlying judgment which plaintiff seeks to satisfy was obtained in February 2002, but the TRIA was not enacted until November 2002 and Bank Melli was not designated a "proliferat[or] of weapons of mass destruction" until 2007. In another argument raised for the first time on appeal, Bank Melli argues that the TRIA, as here applied, is unconstitutional because it "mandates the reopening of a final judgment in violation of the separation of powers doctrine of Article III of the U.S. Constitution." Thus, to avoid any constitutional problem, Bank Melli urges this Court to read the TRIA as applying, prospectively, only to judgments rendered final after the TRIA's enactment, and thus not to apply here.

Although plaintiff contends, with some force, that the constitutional challenge has been waived for failure to raise it below, a claim that a legislative enactment intrudes on the courts' powers is the kind of claim that appropriately may be considered here, even if for the first time. See, e.g., *Freitag v. Comm'r*, 501 U.S. 868, 879, 111 S.Ct. 2631, 115 L.Ed.2d 764 (1991) (rejecting waiver and addressing constitutional challenge because of "the strong interest of the federal judiciary in maintaining the constitutional plan of separation of powers") (internal quotation marks omitted).

Bank Melli's constitutional challenge is largely derived from *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995), in which the Supreme Court held that a section of the Securities Exchange Act of 1934 violated separation of powers because it required federal courts retroactively to reopen final money judgments that had been dismissed as barred under the statute of limitations. See *id.* at 219, 115 S.Ct. 1447. "[R]etroactive legislation [that] requires its own application *51 in a case already finally adjudicated ... does no more and no less than 'reverse a determination once made, in a particular case' [and thus] exceeds the

powers of Congress.” *Id.* at 225, 115 S.Ct. 1447 (quoting *The Federalist* No. 81, at 545 (J. Cooke, ed., 1961)).

Here, however, no such revision of the 2002 judgment is effectuated by the attachment of Bank Melli’s property pursuant to the TRIA. Indeed, the judgment itself is unaffected. What the TRIA did, instead, was to override the Supreme Court’s reading in *First Nat’l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 627–28, 103 S.Ct. 2591, 77 L.Ed.2d 46 (1983) (“*Bancec*”), that “duly created instrumentalities of a foreign state are to be accorded a presumption of independent status.” *Id.* at 627, 103 S.Ct. 2591. This presumption related to enforceability of judgments against state instrumentalities, but it had not nothing to do with the rendering of the judgment itself. Moreover, even under *Bancec*, the presumption could be overcome. *Id.* at 629. The effect of the TRIA, therefore, was simply to render a judgment more readily enforceable against a related third party. The judgment itself was in no way tampered with, and separation of powers was thus in no way offended.⁶

Bank Melli also argues that the delegation of authority to the Treasury Department to determine which entities’ assets would be “blocked” is, as applied here, tantamount to an unconstitutional vesting of “review of the decisions of Article III courts in officials of the Executive Branch.” *Plaut*, 514 U.S. at 218, 115 S.Ct. 1447; see *Hayburn’s Case*, 2 U.S. 408, 2 Dall. 409, 1 L.Ed. 436 (1792). Here, however, it is clear that no official from the Executive Branch stands in direct review of the district court’s decision regarding execution and attachment of assets pursuant to the TRIA. OFAC simply made a factual determination that Bank Melli was a proliferator of weapons of mass destruction, pursuant to which Bank Melli’s assets were “blocked.” In so doing, OFAC did not in any way review or alter the district court’s original entry of the default judgment.

Nor does the district court’s reliance on OFAC’s determination for its exercise of subject matter jurisdiction run afoul of separation of powers. In *Jones v. United States*, 137 U.S. 202, 11 S.Ct. 80, 34 L.Ed. 691 (1890), the Supreme Court held that the district court had subject matter jurisdiction over a murder trial where the crime occurred on an island that the State Department had deemed was “appertaining to the United States.” *Id.* at 224, 11 S.Ct. 80. In that case, the exercise of subject matter jurisdiction based on an Executive Branch determination did not exceed the bounds of Article III. Similarly, in *Matimak Trading Co. v. Khalily*, 118 F.3d 76, 83–84 (2d Cir.1997), overruled in part on other grounds by *JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 122 S.Ct. 2054,

153 L.Ed.2d 95 (2002), this Court found that alienage jurisdiction could depend on whether the Executive Branch had deemed a given foreign entity a *52 “state,” and because the foreign entity in question had not been recognized as a “state,” jurisdiction was deemed lacking.

It is true that, in *Rein*, 162 F.3d at 763, this Court, in dicta, raised the question of whether after the passage of the FSIA, designation of a foreign state as a sponsor of terrorism by a branch other than Congress raised a potential issue of separation of powers. Specifically, in *Rein*, we rejected Libya’s argument that the State Department’s designation of Libya as a state sponsor of terrorism violated separation of powers, since Libya had already been designated as such when section 1605(a)(7) was added to the FSIA; but we queried whether a different “issue of delegation might be presented if another foreign sovereign—one not identified as a state sponsor of terrorism when § 1605(a)(7) was passed—was placed on the relevant list by the State Department and, on being sued in federal court, interposed the defense that Libya now raises.” 162 F.3d at 764; see also *Miller v. FCC*, 66 F.3d 1140, 1144 (11th Cir.1995) (noting that Congress cannot delegate the power of any federal agency to “oust state courts and federal district courts of subject matter jurisdiction”); *United States v. Mitchell*, 18 F.3d 1355, 1360 n. 7 (7th Cir.1994) (raising doubts about whether Congress could delegate its control over federal court jurisdiction to any agency or commission).

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

The TRIA provides jurisdiction for execution and attachment proceedings to satisfy a judgment for which there was original jurisdiction under the FSIA (which is not challenged here) if certain statutory elements are satisfied. The fact that satisfaction of one of those statutory elements—that Bank Melli’s assets were blocked—was based on the factual determination by a

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

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

C. TRIA & TREATY OF AMITY

We next turn to the arguments that Bank Melli did raise in the district court, the first of which concerns the Treaty of *53 Amity (the "Treaty") that the United States and Iran (then governed by the Shah) signed in 1955, which took effect in 1957 and still remains in place. Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, Aug. 15, 1955, 8 U.S.T. 899. Article III.1 of the Treaty provides that "[c]ompanies constituted under the applicable laws of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party." *Id.*, art. III.1. Article IV.2 adds that "[p]roperty of nationals and companies of either High Contracting Party, including interest in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law." *Id.*, art. IV.2.

Bank Melli asserts that these provisions, read together, require that Iranian companies be treated as distinct and independent entities from their sovereign. But this is not correct. As the district court noted, the key provision, Article III.1., is "substantively identical" to a provision in a number of Friendship, Commerce, and Navigation ("FCN") treaties negotiated by the U.S. following World War II. In *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 102 S.Ct. 2374, 72 L.Ed.2d 765 (1982), the Supreme Court held that these provisions are designed, not to give separate juridical status to instrumentalities of

the sovereign entity, but simply "to give corporations of each signatory legal status in the territory of the other party, and to allow them to conduct business in the other country on a comparable basis with domestic firms." *Id.* at 185–86.

Bank Melli argues that *Sumitomo* only addressed the language in the provision of the U.S.-Japan FCN Treaty that a company "constituted under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof," but did not address the rest of the provision, "and shall have their juridical status recognized within the territories of the other Party." While it is true that the Court focused its analysis on the phrase "shall be deemed companies thereof," it went on to explain that the intent behind the FCN treaties as a whole was simply to grant legal status to corporations of each of the signatory countries in the territory of the other, thus putting the foreign corporations on equal footing with domestic corporations. 457 U.S. at 185–86, 102 S.Ct. 2374. There is, therefore, no conflict between the TRIA and the Treaty.

Moreover, even assuming, *arguendo*, that there were a conflict between the two, the TRIA would have to be read to abrogate that portion of the Treaty. Although a "treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed," *Trans World Airlines, Inc. v. Franklin Mint Corp.*, 466 U.S. 243, 252, 104 S.Ct. 1776, 80 L.Ed.2d 273 (1984) (quoting *Cook v. United States*, 288 U.S. 102, 120, 53 S.Ct. 305, 77 L.Ed. 641 (1933)), Section 201(a) of the TRIA expressly states that it permits attachment of the assets of a foreign sovereign's instrumentalities in satisfaction of a terrorism-related judgment against the foreign sovereign "[n]otwithstanding any other provision of law" (emphasis supplied). *See Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18, 113 S.Ct. 1898, 123 L.Ed.2d 572 (1993) (noting that the Courts of Appeals have regularly interpreted such "notwithstanding" provisions "to supersede all other laws"); *see also Ministry of Defense and Support for the Armed Forces of the Islamic Rep. of Iran v. Elahi*, 556 U.S. 366, 129 S.Ct. 1732, 173 L.Ed.2d 511 (2009); *54 *Hill v. Rep. of Iraq*, No. 99 CV 03346TP, 2003 WL 21057173, at *2, 2003 U.S. Dist. LEXIS 3725, at *10–11 (D.D.C. Mar. 11, 2003) (holding that the "notwithstanding provision" is "unambiguous and effectively supersedes all previous laws").

D. TAKINGS CLAUSE

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

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

Here, where the underlying judgment against Iran has not been challenged, seizure of Bank Melli’s property, as an instrumentality of Iran, in satisfaction of that liability does not constitute a “taking” under the Takings Clause. See *Branch*, 69 F.3d at 1577 (noting absence of “any principle of takings law under which an imposition of liability is deemed a *per se* taking as to any party that cannot pay it”). Instead, Bank Melli’s own conduct as a funder of weapons of mass destruction opened it to liability for judgments already entered against Iran. See, e.g., *Meriden Trust and Safe Deposit Co. v. FDIC*, 62 F.3d 449, 455 (2d Cir.1995) (citing cases holding that deprivation of property resulting from voluntary conduct cannot constitute a “taking”).

As the Supreme Court has noted, the Takings Clause is designed “to prevent the government ‘from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.’ ” *E. Enters. v. Apfel*, 524 U.S. 498, 522, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998) (quoting *Armstrong v. United States*, 364 U.S. 40, 49, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960)). Here, where Bank Melli’s assets are subject to attachment to satisfy a judgment against its foreign sovereign, the underlying purpose of the Takings Clause is in no way violated by attachment of Bank Melli’s

assets.

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

E. ALGIERS ACCORDS

In the last of the arguments it raised below, Bank Melli argues that the attachment *55 here in issue violates the so-called Algiers Accords (the “Accords”). In 1980, the United States and Iran, under the auspices of the Government of Algeria, entered into the Accords to settle a number of disputes between the two countries, in particular, matters arising out of the hostage crisis that occurred on November 4, 1979 in Tehran in which the Iranian Government seized the U.S. Embassy and held captive 52 U.S. citizens.⁷ Previously, in response to the hostage crisis, President Carter had issued *Executive Order 12,170*, which “blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States....” *Exec. Order 12,170*, 44 Fed.Reg. 65,729 (Nov. 14, 1979). As part of the Accords, the United States agreed to “restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979,” and to “commit[] itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction.” 20 I.L.M. at 224. The United States also agreed, subject to some exceptions to “arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad.” *Id.* at 227.

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

This argument confuses the United States’s obligation to unblock assets that had been blocked based on pre-Accords violations with post-Accords blocking based on post-Accords violations. As the district court noted in

an earlier decision, after the United States and Iran entered into the Accords most Iranian assets were automatically unblocked. See *Weinstein*, 299 F.Supp.2d at 67–68. Since the Forest Hills property was no longer blocked after the Accords, Bank Melli was entitled to exercise any and all rights of ownership, including sale of the property, until it was subsequently blocked on October 25, 2007. Although Bank Melli argues that no specific expiration date was given in the Accords, and therefore the obligations of the U.S. are ongoing, nothing in the Accords suggests that the United States is precluded from blocking Iranian assets based on subsequent events unrelated to the hostage crisis. Indeed, the United States has implemented several sanctions programs against Iran, subsequent to the Accords, that have had the effect of limiting the mobility of Iranian property. See, e.g., *Executive Order 12,613*, 52 Fed.Reg. 41940 (Oct. 29, 1987) (prohibiting, pursuant to 3 U.S.C. § 301 and Section 505 of the International Security and Development Cooperation Act of 1985, 22 U.S.C. § 2349aa–9, certain Iranian imports); see also *Weinstein*, 299 F.Supp.2d at 68 (providing overview of executive orders imposing sanctions *56 that affected property controlled or owned by Iran).

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

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

CONCLUSION

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

All Citations

609 F.3d 43

Footnotes

- * The clerk of Court is directed to amend the official caption in this case to conform to the listing of the parties above.
- ** The Honorable *Jed S. Rakoff*, United States District Judge for the Southern District of New York, sitting by designation.
- 1 *Executive Order 13,382* was issued by the President pursuant to the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, 1702, and provided that all property and interests in property in the United States of persons and entities listed in the order or subsequently listed “are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.” *Exec. Order 13,382*, 70 Fed.Reg. 38,567 (June 28, 2005). Bank Melli was added to the list on October 25, 2007.
- 2 Although the district court also invited the United States to file its own submission to address the issues in the case, the Government declined to do so.

- 3 The district court did, however, cite for other purposes to a lower court decision that also considered the jurisdiction issue. See *Weininger v. Castro*, 462 F.Supp.2d 457, 490 (S.D.N.Y.2006) (holding that the TRIA “provides [an] independent basis of subject matter jurisdiction in this enforcement proceeding against these [foreign sovereign] entities”).
- 4 In 2008, Congress repealed § 1605(a)(7) and created a new section specifically devoted to the terrorism exception to the jurisdictional immunity of a foreign state. See Pub.L. 110–181, Div. A, § 1803, Jan. 28, 2008, 122 Stat. 341 (repealing 28 U.S.C. § 1605(a)(7) and creating 28 U.S.C. § 1605A). To the extent relevant to this case, § 1605A provides for the same exceptions to foreign sovereign immunity as the repealed section.
- 5 To date, no appellate court has addressed this issue, although several district courts have found that the TRIA grants subject matter jurisdiction for execution and attachment proceedings over parties against whom there exist underlying judgments. See, e.g., *Weininger*, 462 F.Supp.2d at 477–89; *Rubin v. Islamic Rep. of Iran*, 456 F.Supp.2d 228 (D.Mass.2006).
- 6 It should be noted that Hazi seeks attachment of property in partial satisfaction only of the portion of the underlying judgment that awarded compensatory damages in her favor. See *Rein v. Socialist People’s Libyan Arab Jamahiriya*, 162 F.3d 748, 762 (2d Cir.1998) (“Where a retroactive law is civil rather than criminal, it is only the imposition of punitive damages that might, in particular circumstances, raise a constitutional problem.”). Of the total judgment of approximately \$183,200,000, approximately \$33,200,000 was compensatory damages, of which \$5,000,000 was allocated to Hazi. *Weinstein*, 184 F.Supp.2d at 22–25.
- 7 The Accords are comprised primarily of two documents: the Declaration of the Government of the Democratic and Popular Republic of Algeria (Jan. 19, 1981), and The Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Jan. 19, 1981), reprinted in 20 I.L.M. 223 (1981); 81 Dep’t of State Bull. No.2047, Feb. 1981 at 1. See *Iran Aircraft Industries v. Avco Corp.*, 980 F.2d 141, 143 (2d Cir.1992).

ANNEX 309

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CLOSED

**U.S. District Court
Eastern District of New York (Central Islip)
CIVIL DOCKET FOR CASE #: 2:12-cv-03445-LDW**

Weinstein, et al v. The Islamic Republic, et al
Assigned to: Judge Leonard D. Wexler
Demand: \$0

Date Filed: 07/12/2012
Date Terminated: 12/20/2012
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Receiver**Esq. Frederick M. Ausili**

represented by **Fredrick M. Ausili**
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631-871-8373
ATTORNEY TO BE NOTICED

Plaintiff

Susan Weinstein
*individually as Co-Administrator of the
Estate of Ira William Weinstein, and as
natural guardian of plaintiff David
Weinstein*

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ATTORNEY TO BE NOTICED

Plaintiff

Jeffrey A. Miller
*as Co-Administrator of the Estate of Ira
William Weinstein, Joseph Weinstein,
Jennifer Weinstein, Hazi & David Weinstein*

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V.

Defendant

Islamic Republic of Iran

Defendant

The Iranian Ministry of Information and Security

Defendant

Ayatollah Ali Hoseini Khamenei

Defendant

Ali Akbar Hashemi-Rafsanjani

Defendant

Ali Fallahian-Khuzestani

V.

Respondent

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*Bank Melli Iran, New York Representative
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TERMINATED: 11/30/2009

Respondent

Bank Saderat Iran
Bank Saderat Iran, New York Representative Office

Respondent

Bank Sepah Iran
Bank Sepah Iran, New York Representative Office

V.

Creditor

Estate of Michael Heiser

represented by **Barbara L. Seniawski**
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PRO HAC VICE
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Richard M. Kremen
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ATTORNEY TO BE NOTICED

Interested Party

United States of America

Date Filed	#	Docket Text
10/08/2002	1	Registration of FOREIGN JUDGMENT; FILING FEE \$ 30.00 RECEIPT # 7503. Entry of judgment in the amount of \$ 183,248,164.00 in favor of Plaintiffs and against defendants. (Duong, Susan) Modified on 10/09/2002 (Entered: 10/09/2002)
10/09/2002		Statistical Case Closing (Duong, Susan) (Entered: 10/09/2002)
12/24/2002	4	ORDER TO SHOW CAUSE: Show Cause Hearing set for 11:30 1/3/03, as to rights to

		position on the 98 MOTION to Intervene. (Romans, John) Modified text on 11/22/2010 (Glueckert, Lisa). (Entered: 11/16/2010)
11/22/2010		Motions terminated, docketed incorrectly: 107 MOTION to Intervene filed by Bank Melli Iran New York Representative Office. Docket entry is a letter regarding the 98 Motion to Intervene. (Glueckert, Lisa) (Entered: 11/22/2010)
11/22/2010	108	ORDER: IT IS HEREBY ORDERED that Mr. Ausili is empowered to execute a deed conveying the property located at 135 Puritan Avenue, Forest Hills, New York, to execute any other documents, and to take any other steps necessary, to effectuate the sale of that property, and to receive the proceeds of the sale of that property. Ordered by Senior Judge Leonard D. Wexler on 11/22/2010. (Glueckert, Lisa) (Entered: 11/29/2010)
12/21/2010	109	MOTION to Stay by Bank Melli Iran New York Representative Office. (Romans, John) (Entered: 12/21/2010)
01/03/2011		ORDER granting 109 Motion to Stay the matter pending disposition of Bank Melli's certiorari petition and any Supreme Court review. Accordingly, the Court denies the 98 Motion to Intervene without prejudice and stays any determination regarding disposition of the net proceeds of the sale of the Property. The matter is administratively closed pending completion of Supreme Court proceedings and may be reopened thereafter upon request. Ordered by Senior Judge Leonard D. Wexler on 1/3/2011. (Ausili, Peter) (Entered: 01/03/2011)
01/03/2011		ORDER denying 98 Motion to Intervene. See order entry dated 1/3/2011 for further details. Ordered by Senior Judge Leonard D. Wexler on 1/3/2011. (Glueckert, Lisa) (Entered: 01/04/2011)
03/20/2011	110	STATUS REPORT by Frederick M. Ausili. (Glueckert, Lisa) (Entered: 03/30/2011)
10/04/2011		ORDER. This matter has been stayed and closed pending completion of appellate proceedings. Given the appointment of the receiver, my law clerk Peter Ausili will not participate in proceedings in this matter. Instead, my law clerk Anne Shields is assigned to this matter. So Ordered by Senior Judge Leonard D. Wexler on 10/4/2011. (Shields, Anne) (Entered: 10/04/2011)
11/10/2011	111	Letter MOTION for Attorney Fees ; <i>for a five percent (5%) fee request by the appointed Receiver</i> by Frederick M. Ausili. (Fagan, Linda) (Entered: 11/16/2011)
11/10/2011		ORDER granting 111 Motion for Attorney Fees. Upon the Court's review and the parties' consent, the fee request is hereby approved and is So Ordered. (Ordered by Senior Judge Leonard D. Wexler on 11/10/2011.) (Fagan, Linda) (Entered: 11/16/2011)
07/06/2012	112	MOTION to Reopen Case <i>and remove stay, now that Supreme Court has denied the defendant's cert. petition and all appeals are exhausted</i> , MOTION for Release of Funds <i>presently held in escrow by court appointed receiver from sale of subject property</i> by Jennifer Weinstein Hazi. (Tolchin, Robert) (Entered: 07/06/2012)
07/10/2012	113	RESPONSE to Motion re 112 MOTION to Reopen Case <i>and remove stay, now that Supreme Court has denied the defendant's cert. petition and all appeals are exhausted</i> MOTION for Release of Funds <i>presently held in escrow by court appointed receiver from sale of subject property</i> filed by Estate of Michael Heiser. (Seniawski, Barbara) (Entered: 07/10/2012)
07/12/2012	114	NOTICE of Appearance by David B. Mislser on behalf of Estate of Michael Heiser, Estate of Millard D. Campbell (aty to be noticed) (Mislser, David) (Entered: 07/12/2012)
07/12/2012		NOTICE; case 02mc237 (LDW) has been converted into a civil action. The civil case number is 12cv3445 (LDW). All further entries are to be made on 12cv3445. (McMahon,

		Carol) (Entered: 07/12/2012)
07/12/2012		ORDER granting 112 Motion to Reopen Case; denying 112 Motion for Release of Funds. The motion to reopen the case is granted. The motion for the release of funds is denied at this time without prejudice to renewal upon this court's decision as to the previously briefed motion to intervene. As to that motion, the proposed intervenor is directed to provide this court with a courtesy copy of the fully briefed motion within one week of the date of this order. So Ordered by Judge Leonard D. Wexler on 7/12/2012. (Shields, Anne) (Entered: 07/12/2012)
07/13/2012		ORDER re Order on Motion to Reopen Case, Order on Motion for Release of Funds,,,, The Renewed Motion to Intervene shall be briefed pursuant to the following schedule: the initial motion papers shall be served by July 30, 2012, the opposition shall be served by August 13, 2012, and the reply papers shall be served by August 20, 2012. All papers shall be filed on August 20, 2012. So Ordered by Judge Leonard D. Wexler on 7/13/2012. (Sweeney, Helen) (Entered: 07/13/2012)
08/01/2012		Case Ineligible for Arbitration (Bollbach, Jean) (Entered: 08/01/2012)
08/10/2012	115	Letter <i>requesting modification of briefing schedule and leave to file a cross-motion</i> by Jennifer Weinstein Hazi (Tolchin, Robert) (Entered: 08/10/2012)
08/13/2012	116	ORDER re 115 Letter filed by Jennifer Weinstein Hazi. Request granted. Parties are to agree on briefing schedule for cross motion and submit dates to Court in one (1) week. So Ordered. (Ordered by Judge Leonard D. Wexler on 8/13/2012.) (Fagan, Linda) (Entered: 08/13/2012)
08/17/2012	117	Letter <i>advising court of briefing schedule agreed upon by the parties</i> by Jennifer Weinstein Hazi (Tolchin, Robert) (Entered: 08/17/2012)
08/21/2012		ORDER re 117 Letter filed by Jennifer Weinstein Hazi, 116 Order. The briefing schedule submitted by counsel is hereby approved. All papers shall be filed on the respective reply dates for each motion, with courtesy copies to be provided to the Court by the movant. So Ordered by Judge Leonard D. Wexler on 8/21/2012. (Sweeney, Helen) (Entered: 08/21/2012)
08/26/2012	118	Letter <i>on consent requesting modification of briefing schedule</i> by Jennifer Weinstein Hazi (Tolchin, Robert) (Entered: 08/26/2012)
08/27/2012		ORDER re 118 Letter filed by Jennifer Weinstein Hazi. The modification to the briefing schedule, as submitted with the consent of the parties, is hereby approved. All papers shall be filed on the respective reply dates for the motions. So Ordered by Judge Leonard D. Wexler on 8/27/2012. (Sweeney, Helen) (Entered: 08/27/2012)
09/23/2012	119	Letter <i>requesting modification of briefing schedule such that reply on cross motion will be due 10-5-12</i> by Jennifer Weinstein Hazi (Tolchin, Robert) (Entered: 09/23/2012)
09/24/2012	120	Letter <i>to Judge Wexler</i> by Estate of Michael Heiser, Estate of Millard D. Campbell (Misler, David) (Entered: 09/24/2012)
09/25/2012		ORDER re 119 Letter filed by Jennifer Weinstein Hazi, 120 Letter filed by Estate of Michael Heiser, Estate of Millard D. Campbell. Plaintiffs' request for an extension of time until 10/5/12 to serve reply papers is granted. All papers shall be filed on the reply date. So Ordered by Judge Leonard D. Wexler on 9/25/2012. (Sweeney, Helen) (Entered: 09/25/2012)
10/04/2012	121	MOTION to Intervene (<i>Renewed</i>) by Estate of Michael Heiser, Estate of Millard D. Campbell. (Attachments: # 1 Certificate of Service) (Seniawski, Barbara) (Entered: 10/04/2012)

10/04/2012	122	MEMORANDUM in Support re 121 MOTION to Intervene (<i>Renewed</i>) filed by Estate of Michael Heiser, Estate of Millard D. Campbell. (Attachments: # 1 Exhibit A, # 2 Certificate of Service) (Seniawski, Barbara) (Entered: 10/04/2012)
10/04/2012	123	AFFIDAVIT/DECLARATION in Support re 121 MOTION to Intervene (<i>Renewed</i>) filed by Estate of Michael Heiser, Estate of Millard D. Campbell. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Certificate of Service) (Seniawski, Barbara) (Entered: 10/04/2012)
10/04/2012	124	MOTION to Enforce Judgment <i>DECLARING that the proposed intervenors have no enforceable interest in the proceeds of the sale of 135 Puritan Avenue, Forest Hills, New York, presently being held in escrow by the court appointed receiver herein, Fred Ausili, Esq.</i> by Jennifer Weinstein Hazi. (Tolchin, Robert) (Entered: 10/04/2012)
10/04/2012	125	MEMORANDUM in Opposition re 121 MOTION to Intervene (<i>Renewed</i>) , MEMORANDUM in Support re 124 MOTION to Enforce Judgment <i>DECLARING that the proposed intervenors have no enforceable interest in the proceeds of the sale of 135 Puritan Avenue, Forest Hills, New York, presently being held in escrow by the court appointed receiver herein, Fred A Ausili</i> filed by Jennifer Weinstein Hazi. (Attachments: # 1 Exhibit A, Weinstein Judgment as docketed with the Queens County Clerk on December 3, 2002, # 2 Exhibit B, Heiser Motion for lis pendens) (Tolchin, Robert) (Entered: 10/04/2012)
10/04/2012	126	REPLY in Support re 121 MOTION to Intervene (<i>Renewed</i>) , RESPONSE in Opposition re 124 MOTION to Enforce Judgment <i>DECLARING that the proposed intervenors have no enforceable interest in the proceeds of the sale of 135 Puritan Avenue, Forest Hills, New York, presently being held in escrow by the court appointed receiver herein, Fred A</i> filed by Estate of Michael Heiser, Estate of Millard D. Campbell. (Attachments: # 1 Certificate of Service) (Seniawski, Barbara) (Entered: 10/04/2012)
10/04/2012	127	AFFIDAVIT/DECLARATION in Support re 121 MOTION to Intervene (<i>Renewed</i>) , AFFIDAVIT/DECLARATION in Opposition re 124 MOTION to Enforce Judgment <i>DECLARING that the proposed intervenors have no enforceable interest in the proceeds of the sale of 135 Puritan Avenue, Forest Hills, New York, presently being held in escrow by the court appointed receiver herein, Fred A</i> filed by Estate of Michael Heiser, Estate of Millard D. Campbell. (Attachments: # 1 Exhibit 1, # 2 Certificate of Service) (Seniawski, Barbara) (Entered: 10/04/2012)
10/04/2012	128	REPLY in Support re 124 MOTION to Enforce Judgment <i>DECLARING that the proposed intervenors have no enforceable interest in the proceeds of the sale of 135 Puritan Avenue, Forest Hills, New York, presently being held in escrow by the court appointed receiver herein, Fred A Ausilli</i> filed by Jennifer Weinstein Hazi. (Tolchin, Robert) (Entered: 10/04/2012)
12/19/2012	129	STIPULATION <i>AND [PROPOSED] ORDER</i> by Estate of Michael Heiser, Jennifer Weinstein Hazi, Susan Weinstein (Birnbaum, Timothy) (Entered: 12/19/2012)
12/20/2012	130	ORDER granting 121 Motion to Intervene; finding as moot 124 Motion to Enforce Judgment. It is hereby Ordered, Adjudged and Decreed That: The motion to intervene is granted. Within 5 days of the date of the entry of this Stipulation and Order, the Receiver shall distribute the proceeds to the parties as follows: A. \$333,776.67 to the Helsen, c/o Richard M. Kremen, Esq. 6225 Smith Ave, Baltimore MD, 21209 via wire transfer to DLA Piper LLP (US)'s Escrow account; and B. \$1,021,736.36 to the Weinstens c.o Robert Tolchin, Esq. The Berkman Law Office, LLC, 111 Livingston St. Suite 1928 Brooklyn, NY 11201, via wire transfer to that firm's escrow account or check payable to "The Berkman Law Office, LLC as attorneys." C. Any residual funds remaining in the Blocked Account after making distributions (A) and (B) listed above shall be distributed

		by the Receiver 38% to the Heisers, and 62% to the Weinstains, via wire transfer or check in the same manner as indicated in (A)and (B) above. All other outstanding motions shall be denied as moot. So Ordered.. Ordered by Judge Leonard D. Wexler on 12/20/2012. (Padilla, Kristin) (Entered: 12/20/2012)
03/03/2015	131	Letter <i>requesting that Court so-order confidentiality stipulation with respect to judgment enforcement discovery</i> by Jennifer Weinstein Hazi, Jeffrey A. Miller, Susan Weinstein, STIPULATION by Jennifer Weinstein Hazi, Jeffrey A. Miller, Susan Weinstein (Attachments: # 1 Exhibit Stipulation to be so-ordered) (Tolchin, Robert) (Entered: 03/03/2015)
03/09/2015		ORDER re 131 Letter, Stipulation, filed by Jeffrey A. Miller, Jennifer Weinstein Hazi, Susan Weinstein. Counsel are directed to appear for a conference on March 18, 2015 at 10:30am in Courtroom 940. So Ordered by Judge Leonard D. Wexler on 3/9/2015. (Sweeney, Helen) (Entered: 03/09/2015)
03/17/2015	132	Letter by Jennifer Weinstein Hazi, Jeffrey A. Miller, Susan Weinstein (Attachments: # 1 Exhibit A - Email from CCB's counsel) (Tolchin, Robert) (Entered: 03/17/2015)

ANNEX 310

604 F.Supp.2d 152
United States District Court,
District of Columbia.

Michael BENNETT and Linda Bennett
Individually and as Co-Administrator of
the Estate of Marla Ann Bennett,
Plaintiffs,
v.
The ISLAMIC REPUBLIC OF IRAN, et
al., Defendants.

No. 03-CV-1486 (RCL).

March 31, 2009.

Synopsis

Background: Following grant of default judgment, 507 F.Supp.2d 117, in action, under the state-sponsored terrorism exception to the Foreign Sovereign Immunities Act (FSIA), alleging that the Islamic Republic of Iran and its Ministry of Information and Security (MOIS) provided material support to terrorists who carried out a bombing at a university in Israel which resulted in the killing of an American citizen, United States moved to quash five writs of attachment issued against properties belonging to the Iranian government.

Holdings: The District Court, Royce C. Lamberth, Chief Judge, held that:

former diplomatic properties of the Islamic Republic of Iran were immune from attachment, and

U.S. had standing to move to quash writs of attachment.

Motion granted.

Attorneys and Law Firms

*154 Ronald Alvin Karp, Karp, Frosh, Lapidus, Wigodsky & Norwind, P.A., Rockville, MD, Thomas Fortune Fay, Washington, DC, for Plaintiffs.

MEMORANDUM OPINION

ROYCE C. LAMBERTH, Chief Judge.

The United States has moved to quash five writs of attachment issued against properties belonging to the Islamic Republic of Iran. Dk. # 34. These properties largely comprise the former Iranian Embassy compound here in Washington, D.C. This includes the former Ambassador's residence, Iran's former Embassy Chancery, as well as a separate diplomatic residence, and two parking lots.¹ Plaintiffs obtained the writs attaching these properties of Iran in an effort to satisfy a judgment they received in an action pursuant to the 28 U.S.C. § 1605(a)(7), the state sponsor of terrorism exception to sovereign immunity. See Dk. # s 20-22. For the reasons expressed herein, the Court will grant the Government's motion to quash the writs of attachment.

Facts and Procedural History

Marla Ann Bennett, an American citizen and resident of California, was just 24 years old when she was murdered by terrorists. She was killed when Hamas operatives detonated a bomb inside a cafeteria at the Hebrew University in Jerusalem in July of 2002. In an effort to achieve some measure of justice, Marla's parents brought a civil action against Iran and its Ministry of Information and Security (MOIS) under § 1605(a)(7). The Bennetts demonstrated through evidence satisfactory to this Court, see § 1608(e), that Iran and its MOIS provided material support to Hamas in furtherance of terrorist objectives. See *Bennett v. Islamic Republic of Iran*, 507 F.Supp.2d 117 (D.D.C.2007) (Lamberth, J.). Plaintiffs were awarded a judgment in excess of 12 million dollars. To date, that judgment remains unsatisfied.

In an effort to execute their judgment against Iran, plaintiffs procured the writs of attachment on the properties at issue in this case. Due to the manner in which plaintiffs attached these former diplomatic properties, however, this matter has a strange and somewhat tortured procedural history. Contrary to the usual procedure for the issuance of writs of attachment, in *155 which the request is handled directly by the Clerk's

office in accordance with long-standing procedures established by this Court, plaintiffs' counsel instead filed a separate motion requesting that this Judge specifically order the Clerk of Court to issue the five writs. *See* Dk. # 22. Plaintiffs' counsel later filed a supplemental memorandum in support of the motion for writs of attachment. *See* Dk. # 24. In that memorandum, counsel observes that in *Flatow v. Islamic Republic of Iran* this Judge quashed five writs of attachment on some of the very same properties at issue here. *See* Dk. # 24 at p. 2 (citing 76 F.Supp.2d 16 (D.D.C.1999) (Lamberth, J.))² Counsel argues, however, that both the relevant facts and the applicable law have changed since that decision in *Flatow* and, as a result of those changes, Iran's properties here in Washington are no longer immune from attachment. *See id.* at 2–7.

At the time plaintiffs' supplemental memorandum was filed, the United States had not yet entered an appearance in this action, let alone moved to quash plaintiffs' writs of attachment. Nonetheless, plaintiffs' counsel suggests in his supplemental memorandum that the United States does not have standing to move this Court to quash writs of attachment issued against Iran's former embassy properties, notwithstanding the fact that it was the United States that successfully moved to quash the writs in *Flatow*. *See* Dk. # 24, p. 7–10. Counsel's argument relies heavily—if not exclusively—on *Rubin v. Islamic Republic of Iran*, a case from the Northern District of Illinois in which the court held that the University of Chicago did not have standing to challenge writs of attachments issued against collections of Persian artifacts on loan to the university from Iran. *See id.* (citing 408 F.Supp.2d 549 (N.D.Ill.2005)).³

Plaintiffs' counsel ultimately withdrew his motion for an order to issue of writs of attachment, but the writs of attachment were issued by the Clerk of the Court about a week later on April 1, 2008. *See* Dk. # 26. Counsel subsequently filed executed returns on the writs on June 5, 2008. *See* Dk. # s 27–31. Accordingly, the record suggests that the plaintiffs' counsel withdrew the motion in order to procure the writs through the Clerk's office in accordance with the normal and long-established procedures of this Court. While this Court normally does not consider motions or other matters that have been withdrawn by counsel, this Court will nonetheless accept the withdrawn motion and supplemental memorandum for the limited purpose of establishing that counsel believed he had some good faith basis for procuring writs of attachment against former diplomatic properties of Iran.

*156 Undeterred by plaintiffs' peremptory arguments, the United States moved to quash all five writs of attachment

on July 18, 2008. *See* Dk. # 34. Plaintiffs filed their opposition in a timely manner and the United States timely filed its reply. *See* Dk. # s 35 & 36. More than two months later, however, and without leave of the Court, plaintiff filed another supplemental memorandum and several exhibits as additional support for their opposition to the Government's motion to quash. Dk. # 37. The Government then filed a response to the plaintiffs' supplemental memorandum four days later on October 21, 2008. *See* Dk. # 40. In that response, the Government requests that plaintiffs' supplemental filing be struck from the record or disregarded.

Arguments of the Parties

The United States

The United States argues that plaintiffs' writs of attachment must be quashed because the properties at issue are immune from attachment in light of several important legal authorities. The United States calls this Court's attention to the Vienna Convention on Diplomatic Relations (Vienna Convention), 23 U.S.T. 3227, T.I.A.S. No. 7502 (1972), the Foreign Missions Act, 22 U.S.C. §§ 4301, *et seq.*, the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1602, *et seq.*, the Terrorism Risk Insurance Act (TRIA), Pub.L. No. 107–297, Title II, § 201 (Nov. 26, 2002), codified as 28 U.S.C. § 1610 Note, and several Executive Orders and Federal Regulations relating to properties belonging to Iran in the United States. *See* Dk. # 34. The Government emphasizes that the United States is now holding the former diplomatic properties of Iran in protective custody pursuant to the terms of the Foreign Missions Act and consistent with the Federal Government's obligations under the Vienna Convention. *See id.* at p. 1, 8–10, Exh. 1. The United States claims that, in order to fulfill its responsibilities under the Vienna Convention and Foreign Missions Act, the State Department's Office of Foreign Missions (OFM) has periodically leased Iran's properties to other foreign governments or to private parties and has used the income derived from those rentals to fund necessary maintenance and repairs of the properties. *See* Dk. 34 at p. 10.

In light of its multilateral treaty and statutory obligations, as well as the overall importance of the foreign policy interests presented here, the United States stresses that it therefore has at least two independent bases on which it may assert standing in this action. First, the Government relies on 28 U.S.C. § 517, which vests the Attorney

General with broad authority “to send any officer of the Department of Justice to ‘attend to the interests of the United States in a suit pending in a court of the United States.’ ” *Id.* at p. 11. Second, the United States argues that, regardless of the scope of any statutory authority provided under 28 U.S.C. § 517, long-standing case precedent establishes that the Federal Government has standing to assert and protect its own important foreign policy interests. *See Id.* *See also* Dk. # 36 at p. 1–5.

The Government observes that on at least two prior occasions this Court determined that the very properties at issue here are immune from attachment. *See Id.* at p. 20–21 (citing *Flatow v. Islamic Republic of Iran*, 74 F.Supp.2d 18 (D.D.C.1999); *Mousa v. Islamic Republic of Iran*, 00-cv-2096, 2003 WL 2420777 (D.D.C.2003) (Bryant, J.)). According to the Government there’s been no subsequent change in the applicable facts or law the would render those properties subject to attachment now. *See id.* at 13–21; Dk. # 36, p. 6–7. In particular, the Government emphasizes that Congress did not *157 intend that the enactment of § 1083 of the 2008 NDAA and the new state sponsor of terrorism exception 1605A to allow for the attachment of diplomatic properties. *See* Dk. # 34 at p. 13–16.

Finally, the Government asks that this Court strike or otherwise disregard plaintiffs supplemental filings in this matter. *See* Dk. # 40. The United States emphasizes that the supplemental materials were filed in contravention of the local rules without leave of the Court, and that, in any event, the materials are not relevant to this dispute. *See id.*

Plaintiffs Michael and Linda Bennett

Plaintiffs’ primary argument is the United States does not have standing to challenge the writs of attachment issued against Iran’s former diplomatic properties. *See* Dk. 35 at p. 1–5. In plaintiffs’ brief that is heavy on rhetoric, counsel is largely dismissive of the United States’ position, asserting that it is “insulting to the intelligence of the American people.” *Id.* at p. 4. Plaintiffs’ counsel cast the United States as effectively mounting a defense of Iran, and argues that the United States should be precluded from doing so in this case because Iran has proven more than capable of defending itself in actions in this district and in other federal courts throughout the country. *Id.* at 2–5. Counsel again relies on *Rubin v. Islamic Republic of Iran*, a case pending in Chicago in which the federal district court there determined that certain private litigants—the University of Chicago and others—do not have standing to assert sovereign

immunity in an action in which certain judgment-creditors of Iran are seeking attachment or execution of certain artifacts on loan from Iran to the University of Chicago. *See* Dk. 35 at p. 2–5.

On the merits, plaintiffs claim that neither the Vienna Convention nor the Foreign Missions Act precludes attachment of properties once used for diplomatic purposes when, as here, the United States and the foreign nation no longer maintain formal diplomatic relations and the properties at issue are unoccupied and have fallen into disuse and disrepair. *See id.* at p. 5–8. Indeed, counsel alleges that the former embassy properties at issue in this case are currently in such a state of disuse and disrepair that the properties are not capable of being used for diplomatic purposes and therefore offer nothing more than investment value. *See id.* at p. 6–9. Moreover, plaintiffs suggest that to the extent that the State Department might have either the legal obligation or the authority to assert custody and control over a foreign mission properties, the current state of disrepair of Iran’s former embassy properties shows that the United States has completely abdicated its responsibility in this case. Accordingly, in plaintiffs’ view, the properties should now, at a minimum, be subject to attachment under the commercial activities exception to the FSIA. *See id.* at 7–10.

Plaintiffs also assert that, regardless of whether Iran’s properties in this case might ordinarily be entitled to diplomatic protection or some other immunity from attachment, recent changes to the FSIA—specifically, the sweeping changes enacted through § 1038 of the NDAA last year—render diplomatic properties of state sponsors of terrorism subject to attachment and execution. Plaintiffs argue that for the purpose of attaching Iran’s property, it does not matter that their action falls under the prior version of the state sponsor of terrorism exception, § 1605(a)(7), rather than § 1605A, because in plaintiffs’ view, the new law simply strips away any immunity from attachment or execution that the diplomatic properties of terrorist nations might have otherwise enjoyed.

*158 More than two months after the conclusion of briefing on this matter, plaintiffs filed a supplemental memorandum and exhibits in an apparent effort to bolster their position that the properties Iran once used for its embassy here in Washington are no longer immune from attachment. *See* Dk. # 37. The memorandum, which was filed without leave of the Court, summarizes plaintiffs’ failed attempts to obtain information from the Department of State regarding the leasing and maintenance of the properties as issue, as well as other information concerning discussions between the United States and

Iran regarding the status of Iran embassy properties.⁴

The remainder of the supplemental memorandum simply summarizes the testimony provided in two supplemental exhibits. The first exhibit is a transcript of deposition testimony of a witness who claims that the former United States embassy in Tehran, Iran has been used as a school for Iran's Revolutionary Guards sometime within the last three years. *See* Dk. # 37 at p. 3 & Exh. F. The relevance of this testimony is not apparent and no explanation is proffered by plaintiffs' counsel. Perhaps plaintiff means to suggest that Iran is in material breach of its obligations under the Vienna Convention, and that therefore the United States is no longer obligated to protect Iran's former diplomatic properties here in the United States. The second exhibit included with the supplement is a transcript of deposition testimony of a witness who claims he is a construction worker who once worked on the buildings located on the properties now subject to plaintiffs' writs of attachment. *See* Dk. # 37 at p. 3 & Exh. G. The witness' testimony largely supports plaintiffs' assertions that former diplomatic properties are not currently in use and have fallen into various states of disrepair.⁵

This Court will address each of the arguments of the parties in turn. Before proceeding to analysis of those arguments, however, the Court believes it is important to provide the legal and factual backdrop that is essential to an understanding of the issues involved in this dispute. A decade has passed since this Court first ruled, in the case of *Flatow v. Islamic Republic of Iran*, that the former embassy properties at issue here today are not subject to attachment and execution under the FSIA. Both plaintiffs and the United States have identified a number of developments in the law relating to this matter since that decision. While this Court is not convinced *159 that there is has been any change in the law that would require a different outcome in this case, it is with sincere respect for the plaintiffs in this action, that this Court will briefly review the controlling legal authorities, as well as the key facts concerning diplomatic relations between the United States and Iran, in order to examine carefully whether the relief denied to the Flatows ten years ago should be available to the Bennetts today

Discussion of Legal and Factual Background Concerning the Former Iranian Embassy Properties here in Washington, D.C.

There are basically five sources of law that are central to the resolution this dispute. The first source of law that

undergirds this whole matter is the Vienna Convention on Diplomatic Relations. The second is the Foreign Missions Act, which in certain critical respects serves to implement the United States' obligations under the Vienna Convention. The third source is the Foreign Sovereign Immunities Act, §§ 1609, 1610, including the key amendments made pursuant to the Terrorism Risk Insurance Act, which furnishes a number of exceptions to the general rule that the property of a foreign sovereign is immune from attachment or execution. The fourth key source of law in this sensitive foreign relations matter is the Executive Branch's official actions in response to the breakdown in diplomatic relations with Iran. This source of legal authority includes both Executive Orders and statements issued by the United States to Iran regarding the status of its mission properties here in the United States. Fifth, and finally, this Court will review the few decisions of this Court and others that have addressed the issue of whether Iran's properties that are no longer being used by Iran for diplomatic purposes should now be subject to attachment in execution in satisfaction of court judgments. A review of all five of these sources demonstrates that the laws of the United States do not permit this Court to sustain plaintiffs' writs of attachment.

(1) The Vienna Convention

In 1972, the United States ratified the Vienna Convention on Diplomatic Relations. 23 U.S.T. 3227, T.I.A.S. No. 7502. Under the terms of that treaty, the United States, in its role as a receiving state of foreign missions, is obligated to protect and respect the premises of any foreign mission located within its sovereign territory. Article 22 of the Convention outlines the basic responsibilities of a receiving state with respect to the property of a foreign mission. That Article provides that the property of a foreign mission is "inviolable," and thus the receiving state is under a "special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage." Moreover, "[t]he premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment, or execution." Article 22(3) (emphasis added).

Article 45 of the Vienna Convention makes clear that the obligation to protect and respect the premises of a foreign mission survives even in cases in which diplomatic relations are broken off, or in cases in which the mission is permanently recalled, and even during instances of armed conflict. Article 45 states as follows

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

(a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;

*160 (b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;

(c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

Thus, even during periods in which the United States is experiencing an extremely strained or outright hostile relationship with a foreign nation, the United States remains obligated to protect that nation's diplomatic properties.

(2) *The Foreign Missions Act*

The Foreign Mission Act, 22 U.S.C. §§ 4301, *et seq.*, vests the Department of State with broad authority to make determinations with respect to the treatment accorded to foreign missions here in the United States. *Palestine Information Office v. Shultz*, 853 F.2d 932, 936 (D.C.Cir.1988). Specifically, 22 U.S.C. § 4301(c) provides that:

The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission, as well as matters relating to the protection of the interests of the United States.

The State Department "acts at the apex of its power" when it exercises its authority over foreign missions here in the United States because "it wields the combined power of both the executive and legislative branches." *Palestine Information Office*, 853 F.2d at 937.

The foreign Mission Act expressly authorizes the Secretary of State to protect the properties of foreign missions here in the United States even when those properties are not being used by a foreign power. Specifically, the Secretary of State may "protect and preserve property of a foreign mission" when that

"foreign mission has ceased conducting diplomatic, consular, and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission." § 4305(c). Thus, the former diplomatic properties here in the United States are ultimately subject to the authority and control of the Secretary of State.

The Office of Foreign Missions (OFM) is the arm of the State Department that acts pursuant to the Secretary of State's broad authority with respect to treatment and oversight of foreign mission properties, including former diplomatic properties located here in the United States. *See* 4303; Dk. 34, Exh. 1 at p. 1–2. Consistent with the Vienna Convention, the Foreign Mission Act also provides that foreign mission property within the control of the Department State is not subject to attachment or execution. Section 4308(f) provides as follows:

Assets of or under the control of the Department of State, wherever situated, which are used by or held for the use of a foreign mission *shall not be subject to attachment, execution, injunction, or similar process, whether immediate or final* (emphasis added).

Accordingly, the Foreign Mission Act reinforces the basic understanding that properties of a foreign mission, including those that are not currently being used by a foreign mission, are generally immune from attachment or execution.

(3) *Foreign Sovereign Immunities Act, §§ 1609, 1610, Including Provisions Incorporated by the Terrorism Risk Insurance Act*

The Foreign Sovereign Immunities Act, provides that the property of a foreign *161 state is generally immune from attachment or execution subject to a few, carefully delineated exceptions. *See* 28 U.S.C. §§ 1609, 1610. The exceptions to that immunity are found in § 1610. One well-established exception to the general rule of immunity from attachment or execution is the so called "commercial activity" exception. *See* § 1610(a)(7); *Republic of Argentina v. Weltover*, 504 U.S. 607, 112 S.Ct. 2160, 119 L.Ed.2d 394 (1992). That exception provides that the property of a foreign state is *not* immune from attachment or execution if the property at issue "is used for a commercial activity" by the foreign state. § 1610(a)(7).

Congress has enacted an exception to immunity for any property belonging to designated state sponsors of terrorism. *See* Pub.L. 105–277, Div. A., Title I, § 117

(October 21, 1998). That exception—now codified as § 1610—would otherwise permit the attachment of blocked assets of terrorist states, including former diplomatic properties, but Congress gave the President express authority to waive the exception in the interest of national security, and the President promptly executed the waiver upon signing the legislation into law. *See* Pres. Determination No. 99–1, 63 FR 59201. (1998).

A term later, Congress attempted to override the President’s waiver of § 1610(f) in the Victims of Trafficking and Violence Protection Act (VTVPA) of 2000. *See* Pub.L. 106–386, § 2002, 114 Stat. 1541 (October 28, 2000), but Congress again included in the legislation express authority for the President to waive § 1610(f). The President immediately waived § 1610(f)(1)(A) a second time upon signing the VTVPA into law, and thus § 1610 remains a nullity. *See* Pres. Determination No 2001–03, 65 Fed. Reg. 66483 (2000).

Congress and the President eventually reached an agreement with respect to the attachment and execution of certain blocked assets of terrorist states, and enacted the Terrorism Risk Insurance Act (TRIA) in 2002, a law that permits terrorism victims with judgments under § 1605(a)(7) to satisfy their judgments for compensatory damages from “blocked assets of terrorists, terrorist organizations, and State sponsors or terrorism.” *See* Pub.L. No. 107–297, Title II, 201 (Nov. 26, 2002); now codified as 28 U.S.C. § 1610 Note.

Specifically, Section 201 of the TRIA provides that the blocked assets of a terrorist state *shall be subject to execution or attachment in aid of execution to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable* (emphasis added).

The definition of “blocked assets” under the TRIA, however, expressly excludes “property subject to Vienna Convention on Diplomatic relations, or that enjoys equivalent privileges and immunities under the law of the United States, being used for exclusively for diplomatic or consular purposes.” Section 201(d)(2)(B)(ii). The TRIA defines diplomatic and consular property as follows:

The term “property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations” and the term “asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations” mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the

Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

Section 201(d)(3).

*162 Accordingly, properties subject to the Vienna Convention that are being held exclusively for diplomatic purposes are not subject to attachment under the TRIA.

Last term, with the enactment of the § 1083 of the 2008 National Defense Appropriations Act (NDAA), Congress implemented changes to the FSIA in an effort to clarify the circumstances under which the property of a foreign state sponsor of terrorism is subject to attachment and execution. *See* Pub.L. No. 110–181, 122 Stat. 3, § 1083. The result is now codified as 28 USC. § 1610(g). That new section provides:

(g) Property in certain actions.—

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

(A) the level of economic control over the property by the Government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs

(D) whether the 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.

Notably, § 1610(g) is silent with respect to diplomatic properties; it makes no mention of the Vienna Convention, the Foreign Mission Act, or the TRIA, and does not otherwise evince an intent to allow for the attachment of diplomatic properties. Thus, even if the full scope or application of § 1610(g) is not entirely clear, a plain reading of the new enactment in now way provides a sufficient basis for stripping away the immunity long afforded to diplomatic property.

This plain reading and common sense understanding of the statute is reinforced by the Conference Report to § 1083, which strongly suggests that Congress did not intend for § 1610(g) to allow for attachment or execution of diplomatic properties. That Report states: “The conferees intend that property used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of Mission, which is not subject to execution or attachment in aid of execution of a judgment, should not be subject to a lien of *lis pendens* under this provision.” See Conf. Rep. to H.R. 1585, p. 10010 (December 6, 2007). Accordingly, it appears that Congress drafted § 1610(g) with the assumption that diplomatic properties are not subject to attachment. Moreover, § 1610(g), by its express terms, applies only to “judgments entered under 1605A,” and thus this new provision is not available to plaintiffs, like the Bennetts in this action, who have judgments under § 1605(a)(7).

(4) Executive Actions Pertaining to Iran’s Foreign Mission Properties

Plaintiffs’ effort to attach properties that once served as the Iranian Embassy complex directly implicates United States foreign policy, including sensitive national security concerns, and thus the status this Court should accord those properties, and, ultimately, the issue of whether they should be subject to attachment, *163 depends in large part on the policy decisions of the President and other actions taken by the Executive Branch. As the Supreme Court has recognized time and again, “[m]atters 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.” *Regan v. Wald*, 468 U.S. 222, 242, 104 S.Ct. 3026, 82 L.Ed.2d 171 (1984)(quoting *Haristades v. Shaughnessy*, 342 U.S. 580, 72 S.Ct. 512, 96 L.Ed. 586 (1952)). This is true particularly where, as here, Congress has vested the State Department with sweeping authority to manage former diplomatic properties in the United States. *Palestine Information Office*, 853 F.2d at 937; See *Dames & Moore v. Regan*, 453 U.S. 654, 669, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981). A review of the policy decisions in this area reveals in no uncertain terms that the Executive Branch has consistently taken the position that properties once used by the Iranian Foreign Mission should be protected under the Vienna Convention and are therefore immune from attachment.

The relationship between Iran and the United States deteriorated as a result of the Iran hostage crisis, which began on November 4, 1979, when a large group of

Islamist students seized the American Embassy in Tehran and took all 52 members of the embassy staff as hostages. In response to this crisis, President Carter issued an Executive Order blocking all Iranian assets in the United States. Executive Order 12170, 44 FR 65729 (November 14, 1979). At that time, Iran continued to use the properties of its foreign mission here in the United States, including its diplomatic properties here in the Nation’s Capitol.⁶

Approximately five months later, as the hostage crisis waned on, President Carter severed diplomatic relations. In accordance with the President’s directive, the Secretary of State, by diplomatic note, informed the Embassy of Iran on April 7, 1979 that all Iran’s diplomatic properties were to be closed and sealed, except to the extent that such properties might be used, with State Department approval, by a designated protecting power for Iran.

About a year later, on April 14, 1980, Algeria was approved by the State Department as the protecting power for Iranian *164 interests in the United States.⁷ At that time, however, the Department of State informed Algeria that the United States would retain custody of Iran’s diplomatic premises until the United States, or its Protecting Power, regained custody of the American embassy in Tehran. The State Department later stressed that its refusal to turn over Iranian diplomatic properties to Algeria, “was a reciprocal action taken in response to Iran’s breach of its obligations under the Vienna Contention to respect and protect the diplomatic and consular properties of the United States and to permit Switzerland, the United States Protecting Power in Iran, to assume custody of those properties.” Dk. # 34, Exh. 1 at p. 4.

Thus, the State Department asserted control over Iran’s diplomatic properties here in the United States and Algeria was never authorized to take custody of Iran’s diplomatic properties. In response to concerns expressed by Algeria regarding the security and upkeep of Iran’s diplomatic properties, the State Department assured Algeria that it would take appropriate measures ensure the safety and protection of Iran’s diplomatic properties within the United States. See Dk. # 34, Exh. 1 at p. 3.

In 1982, Congress passed the Foreign Missions Act, which as noted above established the Office of Foreign Missions and formalized the State Department’s authority and responsibilities with respect to diplomatic properties in the United States. After considering ways to maintain Iran’s official properties consistent with the Vienna Convention, OFM eventually decided that, to the extent possible, it would rent Iran’s properties in furtherance of

its obligations to protect those properties under the Vienna Convention. The State Department, which was then under the administration of President Ronald Reagan, promptly informed Algeria of its decision by diplomatic note, dated March 10, 1983. That note reads in pertinent parts as follows:

Since assuming custody of the Iranian properties following the break in diplomatic relations, the Department has undertaken to respect and protect them in accordance with Article 45 of the Vienna Convention on Diplomatic Relations.

....

.... The Department considers that rental would protect Iran's interest in these properties by ensuring maintenance of their commercial value.

It would be appreciated if the Embassy of the Democratic and Popular Republic of Algeria could transmit the foregoing message to the Government of the Islamic Republic of Iran as soon as feasible.

Department of State, Washington, March 10, 1983

Since 1983, OFM has periodically rented Iran's diplomatic properties to both foreign states and states private parties. For instance, the Embassy building and the diplomatic residence on Garfield Street have been rented out to private tenants over the years; Iran's former Chancery at 3005 Massachusetts Avenue was rented out to Turkey for a period of time; and the parking lots have been rented out periodically to other foreign missions or private parties. *Id.* at p. 6–8. At the moment, however, the properties are not being rented and the buildings on the properties *165 are in need of repair. *Id.*; Dk. # 35 at p. 7

According to Deputy Assistant Secretary Nebel, the OFM's "actions in connection with the maintenance and rental of Iran's diplomatic and consular property have been and to be taken exclusively for diplomatic and consular purposes as such actions are in furtherance of obligations of the United States, as the receiving State, to protect the property pursuant to the Vienna Conventions." *Id.* at p. 5. The proceeds from the rental of the properties are used to maintain and repair the properties and any excess funds "are deposited in a blocked Iranian diplomatic account and not used for any other purpose." *Id.*

Notably, OFM "protects and preserves the Iranian diplomatic properties in a manner consistent with the offices's management of other countries' diplomatic properties when, in the absence of diplomatic relations, custody has not been turned over to a protecting power."

Id. at p. 5. In the 1980s, for example, OFM renovated and rented out the diplomatic properties of Vietnam and Cambodia. Since the United States resumed normal diplomatic relations with those countries, both nations have returned their foreign missions to their respective properties here in the United States. Moreover, Assistant Deputy Secretary Nebel claims that, "as a direct result of the actions of the United States protecting Vietnam's properties during the absence of relations and returning those properties when relations resumed, Vietnam returned to the U.S. numerous U.S. diplomatic properties in Vietnam." *Id.* at p. 6

President Clinton, who normalized United States diplomatic relations with Vietnam, twice executed waivers with respect to provisions of the FSIA that would have otherwise permitted the attachment of diplomatic properties owned by state sponsors of terrorism, as explained above. When President Clinton first exercised his express waiver authority in order to protect diplomatic properties of states sponsors of terrorism, the White House issued the following statement:

[T]he Struggle to defeat terrorism would be weakened, not strengthened, by putting into effect a provision of the Omnibus Appropriations Act for FY 1999. It would permit individuals who win court judgments against nations on the State Department's terrorist list to attach embassies and certain other properties of foreign nations, despite U.S. laws and treaty obligations barring such attachment.

The new law allows the President to waive the provision in the interest of national security interest of the United States. President Clinton signed the bill, and in the interests of protecting America's security, has exercised the waiver authority. If the U.S. permitted attachment of diplomatic properties, the other countries could retaliate, placing our embassies and citizens overseas at grave risk. Our ability to use foreign properties as leverage in foreign policy disputes would also be undermined.

Statement by the Press Secretary (October 21, 1998) (reproduced in Suits Against State Sponsors of Terrorism, Congressional Research Serv. Rep. RL31258 at p. 51) (updated August 8, 2008).

As the White House's statement clearly indicates, the Clinton Administration feared that permitting FSIA judgment-creditors to attach "embassies and certain other properties of foreign nations" would undercut United States' treaty obligations and have substantial negative consequences with respect national security and foreign relations matters.

*166 Last summer, the Justice Department, then under the control of the Bush administration filed the pending motion to quash the five writs of attachment on Iran diplomatic properties issued in this case on behalf of Michael and Linda Bennett and the Estate of their daughter, Marla Ann Bennett. As Deputy Assistant Secretary Nebel's declaration makes clear, the State Department's position then, and presumably now, is entirely consistent with the position taken by the State Department throughout the preceding two decades during which the Department has stressed, time and again, that Iran's diplomatic properties are under the protective custody of the OFM in accordance with the Federal Government's responsibility to respect and protect those premises under Articles 22 and 45 of the Vienna Convention.

A review of the relevant Executive Branch decisions and actions since the termination of diplomatic relations with Iran in 1980 reveals that there has been universal agreement—as specifically expressed by at least four different Presidential administrations and through the more than 30 years of continued preservation of Iranian diplomatic properties—that the protection of these properties is an important foreign policy objective of the United States.

(5) Prior Decisions Regarding Efforts to Attach Iran Former Diplomatic Properties

As noted above, this case is not the first time that a judgment-creditor of Iran has sought to attach properties that Iran formerly maintained for its diplomatic mission. Indeed, this Court has ruled on three different occasions with respect to efforts to attach many of the very same Iranian embassy properties that are now at issue in this case. See *Flatow*, 76 F.Supp.2d 16; *Mousa v. Iran*, 00-cv-2096, 2003 WL 24207777 (D.D.C.2003) (Bryant, J.); *Elahi v. Islamic Republic of Iran*, 99-cv02802 (D.D.C.2003) (Lamberth, J). Moreover, a few other courts have had opportunity to pass on similar efforts to attach Iranian diplomatic or consular properties within their respective jurisdictions. See *Hegna v. Islamic Republic of Iran*, 376 F.3d 485 (5th Cir.2004); *Hegna v. Islamic Republic of Iran*, 287 F.Supp.2d 608 (D.Md.2003).

Without exception, every court that has passed on the question has determined that the properties Iran once used for diplomatic purposes here in the United States are not subject to attachment or execution. In *Flatow*, for example, this Court ruled that the commercial activity exception to the FSIA, § 1610(a)(7), does not permit the

attachment of Iran's real properties that were once used for diplomatic purposes when these properties are held and maintained in protective custody by the OFM. 76 F.Supp.2d at 23. Moreover, in an unpublished ruling in *Elahi*, this Court determined that the attachment of these properties would violate multi-lateral treaty obligations owed by the United States under both the Vienna Convention. 00-cv-02802, p. 2–3. Consequently, this Court ruled in that case that the TRIA had excluded these former diplomatic properties from the definition of “blocked assets,” and thus the properties maintained their immunity from attachment under the FSIA. See *Id.* Judge Bryant of this Court, Judge Motz of the District of Maryland, and the 5th Circuit Court of Appeals have all reached the same conclusion. See *Hegna*, 376 F.3d at 495–96; *Mousa*, 00-cv-02096 at p. 8; *Hegna*, 287 F.Supp.2d 608 at 610–611.

Analysis

This Court's review of the relevant legal sources—when considered in light of *167 the Office of Foreign Mission's continued assertion of authority over Iran's former diplomatic properties under the Foreign Missions Act—leads to inescapable conclusion that the real properties at issue are currently immune from attachment under the laws of the United States, and therefore the Government's motion to quash will be granted. With the preceding legal discussion as the foundation for this Court's decision, the Court will now briefly address the key arguments raised by the parties during this litigation.

(1) The United States Has Standing to Move to Quash the Writs of Attachment

The plaintiffs' argument that the United States lacks standing in this action is without merit and essentially frivolous. This Circuit has consistently recognized that the United States has standing to bring actions necessary to uphold its foreign policy obligations under international agreements, particularly those relating to Iran. See e.g., *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233–34 (D.C.Cir.2003); *Persinger v. Islamic Republic of Iran*, 729 F.2d 835, 837 (D.C.Cir.1984). Indeed, this Court has recognized on numerous occasions that the United States has standing, pursuant to 28 U.S.C. § 517, to bring a motion to quash writs of attachment issued against Iran foreign mission properties and other protected assets. See e.g., *Weinstein v. Islamic Republic of Iran*, 274 F.Supp.2d

53, 55 n. 1 (D.D.C.2003) (Lamberth, J.); *Flatow*, 76 F.Supp.2d at 18 n. 1. Moreover, longstanding Supreme Court precedent establishes that the Attorney General has standing to initiate civil litigation in order to uphold United States foreign policy obligations under international treaties. See *Sanitary Dist. Of Chicago v. United States*, 266 U.S. 405, 425–426, 45 S.Ct. 176, 69 L.Ed. 352 (1925).

Whatever might be said of the decisions issued by the Northern District of Illinois in *Rubin*, those rulings simply do not apply here. See *Rubin v. Islamic Republic of Iran*, 408 F.Supp.2d 549 (N.D.Ill.2005), *aff'd*, 436 F.Supp.2d 938 (N.D.Ill.2006). In *Rubin* a magistrate judge considered efforts by private parties, namely the University of Chicago and others, to defeat writs of attachment issued against Persian artifacts on loan to the University from Iran. The University of Chicago claimed that it had standing to challenge the writs on sovereign immunity grounds or to otherwise serve as Iran's proxy in the litigation. Thus, in *Rubin* the plaintiffs were literally seeking to represent the interests of Iran.

In contrast to private interests asserted in *Rubin*, the United States in this action seeks to uphold its own, independent foreign policy obligations under the Vienna Convention and the Foreign Mission Act. As explained above, the Federal Government's duty to protect and respect the diplomatic properties of other nations does not depend on the current state of our relations with those foreign powers. The level of hostility between the United States and Iran simply makes no difference. Quite the contrary, under Article 45 of the Vienna Convention, the United States must meet its obligations to protect and respect diplomatic properties, even when, as in this case, diplomatic relations have been strained and, at times, are openly hostile.

More fundamentally, plaintiffs' counsel fail to note that the Magistrate Judge in the *Rubin* action discussed this Court's ruling in *Flatow* and expressly acknowledged that the United States Government does have standing, consistent with its obligations under the Foreign Mission Act, to challenge writs of attachment issued *168 against Iran's diplomatic properties. See 408 F.Supp.2d at 558–59. By doing so, the magistrate judge distinguished his case, which involved private third parties and generalized Executive Branch concerns about foreign policy under the FSIA, from the specific duty of the Federal Government to protect and respect foreign diplomatic properties. Accordingly, it is hard for this Court to understand how the *Rubin* decision supports plaintiffs at all. Moreover, this Court is concerned that while counsel has vigorously urged this Court to adopt his

selective reading of case precedent from the Northern District of Illinois, he has failed to discuss, let alone cite, the controlling case precedent from this District Court and the D.C. Circuit.

Finally, this Court observes that plaintiffs' counsel, much like counsel in *Roeder*, consistently offers up mischaracterizations of the nature of the interests the United States seeks to assert in this action. See *Roeder v. Islamic Republic of Iran*, 195 F.Supp.2d 140, 155 (D.D.C.2002). The United States, as emphasized throughout this discussion, is not appearing in this action in order to defend the Islamic Republic of Iran, as counsel's rhetoric tends to suggest; rather the United States seeks to uphold its obligations under multi-national treaties in furtherance of broader foreign policies objectives. In fact, the statement issued by the Clinton White House in 1998, *supra*, p. 165–66, seems to accurately summarize the foreign policy and national security interests the United States has at stake in this highly charged, politically sensitive context.

This Court recognizes that plaintiffs believe that the United States is misguided in its conduct of foreign policy in this instance. To all the victims in these actions, it must certainly feel as if the United States has turned against them in favor of state sponsors of terrorism. Nonetheless, counsel's rhetoric is neither accurate nor fair, and it certainly does not establish a basis on which this Court can deny the United States standing in this action. Plaintiffs have a right to express their frustration with respect to United States foreign policy, but that frustration should be directed to the foreign policy decision makers within the Executive Branch, or in Congress, who have the power to authorize the relief plaintiffs' desire.⁹

169 (2) *The Supplemental Materials Filed by Plaintiffs Are Not Properly Before the Court and therefore the Court will Strike those Documents from the Record

Plaintiffs' supplemental filing, Dk. # 37, is untimely and was filed without leave of the Court and therefore it will be struck from the docket. See e.g., *D.L. v. District of Columbia*, 450 F.Supp.2d 11, 20 (D.D.C.2006) (Lamberth, J.). Additionally, the supplemental memorandum and related materials are simply not relevant to any matter of consequence in this action, and thus this Court need not consider them. See *Judicial Watch, Inc. v. U.S. Dep't of Commerce*, 224 F.R.D. 261, 263 (D.D.C.2004)(Lamberth, J.).

(3) For the reasons stated in *Flatow*, the Commercial Activity Exception does not Apply in this Case.

In the decade since *Flatow* was decided, the factual circumstances relating to the Iranian Embassy Properties have not changed in a way that would require this Court to revisit its prior ruling with respect to the commercial activities exception of the FSIA, § 1610(a)(7). The plaintiffs' arguments on this issue lack merit. As this Court explained in *Flatow*, the availability of the commercial activity exception turns on whether the foreign state—in this case Iran—is using the properties at issue for a commercial purpose *Flatow*, 76 F.Supp.2d at 23. Iran was using the properties at issue exclusively for diplomatic purposes when the United States severed diplomatic relations in 1979. To the extent that there has been any commercial activity in connection with those properties since then—such as the leasing of those properties to private parties—that activity has been carried out by the United States under the auspices of the Foreign Mission Act. “Put simply, although the leasing of property by a private party might be commercial in nature, taking custody over diplomatic property under the authority granted by a federal statute or treaty is decidedly sovereign in nature.” *Id.* at 23.

It makes no difference that the Iranian Foreign Mission properties here in Washington are currently unoccupied and apparently in poor condition. Under the Foreign Mission Act—particularly §§ 4301(c) and 4305—the Department of State is vested with exceedingly broad—if not exclusive—discretion with respect to the preservation of those properties. In exercising that discretion, the Office of Foreign Missions undoubtedly must consider an array of issues and competing priorities in light of limited resources. This Court is not free to second guess that Executive agency's decision making under these circumstances.

Moreover, the Foreign Mission Act expressly provides that properties held in protective custody by the Department of State are not subject to attachment or execution. *See* § 4308(f). Thus, the manner in which the Office of Foreign Missions has exercised its own prerogative to maintain Iranian diplomatic properties within its custody simply has nothing to do with the ultimate question of whether those properties are entitled to immunity from attachment. To be blunt, even if the properties at issue have been so poorly maintained that they are not currently capable of being occupied, as plaintiffs suggest is the case, it simply does not follow that, as consequence of that neglect, the United States has

somehow forfeited these properties to the judgment-creditors of Iran.

(4) § 1610(g) Does Not Strip Away Sovereign Immunity Accorded to Iran's Diplomatic Properties

As noted above, plaintiffs are not entitled to rely on § 1610(g) because their FSIA judgment is under § 1605(a)(7), and they have not elected to proceed under latest state sponsor of terrorism provision, § 1605A. More fundamentally, however, this Court finds that even if the plaintiffs could suddenly bring their action under § 1605A, it would not alter the outcome with respect to their writs of attachment. As noted above, nothing in § 1610(g) indicates that Congress intended to strip away the immunity long afforded to diplomatic properties. This plain language interpretation of § 1610(g) is reinforced by the legislative history relating to that enactment. Moreover, in other enactments under the FSIA, such as the TRIA and the VTPA, Congress has clearly and directly addressed the issue of whether and to what extent diplomatic properties of terrorist states should be afforded immunity from attachment and execution. Congress' complete silence on the matter in this most recent enactment indicates that they did not intend to pare back the immunity that they have long afforded to diplomatic properties.

Even if plaintiffs could offer up some contrived reading of § 1610 to support their claim that Iranian diplomatic properties are now subject to attachment, this Court would have to resolve the statutory ambiguity on this matter in favor of the Government in light of the clear immunity accorded such properties under both the Foreign Missions Act and the Vienna Convention. *See e.g., Trans World Airlines, Inc. v. Franklin Mint Corp.*, 466 U.S. 243, 252, 104 S.Ct. 1776, 80 L.Ed.2d 273 (1984); *Hegna*, 287 F.Supp.2d at 610–611. Moreover, to deny those diplomatic properties immunity in the absence of express guidance from Congress would, in this Court's view, constitute an unwarranted encroachment on the President's authority to conduct foreign affairs.

In ruling that plaintiffs' writs of attachment must be quashed, this Court is certainly mindful of the long and difficult pursuit of justice that the Bennetts and so many other victims of terrorism have had to endure. Under the current state of the law, however, this Court has no choice but to grant the Government's motion to quash. If, at some later time, Congress or the President decide that the sorts of diplomatic properties at issue in this case should be subject to attachment, then this Court will of course

reconsider the matter.

All Citations

A separate order consistent with this opinion shall issue this date.

604 F.Supp.2d 152

Footnotes

- 1 The five properties at issue are identified as 3003 Massachusetts Avenue, NW; 3005 Massachusetts Avenue, NW; 3410 Garfield Street, NW; Lot 8, Square 2145, NW; and Lot 0820, Square 2145, NW. See Dk. # s 26–31. These five properties are described in some detail in the written declaration of Mr. Claude J. Nebel, dated July 11, 2008. See Dk. # 34, Exh. 1. At the time of the declaration, Mr. Nebel was Deputy Assistant Secretary for Diplomatic Security and Deputy Director of the Office of Foreign Missions for the State Department. The United States relies on Deputy Assistant Secretary Nebel's declaration in support of its motion to quash the five writs of attachment. According to the declaration: The property at 3003 Massachusetts Avenue, NW was the residence of Iran's Ambassador. The property at 3500 Massachusetts Avenue, NW served as the Embassy Chancery. The property at 3410 Garfield Street, NW was used as a diplomatic residence of the Embassy. The properties identified as Lot 8, Square 2145, NW and Lot 0820, Square 2145, NW were both part of the Iranian Embassy compound and functioned primarily as parking lots for the Iranian Embassy. Iran owns all the properties at issue and the majority of them were purchased by the Government of Iran in 1959.
- 2 The decision in *Flatow* involved three of the properties at issue today—3003 Massachusetts Avenue, NW, 3005 Massachusetts Avenue, NW, and 3410 Garfield Street, NW—as well as one other Iranian property, 2954 Upton Street, NW. See 76 F.Supp.2d at 19, n. 3. Just four years later, this Judge again quashed writs of attachment on those very same properties and issued a short, unpublished opinion in the matter. See *Elahi v. Islamic Republic of Iran*, 99-cv-02802 (D.D.C.2003) (Lamberth, J.).
- 3 Counsel also included the following rhetoric: “The argument that pandering to a terrorist is in the best interest of the United States falls on the sale of reason somewhere between illogical and insulting. We would all hope that there is no close relationship between any American Administration and the world's leading supporter of terrorism.” Dk. 24 at p. 10. Perhaps such rhetoric was intended to deter the United States from getting involved in this litigation. At any rate, it seems unnecessary and, as will be emphasized below, completely mischaracterizes the nature of the interests the United States has at stake in these matters.
- 4 Plaintiffs issued a subpoena to the State Department for this information, but the Department, by written letter, declined to comply. See Dk. # 37. The Department noted, among other objections, that plaintiffs' subpoena is procedurally defective, unduly burdensome, and that the information requested is irrelevant to this dispute. See Dk. # 37 & Exh. 4; Dk. 40 at p. 3–4. For the reasons discussed below, this Court finds that the information plaintiffs requested from the Department of State is irrelevant to the issue of whether this Court must quash the writs of attachment.
- 5 In summarizing the relevance of the construction worker's testimony, counsel states as follows:
The testimony demonstrates that the buildings located on the properties at 3003 Massachusetts Avenue, 3005 Massachusetts Avenue and 3410 Garfield Street are not in use at all and therefore have value only as investment property. The other pieces, never legally joined to the real property on which the three buildings at those addresses above were located, were vacant lots and never had any known use and therefore could not be diplomatic property in accordance with Article 22 of the Vienna Convention on Diplomatic Relations. The properties are not exempt from attachment upon the judgment entered against Defendant, Iran.
Dk. # 37 at p. 4.
- 6 For this portion of the opinion, the Court relies in large part on the declaration provided to the Court by Claude J. Nebel while he was serving Deputy Assistant Secretary of State for Diplomatic Security and Chief of the Office of Foreign Missions. That declaration as noted above, *supra*, n. 1, has been offered by the United States as an exhibit in support of its motion to quash the writs of attachment, and is included as Exhibit 1 to the Government's brief in support of the motion to quash. See Dk. # 34, Exh. 1. The Court also relies on certain documents furnished in connection with Deputy Assistant Secretary Nebel's declaration and included as separate exhibits to his declaration. These documents include compilations of statements and directives of President Carter in connection with the termination of diplomatic relations with Iran. The exhibits also include copies and secondary source compilations of diplomatic notes and other Department of State correspondence relating to the severance of diplomatic relations with Iran and the status of Iran's Foreign Mission Properties in the United States. These miscellaneous source materials are included in the record as exhibits with Deputy Assistant Secretary Nebel's declaration. The plaintiffs have not challenged Deputy Assistant

Secretary Nebel's declaration or any of the documentary exhibits included therewith. Moreover, the declaration underscores points that the plaintiffs apparently believe are relevant to this dispute, namely, that the buildings on the properties at issue are not occupied and are in need of repair. *See id.* at p. 6–8. For purposes of this opinion, the Court will assume the truth of plaintiffs' assertion that the buildings on Iran's properties are "not adequately cared for, are not rented, and are in need of rehabilitation." Dk. # 35 at p. 7.

7 Algeria served initially as Iran's Protecting Power for Iranian interests in the United States. Pakistan now serves that role.

8 The Diplomatic Note is included with the materials attached as exhibits to Deputy Secretary Nebel's Declaration. *See* Dk. # 34, Exh. 1 to Exh. 1.

9 Plaintiffs claim that the Office of Foreign Missions is laboring under a misunderstanding of the United States' obligations under the Vienna Convention. In support of this claim, plaintiffs note that whereas Article 22 states that diplomatic properties are immune from attachment and execution, Article 45 is silent on the matter. Plaintiffs therefore argue that under Article 45 of the Vienna Convention, foreign mission properties are subject to attachment and execution whenever diplomatic relations are severed. Plaintiffs' interpretation of Article 45 is untenable. As an initial matter, nothing in Article 45 indicates that it is intended to abrogate or otherwise supplant the Receiving States's duties to protect and respect foreign mission property as described in Article 22. Indeed, Article 45 by its plain terms serves to clarify and reinforce that the Receiving State must respect and protect the property of a foreign mission even after relations with that foreign power turn cold or hostile. In addition to underscoring the inviolable nature of the Receiving State's responsibility to protect and respect a foreign nation's mission properties, Article 45 serves to offer the Receiving State a number of practical approaches that the Receiving States may use to fulfil those obligations after diplomatic relations have been severed. For example, the Receiving state *may* entrust the premises of the mission to a third state. *See* Article 45(b). Thus, rather than supplant Article 22, as plaintiffs suggests, Article 45 merely supplements that provision with some practical approaches that the Receiving State may, within its discretion, utilize to fulfil its Article 22 obligations. More fundamentally, however, what plaintiffs have articulated in this case is best characterized as an expression of disagreement and frustration with United States foreign policy as it relates to the diplomatic properties of state sponsors of terrorism. As explained in this portion of the opinion, however, those disagreements and frustrations are best directed to the policy makers within two political branches of the federal government. Much like this Court cannot deny the United States standing to defend its foreign policy positions in connection with multilateral treaties, this Court also lacks the authority to pass judgment on the merits of those foreign policy determinations. *See e.g., Holmes v. Laird*, 459 F.2d 1211, 1215 (D.C.Cir.1972) (stressing that questions concerning the extent of United States treaty obligations toward other foreign governments are largely nonjusticiable political questions) *Kucinich v. Bush*, 236 F.Supp.2d 1, 16 (D.D.C.2002) (stressing issues concerning the interpretation of treaties and other agreements between sovereign powers "are largely political questions best left to the political branches of the government, not the courts, for resolution.")

ANNEX 311

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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.

1 Before the Court is a motion to lift stay and for withdrawal filed by Plaintiffs Michael
2 Bennett, *et al.*, Third-Party Defendants and Counter-Claimants Carlos Acosta, *et al.*, Third-Party
3 Defendants and Counter-Claimants Steven Greenbaum, *et al.*, Third-Party Defendants and
4 Counter-Claimants The Estate of Michael Heiser, *et al.*, Third-Party Plaintiff Visa Inc., and Third-
5 Party Plaintiff Franklin Resources, Inc. Upon consideration of the motion, it is hereby:

6 **ORDERED** that the motion is **GRANTED**.

7 **IT IS FURTHER ORDERED** that the stays entered on December 3, 2018 (Dkt. No. 192),
8 and December 19, 2018 (Dkt. No. 196), are **LIFTED**.

9 **IT IS FURTHER ORDERED** that Baker & McKenzie LLP, counsel for Visa Inc. and
10 Franklin Resources, Inc., are hereby authorized to withdraw \$324,130.60 from the Court's
11 Registry, to be paid from the \$17,648,962.76 wired to the Court's Registry on or about May 8,
12 2012 (Dkt. No. 89).

13 **IT IS FURTHER ORDERED** that Baker & McKenzie LLP shall post notice on the docket
14 in this action within three business days after it receives the \$324,130.60 from the Court's Registry
15 referenced above.
16


17 **IT IS FURTHER ORDERED** that Stroock & Stroock & Lavan LLP, counsel for Carlos
18 Acosta, *et al.*, and Steven Greenbaum, *et al.*, are hereby authorized on behalf of Carlos Acosta, *et*
19 *al.*, Steven Greenbaum, *et al.*, Michael Bennett, *et al.*, and The Estate of Michael Heiser, *et al.*, to
20 withdraw the balance of the \$17,648,962.76 wired to the Court's Registry on or about May 8, 2012
21 (Dkt. No. 89), including interest and return on investment, after Baker & McKenzie LLP posts the
22 notice referenced above.
23

24 **IT IS FURTHER ORDERED** that, within three business days after Stroock & Stroock &
25 Lavan LLP receives the balance of the \$17,648,962.76 referenced in the immediately preceding
26 paragraph, Stroock & Stroock & Lavan LLP shall transfer portions of those funds to Bond &
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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

ANNEX 312

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**MICHAEL BENNETT
LINDA BENNETT
Individually And As Co-Administrators Of
The Estate Of Estate of MARLA ANN BENNETT
Plaintiffs**

v.

**CA No.1:03 CV-01-1486RCL
Judge Royce C. Lamberth**

**THE ISLAMIC REPUBLIC OF IRAN, et al.
Defendants**

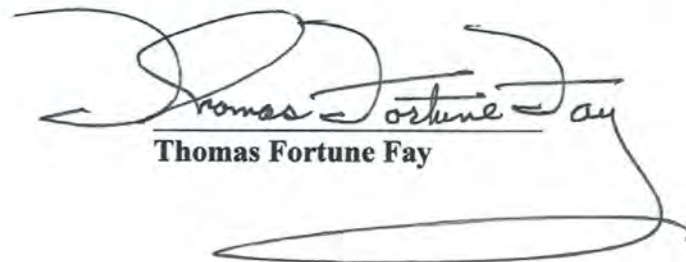
**SUPPLEMENTAL AFFIDAVIT OF
SERVICE OF PROCESS OF
JUDGMENT PURSUANT TO 28 U.S.C.§1608(c)**

I, Thomas Fortune Fay, 777 Sixth Street, NW, Suite 410, Washington, DC 20001, pursuant to Local Rule 5.1(h) declare under penalty of perjury as follows:

- (1) That I am an adult 70 years of age, with a date of birth on April 16, 1940.
- (2) That I am counsel of record for the Plaintiff in the above titled action.
- (3) That on the 19th day of November, 2007, I caused to be mailed to the Defendant, the Islamic Republic Of Iran, Ministry Of Foreign Affairs, Manouchehr Mottaki, Foreign Minister, Khomeini Avenue, United Nations Street, Tehran, Iran, a copy of the judgment entered in this action on August 30, 2007, in English and translated into Farsi.

(4) That I received the attached confirmation of service of the above document bearing the signed name in Farsi of the addressee, Manouchehr Mottaki, Minister of Foreign Affairs of the Islamic Republic of Iran from August 24, 2005 to December 13, 2010, from DHL Worldwide Mail Service, bearing a date of November 26, 2007.

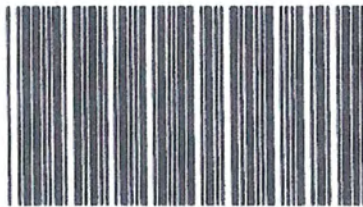
January 24, 2011


Thomas Fortune Fay

DUA

DESTINATION:

THR



AWB:

8607262160



OF 1
ORIGIN: IAD



سید تاج احمدی رہنما
وزارت خارجہ
منوچہر مٹاکی

Attn.: Mr Rahnama

Ministry of Foreign Affairs

Manouchehr Mottaki



ANNEX 313

JANE CAROL NORMAN, ESQ.
California Bar No. 66998
Bond & Norman, PLLC
777 Sixth Street, NW
Suite 410
Washington, DC 20001
202/423-3863
Fax 202/207-1041

[Handwritten signature]
FILED
DEC - 2 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL BENNETT)
LINDA BENNETT)
Individually and as Co-Administrators of)
the Estate of MARLA ANN BENNETT, deceased)
c/o THOMAS FORTUNE FAY, ESQ.)
601 Pennsylvania Ave., NW)
Suite 900 – South Building)
Washington, DC 20004)

E-filing

JSC

CV

11

5807

Plaintiffs,

[Handwritten signature]

THE ISLAMIC REPUBLIC OF IRAN)
Ministry of Foreign Affairs)
Khomeini Avenue)
United Nations Street)
Tehran, Iran,)
and)
THE IRANIAN MINISTRY OF INFORMATION)
AND SECURITY)
Pasdaran Avenue)
Golestan Yekom)
Tehran, Iran,)
and)

FRANKLIN RESOURCES INC)
dba FRANKLIN TEMPLETON FIDUCIARY TRUST)
 Serve:CT Corporation Services)
 818 W. 7th Street)
 Suite 200)
 Los Angeles, CA 90017)
 and)
VISA INC)
dba VISA INTERNATIONAL)
SERVICE ASSOCIATION)
 Serve:CT Corporation Services)
 818 W. 7th Street)
 Suite 200)
 Los Angeles, CA 90017)
 _____ Defendants.)

COMPLAINT

(1) This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1605A(g)(3) and 28 U.S.C. §1331. This is an action in rem in accordance with the provisions of 28 U.S.C. §1655. The Defendants, The Islamic Republic of Iran and The Iranian Ministry of Information and Security, are subject to suit in the courts of the United States pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1605A, and 28 U.S.C. §1605(a)(7), as in effect before the enactment of 28 U.S.C. §1605A. Venue lies in this Court pursuant to 28 U.S.C. §1391(f)(3). This is an action in rem for enforcement of a lien as provided by 28 U.S.C. §1605A(g)(3) and 28 U.S.C. §1655.

(2) The Defendant, Franklin Resources Inc., dba Franklin Templeton Fiduciary Trust, (Franklin) is a corporation organized under the laws of the State of Delaware, and was, at all times relevant to this action, doing business in the State of California, as to the property which is the subject of this in rem proceeding. In the course of that business it accepted investments designated as the property of Defendant, Visa, Inc., whose beneficial owner was in fact the

Defendant, The Islamic Republic Of Iran, at all times relevant to this action. The Defendant, Visa, Inc., dba Visa International Service Association, (Visa) is a corporation organized under the laws of the State of State of Delaware, and was, at all times relevant to this action, doing business in the State of California, as to the property which is the subject of this in rem proceeding.

(3)Plaintiffs Michael Bennett and Linda Bennett, domiciliaries of the State of California, are the parents of decedent, Marla Ann Bennett, who died from injuries sustained during a terrorist attack in Jerusalem on July 31, 2002. Plaintiffs Michael Bennett and Linda Bennett are the Co-Administrators of the Estate of Marla Ann Bennett and in that capacity represent their daughter's other beneficiary pursuant to federal and California state law, Lisa Bennett, decedent's sister. On August 30, 2007, judgment was entered for Plaintiffs, and against Defendants, The Islamic Republic of Iran and The Iranian Ministry of Information and Security, in the amount of \$12,904,548.00, of which \$404,548.00, was allocated to the estate of Marla Bennett for wrongful death, \$5,000,000.00 was allocated to Linda Bennett, \$5,000,000.00 was allocated to Michael Bennett, and \$2.5 million was allocated to Lisa Bennett. As of the date of this Complaint the entire amount of that judgment remains unsatisfied. On January 25, 2011, the United States District Court For The District Of Columbia, entered an Order pursuant to 28 U.S.C. 1610(c), permitting Plaintiffs leave to proceed with attachment or execution.

(4)Defendant, The Islamic Republic of Iran, is a foreign state and was on July 31, 2002, and is to the present, a state sponsor of terrorism designated as such pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. §2405(j)). Defendant, The Iranian Ministry of Information and Security, is the Iranian intelligence service through which Iran sponsored the terrorist group that caused the act of extra judicial killings described below.

(5)Decedent Marla Ann Bennett, a United States national, was a 24-year-old graduate of University of California at Berkeley who planned to be teacher. She was a graduate student working on her master's degree in Judaic studies at the Pardes Institute of Jewish Studies in Berkeley and a participant in its Melton Center for Jewish Education program at Hebrew University in Jerusalem at the time of her death. On Wednesday, July 31, 2002, the decedent was having lunch with two of her friends, Harris-Gershon and Benjamin Blutstein¹, in the cafeteria of the Hebrew University in Jerusalem. The decedent prepared for a final exam later that afternoon, her last requirements for the summer session. She intended to fly back home to San Diego with her boyfriend Michael Simon two days later.

(6)At 1:40 p.m. local time, a nail-studded bomb went off in the crowded cafeteria. The explosion killed the decedent and six other people and wounded over eighty other individuals, mostly students. The bomb was placed by a Hamas agent in a bag left in the cafeteria and activated from a cell phone. These actions were found by Chief Judge Lamberth United States District Court For The District Of Columbia to have been undertaken by an agent of Hamas with the material support of the Defendant, The Islamic Republic Of Iran.

(7)Pursuant to 50 USCS §1702, the President may:

“(A) investigate, regulate, or prohibit--

- (i) any transactions in foreign exchange,
 - (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,
 - (iii) the importing or exporting of currency or securities,
- by any person, or with respect to any property, subject to the jurisdiction of the United States....” See Exhibit A attached.

¹ Benjamin Blustein suffered fatal injuries in the attack described in this Complaint.

On November April 9, 1980, under the authority of 50 U.S.C. 1701-1706, at FR 24432, the President by regulation exercised his authority as follows (EXHIBIT B):

“Sec. 535.201 Transactions involving property in which Iran or Iranian entities have an interest. No property subject to the jurisdiction of the United States or which is in the possession of or control of persons subject to the jurisdiction of the United States in which on or after the effective date Iran has any interest of any nature whatsoever may be transferred, paid, exported, withdrawn or otherwise dealt in except as authorized.”

The Office Of Foreign Assets Control of the United States Department Of The Treasury has confirmed that none of the Defendants has ever has a license to deal in investments for The Islamic Republic Of Iran.

(8)On November 2, 2011, Plaintiffs, through counsel, caused a Notice Of Lis Pendens to be served upon the Defendant Franklin in accordance with the provisions of 28 U.S.C. §1605A(g)(1), establishing a lien upon the tangible personal property of the Defendant, The Islamic Republic Of Iran, consisting of securities held for investment by Defendant Franklin upon an account bearing the name of the Defendant Visa. The lien is enforced as provided in Chapter 111 of Title 28 of the United States Code (28 U.S.C. §1655).

(9)Service upon foreign states is governed by the provisions of 28 U.S.C. §1608(a), which provides in pertinent part for alternative means of service: (1) through any special arrangement with the Defendant; (2) through use of any applicable international convention; (3)by any form of mail requiring a return receipt; or, if service cannot be completed by any of the foregoing means, through diplomatic channels. In addition 28 U.S.C. §1608(d) provides that the foreign state shall serve “an answer or other responsive pleading within sixty days after service has been made.”

Wherefore, the premises considered, Plaintiffs request:

(1) That the Court enter an Order directed to the Clerk of this Court that a summons be issued directed to the Defendant, The Islamic Republic Of Iran, requiring that an answer or other responsive pleading be filed within sixty days;

(2) That the Court enter an Order directed to the Clerk of this Court that a summonses be issued directed to the Defendants, Franklin Resources Inc., dba Franklin Templeton Fiduciary Trust and, and Visa, Inc., dba Visa International Service Association requiring each Defendant to file an answer or other responsive pleading within thirty days;

(3) That upon hearing the Court Order turnover of assets of the Defendant, The Islamic Republic Of Iran, in an amount sufficient to satisfy the judgment, with interest at the rate applicable by law and the costs of this proceeding as determined by the Court.

Date: December 2, 2011


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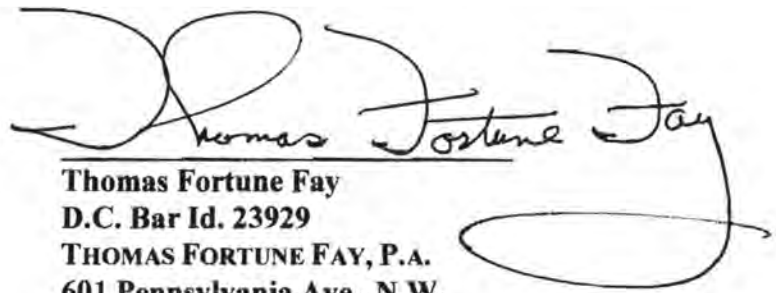

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(202) 638-4534
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EXHIBIT A

50 USCS § 1702

§ 1702. Presidential authorities

(a) In general.

(1) At the times and to the extent specified in section 202 [50 USCS § 1701], the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise--

(A) investigate, regulate, or prohibit--

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this title [50 USCS

§§ 1701 et seq.] shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued under this title.

(b) Exceptions to grant of authority. The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly--

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 202 of this title [50 USC § 1701], (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; [or]

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 5 of the Export Administration Act of 1979 [50 USC Appx. § 2404], or under section 6 of such Act [50 USC Appx. § 2405] to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code [18 USC §§ 791 et seq.]; or

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(c) Classified information. In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act [18 USC Appx § 1(a)]) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.

History:

(Dec. 28, 1977, P.L. 95-223, Title II, § 203, 91 Stat. 1626; Aug. 23, 1988, P.L. 100-418, Title II, Subtitle E, § 2502(b)(1), 102 Stat. 1371; April 30, 1994, P.L. 103-236, Title V, Part A, § 525(c)(1), 108 Stat. 474; Oct. 26, 2001, P.L. 107-56, Title I, § 106, 115 Stat. 277.)

EXHIBIT B

[Code of Federal Regulations]
[Title 31, Volume 2, Parts 200 to end]
[Revised as of July 1, 1997]
From the U.S. Government Printing Office via GPO Access
[CITE: **31CFR535**]

[Page 513-547]

TITLE 31--MONEY AND FINANCE: TREASURY

CHAPTER V--OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE
TREASURY

PART 535--IRANIAN ASSETS CONTROL REGULATIONS

Subpart B--Prohibitions

Sec. 535.201 Transactions involving property in which Iran or Iranian
entities have an interest.

No property subject to the jurisdiction of the United States or
which is in the possession of or control of persons subject to the
jurisdiction of the United States in which on or after the effective
date Iran has any interest of any nature whatsoever may be transferred,
paid, exported, withdrawn or otherwise dealt in except as authorized.

[45 FR 24432, Apr. 9, 1980]

ANNEX 314

391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New York.

James G. Wilkerson

Mr. Wilkerson, 40, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilkerson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Randy L. Wyant

Mr. Wyant, 47, has had ITDM since 1969. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wyant meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable proliferative and nonproliferative diabetic retinopathy. He holds a Class A CDL from Ohio.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the dates section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).¹

¹ Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule" but did establish the procedures and

The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Dated: October 26, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7-21640 Filed 11-2-07; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 17 newly-designated entities and eight

standards for issuing exemptions for drivers with ITDM.

newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters."

DATES: The designation by the Director of OFAC of the 17 entities and eight individuals identified in this notice pursuant to Executive Order 13382 is effective on October 25, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622-0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the "Order"), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of

proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On October 25, 2007, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated 17 entities and eight individuals whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees follows:

Entities:

1. BANK MELLI, Ferdowsi Avenue, P.O. Box 11365-171, Tehran, Iran; all offices worldwide [NPWMD]
2. BANK KARGOSHAEE (a.k.a. Kargosa'i Bank), 587 Mohammadiye Square, Mowlavi St., Tehran 11986, Iran [NPWMD]
3. BANK MELLI IRAN ZAO, Number 9/1, Ulitsa Mashkova, Moscow 103064, Russia [NPWMD]
4. MELLI BANK PLC, 1 London Wall, London EC2Y 5EA, United Kingdom [NPWMD]
5. ARIAN BANK (a.k.a. Aryan Bank), House 2, Street Number 13, Wazir Akbar Khan, Kabul, Afghanistan [NPWMD]
6. BANK MELLAT, 327 Taleghani Avenue, Tehran 15817, Iran; P.O. Box 11365-5964, Tehran 15817, Iran; all offices worldwide [NPWMD]
7. MELLAT BANK SB CJSC (a.k.a. Mellat Bank DB AOZT), P.O. Box 24, Yerevan 0010, Armenia [NPWMD]
8. PERSIA INTERNATIONAL BANK PLC, #6 Lothbury, London EC2R 7HH, United Kingdom [NPWMD]
9. KHATAM OL ANBIA GHARARGAH SAZANDEGI NOOH (a.k.a. GHORB KHATAM; a.k.a. KHATAM AL-ANBYA; a.k.a. KHATAM OL AMBIA), No. 221, Phase 4, North Falamak-Zarafshan Intersection, Shahrak-E-Ghods, Tehran 14678, Iran [NPWMD]
10. ORIENTAL OIL KISH, Second Floor, 96/98 East Atefi St., Africa Blvd., Tehran, Iran; Dubai, United Arab Emirates [NPWMD]
11. GHORB KARBALA (a.k.a. Gharargah Karbala; a.k.a. Gharargah Sazandegi Karbala-Moasseseh Taha), No. 2 Firouzeh Alley, Shahid Hadjipour St., Resalat Highway, Tehran, Iran [NPWMD]
12. SEPASAD ENGINEERING COMPANY, No. 4 Corner of Shad St., Mollasadra Ave., Vanak Square, Tehran, Iran [NPWMD]
13. GHORB NOOH, P.O. Box 16765-3476, Tehran, Iran [NPWMD]
14. OMRAN SAHEL, Tehran, Iran [NPWMD]
15. SAHEL CONSULTANT ENGINEERS, P.O. Box 16765-34, Tehran, Iran; No. 57, Eftekhar St., Larestan St., Motahhari Ave., Tehran, Iran [NPWMD]
16. HARA COMPANY (a.k.a. HARA INSTITUTE), Tehran, Iran [NPWMD]
17. GHARARGAHE SAZANDEGI GHAEM (a.k.a. GHARARGAH GHAEM), No. 25, Valiasr St., Azadi Sq., Tehran, Iran [NPWMD]

Individuals:

1. BAHMANYAR, Bahmanyar Morteza; DOB 31 Dec 1952; POB Tehran, Iran; Passport I0005159 (Iran); alt Passport 10005159 (Iran) (individual) [NPWMD]
2. DASTJERDI, Ahmad Vahid (a.k.a. VAHID, Ahmed Dastjerdi); DOB 15 Jan 1954; Diplomatic Passport A0002987 (Iran) (individual) [NPWMD]
3. ESMAELI, REZA-GHOLI; DOB 3 Apr 1961; POB Tehran, Iran; Passport A0002302 (Iran) (individual) [NPWMD]
4. AHMADIAN, ALI AKBAR (a.k.a. AHMADIYAN, Ali Akbar); DOB circa 1961; POB Kerman, Iran; citizen Iran; nationality Iran (individual) [NPWMD]
5. HEJAZI, MOHAMMAD; DOB circa 1959; citizen Iran; nationality Iran (individual) [NPWMD]
6. REZAIE, MORTEZA (a.k.a. REZAI, Morteza); DOB circa 1956; citizen Iran; nationality Iran (individual) [NPWMD]
7. SALIMI, HOSEIN (a.k.a. SALAMI, Hoseyn; a.k.a. SALAMI, Hossein; a.k.a. SALAMI, Hussayn); citizen Iran; nationality Iran; Passport D08531177 (Iran) (individual) [NPWMD]
8. SOLEIMANI, QASEM (a.k.a. SALIMANI, Qasem; a.k.a. SOLAIMANI, Qasem; a.k.a. SOLEMANI, Qasem; a.k.a. SOLEYMANI Ghasem; a.k.a. SOLEYMANI, Qasem; a.k.a. SULAIMANI, Qasem; a.k.a. SULAYMAN, Qasmi; a.k.a. SULEMANI, Qasem); DOB 11 Mar 1957; POB Qom, Iran; citizen Iran; nationality Iran; Diplomatic Passport 008827 (Iran) issued 1999 (individual) [NPWMD]

Dated: October 25, 2007.

Adam Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7-21725 Filed 11-2-07; 8:45 am]

BILLING CODE 4811-45-P

ANNEX 315

AO 441 (Rev. 07/10) Summons on Third-Party Complaint

UNITED STATES DISTRICT COURT

for the Northern District of California

See Attachment 1 For Complete Caption

Bennett, et al. v. The Islamic Republic of Iran, et al.
X
X
Civil Action No. CV-11-5807-CRB
Visa Inc. and Franklin Resources, Inc.
Defendant, Third-party plaintiffs
v.
Bank Melli, Carlos Acosta, Maria Acosta, et al.
Third-party defendants

SUMMONS ON A THIRD-PARTY COMPLAINT

To: (Third-party defendant's name and address)

See Attachment 2 for Complete List of Third-Party Defendants

A lawsuit has been filed against defendant VISA INC. and FRANKLIN RESOURCES, INC. are
this claim against you to pay part or all of what the defendant may owe to the plaintiffs Michael Bennett, et al.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a
motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or
defendant's attorney, whose name and address are:

Bruce H. Jackson [bruce.jackson@bakermckenzie.com]; Irene V. Gutierrez [irene.gutierrez@bakermckenzie.com]
Baker & McKenzie LLP - Two Embarcadero Center, 11th Floor
San Francisco, CA 94111 Tel: 415 576 3000; Fax: 415 576 3099

It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:
Jane Carol Norman, Esq.
Bond & Norman, PLLC
777 Sixth Street, NW, Suite 410 - Washington, D.C. 20001 - Tel: 202 423 3863; Fax: 202 207 1041

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party
complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may — but are not required to — respond to it.
[See Attachment 3]

Date: FEB 03 2012

CLERK OF COURT

Signature of Clerk or Deputy Clerk

AO 441 (Rev. 07/10) Summons on Third-Party Complaint (Page 2)

Civil Action No. CV-11-5807-CRB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

BENNETT, et al. v. THE ISLAMIC REPUBLIC OF IRAN, et al.
U.S.D.C., N.D. CAL., CASE NO. CV-11-5807-CRB

ATTACHMENT 1
to SUMMONS ON A THIRD-PARTY COMPLAINT

BENNETT, et al. v. THE ISLAMIC REPUBLIC OF IRAN, et al.

U.S.D.C., N.D. CAL., CASE NO. CV-11-5807-CRB

**ATTACHMENT 1
to Summons on a Third-Party Complaint**

COMPLETE CAPTION

MICHAEL BENNETT, LINDA BENNETT,
Individually and as Co-Administrators of the
Estate of MARLA ANN BENNETT, deceased
c/o THOMAS FORTUNE FAY, ESQ.
601 Pennsylvania Ave., NW
Suite 900 – South Building
Washington, DC 20004

Plaintiffs,

v.

THE ISLAMIC REPUBLIC OF IRAN
Ministry of Foreign Affairs
Khomeini Avenue
United Nations Street
Tehran, Iran and

THE IRANIAN MINISTRY OF INFORMATION
AND SECURITY
Pasdaran Avenue
Golestan Yekom
Tehran, Iran,

and

FRANKLIN RESOURCES INC.
dba FRANKLIN TEMPLETON FIDUCIARY TRUST
Serve: CT Corporation Services
818 W. 7th Street
Suite 200
Los Angeles, CA 90017

and

VISA INC
dba VISA INTERNATIONAL SERVICE ASSOCIATION
Serve: CT Corporation Services
818 W. 7th Street
Suite 200
Los Angeles, CA 90017

Defendants.

VISA INC., a Delaware corporation, and
FRANKLIN RESOURCES, INC. a Delaware
corporation,

Third-Party Plaintiffs,

v.

BANK MELLI, CARLOS ACOSTA, MARIA ACOSTA, IRVING FRANKLIN, ESTATE OF IRMA FRANKLIN, LIBBY KAHANE, ESTATE OF SONYA KAHANE, CIPPORAH KAPLAN, TOVA ETTINGER, BARUCH KAHANE, ETHEL GRIFFIN AS ADMINISTRATOR OF BINYAMIN KAHANE'S ESTATE, RABBI NORMAN KAHANE, STEVEN GREENBAUM, ALAN HAYMAN, SHIRLEE HAYMAN, THE ESTATE OF MICHAEL HEISER, deceased, GARY HEISER, FRANCIS HEISER, THE ESTATE OF LELAND TIMOTHY HAUN, deceased, IBIS S. HAUN, MILAGRITOS PEREZ-DALIS, SENATOR HAUN, THE ESTATE OF JUSTIN R. WOOD, deceased, RICHARD W. WOOD, KATHLEEN M. WOOD, SHAWN M. WOOD, THE ESTATE OF EARL F. CARTRETTE, JR., deceased, DENISE M. EICHSTAEDT, ANTHONY W. CARTRETTE, LEWIS W. CARTRETTE, THE ESTATE OF BRIAN MCVEIGH, deceased, SANDRA M. WETMORE, JAMES V. WETMORE, THE ESTATE OF MILLARD D. CAMPBELL, deceased, MARIE R. CAMPBELL, BESSIE A. CAMPBELL, THE ESTATE OF KEVIN J. JOHNSON, deceased, SHYRL L. JOHNSON, CHE G. COLSON, KEVIN JOHNSON, a minor, by his legal guardian Shyrl L. Johnson, NICHOLAS A. JOHNSON, a minor, by his legal guardian Shyrl L. Johnson, LAURA E. JOHNSON, BRUCE JOHNSON, THE ESTATE OF JOSEPH E. RIMKUS, deceased, BRIDGET BROOKS, JAMES R. RIMKUS, ANNE M. RIMKUS, THE ESTATE OF BRENT E. MARTHALER, deceased, KATIE L. MARTHALER, SHARON MARTHALER, HERMAN C. MARTHALER, III, MATTHEW MARTHALER, KIRK MARTHALER, THE ESTATE OF THANH VAN NGUYEN, deceased, CHRISTOPHER R. NGUYEN, THE ESTATE OF JOSHUA E. WOODY, deceased, DAWN WOODY, BERNADINE R. BEEKMAN, GEORGE M. BEEKMAN, TRACY M. SMITH, JONICA L. WOODY, TIMOTHY WOODY, THE ESTATE OF PETER J. MORGERA, deceased, MICHAEL MORGERA, THOMAS MORGERA, THE ESTATE OF KENDALL KITSON, JR., deceased, NANCY R. KITSON, KENDALL K. KITSON, STEVE K. KITSON, NANCY A. KITSON,

THE ESTATE OF CHRISTOPHER ADAMS, deceased, CATHERINE ADAMS, JOHN E. ADAMS, PATRICK D. ADAMS, MICHAEL T. ADAMS, DANIEL ADAMS, MARY YOUNG, ELIZABETH WOLF, WILLIAM ADAMS, THE ESTATE OF CHRISTOPHER LESTER, deceased, CECIL H. LESTER, JUDY LESTER, CECIL H. LESTER, JR., JESSICA F. LESTER, THE ESTATE OF JEREMY A. TAYLOR, deceased, LAWRENCE E. TAYLOR, VICKIE L. TAYLOR, STARLINA D. TAYLOR, THE ESTATE OF PATRICK P. FENNIG, deceased, THADDEUS C. FENNIG, CATHERINE FENNIG, PAUL D. FENNIG, MARK FENNIG, THE UNITED STATES OF AMERICA, ~~AND OTHERS~~

Third-Party Defendants.

BENNETT, et al. v. THE ISLAMIC REPUBLIC OF IRAN, et al.
U.S.D.C., N.D. CAL., CASE NO. CV-11-5807-CRB

ATTACHMENT 2
to SUMMONS ON A THIRD-PARTY COMPLAINT

BENNETT, et al. v. THE ISLAMIC REPUBLIC OF IRAN, et al.
U.S.D.C., N.D. CAL., CASE NO. CV-11-5807-CRB

ATTACHMENT 2
to Summons on a Third-Party Complaint
COMPLETE LIST OF THIRD-PARTY DEFENDANTS

Bank Melli,

Carlos Acosta, Maria Acosta, Irving Franklin, Estate of Irma Franklin, Libby Kahane, Estate of Sonya Kahane, Cipporah Kaplan, Tova Ettinger, Baruch Kahane, Ethel Griffin As Administrator of Binyamin Kahane's Estate, Rabbi Norman Kahane,

Steven Greenbaum, Alan Hayman, Shirlee Hayman,

The Estate of Michael Heiser, deceased, Gary Heiser, Francis Heiser, The Estate of Leland Timothy Haun, deceased, Ibis S. Haun, Milagritos Perez-Dalis, Senator Haun, The Estate of Justin R. Wood, deceased, Richard W. Wood, Kathleen M. Wood, Shawn M. Wood, The Estate of Earl F. Cartrette, Jr., deceased, Denise M. Eichstaedt, Anthony W. Cartrette, Lewis W. Cartrette, The Estate of Brian Mcveigh, deceased, Sandra M. Wetmore, James V. Wetmore, The Estate of Millard D. Campbell, deceased, Marie R. Campbell, Bessie A. Campbell, The Estate of Kevin J. Johnson, deceased, Shyrl L. Johnson, Che G. Colson, Kevin Johnson, A Minor, By His Legal Guardian Shyrl L. Johnson, Nicholas A. Johnson, A Minor, By His Legal Guardian Shyrl L. Johnson, Laura E. Johnson, Bruce Johnson, The Estate of Joseph E. Rimkus, deceased, Bridget Brooks, James R. Rimkus, Anne M. Rimkus, The Estate of Brent E. Marthaler, deceased, Katie L. Marthaler, Sharon Marthaler, Herman C. Marthaler III, Matthew Marthaler, Kirk Marthaler, The Estate of Thanh Van Nguyen, deceased, Christopher R. Nguyen, The Estate of Joshua E. Woody, deceased, Dawn Woody, Bernadine R. Beekman, George M. Beekman, Tracy M. Smith, Jonica L. Woody, Timothy Woody, The Estate of Peter J. Morgera, deceased, Michael Morgera, Thomas Morgera, The Estate of Kendall Kitson, Jr., deceased, Nancy R. Kitson, Kendall K. Kitson, Steve K. Kitson, Nancy A. Kitson, The Estate of Christopher Adams, deceased, Catherine Adams, John E. Adams, Patrick

D. Adams, Michael T. Adams, Daniel Adams, Mary Young, Elizabeth Wolf, William Adams, The Estate of Christopher Lester, deceased, Cecil H. Lester, Judy Lester, Cecil H. Lester, Jr., Jessica F. Lester, The Estate of Jeremy A. Taylor, deceased, Lawrence E. Taylor, Vickie L. Taylor, Starlina D. Taylor, The Estate of Patrick P. Fennig, deceased, Thaddeus C. Fennig, Catherine Fennig, Paul D. Fennig, Mark Fennig,

The United States of America,

And Does 1-20.

BENNETT, et al. v. THE ISLAMIC REPUBLIC OF IRAN, et al.
U.S.D.C., N.D. CAL., CASE NO. CV-11-5807-CRB

ATTACHMENT 3
to SUMMONS ON A THIRD-PARTY COMPLAINT

PLAINTIFFS' COMPLAINT

JANE CAROL NORMAN, ESQ.
California Bar No. 66998
Bond & Norman, PLLC
777 Sixth Street, NW
Suite 410
Washington, DC 20001
202/423-3863
Fax 202/207-1041

[Handwritten signature]
FILED
DEC - 2 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL BENNETT
LINDA BENNETT
Individually and as Co-Administrators of
the Estate of MARLA ANN BENNETT, deceased
b/o THOMAS FORTUNE FAY, ESQ.
601 Pennsylvania Ave., NW
Suite 900 - South Building
Washington, DC 20004

Plaintiffs,

THE ISLAMIC REPUBLIC OF IRAN
Ministry of Foreign Affairs
Khomeini Avenue
United Nations Street
Tehran, Iran,
and
THE IRANIAN MINISTRY OF INFORMATION
AND SECURITY
Pasdaran Avenue
Golestan Yekom
Tehran, Iran,
and

E-filing

JSC

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11

5807

~~CALIFORNIA~~

Defendant, The Islamic Republic Of Iran, at all times relevant to this action. The Defendant, Visa, Inc., dba Visa International Service Association, (Visa) is a corporation organized under the laws of the State of Delaware, and was, at all times relevant to this action, doing business in the State of California, as to the property which is the subject of this in rem proceeding.

(3) Plaintiffs Michael Bennett and Linda Bennett, domiciliaries of the State of California, are the parents of decedent, Marla Ann Bennett, who died from injuries sustained during a terrorist attack in Jerusalem on July 31, 2002. Plaintiffs Michael Bennett and Linda Bennett are the Co-Administrators of the Estate of Marla Ann Bennett and in that capacity represent their daughter's other beneficiary pursuant to federal and California state law, Lisa Bennett, decedent's sister. On August 30, 2007, judgment was entered for Plaintiffs, and against Defendants, The Islamic Republic of Iran and The Iranian Ministry of Information and Security, in the amount of \$12,904,548.00, of which \$404,548.00, was allocated to the estate of Marla Bennett for wrongful death, \$5,000,000.00 was allocated to Linda Bennett, \$5,000,000.00 was allocated to Michael Bennett, and \$2.5 million was allocated to Lisa Bennett. As of the date of this Complaint the entire amount of that judgment remains unsatisfied. On January 25, 2011, the United States District Court For The District Of Columbia, entered an Order pursuant to 28 U.S.C. 1610(c), permitting Plaintiffs leave to proceed with attachment or execution.

(4) Defendant, The Islamic Republic of Iran, is a foreign state and was on July 31, 2002, and is to the present, a state sponsor of terrorism designated as such pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. §2405(j)). Defendant, The Iranian Ministry of Information and Security, is the Iranian intelligence service through which Iran sponsored the terrorist group that caused the act of extra judicial killings described below.

(5) Decedent Marla Ann Bennett, a United States national, was a 24-year-old graduate of University of California at Berkeley who planned to be teacher. She was a graduate student working on her master's degree in Judaic studies at the Pardes Institute of Jewish Studies in Berkeley and a participant in its Melton Center for Jewish Education program at Hebrew University in Jerusalem at the time of her death. On Wednesday, July 31, 2002, the decedent was having lunch with two of her friends, Harris-Gershon and Benjamin Blutstein¹, in the cafeteria of the Hebrew University in Jerusalem. The decedent prepared for a final exam later that afternoon, her last requirements for the summer session. She intended to fly back home to San Diego with her boyfriend Michael Simon two days later.

(6) At 1:40 p.m. local time, a nail-studded bomb went off in the crowded cafeteria. The explosion killed the decedent and six other people and wounded over eighty other individuals, mostly students. The bomb was placed by a Hamas agent in a bag left in the cafeteria and activated from a cell phone. These actions were found by Chief Judge Lamberth United States District Court For The District Of Columbia to have been undertaken by an agent of Hamas with the material support of the Defendant, The Islamic Republic Of Iran.

(7) Pursuant to 50 USCS §1702, the President may:

- “(A) investigate, regulate, or prohibit--
 - (i) any transactions in foreign exchange,
 - (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,
 - (iii) the importing or exporting of currency or securities,by any person, or with respect to any property, subject to the jurisdiction of the United States....” See Exhibit A attached.

¹ Benjamin Blustein suffered fatal injuries in the attack described in this Complaint.

On November April 9, 1980, under the authority of 50 U.S.C. 1701-1706, at FR 24432, the President by regulation exercised his authority as follows (EXHIBIT B):

"Sec. 535.201 Transactions involving property in which Iran or Iranian entities have an interest. No property subject to the jurisdiction of the United States or which is in the possession of or control of persons subject to the jurisdiction of the United States in which on or after the effective date Iran has any interest of any nature whatsoever may be transferred, paid, exported, withdrawn or otherwise dealt in except as authorized."

The Office Of Foreign Assets Control of the United States Department Of The Treasury has confirmed that none of the Defendants has ever has a license to deal in investments for The Islamic Republic Of Iran.

(8) On November 2, 2011, Plaintiffs, through counsel, caused a Notice Of Lis Pendens to be served upon the Defendant Franklin in accordance with the provisions of 28 U.S.C. §1605A(g)(1), establishing a lien upon the tangible personal property of the Defendant, The Islamic Republic Of Iran, consisting of securities held for investment by Defendant Franklin upon an account bearing the name of the Defendant Visa. The lien is enforced as provided in Chapter 111 of Title 28 of the United States Code (28 U.S.C. §1655).

(9) Service upon foreign states is governed by the provisions of 28 U.S.C. §1608(a), which provides in pertinent part for alternative means of service: (1) through any special arrangement with the Defendant; (2) through use of any applicable international convention; (3) by any form of mail requiring a return receipt; or, if service cannot be completed by any of the foregoing means, through diplomatic channels. In addition 28 U.S.C. §1608(d) provides that the foreign state shall serve "an answer or other responsive pleading within sixty days after service has been made."

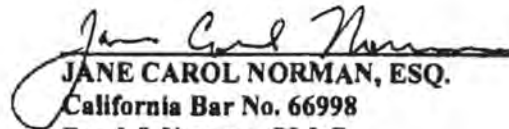
Wherefore, the premises considered, Plaintiffs request:

(1) That the Court enter an Order directed to the Clerk of this Court that a summons be issued directed to the Defendant, The Islamic Republic Of Iran, requiring that an answer or other responsive pleading be filed within sixty days;

(2) That the Court enter an Order directed to the Clerk of this Court that a summonses be issued directed to the Defendants, Franklin Resources Inc., dba Franklin Templeton Fiduciary Trust and, and Visa, Inc., dba Visa International Service Association requiring each Defendant to file an answer or other responsive pleading within thirty days;

(3) That upon hearing the Court Order turnover of assets of the Defendant, The Islamic Republic Of Iran, in an amount sufficient to satisfy the judgment, with interest at the rate applicable by law and the costs of this proceeding as determined by the Court.

Date: December 2, 2011


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JNormas425@aol.com

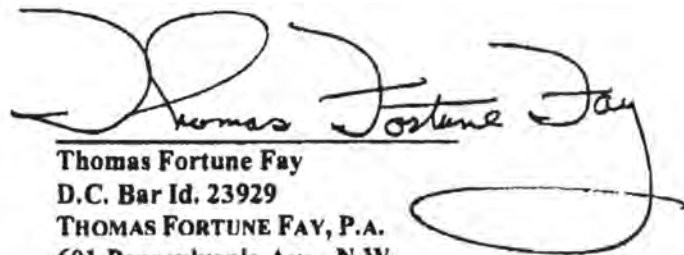

Thomas Fortune Fay
D.C. Bar Id. 23929
THOMAS FORTUNE FAY, P.A.
601 Pennsylvania Ave., N.W.
Suite 900
Washington, DC 20004
(202) 638-4534
Attorney for Plaintiffs
ThomasFay@aol.com

EXHIBIT A

50 USCS § 1702

§ 1702. Presidential authorities

(a) In general.

(1) At the times and to the extent specified in section 202 [50 USCS § 1701], the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise--

(A) investigate, regulate, or prohibit--

- (i) any transactions in foreign exchange,
- (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,
- (iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this title [50 USCS

§§ 1701 et seq.] shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued under this title.

(b) Exceptions to grant of authority. The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly--

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 202 of this title [50 USC § 1701], (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; [or]

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 5 of the Export Administration Act of 1979 [50 USC Appx. § 2404], or under section 6 of such Act [50 USC Appx. § 2405] to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code [18 USC §§ 791 et seq.]; or

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(c) Classified information. In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act [18 USC Appx § 1(a)]) such information may be submitted to the reviewing court *ex parte* and *in camera*. This subsection does not confer or imply any right to judicial review.

History:

(Dec. 28, 1977, P.L. 95-223, Title II, § 203, 91 Stat. 1626; Aug. 23, 1988, P.L. 100-418, Title II, Subtitle E, § 2502(b)(1), 102 Stat. 1371; April 30, 1994, P.L. 103-236, Title V, Part A, § 525(c)(1), 108 Stat. 474; Oct. 26, 2001, P.L. 107-56, Title I, § 106, 115 Stat. 277.)

EXHIBIT B

[Code of Federal Regulations]
[Title 31, Volume 2, Parts 200 to end]
[Revised as of July 1, 1997]
From the U.S. Government Printing Office via GPO Access
[CITE: **31CFR535**]

[Page 513-547]

TITLE 31--MONEY AND FINANCE: TREASURY

CHAPTER V--OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE
TREASURY

PART 535--IRANIAN ASSETS CONTROL REGULATIONS

Subpart B--Prohibitions

Sec. 535.201 Transactions involving property in which Iran or Iranian
entities have an interest.

No property subject to the jurisdiction of the United States or
which is in the possession of or control of persons subject to the
jurisdiction of the United States in which on or after the effective
date Iran has any interest of any nature whatsoever may be transferred,
paid, exported, withdrawn or otherwise dealt in except as authorized.

[45 FR 24432, Apr. 9, 1980]

ANNEX 316

**UNITED STATES DISTRICT COURT
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102**

www.cand.uscourts.gov

Richard W. Wieking
Clerk

General Court Number
415.522.2000

April 26, 2012

RE: CV 11-05807 CRB MICHAEL BENNETT ET AL-v- THE ISLAMIC REPUBLIC OF IRAN ET AL

Default is entered as to third-party defendant Bank Melli on April 26, 2012.

RICHARD W. WIEKING, Clerk



by Maria Loo
Case Systems Administrator

ANNEX 317

STROOCK

FILED

JUN 11 2012

By Federal Express

June 6, 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Curtis C. Mechling
Direct Dial 212-806-5609
Direct Fax 212-806-2609
cmechling@stroock.com

The Honorable Charles R. Breyer
U.S. District Court for the Northern District of California
San Francisco Courthouse, Courtroom 6, - 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

F-12

Re: Bennett v. The Islamic Republic of Iran (No. 3:11-cv-5807-CRB)

Dear Judge Breyer:

I write on behalf of our clients, the Greenbaum and Acosta Judgment Creditors,¹ third-party defendants in the above-referenced action, in response to the June 4, 2012 letter to the Court from Jeffrey Lamken, an attorney who may or may not (his letter does not make clear) represent defaulted third-party defendant Bank Melli.

Mr. Lamken's letter requests an adjournment of all proceedings herein for an indeterminate period while Bank Melli seeks to engage counsel in the Northern District of California and also seeks a licenses from the United States Department of the Treasury Office of Foreign Assets Control ("OFAC") to pay any lawyer it retains. For the reasons stated below, the Greenbaum and Acosta Judgment Creditors submit that the request for an open-ended delay of these proceedings should be denied as unjust and futile.

¹ The Greenbaum and Acosta Judgment Creditors are third-party defendants Steven M. Greenbaum, on behalf of himself individually and as Administrator of the Estate of Judith (Shoshana) Lillian Greenbaum, Alan D. Hayman, Shirlee Hayman, Carlos Acosta, Maria Acosta, Tova Ettinger, the Estate of Irving Franklin, the Estate of Irma Franklin, Baruch Kahane, Libby Kahane (on her own behalf and as Administratrix of the Estate of Meir Kahane), Ethel J. Griffin (as Administratrix of the Estate of Binyamin Kahane), Norman Kahane (on his own behalf and as Executor of the Estate of Sonia Kahane), and Ciporah Kaplan.

The Honorable Charles R. Breyer
June 6, 2012
Page 2

This is a turnover and interpleader action to determine claims to a fund of \$17,648,962.76 (the “Blocked Assets”) held by third-party plaintiffs Visa Inc. (“Visa”) and Franklin Resources Inc. (“Franklin”). The Blocked Assets, which allegedly once were owned by Bank Melli, have been blocked at least since October 25, 2007, pursuant to Executive Order 13382, 70 Fed. Reg. 38, 567 (June 28, 2005), by virtue of the Treasury Department’s designation of Bank Melli as a proliferator of weapons of mass destruction under the control of Iran. See Visa and Franklin’s Third-Party Complaint at ¶17 (Docket No. 16). Bank Melli itself has conceded its status as an agency and instrumentality of Iran. See *Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 48 (2d Cir. 2010).

Our clients are victims of Iranian terrorism who were awarded valid and enforceable US judgments – judgments of over \$19 million for the Greenbaum Judgment Creditors, and over \$350 million for the Acosta Judgment Creditors – against Iran over four years ago. To date, our clients have yet to recover more than a small portion of the interest accrued on their judgments.

Bank Melli has already defaulted in this matter. See Clerk’s Entry of Default, dated April 26, 2012, Docket No. 79. Indeed, in the almost five years since the Blocked Assets were first blocked, Bank Melli apparently has not taken any action to assert its interest in such property.

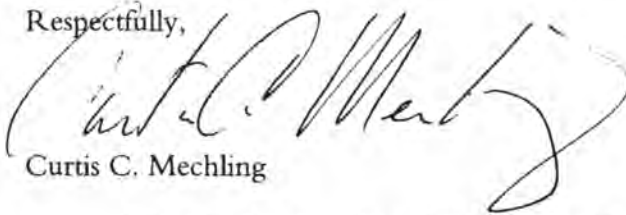
As blocked assets of an agency or instrumentality of Iran, the Blocked Assets here are unquestionably subject to execution and turnover to satisfy the judgments of victims of Iranian terrorism. Section 201(a) of the Terrorist Risk Insurance Act of 2002, codified as a note to 28 U.S.C. § 1610, provides in relevant part:

Notwithstanding any other provision of law, . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, . . . *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. (Emphasis added).

The Honorable Charles R. Breyer
June 6, 2012
Page 3

Under these circumstances, Bank Melli cannot show any fair reason why our clients and the other terror victims party to this action should be further delayed in recovering on their judgments. We therefore respectfully request that the Court deny Mr. Lamken's untimely entreaty to stay the progress of this action.

Respectfully,

A handwritten signature in black ink, appearing to read "Curtis C. Mechling". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Curtis C. Mechling

cc: Jeffrey A. Lamken, Esq. (by E-Mail and Overnight Mail)
All Counsel of Record (by E-Mail and Overnight Mail)



FILED

JUN 11 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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T 410.580.4122
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June 7, 2012

Via UPS Overnight Mail

The Honorable Charles R. Breyer
United State District Judge
United States District Court
for the Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

Re: *Bennett v. Islamic Republic of Iran*, case no. C 11-5807 CRB

Dear Judge Breyer:

This law firm is counsel to the third-party defendants the Estate of Michael Heiser, *et al.* (the "Heisers"). The Heisers comprise the seventy-eight (78) family members and personal representatives of the estates of the United States Air Force personnel who were victims of the 1996 terrorist bombing of the Khobar Towers in Saudi Arabia. The Heisers hold an unsatisfied judgment in the amount of \$591,089,966.00 (the "Judgment") against the Islamic Republic of Iran, the Iranian Ministry of Information and Security, and the Iranian Islamic Revolutionary Guard Corps (collectively, "Iran") based upon Iran's role in the terrorist bombing.

The Heisers are in receipt of the June 4, 2012 letter to the Court from Bank Melli's proposed counsel and the June 6, 2012 letter from the Greenbaum and Acosta Judgment Creditors. For all the reasons set forth in the Greenbaum and Acosta's June 6, 2012 letter, which is incorporated by reference herein, Bank Melli's proposed counsel's untimely request to stay this matter should be denied. No valid legal or factual basis exists for the untimely stay request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dale K. Cathell'.

Dale K. Cathell

cc: (via e-mail)
Curtis C. Mechling
James L. Bernard
Thomas Faye
Jane C. Norman



The Honorable Charles R. Breyer
June 7, 2012
Page Two

Bruce H. Jackson
Irene V. Gutierrez
Richard M. Kremen
Frank T. Pepler
Jeffrey A. Lamken

EAST48704142.1

1 **STROOCK & STROOCK & LAVAN LLP**
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 8 Email: lacalendar@stroock.com
 9 Attorneys for Third-Party Defendants
 Steven M. Greenbaum, *et al.* and Carlos Acosta, *et al.*

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN FRANCISCO DIVISION**

14 MICHAEL BENNETT, *et al.*,

15 Plaintiffs,

16 v.

17 ISLAMIC REPUBLIC OF IRAN, *et al.*,

18 Defendants.

19 VISA INC. and
 20 FRANKLIN RESOURCES, INC.,

21 Third-Party Plaintiffs,

22 v.

23 BANK MELLI, *et al.*,

24 Third-Party Defendants.
 25

) **Case No. CV-11-5807-CRB-NJV**

) **GREENBAUM AND ACOSTA JUDGMENT**
) **CREDITORS' MEMORANDUM OF LAW**
) **IN OPPOSITION TO BANK MELLI'S**
) **MOTION FOR STAY OF DISTRIBUTION**

) **Before the Honorable Charles R. Breyer and**
) **Nandor J. Vadas**

) **Date Action Filed: December 2, 2011**

1 Third-Party Defendants the Greenbaum and Acosta Judgment Creditors¹, by and through
 2 their undersigned counsel, respectfully submit this memorandum of law in opposition to Bank
 3 Melli's so-called Motion for Stay of Distribution, dated June 12, 2012 (the "Stay Motion") and
 4 filed in the above-captioned action.

5 PRELIMINARY STATEMENT

6 Five years after the interpleaded assets at issue (the "Blocked Assets") were first frozen,
 7 more than three months after receiving formal notice of these proceedings, and nearly two months
 8 after this Court entered a default against it, Bank Melli has suddenly made its facially improper
 9 Stay Motion to stop the lawful turnover of the Blocked Assets to victims of Iran-sponsored
 10 terrorism. It does so just days after all parties before the Court (collectively, the "Parties")²
 11 submitted to the Court the Parties' Stipulation and Proposed Order Awarding Turnover of Blocked
 12 Assets, Discharge of Stakeholders and Entry of Final Judgment on Consent of Parties, dated June
 13 11, 2012 (the "Stipulation and Proposed Order"), by which the Parties have resolved all competing
 14 claims to the Blocked Assets and agreed, subject to Court approval, to an equitable distribution of
 15 that property to judgment creditors.

16 Bank Melli presumes to make its motion even before vacatur of its default and at a time
 17 when it does not have standing to seek a stay. Even more remarkable, the Stay Motion does not
 18 contain a single sentence addressing the legal standard for the stay Bank Melli seeks, nor does it
 19

20 ¹ The "Greenbaum and Acosta Judgment Creditors" are third-party defendants Steven M. Greenbaum (on his own
 21 behalf and as Administrator of the Estate of Judith (Shoshana) Lillian Greenbaum), Alan D. Hayman, and Shirlee
 22 Hayman (the "Greenbaum Judgment Creditors"); and Carlos Acosta, Maria Acosta, Tova Ettinger, the Estate of
 23 Irving Franklin, the Estate of Irma Franklin, Baruch Kahane, Libby Kahane (on her own behalf and as
 Administratrix of the Estate of Meir Kahane), Ethel J. Griffin (as Administratrix of the Estate of Binyamin
 Kahane), Norman Kahane (on his own behalf and as Executor of the Estate of Sonia Kahane), and Ciporah Kaplan
 (the "Acosta Judgment Creditors").

24 ² On April 30, 2012, defendants and third-party plaintiffs Visa Inc. ("Visa") and Franklin Resources, Inc.
 25 ("Franklin") filed, at the behest of the U.S. Department of Justice, a Notice of Voluntary Dismissal of Third-Party
 Defendant the United States of America. ECF Dkt. No. 84. On May 17, 2012, Michael and Linda Bennett,
 26 individually and on behalf of themselves individually and as Co-Administrators of the Estate of Marla Ann Bennett
 (the "Bennett Plaintiffs") filed a Notice of Voluntary Dismissal of Defendants the Islamic Republic of Iran ("Iran")
 27 and the Iranian Ministry of Information and Security ("MOIS"). ECF Dkt. No. 90. Accordingly, the only
 28 remaining parties not currently in default are: the Bennett Plaintiffs, Visa, Franklin, the Greenbaum and Acosta
 Judgment Creditors, and third-party defendants the Estate of Michael Heiser, *et al.* ("the Heiser Judgment
 Creditors") (collectively, the "Parties").

1 provide any legal or factual support for such extraordinary and procedurally improper relief.
 2 Rather, Bank Melli's submission is nothing more than a preview of certain arguments it plans to
 3 raise in support of a *separate* motion to vacate its default, which it promises to file by June 18,
 4 2012.³

5 The Stay Motion is not only procedurally improper, but also substantively without merit.
 6 Bank Melli cannot show any grounds for stay or any likelihood of success on any future motion to
 7 vacate its default because: (1) service via registered international mail upon Bank Melli's Paris,
 8 France branch constituted good and proper service; (2) Bank Melli has no meritorious defenses to
 9 the Greenbaum and Acosta Judgment Creditors' claims for turnover of the Blocked Assets pursuant
 10 to, *inter alia*, § 201 of the Terrorism Risk Insurance Act of 2002 ("TRIA"); and (3) lifting the
 11 default against Bank Melli and/or staying this proceeding would, in fact, work a great prejudice
 12 upon the judgment creditors who have been struggling for years to win a recovery on their
 13 judgments against Iran and its agencies and instrumentalities. The Stay Motion therefore should be
 14 denied.

15 ARGUMENT

16 I. BANK MELLI LACKS STANDING TO MOVE FOR A STAY

17 The entry of a default for non-appearance or failure to plead precludes the defaulting party –
 18 here, Bank Melli – from raising any defenses on the merits. *See, e.g., Geddes v. United Financial*
 19 *Group*, 559 F.2d 557, 560 (9th Cir. 1977) ("The general rule of law is that upon default the factual
 20 allegations of the complaint . . . will be taken as true."); *In re Consol. Pretrial Proceedings in Air*
 21 *W. Sec. Litig.*, 436 F. Supp. 1281, 1286 (N.D. Cal. 1977) ("[T]he party in whose favor a default has
 22 been entered is entitled to the benefit of all reasonable inferences from the evidence tendered, and
 23 attempts by the party against whom a default has been entered to attack the validity of the
 24 allegations deemed proven by the default are to be strictly circumscribed."). Simply put, Bank
 25 Melli is not even a proper party before the Court. It follows that Bank Melli has no standing to
 26
 27

28 ³ The Parties expressly reserve their rights to fully respond to any factual material and arguments submitted by Bank Melli in support of its promised motion to vacate the default.

1 bring this so-called Motion for Stay of Distribution. *See id.* The Court should not consider any
2 motion by Bank Melli unless and until the default judgment against it is vacated.

3 **II. SERVICE OF PROCESS BY INTERNATIONAL MAIL UPON BANK MELLI'S**
4 **PARIS, FRANCE BRANCH CONSTITUTED VALID SERVICE**

5 Any attempt by Bank Melli to attack the validity of service of process will fail as a matter
6 of law and based upon documentary record already before the Court.

7 In accordance with The Hague Convention on the Service Abroad of Judicial and
8 ExtraJudicial Documents in Civil or Commercial Matters (the "Hague Convention"), Article 10(a),
9 as made applicable by 28 U.S.C. § 1608(b)(2) of the Foreign Sovereign Immunities Act, 28 U.S.C.
10 § 1602, *et seq.* (the "FSIA"), on March 5, 2012, Visa and Franklin served Bank Melli with a
11 summons on third-party complaint, the third-party complaint and additional court-issued
12 documents via U.S. International Mail - Registered and Return Receipt Requested for International
13 Mail on Bank Melli's Paris, France branch, as evidenced by the Certificate of Service on file with
14 this Court. *See* ECF Dkt. No. 45. In accordance with § 1608(c)(2) of the FSIA, such service was
15 deemed complete on March 12, 2012, as indicated on the Return Receipt Requested as the date on
16 which the service of process documents were *actually received* and signed for by Bank Melli's
17 official agent in Paris, France. *See id.*

18 The Ninth Circuit, like other courts, has recognized that Article 10(a) of the Hague
19 Convention permits service of process by international mail in countries such as France and the
20 United States that have ratified such article without objection. *See Brockmeyer v. May*, 383 F.3d
21 798, 803 (9th Cir. 2004); *Ackermann v. Levine*, 788 F.2d 830, 838 (2d Cir. 1986); Practical
22 Handbook on the Operation of the Hague Convention of 15 November 1965 on the Service Abroad
23 of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 30 (1984); 1 B. Ristau,
24 International Judicial Assistance (Civil and Commercial) § 4-10 at 132 (1984) (United States has
25 made no objection to service by international mail under Article 10(a) in this country). Moreover,
26 because most courts to have considered Article 10(a) have held that article to authorize service by
27 international mail, such courts have further held that such service need not also satisfy federal or
28 state service of process provisions, such as those found in Rule 4 of the Federal Rules of Civil

1 Procedure. *See, e.g., Ackermann*, 788 F.2d at 840 (“The old Federal Rule 4 was superseded by the
 2 Hague Convention and thus presumptively should not limit application of the Convention”), *citing*
 3 *Cook v. United States*, 288 U.S. 102, 119 (1933) (subsequent treaty given effect over prior,
 4 inconsistent federal statute).

5 Bank Melli’s reliance on *Brockmeyer* as support for the argument that service here was
 6 ineffective because it failed to also fully comply with Rule 4 is misplaced. Indeed, the facts here
 7 are starkly different than those of *Brockmeyer*, where a plaintiff obtained a default judgment
 8 against a British defendant after twice attempting service “simply [by] dropp[ing] the complaint
 9 and summons in a mailbox in Los Angeles, to be delivered by ordinary, international first class
 10 mail” to a post office box ostensibly belonging to the defendant in England. *Brockmeyer*, 383 F.3d
 11 at 809. The plaintiff in *Brockmeyer* did *not* receive a signed receipt for either package, and the
 12 record was wholly unclear as to whether the defendant ever received actual notice of the action
 13 against it at any point prior to entry of default judgment.

14 Here, by contrast, the service documents were sent by registered mail return receipt
 15 requested, which return receipt indicates that Bank Melli was, in fact, served and did, in fact,
 16 receive actual notice of this proceeding. But for the fact that Visa’s and Franklin’s counsel mailed
 17 the service documents himself, rather than directing the Clerk of Court to do so, all other aspects of
 18 the service upon Bank Melli were in compliance with Fed. R. Civ. P. Rule 4(f)(2)(C)(ii). *Cf.*
 19 *Marks v. Alfa Group*, 615 F. Supp. 2d 375, 380 (E.D. Pa. 2009). The fact that counsel mailed the
 20 service document to Bank Melli’s Paris branch himself does not invalidate service. Indeed, “[t]he
 21 Ninth Circuit has adopted a substantial compliance test for the FSIA’s notice requirements; a
 22 plaintiff’s failure to properly serve a foreign state defendant will not result in dismissal if the
 23 plaintiff substantially complied with the FSIA’s notice requirements and the defendant had actual
 24 notice.” *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1129 (9th Cir. 2010), *citing Straub v.*
 25 *A P Green, Inc.*, 38 F.3d 448, 453 (9th Cir. 1994). In *Straub*, the Ninth Circuit excused the
 26 plaintiff’s “failure to dispatch the complaint by the clerk of the court” because the foreign state had
 27 “received actual notice of the lawsuit.” *See* 38 F.3d at 453-454. “By the same token, the FSIA’s
 28 service requirements have been substantially complied with in this case.” *Peterson*, 627 F.3d at

1 1129 (holding service effective despite issuing from plaintiffs' counsel directly rather than clerk of
 2 court); *see also S.E.C. v. Internet Solutions for Business Inc.*, 509 F.3d 1161, 1166 (9th Cir. 2007)
 3 ("A signed return of service constitutes prima facie evidence of valid service which can be
 4 overcome only by strong and convincing evidence."); *Meadows v. Dominican Republic*, 817 F.2d
 5 517, 521 (9th cir. 1987) (foreign sovereign defendants held "culpable" for their defaults where they
 6 "received actual or constructive notice of the filing of the action and failed to answer.").

7 **III. BANK MELLI HAS NO MERITORIOUS DEFENSES TO THE TURNOVER OF**
 8 **ITS BLOCKED ASSETS PURSUANT TO § 201 OF TRIA**

9 **A. Section 201 of TRIA Permits Execution Against**
 10 **Property of Foreign Agencies and Instrumentalities**

11 Bank Melli does not contend that the Blocked Assets are not properly blocked by the
 12 Department of the Treasury or that any of the other requirements under § 201 of TRIA have not
 13 been satisfied.⁴ Unable to refute those indisputable facts, Bank Melli merely argues that TRIA
 14 does not obviate the presumption of separate juridical entity status for foreign instrumentalities
 15 discussed by the Supreme Court in *First National City Bank v. Banco Para El Comercio Exterior*
 16 *de Cuba*, 462 U.S. 611 (1983) ("*Bancec*").

17 Bank Melli refuses to acknowledge, however, that the plain language of TRIA vitiates any
 18 such argument. As this Court (Vadas, M.J.) recognized in the related matter captioned *Bennett, et*
 19 *al. v. Islamic Republic of Iran, et al.*, Case No. CV11-80065-MISC-CRB (the "Related Bennett
 20 Proceeding")⁵, "[u]nder [§ 201 of] the Terrorism Risk Insurance Act of 2002 ('TRIA'), the
 21 'blocked assets' of a terrorist party *or its agency or instrumentality* are subject to execution to
 22 satisfy a judgment obtained under the FSIA's terrorism exception, § 1605(a)(7)." *Bennett v.*
 23 *Islamic Republic of Iran*, 2011 WL 3157089 at *5 (N.D.Cal. July 26, 2011) (emphasis added); *see*
 24 Pub.L. No. 107-297, Title II, § 201(a), 116 Stat. 2322, 2337 (2002) (codified at 28 U.S.C. § 1610

25 ⁴ Bank Melli has already conceded these points in other litigation. *See Weinstein v. Islamic Republic of Iran, et al.*,
 26 609 F.3d 43, 48, n.1 (2d Cir. 2010) (noting that federal law blocks all property and interests in property of Bank
 27 Melli within the United States and that Bank Melli did not dispute that all of the elements of § 201(a) of TRIA had
 28 been met).

⁵ The Related Bennett Proceeding was related to the above-captioned matter by Order of the Court, dated December
 19, 2011 (ECF Dkt. No. 52).

1 note); *Weinstein*, 609 F.3d at 47-51. In so ruling, Magistrate Judge Vadas expressly relied on the
 2 decision in *Weinstein*, in which the Second Circuit flatly rejected the very same argument advanced
 3 by Bank Melli here. See *Weinstein*, 609 F.3d at 49 (“Bank Melli’s argument is belied by the plain
 4 language of Section 201(a), as well as by its history and purpose.”); *id.* at 51 (“What the TRIA did,
 5 instead [of revising judgments against Iran to include agencies and instrumentalities of Iran] was to
 6 override the Supreme Court’s reading in [*Bancec*] that ‘duly created instrumentalities of a foreign
 7 state are to be accorded a presumption of independent status.’”). The *Weinstein* decision correctly
 8 recognized that § 201 of TRIA “clearly differentiates between the party that is the subject of the
 9 underlying judgment itself, which can be any terrorist party (here, Iran), and parties whose blocked
 10 assets are subject to execution or attachment, *which can include not only the terrorist party but also*
 11 *‘any agency or instrumentality of that terrorist party,’*” and hence serves to overrule *Bancec* in the
 12 limited context of victims’ execution on terrorism-related judgments. *Id.* at 49 (emphasis added).⁶
 13 Indeed, the legislative history is richly supportive on this point; Senator Harkin, a sponsor of TRIA,
 14 explained as follows while addressing the conference report accompanying the act:

15 [TRIA] expressly addresses three particular issues which have vexed
 16 victims of terrorism in th[e] context [of blocked terrorist assets].
 17 First, there has been a dispute over the availability of “agency and
 18 instrumentality” assets to satisfy judgments against a terrorist state
 19 itself. *Let there be no doubt on this point. [TRIA] operates to strip a*
 20 *terrorist state of its immunity from execution or attachment in aid of*
 21 *execution by making the blocked assets of that terrorist state,*
 22 *including the blocked assets of any of its agencies or*
 23 *instrumentalities, available for attachment and/or execution of a*
 24 *judgment issued against that terrorist state. Thus, for purposes of*
 25 *enforcing a judgment against a terrorist state, [TRIA] does not*
 26 *recognize any juridical distinction between a terrorist state and its*
 27 *agencies or instrumentalities.*

28 148 Cong. Rec. S11524, at S11528 (Nov. 19, 2002) (statement of Sen. Harkin) (emphasis added).

⁶ Although Bank Melli notes that the TRIA versus *Bancec* issue is the subject of its petition for a writ of *certiorari* currently pending before the Supreme Court, it makes bare mention of the fact that the United States recently submitted a brief as *Amicus Curiae* in that action in which it unequivocally supports the Second Circuit’s holding that TRIA permits attachment and execution of the property of a foreign state’s agencies and instrumentalities. See *Bank Melli Iran New York Representative Office v. Weinstein*, 2012 WL 1883085 (May 24, 2012). Nor do Bank Melli’s remarks in this regard realistically characterize the likelihood that the Supreme Court will grant review, the

1 The few authorities actually cited by Bank Melli are not to the contrary and speak only to
 2 older provisions of the FSIA pre-dating TRIA's enactment. *See, e.g., Flatow v. Islamic Republic of*
 3 *Iran*, 308 F.3d 1065, 1069 (9th Cir. 2002) (considering whether certain earlier amendments to 28
 4 U.S.C. § 1605(a)(7), *not* TRIA, altered the application of the *Bancec* presumption); *Alejandro v.*
 5 *Telefonica Larga Distancia, de Puerto Rico, Inc.*, 183 F.3d 1277 (11 Cir. 1999) (a pre-TRIA case
 6 holding that 28 U.S.C. § 1610(f)(1)(A) did not overcome *Bancec* presumption).

8 **B. Section 201 of TRIA Is Not Impermissibly Retroactive**

9 Bank Melli's second argument, that TRIA does not purport to be retroactive and therefore
 10 should not apply where conduct underlying the judgment predates the TRIA's enactment,
 11 misconstrues TRIA's role within the basic framework of the FSIA, which speaks both to
 12 jurisdictional immunity from suit and immunity from attachment and execution. *See, e.g., Peterson*
 13 *v. Islamic Republic of Iran*, 627 F.3d 1117, 1124 (9th Cir. 2010). Codified as a note to § 1610 of
 14 the FSIA ("Exceptions to the immunity from attachment or execution"), § 201 of TRIA merely
 15 provides jurisdiction over foreign agencies and instrumentalities of terrorist parties in the *post-*
 16 *judgment* context of execution and attachment proceedings to satisfy judgments "*for which there*
 17 *was original jurisdiction under the FSIA.*" *Bennett*, 2011 WL 3157089 at *5 (emphasis added),
 18 *citing Weinstein*, 609 F.3d at 52. It follows that TRIA is not impermissibly retroactive because it
 19 does not impose any new or additional liability upon Iran for its conduct underlying the judgments
 20 sought to be enforced in this proceeding.

21 In *Landgraf v. USI Film Prods.*, a case relied upon by Bank Melli, the Supreme Court held
 22 that a statute is impermissibly retroactive if, *inter alia*, it "imposes a new duty, or attaches a new
 23 disability, in respect to transactions or considerations already past." 511 U.S. 244, 269 (1994).
 24 The Supreme Court further noted in *Landgraf* that "[a] statute [is not impermissibly retroactive]
 25 merely because it is applied in a case arising from conduct antedating the statute's enactment, or
 26 upsets expectations based in prior law." *Id.* at 269 (internal citations omitted). Rather, *Landgraf*

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 28 chance of which is speculative at best (especially given the plain language of the statute and the Government's
 recommendation that the Supreme Court deny Bank Melli's petition). *See id.*

1 instructs courts to assess “the nature and extent of the change in the law and the degree of
2 connection between the operation of the new rule and a relevant past history,” and to be guided in
3 such assessment by “*familiar considerations of fair notice, reasonable reliance, and settled*
4 *expectations.*” *Id.* at 270 (emphasis added).

5 In applying the holding of *Landgraf* to TRIA, one other court has already ruled that TRIA
6 cannot be considered impermissibly retroactive because its passage did not deprive Iran or any
7 third-party agencies or instrumentalities of Iran of any “legitimate expectations.” *See Hausler v.*
8 *JPMorgan Chase Bank, N.A.*, 2012 WL 601034 at *18 (S.D.N.Y. Feb. 22, 2012), *citing General*
9 *Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992).

10 Section 201 of TRIA only applies in the limited context of blocked assets, which by
11 definition are assets that have been seized or frozen by the Executive Branch pursuant to the
12 authority vested in it by, *inter alia*, the International Economic Emergency Powers Act, 50 U.S.C.
13 § 1701, *et seq.* (“IEEPA”). As the court in *Hausler* correctly recognized, IEEPA “provides the
14 President with the discretion to confiscate assets blocked pursuant to OFAC regulations. This was
15 true before the passage of the TRIA; it is still true.” *Hausler*, 2012 WL 601034 at *18. Indeed,
16 such blocked assets “are subject to a myriad of sources of diminution – including attachment and
17 execution to satisfy judgment.” *Id.* Thus, “[t]he President’s authority to summarily dispose of
18 blocked assets destroys any claim that [Bank Melli] could have justifiably relied upon the Blocked
19 [Assets] remaining in interest-bearing accounts until . . . a détente in U.S.-[Iranian] relations.” *Id.*
20 Moreover, while TRIA was enacted in 2002, Bank Melli’s assets in the United States were not
21 blocked until 2007, when Bank Melli was designated by the Executive Branch as a Weapons of
22 Mass Destruction Proliferator. Thus, the illicit conduct underlying the blocking of Bank Melli’s
23 property, including the Blocked Assets, occurred – contrary to Bank Melli’s assertions – well after
24 TRIA’s enactment, and Bank Melli should have fully appreciated that its conduct, *i.e.*, its
25 proliferation of weapons of mass destruction, could result in its U.S. property being blocked and
26 executed against by judgment creditors of Iran pursuant to § 201 of TRIA.

27 Just as recognized by the court in *Hausler*, moreover, “both prior to and after the passage of
28 TRIA, the same straightforward and obvious means [for Bank Melli] to protect [its] interests from

1 this persistent risk was and is available to [Bank Melli]: pursue an OFAC license.” *Hausler*, 2012
2 WL 601034 at *18. Significantly, not a shred of evidence has been presented to suggest that Bank
3 Melli has ever sought an OFAC license with respect to the Blocked Assets in the *five years* since
4 Bank Melli’s assets in the United States were originally blocked in 2007.

5 **IV. THE REQUESTED STAY WOULD UNJUSTLY PREJUDICE**
6 **THE JUDGMENT CREDITORS**

7 Contrary to Bank Melli’s contentions, lifting the default against Bank Melli and/or staying
8 this proceeding would seriously prejudice the Greenbaum and Acosta Judgment Creditors, as well
9 as the other judgment creditor Parties, who – like the Greenbaum and Acosta Judgment Creditors –
10 are judgment creditors of Iran who have already been waiting many years to be compensated for
11 their injuries and the injuries of their loved ones. Many of these Parties are now elderly and infirm,
12 and every day that passes is another day that they have been deprived of justice. Given that their
13 injuries were incurred as a result of heinous acts of Iranian-sponsored global terrorism – acts
14 bankrolled by state-owned and operated financial institutions like Bank Melli, which itself is
15 designated by the U.S. Government as a Weapons of Mass Destruction Proliferator – it adds insult
16 to injury to further delay justice for such parties at the *post-default* behest of a party with such
17 blood-stained hands.

18 **CONCLUSION**

19 For all of the foregoing reasons, the Greenbaum and Acosta Judgment Creditors
20 respectfully request that the Court deny Bank Melli’s Stay Motion and enter the Parties’ Stipulation
21 and Proposed Order.

22 Dated: New York, New York
23 June 18, 2012

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Judgment Creditors*

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the CM/ECF registrants on record in this matter.

/s/ Curtis C. Mechling
Curtis C. Mechling

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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

18 MICHAEL BENNETT, *et al.*,

19 Plaintiffs,

20 v.

21 ISLAMIC REPUBLIC OF IRAN, *et al.*,

22 Defendants.

23 VISA, INC. and FRANKLIN
24 RESOURCES, INC.,

25 Third-Party Plaintiffs,

26 v.

27 BANK MELLI, *et al.*,

28 Third-Party Defendants.

CV NO. 11-cv-5807 (CRB)

**ESTATE OF MICHAEL HEISER, ET AL.'S
RESPONSE IN OPPOSITION TO BANK
MELLI'S MOTION FOR STAY OF
DISTRIBUTION**

(Honorable Charles R. Breyer)

1 The Estate of Michael Heiser, *et al.* (collectively, the “Heisers”), by and through their
2 undersigned counsel, hereby respond in Opposition to Bank Melli’s Motion for Stay of
3 Distribution, and in connection therewith state as follows:

4 **Background**

5 1. The Heisers hold an unsatisfied judgment under 28 U.S.C. §§ 1605(a)(7)
6 and 1605A against Iran in the total amount of \$591,089,966.00, plus post-judgment interest at the
7 legal rate. The judgment is comprised of two parts: (1) a judgment dated December 22, 2006 in
8 the amount of \$254,431,903.00 and (2) a supplemental judgment dated September 30, 2009, in
9 the amount of \$336,658,063.00.

10 2. On June 11, 2012, the Heisers, the Greenbaum and Acosta Judgment Creditors, the
11 Bennett Judgment Creditors, and Visa, Inc. (“Visa”) and Franklin Resources, Inc. (“Franklin”)
12 jointly submitted a Stipulation and Proposed Order Awarding Turnover of Blocked Assets,
13 Discharge of Stakeholders and Entry of Final Judgment on Consent of Parties (the “Stipulation
14 and Proposed Order”) (ECF Dkt. No. 95) by which the parties resolved all competing claims to
15 the assets deposited into the Court’s registry by Visa and Franklin and agreed, subject to Court
16 approval, to a distribution of that property to the judgment creditors.

17 3. On June 12, 2012, Bank Melli filed a Motion for Stay of Distribution (the “Stay
18 Motion”) (ECF Dkt. No. 98).

19 4. On June 18, 2012, the Greenbaum and Acosta Judgment Creditors filed a
20 Memorandum of Law in Opposition to Bank Melli’s Motion for Stay of Distribution (the
21 “Greenbaum and Acosta Opposition”) (ECF Dkt. No. 103).

22 **Argument**

23 **I. The Heisers Join and Adopt the Arguments of the Greenbaum and Acosta Judgment**
24 **Creditors.**

25 5. The Heisers hereby join and adopt all of the arguments set forth in the Greenbaum
26 and Acosta Opposition, which is incorporated by reference herein.

27

28

1 **II. The Supreme Court Has Denied Cert. in *Weinstein v. Islamic Republic of Iran*.**

2 6. In support of the Stay Motion, Bank Melli relies heavily upon its petition for writ
3 of certiorari (the “Cert. Petition”) before the United States Supreme Court in *Bank Melli Iran v.*
4 *Weinstein*, No. 10-947 (S. Ct.). Indeed, Bank Melli specifically suggested that it would be
5 inappropriate to proceed with a distribution of assets in this case “where an imminent Supreme
6 Court decision could undermine any legal basis for execution.” Stay Motion at 8-9. However,
7 yesterday, the United States Supreme Court denied Bank Melli’s Cert. Petition in *Weinstein*.
8 Accordingly, the primary thrust of Bank Melli’s motion is no longer applicable.

9 7. In *Weinstein v. Islamic Republic of Iran*, 609 F.3d 43 (2d Cir. 2010), the Second
10 Circuit rejected virtually the identical arguments being raised by Bank Melli before this Court.
11 The Supreme Court’s denial of the Cert. Petition means that the Second Circuit’s decision in
12 *Weinstein* remains firmly in place. Therefore, this Court should adopt the Second Circuit’s
13 reasoning and likewise reject the argument by Bank Melli in this case that TRIA does not
14 override *First Nat’l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611 (1983)
15 (“*Bancec*”) and the former presumption of separate juridical entity status of admitted agencies
16 and instrumentalities of state sponsors of terrorism. In *Weinstein*, the Second Circuit expressly
17 held that

18 [w]hat the TRIA did, instead [of revising a judgment against Iran to include
19 agencies and instrumentalities of Iran] was to override the Supreme Court’s
20 reading in [*Bancec*] that ‘duly created instrumentalities of a foreign state are to be
21 accorded a presumption of independent status.’). The effect of the TRIA,
22 therefore, was simply to render a judgment more readily enforceable against a
23 related third party. The judgment itself was in no way tampered with, and
24 separation of powers was thus in no way offended.

23 *Weinstein*, 609 F.3d at 51.

24 8. Bank Melli admits that it is a wholly-owned instrumentality of the Government of
25 Iran and that its assets have been blocked. *See, e.g.*, Stay Motion at 2 (stating that Bank Melli is a
26 “state-owned Iranian Bank”); *Weinstein*, 609 F.3d at 48 (“Bank Melli concedes that it is an
27 instrumentality of Iran.”). Moreover, Bank Melli does not dispute that the remainder of the
28 requirements of TRIA § 201 and 28 U.S.C. § 1610(g) are satisfied.

1 9. Accordingly, for all the reasons set forth in the Greenbaum and Acosta Opposition,
2 and as discussed herein, the Stay Motion should be denied and the Court should enter the
3 Stipulation and Proposed Order.

4 WHEREFORE, the Heisers respectfully request that the Court:

- 5 (i) Deny the Stay Motion;
6 (ii) Grant the Stipulation and Proposed Order; and
7 (iii) Grant such other and further relief as the Court deems just and proper.

8 Dated: June 26, 2012
9 San Francisco, California

Respectfully submitted,

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Attorneys for Michael Bennett, et. al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL BENNETT et al.
Plaintiffs

CASE NO. CV-11-5807 (CRB)

PLAINTIFF MICHAEL BENNETT, ET AL.'S
RESPONSE IN OPPOSITION TO BANK
MELLI'S MOTION FOR STAY OF
DISTRIBUTION

v.

ISLAMIC REPUBLIC OF IRAN, et. al.
Defendants

VISA INC., and FRANKLIN
RESOURCES, INC.,
Third-Party Plaintiffs

v.

BANK MELLI, et. al.
Third-Party Defendants

Plaintiffs Michael and Linda Bennett, et al, individually and on behalf of the Estate of Marla Bennett, ("Bennett Plaintiffs") by and through their undersigned counsel, hereby respond in Opposition to Bank Melli's Motion for Stay of Distribution, and in connection therewith state as follows:

Background

1. The Bennett plaintiffs are California residents. They obtained a judgment against the Islamic Republic of Iran (“Iran”) and the Iranian Ministry of Intelligence and Security (“MOIS) in the amount of \$12,904,548.00 on August 30, 2007 in the United States District Court for the District of Columbia. (Civ. Action No. 03-1486 RCL)
2. Plaintiffs are still owed that entire amount plus interest that has accrued at the legal rate.
3. The Bennett plaintiffs’ action arose from the July 31, 2002 bombing of the cafeteria at the Frank Sinatra Building on the campus of Hebrew University in Jerusalem. Their daughter Marla who was studying there for the summer was killed in the bombing. Her face was blown off. She suffered horribly before she died. The bombing was orchestrated and carried out by Hezbollah.
4. The judge in the District of Columbia found, after a full trial, that the defendants Iran and MOIS had provided material support and assistance to Hezbollah and entered judgment against them.
5. On June 11, 2012 the Estate of Michael Heiser, et al. (the Heisers), the Greenbaum and Acosta Judgment Creditors, the Bennett Plaintiffs, Visa, Inc, and Franklin Resources, Inc. entered into an agreement to turnover blocked Iranian assets which had been deposited into the Court’s registry by Visa, Inc. and Franklin Resources, Inc. (Dkt. No. 95)
6. On June 12, 2012 Bank Melli filed a Motion for Stay of Distribution. (Dkt. No. 98)

7. On June 18, 2012 the Greenbaum and Acosta Judgment Creditors filed a Memorandum of Law in Opposition to Bank Melli's Motion for Stay of Distribution. (Dkt. No. 103)
8. The Bennett Plaintiffs hereby oppose Bank Melli's Opposition to the proposed distribution by an entity that is one and the same as Iran and responsible for the murder of their daughter.

Argument

I. The Bennett Plaintiffs Join and Adopt the Arguments of the Greenbaum and Acosta Judgment Creditors

9. The Bennett Plaintiffs hereby join and adopt all of the arguments set forth in the Greenbaum and Acosta Opposition, which is incorporated by reference herein.

II. Bank Melli is publicly owned, controlled and administered by Iran

10. Article 44 of the Iranian Constitution specifically states that its banks are state owned, administered and therefore controlled by Iran. The pertinent text of that portion of the Iranian constitution is as follows:

Article 44

The economy of the Islamic Republic of Iran is to consist of three sectors: state, cooperative, and private, and is to be based on systematic and sound planning. The state sector is to include all large-scale and mother industries, foreign trade, major minerals, banking, insurance, power generation, dams and large-scale irrigation networks, radio and television, post, telegraph and telephone services, aviation, shipping, roads, railroads and the like; all these will be publicly owned and administered by the State. The cooperative sector is to include cooperative companies and enterprises concerned with production and distribution, in urban and rural areas, in accordance with Islamic criteria. The private sector consists of those activities concerned with agriculture, animal husbandry, industry, trade, and services that supplement the economic activities of the state and cooperative sectors. Ownership in each of these three

sectors is protected by the laws of the Islamic Republic, in so far as this ownership is in conformity with the other articles of this chapter, does not go beyond the bounds of Islamic law, contributes to the economic growth and progress of the country, and does not harm society. The [precise] scope of each of these sectors, as well as the regulations and conditions governing their operation, will be specified by law. (Emphasis added)

There simply can be no good faith argument that Bank Melli is a separate entity from that of Iran itself.

WHEREFORE, the Bennett Plaintiffs respectfully request that the Court:

1. Deny Bank Melli's Motion to Stay Distribution;
2. Grant the Stipulation and Proposed Order for Turnover of Assets;
3. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

/s/Jane Carol Norman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of June, 2012, a copy of the foregoing was sent via electronic means to all counsel of record.

/s/Jane Carol Norman

ANNEX 318

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 3 Washington, D.C. 20037
 Telephone: (202) 556-2000
 4 Facsimile: (202) 556-2001

5
 6 *Counsel for Third-Party Defendant*
 BANK MELLI

7
 8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11
 12 MICHAEL BENNETT, *et al.*,
 13 Plaintiffs,
 14 v.
 15 ISLAMIC REPUBLIC OF IRAN,
et al.,
 16 Defendants.

Case No. CV 11-5807 (CRB) (NJV)

**STIPULATION AND ~~PROPOSED~~
 ORDER VACATING DEFAULT**

**Before the Honorable Charles R. Breyer
 and Nandor J. Vadas**

17
 18
 19 VISA INC. and
 FRANKLIN RESOURCES, INC.,
 20 Third-Party Plaintiffs,
 21 v.
 22 BANK MELLI, *et al.*,
 23 Third-Party Defendants.

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1 Third-Party Defendant Bank Melli, Defendants and Third-Party Plaintiffs
2 Visa Inc. and Franklin Resources, Inc. (“Visa” and “Franklin”), Plaintiffs Michael
3 Bennett *et al.* (the “Bennett Plaintiffs”), Third-Party Defendants Steven Green-
4 baum and Carlos Acosta *et al.* (the “Greenbaum/Acosta Judgment Creditors”), and
5 Third-Party Defendants Estate of Michael Heiser *et al.* (the “Heiser Judgment
6 Creditors”), by and through their undersigned counsel, hereby consent and stipu-
7 late to the entry of this Order, and the Court concludes that good cause has been
8 shown for the entry thereof:

9 1. Bank Melli’s motion to set aside the default (Doc. No. 104) is hereby
10 **GRANTED**. The Clerk’s entry of default (Doc. No. 79) is hereby **VACATED**.

11 2. The vacating of the Clerk’s entry of default does not constitute a con-
12 sent or agreement to any of the arguments or defenses raised by Bank
13 Melli opposing the right of the Bennett Plaintiffs, the Greenbaum/Acosta Judgment
14 Creditors, and the Heiser Judgment Creditors to a turnover of the assets deposited
15 into the Court’s registry by Visa and Franklin.

16 3. Bank Melli hereby waives its objections to service of the summons
17 and third-party complaint (Doc. Nos. 16, 45), reserving all other jurisdictional,
18 immunity, and other defenses and objections.

19 4. The Stipulation with Proposed Order Awarding Turnover of Blocked
20 Assets, Discharge of Stakeholders and Entry of Final Judgment (Doc. No. 95) and
21 Bank Melli’s Motion to Stay Distribution (Doc. No. 98) are hereby **WITH-**
22 **DRAWN** without prejudice.

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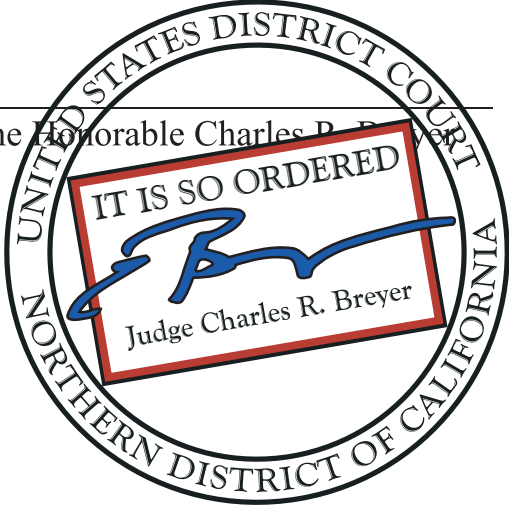
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5. Bank Melli shall move against or answer the Third-Party Complaint within 30 days of the entry of this Order.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: July 5, 2012
San Francisco, California

The Honorable Charles P. [redacted]



ANNEX 319

FILED

UNITED STATES COURT OF APPEALS

JAN 7 2014

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL BENNETT; et al.,

Plaintiffs - Appellees,

v.

THE ISLAMIC REPUBLIC OF IRAN,

Defendant,

V.

VISA INC.; et al.,

Defendants-third-party-
plaintiffs - Appellees,

V.

GREENBERG AND ACOSTA,

Plaintiff-third-party-
defendant - Appellee,

HEISER JUDGMENT CREDITORS,

Plaintiff-fourth-party-
defendant - Appellee,

V.,

BANK MELLI,

Plaintiff-third-party-
defendant - Appellant.

Nos. 13-15442
13-16100

D.C. No. 3:11-cv-05807-CRB
Northern District of California,
San Francisco

ORDER

Appellant's motion for leave to file an overlength brief is granted in part. Appellant is granted leave to file a brief not to exceed 8,400 words. 9th Cir. R. 28-4. If appellant seeks leave to file a brief lengthier than 8,400 words, appellant must file a renewed motion accompanied by the proposed brief. 9th Cir. R. 32-2. The reply brief remains due January 21, 2014.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

Cole Benson
Supervising Deputy Clerk
Ninth Circuit Rules 27-7 and 27-10

FILED

UNITED STATES COURT OF APPEALS

NOV 30 2015

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL BENNETT; et al.,

Plaintiffs - Appellees,

v.

THE ISLAMIC REPUBLIC OF IRAN,

Defendant,

v.

VISA INC.; et al.,

Defendants-third-party-
plaintiffs - Appellees,

v.

GREENBERG AND ACOSTA
JUDGEMENT CREDITORS AND
HEISER JUDGMENT CREDITORS,

Third-party-defendants -
Appellees,

and

BANK MELLI,

Third-party-defendant -
Appellant.

Nos. 13-15442, 13-16100

D.C. No. 3:11-cv-05807-CRB
Northern District of California,
San Francisco

ORDER

Before: THOMAS, Chief Judge, GRABER, Circuit Judge and BENSON,* Senior District Judge.

Bank Melli's motion for leave to file a reply is GRANTED. The reply submitted on November 27, 2015 shall be filed.

* The Honorable Dee V. Benson, Senior District Judge for the U.S. District Court for the District of Utah, sitting by designation.

**General Docket
United States Court of Appeals for the Ninth Circuit**

Court of Appeals Docket #: 13-15442 **Docketed:** 03/12/2013
Nature of Suit: 4360 Other Personal Injury **Termed:** 02/22/2016
Michael Bennett, et al v. Bank Melli
Appeal From: U.S. District Court for Northern California, San Francisco
Fee Status: Paid

Case Type Information:

- 1) civil
- 2) private
- 3) null

Originating Court Information:

District: 0971-3 : [3:11-cv-05807-CRB](#)
Court Reporter: Connie McCarthy Kuhl
Court Reporter: Debra Pas, Official Court Reporter
Trial Judge: Charles R. Breyer, Senior District Judge
Date Filed: 12/02/2011
Date Order/Judgment: 02/28/2013 **Date Order/Judgment EOD:** 02/28/2013 **Date NOA Filed:** 03/11/2013 **Date Rec'd COA:** 03/11/2013

Prior Cases:

None

Current Cases:

	Lead	Member	Start	End
Consolidated	13-15442	13-16100	08/02/2013	

MICHAEL BENNETT
Plaintiff - Appellee,

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Jane Carol Norman, Esquire
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LINDA BENNETT, as Co-Administrators of the Estate of Maria Ann Bennett
Plaintiff - Appellee,

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(see above)

Jane Carol Norman, Esquire
[COR NTC Retained]
(see above)

v.

THE ISLAMIC REPUBLIC OF IRAN
Defendant,

v.

VISA INC.
Defendant-third-party-plaintiff - Appellee,

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v.

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UNITED STATES OF AMERICA
Amicus Curiae,

Benjamin M. Shultz, Attorney
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MICHAEL BENNETT; LINDA BENNETT, as Co-Administrators of the Estate of Maria Ann Bennett,

Plaintiffs - Appellees,

v.

THE ISLAMIC REPUBLIC OF IRAN,

Defendant,

v.

VISA INC.; FRANKLIN RESOURCES, INC.,

Defendants-third-party-plaintiffs - Appellees,

v.

GREENBERG AND ACOSTA JUDGEMENT CREDITORS,

Plaintiff-third-party-defendant - Appellee,

HEISER JUDGMENT CREDITORS,

Plaintiff-fourth-party-defendant - Appellee,

v,

BANK MELLI,

Plaintiff-third-party-defendant - Appellant.

- 03/12/2013 [1](#) 15 pg, 590.78 KB DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 03/19/2013. Transcript ordered by 04/10/2013. Transcript due 05/10/2013. Appellant Bank Melli opening brief due 06/19/2013. Appellees Linda Bennett, Michael Bennett, Franklin Resources, Inc., Greenberg and Acosta Judgement Creditors, Heiser Judgment Creditors and VISA Inc. answering brief due 07/19/2013. Appellant's optional reply brief is due 14 days after service of the answering brief. [8546419] (GR) [Entered: 03/12/2013 08:48 AM]
- 03/19/2013 [2](#) 6 pg, 109.51 KB Filed (ECF) Appellant Bank Melli Mediation Questionnaire. Date of service: 03/19/2013. [8556240] (Lamken, Jeffrey) [Entered: 03/19/2013 11:34 AM]
- 04/12/2013 [3](#) 1 pg, 333.72 KB Filed (ECF) notice of appearance of Curtis Campbell Mechling for Appellee Greenberg and Acosta Judgement Creditors. Date of service: 04/12/2013. [8588133] (Mechling, Curtis) [Entered: 04/12/2013 11:51 AM]
- 04/12/2013 [4](#) 1 pg, 333.55 KB Filed (ECF) notice of appearance of Benjamin Weathers-Lowin for Appellee Greenberg and Acosta Judgement Creditors. Date of service: 04/12/2013. [8588134] (Weathers-Lowin, Benjamin) [Entered: 04/12/2013 11:51 AM]
- 04/12/2013 5 Added attorney Benjamin Weathers-Lowin, Curtis Campbell Mechling for Greenberg and Acosta Judgement Creditors, in case 13-15442. [8588332] (JFF) [Entered: 04/12/2013 01:14 PM]
- 04/12/2013 [6](#) 51 pg, 612.11 KB Filed (ECF) Appellees Linda Bennett, Michael Bennett, Greenberg and Acosta Judgement Creditors and Heiser Judgment Creditors Motion to dismiss the case. Date of service: 04/12/2013. [8588543] (Mechling, Curtis) [Entered: 04/12/2013 02:19 PM]
- 04/25/2013 [7](#) 27 pg, 199.01 KB Filed (ECF) Appellant Bank Melli response opposing motion (,motion to dismiss the case). Date of service: 04/25/2013. [8604193] (Lamken, Jeffrey) [Entered: 04/25/2013 09:37 AM]
- 05/06/2013 [8](#) 19 pg, 432.52 KB Filed (ECF) Appellees Linda Bennett, Michael Bennett, Greenberg and Acosta Judgement Creditors and Heiser Judgment Creditors reply to response (,motion to dismiss the case,). Date of service: 05/06/2013. [8617723] (Mechling, Curtis) [Entered: 05/06/2013 02:43 PM]
- 05/13/2013 [9](#) 2 pg, 13.75 KB Filed (ECF) notice of appearance of Robert K. Kry for Appellant Bank Melli. Date of service: 05/13/2013. [8625691] (Kry, Robert) [Entered: 05/13/2013 09:44 AM]
- 05/13/2013 10 Added attorney Robert Kelsey Kry for Bank Melli, in case 13-15442. [8625704] (JFF) [Entered: 05/13/2013 09:48 AM]
- 06/18/2013 [11](#) 2 pg, 30 KB Filed clerk order (Deputy Clerk: SJ): On May 30, 2013, this court granted appellant's petition for permission to appeal in No. 13-80057 pursuant to 28 U.S.C. § 1292(b). The newly opened appeal is No. 13-16100. It appears that the issues raised in appeal No. 13-16100 may be identical to those raised in this appeal. Within 21 days after the date of this order, appellant shall move for voluntary dismissal of this appeal or show cause why it should not be dismissed as duplicative of appeal No. 13-16100. If appellant elects to show cause, appellees may respond within 10 days after service of appellant's memorandum. Failure to comply with this order shall result in the automatic dismissal of this petition for review by the Clerk for failure to prosecute. See 9th Cir. R. 42-1. If necessary, the court will set a briefing schedule upon disposition of this order to show cause. [8672073] (WL) [Entered: 06/18/2013 01:30 PM]
- 07/09/2013 [12](#) 5 pg, 100.52 KB Filed (ECF) Appellant Bank Melli Unopposed Motion to consolidate cases 13-15442 & 13-16100. Date of service: 07/09/2013. [8696868] (Lamken, Jeffrey) [Entered: 07/09/2013 04:01 PM]
- 07/11/2013 13 Case rejected from Circuit Mediation Program. [8699732] (LW) [Entered: 07/11/2013 11:56 AM]
- 08/02/2013 [14](#) 3 pg, 35.96 KB Filed order (Appellate Commissioner): Appellant Bank Melli's unopposed motion to consolidate appeal Nos. 13-15442 and 13-16100 is granted. Appellees' opposed motion to dismiss appeal No. 13-15442 is denied without prejudice to renewing the argument in the answering brief. The order to show cause, issued on June 18, 2013, in appeal No. 13-15442 is discharged. The briefing schedule previously established in appeal No. 13-16100 shall govern these consolidated appeals. (MOATT) [8727648] [13-15442, 13-16100] (WL) [Entered: 08/02/2013 07:20 AM]
- 08/23/2013 15 Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant Bank Melli in 13-16100, 13-15442. New requested due date is 10/09/2013 at 11:59 pm. [8753916] [13-16100, 13-15442] (Lamken, Jeffrey) [Entered: 08/23/2013 09:45 AM]
- 08/23/2013 16 **Streamlined request [15] by Appellant Bank Melli in 13-16100, 13-15442 to extend time to file the brief is approved. Amended briefing schedule: Appellant Bank Melli opening brief due 10/09/2013. Appellees Linda Bennett, Michael Bennett, Franklin Resources, Inc., Greenberg and Acosta Judgement Creditors, Heiser Judgment Creditors and VISA Inc. answering brief due 11/08/2013. The optional reply brief is due 14 days from the date of service of the answering brief.** [8753937] [13-16100, 13-15442] (LN) [Entered: 08/23/2013 09:57 AM]
- 10/09/2013 [17](#) 2 pg, 338.2 KB Filed (ECF) notice of appearance of Lucas M. Walker for Appellant Bank Melli in 13-15442, 13-16100. Date of service: 10/09/2013. [8816521] [13-15442, 13-16100] (Walker, Lucas) [Entered: 10/09/2013 08:00 PM]

ANNEX 320

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<hr/>)	
MICHAEL BENNETT)	
and)	
LINDA BENNETT,)	
Individually and as Co-Administrators of)	
The Estate of MARLA ANN BENNETT)	
)	
	Plaintiffs,)	
)	Civil Action No. 03-1486 (RCL)
	v.)	
)	
THE ISLAMIC REPUBLIC OF IRAN, et al.,)	
)	
	Defendants.)	
<hr/>)	

UNITED STATES' MOTION TO QUASH PLAINTIFFS' WRITS OF ATTACHMENT

The United States respectfully moves to quash in their entirety five writs of attachment issued by the Clerk of this Court on April 1, 2008. These writs attach properties of the government of Iran that are used for diplomatic purposes. The properties were used by Iran as office and residential space for the Iranian diplomatic mission to the United States until the United States severed diplomatic relations with Iran in 1980. These properties have since been held in the protective custody of the United States pursuant to its international obligations under the Vienna Convention on Diplomatic Relations. They are immune from attachment under the laws of the United States.

Support for this motion is found in the accompanying memorandum and exhibits.

Respectfully submitted this 18th day of July, 2008.

GREGORY G. KATSAS

Assistant Attorney General

JEFFREY A. TAYLOR
United States Attorney

JOSEPH H. HUNT
Director, Federal Programs Branch

VINCENT M. GARVEY
Deputy Director, Federal Programs Branch

/s/ Varu Chilakamarri

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varudhini.chilakamarri@usdoj.gov
Courier Address:
20 Massachusetts Ave., NW, Rm. 7226
Washington, D.C. 20530

Counsel for the United States of America

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
MICHAEL BENNETT)	
and)	
LINDA BENNETT,)	
Individually and as Co-Administrators of)	
The Estate of MARLA ANN BENNETT)	
)	
Plaintiffs,)	
)	Civil Action No. 03-1486 (RCL)
v.)	
)	
THE ISLAMIC REPUBLIC OF IRAN, et al.,)	
)	
Defendants.)	
_____)	

**MEMORANDUM IN SUPPORT OF UNITED STATES’
MOTION TO QUASH WRITS OF ATTACHMENT**

INTRODUCTION

Plaintiffs brought suit against Iran and the Iranian Ministry of Intelligence and Security in the United States District Court for the District of Columbia for a terrorist act by Hamas resulting in the death of their daughter. This Court entered a default judgment in the amount of \$12,904,548. Plaintiffs have now served writs of attachment on Iranian diplomatic properties situated in the District of Columbia in an effort to satisfy their judgment.¹

The United States has the deepest sympathy for the suffering experienced by the plaintiffs and abhors the actions which gave rise to their judgment. However, attachment of the

¹ On March 26, 2008, after filing their Motion for Order to Issue Writs of Attachment and accompanying memoranda, plaintiffs filed a Withdrawal of their Motion for an Order to Issue Writs of Attachment. See Doc. No. 26. Subsequently, however, the writs were issued by this Court, and the plaintiffs appear to be pursuing the attachment of these properties, as they filed executed returns of these writs. See Doc. Nos. 27-31.

properties targeted by plaintiffs' writs is not permitted under the laws of the United States and would have the effect of placing the United States in violation of its international obligations. Indeed, similarly situated plaintiffs previously have sought to attach the exact properties at issue here, and this Court has repeatedly determined that these properties are immune from attachment.² The same conclusion should be reached in this case. As a result, the United States hereby respectfully requests that the plaintiffs' writs of attachment be quashed in their entirety.³

LEGAL AND FACTUAL BACKGROUND

A. International Treaty and Statutory Obligations Regarding Diplomatic Property

The United States has entered into treaties and international agreements that establish its obligation to protect diplomatic property against interference. Foremost among those treaties is the Vienna Convention on Diplomatic Relations ("Vienna Convention"), which establishes that the "premises of a foreign mission shall be inviolable," "immune from search, requisition, attachment or execution," and that "[t]he receiving State is under a special duty to take all appropriate steps to protect the premises of the mission." Article 22 of the Vienna Convention, 23 U.S.T. 3227 (1972), T.I.A.S. No. 7502. The residence of a diplomat enjoys the same protection as the premises of the mission. Vienna Convention, Article 30(1). Further, the Vienna Convention requires the host country to take steps to protect the property of diplomatic

² See, e.g., Mousa v. Islamic Republic of Iran, No. 00-2096 (D.D.C. Nov. 5, 2003); Elahi v. Islamic Republic of Iran, No. 99-02802 (D.D.C. July 22, 2003); Flatow v. Islamic Republic of Iran, 76 F. Supp. 2d 16 (1999).

³ The United States appears in this action pursuant to 28 U.S.C. § 517, which authorizes the Attorney General of the United States to send any officer of the Department of Justice to "attend to the interests of the United States in a suit pending in a court of the United States, or in the courts of a State, or to attend to any other interest of the United States." See also *infra* at 10-12.

missions even under exceptional circumstances. For example, under Article 45(a) of the Vienna Convention, if diplomatic relations are broken or if a mission is permanently or temporarily recalled, the receiving state “must even in the case of armed conflict, respect and protect the premises of the mission, together with its property and archives.”

The Foreign Missions Act, 22 U.S.C. §§ 4301, et seq., provides that the Department of State, Office of Foreign Missions (“OFM”) is to protect the property of foreign missions in various circumstances. The Foreign Missions Act authorizes OFM to “protect and preserve any property of [a] foreign mission” if that mission has ceased conducting diplomatic, consular and other governmental activities and has not designated a protecting power (or other agent) approved by the Secretary to be responsible for the property of that foreign mission. Id. § 4305(c). The Foreign Missions Act also prohibits the attachment of or execution upon such mission property being held by the Department of State. Specifically, 22 U.S.C. § 4308(f) provides that:

Assets of or under the control of the Department of State, wherever situated, which are used by or held for the use of a foreign mission *shall not be subject to attachment, execution, injunction, or similar process, whether intermediate or final.*

Id. (emphasis added); see also 28 U.S.C. § 1609 (generally prohibiting the attachment of a foreign state’s property, subject to the existing international agreements to which the United States is a party).

B. Legislation Governing the Attachment of Foreign Property in the United States

As relevant in this case, two statutes provide the means of attaching foreign property in the United States: the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. §§ 1602, *et seq.*,

and the Terrorism Risk Insurance Act (“TRIA”), Pub. L. No. 107-297, Title II, § 201 (Nov. 26, 2002), codified at 28 U.S.C. § 1610 note.

In pertinent part, the Foreign Sovereign Immunities Act (“FSIA”) provides that “the property in the United States of a foreign state shall be immune from attachment[,] arrest and execution except as provided in section[] 1610 . . . of this chapter.” 28 U.S.C. § 1609. In turn, section 1610 provides various exceptions to the immunity from attachment. Section 1610(a)(7) provides that the property of a foreign state is not immune from attachment where it has been “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 [28 U.S.C. §] 1605A.”⁴ *Id.* § 1610(a)(7). Section 1610(f) of the FSIA also states that certain foreign property shall be subject to attachment in aid of execution of a judgment for which the foreign state “is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.” *Id.* § 1610(f)(1)(A).⁵

⁴ The FSIA was recently amended by section 1083 of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110-181 (January 28, 2008); 122 Stat. 3. The amendments repealed section 1605(a)(7) of the FSIA, which had provided an exception to a foreign state’s jurisdictional immunity for actions against designated state sponsors of terrorism for personal injury or death. The amendments created a new FSIA section, section 1605A which, *inter alia*, reasserts the exception (previously codified at 28 U.S.C. § 1605(a)(7)) to jurisdictional immunity for actions against designated state sponsors of terrorism, and creates a federal cause of action against foreign states for such actions. See P.L. 110-181 § 1083(a), (c); 28 U.S.C. § 1605A(a), (c). The amendments also provide a framework and a 60-day statutory deadline for converting pre-existing actions brought under section 1605(a)(7) into actions under new section 1605A. See P.L. 110-181, Div. A., Title X § 1083(c); 28 U.S.C. § 1605A note. Furthermore, the amendments added a new section 1610(g), which is applicable to actions brought under new section 1605A. Section 1610(g) will be discussed in more detail below.

⁵ Specifically, section 1610(f)(1)(A) states:

Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)),

However, section 1610(f)(3) provides the President authority to waive section 1610(f)(1) in the interest of national security, and the President acted on this authority by waiving section 1610(f)(1) in its entirety. See Pres. Determination No 2001-03, 65 Fed. Reg. 66483 (2000).

In addition to the FSIA exceptions noted above, section 201 of TRIA provides for the “[s]atisfaction of judgments from blocked assets of terrorists, terrorist organizations, and State sponsors of terrorism.” Subsection (a) of this section specifically provides as follows:

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

See Section 201(a) (emphasis added). The Section further defines the term “blocked assets” as:

(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702); and

(B) does not include property that-- . . .

(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the

section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

United States, is being used exclusively for diplomatic or consular purposes.

Section 201(d)(2). Finally, the section provides the following definition with respect to diplomatic and consular property:

(3) CERTAIN PROPERTY.— The term “property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations” and the term “asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations” means any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

Section 201(d)(3).

As a result of Section 201(d)(2)(B)(ii)’s exclusion from “blocked assets,” any property subject to the Vienna Conventions on Diplomatic and Consular Relations that “is being used exclusively for diplomatic and consular purposes,” property that is used exclusively for diplomatic purposes is not subject to TRIA.

C. Iranian Diplomatic Real Properties

The writs of attachment filed by plaintiffs implicate five parcels of real property that are associated with the former mission of the government of Iran and that are currently under the control of the Department of State.⁶ See Declaration of Claude J. Nebel, Deputy Assistant Secretary of the Office of Foreign Missions, United States Department of State (“Nebel Decl.”), attached hereto as Exhibit 1, ¶¶ 14-19. These particular diplomatic properties were blocked on November 14, 1979 by Executive Order 12170, in response to the taking of the U.S. Embassy

⁶ The properties are located at: (1) 3003 Massachusetts Avenue, NW; (2) 3005 Massachusetts Avenue, NW; (3) 3410 Garfield Street, NW; (4) Lot 8, Square 2145, NW; and (5) Lot 0820, Square 2145, NW.

and hostages in Tehran. Id. ¶¶ 5, 14-19. Iran was permitted to continue to occupy and use its Embassy, consulates, and diplomatic residences until the United States severed diplomatic relations with Iran on April 7, 1980. Id. ¶ 6. As a result of that action, the United States took custody of all Iranian diplomatic and consular real properties. Id. ¶ 6.

On April 14, 1980, the Department of State approved Algeria as the protecting power for Iranian interests in the United States.⁷ Nebel Decl. ¶ 8. Because the United States and Iran were unable to reach agreement concerning the return of each other's diplomatic and consular property to the protecting power of the other state, the Department of State informed Algeria that the United States would retain custody over the diplomatic and consular properties of Iran. Id. It further informed Algeria that it would take all appropriate measures for the safety and protection of such diplomatic and consular premises in the United States. Id. The diplomatic and consular properties of Iran have remained in the custody of the Department of State since 1980, and specifically of the Department of State's Office of Foreign Missions ("OFM"), since that office was created in 1982. See id. ¶ 10. These properties have remained blocked pursuant to Executive Order 12170. Id. ¶¶ 5, 14-19.

By a diplomatic note tendered on March 10, 1983, the United States notified Algeria that the United States would continue to respect and protect Iran's diplomatic and consular property pursuant to Article 45 of the Vienna Convention on Diplomatic Relations, adopted Apr. 18, 1961, T.I.A.S. No. 7502, 23 U.S.T. 3227, and that it intended to rent some of the properties in order to protect Iran's interest in these properties. See Nebel Decl. ¶ 11. The United States

⁷ Algeria is no longer the protecting power for Iranian interests. Pakistan now serves that role. See Nebel Decl. ¶ 8.

determined that rental of the properties would further its obligation to protect the properties by keeping them occupied and generating a source of funds that could be used for the maintenance of the properties. See id. Therefore, OFM has periodically leased all of the properties at issue here at various times to private parties or to other foreign governments' missions. See id. ¶¶ 15-19. Currently, three of the properties at issue (located at 3003 Massachusetts Ave., 3005 Massachusetts Ave., and 3410 Garfield St.) are vacant while OFM makes needed repairs, seeks new tenants, and explores other options for maintaining and preserving the properties. See id. ¶¶ 15-17. The remaining two parcels of land are lots that OFM periodically rents as parking lots to other foreign missions. See id. ¶¶ 18-19. All of the proceeds from OFM's rental of these five properties that are not necessary for maintenance and repair of the properties are deposited in a blocked Iranian diplomatic account, and are not used for any other purposes.⁸ Id. ¶ 12.

ARGUMENT

At the outset, the United States wishes to address plaintiffs' contention that the United States does not have standing to assert the sovereign immunity of Iran as a bar to the attachment of this property, implying that the United States cannot oppose the attachments at issue. See Pls. Am. Supp. Mem. in Support of Mot. for Order to Issue Writs of Attachment on Judgment, at 7, Rec. Doc. No 24.

⁸ Funds that had accrued in this account as of the date of enactment of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, were paid to certain individuals designated by Congress as eligible for payment. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 2002, 114 Stat. 1464, 1541-43, as amended by the Terrorism Risk Insurance Act, of 2002, Pub. L. No. 107-297, § 201(d).

The Attorney General of the United States has broad authority under 28 U.S.C. § 517, to send any officer of the Department of Justice to “attend to the interests of the United States in a suit pending in a court of the United States.” Accordingly, by virtue of its interest in this matter, the United States has the right to enter this action and seek the necessary relief.

Moreover, it has long been established that the United States has standing to assert and protect *its* foreign policy interests, particularly as they relate to carrying out its obligations pursuant to international treaties. See, e.g., Sanitary Dist. of Chicago v. United States, 266 U.S. 405, 425-426, (1925) (holding that the United States “has a standing in this suit not only to remove obstruction to interstate and foreign commerce . . . but also to carry out treaty obligations to a foreign power The Attorney General by virtue of his office may bring this proceeding and no statute is necessary to authorize the suit”); United States v. Arlington County, 669 F.2d 925, 928-929 (4th Cir. 1982) (holding that, where the United States filed a claim against the county to void all property tax assessments against German diplomatic property, “[t]he United States can sue to enforce its policies and laws, even when it has no pecuniary interest in the controversy. This principle has been invoked to enable the United States to honor its treaty obligations to a foreign state.”) (internal citations omitted). Here, the United States moves to quash the writs at issue because the United States has significant foreign policy interests in ensuring that the statutory provisions governing foreign sovereign immunity are properly interpreted and applied and that the United States complies with its obligations under the Vienna Convention. This interest is heightened by the risk that U.S. property abroad will be subject to reciprocal treatment.

Pursuant to domestic law and international treaties, the properties at issue are currently under the control of the Department of State, which has a legal duty and right to protect the properties.⁹ See infra; 22 U.S.C. §§ 4305(c), 4308(f); 23 U.S.T. 3227; 21 U.S.T. 77. Thus, in Rubin v. Islamic Republic of Iran, 408 F. Supp. 2d 549 (N.D. Ill. 2005) (Mag. J. Ashman) --the only authority which plaintiffs cite in support of their position -- the court recognized that the United States is different from other third-parties, noting that “[t]he non-agent third party in Flatow, however, was the U.S. Government itself, which had standing to assert FSIA defenses because it took custody of and leased the Iranian properties in issue against Iran’s wishes but pursuant to the Foreign Missions Act, 22 U.S.C. § 4305(c).” Rubin, 408 F. Supp. 2d at 558; see also Roeder v. Islamic Republic of Iran, 195 F. Supp. 2d 140, 155 (D.D.C. 2002) (“Plaintiffs then argue that the United States lacks a cognizable interest because Iran has waived all defenses by refusing to appear in this court, and therefore the United States lacks standing to assert defenses on behalf of Iran. . . . Plaintiffs consistently mischaracterize the nature of the interest asserted by the United States. The United States is not seeking to vindicate Iran’s interests, but rather its own commitment under a binding international agreement, and its ever-present interest in the enforcement of its laws.”).

⁹ The Foreign Missions Act, 22 U.S.C. § 4311, states that “[t]he United States, acting on its own behalf or on behalf of a foreign mission, has *standing to bring or intervene in an action to obtain compliance with this chapter*, including any action for injunctive or other equitable relief.” 22 U.S.C. § 4311 (emphasis added). That chapter of the Foreign Mission Act includes § 4305 and § 4308, which provide that the Department of State shall protect and preserve diplomatic property after the foreign sovereign has ceased conducting diplomatic, consular and other governmental activities.

The United States has properly moved to quash writs of attachment with respect to the same properties in a number of instances, based on the significant interests of the United States that are implicated by such writs. See infra Part C (citing authorities). This case is no different.

As to their ability to attach the properties at issue, plaintiffs appear to argue that the properties are subject to attachment because: (1) the recent amendments to the FSIA, specifically section 1610(g), create a new category of attachable foreign property which includes the properties at issue here; (2) the properties are otherwise attachable under FSIA section 1610; and (3) the properties are not being used for diplomatic purposes, and are therefore attachable under TRIA. As set forth below, none of these avenues provides a supportable means of attaching the properties, which are immune under the FSIA, the Foreign Missions Act, and by virtue of the Vienna Convention.

A. Recently Added Section 1610(g) of the FSIA Does Not Permit Attachment of the Properties at Issue

Plaintiffs argue that section 1610(g) of the FSIA, which was recently added by the National Defense Authorization Act for Fiscal Year 2008 (“NDAA”), P.L. 110-181, section 1083 (January 28, 2008), “created a new special category of terrorist state property open to attachment,” and that these changes “are specifically made applicable to pending cases by the amendment to 28 U.S.C. § 1610(f)(1)(A).” Pl.’s Am. Supp. Mem., at 3. Section 1610(g) provides, in relevant part:

(g) Property in certain actions.--

(1) **In general.**--Subject to paragraph (3), the property of a foreign state *against which a judgment is entered under section 1605A*, and the property of an agency or instrumentality of such a state, including property that is a separate juridical

entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment *as provided in this section*, regardless of--

- (A) the level of economic control over the property by the government of the foreign state;
- (B) whether the profits of the property go to that government;
- (C) the degree to which officials of that government manage the property or otherwise control its daily affairs;
- (D) whether that government is the sole beneficiary in interest of the property; or
- (E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

28 U.S.C.A. § 1610(g) (emphasis added). Section 1610(g) does not provide for the attachment of the properties at issue. Section 1610(g) explicitly applies only to judgments “entered under [28 U.S.C. §] 1605A.” Plaintiffs’ judgment was not and could not have been entered under section 1605A, as section 1605A was enacted several months after plaintiffs’ judgment was issued. By its own terms, therefore, section 1610(g) is clearly inapplicable to plaintiffs and their judgment.¹⁰

Nor could section 1610(g) be made applicable via section 1610(f)(1), as plaintiffs argue, because the President acted on the authority provided by 1610(f)(3) by waiving section 1610(f)(1) in its entirety. See Pres. Determination No. 2001-03, 65 Fed. Reg. 66483 (2000) (“I hereby waive subsection (f)(1) of section 1610 of title 28, United States Code, in the interest of national security.”). Further, plaintiffs’ assertion that the NDAA amendments are somehow made applicable to their case has been unequivocally rejected by the recent D.C. Circuit opinion in Simon v. Republic of Iraq, Nos. 06-7175, 06-7178, 2008 WL 2497417 (D.C. Cir., 2008),

¹⁰ Section 1083 of Public Law No. 110-81 provides for a 60-day time period for converting pre-existing actions brought under section 1605(a)(7) into actions under section 1605A. See P.L. 110-181, Div. A., Title X § 1083(c); 28 U.S.C. § 1605A note. Plaintiffs have not attempted to convert their judgment as one under section 1605A, and the time in which they might have attempted to do so has elapsed.

which held that the NDAA amendments do not apply to cases brought under 28 U.S.C.

§ 1605(a)(7):

[I]t is apparent that the 2008 amendments, including the “conforming amendments” that strike former § 1605(a)(7), see NDAA § 1083(b), do not apply to any claim then “pending” under that provision. . . . [O]nly a plaintiff prosecuting an action under new § 1605A of the FSIA can claim the benefits of that section, such as prejudgment attachment of the defendant’s property.

Id. at *4 & note. Accordingly, section 1610(g) does not permit attachment of the properties at issue.

Even if plaintiffs had obtained a judgment “entered under section 1605A,” section 1610(g) does not provide for the attachment of the properties at issue, because 1610(g) does not create an independent exception to the immunity of foreign property. Rather, it simply clarifies that when the property of a foreign state or its agency or instrumentality “is subject to attachment . . . as provided in this section,” such attachment cannot be defeated by application of the five so-called “Bancec” factors,¹¹ which the courts have traditionally relied upon in determining whether a foreign government has a sufficient beneficial interest in the property to be attached. Id. (emphasis added). By excluding verbatim the five Bancec factors from consideration in an attachment proceeding otherwise provided for under section 1610, Congress merely sought to

¹¹ In First Nat’l City Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611 (1983) (“Bancec”), the Supreme Court explained that instrumentalities of a foreign state are presumed to have separate juridical status, which can be overcome by a showing of a principal-agent relationship, or where such a separate status would work fraud or injustice. Id. at 629. Several courts have distilled five factors from Bancec to be considered: “(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, 1381 (5th Cir. 1992); see also Flatow v. Islamic Republic of Iran, 308 F.3d 1065, 1070-71 & n. 9 (9th Cir. 2002) (same). These factors are recited in new section 1610(g)(1)(A) - (E).

eliminate the application of Bancec. Unless the properties would be otherwise attachable under Section 1610, which they are not, no attachment is permissible.

The legislative history of the NDAA amendments confirms that this section was designed to allow attachment of foreign property notwithstanding the specific degree of control that the foreign government has over such property, but that Congress continued to intend that diplomatic properties be exempt from attachment. See H. Rept. 110-477, Conference Report to Accompany H.R. 1585, NDAA, at 1001, attached hereto as Exhibit 2 (stating that the new amendments permit “any property in which the foreign state has a *beneficial ownership* to be subject to execution” but that “[t]he conferees intend that property used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of Mission, *which is not subject to execution or attachment in aid of execution of a judgment*, should not be subject to a lien of *lis pendens* under this provision.”) (emphasis added). Thus, this new subsection does not, as plaintiffs contend, create an independent exception to the attachment of foreign property, and it certainly does not provide for the attachment of foreign diplomatic property.

B. The Properties are Not Subject to Attachment Under Section 1610 of the FSIA

As section 1610(g) does not apply to this case and does not provide an independent means of attaching foreign property, the properties must fall within one of the other exceptions under section 1610 in order to be attachable via the FSIA. Plaintiffs appear to allege that the properties are attachable under sections 1610(a)(7) and 1610(f)(1).¹²

In order to be attachable under section 1610(a)(7), the foreign property must be “used for a commercial activity” in the United States. It is the foreign state’s own activities, not those of

¹² Plaintiffs concede that the exception created by section 1610(b) is not applicable in this case. Pls. Supp. Mem., at 7, Rec. Doc. No. 23. Further, the remaining exceptions under section 1610 are not relevant here.

the United States, that determine whether the particular property is “used for a commercial activity” within the meaning of section 1610(a). See Flatow, 76 F. Supp. 2d at 23. As the Supreme Court stated in discussing the waiver of jurisdictional immunity in the FSIA in Republic of Argentina v. Weltover, 504 U.S. 607 (1992), actions are “commercial” within the meaning of the FSIA “when *a foreign government acts*, not as regulator of a market, but in the manner of a private player within it.” Id. at 614 (emphasis added). “[T]he issue is whether the particular actions that *the foreign state performs . . .* are the type of actions by which a private party engages in ‘trade and traffic or commerce[.]’” Id. (emphasis added). This interpretation comports with the rationale behind the FSIA’s exceptions to jurisdictional immunity and attachment and execution immunity -- a foreign state should be found to have waived these immunities only when *it* has taken some action outside the realm of sovereign actions and itself acts as a private party.

Here, assuming *arguendo* that section 1610(a)(7) is available in this case,¹³ the properties at issue are not being “used for a commercial activity” by Iran, which has not possessed or used the properties since diplomatic relations between the United States and Iran were severed in 1980. And, as this Court held in Flatow, the actions of the Department of State in connection with any renovation and rental of the same diplomatic properties at issue in this case did not constitute “commercial activity” by the foreign state so as to bring section 1610(a)(7) into play. See 76 F. Supp. 2d at 22-24. Thus, these properties are not attachable via section 1610(a)(7).

Section 1610(f)(1) may have provided an alternate means for attachment of property, but plaintiffs cannot rely on this section here, as it was waived by the President. See Pres. Determination No. 2001-03, 65 Fed. Reg. 66483. Plaintiffs state that this “waiver power held by

¹³ See 28 U.S.C. § 1610(a)(7) (as amended).

the President to issue a waiver was repealed by [TRIA], which applies specifically to the property in question here, by exempting it from the President's waiver power." This argument is untenable. First, as explained below, TRIA does not apply to the properties in question because these properties are not "blocked assets" as defined by TRIA. See infra Part C. Furthermore, the waiver authority provided under section 1610(f)(3), and the waiver executed thereto, continue to be in effect today, notwithstanding the passage of TRIA. TRIA created a mechanism, separate and apart from section 1610(f)(1), by which judgment holders may attach foreign property. See, e.g., Weininger v. Castro, 462 F. Supp. 2d 457, 486-87 (S.D.N.Y. 2006) ("TRIA thus expressly provides that where a judgment against a terrorist party exists, not only its assets, but the assets of its agencies and instrumentalities can be used to satisfy the judgment. In contrast, § 1610(f)(1)(A) states that if a creditor seeks to execute on assets claimed by an agency or instrumentality of a foreign state, that agency or instrumentality must already not be 'immune under § 1605(a)(7).'"). TRIA did nothing to amend, repeal, or otherwise modify section 1610(f)(3). Accordingly, and as has been recognized by various courts, TRIA left unchanged the waiver authority provided by 1610(f)(3), and the waiver that was executed by President Clinton continues to render section 1610(f)(1) inoperable. See, e.g., Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran v. Cubic Defense Systems, Inc., 495 F.3d 1024, 1032 (9th Cir. 2007) (noting that "TRIA's text does not expressly reinvigorate § 1610(f)(1)(A) from President Clinton's waiver"); Weininger, 462 F. Supp. 2d at 486-87 (describing differences between TRIA and section 1610(f)(1), and noting that section 1610(f)(1) was waived by the president); Smith v. Federal Reserve Bank of New York, 280 F. Supp. 2d 314, 317 & n.3 (S.D.N.Y.2003) (finding that plaintiffs could not rely on section 1610(f)(1) to attach property because that section had been waived by the president, and separately finding that attachment

under TRIA was also impermissible). Thus, plaintiffs cannot rely on section 1610(f)(1) to attach the property at issue.

C. The Properties at Issue are Not “Blocked Assets” as Defined by TRIA and Therefore are Not Subject to Attachment Under TRIA Section 201(a)

As set forth above, in addition to the exceptions under the FSIA, TRIA provides another mechanism for attaching certain foreign property in aid of execution of a judgment. Section 201(a) of TRIA provides that “blocked assets” of a terrorist party shall be subject to attachment in aid of execution of a judgment on a claim that is based upon an act of terrorism. Pub. L. No. 107-297. Section 201(d) of TRIA then states that “blocked assets” do not include property that:

[I]n the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

Section 201(d)(2)(B)(ii).¹⁴

The five parcels of real property at issue fall within this exception to TRIA’s definition of “blocked assets.” First, the properties are “subject to the Vienna Convention on Diplomatic Relations.” Under the Vienna Convention, the United States is required to “respect and protect the premises of the mission, together with its property and archives” even after diplomatic relations have been severed. See Article 45 of the Vienna Convention on Diplomatic Relations. Second, these real properties are “being used exclusively for diplomatic or consular purposes” by the United States. The United States’ obligations under the Vienna Convention include the duty

¹⁴ Section 201(d)(3) of the TRIA defines “property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations” as property, “the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under [either of the] Vienna Convention[s].”

to protect and maintain diplomatic properties.¹⁵ See Nebel Decl. ¶¶ 10-12. Accordingly, since the break in diplomatic relations with Iran, the United States has undertaken to protect the specific properties at issue pursuant to the Vienna Convention and the Foreign Missions Act.¹⁶ See Nebel Decl. ¶¶ 4, 12. As the Nebel Declaration explains, OFM has determined that the United States, as the receiving State, may appropriately discharge its obligation under the Vienna Convention to protect the property, by ensuring (to the extent possible) that the properties are occupied and generating income needed for their own maintenance and repair. See id. ¶ 11. Consequently, over the years OFM has leased some of the properties, and has used some of the proceeds for maintenance costs. See id. ¶ 12, 14-19. Remaining proceeds have been deposited in a blocked Iranian diplomatic account, and are not used for any other purposes. See id. ¶ 12.

The United States' purpose in protecting certain foreign properties pursuant to its international obligations, and any of its specific efforts pursuant to that purpose, have been

¹⁵ The United States notes that courts must give great weight to the Executive Branch's interpretation of the Vienna Convention. See Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176, 184-85 (1982); Kolovrat v. Oregon, 366 U.S. 187, 194 (1961).

¹⁶ Plaintiffs' writs each purport to be directed at "The Islamic Republic of Iran and Person In Possession Of The Below Described Real Property." Although these writs were never served on the United States or its agencies, as this Court has previously held, property in the custody or possession of the United States is subject to the United States' sovereign immunity. See, e.g., Weinstein v. Islamic Republic of Iran, 274 F. Supp. 2d 53, 57-58 (D.D.C. 2003); Flatow v. Islamic Republic of Iran, 74 F. Supp. 2d 18, 21 (D.D.C. 1999). Plaintiffs point to 28 U.S.C. § 1610(g)(2) as providing a waiver of that immunity. That section is inapplicable to these proceedings because, as with § 1610(g)(1), see supra at 14-15, it only applies to judgments entered under § 1605A, which plaintiffs' judgment was not. In any event, nothing in section 1610(g)(2) prevents the United States from protecting foreign diplomatic properties in its custody as is required by the Foreign Missions Act and the Vienna Convention. Plaintiffs point to no other waiver of the United States' sovereign immunity that would allow execution of a writ, or any other compulsory judicial process, against the United States in the circumstances of this case. See Flatow, 76 F. Supp. 2d at 23 (noting that the United States' custody of diplomatic properties is a "sovereign" function).

deemed by various courts as use of the property that is “exclusively for diplomatic or consular purposes” under section 201(d)(2)(B). As one court explained:

The United States has an international legal obligation under the Vienna Conventions to protect foreign missions, consular premises, and their property in the United States in the event that diplomatic relations between the United States and a foreign country are severed. The conventions recognize that diplomatic properties belong to the state that established them, not to the government that controls the state. The conventions also recognize that host states have the duty to hold in trust for future generations the diplomatic properties of a state with whom they have a dispute, however severe and violent, that has caused the severance of diplomatic relations. As treaties into which the United States has voluntarily entered, the conventions are part of the fundamental fabric of the nation’s law. *Likewise, the goal of assuring that the United States is in compliance with its treaty obligations is quintessentially “diplomatic.” Therefore, in protecting the subject properties the United States clearly is using them for a “diplomatic purpose.”*

Hegna v. Islamic Republic of Iran, 287 F. Supp. 2d 608, 610 (D. Md. 2003) (emphasis added); see also Mousa v. Islamic Republic of Iran, No. 00-2096 (D.D.C. Nov. 5, 2003) (attached hereto as Exhibit 3) (finding that three parcels of real property formerly associated with the Iranian diplomatic mission -- including two of the properties in this case -- were immune from attachment under TRIA because in “protecting and maintaining the properties the United States [was] fulfilling its duties under international diplomatic law,” and therefore “the property is being used for diplomatic or consular purposes”); Elahi v. Islamic Republic of Iran, No. 99-02802 (D.D.C. July 22, 2003) (attached hereto as Exhibit 4) (granting United States’ motion to quash writs on the same three properties at issue in Mousa v. Iran, because “an attachment of these real properties by plaintiffs would result in a violation of an obligation owed by the United States pursuant to the two Vienna Conventions”); Hegna v. Islamic Republic of Iran, 376 F.3d 485, 495-96 (5th Cir. 2004) (finding that foreign property formerly used as the residence of the General Consul of Iran was immune from attachment under TRIA because the property was

being used by the United States “exclusively for diplomatic or consular purposes” under section 201(d)(2)(B), where the United States was leasing the properties and using a portion of the funds to maintain and preserve the property pursuant to its diplomatic obligations under the Vienna Conventions). Thus, the purpose of the United States in protecting the properties at issue, including in renting out the properties where feasible, constitutes a “diplomatic purpose,” under section 201(d) of the TRIA.¹⁷ Therefore, the properties are not blocked assets, and are not subject to attachment under TRIA.

* * *

As neither the FSIA exceptions nor TRIA applies to the properties at issue, the FSIA and the Foreign Missions Act prohibit the attachment of the real properties. The real properties are immune from attachment pursuant to these provisions because the properties were used in the past by the Iranian government for diplomatic activities and they are now being maintained and/or leased by the Department of State pursuant to the United States’ duties under the Vienna Convention to preserve such diplomatic property.

CONCLUSION

For the reasons provided above, the Court should quash the plaintiffs’ writs in their entirety.

¹⁷ The fact that some of the properties are not currently occupied does not render them attachable under TRIA. As the cases indicate, it is the United States’ “diplomatic purpose” in protecting the property from interference that makes the property immune from attachment, not the means it takes in effectuating that purpose. *See, e.g., Hegna*; 287 F. Supp. 2d at 610. Further, as explained in the Nebel Declaration, and as is shown in the jurisprudence involving some of the exact properties at issue, OFM has taken efforts to periodically lease the properties where feasible.

Respectfully submitted this 18th day of July, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2008, a true and correct copy of the foregoing was served electronically by the U.S. District Court for the District of Columbia Electronic Document Filing System (ECF) and that the documents are available on the ECF system.

/s/ Varu Chilakamarri
VARU CHILAKAMARRI

ANNEX 321

ORAL ARGUMENT SCHEDULED FOR JANUARY 15, 2010
No. 09-5147

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MICHAEL BENNETT AND LINDA BENNETT,
INDIVIDUALLY AND AS CO-ADMINISTRATORS
OF THE ESTATE OF MARLA ANN BENNETT,
Plaintiffs-Appellants,

v.

ISLAMIC REPUBLIC OF IRAN, et al.,
Defendants,

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the United States District Court
For the District of Columbia, Case No. 03-1486

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**CERTIFICATE AS TO PARTIES, RULINGS,
AND RELATED CASES**

A. Parties

The parties are: plaintiffs Michael Bennett and Linda Bennet, individually and as co-administrators of the estate of Marla Ann Bennett; defendants Islamic Republic of Iran, and the Iranian Ministry of Information and Security; and movant-appellee United States of America.

B. Rulings Under Review

The ruling under review is Chief Judge Lamberth's March 31, 2009 memorandum opinion and order granting the United States' motion to quash the plaintiffs' writs of attachment (App. 15-46). It is reported at 604 F. Supp. 2d 152 (D.D.C. 2009).

C. Related Cases

A default judgment was issued in this case in 2007 under the same caption and district court docket number. 507 F. Supp. 2d 117 (D.D.C. 2007). We are not aware of any related cases currently pending in any other United States court of appeals or any court in the District of Columbia within the meaning of Circuit Rule 28. We note that on September 30, 2009, Chief Judge Lamberth issued a memorandum that captioned this case along with nineteen other civil suits pending in the district court for the District of Columbia. *In re: Islamic Republic of Iran Terrorism Litigation* (available at district court docket number 44 in the case on review). We do not

believe those cases fall within the definition of related cases under Rule 28, however.

/s/ Samantha L. Chaifetz
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Date: November 30, 2009

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GLOSSARY

FSIA	Foreign Sovereign Immunities Act
TRIA	Terrorism Risk Insurance Act
VCDR	Vienna Convention on Diplomatic Relations

No. 09-5147

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**MICHAEL BENNETT AND LINDA BENNETT,
INDIVIDUALLY AND AS CO-ADMINISTRATORS
OF THE ESTATE OF MARLA ANN BENNETT,
Plaintiffs-Appellants,**

v.

**ISLAMIC REPUBLIC OF IRAN, et al.,
Defendants,**

**UNITED STATES OF AMERICA,
Appellee.**

**On Appeal from the United States District Court
For the District of Columbia, Case No. 03-1486**

CORRECTED BRIEF FOR APPELLEE UNITED STATES OF AMERICA

JURISDICTIONAL STATEMENT

Plaintiffs asserted claims against Iran under 28 U.S.C. § 1605(a)(7), and invoked the jurisdiction of the district court under 28 U.S.C. §§ 1330(a), 1331, and 1332(a). *See* App. 7. The district court entered a default judgment in favor of the plaintiffs against Iran on August 30, 2007. Docket (“Dkt.”) No. 21. Plaintiffs sought to enforce the judgment by obtaining writs of attachment against various properties

located in the District of Columbia. *See* App. 67, 74, 82, 88, 93. The United States filed a motion to quash those writs. App. 48 (Dkt. No. 34). The district court granted the motion to quash on March 31, 2009. 604 F. Supp. 2d 152 (D.D.C. 2009) (App. 15-45, 46). Plaintiffs noticed this appeal on April 23, 2009, within the period specified by Fed. R. App. P. 4(a)(1). App. 47. This court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Section 201 of the Terrorism Risk Insurance Act (TRIA) permits a plaintiff with a compensatory award against a terrorist party to attach the “blocked assets” of the terrorist party in order to satisfy the judgment. Section 201 excludes from the definition of “blocked assets” any property “subject to the Vienna Convention on Diplomatic Relations” that is “being used exclusively for diplomatic or consular purposes.” The question presented is whether the district court properly concluded that the properties at issue are excluded from TRIA’s definition of “blocked assets,” and thus unavailable for attachment.

STATUTES AND REGULATIONS

Pertinent statutes and regulations are contained in the addendum to this brief.

STATEMENT OF THE CASE

This appeal concerns a district court's order quashing writs of attachment issued against property belonging to Iran. In August 2007, the Bennetts, plaintiffs-appellants here, obtained a default judgment against Iran and the Iranian Ministry of Information and Security for Iran's role in the July 2002 bombing of Hebrew University by Hamas operatives, which resulted in the death of their daughter, Marla Ann Bennett. *See Bennett v. Islamic Republic of Iran*, 507 F. Supp. 2d 116 (D.D.C. 2007) (Dkt. Nos. 20-21).

In 2008, in an effort to satisfy their default judgment for more than \$12 million, plaintiffs sought and obtained writs of attachment against five parcels of real property owned by Iran and located in the District of Columbia. *See App. 15-18*. The United States, acting pursuant to 28 U.S.C. § 517, filed a motion to quash all five of the writs on the ground that plaintiffs sought to attach diplomatic properties governed by the terms of the Foreign Missions Act and the Vienna Convention on Diplomatic Relations. *App. 48* (Dkt. No. 34). The district court granted the Government's motion and quashed the writs. *App. 15-45, 46*. Plaintiffs now appeal. *App. 47*.

STATEMENT OF THE FACTS

I. Legal Framework: Treaty Obligations and Federal Legislation

In recent years, Congress has enacted, and amended, several statutory provisions concerning private suits against state sponsors of terrorism – lifting the sovereign immunity of those foreign states for various types of claims, and allowing for the enforcement of judgments against certain assets of terrorist states that are located here.¹ This case turns on a crucial aspect of the governing law that has gone unchanged: in accordance with obligations under the Vienna Convention on Diplomatic Relations, certain diplomatic property of foreign states remains exempt from attachment by parties such as the Bennetts.

A. The Vienna Convention on Diplomatic Relations and the Foreign Missions Act.

The United States has entered into treaties and international agreements that establish its obligation to protect diplomatic property. Foremost among these is the Vienna Convention on Diplomatic Relations (“Vienna Convention” or “VCDR”), ratified by the United States in 1972, which provides the legal

¹ See, e.g., Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, § 221(a), 110 Stat. 1214, 1242 (1996) (amending the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(7)); Terrorism Risk Insurance Act (TRIA), Pub. L. No. 107-297, Title II, § 201, 116 Stat. 2332, 2337-39 (2002) (codified at 28 U.S.C. § 1610 note) (facilitating recovery of judgments under the Foreign Sovereign Immunities Act in some cases).

framework for reciprocal obligations regarding diplomatic relations between foreign states. *See* Vienna Convention on Diplomatic Relations, *done* Apr. 18, 1961, 23 U.S.T. 3227 (1972), 500 U.N.T.S. 95.

The Vienna Convention establishes that the “premises of a foreign mission shall be inviolable,” “immune from search, requisition, attachment or execution,” and that “[t]he receiving State is under a special duty to take all appropriate steps to protect the premises of the mission.” VCDR, art. 22. Under Article 30 of the Convention, the residence of diplomatic staff enjoys the same protection as the premises of the mission. *Id.*, art. 30(1); *see id.*, art. 1(e).

Further, the Vienna Convention requires a host country to take steps to protect these properties even under exceptional circumstances. Under Article 45, if diplomatic relations are severed or if a mission is recalled, the “sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State.” *Id.*, art. 45(b). But even if the sending and receiving States cannot agree on a custodial third State, still “the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives.” *Id.*, art. 45(a).

Implementing these obligations of the Vienna Convention, the Foreign

Missions Act, 22 U.S.C. § 4301 *et seq.*, specifically authorizes the Secretary of State to “protect and preserve any property of [a] foreign mission” if that “mission has ceased conducting diplomatic, consular and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission.” 22 U.S.C. § 4305(c)(1); *see id.* § 4302(a)(3) (defining “foreign mission” to mean “any mission to or agency or entity in the United States which is involved in the diplomatic, consular, or other activities of, or which is substantially owned or effectively controlled by . . . a foreign government”).²

Consistent with the Vienna Convention, the Foreign Missions Act also prohibits the attachment of foreign mission property being held by the Department of State. Specifically, 22 U.S.C. § 4308(f) provides: “Assets of or under the control of the Department of State, wherever situated, which are used by or held for the use of a foreign mission shall not be subject to attachment, execution,

² *See generally Palestine Information Off. v. Schultz*, 853 F.2d 932, 936 (D.C. Cir. 1988) (observing that “[i]n passing the Foreign Missions Act, Congress vested broad authority over foreign missions in the Secretary of State”); 22 U.S.C. § 4301(c) (charging the Secretary with determinations about the “treatment to be accorded to a foreign mission in the United States”). Pursuant to 22 U.S.C. § 4303(4), the Secretary has delegated her authority with respect to the treatment and oversight of foreign mission properties to the State Department’s Office of Foreign Missions. *See* Delegation Authority No. 214 (cited at App. 57); 48 C.F.R. § 601.603-70.

injunction, or similar process, whether intermediate or final.” *Id.*

B. The Foreign Sovereign Immunities Act and Section 201 of the Terrorism Risk Insurance Act.

Under the Foreign Sovereign Immunities Act (“FSIA”), foreign states are immune from the jurisdiction of federal and state courts, except as provided by the Act. 28 U.S.C. § 1604. One such exception permits suits, such as the Bennetts’, for certain claims for personal injury or death caused by state-sponsored terrorism. *See* 28 U.S.C. § 1605(a)(7) (repealed Jan. 2008); *see also* 28 U.S.C. § 1605A.³

Even where a judgment may be obtained, the FSIA generally prohibits the attachment of a foreign state’s property, subject to express statutory exceptions. 28 U.S.C. §§ 1609, 1610. Prior to the enactment of Section 201 of the Terrorism Risk Insurance Act (“TRIA”) in 2002, judgment creditors could only attach the property of state sponsors of terrorism if the foreign state had used the property for commercial activity. *See* 28 U.S.C. § 1610(a)(7); *see also Flatow v. Islamic Republic of Iran*, 76 F. Supp. 2d 16, 23 (D.D.C. 1999).

TRIA § 201 expanded the rights of judgment creditors to attach properties

³ In 1996, Congress established the exception at § 1605(a)(7) for certain claims brought against state sponsors of terrorism and arising out of their provision of material support of acts of terrorism. In 2008, several months after plaintiffs’ judgment was issued, Congress repealed § 1605(a)(7) and added a new section, 28 U.S.C. § 1605A, which, *inter alia*, reasserts the exception previously at § 1605(a)(7). This case remains a suit under § 1605(a)(7). *See* App. 44.

of a “terrorist party,” including state sponsors of terrorism such as Iran.⁴ As relevant here, Section 201 permits terrorism victims with judgments under 28 U.S.C. § 1605(a)(7) to satisfy their judgments for compensatory damages by attaching “the blocked assets of [a] terrorist party.” Pub. L. No. 107-297, § 201(a), 116 Stat. at 2337 (codified at 28 U.S.C. § 1610 note).

Under TRIA, “blocked asset” is a term of art, initially defined as “any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 or 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702).” *Id.* § 201(d)(2)(A), 116 Stat. at 2339. The definition of “blocked asset” goes on to expressly *exclude* “property subject to the Vienna Convention on Diplomatic Relations . . . being used exclusively for diplomatic or consular purposes.” *Id.* § 201(d)(2)(B)(ii), 116

⁴ Before the enactment of TRIA, Congress twice expanded the rights of plaintiffs with judgments under 28 U.S.C. § 1605(a)(7) to allow them to attach generally the property of state sponsors of terrorism. *See* Treasury and General Government Appropriations Act of 1999, Pub. L. No. 105-277, Title I, § 117(a), 112 Stat. 2681, 2681-491 (1998) (adding 28 U.S.C. § 1610(f)(1)(A)); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 2002(f) (adding 28 U.S.C. § 1610(f)(3)). Each time, however, Congress authorized the President to waive this new attachment provision in the interest of national security, and each time, President Clinton immediately exercised this authority. *See* Presidential Determination No. 99-1, 63 Fed. Reg. 59,201 (Oct. 21, 1998); Presidential Determination No. 2001-01, 65 Fed. Reg. 66,483 (Nov. 6, 2000). The exception has never gone into effect.

Stat. at 2340; *see also id.* § 201(d)(3), 116 Stat. at 2340 (defining “property subject to the Vienna Convention on Diplomatic Relations” as property “the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under [the] Vienna Convention”).

Because Section 201 authorizes attachment only of “blocked assets,” any property subject to the Vienna Convention on Diplomatic Relations that “is being used exclusively for diplomatic and consular purposes” is not subject to attachment. TRIA § 201(a), 116 Stat. at 2337.

II. Historical Framework: U.S.-Iran Diplomatic Relations

A. Severance of Diplomatic Relations and Assumption of Custodial Responsibilities.

In response to Iran’s seizure of American hostages, on November 14, 1979, the President exercised his powers under the International Emergency Economic Powers Act and “blocked all property and interests in property of the Government of Iran . . . subject to the jurisdiction of the United States.” Exec. Order No. 12170, 44 Fed. Reg. 65,729 (Nov. 15, 1979). Initially the United States nonetheless allowed Iran to continue to occupy its diplomatic and consular properties here. App. 18. But on April 7, 1980, as the hostage crisis continued, the President exercised his foreign affairs powers to sever diplomatic relations

with Iran. *Id.* at 33. Iranian diplomatic officials were ordered to leave the United States. *Id.*

Shortly thereafter, the Department of State approved Algeria as the protecting power for Iranian interests in the United States. As it informed Algeria, however, the United States retained custody over Iran's diplomatic and consular properties in response to Iran's refusal to return custody of the United States' diplomatic and consular property to either the United States or its protecting power, Switzerland. *Id.* at 33-34; *see id.* at 58-59. The State Department assured Algeria by diplomatic note that it would take all appropriate measures for the safety and protection of Iran's diplomatic and consular properties in the United States. App. 33-34 .

As a result, the diplomatic and consular properties of Iran – including the five parcels of real property at issue in this case – have remained in the protective custody of the Department of State since 1980. App. 33-37; *id.* at 61-63 (noting that they remain blocked pursuant to Exec. Order No. 12170).

B. Satisfaction of the Vienna Convention on Diplomatic Relations.

As noted, Article 45 of the Vienna Convention on Diplomatic Relations imposes on the United States an obligation to “respect and protect” Iran's diplomatic property in the United States. From 1980, when the United States

severed diplomatic relations with Iran, until 1983, the United States fulfilled this obligation by providing for “essential maintenance and repairs” of the properties at the expense of American taxpayers. App. 64-65. But as it became clear that the dispute concerning the parties’ respective diplomatic and consular properties would not be resolved in the near term, the State Department determined that renting out Iran’s properties would enable the United States to fulfill its “respect and protect” obligations over the long term. The Department reasoned that rental of the properties “would provide a source of funds for essential maintenance and repairs, necessary to supplement the scarce appropriated funds available for these activities.” *Id.* at 60 (noting also that keeping the buildings occupied would help to protect and preserve them); *see id.* at 34-35. By diplomatic note tendered on March 10, 1983, the United States notified Algeria of its intentions to offer Iran’s diplomatic and consular properties for rent in order to protect Iran’s interests in the long term. App. 34.

Accordingly, the United States has periodically leased all of the diplomatic properties at issue here – 3003 and 3005 Massachusetts Ave., N.W.; 3410 Garfield St., N.W.; Lot 8, Square 2145 N.W.; and Lot 0820, Square 2145, N.W.⁵ – to

⁵ More descriptively, these include the former Ambassador’s residence at 3003 Massachusetts Ave., N.W.; the former Embassy Chancery at 3500 Massachusetts Ave., N.W.; a former diplomatic residence of the Embassy at 3410 Garfield St., N.W.;

various private parties and to other foreign governments' missions. App. 34-35. Proceeds from the rental of these properties go toward maintenance and repairs; any additional proceeds are deposited in a blocked Iranian diplomatic account. *Id.* at 35.

III. Judicial Framework: Attempts to Attach Iranian Diplomatic Properties

A. Prior Cases.

As the district court observed, App. 37-38, this is not the first case to come before the District Court or this Court seeking to attach properties owned by Iran and formerly maintained for its diplomatic mission. Prior cases have all reached the same conclusion – that these properties remain immune from attachment or execution. *See, e.g., Mousa v. Islamic Republic of Iran*, No. 00-2096, at 7-8 (D.D.C. Nov. 5, 2003) (holding properties formerly associated with the Iranian diplomatic mission – including 3003 Massachusetts Avenue N.W., and 3410 Garfield Street N.W. – were immune from attachment under TRIA because “the United States [was] fulfilling its duties under international diplomatic law” by “protecting and maintaining the properties,” and therefore they were “being used for diplomatic or consular purposes”); *Elahi v. Islamic Republic of Iran*, No.

and two additional properties (at Lot 8, Square 2145 NW and Lot 0820, Square 2145, NW) that form part of the former Iranian Embassy compound and function primarily as parking lots for the Embassy. App. 15-16; *see id.* 61-63.

99-02802 (D.D.C. July 22, 2003) (quashing writs on the same properties as in *Mousa*, because allowing attachment of these properties “would result in a violation of an obligation owed by the United States pursuant to the two Vienna Conventions”).⁶ Other courts have similarly assessed and rejected efforts to attach Iranian diplomatic or consular properties in other jurisdictions. *See, e.g., Hegna v. Islamic Republic of Iran*, 376 F.3d 485, 495-96 (5th Cir. 2004); *Hegna v. Islamic Republic of Iran*, 287 F. Supp. 2d 608 (D. Md. 2003) (same), *aff’d on other grounds*, 376 F.3d 226 (4th Cir. 2004).

B. Proceedings Below.

As explained *supra*, the Bennetts sought to enforce a default judgment against Iran by attaching five real properties that are associated with the former Iranian diplomatic mission and have been under the control of the United States since 1980. *See* App. 15. The United States moved to quash plaintiffs’ writs,

⁶ Other plaintiffs in this jurisdiction have been denied the relief sought on other legal bases. *See, e.g., Hegna v. Islamic Republic of Iran*, No. 04-5139 (D.C. Cir. Apr. 22, 2005) (holding that plaintiffs – who sought to attach properties including 3003 and 3005 Massachusetts Ave., N.W., and 3410 Garfield St., N.W. – had relinquished any right to relief by accepting compensation from the U.S. Treasury); *Flatow*, 76 F. Supp. at 21-23 (holding that the leasing of Iran’s former diplomatic properties on Massachusetts Avenue and Garfield Street by the United States “pursuant to its ‘preserve and protect’ responsibilities” did not render the properties subject to attachment under the FSIA’s exception for commercial activity at 28 U.S.C. § 1610(a)(7)).

urging that they cover diplomatic properties not subject to attachment.

The district court agreed, holding that “in light of the Office of Foreign Mission’s continued assertion of authority over Iran’s former diplomatic property under the Foreign Missions Act,” the “inescapable conclusion” is that the “real properties at issue are currently immune from attachment under the laws of the United States.” App. 38. The court noted that, like other courts to consider such questions, it had also reached this conclusion in prior cases. *Id.* at 37-38 (citing cases).

The court rejected the arguments advanced by the plaintiffs in their district court papers: that the United States lacked standing to seek to quash the writs of attachment; that the Vienna Convention on Diplomatic Relations does not provide for immunity after the withdrawal of diplomatic relations; and that the properties at issue are subject to attachment under FSIA’s commercial activity exception, 28 U.S.C. § 1610(a)(7). App. 39-43; *see* Pls. Mem. in Opp. to the Govt’s Mot. to Quash (“Pls Mem. in Opp.”) (Dkt. No. 35). Notably, plaintiffs do not raise any of these issues on appeal.

In rejecting plaintiffs’ standing argument as “without merit and essentially frivolous,” App. 39, the court observed that this case involves the United States’s “independent foreign policy obligations under the Vienna Convention and the

Foreign Mission Act,” namely its “duty to protect and respect the diplomatic properties of other nations,” *id.* at 40, and related “foreign policy and national security interests,” *id.* at 41 (acknowledging concerns about reciprocal or retaliatory action).

The court went on to address plaintiffs’ argument that the Iranian properties at issue are covered by the FSIA’s commercial activity exception, 28 U.S.C. § 1610(a)(7). Plaintiffs had argued that § 1610(a)(7) should apply because the properties were “unoccupied” and “not being maintained.” Pls. Mem. in Opp. 9 (Dkt. No. 35). The district court explained that § 1610(a)(7) “turns on whether the foreign state – in this case Iran – is using the properties at issue for a commercial purpose,” App. 43 (citing *Flatow*, 76 F. Supp. 2d at 23), and plainly no such activity had occurred here. The court explained that it made “no difference” to the immunity analysis whether the properties were unoccupied or even in poor condition. *Id.* at 43-44. The court observed that specific treatment of the properties of foreign missions falls within the Department of State’s broad discretion under the Foreign Missions Act. *Id.*⁷

⁷ The district court also explained that plaintiffs could not rely on 28 U.S.C. § 1610(g), a provision enacted in 2008, to obtain relief, and concluded that, in any event, the application of § 1610(g) “would not alter the outcome with respect to the writs of attachment.” App. 44. Plaintiffs do not challenge that ruling on appeal.

SUMMARY OF ARGUMENT

Plaintiffs in this litigation have a default judgment against Iran pursuant to the FSIA's "terrorism exception" to foreign sovereign immunity. The United States emphatically condemns the acts of terrorism that gave rise to this judgment, and has deep sympathy for plaintiffs' suffering. The United States remains committed to disrupting terrorist financing and to pursuing those responsible for terrorist acts against U.S. nationals.

Attachment of the properties targeted by plaintiffs' writs is not permitted under the laws of the United States, however, and would be inconsistent with obligations set out in the Vienna Convention on Diplomatic Relations. Because the relations among nations are by nature reciprocal, the position urged by plaintiffs could have significant implications for U.S. foreign policy and international relations. In the past, similarly situated plaintiffs have sought to attach many of the same properties at issue here, and courts have repeatedly determined that these properties are not subject to attachment. The district court here reached the same conclusion, and quashed appellants' writs of attachment. That judgment was proper, and should be affirmed.

Plaintiffs do not press the various arguments they advanced in the district court. They now argue that the properties qualify as attachable "blocked assets"

within the meaning of the TRIA. Their argument on appeal is sufficiently distinct from anything articulated in the district court that it may be considered waived. In any event, the argument fails on its merits because TRIA specifically excludes from its definition of “blocked assets” any “property subject to the Vienna Convention on Diplomatic Relations . . . [that] is being used exclusively for diplomatic or consular purposes.” TRIA § 201(d)(2)(B)(ii), 116 Stat. at 2340.

As the State Department has determined and as prior cases reflect, the properties at issue in this case all fall within the statutory definition of “propert[ies] subject to the Vienna Convention on Diplomatic Relations.” *Id.* § 201(d)(3), 116 Stat. at 2340. Plaintiffs readily concede that this is true of four of the five properties at issue, but argue that the fifth – 3410 Garfield Street, N.W. – is not subject to the Vienna Convention. *See* Pls. Br. 13, 23-26. This is a new development on appeal: plaintiffs did not previously so argue. The argument is thus waived. And, in any event, it is without merit. The district court found, based on undisputed evidence, that the Garfield Street property was, prior to 1979, a diplomatic residence. By its terms, the Vienna Convention makes clear that, whether or not it is part of the premises of the mission, the residence of diplomatic staff enjoys the same protections as the premises of the mission. VCDR, arts. 1(e), 30(1). Moreover, courts have concluded that deference is owed the State

Department on questions of whether a particular property is protected by the Vienna Convention, and the Garfield Street property has consistently been recognized as such.

Further, all five subject properties are in the protective custody of the Department of State. Acting pursuant to a broad delegation of authority and discretion, the Department protects and preserves the properties in satisfaction of international obligations and to advance long-term U.S. foreign policy objectives. Plaintiffs nonetheless argue that the properties are not “being used exclusively for diplomatic and consular purposes.” *Id.* at 16-19 (quoting TRIA § 201(d)(2)(B)(ii)). They neither suggest that the United States, as custodian of the properties, seeks to achieve any non-diplomatic objective, nor otherwise dispute that the United States’ sole purpose in maintaining the properties is diplomatic. Rather, they maintain that TRIA requires a separate and independent assessment of the “the properties’ use,” and suggest that the leasing of property is necessarily not diplomatic. Pls. Br. 17.

Plaintiffs made no argument of this sort in district court. Even if this Court elects to consider it, plaintiffs’ position does not find support in TRIA’s “plain language,” *id.*, as they now contend. In fact, their view rests on a misreading of the statute – one that treats Section 201(d)(2)(B)(ii) as if it establishes distinct

requirements of “diplomatic uses” and “diplomatic purposes.” Plaintiffs’ approach is fundamentally problematic. Contrary to accepted canons of statutory construction, plaintiffs read TRIA to require, rather than avoid, violations of international treaty obligations. Moreover, plaintiffs seek to replace the State Department’s lawful exercise of authority (which reflects powers constitutionally vested in the Executive branch and discretion expressly afforded by Congress) with judicial determinations on matters of foreign policy. *See* App. 41-42 & n.9.

Finally, even plaintiffs’ erroneous reading of the statute does not establish any basis for relief in this case. They have not identified any manner in which the property is “being used” that renders it attachable. Plaintiffs cannot overcome the presumption of immunity to which property of a foreign state is entitled where they identify no basis for an exception.

STANDARD OF REVIEW

Whether the properties at issue may be attached under TRIA is a question of law this Court reviews *de novo*. *See Price v. Socialist People’s Libyan Arab Jamahiriya*, 389 F.3d 192, 197 (D.C. Cir. 2004). This Court reviews any findings of fact for clear error. *Id.*

ARGUMENT

THE DISTRICT COURT PROPERLY CONCLUDED THAT PLAINTIFFS CANNOT ATTACH DIPLOMATIC PROPERTIES BELONGING TO IRAN THAT ARE BEING USED BY THE UNITED STATES EXCLUSIVELY FOR DIPLOMATIC PURPOSES.

A. As the District Court Recognized, the Department of State Has Broad Authority To Identify and To Protect Iran's Diplomatic Properties.

The Department of State is the agency within the United States government that administers matters arising under the Vienna Convention on Diplomatic Relations and manages foreign government-owned diplomatic and consular property as appropriate under the Foreign Missions Act. As discussed below, the Department's views as to the scope and application of the Vienna Convention are entitled to deference, and its authority over foreign missions is broad.

1. The Vienna Convention establishes a framework for regulating diplomatic relations between nations. The Convention's basic principles include the immunity of diplomatic property from attachment, VCDR, art. 22, and the obligation of a receiving State "to respect and protect" foreign diplomatic mission property, *id.*, arts. 22, 45.

In the United States, the Department of State is the agency charged with administering matters arising under the Convention, including accrediting foreign

diplomatic personnel and determining which properties qualify for the protections. VCDR, art. 1(I). Courts have consistently recognized the deference owed to Executive agencies in the interpretation of treaties that they negotiate and subsequently administer. *See, e.g., Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 184-85 (1982) (citing *Kolovrat v. Oregon*, 366 U.S. 187, 194 (1961)) (“Although not conclusive, the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight.”); *Air Canada v. Dept. of Transp.*, 843 F.2d 1483, 1486 (D.C. Cir. 1988) (when operative terms of treaty “have some play,” reviewing court “owes substantial deference to the interpretation given by the administering agency to matters within its competence”). Here particular deference is appropriate because the Executive branch is charged by the Constitution with conducting foreign policy, and the interpretation of international legal obligations is likely to have foreign policy implications. *See also* U.S. Const. art. II, § 3, cl.3. *Cf. App. 42* (acknowledging that “questions concerning extent of United States treaty obligations . . . are largely nonjusticiable political questions”) (citing *Holmes v. Laird*, 459 F.2d 1211, 1215 (D.C. Cir. 1972), as well as *Kucinich v. Bush*, 236 F. Supp. 2d 1, 16 (D.D.C. 2002)).

2. In the Foreign Missions Act, Congress assigned to the Department of

State the central role in carrying out U.S. policy “to support the secure and efficient operation” of American missions abroad and foreign missions in this country. 22 U.S.C. § 4301(b). The Act expressly charges the Secretary of State with managing the reciprocal relationship between the treatment of our own missions abroad and foreign missions here. *Id.* § 4301(c).⁸ Accordingly, the Secretary is authorized “to decide what constitutes a foreign mission for the purposes of the Act.” *Palestine Information Off. v. Schultz*, 853 F.2d 932, 936 (D.C. Cir. 1988); *see* 22 U.S.C. § 4302(b) (“determinations with respect to the meaning and applicability of the terms . . . [including “foreign mission”] shall be committed to the discretion of the Secretary”). In addition, the Secretary regulates, *inter alia*, the provisions of benefits – including “maintenance” and “protective services” – to foreign missions. 22 U.S.C. §§ 4303-4305; *see id.* § 4302(a)(1). Relatedly, the Act authorizes the Secretary to “protect and preserve any property of [a] foreign mission” when relations have been severed and there is no protecting power or agent approved to take responsibility for the property. 22 U.S.C. § 4305(c)(1).

⁸ Section 4301(c) provides: “The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission, as well as matters relating to the protection of the interests of the United States.”

This Court has previously acknowledged that Congress has “vested broad authority over foreign missions” in the Secretary of State. *Palestine Information Off.*, 853 F.2d at 936. Indeed, this Court has observed that “[w]hen exercising its supervisory function over foreign missions, the State Department acts at the apex of its power” because it “wields the combined power of both executive and legislative branches.” *Id.* at 937 (cited at App. 26-27). *Cf.* App. 43 (recognizing that the State Department’s decisionmaking with respect to the preservation of foreign diplomatic properties is not subject to second-guessing by courts); *id.* at 31-32 (explaining that matters relating to foreign relations are “largely immune from judicial inquiry or interference,” “particularly . . . where, as here, Congress vested the State Department with sweeping authority to manage former diplomatic properties in the United States”) (quoting *Regan v. Wald*, 468 U.S. 222, 242 (1984)).

B. The Five Properties At Issue Are Not Subject to Attachment.

As set forth above, the FSIA provides that “the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided” in enumerated statutory exceptions. 28 U.S.C. § 1609. This statute establishes a default presumption that the property of a foreign state is immune from execution and places the burden on a judgment creditor to show that a

specific property falls within an enumerated exception to the general rule of immunity. *See, e.g., Olympic Chartering, S.A. v. Ministry of Industry and Trade of Jordan*, 134 F. Supp. 2d 528, 536 (S.D.N.Y. 2001) (acknowledging the “presumption of immunity for the property of foreign states”). Thus, as this Court explained in *FG Hemisphere Assocs., LLC v. Democratic Republic of Congo*, 447 F.3d 835 (D.C. Cir. 2006), while the party asserting immunity may “bear the ultimate burden of persuasion,” plaintiffs seeking to attach property “bear[] the burden of producing evidence that immunity should not be granted.” *Id.* at 842.

In 2002, Congress added to the existing FSIA scheme by providing that “blocked assets” of a terrorist party are subject to attachment in aid of execution of a judgment on a claim based upon an act of terrorism. TRIA § 201(a), 116 Stat. at 2337 (codified at 28 U.S.C. § 1610 note). Congress specified, however, that property “subject to the Vienna Convention on Diplomatic Relations . . . being used exclusively for diplomatic or consular purposes” does not constitute a “blocked asset.” *Id.* § 201(d)(2)(B)(ii), 116 Stat. at 2340.⁹

On appeal, plaintiffs argue that the properties they seek to attach are

⁹ More fully, the section exempts “property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, [and] is being used exclusively for diplomatic or consular purposes.” TRIA § 201(d)(2)(B)(ii), 116 Stat. at 2340.

excepted from immunity by TRIA because they fall outside Section 201(d)(2)(B)(ii). Before the district court, however, they made no attempt to make any showing to this effect to overcome the presumption of immunity. Based on the undisputed evidence presented by the Government and careful analysis of the relevant law, the district court properly ruled that the five parcels of real property at issue are not within the scope of any applicable exception to general immunity.

1. Diplomatic Properties for Purposes of Section 201(d)(2)(B)(ii).

Plaintiffs concede that four of the five properties at issue “are diplomatic properties for the purposes of section 201(d)(2)(B)(ii).” Pls. Br. 13. They assert that “[t]here is a contest regarding the fifth property, located at 3410 Garfield Street, N.W.” *Id.*

That is not the case, however. Plaintiffs had not previously disputed that the Garfield Street property was used as a diplomatic residence by Iran and is therefore subject to the Vienna Convention on Diplomatic Relations. *See* App. 62 (supporting declaration from the Deputy Assistant Secretary for Diplomatic Security and Deputy Director of the Office of Foreign Missions).¹⁰ The argument

¹⁰ If anything, plaintiffs’ supplemental filing in the district court – which was quoted in the court’s decision but then struck from the record – indicated that they agreed that the Garfield Street property is a diplomatic property. App. 23-24 & n.5 (quoting Dkt. No. 37); *see id.* at 42 (striking Dkt. No. 37).

plaintiffs seek to press on appeal is thus waived. *See Potter v. District of Columbia*, 558 F.3d 542, 547 (D.C. Cir. 2009) (and cases cited therein) (explaining that it “does not suffice to make [an] argument for the first time on appeal”); *Ben-Kotel v. Howard University*, 319 F.3d 532, 535 (D.C. Cir. 2003) (finding “no occasion to decide” questions “because [plaintiff] did not raise them first in the district court”); *Marymount Hospital, Inc. v. Shalala*, 19 F.3d 658 (D.C. Cir. 1994).

Even if this Court were to entertain plaintiffs’ argument, it is without merit. The district court properly noted that the Garfield Property was “used as a diplomatic residence of the Embassy,” App. 15, and regarded it as a “diplomatic property” subject to the Vienna Convention on Diplomatic Relations, *e.g., id.* at 21, 37-38, 39-45. This conclusion reflects the State Department’s position since 1980, when the United States assumed protective custody of this and other diplomatic properties belonging to Iran. As discussed in Section A, *supra*, the State Department’s view on this point is entitled to substantial weight, given the agency’s role in administering matters arising under the Vienna Convention and its express authority under the Foreign Missions Act. *See Hegna*, 376 F.3d at 494 (giving “substantial weight” to the United States’s view that the former residence of the General Consul of Iran was covered by the Vienna Convention on Consular

Relations). The Garfield Street property has, in fact, always been treated in this way. *See Mousa*, No. 00-2096 (D.D.C. Nov. 5, 2003); *Elahi*, No. 99-02802 (D.D.C. July 22, 2003); *Flatow*, 76 F. Supp. at 21-23.

Moreover, that the Garfield Street parcel is, as described in TRIA, “property subject to the Vienna Convention on Diplomatic Relations” is readily established. TRIA § 201(d)(2)(B)(ii), 116 Stat. at 2340. The State Department’s view finds clear support in the text of the Vienna Convention, which guarantees the residence of diplomatic staff the same protections as the premises of the mission. VCDR, art. 30(1); *see id.*, art. 1(e).

Plaintiffs do not identify relevant contrary authority, and we are aware of none. The case on which they rely – *Permanent Mission of India v. City of New York*, 551 U.S. 193 (2007) – is inapposite. It did not involve an action for attachment or address articles 45 or 30 of the Vienna Convention, which provide the obligation to “respect and protect” diplomatic property, including the residence of a diplomatic agent. Rather, *Permanent Mission of India* presented a jurisdictional question: whether foreign sovereigns were immune from a lawsuit to declare the validity of local tax liens on their property. The Supreme Court held that the case fell within the “right in immovable property” exception of the FSIA. *Permanent Mission of India*, 551 U.S. at 195; *see id.* at 197 & n.1 (noting that the

foreign states “are immune from foreclosure proceedings”). The Court looked to article 31 of the Vienna Convention on Diplomatic Relations (which addresses the limited immunity of diplomatic agents from civil jurisdiction), but found that it did not provide any clear guidance on the question presented. *Permanent Mission of India*, 551 U.S. at 201-02.

2. “Being used exclusively for diplomatic or consular purposes.”

To fall under TRIA § 201(d)(2)(B)(ii), a foreign state’s diplomatic property must also be “used exclusively for diplomatic or consular purposes.” The United States has custody of the five properties at issue, and uses them exclusively for the purpose of satisfying its obligation to “respect and protect” Iran’s former diplomatic properties during this ongoing period of severed relations. VCDR, arts. 22, 45.

a. The relevant facts have never been challenged: the State Department has determined that at times the most appropriate way to maintain the subject properties in light of the United States’ severed diplomatic relations with Iran – and thereby comply with the Vienna Convention’s obligations and advance U.S. diplomatic objectives – is to lease them and use the proceeds from the rentals for repairs. App. 60, 64-65. At other times, as at present, the State Department protects and preserves these properties without leasing to tenants. *Id.* at 29; *see*

Pls. Mem. in Opp. to Mot. 9 (Dkt. No. 35); App. 61-63.¹¹ In either case, the State Department determines the appropriate treatment of foreign mission property pursuant to the agency's statutory authority to protect such properties and in light of its responsibility to administer matters arising under the Vienna Convention.

The district court correctly noted that the State Department, in exercising its “broad – if not exclusive – discretion with respect to the preservation of [foreign mission] properties,” “undoubtedly must consider an array of issues and competing priorities in light of limited resources.” App. 43. The court concluded that it “was not free to second guess that Executive agency’s decision making under these circumstances.” *Id.*; *see also id.* at 41 (pointing to a summary of “foreign policy and national security interests the United States has at stake in this highly charged, politically sensitive context”). It is sufficient for the purposes of TRIA § 201(d)(2)(B)(ii) that “all of [the State Department’s] actions in connection with the maintenance and rental of Iran’s diplomatic and consular property have been and continue to be taken exclusively for diplomatic and consular purposes as

¹¹ The properties at 3003 Massachusetts Avenue N.W. and 3410 Garfield Street N.W. are vacant, and the United States is making repairs. App. 61-62. The property at 3005 Massachusetts Avenue N.W. was rented to the Government of Turkey for use as a temporary chancery until 1999; since then it has been vacant. *Id.* at 62. The lots are periodically rented to other foreign missions, and, as with all of the rentals, proceeds are used to protect and maintain the Iranian diplomatic properties. *Id.* at 63.

such actions are in furtherance of obligations of the United States, as the receiving State, to protect the property pursuant to the Vienna Convention.” App. 60; *see In re: Islamic Republic of Iran Terrorism Litigation* 162 (Dkt. No. 44).

b. On appeal, plaintiffs dispute this conclusion. They did not raise this dispute before the district court, however. *See* Pls. Mem. in Opp. (Dkt. No. 35) (no discussion of TRIA); *see also* Statement of Issues on Appeal (D.C. Cir.) (filed May 26, 2009) (identifying several issues for appeal but making no mention of TRIA generally or the requirements of Section 201(d)(2)(B)(ii) specifically). The argument is thus waived. *See, e.g., Potter*, 558 F.3d at 547.

c. Even if this Court elects to examine the applicability of TRIA § 201(d)(2)(B)(ii), the proper outcome is clear; there is no basis on which to allow plaintiffs to attach the subject properties.

To be clear, it is not – as plaintiffs suggest – the Government’s position that “[t]he mere fact that the United States has taken custody of these properties,” Pls. Br. 16, establishes that they are “being used exclusively for diplomatic or consular purposes” and are thus immune from attachment. TRIA § 201(d)(2)(B)(ii), 116 Stat. at 2340. Consonant with precedent, it is the Government’s position that TRIA requires that the United States be protecting the properties in consideration of diplomatic aims or obligations. (As noted earlier,

the uncontradicted record shows that this is the case here.) By contrast, if the United States were to take custody of a diplomatic property, but then abandon its treaty obligations and use the property in a manner not intended to advance Plaintiffs claim that the United States errs by focusing on “diplomatic purpose” and that the “plain language” of the statute “focuses on the properties’ use.” Pls. Br. 17. They urge that an independent assessment of the “use of the property” is required, separate from the question of “diplomatic purpose.” *Id.* at 16-17. This argument finds no support in the text of the statute – let alone the plain language. Section 201(d)(2)(B)(ii) refers to property “being used exclusively for diplomatic or consular purposes,” articulating a single requirement in which the passive participle “being used” is modified by the phrase “exclusively for diplomatic or consular purposes.” The statute – unlike plaintiffs – makes no reference to “diplomatic *uses.*” Pls. Br. 16 (emphasis in original).

For this reason, plaintiffs can offer no case law to support their position. Courts have uniformly held that where the State Department protects properties with the “goal of assuring that the United States is in compliance with its treaty obligations,” it “clearly is using them for a ‘diplomatic purpose.’” *Hegna*, 287 F. Supp. 2d at 610 (noting that the “purpose of the rentals [of Iranian diplomatic and consular property], as was described in the diplomatic note tendered on March 10,

1983 to Iran's protecting power, is to protect Iran's interest in the properties," and concluding that the use was therefore exclusively diplomatic); *see Hegna v. Islamic Republic of Iran*, 376 F.3d 485, 495-96 (5th Cir. 2004) (finding that foreign property formerly used as the residence of the General Consul of Iran was immune from attachment under TRIA because the property was being used by the United States "exclusively for diplomatic or consular purposes," where the United States was leasing out the properties and using a portion of the funds to maintain and preserve the property pursuant to its diplomatic obligations under the Vienna Conventions); *Mousa*, No. 00-2096, at 7-8 (D.D.C. Nov. 5, 2003) (same, with regard to Iranian diplomatic properties in the District of Columbia).

Plaintiffs do not address these decisions in any way, except to claim that the Fourth Circuit "declined to accept" this analysis. Pls. Br. 15. In fact, the Fourth Circuit simply did not reach the issue: the court affirmed *Hegna*, 287 F. Supp. 2d 608 (D. Md. 2003), on the separate ground that the plaintiffs there had relinquished any rights to compensatory damages, and the court expressed no view as to whether the properties plaintiffs sought were "blocked assets." *Hegna v. Islamic Republic of Iran*, 376 F.3d 226, 229, 232 (4th Cir. 2004).

Furthermore, while plaintiffs do not discuss the Fifth Circuit's decision in *Hegna v. Islamic Republic of Iran*, 376 F.3d 485 (5th Cir. 2004) (rejecting

arguments like those proffered by plaintiffs), they do cite another Fifth Circuit case – *Connecticut Bank of Commerce v. Republic of Congo*, 309 F.3d 240 (5th Cir. 2002) – and urge that it supports their reading of TRIA § 201(d)(2)(B)(ii). App. 16-17. It does not. *Connecticut Bank of Commerce* addressed the FSIA’s exception for the attachment of property used in commercial activities, 28 U.S.C. § 1610(a). The court came to the unexceptional conclusion that property “used for a commercial purpose” is distinct from property “generated by commercial activity.” 309 F.3d at 251 (concluding that royalties – which are produced by commercial activity, but are not necessarily put toward a commercial purpose – might not fall within the commercial activity exception). The court noted that “use” is defined as: “to carry out a purpose or action by means of: make instrumental to an end or process ... utilize.” *Id.* at 254 (quoting Webster's Third New International Dictionary 2524 (Philip B. Gove ed., Merriam Webster Inc. 1993) (1961)). As that definition makes clear, within the ordinary meaning of “use,” TRIA requires only that the United States “carry out” its diplomatic purpose “by means” of the former Iranian properties, or that the properties are “made instrumental to” the Government’s diplomatic end.

d. Despite plaintiffs’ lengthy discussion of Section 201(d)(2)(B)(ii), the alleged basis for plaintiffs’ request for relief on appeal remains wholly unclear.

Plaintiffs do not identify any error by the district court. Nor do they describe any way in which the properties at issue are being used for a non-diplomatic purpose.

The closest plaintiffs come is to assert that the leasing of such properties is inherently non-diplomatic. *See* Pls. Br. 17 (claiming that “[u]se as a rental property’ is *not* a diplomatic purpose”). Reliance on such an assertion is multiply flawed. To begin with, plaintiffs made no arguments in the district court regarding the leasing of properties. They emphasized, instead, that the five properties are currently unoccupied. *E.g.*, Pls. Mem. in Opp. 9 (Dkt. No. 35). On that point they were correct as a factual matter. And that brings to the fore a critical point: it is undisputed that no leasing is occurring at this time, thus the properties are not “being used” in the manner now asserted by the plaintiffs.

In light of the facts, no further analysis is required. But if this Court wishes to examine plaintiffs’ assertion that the leasing of the subject properties necessarily constitutes a non-diplomatic purpose, that mistaken insistence underscores plaintiffs’ failure to come to grips with the question of purpose posed by the statute. In excluding Vienna Convention property from the definition of “blocked assets” if the property is “being used exclusively for diplomatic . . . purposes,” TRIA § 201(d)(2)(B)(ii) directs an inquiry into the actor’s apparent intent. Because rentals may serve either nondiplomatic or diplomatic purposes,

further inquiry into the United States's intent is undoubtedly required. *See, e.g., Hegna*, 287 F. Supp. 2d at 610.

e. In search of some basis for their argument, plaintiffs offer comparisons of TRIA § 201(d)(2)(B)(ii) to several other statutory provisions. These arguments are unavailing.

First, plaintiffs suggest that analogy to FSIA's commercial activity exception is appropriate. *See* Pls. Br. 18. The FSIA, however, provides that the commercial character of a foreign state's activity is to be determined by reference to the activity's "nature" rather than its "purpose." 28 U.S.C. § 1603(d) (defining "commercial activity" for purposes of the FSIA). The Supreme Court has held that the FSIA thus requires an inquiry into whether the activity is one by which a private party engages in commerce, rather than an inquiry into the intent of the foreign sovereign in undertaking the activity. *See Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 614 (1992). Because TRIA § 201(d) specifically refers to "purpose" rather than "nature," an inquiry into apparent intent is both necessary and appropriate.

Second, plaintiffs posit that the language of TRIA § 201(b)(2) is inconsistent with the view that, under § 201(d)(2)(B)(ii), a property may be rented out and still thought to serve a diplomatic purpose. Pls. Br. 17-18. Section

201(b)(2) confers on the President the authority to issue waivers of TRIA as it applies to certain property that comes within the definition of “blocked asset.” Specifically, TRIA § 201(b)(2)(A) provides that the President may not waive the attachment of diplomatic property “used by the United States for any nondiplomatic purpose (including use as rental property).” TRIA § 201(b)(2)(A), 116 Stat. at 2337.

Although plaintiffs suggest that this provision is inconsistent with the United States’s position here, there can be no inconsistency between TRIA § 201(d)(2) and TRIA § 201(b)(2)(A). The former defines the scope of what is a “blocked asset,” while the latter confers on the President the authority to issue waivers of TRIA as it applies to certain property that comes within the definition of blocked asset. In sum, the waiver provision has no bearing on the antecedent definitional question whether a particular property is considered a “blocked asset” under TRIA.

Even insofar as Section 201(b)(2)(A)’s exception to the President’s waiver power anticipates that the United States may use property as rental property for a nondiplomatic purpose, it does not classify all use as rental property as use for a nondiplomatic purpose. Rather, like Section 201(d)(2)(B)(ii), this provision requires an inquiry into the rationale for the United States’ use of the property.

See Hegna, 287 F. Supp. 2d at 610 (“The section does not necessarily mean, as plaintiffs contend, that the rental by the United States of a foreign government’s property is ipso facto for a nondiplomatic purpose.”).

Moreover, the fact that Congress excepted from the President’s waiver power property subject to the Vienna Convention that the United States has used for a nondiplomatic purpose demonstrates that Congress was aware that the United States might use such property for a diplomatic purpose. Otherwise, the characterization “nondiplomatic” would be superfluous. Therefore, contrary to plaintiffs’ assertion, the waiver provision does not make the United States’ “use as a rental property” *per se* a use for a nondiplomatic purpose.

Third, plaintiffs suggest that the United States’s construction of TRIA § 201(d)(2)(B)(ii) renders this provision superfluous in light of the pre-existing bar on attachment of assets held in protective custody under the Foreign Missions Act, 22 U.S.C. § 4308(f) (barring the attachment of foreign assets held in the protective custody of the Department of State for the benefit of a foreign state). *See* Pls. Br. 18. That argument ignores the structure of TRIA, which provides a mechanism for the attachment of various assets not otherwise subject to attachment (i.e., “[n]otwithstanding any other provision of law”). TRIA § 201(a), 116 Stat. at 2337. Section 201(d)(2)(B) is therefore necessary to except certain

diplomatic property from the universe of assets made attachable under TRIA.

Section 201(d)(2)(B)(ii) is consistent with 22 U.S.C. § 4308(f) but by no means superfluous.

f. Plaintiffs ultimately suggest that, by enacting TRIA § 201(d)(2)(B)(ii), Congress intended to abrogate the obligations of the United States under the Vienna Convention on Diplomatic Relations. They insist that any other reading would undermine Congressional intent. *See* Pls. Br. 19-21.

The plain terms of TRIA refute that proposition, however. Pursuant to Section 201(d)(2)(B)(ii), property cannot be attached if attachment “would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations,” § 201(d)(3), 116 Stat. at 2339 (defining “property subject to the Vienna Convention on Diplomatic Relations”), unless the United States has elected to abandon its treaty obligations. *Id.* § 201(d)(2)(B)(ii), 116 Stat. at 2340. Congress thus chose to structure the statute so as to *avoid* treaty violations, not to require them (as plaintiffs urge). *See also, e.g., Weinberger v. Rossi*, 465 U.S. 25, 32 (1982) (It has been a maxim of statutory construction since the decision in *Murray v. The Charming Betsy*, [6 U.S.] 2 Cranch 64, 118 (1804), that ‘an act of congress ought never be construed to violate the laws of nations, if

any other possible construction remains.”).¹²

The necessary consequence of a successful attachment of the properties sought by plaintiffs is that the United States would be unable to fulfill its obligation to “respect and protect” the premises of Iran’s mission. *See, e.g., Weinstein v. Islamic Republic of Iran*, 274 F. Supp. 2d 53, 60-61 (D.D.C. 2003). Indeed, it would require the United States to renege on its assurance to Algeria that it would “retain custody of these properties until Iran releases to the custody of the Government of Switzerland Protecting Power the diplomatic and consular properties owned by the United States in Iran.” App. 64. Because the plaintiffs’ interpretation of Section 201(d)(2)(B)(ii) would lead to a violation of the United States’ treaty obligations under the Vienna Convention, the district court correctly rejected it. *Cf. Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 237-38 (D.C. Cir. 2003) (noting that “neither a treaty nor an executive agreement will be considered ‘abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed,’” and on this basis concluding that an amendment to the FSIA did not abrogate the Algiers Accords) (citations omitted).

¹² While TRIA does not require the violation of longstanding treaty obligations, it nonetheless facilitates recovery by various judgment creditors. For example, under TRIA § 201, certain judgment creditors may attach a foreign state’s nondiplomatic property even if the state did not use that property for commercial activities; such property was not attachable before TRIA’s enactment.

CONCLUSION

For the foregoing reasons, the district court's ruling should be affirmed.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the Corel WordPerfect 12 word count is 8,822, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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Date: November 30, 2009

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On December 1, 2009, a true and correct electronic copy of the foregoing brief, including a corrected table of authorities, was sent via electronic filing to the above-listed counsel of record.

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ADDENDUM

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22 U.S.C. § 4302(a)(1), (b). A-1

22 U.S.C. § 4303. A-2

22 U.S.C. § 4305(c)..... A-2

22 U.S.C. § 4308(f). A-3

28 U.S.C. § 1604. A-3

28 U.S.C. § 1605(a)(7). A-3

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TRIA § 201(a). A-4

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22 U.S.C. § 4301(b)-(c). Congressional declaration of findings and policy.**(b) Policy**

The Congress declares that it is the policy of the United States to support the secure and efficient operation of United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations, and to assist in obtaining appropriate benefits, privileges, and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law.

(c) Treatment of foreign missions in United States

The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission, as well as matters relating to the protection of the interests of the United States.

22 U.S.C. § 4302(a)(1), (b). Definitions.**(a) For purposes of this chapter--**

(1) “benefit” (with respect to a foreign mission) means any acquisition, or authorization for an acquisition, in the United States by or for a foreign mission, including the acquisition of--

(A) real property by purchase, lease, exchange, construction, or otherwise,

(B) public services, including services relating to customs, importation, and utilities, and the processing of applications or requests relating to public services,

(C) supplies, maintenance, and transportation,

(D) locally engaged staff on a temporary or regular basis,

(E) travel and related services,

(F) protective services, and

(G) financial and currency exchange services,

and includes such other benefits as the Secretary may designate;

...

(b) Determinations with respect to the meaning and applicability of the terms used

in subsection (a) of this section shall be committed to the discretion of the Secretary.

22 U.S.C. § 4303. Authorities of Secretary of State.

The Secretary shall carry out the following functions:

(1) Assist agencies of Federal, State, and municipal government with regard to ascertaining and according benefits, privileges, and immunities to which a foreign mission may be entitled.

(2) Provide or assist in the provision of benefits for or on behalf of a foreign mission in accordance with section 4304 of this title.

(3) As determined by the Secretary, dispose of property acquired in carrying out the purposes of this Act.

(4) As determined by the Secretary, designate an office within the Department of State to carry out the purposes of this Act. If such an office is established, the President may appoint, by and with the advice and consent of the Senate, a Director, with the rank of ambassador. Of the Director and the next most senior person in the office, one should be an individual who has served in the Foreign Service and the other should be an individual who has served in the United States intelligence community.

(5) Perform such other functions as the Secretary may determine necessary in furtherance of the policy of this chapter.

22 U.S.C. § 4305(c). Property of foreign missions.

(c) Cessation of diplomatic, consular, and other governmental activities in United States; protecting power or other agent; disposition of property

If a foreign mission has ceased conducting diplomatic, consular, and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission, the Secretary--

(1) until the designation of a protecting power or other agent approved by the Secretary, may protect and preserve any property of that foreign mission; and

(2) may dispose of such property at such time as the Secretary may determine after the expiration of the one-year period beginning on the date

that the foreign mission ceased those activities, and may remit to the sending State the net proceeds from such disposition.

22 U.S.C. § 4308(f). General provisions.

(f) Attachment, execution, etc., of assets

Assets of or under the control of the Department of State, wherever situated, which are used by or held for the use of a foreign mission shall not be subject to attachment, execution, injunction, or similar process, whether intermediate or final.

28 U.S.C. § 1604. Immunity of a foreign state from jurisdiction.

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

28 U.S.C. § 1605(a)(7). General exceptions to the jurisdictional immunity of a foreign state.

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support 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 [subject to specified exceptions not applicable in this case].

28 U.S.C. § 1609. Immunity from attachment and execution of property of a foreign state.

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

28 U.S.C. § 1610(a)(7). Exceptions to the immunity from attachment or execution.

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A, regardless of whether the property is or was involved with the act upon which the claim is based.

TRIA § 201(a), 116 Stat. at 2337, 28 U.S.C. § 1610 note.

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

TRIA § 201(d)(2)-(3), 116 Stat. at 2340, 28 U.S.C. § 1610 note.

(d) Definitions.--In this section [this note] the following definitions shall apply:

(2) Blocked asset.--The term 'blocked asset' means--

(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702); and

(B) Does not include property that--

...

(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

(3) Certain property.--The term 'property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations' and the term 'asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations' mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

ANNEX 322

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL BENNETT; LINDA BENNETT,
as Co-Administrators of the Estate of Maria Ann Bennett,
Plaintiffs - Appellees,

v.

THE ISLAMIC REPUBLIC OF IRAN,
Defendant,
VISA, INC. and FRANKLIN RESOURCES, INC.,
Third Party Defendants - Appellees,

v.

GREENBERG AND ACOSTA JUDGEMENT CREDITORS AND HEISER JUDGMENT
CREDITORS,
Third Party Defendants - Appellees,
and
BANK MELLI,
Third Party Defendants - Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE
SUPPORTING NEITHER PARTY**

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INTRODUCTION

Pursuant to the Court's invitation, the United States submits this amicus brief to address several issues of importance to the government, related to the proper interpretation of 28 U.S.C. § 1610(g) and the Terrorism Risk Insurance Act (TRIA). In doing so, the United States emphatically condemns the terrorist actions that gave rise to this case, and expresses its deep sympathy for the victims. The United States is committed to aggressively pursuing those responsible for violence against U.S. nationals.

Under 28 U.S.C. § 1610(g), certain individuals holding judgments against state sponsors of terrorism may attach both "the property of" that state, and the "property of an agency or instrumentality of such a state," even if the property is held "in a separate juridical entity." 28 U.S.C. § 1610(g). Section 1610(g) additionally requires, however, that any such attachment must occur "as provided in this section" — that is, in accordance with the other requirements of section 1610.

In the United States's view, the import of section 1610(g) is clear. Because attachment must occur "as provided in this section," section 1610(g) is not a freestanding exception to foreign sovereign immunity; a plaintiff seeking execution must therefore proceed under one or more of

the exceptions to immunity separately set out in section 1610. But in evaluating whether a plaintiff meets any of those exceptions, section 1610(g) requires a court to do so without regard to the fact that the plaintiff may be seeking to satisfy a judgment against a foreign state by attaching the assets of its agency or instrumentality.

In this case, the United States understands the panel to have reached a result consistent with that understanding. Accordingly, we do not urge the Court to rehear the case en banc. At the same time, however, dicta from the panel's opinion might be misinterpreted as holding that section 1610(g) creates an independent exception to sovereign immunity, such that a plaintiff could attach the directly-held assets of a foreign state *itself*, notwithstanding the fact that the assets would not be covered by any relevant immunity exception in section 1610. Thus, panel rehearing may be warranted to clarify that the Court's opinion leaves that issue for another day.

Finally, we separately urge the panel to grant rehearing with respect to its discussion of California law. *See* Op. 16-17. As the United States has explained in other cases, and as the D.C. Circuit has expressly held, both TRIA and section 1610(g) only authorize plaintiffs to attach assets that are

“owned” by the relevant foreign state (or its agency or instrumentality).

The panel’s opinion did not dispute that point. But it treated as dispositive of the ownership issue the fact that attachment would have been authorized under California law. Because the two concepts are not the same, the Court should grant rehearing so that it can determine whether the assets at issue are owned by Bank Melli under the relevant source or sources of law.

BACKGROUND

1. Under the Foreign Sovereign Immunities Act (FSIA), a “foreign state” is generally immune from the jurisdiction of U.S. courts, *see* 28 U.S.C. § 1604, except as set out in the immunity exceptions in 28 U.S.C. §§ 1605-1607. And foreign state property is generally immune from attachment and execution, *see* 28 U.S.C. § 1609, subject to several exceptions codified at 28 U.S.C. § 1610.

Relevant here, section 1610(a) creates exceptions to immunity for certain “property in the United States of a foreign state . . . used for a commercial activity in the United States.” 28 U.S.C. § 1610(a). Section 1610(b) creates exceptions to immunity for “any property in the United States of an agency or instrumentality of a foreign state engaged in a

commercial activity in the United States.” *Id.* § 1610(b). Both subsections have specific provisions that, subject to these “commercial activity” requirements, authorize attachment by plaintiffs who hold judgments under the now-in-force 28 U.S.C. § 1605A, or the previously-in-force 28 U.S.C. § 1605(a)(7) (2006), both of which created exceptions to foreign sovereign immunity in certain terrorism cases. *See* 28 U.S.C. § 1610(a)(7), (b)(3).

Section 1610(g) contains further provisions applicable to individuals holding judgments under section 1605A. Section 1610(g) provides that for such judgment holders, “the property of a foreign state,” as well as the “property of” its agency or instrumentality, “is subject to attachment in aid of execution, and execution, . . . as provided in this section.” 28 U.S.C. § 1610(g). This directive applies even as to “property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity.” *Id.* And it applies “regardless of” five listed factors. *Id.*

Separately, the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, § 201, 116 Stat. 2322, 2337 (codified in relevant part at 28 U.S.C. § 1610 note) has provisions related to attachment. Section 201(a) of the statute provides that “[n]otwithstanding any other provision of law,” certain

terrorism-related judgment holders may attach “the blocked assets of” certain foreign states, including the blocked assets of any of their agencies or instrumentalities. TRIA § 201(a). Generally speaking, “blocked” assets under TRIA include assets “seized or frozen by the United States” under specified statutory provisions. *See* TRIA § 201(d)(2).

2. This case involves four groups of creditors who hold judgments against Iran arising out of several different terrorist attacks. Op. 6. All four groups thereafter invoked TRIA and/or section 1610(g) to attach certain blocked funds held by defendants Visa and Franklin; those funds were allegedly “due and owing” to Bank Melli (an Iranian Bank whose stock is wholly owned by the Iranian government) by virtue of a contract stemming from the Bank’s “commercial relationship” with Visa. ER 64; Pet. 5.

After Bank Melli unsuccessfully moved to dismiss the proceeding against it, this Court accepted an interlocutory appeal. The panel affirmed. Among other things, the panel held that the text of section 1610(g) “makes unmistakably clear” that it reaches the assets of a terrorist state’s instrumentalities, even if that instrumentality is not an “alter ego” of the state. Op. 11. Additionally, while Bank Melli had argued against

attachment based on the idea that section 1610(g) was not a freestanding exception to sovereign immunity, and that no other portion of section 1610 authorized attachment against an instrumentality in this circumstance, the panel opinion stated that it found the Bank's argument problematic because it would read out of section 1610 its clear provisions subjecting instrumentalities to attachment notwithstanding their separate juridical status. Op. 12.

The panel opinion also rejected the Bank's argument that TRIA and section 1610(g) could not reach the assets in question because those assets were not "owned" by the Bank. In doing so, the panel did not take issue with the Bank's contention that TRIA and section 1610(g) both require ownership. Rather, the panel held that ownership must be determined with reference to California law, and then found that the plaintiffs could attach the assets in question because California law would permit a judgment creditor to attach such assets. Op. 16-17.

The Bank thereafter petitioned for rehearing and rehearing en banc.

DISCUSSION

The United States respectfully suggests that the Court deny the petition for en banc rehearing, but grant panel rehearing. Unlike the Bank,

we do not understand the panel to have actually held that section 1610(g) creates a freestanding immunity exception. Rather, in a case in which plaintiffs appear to satisfy the additional requirements of section 1610(b) – but for the separate juridical status of the Bank – the panel properly understood section 1610(g) to mean that the separate juridical status was irrelevant. To the extent the panel’s opinion might be misinterpreted as holding something broader, that at most counsels that the Court grant panel rehearing to make the limits of its holding pellucid.

Additionally, we urge the panel to revisit its discussion of California law. As the panel properly did not dispute, both TRIA and section 1610(g) impose a federal requirement that the relevant foreign state (or its agency or instrumentality) “own” the targeted funds. The panel appears to have been under the mistaken impression, however, that anything attachable under California law is necessarily “owned” by the judgment debtor. Because the two concepts are distinct, the panel should grant rehearing to determine ownership under the relevant law.

1.a. Under the FSIA’s baseline rule, “the property in the United States of a foreign state [is] immune from attachment . . . except as provided” elsewhere in the FSIA. 28 U.S.C. § 1609. Section 1610

nonetheless permits attachment in various circumstances, which generally require a sufficient nexus to “commercial activity” by the foreign state or its instrumentality. *See id.* § 1610(a), (b), (d).

The plain text of section 1610(g) then provides special provisions for certain terrorism cases, but still makes clear that its specified property is “subject to attachment . . . *as provided in this section.*” 28 U.S.C. § 1610(g)(1) (emphasis added). The referenced “section” is section 1610, and thus section 1610(g) plainly incorporates by reference the other requirements for attaching foreign state property provided under section 1610. Accordingly, section 1610(g) is not a freestanding exception to immunity that can be invoked independent of the rest of section 1610.

Indeed, a broader understanding of section 1610(g) would violate the “cardinal principle of statutory construction” that a statute should be construed to avoid superfluity. *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Both sections 1610(a)(7) and (b)(3), which specifically apply (*inter alia*) to terrorism-related judgments entered under 28 U.S.C. § 1605A, require some relation to commercial activity in the United States on the part of the foreign state’s property, or by the foreign state’s agency or instrumentality, as a condition of attachment of property in aid of execution. Section

1610(g), which also relates to a judgment under section 1605A, does not independently require that commercial nexus. Thus, reading section 1610(g) to be a freestanding immunity exception would render the restrictions in sections 1610(a)(7) and (b)(3) superfluous (in addition to rendering superfluous the “as provided in this section” language in section 1610(g)). That cannot be correct.

Nor is it the case that the government’s interpretation deprives section 1610(g) of all meaning. What section 1610(g) adds is the special rule that certain plaintiffs with a judgment against a foreign state may pursue not only the assets of that state itself, but also “the property of an agency or instrumentality of” the state, “including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity.” 28 U.S.C. § 1610(g). Accordingly, section 1610(g) overrides various legal principles that might otherwise require respect for an entity’s separate juridical status. *See, e.g., First Nat’l City Bank v. Banco Para El Comercio Exterior de Cuba (“Bancec”)*, 462 U.S. 611, 628-34 (1983) (creating a multi-factor test for determining when a creditor can look to the assets of a separate juridical entity to satisfy a claim against a foreign sovereign under

the FSIA).¹ But that merely means that if a plaintiff covered by section 1610(g) wishes to attach the assets of a state agency or instrumentality, and the plaintiff can find an exception in section 1610 that would apply but for the fact that the plaintiff holds a judgment against the state itself – rather than an entity that would be considered legally distinct – the plaintiff would be able to proceed.²

This Court’s decision in *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117 (9th Cir. 2010), is not to the contrary. In that case, which did not involve a proposed attachment under section 1610(g), this Court briefly stated in a footnote that section 1610(g) lets “judgment creditors . . . reach any U.S. property in which Iran has any interest.” *Id.* at 1123 n.2. That

¹ Particularly in light of *Bancec*, we do not understand the Court’s opinion to hold that sections 1610(a) and 1603(a), of their own accord, permit a judgment creditor to attach the assets of an instrumentality to satisfy a judgment against the foreign state itself.

² The Bank contends that section 1610(g) *only* overrides *Bancec*, and does not overcome other reasons (such as the Treaty of Amity) why an instrumentality’s assets might be unavailable. We do not here address whether the Treaty of Amity covers the Bank in this circumstance, nor do we address whether section 1610(g) overrides any contrary treaty provisions. We note, however, that the United States has taken the position that at least certain kinds of government agencies and instrumentalities are neither “nationals” nor “companies” under the Treaty of Amity. See Brief for the United States as Amicus Curiae at 21-23, *Bank Markazi v. Peterson*, No. 14-770 (S. Ct.) (filed Aug. 19, 2015), *cert. granted* __ S. Ct. __ (Oct. 1, 2015).

footnote is dicta. *See, e.g., In re Magnacom Wireless, LLC*, 503 F.3d 984, 993-94 (9th Cir. 2007) (“[S]tatements made in passing, without analysis, are not binding precedent.”). And it certainly does not purport to address whether section 1610(g) is a freestanding exception to immunity wholly divorced from section 1610’s other requirements.

Notably, if the allegations in this case are true, this would appear to be just such a case where the plaintiffs need not rely on section 1610(g) as a freestanding immunity exception. Section 1610(b)(3) allows individuals to attach “any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States,” if they are seeking to satisfy certain terrorism-related judgments under the now-in-force section 1605A or the previously-in-force section 1605(a)(7). 28 U.S.C. § 1610(b)(3). Taking the complaint’s allegations as true (which of course the Court must at this procedural posture) the property at issue is located in the United States, is alleged to be property of an Iranian agency or instrumentality engaged in commercial activity in the United States (*i.e.*, an entity that has contracted with Visa, an American company, to perform commercial services for that company), and the judgments sought to be enforced are section 1605A judgments. If these facts are established,

section 1610(b)(3) would apply but for the fact that the judgment is against Iran and the Bank would (possibly) be accorded juridical status separate from Iran itself. (It may also be the case that plaintiffs could be able to satisfy section 1610(a)(7) if the Bank's separate juridical status is disregarded, but that issue is more complicated and would require further analysis; as the United States has elsewhere explained, section 1610(a) requires that the property at issue must have been used for a commercial activity in the United States by the foreign state itself. *See* Br. for the United States as Amicus Curiae, at 14-21, *Rubin v. Islamic Republic of Iran*, No. 14-1935 (7th Cir., filed Nov. 3, 2014)).

b. Because this appears to be a case in which the assets *do* appear to meet the additional requirements set out in at least one of section 1610's other provisions (ignoring the separate juridical status issue), this case does not actually present the issue of whether section 1610(g) provides a freestanding exception to immunity. Accordingly, we understand any contrary language in the panel's opinion to be dicta that leaves open in this Circuit the distinct question of whether a plaintiff can proceed under section 1610(g), even after ignoring the separate juridical status of an agency or instrumentality, if the plaintiff still cannot meet any of the

immunity exceptions in section 1610. We thus see no need in this case for rehearing en banc. Nor do we see the panel's decision as foreclosing in this Circuit the positions we took in our filings in *Rubin v. Islamic Republic of Iran*, No. 14-1935 (7th Cir.), *Ministry of Defense v. Frym*, No. 13-57182 (9th Cir.), and *Hegna v. Islamic Republic of Iran*, No. 11-1582 (2d Cir.), as all of those cases presented the question whether a plaintiff could invoke section 1610(g) without showing the requisite relation to commercial activity in the United States (by the relevant actor) set out in either section 1610(a)(7) or section 1610(b)(3).

We note that some language on page 12 of the panel's opinion might be read as addressing more than the issue that was before the Court. Indeed, the plaintiffs in the *Rubin* case have already cited the panel's opinion (in a Rule 28(j) letter) for the proposition that section 1610(g) allows them to attach assets of the foreign state itself, to satisfy a judgment against that state, even if the assets would otherwise be outside the scope of section 1610(a)(7) because they had not been used in commercial activity. Those same plaintiffs are also parties to the pending *Frym* case in this Circuit. Thus, to avoid confusion, we urge the panel to amend its opinion to clarify the limitations of its holding.

2. Separately, we urge the panel to grant rehearing with regard to its discussion of California law.

a. The Bank contended, and this Court did not dispute, that both TRIA and section 1610(g) only reach assets that are actually owned by the terrorist state or its agency or instrumentality. That was the D.C. Circuit's express holding in *Heiser v. Islamic Republic of Iran*, 735 F.3d 934, 938-40 (D.C. Cir. 2013).³ TRIA authorizes attachment against "the blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)." TRIA § 201(a) (emphases added). Section 1610(g) similarly applies to the property "of" a foreign state or "of" its agency or instrumentality. 28 U.S.C. § 1610(g).

The assets "of" an entity are not naturally understood to include all assets in which it has any interest of any nature whatsoever. Rather, the Supreme Court has repeatedly observed that the "use of the word 'of' denotes ownership." *Board of Trs. of the Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 131 S. Ct. 2188, 2196 (2011) (quoting *Poe v. Seaborn*, 282

³ *But cf. Calderon-Cardona v. Bank of New York Mellon*, 770 F.3d 993, 1001-02 (2d Cir. 2014) (finding that section 1610(g) "is silent as to what interest in property the foreign state, or instrumentality thereof, must have in order for that property to be subject to execution," and ultimately looking at New York property law).

U.S. 101, 109 (1930)); *see also id.* at 2196 (describing *Flores–Figueroa v. United States*, 556 U.S. 646, 648, 657 (2009), as treating the phrase “identification [papers] of another person” as meaning such items belonging to another person (brackets in original)); *Ellis v. United States*, 206 U.S. 246, 259 (1907) (interpreting the phrase “works of the United States” to mean “works belonging to the United States”).

Applying that understanding of “of” to a disputed provision of patent law, the Court in *Stanford* concluded that “invention owned by the contractor” or “invention belonging to the contractor” are natural readings of the phrase “invention of the contractor.” 131 S. Ct. at 2196. In contrast, in *United States v. Rodgers*, 461 U.S. 677 (1983), the Court held that the IRS could execute against property in which a tax delinquent had only a partial interest when the relevant statute permitted execution with respect to “any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest.” 26 U.S.C. § 7403(a) (emphases added); *see also Rodgers*, 461 U.S. at 692-94. The Court found it important that the statute explicitly applied not only to the property “of the delinquent,” but also specifically referred to property in which the delinquent “has any right, title, or interest.” *See Rodgers*, 461 U.S. at 692 (emphasis removed). TRIA and

section 1610(g) omit that additional phrase; the former only applies to the blocked assets “of” a terrorist party, *see* TRIA § 201(a), and the latter only applies to the property “of” a terrorist state, *see* 28 U.S.C. § 1610(g)(1).

Indeed, extending these statutes beyond ownership would expand these statutes well beyond common law execution principles. It “is basic in the common law that a lienholder enjoys rights in property no greater than those of the debtor himself; . . . the lienholder does no more than step into the debtor’s shoes.” *Rodgers*, 461 U.S. at 713 (Blackmun, J., concurring in part and dissenting in part); *see also id.* at 702 (majority op.) (implicitly agreeing with this description of the traditional common law rule); 50 C.J.S. Judgments § 787 (2015). Congress enacted TRIA and section 1610(g) against the background of these principles, and the statutes should be interpreted consistent with those common-law precepts. *See Staples v. United States*, 511 U.S. 600, 605 (1994); *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 107-10 (1991).

Nor would it make sense to expand the statutes beyond ownership. Allowing the victims of terrorism to satisfy judgments against the property of a terrorist party “impose[s] a heavy cost on those” who aid and abet terrorists. 148 Cong. Rec. S11527 (daily ed. Nov. 19, 2002) (statement of

Sen. Harkin, discussing TRIA). Paying judgments from assets that are *not* owned by the terrorist party would not serve that goal.

b. Despite the fact that the panel opinion took issue with none of the above, the panel treated as dispositive the fact that California law would allow a judgment creditor to reach assets owed to a debtor. Op. 17. But the mere fact that state law authorizes attachment is insufficient. As explained above, federal law has an affirmative requirement that the assets actually be *owned* by the debtor state or instrumentality. Thus if a state decided (for example) that judgment creditors could obtain assets wholly owned by third parties, that state determination would be contrary to federal law in this context and without effect.

That rule is fully in accord with his Court's decision in *Peterson*. *Peterson* itself recognized that state law on the enforcement of judgments only applies insofar as it does not conflict with federal law. See 627 F.3d at 1130. And while the Court in dicta stated that "[t]he FSIA does not provide methods for the enforcement of judgments against foreign states," *id.*, the case did not address the interpretative question at issue here, nor did it even involve a proposed execution under either TRIA or section 1610(g).

Furthermore, the same sentence in *Peterson* went on to acknowledge that the FSIA controls whether or not specifically targeted properties are immune. *Peterson*, 627 F.3d at 1130. Thus, despite the fact that California law apparently allowed the property in question there to be attached, the Court nonetheless held that the property was immune because the FSIA provision invoked there only applied to property located in the United States, which the asset in question was not. *Id.* at 1130-32. While the Court may have used state law to determine the property's location, federal law dictated the relevant question.

Here, as explained above, TRIA and section 1610(g) only apply insofar as the targeted property is owned by Iran or one of its agencies or instrumentalities. Thus, even assuming that ownership can be determined under state law rather than federal law,⁴ the relevant state law must be actually addressed to that question; the mere fact that state law makes the asset attachable is insufficient. Accordingly, the Court should grant

⁴ In *Heiser*, the D.C. Circuit understood TRIA and section 1610(g) as creating a federal definition of ownership, with the content of that definition to be filled in by the judiciary. *Heiser*, 735 F.3d at 940. The United States takes no position on whether ownership is to be determined using such federal law, or if state law may instead provide that definition.

rehearing in order to determine, under the relevant source of law, whether Bank Melli is the owner of the assets in question here.

CONCLUSION

For the reasons discussed above, the Court should deny rehearing en banc, but grant panel rehearing.

Respectfully submitted,

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October 23, 2015

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Book Antiqua, a proportionally spaced font.

I further certify that this brief complies with the Court's order because it contains **3946 words**, excluding the parts of the brief exempted under Rule 32, according to the count of Microsoft Word.

/s/ Benjamin M. Shultz
BENJAMIN M. SHULTZ

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2015, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, which constitutes service on all parties under the Court's rules because all participants in the case are registered CM/ECF users..

/s/ Benjamin M. Shultz
BENJAMIN M. SHULTZ

ANNEX 323

2011 WL 812032

Only the Westlaw citation is currently available.
United States District Court,
S.D. New York.

Mr. Jeremy LEVIN and
Dr. Lucille Levin, Plaintiffs

v.

BANK OF NEW YORK, JP Morgan Chase,
Société Générale and Citibank, Defendants.

Bank of New York Mellon, JP
Morgan Chase, Société Générale
and Citibank, Third-Party Plaintiffs

v.

Steven M. Greenbaum, et
al. Third-Party Defendants.
Bank of New York, JP Morgan
Chase, Société Générale and
Citibank, Third-Party Plaintiffs

v.

Estate of Michael Heiser, et
al., Third-Party Defendants.

No. 09 CV 5900 RPP.

March 4, 2011.

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OPINION AND AMENDED ORDER

PATTERSON, J.

*1 Plaintiffs Jeremy and Dr. Lucille Levin move for partial summary judgment and a turnover order as to certain accounts blocked pursuant to regulations issued by the Office of Foreign Asset Control or the United States Department of Treasury (the "Phase One Assets") held by several banks: Bank of New York Mellon ("Bank of New York"), Société Générale, Citibank, N.A. ("Citibank"), and JP Morgan Chase Bank, N.A. ("JP Morgan") (collectively, the "New York Banks"). Plaintiffs also seek summary judgment as to certain third party defendant Iranian Judgment Creditors, namely the Heiser Creditors and the Greenbaum and Acosta Creditors, designating the Plaintiffs as the holders of a first priority lien interest in the Phase One Assets. The Heiser Creditors cross move for summary judgment designating the Heisers as the holders of a first priority lien interest in three blocked wire transfers held at the Bank of New York. The Greenbaum and Acosta Creditors similarly cross-move for summary judgment designating them as the holders of a first priority lien interest in assets held by JP Morgan and Citibank.

BACKGROUND

Plaintiff Jeremy Levin was the CNN bureau chief in Lebanon during a period when the Islamic Republic of Iran ("Iran") was using the organization Hizbollah directly and indirectly to commit terrorist acts against American civilians. (Plaintiffs' Statement of Undisputed Facts Pursuant to Local Rule 56.1 ("Pls.' 56.1 Statement") at ¶ 1.)¹ Mr. Levin was taken hostage and tortured during 1983–84, when he was held by Hizbollah in a house directly across from the Iranian Revolutionary Guard headquarters in the Bekka Valley of Lebanon. (Pls.' 56.1 Statement at ¶ 2.) After his escape from his captors, Mr. Levin returned to the United States. (*Id.* at ¶ 3.) The effects of Mr. Levin's torture and imprisonment caused severe and ongoing harm to both Mr. Levin and his wife Dr. Levin. (*Id.*)

On February 6, 2008, following a trial, the United States District Court for the District of Columbia entered judgment in favor of the Levins, and against the Islamic Republic of Iran, the Iranian Ministry on Information and Security, and the Iranian Islamic Revolutionary Guard Corp (collectively, the "Iranian Judgment Debtors"). (*Id.* at ¶ 4.) See *Levin v. The Islamic Republic of Iran*, 529 F.Supp.2d 1 (D.D.C.2007). The judgment awards the Levins \$28,807,719. (*Id.*) Upon receiving this award, the Levins

served information subpoenas on the Office of Foreign Asset Control ("OFAC"), which produced government records identifying certain assets in which Iran or its instrumentalities have an interest, and that were accordingly blocked by OFAC from January 1, 2007 to June 30, 2008 ("Blocked Assets"). (*Id.* at ¶ 5.) OFAC responded via a letter to Plaintiffs dated October 6, 2008, which disclosed information regarding certain Iranian assets held in the United States pursuant to various blocking regulations. (Declaration of Suzelle Smith, ("Smith Decl.") Ex. 2.) The Levins then proceeded to serve additional information subpoenas on the New York Banks, and in response, further identifying information related to OFAC Blocked Assets was disclosed from the New York Banks' business records. (Pls.' 56.1 Statement at 5.)

*2 On April 20, 2009, the Levins registered their judgment with the United States District Court for the Southern District of New York, and on October 14, 2009, the Levins served their judgment on the Iranian Judgment Debtors through court and diplomatic channels. (*Id.* at ¶¶ 6–7.) On June 19, 2009, the Levins delivered Writs of Execution, issued by the Clerk of this Court to the United States Marshal for the Southern District of New York for service on the New York Banks. (*Id.* at ¶ 8.) The Marshal served the New York Banks with the Writs. (*Id.*) On June 26, 2009, the Levins filed their complaint in this Court. (*Id.* at ¶ 9.)

On January 11, 2010, this Court entered an Order authorizing Third-Party Interpleader Complaints and divided the proceeding into two phases. In Phase One, the Court would determine the right of Plaintiffs to execute and collect certain assets selected by Plaintiffs (the Phase One Assets). (Smith Decl., Ex. 12.) Phase Two would involve other assets within the scope of the Complaint. On February 1, 2010, Defendants Bank of New York, JP Morgan, Société Générale and Citibank filed an Interpleader Complaint pursuant to [Rule 22 of the Federal Rules of Civil Procedure](#) against a number of parties that held judgments against the Iranian Judgment Debtors, as well as commercial entities with connections to the blocked assets, in order to determine whether any of these parties had priority interests to the assets sought by the Levins. (See Interpleader Complaint, February 1, 2010, ECF No. 60.) The Greenbaum and Acosta Judgment Creditors were served with the Interpleader Complaint on February 19, 2010. (Pls.' Rule 56.1 Statement at ¶ 19.) The Heiser Judgment Creditors were served with the Interpleader Complaint on June 1, 2010. (*Id.*)

The Greenbaum Judgment Creditors hold a judgment issued by the U.S. District Court for the District of Columbia for \$19,878,023.00 against the Islamic Republic of Iran and the Iranian Ministry of Information and Security ("MOIS"). (The Greenbaum and Acosta Judgment Creditors' Counterstatement of Undisputed Facts Pursuant to Local Rule 56.1 ("Greenbaum/Acosta 56.1 Counterstatement") at ¶ 68; Declaration of James L. Bernard, Ex. 3.) This judgment was awarded on August 10, 2006 in satisfaction of a suit brought by the Greenbaum Judgment Creditors under 28 U.S.C. § 1605(a)(7) against Iran and the MOIS for damages the Greenbaum Judgment Creditors suffered in conjunction with the death of a woman killed in an August 9, 2001 terrorist attack on a restaurant in Jerusalem, Israel. (Greenbaum/Acosta 56.1 Counterstatement at ¶¶ 66–67.) The Greenbaum Judgment Creditors served Iran and MOIS with their judgment on April 22, 2007 through court and diplomatic channels. (*Id.* at ¶ 69.) On December 10, 2008, the Greenbaum Judgment Creditors registered their judgment in the Southern District of New York. (*Id.* at ¶ 70.) On December 14, 2009, the Greenbaum Judgment Creditors obtained an order from this court (Jones, J.) pursuant to 28 U.S.C. § 1610(c) permitting them to obtain a writ of execution to levy against property of Iran held by Citibank in this District. (*Id.* at ¶ 71.) On December 21, 2009, the Greenbaum Judgment Creditors obtained the writ of execution from the Clerk of the Court and delivered it to the U.S. Marshal for the Southern District of New York. (*Id.* at ¶ 72.) On April 5, 2010, the Greenbaum Judgment Creditors obtained an amended writ of execution from the Clerk of Court and delivered it to the U.S. Marshal for the Southern District of New York on April 6, 2010. (*Id.* at ¶ 73.) The U.S. Marshal levied by service of the amended execution upon Citibank on April 15, 2010. (*Id.*) On April 15, 2010, the Greenbaum Judgment Creditors filed their Answer to the Third Party Complaint and Counterclaims in response to the interpleader complaint. (*Id.* at ¶ 74.)

*3 On August 26, 2008, the Acosta Judgment Creditors obtained a judgment in the U.S. District Court for the District of Columbia against the Islamic Republic of Iran and the MOIS in the amount of \$350,172,000. (*Id.* at ¶ 77.) This judgment was awarded in satisfaction of a lawsuit filed by the Acosta Judgment Creditors against Iran and the Ministry under 28 U.S.C. § 1605A to compensate the Acosta Judgment Creditors for damages suffered from the assassination of Rabbi Meier Kahane and the shooting of Irving Franklin and U.S. Postal Officer Carlos Acosta on November 5, 1990. (*Id.* at ¶¶ 75–76.) On September 28, 2009, the Acosta Judgment Creditors served Iran and the MOIS with their judgment

through court and diplomatic channels. (*Id.* at ¶ 78.) The Acosta Judgment Creditors registered their judgment in the Southern District of New York on December 1, 2008, and on December 14, 2009, obtained an order from the this Court (Jones, J.), pursuant to 28 U.S.C. § 1610(c) permitting them to obtain writs of execution to levy against property of Iran held by Citibank and JP Morgan Chase in this District. (*Id.* at ¶ 80.) On December 21, 2009, the Acosta Judgment Creditors obtained Writs of Execution from the Clerk of the Court and delivered them to the U.S. Marshal. (*Id.* at ¶ 81.) On April 5, 2010, the Acosta Judgment Creditors obtained amended Writs of Execution from the Clerk of Court and delivered them to the U.S. Marshal for the Southern District of New York on April 6, 2010. (*Id.* at ¶ 82.) The U.S. Marshal levied by service of the amended writs on April 15, 2010. (*Id.*) On April 15, 2010, the Acosta Judgment Creditors filed their Answer to the Third-Party Complaint and Counterclaims in response to the New York Banks' interpleader complaint. (*Id.* at ¶ 83.)

On September 29, 2000 and October 9, 2001, two groups of plaintiffs Filed claims in the United States District Court for the District of Columbia against Iran, the Ministry of Information and Security and the Iranian Revolutionary Guard. (The Heiser Judgment Creditors' Statement of Undisputed Facts Pursuant to Local Rule 56.1 ("Heiser 56.1 Statement") at ¶¶ 3–4.) These suits sought compensation for damages suffered in conjunction with the June 25, 1996 bombing of the Khobar Towers complex in Saudi Arabia. (Heiser 56.1 Statement at ¶¶ 1–2.) On February 1, 2002, the two actions were consolidated, and on December 22, 2006, the Heiser Judgment Creditors obtained a judgment pursuant to 28 U.S.C. § 1605(a)(7) in the amount of \$254,431,903 against Iran, the MOIS, and the Iranian Revolutionary Guard. (*Id.* at ¶¶ 5–6.) On February 7, 2008, the D.C. District Court issued an order pursuant to 28 U.S.C. § 1610(c) permitting the Heiser Judgment Creditors to pursue attachment in aid of execution of the December 2006 judgment. (*Id.* at ¶ 7.) On January 13, 2009, the D.C. District Court converted the Heiser Judgment Creditors' December 2006 judgment issued under 28 U.S.C. § 1605(a)(7) into a judgment pursuant to 28 U.S.C. § 1605A. (*Id.* at ¶ 8.) On August 27, 2008, the Heiser Judgment Creditors registered the Judgment with the U.S. District Court for the District of Maryland. (*Id.* at ¶ 11.) On April 27, 2010, the Heiser Judgment Creditors filed a Request for Writ to the Bank of New York in the Maryland District Court. (*Id.* at ¶ 11–12.) This writ was issued on April 30, 2010, and served on the Bank of New York in Maryland on May 3, 2010. (*Id.* at ¶¶ 12–13.)

*4 In addition to the Heisers and the Greenbaums and Acostas, there remain eight other judgment creditor groups that were interpled as third-party defendants. Of these, only 4 have asserted any interest in the Phase One Assets: the Brown, Blan, Silvia and Rubin judgment creditors. (Pls.'s 56.1 Statement at ¶ 22–23; Smith Decl., Exs. 41–43.) With the exception of the Rubin judgment creditors, none of the other groups have attached or executed against any of the Phase One Assets. (Smith Decl., Ex. 58.) The Rubin judgment creditors have not obtained an order of the court pursuant to 28 U.S.C. § 1610(c) authorizing execution, nor have they moved for a turnover order. (Smith Decl., Ex. 41.)

The New York Banks also filed an interpleader complaint against commercial entities that might have an interest in the Blocked Assets by virtue of their connections to the blocked wire transfers or accounts. *See* Order, January 11, 2010, Docket No. #33. Commerzbank is the only commercial third-party defendant to have made a claim to any of the Phase One Assets. (Smith Decl., Ex. 50). However, Commerzbank's claim was withdrawn, and the interpleader complaint dismissed as to Commerzbank by Stipulation and Order of this Court dated July 26, 2010. Therefore, the only parties seeking the Phase One Assets who have attached or executed against them and moved for turnover are the Levin, Heiser, and Greenbaum and Acosta Judgment Creditors.

On July 13, 2010, the Levin Plaintiffs filed a Motion for Summary Judgment that Plaintiffs possess a priority interest in the Phase One Assets and seeking a Turnover Order directing the New York Banks to turn over the specified Phase One Assets. On September 13, 2010, the Heiser Judgment Creditors filed a Cross-Motion for Summary Judgment that the Heisers possess a priority interest in the Phase One Blocked Assets held by Bank of New York, and a Turnover Order directing the Bank of New York to release the Phase One Blocked Assets, as well as a brief in opposition to the Levins' motion. Also on September 13, 2010, the Greenbaum and Acosta Judgment Creditors filed a Cross-Motion for Summary Judgment that they possess a priority interest in the Phase One Blocked Assets held by Citibank and JP Morgan, and moved for a Turnover Order directing those banks to release the Phase One Blocked Assets, as well as a brief in opposition to the Levins' motion. On September 15, 2010, Citibank and JP Morgan Chase filed a joint brief identified as a "Response" to the Plaintiffs' Motion for Summary Judgment. On September 24, 2010, the Levins filed briefs in opposition to the Heiser and the Greenbaum and Acosta motions, and a reply in support of their original Motion for

Summary Judgment. On September 29, 2010, oral argument was held before this Court. On October 6, 2010, the Heiser Judgment Creditors filed a supplemental brief addressing the validity of their writ issued by the District Court in Maryland. On October 26, 2010, the Bank of New York Mellon filed a supplemental brief regarding the validity of the Heiser Judgment Creditors' Maryland writ.

*5 For the reasons stated below, the Levins' and the Heisers' Motions for Partial Summary Judgment are denied, and the Greenbaum and Acosta Third-Party Defendants' Motion for Summary Judgment and a Turnover Order is granted.

DISCUSSION

I. Summary Judgment Standard

Summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Fed.R.Civ.P. 56(c)*. It is the initial burden of a movant on summary judgment to demonstrate that there is no genuine issue of material fact. *F.D.I.C. v. Great American Ins. Co.*, 607 F.3d 288, 292 (2d Cir.2010). When the moving party has met this initial burden, the opposing party must set forth specific facts showing that there is a genuine issue for trial, and cannot rest on mere allegations or denials of the facts asserted by the movant. *Davis v. State of New York*, 316 F.3d 93, 100 (2d Cir.2002). The Court must “view the evidence in the light most favorable to the non-moving party, and may grant summary judgment only when no reasonable trier of fact could find in favor of the non-moving party.” *Allen v. Coughlin*, 64 F.3d 77, 79 (2d Cir.1995).

Plaintiffs Jeremy and Dr. Lucille Levin move for partial summary judgment and a turnover order as to Blocked Assets held at Bank of New York, Société Générale, Citibank and JP Morgan and partial summary judgment as to third party defendant Iranian Judgment Creditors, including the Heisers and the Greenbaums and Acostas. The Levins assert that because they have fulfilled the requirements of New York's collection statutes, and are the first party to have served writs of execution on the New York Banks to obtain the Blocked Assets, they have priority over the other Iranian Judgment Creditors. The Levins also contend that they are entitled to a turnover order, because the Blocked Assets in question are subject to execution and include accounts and

wire transfers that originate from Iran or its agencies or instrumentalities or were sent for the benefit of Iran or its agencies or instrumentalities.

The Heiser Judgment Creditors (“The Heisers”) oppose the Levins' motion because the Levins failed to obtain an order pursuant to 28 U.S.C. § 1610(c) authorizing them to pursue attachment and execution of the blocked assets, and therefore, the Heisers assert, the Levins writs are void. The Heisers cross-move for summary judgment on the grounds that they hold an unsatisfied judgment against Iran and have executed on the assets held by Bank of New York properly, by obtaining a court order under 28 U.S.C. § 1610(c) prior to obtaining a writ. The Heisers accordingly claim that they hold a first priority lien interest in three blocked wire transfers at Bank of New York. The Levins oppose the Heisers' Motion for Summary Judgment and claim that the Heisers' writ of execution is invalid as to the Bank of New York wire transfers because it was issued by a Maryland District Court and served on the Bank of New York in Maryland.

*6 The Greenbaums and Acostas oppose the Levins' motion on the same primary basis asserted by the Heisers, namely that the Levins' writs are void because the Levins failed to obtain an order pursuant to section 1610(c) prior to serving the writs. The Greenbaums and Acostas also move for summary judgment and a turnover order in their favor on the grounds that their writs are valid because they complied with section 1610(c), and that they therefore have priority to the Phase One Assets held at Citibank and JP Morgan. The Levins oppose the Greenbaum and Acosta motion by asserting that they were not required to obtain an order under 1610(c) in order to execute on the assets held by the New York Banks. They further contend that this Court should use its powers to find, *nunc pro tunc*, that the Levins' writs were in compliance with section 1610(c) at the time they were delivered.

In response to the Levins' motion, Defendants and Third-Party Plaintiffs Citibank and JP Morgan submitted a brief addressing whether the blocked assets sought by the parties are in fact subject to execution. The Heisers and Third Party Plaintiff Bank of New York submitted briefs addressing the validity of the Heiser Writs, which were issued and served in Maryland.

Resolution of these competing claims implicates two issues; the priority of interest among the parties to the Phase One Assets and the susceptibility of the Phase One Assets to attachment. Because the Judgment Creditors seek to attach

different assets, this opinion will first address which of the parties holds a priority interest in which of the Phase One Assets. Then, the opinion will address whether those assets are susceptible to attachment.

II. Priority of Interest

The Court must first determine whether the Levin Plaintiffs hold a priority interest in the Blocked Assets held at the New York Banks that entitles them to turnover, or whether their failure to obtain an order of the court pursuant to 28 U.S.C. § 1610(c) renders their writs void as a matter of law.

The Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, (“FSIA”) provides the exclusive basis for subject matter jurisdiction over all civil actions against foreign state defendants, and governs the immunity of a foreign state in United States Courts. *Saudi Arabia v. Nelson*, 507 U.S. 349, 351, 113 S.Ct. 1471, 123 L.Ed.2d 47 (1993); *Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 47 (2d Cir.2010). The FSIA provides that “where a valid judgment has been entered against a foreign sovereign, property of that foreign state is immune from attachment and execution except as provided in the subsequent sections, sections 1610 and 1611, 28 U.S.C. § 1609.” *Weinstein*, 609 F.3d at 48. One exception to foreign sovereign immunity applies where the property to be attached and executed is sought as compensation for personal injury or death resulting from an act of terrorism or the provision of material support or resources for an act of terrorism. 28 U.S.C. § 1605A. In such cases, properly belonging to a foreign state, or to an agency or instrumentality of such state, is not immune from attachment in the aid of execution, or from execution, upon a judgment entered by a court of the United States. 28 U.S.C. § 1610(a), 28 U.S.C. § 1610(b). Moreover, the Terrorism Risk Insurance Act (“TRIA”), codified as a note to section 1610 of the Foreign Sovereign Immunities Act, explains that:

*7 In every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7)² of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201 (codified at 28 U.S.C. § 1610, note.)

While sections 1610(a) and (b) enumerate the exceptions to foreign sovereign immunity, section 1610(c) of the FSIA describes the procedure to be followed by plaintiffs seeking to execute or attach the property of a foreign sovereign or an agency or instrumentality of a foreign sovereign:

No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has 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 this chapter.

28 U.S.C. § 1610(c).

The order referred to in 1610(c) has been found to be mandatory by a number of courts reviewing attachments of the assets of foreign sovereigns. See *First City, Texas Houston, N.A. v. Rafidain Bank*, 197 F.R.D. 250, 256 (S.D.N.Y.2000); *Ferrostaal Metals Corp. v. S.S. Lash Pacifico*, 652 F.Supp. 420, 423 (S.D.N.Y.1987); *Gadsby & Hannah v. Socialist Republic of Romania*, 698 F.Supp. 483, 485 (S.D.N.Y.1988). According to a House Report on the FSIA, the procedures mandated by 1610(c) are in place to ensure that sufficient protection is afforded to foreign states that might be defendants in actions in United States Courts:

In some jurisdictions in the United States, attachment and execution to satisfy a judgment may be had simply by applying to a clerk or a local sheriff. This would not afford sufficient protection to a foreign state. This subsection contemplates that the courts will exercise their discretion in permitting execution. Prior to ordering attachment and execution, the court must determine that a reasonable period of time has elapsed following the entry of judgment ... In determining whether the period has been reasonable, the courts should take into account procedures, including legislation, that may be necessary for payment of a judgment by a foreign state, which may take several months; representations by the foreign state of steps being taken to satisfy the judgment; or any steps being taken to satisfy the judgment; or evidence that the foreign state is about to remove assets from the jurisdiction to frustrate satisfaction of the judgment.

H.R.Rep. No. 1487, 94th Cong., 2d Sess. 30, reprinted in 1976 U.S.Code Cong. & Admin. News 6604, 6629.

*8 The Greenbaum and Acosta Judgment Creditors and the Heiser Judgment Creditors both contend that the Levins' writs of execution served on the New York Banks are invalid

because the Levins failed to comply with section 1610(c) of the FSIA. The Levins concede that they did not obtain an order of the court pursuant to 1610(c) prior to serving their writs of execution. (Pls.' Mem. in Reply to the Greenbaum and Acosta Mem. in Opp. at 7 n.7; "It is undisputed that the Levins did not obtain a specific court order under § 1610(c) before seeking writs of execution issued by the court.") The Levins contend, however, that they were not required to obtain an order under section 1610(c), first because their judgment was issued pursuant to section 1605(a)(7), and not section 1605A, and therefore sections 1610(a), (b), and (c) do not apply to them. The Levins also contend that they were not required to obtain an order under section 1610(c) because they are pursuing Blocked Assets, the attachment of which, Plaintiffs claim, is governed by section 1610(f)(1)(A), not 1610(c). Further, the Levins argue that they may execute under TRIA, and that such executions are similarly not subject to the requirements of section 1610(c). Finally, the Levins contend that even if they were required to obtain a court order prior to obtaining and serving their writs of execution, this Court should find, nunc pro tunc, that the Levins' writs were in compliance with 1610(c) at the time of their delivery.

A. Section 1605(a)(7) and Section 1605A

The Levins hold a judgment issued pursuant to 28 U.S.C. 1605(a)(7), which was repealed in 2008 and replaced by 28 U.S.C. 1605A. See Pub.L. 110-181, Div. A, § 1083 "Terrorism Exception to immunity." 28 U.S.C. §§ 1610(a) and (b) enumerate the exceptions to foreign sovereign immunity from attachment and execution. The presently enacted sections 1610(a) and (b) list actions brought under 1605A, actions brought for damages resulting from terrorism, as one of the exceptions to foreign sovereign immunity. Prior to the enactment of section 1605A, sections 1610(a) and (b) listed actions brought under 1605(a)(7), the predecessor statute replaced by 1605A, as an exception to foreign sovereign immunity. In both the pre-2008 and the presently enacted versions of sections 1610(a) and (b), the exception for acts of terrorism appears listed at section 1610(a)(7) and section 1610(b)(3). Thus, section 1605A directly replaced section 1605(a)(7) in the statutory scheme governing exceptions to foreign sovereign immunity.

There are distinctions between actions brought under section 1605A and those brought under 1605(a)(7). "For instance, [§ 1605A] precludes a foreign state from filing an interlocutory appeal under the "collateral order" doctrine, § 1605A(1), and permits a plaintiff to attach property in advance of judgment, § 1605A(g). In addition, § 1605A(c) abrogates *Cicippio-Puleo*

v. Islamic Republic of Iran, 353 F.3d 1024 (D.C.Cir.2004), by creating a federal right of action against foreign states, for which punitive damages may be awarded." *Simon v. Republic of Iraq*, 529 F.3d 1187, 1190 (D.C.Cir.2008) (reversed on alternative grounds, *Republic of Iran v. Beatty*, 556 U.S. 848, 129 S.Ct. 2183, 173 L.Ed.2d 1193).

*9 The Levins claim that because their judgment was entered pursuant to section 1605(a)(7), and not 1605A, they were not required to obtain an court order prior to executing the Blocked Assets held by the New York Banks. This argument fails. Section 1605(a)(7) was repealed and replaced by section 1605A in 2008. Prior to 2008, section 1610 explicitly required plaintiffs proceeding under section 1605(a)(7) to obtain a court order prior to executing foreign assets. 28 U.S.C. 1610(a)(7); 28 U.S.C. 1610(b)(2) (2007). When section 1605(a)(7) was repealed and replaced by section 1605A, Congress updated section 1610 to incorporate section 1605A in the place of 1605(a)(7). There is no indication that this was done for any purpose other than to update the statute. Plaintiffs' argument asserts that while Congress intended that plaintiffs holding judgments pursuant to section 1605(a)(7) obtain court orders prior to the repeal of the statute, upon replacing 1605(a)(7) with 1605A, Congress decided to relieve 1605(a)(7) judgment holders of this requirement, but still impose it on terrorist victims pursuing judgments under 1605A. This argument defies logic, and accordingly fails. While plaintiffs holding 1605(a)(7) judgments do not need to convert them to 1605A judgments, such plaintiffs must still obtain court orders under 1610(c) prior to attachment or execution. Congress's interest in affording adequate protection to foreign sovereigns by imposing the requirement of a court order is of identical importance regardless of whether a plaintiff holds a claim under 1605(a)(7) or 1605A.

B. Section 1610(f)(1)(A)

The Levins next contend that the procedure described in section 1610(c) does not apply to their execution because they seek to recover blocked assets. They claim that the attachment and execution of blocked assets is governed by section 1610(f)(1)(A), and not section 1610(c).

Section 1610(f)(1)(A) provides:

Notwithstanding any other provision of law ... any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 App. U.S.C. 5(b)), section 620(a) of

the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, regulation or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality of such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

28 U.S.C. § 1610(f)(1)(A).

When interpreting a statute, the “statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303, —, 129 S.Ct. 1558, 1566, 173 L.Ed.2d 443 (2009). The Levins contend that section 1610(f)(1)(A) permits them to escape the requirements of 1610(c) despite the fact that their 1605(a)(7) claim was specifically subjected to 1610(c)'s requirements in the pre–2008 statutory language. Reading section 1610(f)(1)(A) in the light of the other subsections of section 1610, as the Court is required to do, establishes that the Levins remain subject to the requirement of section 1610(c), despite the fact that they seek to attach blocked assets. 1610(c) states that “no attachment or execution referred to in sections (a) or (b) of this section shall be permitted until after the court has ordered such attachment and execution ...” As discussed above, sections 1610(a) and 1610(b) did, in fact, refer to attachments or executions pursuant to section 1605(a)(7) prior to the repeal of section 1605(a)(7). Section 1610(f)(1)(A) merely establishes that assets blocked pursuant to regulatory prohibitions on financial transactions are available for execution of any judgment brought under section 1605(a)(7) or 1605A. The fact that section 1610(f)(1)(A) refers to 1605(a)(7) and 1605A indicates that 1610(f)(1)(A) is not itself a stand-alone exception to sovereign immunity, but rather a section targeting the process of executing on assets owned by foreign governments. Section 1610(f)(1)(A) in no way expressly overrides or eliminates the procedural requirements of section 1610(c), and therefore should not be interpreted to do so. Section 1610(f)(1)(A) explains that plaintiffs with claims under 1605(a)(7) or 1605A can proceed to attach or execute blocked assets, as well as other assets held by a sovereign or an agency or instrumentality of a sovereign, provided that they fulfill the requirements of section 1610(c). Thus, Plaintiffs' second argument fails.³

C. TRIA

*10 The Levins further contend that section 1610(c) does not apply to them because they are seeking a turnover of blocked assets under TRIA, which is not listed in section 1610(a) or (b) and therefore is not subject to the requirements of 1610(c). This argument fails for the same reason as Plaintiffs' foregoing argument regarding 1610(f)(1)(A). TRIA is codified as a note to section 1610, and must be read in the context of the overarching statutory scheme of the FSIA. *Padilla v. Rurasfeld*, 352 F.3d 695, 721 (2d Cir.2003) (“No accepted canon of statutory interpretation permits ‘placement’ to trump text, especially where, as here, the text is clear and our reading of it is fully supported by the legislative history.”) To reiterate, section 1610(c), in both its present and pre–2008 incarnations, clearly states that “no execution or attachment referred to in subsections (a) and (b) of this section shall be permitted” without a court order. 28 U.S.C. § 1610(c) (emphasis added). TRIA does not invalidate or override section 1610(c), and does not erase the reference to section 1605(a)(7) in the pre–2008 versions of 1610(a) and (b) or the reference to 1605A in the updated version of the statute. There is no indication in the text of TRIA or 1610 that TRIA was intended to eliminate 1610(c)'s court order requirement in the context of terrorist assets, and no evidence that Congress intended for TRIA to trump section 1610. While the Levins are pursuing attachment under TRIA, their judgment against Iran was obtained via the exception to sovereign immunity found at 1605(a)(7), not in TRIA. Therefore, they remain subject to the requirements of 1610(c), and, since they are not in compliance, their writs are invalid.

D. Nunc Pro Tunc

Finally, the Levins urge the Court to find, nunc pro tunc, that the Levins' Writs were in compliance with 1610(c) at the time of their delivery to the U.S. Marshal on June 19, 2010.

“A nunc pro tunc order is granted only in extreme cases, when ‘a court has spent an undue amount of time deliberating and thereby has caused the parties prejudice or harm.’” *Hegna v. Islamic Republic of Iran*, 380 F.3d 1000, 1008 (7th Cir.2004) (citing *Transamerica Ins. Co. v. South*, 975 F.2d 321, 326 at n. 2 (7th Cir.1992)). The purpose of a nunc pro tunc order is to correct the record, not to alter substantive rights. *Id.* Nunc pro tunc orders are a form of equitable relief, *Zhang v. Holder*, 617 F.3d 650, 652 (2d Cir.2010), and as such, this Court concerns itself with fairness in determining whether such an order is warranted. *SEC v. Management Dynamics, Inc.*, 515 F.2d 801,

808 (2d Cir.1975) (explaining that considerations of fairness are the traditional concern of equity courts.)

This Court declines to find nunc pro tunc that the Levins' writs were in compliance with 1610(c) at the time of their delivery to the U.S. Marshal. The priority of interests among the Levins, the Greenbaum and Acostas and the Heisers is disputed, and in light of the competing interests, it would be inequitable to award a nunc pro tunc order and thereby entitle the Levins to recovery of the assets when they failed to comply with the statutory mandate of section 1610(c).

*11 The Levins' writs of execution were served on the New York Banks without previously obtaining a court order permitting such execution as is required under 28 U.S.C. § 1610(c). The Levins' writs are therefore invalid, and any writs served by them without such an order cannot establish their priority of interest over any party that has served a valid, court-ordered writ and thereby executed or attached the Blocked Assets.

E. Validity of the Heisers' Maryland Issued Writ

Having found the Levins' writs to be invalid, the Court will next consider the Heiser Judgment Creditors' writs, the validity of which remains in doubt because they were issued by the United States District Court for the District of Maryland and served on the Bank of New York in Maryland.

The Heisers obtained a default judgment on December 22, 2006, in the amount of \$254,431,903 in the United States District Court for the District of Columbia. *Estate of Heiser v. Islamic Republic of Iran*, 466 F.Supp.2d 229, 356 (D.D.C.2006). The D.C. judgment was registered with the United States District Court for the District of Maryland on August 27, 2008, and with the United States District Court for the Southern District of New York on September 8, 2008. (Nevling Supp. Dec., Ex. 1, 2). The Heisers then obtained a modified judgment under 28 U.S.C. § 1605A on September 30, 2009, that increased their total recovery to \$591,089,956. (Nevling Supp. Dec., Ex. 3.) The Heisers have not registered the modified judgment in Maryland or New York and have sought to enforce their original judgment.

On February 7, 2008, the D.C. District Court issued an order pursuant to 28 U.S.C. § 1610(c) permitting the Heiser Judgment Creditors to pursue attachment in aid of execution of the December 2006 judgment. On April 30, 2010, the Heisers obtained a writ of garnishment from the District Court for the District of Maryland and served this writ on the Bank

of New York in Maryland on May 3, 2010. (Nevling Supp. Dec., Ex. 4.) Bank of New York served the Heisers with a third-party complaint, and the Heisers filed their amended answer on July 6, 2010.

The Bank of New York contends that the Heiser's writ is invalid, because the Heisers' right to enforce their judgment is governed by the law of New York State. According to the Bank of New York, New York law applies the separate entity rule, which, in this case, would require the Heisers to serve Bank of New York in New York, rather than in Maryland. The Heisers respond that the Blocked EFTs are intangibles with a situs in the United States, and that therefore the Heisers may pursue attachment in any jurisdiction in which the Bank of New York is subject to jurisdiction. The Heisers also contend that the attachment proceeding is governed by Maryland law, and not New York law as the banks assert.

1. Choice of Law

In order to determine whether the Heisers' service of writs of garnishment on the Bank of New York in Maryland was valid, the Court must first determine what law governs this dispute. This analysis hinges on whether the issue is procedural or substantive. The dispute between the Heisers and the Bank of New York regards whether the Heisers' Maryland-issued writs of execution reach blocked wire transfers that the Bank of New York asserts, contain funds currently held in accounts located in New York, managed by employees who are based in New York. (Hall Dec. ¶ 3, Ex. A.) This issue therefore involves questions of attachment procedure; whether a writ of execution issued and served in one state can reach assets held in another state.

*12 "The FSIA states that when a foreign state is not protected by sovereign immunity, 'the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances,' 28 U.S.C. § 1606. In attachment actions involving foreign states, federal courts thus apply Fed.R.Civ.P. 69(a), which requires the application of local state procedures." *Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 313 F.3d 70, 83 (2d Cir.2002). See *Alliance Bond Fund, Inc. v. Grupo Mexicano De Desarrollo, S.A.*, 190 F.3d 16, 20 (2d Cir.1999) (applying Rule 69(a), and hence New York law, in an FSIA action). Federal Rule of Civil Procedure 69(a) states, in pertinent part:

A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on

execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

Fed.R.Civ.P. 69(a).

Thus, “Rule 69(a) provides that in the absence of an applicable federal statute the procedure in supplementary proceedings to execute a federal court’s judgment shall be that of the forum state.” *Resolution Trust Corp. v. Ruggiero*, 994 F.2d 1221, 1226 (7th Cir.1993).

The Heisers contend that the application of this rule results in Maryland law “govern[ing] the procedures for executing upon property of a judgment debtor for actions instituted out of the Maryland Court.” (Heiser’s Suppl. Mem. of Law at 6.) While the writ was issued by the U.S. District Court of Maryland, in this matter the Heisers are applying for a turnover order from this Court in the Southern District of New York. This proceeding is therefore a supplemental proceeding in aid of judgment or execution, and this Court is thus bound to apply the attachment procedures of the state where it is located; New York.

2. The Separate Entity Doctrine

Under New York law, “the separate entity rule dictates that each ‘branch of a bank be treated as a separate entity for attachment purposes.’” *Allied Maritime, Inc. v. Descatrade, S.A.*, 620 F.3d 70, 74 (2d Cir.2010) (quoting *Bergenske Dampskibsselskab v. Sabre Shipping Corp.*, 341 F.2d 50, 53 (2d Cir.1965)). This means that “the mere fact that a bank may have a branch within [a state] is insufficient to render accounts outside of [that state] subject to attachment.” *Allied Maritime*, 620 F.3d at 74. (quoting *John Wiley & Sons, Inc., v. Kirtsang*, No. 08 Civ. 7834, 2009 WL 3003242 at *3 (S.D.N.Y. Sept. 15, 2009).

Following this doctrine, service of a writ of attachment on the Bank of New York’s Maryland branch is not sufficient to attach assets residing in accounts in New York State. Bank of New York has demonstrated that the Blocked Assets the Heisers seek are maintained in accounts located in New York, managed by employees who are based in New York. (Hall Dec. ¶ 3, Ex. A.) Therefore, the Heisers cannot demonstrate their entitlement to a turnover order issuing from this court on the basis of their Maryland writ of attachment, and their motion for such order is denied.

F. The Greenbaum and Acosta Writs

*13 As discussed, the writs of execution served on the New York Banks by the Levins and the Heisers are invalid for the reasons stated. The Greenbaum and Acosta creditors served writs of execution on Citibank and JP Morgan in New York, after having obtained a court order in this District pursuant to 28 U.S.C. 1610(c) permitting them to proceed with their executions. (Greenbaum and Acosta Mem. in Opp. at 8.) The only other group that has attached and executed against the Phase One Assets are the Rubin judgment creditors, who, like the Levins, have not obtained court order under 28 U.S.C. 1610(c). In addition, the Robins did not perfect their levy within 90 days of service.

Therefore, the Greenbaum and Acosta creditors hold a priority interest in the Phase One Assets held at Citibank and JP Morgan.

III. Attachment of the Phase One Assets Held at Citibank and JP Morgan

In order to determine whether a turnover order can be issued as to the assets held at Citibank and JP Morgan that are sought by the Greenbaum and Acosta judgment creditors, the Court must first determine whether these assets are subject to attachment.

The Citibank and JP Morgan Phase One Assets include accounts and electronic fund transfers (“EFTs”) that have been frozen by the Office of Foreign Asset Control (“OFAC”). In this case, the assets were blocked by OFAC due to an apparent nexus with the Islamic Republic of Iran, or an agency or instrumentality of the Iranian government. (See Smith Decl., Ex. 2.) Iran is the subject of numerous sanctions and blocking programs. 31 C.F.R. Parts 535, 544, 560, 594–597; See also *Bank of New York v. Rubin*, 484 F.3d 149; *In re Republic of Iran Terrorism Litigation*, 659 F.Supp.2d 31, 36 n. 1 (D.D.C.2009).

Pursuant to the International Emergency Economic Powers Act (50 U.S.C. § 1701, 1702), various Presidents have issued Executive Orders for the purpose of blocking transactions with Iran.⁴ Pursuant to these Executive Orders, OFAC administers several sanctions schemes regulating the assets of terrorists and state sponsors of terrorism, as well as assets linked to proliferators of weapons of mass destruction (“WMD”) and their supporters. (Compl. at ¶ 36.) Such entities are designated by OFAC and placed on OFAC’s list of “Specially Designated Nationals” (“SDNs”) (Compl. at

¶ 37.) SDNs are defined as “individuals and entities which are owned or controlled by, or acting for or on behalf of, the governments of target countries or are associated with international ... terrorism.” See United States Treasury Website, <http://www.treasury.gov/re-source-center/sanctions/SDN-List/Pages/default.aspx>.

Rule 69 of the Federal Rules of Civil Procedure designates state law procedure for the enforcement of a judgment as the appropriate procedure, subject to any governing law. Fed.R.Civ.P. 69. The Greenbaum and Acosta Judgment Creditors therefore seek turnover orders pursuant to New York Civil Practice Law and Rules (“CPLR”) § 5225(b). CPLR § 5225(b) states:

*14 Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor, and if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff.

CPLR § 5225(b).

In order to issue a turnover order in favor of the Greenbaums and Acostas as to the Citibank and JP Morgan Phase One Assets, this Court must first determine that the assets are subject to attachment under governing law, and that the record establishes the Greenbaum and Acosta Judgment Creditors' entitlement to a turnover order under § 5225(b). Due to the Second Circuit precedent specifically addressing the attachment of electronic fund transfers (“EFTs”), see *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir.2009); *Export-Import Bank of the U.S. v. Asia Pulp & Paper Co., Ltd.*, 609 F.3d 111 (2d Cir.2010), this opinion will first address the intercepted EFTs, and then discuss the Citibank deposit accounts.

A. The Wire Transfers

The Phase One Assets held at Citibank and JP Morgan primarily consist of the proceeds of blocked EFTs currently held in interest bearing accounts, as required by law. (Smith

Decl., Exs. 8–12.). Citibank holds the proceeds of one EFT in the amount of [redacted] associated with the [redacted] (Smith Decl., Ex. 12) JP Morgan holds the proceeds one EFT in the amount of [redacted] associated with [redacted]. (*Id.*)

REDACTED⁵

In their joint response Memorandum of Law and at oral argument, Citibank and JP Morgan suggest that under the applicable Second Circuit precedent and state law, these intercepted EFTs are not the property of the originator or the beneficiary, and therefore are not susceptible to attachment. (Citibank and JP Morgan's Joint Response Mem. of L. at 15–17.)

Two recent Second Circuit decisions, *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir.2009), *cert. denied*, — U.S. —, 130 S.Ct. 1896, 176 L.Ed.2d 402 (2010) (“Jaldhi”) and *Asia Pulp & Paper Co., Ltd.*, 609 F.3d 111 (2d Cir.2010) (“Asia Pulp”), address the issue of whether EFTs residing at intermediary banks in the United States can be attached.

Jaldhi involved the attachment of property under Rule B of the Admiralty Rules. In that case, the Court found that in order to attach EFTs under Rule B, the attachment must be of “tangible or intangible property” that is “the defendant's.” *Jaldhi*, 585 F.3d at 66. In order to determine whether the property interest held by the defendant was adequate to render the property “the defendant's,” as required by Rule B, the Court looked to state law, concluding that because “there is no federal maritime law to guide our decision, we generally look to state law to determine property rights.” *Id.* at 70. The Court applied New York's U.C.C. Article 4 to determine whether EFTs can be considered the defendant's property. *Id.* The Court found that New York state law does not permit the attachment of EFTs that are in the possession of an intermediary bank. *Id.* The Court further found that under New York law, “a beneficiary has no property interest in an EFT because ‘until until the funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary, the beneficiary has no property interest in the funds transfer which the beneficiary's creditor can reach.’” *Id.* at 71 (quoting N.Y. U.C.C. § 4–A–502 cmt. 4.) The Court concluded that “[b]ecause EFTs in the temporary possession of an intermediary bank are not property of either the originator or the beneficiary under New York law, they cannot be subject to attachment under Rule B.” *Id.*

*15 *Asia Pulp* addressed the issue of whether an EFT in the possession of an intermediary bank could be garnished under the Federal Debt Collection Procedures Act (“FDCPA”) to satisfy judgment debts owed by either the originator or beneficiary. 609 F.3d at 114–115. The Court in *Asia Pulp* found that “*Jaldhi instructs that whether or not midstream EFTs may be attached or seized depends upon the nature and wording of the statute pursuant to which attachment or seizure is sought.*” *Id.* at 116. The *Asia Pulp* court then went on to examine the FDCPA, and found that the statute authorized the “issuance of writs of garnishment to any person ‘in possession, custody or control’ of property ‘in which the debtor has a substantial nonexempt interest.’” *Id.* The Court then proceeded in a two-step inquiry; first, looking to state law to see what interest the debtor has in the property that the debt collector seeks to reach, and second, looking to federal law, namely the FDCPA, to see if these interests are “substantial interests” such that would allow garnishment. *Id.* at 118. In the first step of the analysis, the Court reached the same conclusion as the *Jaldhi* court, and found that under New York state law, mid-stream EFTs are neither the property of the originator or the beneficiary. *Id.* at 120.

Judge Marrero of this District recently issued a decision addressing the attachment of EFTs in the context of TRIA. *Hausler v. JP Morgan Chase Bank, N.A.*, No. 09 Civ. 10289, 2010 WL 3817546 (Sept. 13, 2010). The Court in *Hausler* found that TRIA and the underlying federal sanctions regulations (the Cuban Asset Control Regulations, or “CACRs”), considered together, preempted state property law, and therefore the Court did not apply N.Y. U.C.C. Article 4 as had the Courts in *Jaldhi* and *Asia Pulp*. *Id.* at *4–*12. The *Hausler* Court found that TRIA. In conjunction with the CACRs, preempt state law because TRIA explicitly defines “blocked asset” as “any asset seized or frozen by the United States under [§ 5(b)] of the [Trading With the Enemy Act (“TWEA”)] or under sections 202 and 203 of the [International Emergency Economic Powers Act].” TRIA § 201(d)(2). The *Hausler* court concluded that because the CACRs were enacted under § 5(b) of TWEA they should be considered in tandem with TRIA to determine whether the wire transfers were attachable. *Id.* at *6. In considering both together, the Court concluded that federal law comprehensively addressed property rights in this context, and therefore preempted state law:

For decades prior to the passage of TRIA, OFAC regulations have routinely included both property and interests in property among the assets authorized to be

blocked. *See, e.g.*, 31 C.F.R. § 575.201 (Iraq); 31 C.F.R. § 535.201 (Iran); 31 C.F.R. § 537.201 (Burma). Therefore, when drafting TRIA, Congress was presumably aware of the types of assets blocked under OFAC regulations ... As noted above, TRIA § 201(d)(2) defines “blocked assets” to include all assets blocked under the CACRs, and without further direction from Congress excepting interests in property from the blocked assets subject to execution, the Court is not persuaded that the word “of” equates to actual ownership or title and thus would operate to so limit the blocked assets subject to turnover proceedings.

*16 *Id.* at *7.

The Court in *Hausler* found further support for its position in the Supreme Court’s decision in *Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Elahi*, 556 U.S. 366, —, 129 S.Ct. 1732, 1739, 173 L.Ed.2d 511 (2009). In *Elahi*, the Court was considering whether an arbitral judgment awarded to Iran constituted a “blocked asset” subject to execution under TRIA. In making its ruling in *Elahi*, “the Court considered whether Iran had an ‘interest in the property’ as required by the relevant OFAC regulations.” *Hausler*, 2010 WL 3817546 at *8. Similarly, in *Asia Pulp*, the Second Circuit held that “*Jaldhi instructs that whether or not midstream EFTs may be attached or seized depends upon the nature and wording of the statute pursuant to which attachment or seizure is sought.*” *Asia Pulp*, 609 F.3d 111 at 116.

In this case, Plaintiffs are seeking attachment or seizure pursuant to TRIA and 28 U.S.C. § 1610(f)(1)(A)

TRIA states that:

Notwithstanding any other provision of law ... in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a).

TRIA defines “terrorist party” to mean “a terrorist, a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)

(vi)), or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C.App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).” TRIA § 201(d)(4). Iran was designated as a state sponsor of terrorism under the Export Administration Act of 1979, and therefore is a terrorist party within the meaning of TRIA. *See* 49 Fed.Reg. 2836–02 (Jan. 23, 1984) (notice of Secretary of State George P. Schulz, designating Iran as a state sponsor of terrorism).

TRIA then goes on to define blocked assets as, in pertinent part, “(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C.App. 5(b)) or under sections 202 or 203 of the International Emergency Powers Act (50 U.S.C. 1701; 1702).”

The language of TRIA is broad, subjecting *any asset* to execution that is seized or frozen pursuant to the applicable sanctions schemes. The breadth of this language is unsurprising in light of TRIA’s remedial purpose. *Hausler*, 2010 WL 3817546 at *9. Senator Tom Harkin, a sponsor of the Act, stated the following prior to the law’s passage:

*17 The purpose of [TRIA] is to deal *comprehensively* with the problem of enforcement of judgments issued to victims of terrorism is any U.S. court by enabling them to satisfy such judgments from the frozen assets of terrorist parties. As the conference committee stated. TRIA establishes, once and for all, that such judgments are to be enforced against any assets available in the U.S. and that the executive branch has no statutory authority to defeat such enforcement under standard judicial processes, except as expressly provided in this act.

148 Cong. Rec. S11528 (daily ed. Nov. 19, 2002) (emphasis added).

As Judge Marrero observed in *Haulser*, TRIA’s definition of “blocked assets” defines which assets are subject to attachment by reference to the regulations pursuant to which the assets are blocked, and it is this definition that dictates what interest in property subjects a judgment debtor’s property to attachment. *Hausler*, 2010 WL 3817546 at *5. Therefore, in order to determine whether the Phase One Assets held at Citibank and JP Morgan are subject to attachment, the regulations imposing the sanctions on Iranian assets must be considered.

Transactions involving Iranian assets are blocked pursuant to a series of regulations, including 31 C.F.R. § 535, 544, 560,

594–597, 31 C.F.R. § 544, underlies the scheme governing [Weapons of Mass Destruction \(“WMD”\) Proliferators Sanctions](#), and serves to effectuate Executive Order 13382, which freezes assets of proliferators.⁶

Under 31 C.F.R. § 544.201, “all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked.” The regulation then goes on to explain that any entity engaged in the proliferation of weapons of mass destruction is included in the list of “persons” whose property interests are blocked. Section 544.305 defines an “interest in property,” as referred to in section 544.201, as “an interest of any nature whatsoever, direct or indirect.” *Id.*

Another sanctions scheme blocking Iranian assets is the series of Terrorism Sanctions Regulations found at 31 C.F.R. 595. These regulations block transactions “in property or interests in property of specially designated terrorist[s].” 31 C.F.R. 595.201. The regulation then defines what constitutes an interest in property identically to the non-proliferation sanctions; “an interest of any nature whatsoever, direct or indirect.” 31 C.F.R. 595.307.

Thus, pursuant to either the proliferation or terrorist sanctions scheme, any interest in property, of any nature, whatsoever, direct or indirect, held by any of the Iranian entities linked to the Phase One assets, is blocked. This definition of what constitutes a “property interest” is substantially broader than that found under New York law, and evinces a congressional intent to block even property in which a terrorist entity has only a limited interest. Unlike Maritime Rule B in *Jaldhi*, or the FDCPA in *Asia Pulp*, here federal law is not silent on what interest in property would subject the assets to attachment. The property interest required for a terrorist party’s assets to be blocked under these schemes is “any interest of any nature whatsoever.” Accordingly, the Court finds that TRIA and the applicable sanctions regulations “establish a comprehensive statutory scheme that eschews any need for consideration of state definitions of property.” *Hausler*, 2010 WL 3817546 at *6. Therefore, the *Jaldhi* rule regarding EFTs does not apply.

*18 Moreover, section 1610(f)(1)(A) of the FSIA contains language very similar to that of TRIA, and provides further indications that Congress intended for all blocked assets in which terrorist entities have an interest to be available for

attachment by plaintiffs holding valid judgments. Section 1610(f)(1)(A) states:

Notwithstanding any other provision of law ... any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C.App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or 1605A.

28 U.S.C. § 1610(f)(1)(A).

Even if the blocked EFTs were not subject to attachment under TRIA, they are included in the category of assets section 1610(f)(1)(A) subjects to attachment. The statute states that “any property” with respect to which transactions are prohibited, or even regulated, is subject to execution or attachment in aid of execution of judgments against state sponsors of terror. 28 U.S.C. § 1610(f)(1)(A). All of the Phase One Assets constitute property with respect to which financial transactions are prohibited. Unlike TRIA, there is no “of the terrorist party” language in section 1610(f)(1)(A), clarifying Congress's intent to make blocked assets, regardless of whether they are owned in entirety by terrorist parties, available to victims of terrorism.

It is plainly the intention of TRIA and the FSIA to make blocked assets available to plaintiffs. As *Asia Pulp* states, “whether or not midstream EFTs may be attached or seized depends upon the nature and wording of the statute pursuant to which attachment or seizure is sought.” *Asia Pulp*, 609 F.3d 111 at 116. The nature and wording of TRIA and FSIA section 1610(f)(1)(A) indicate that Congress intended all blocked assets be available for attachment by victims of terror. This Court concurs with the *Hausler* Court that in drafting TRIA and 1610(f)(1)(A), Congress was aware of the types of assets that are blocked under the applicable regulations, and therefore understood that by wording the statutes so broadly, it was subjecting all such assets to execution. If Congress had wished to exclude EFTs from the variety of assets subject to attachment, it could have done so. Instead, TRIA and the FSIA employ language subjecting *any* blocked assets to attachment in these circumstances.

Based on this Court's reading of TRIA, section 1610(f)(1)(A) and the applicable sanctions regulations, the Phase One blocked EFTs held at Citibank and JP Morgan are subject to attachment.

*19 While these blocked assets are susceptible to attachment, the Greenbaum and Acosta motion for turnover must comply with N.Y. CPLR § 5225(b), as required by Fed.R.Civ.P. 69. If the evidence presented is sufficient to demonstrate that the entities whose assets have been blocked are agencies and instrumentalities of Iran, and are entitled to the possession of these funds, but for the blocked nature of the accounts, these assets may be used to satisfy judgments. See *Weininger v. Castro*, 462 F.Supp.2d 457, 499 (S.D.N.Y.2006).

The banks and the Iranian entities served with process have provided no evidence to indicate that any of the Iranian entities owning or with interests in the assets held at Citibank and JP Morgan are not agencies or instrumentalities of the Iranian government, and this issue does not appear to be in dispute. It is the movant's burden on summary judgment, nevertheless, to demonstrate that there is no issue of material fact as to the availability of these assets for turnover. *Rodriguez v. City of New York*, 72 F.3d 1060–61 (2d Cir.1995). Therefore, the evidence offered to support relationship between Iran and the entities whose assets are sought is summarized briefly below.

The Greenbaums and Accostas largely rely on the facts as stated by the Levin Plaintiffs regarding the Iranian interest in these assets. (Greenbaum/Acosta 56.1 Statement at ¶ 10.) The Levins, in turn, rely heavily on an affidavit presented by Dr. Patrick Clawson, a Deputy Director for Research of the Washington Institute for Near East Policy. See Affidavit of Dr. Patrick Clawson, February 24, 2010. *Levin v. Bank of New York et. al*, 09 Civ. 5900, ECF # 233 (“Clawson Aff.”). Dr. Clawson has extensive experience researching and consulting with government officials about Iran, and has published several books on the subject.

The first asset, held at JP Morgan, is a blocked EFT sent for the benefit of [redacted] in the amount of [redacted] (Smith Decl., Ex. 12, 10.) According to Dr. Clawson, [redacted] is wholly owned by the Islamic Republic of Iran, and is controlled by Iran. (Clawson Aff at ¶ 27.) In support of this contention, Dr. Clawson cites several online sources, including the [redacted] website, which indicates that

the[redacted], owned by the Islamic Republic of Iran, is the sole owner of [redacted] [redacted] (*Id.*, *See also* [redacted])

REDACTED⁷

The second asset is a blocked EFT held at Citibank, sent for the benefit of the [redacted] in the amount of [redacted]. Dr. Clawson states that it is common knowledge that the National Iranian Oil Company is wholly owned by the Islamic Republic of Iran, and that the [redacted] [redacted] was established by the National Oil Company of Iran. (Clawson Aff., ¶ 27.) Dr. Clawson also states that the [redacted] is controlled by Iran. (*Id.*) It has not been disputed that the [redacted] [redacted] is an agency or instrumentality of Iran.

B. The Citibank Accounts

*20 Three of the assets currently held by Citibank are funds from inactive correspondent accounts associated with certain Iranian banks. (Smith Decl., Ex. 11 p. 5.) These assets include [redacted] at an account associated with [redacted]; [redacted] in account associated with [redacted]; and [redacted] in an account associated with [redacted]. As discussed earlier, TRIA and the FSIA render any blocked asset linked to a terrorist party subject to execution or attachment in order to satisfy judgments held by terrorist victims.

Under CPLR § 5225, Plaintiffs are entitled to a turnover order of the assets held in these accounts if Citibank is a “person in possession or custody of money” in which agencies or instrumentalities of Iran have an interest. *Weininger v. Castro*, 462 F.Supp.2d 457, 499 (S.D.N.Y.2006). If the evidence presented is sufficient to demonstrate that three entities linked to this account are agencies and instrumentalities of Iran, and are entitled to the possession of these funds, but for the blocked nature of the secounts, these assets may be used to satisfy judgments. *Id.* at 499.

Citibank, in its brief jointly submitted with JP Morgan, explains that

“[t]he Defendant banks make no independent assessment of the terrorist status of an account holder or wire transfer party that is subject to blocking pursuant to these regulations. Rather, they simply block (1) any account in their possession where the designated name appears, and (2) any wire transfer when the designated name appear in the string of parties to the wire transfer .”

There is no dispute that these three Citibank accounts are, indeed, blocked accounts subject to TRIA. Therefore, these assets are subject to attachment under TRIA, and can be turned over so long as Plaintiffs have satisfied the procedural requirements of CPLR § 5225 and demonstrated that Iran, the judgment debtor, or agencies and instrumentalities of Iran, have an interest in these assets.

The first account is held in the name of [redacted] [redacted]. Dr. Clawson states that [redacted] is “wholly owned by the Islamic Republic of Iran,” and a national bank of Iran. (Clawson Aff. at ¶ 21.) In support of this assertion, Dr. Clawson cites a Treasury Department Press Release [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] among other sources. (Clawson Aff. at ¶ 21.) Dr. Clawson also includes a link to the Central Bank of Iran website, which lists [redacted] as government-owned bank [redacted] [redacted] Moreover, [redacted] conceded that it is an agency or instrumentality of Iran in the [redacted] case. [redacted]

The second account is held in the name of [redacted]. According to Dr. Clawson [redacted] is a wholly owned subsidiary of the Islamic Republic of Iran. (Clawson Aff. at ¶ 22.) “State-owned central banks indisputably are included in the § 1603(b) definition of “agency of instrumentality.” *Weininger*, 462 F.Supp.2d at 498. In support of this finding, Dr. Clawson cites the OFAC–SDN List, as well as a Treasury Department Press Release [redacted] [redacted] [redacted] [redacted] [redacted] available at <https://ustreas.gov/press/releases/hp219.htm>. (Clawson Aff. at ¶ 22.)

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

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

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

CONCLUSION

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

PARTIAL FINAL JUDGMENT

The Court having determined that there are good grounds for entering a partial judgment immediately, this Opinion and Order constitutes a partial final judgment, within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure, and there is no just reason for delay in the entry of judgment as provided herein. This Opinion and Order presents a controlling question of law which has not previously been decided, namely, the question of whether the requirements of

28 U.S.C. § 1610(c) are applicable to this proceeding. Entry of such partial final judgment will permit the Levin Plaintiffs, who are in their 80s and (in the case of Jeremy Levin) in ill health, to take an immediate appeal. Immediate appeal of this partial judgment will assist in the prompt adjudication of claims brought by the Levin Plaintiffs, the Greenbaum and Acosta Judgment Creditors, the Heiser Judgment Creditors, among others, to additional blocked assets during Phase Two of the case. An immediate appeal might also provide guidance with regard to the adjudication of other turnover cases, which may involve similar issues, pending before other judges in this District but which have not progressed as far as this action.

*22 Notwithstanding the foregoing, this partial judgment shall constitute a final judgment only with respect to the validity of the Levins' claims to the Phase One Assets (identified in Exhibit 12 to the Smith Declaration, which is filed under seal), the validity of the Greenbaum and Acosta Judgment Creditors' claims to the Citibank Phase One Assets and the JP Morgan Phase One Asset, and with respect to the claims of any party to or the rights of any party in the Citibank Phase One Assets or the JP Morgan Phase One Asset.

This judgment, compliance with its terms, and all proceedings to enforce it, shall be stayed pending appeal by the Levin Plaintiffs from the judgment being entered hereby to the United States Court of Appeals for the Second Circuit, on the condition that a notice of appeal is filed in a timely fashion. In view of the Levins' intent to appeal solely on this issue of law, any actions by any parties to this litigation with regard to the Phase One Assets are also stayed pending appeal by the Levin Plaintiffs.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2011 WL 812032

Footnotes

- 1 Unless otherwise noted, citations to the parties Statements of Undisputed Facts are admitted by all opposing parties.
- 2 Repealed and replaced with 28 U.S.C. § 1605A.
- 3 At oral argument, the Heisers and the Acostas and Greenbaums asserted that section 1610(f)(1)(A) had been waived by President Clinton, and was therefore inapplicable. Tr. of Oral Argument, September 29, 2010 at 32:23–35:24; 46:20–47:16. The Levins contended that TRIA, at § 201(b), imposed a requirement on Presidential waivers of exceptions to immunity from attachment or execution that the President waive exceptions to immunity on an asset by asset basis, and that therefore section 1610(f)(1)(A) is not subject to a blanket waiver. It does appear from a reading of TRIA that the President is now required to issue waivers on an asset by asset basis, and such waivers have not been issued with

regard to the assets in question here. However, even if [section 1610\(f\)\(1\)\(A\)](#) applies with full force. It does not excuse the Levins from compliance with [section 1610\(c\)](#), as discussed herein.

- 4 These Orders include: [Executive Order No. 12947](#), 60 Fed.Reg. 5079 (January 23, 1995) (Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process); [Executive Order No. 13099](#), 63 Fed.Reg. 45167 (August 20, 1998) (amending [Exec. Order 12947](#)); [Executive Order 13224](#), 66 Fed.Reg. 49079 (September 23, 2001) (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism). (Compl. at ¶ 33.) On June 28, 2005, the President also issued [Executive Order No. 13382](#), 70 Fed.Reg. 38567, (Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters). (Compl. at ¶ 34.)
- 5 Citibank also holds three inactive deposit accounts; (1) an account containing [redacted] in the name of [redacted], (2) an account containing [redacted] held in the name of [redacted], and (3) an account containing [redacted] in the name [redacted] [redacted].
- 6 Several of the entities linked to the Phase One Assets, namely [redacted] [redacted] [redacted] [redacted], have been designated as WMD proliferators. See Office of Foreign Asset Control, Overview of Non-Proliferation Sanctions, available at <http://www.treasury.gov/re source-center/sanctions/Programs/Documents/irap.pdf>.
- 7 The Iranian ownership of [redacted] is further confirmed by a press release from the U.S. State Department. Fact Sheet, Treasury Announces Targets on Iran's Nuclear and Missile Programs, U.S. Treasury Department (June 17, 2010), available at <http://www.state . gov/isn/143265.htm>.

ANNEX 324

IN THE UNITED STATES DISTRICT COURT
FOR THIS DISTRICT OF COLUMBIA

ESTATE OF MICHAEL HEISER, et al.

Plaintiffs

v.

ISLAMIC REPUBLIC OF IRAN, et al.

Defendants

Case No.

00-CV-02329 (RCL)

Consolidated With

ESTATE OF MILLARD D. CAMPBELL, et al.

Plaintiffs

v.

ISLAMIC REPUBLIC OF IRAN, et al.

Defendants

Case No.

01-CV-02104 (RCL)

ORDER

UPON CONSIDERATION of the Motion For Entry Of Order Authorizing Judgment Creditors To Pursue Attachment In Aid Of Execution And Execution Of December 22, 2006 Judgment, and the lack of any opposition thereto, it is this 7th day of ~~December, 2007,~~ February 2008 *df*

ORDERED:

1. That the Judgment Creditors' Motion is GRANTED;
2. That a reasonable period of time has elapsed following the entry of the December 22, 2006 Judgment and the giving of notice of the Judgment under 28 U.S.C. § 1608(e) which occurred on July 30, 2007;
3. ~~That the Judgment Creditors are authorized to pursue attachment in aid of execution and execution of the December 22, 2006 Judgment; and~~
4. That the Clerk shall electronically file and serve a copy of this Order upon all counsel of record.



Judge Royce C. Lamberth

ANNEX 325

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

ORDER

Upon consideration of the Motion for Entry of Order Authorizing Judgment Creditors to Pursue Attachment in Aid of Execution of September 30, 2009 Judgment and the applicable law, it is hereby ORDERED that

1. the Motion is GRANTED;
2. a reasonable period of time has elapsed following the entry of the September 30, 2009 Judgment and the giving of notice of such Judgment under 28 U.S.C. § 1608(e), which occurred on January 18, 2010; and
3. Judgment Creditors are authorized to pursue attachment in aid of execution of the September 30, 2009 Judgment.

SO ORDERED.

Signed by Chief Judge Royce C. Lamberth on May 10, 2010.

ANNEX 326

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/25/10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JEFFREY LEVIN and DR. LUCILLE LEVIN, :

Plaintiffs, :

-against- :

BANK OF NEW YORK, et al., :

Defendants. :
-----X

Civil Action No. 09 Civ. 5900
(RPP)

**ORDER REGARDING NOTICE
AND SERVICE OF PROCESS**

WHEREAS this proceeding was commenced by the filing of the summons and complaint in this Court on June 26, 2009; and

WHEREAS Plaintiffs' complaint seeks relief in the nature of an order directing Defendant banks to turn over to Plaintiffs, in satisfaction of a judgment in the amount of \$28,807,719 entered in their favor by the United States District Court for the District of Columbia on February 6, 2008 (the "Judgment"), in the case of *Levin v. Islamic Republic of Iran*, Civil Action No. 05-CV-02494-GK (the "Underlying Action"), certain blocked assets held by Defendant banks (the "Blocked Assets") that are allegedly subject to execution to satisfy the Judgment because the Islamic Republic of Iran ("Iran"), or individuals, persons and entities (collectively, "persons") that are agencies or instrumentalities of Iran, have an interest in such Blocked Assets; and

WHEREAS the Defendants have answered the complaint and commenced third-party actions in order to bring before the Court as Third-Party Defendants certain persons who are not now parties to this proceeding but who may have an interest in the

Blocked Assets that are included in phase one of this proceeding or may have been parties to wire transfers or other transactions relating to the Blocked Assets; and

WHEREAS Defendants wish to have the Court exercise its authority under the provisions of law described below to provide additional alternatives for making service of process upon the Third-Party Defendants in the third-party actions that they have commenced; and

WHEREAS it may at some point become necessary or appropriate to serve process upon or give notice of this proceeding to other persons in addition to the persons named as Third-Party Defendants in the third-party complaints that are presently on file; and

WHEREAS section 1608(b)(3)(C) of the Foreign Sovereign Immunities Act of 1976 ("FSIA") authorizes the parties to this proceeding, under the circumstances specified therein, to serve process upon or give notice to an agency or instrumentality of a foreign state "as directed by order of the court consistent with the law of the place where service is to be made;" and

WHEREAS Rules 4(f)(3) and 4(h)(2) of the Federal Rules of Civil Procedure (hereinafter citations to "Federal Rule _" shall refer to those Rules) authorize the parties to this proceeding to serve process upon or give notice to persons outside any judicial district of the United States "by other means not prohibited by international agreement, as the court directs;" and

WHEREAS this Court has the authority under its inherent powers to establish procedures for the service of process or the giving of notice in certain other circumstances as well;

NOW, THEREFORE, it is hereby ORDERED as follows:

1. The following documents, referred to collectively hereinafter as the "Service Documents," may be served upon Third-Party Defendants or Third-Party Respondents in this action (hereinafter collectively referred to as "Third-Party Defendants"), or delivered to any other persons, if any, that the Court may hereinafter designate to receive notice of this proceeding, in the manner specified in subsequent provisions of this Order, in addition to the other methods of service authorized under applicable federal or state statutes or rules:

a. the Complaint, the accompanying Exhibits A through E, Defendants' Answers to the Complaint, any Amended Complaint or Amended Answer that may be filed in this action, and the Complaint in the Underlying Action;

b. any Third-Party Summons, Third-Party Complaint, third-Party Notice of Petition or Third-Party Petition that the Defendants may file in this action;

c. any order entered in this proceeding;

d. any documents reasonably intended or appropriate to put a Third-Party Defendant, or any other person being given notice of these proceedings, on notice of the bank account balances, wire transfer proceeds, funds, accounts and assets held by any of the defendants as Blocked Assets that are being held in that person's name, that may have involved that person or that that person may have an interest in or right to possession of, including but not limited to appropriate excerpts from Exhibit D to the Complaint, documents from the files of any of the Defendants and documents prepared by any party;

e. any other pleading or document that the Court may require to be served upon or provided or delivered to any non-party; and

f. a translation of any of the foregoing documents into a foreign language pursuant to FSIA § 1608(b).

2. The Service Documents may be served upon any person, and any person may be given notice of this action and the contents of those documents, by any of the following methods, which method may be selected by any party at its option and sole discretion, and service made or notice given by any party to this proceeding shall constitute service on behalf of all parties hereto:

a. by sending copies of the Service Documents to such person, either via U.S. mail or by an express delivery company such as Federal Express ("FedEx"), UPS or DHL that makes deliveries in the country to which the documents are being sent, at such person's last known address, as determined by the party making service thereof (or giving notice thereof) from its own records or other sources, such as the internet (if the documents are being sent to a corporation, bank or other type of business entity, the mailing or delivery shall be directed to the attention of the Chief Executive Officer, Managing Director or Chief Legal Officer, or another suitably senior officer, of that person, identified by name, if known, or by title) (In light of the difficulty of obtaining return receipts in some countries and the fact that some persons may wish to avoid acknowledging service, such service/notice shall be valid and effective whether or not a return receipt is requested or obtained);

b. by sending an e-mail that states, "IMPORTANT! This e-mail is being sent to put you on notice of a lawsuit pending in the United States District Court

for the Southern District of New York that could result in the seizure and forfeiture of funds in which you or one of your customers may have an interest. These funds may include the balances held in one or more bank accounts that were blocked pursuant to Sanctions Regulations of the United States and the proceeds of one or more wire transfers that were interrupted and blocked pursuant to those Regulations. Please open the attachments, which are in pdf form, immediately. They will provide more detailed information about the lawsuit and your potential exposure to loss in that lawsuit” to the last known e-mail address of such person, as determined by the party making service or giving notice thereof from its own records or other sources, such as the internet, and attaching pdf versions of the Service Documents to the e-mail (if the e-mail is being sent to a corporation, bank or other type of business entity, the e-mail should be directed to the e-mail address of the Chief Executive Officer, Managing Director or Chief Legal Officer, or another suitably senior officer of such person, if known, or it should state, following the word “IMPORTANT,” “Deliver this e-mail and the attachments to your Chief Executive Officer, Managing Director or Chief Legal Officer at once”);

c. by faxing copies of the Service Documents to such person at its last known fax number, as determined by the party making service or giving notice thereof from its own records or other sources, such as the internet (if the fax is being sent to a corporation, bank or other type of business entity, the fax cover sheet should be addressed to the Chief Executive Officer, Managing Director or Chief Legal Officer, or another suitably senior officer of such person, if known, identified by name, if known, or by title); or

d. if the person being served or given notice is a bank, by sending the following text to the bank in one or more of a series of linked SWIFT messages: "URGENT URGENT URGENT URGENT Deliver this message to your Chief Executive Officer, Managing Director or Chief Legal Officer at once. This message is being sent to put you on notice of a lawsuit pending in the United States District Court for the Southern District of New York that could result in the seizure and forfeiture of funds in which you or one of your customers may have an interest. These funds may include the balances held in one or more bank accounts that were blocked pursuant to Sanctions Regulations of the United States or the proceeds of one or more wire transfers that were interrupted and blocked pursuant to those Regulations. What follows is the text of important legal documents that explain the nature of this lawsuit and what you must do to protect your rights, if any, in the funds at issue in the lawsuit. This is number 1 of _ SWIFT messages incorporating this message and the text of those documents. Please contact [contact information to be supplied]. That person can provide you with additional important legal documents relating to the lawsuit," followed by the text in English of the Service Documents that are being served or delivered (except that the captions of such documents may be abbreviated to show only the name of the first party on either side).

3. In serving any Third-Party Defendants or giving notice to any other persons that that the Court may hereinafter designate to receive notice of this proceeding, any Service Document shall be served in an unredacted form, except that such Service Document, including Exhibit D to the Complaint as well as any Third-Party Complaint, shall be redacted so that the person being served or given notice sees only those portions of the document that relate to Blocked Assets held in that person's name,

that may have involved that person or that that person may have an interest in or right to possession of. This restriction shall not apply to service of the Complaint or any amended complaint upon the United States of America, its agencies, departments and political subdivisions or Iran, all of which shall be served or provided with Exhibit D in an unredacted form, provided however that if the party making such service has not been served with an unredacted copy of the complaint and the exhibits thereto, it need only serve upon United States of America, its agencies, departments and political subdivisions or Iran, a copy of the complaint as served upon it.

4. Service may be made and notice may be given pursuant to this Order by any person authorized to effect service of process under Rule 4(c)(2).

5. If a party making service or giving notice does not know the mail address, e-mail address, fax number or SWIFT address for a Third-Party Defendant or for any other person that it has been directed to give notice to (hereinafter a "No-Address Person"), that party shall send an appropriate version of the notice annexed hereto as Exhibit A1 and/or Exhibit A2, as appropriate, together with an additional copy or copies of the relevant Service Documents, if such notice is being delivered by mail or courier, to any bank that it has reason to believe acted as the originator's bank, beneficiary's bank or bank for that No-Address Person, or to any person that it has reason to believe may be in contact with that No-Address Person, in order to induce such bank or person to forward a copy of the relevant Service Documents to its customer or such other No-Address Person, and such service/notice shall suffice as constituting the best form of notice that can be provided to such No-Address Person under the circumstances.

6. This Order is not intended to and shall not preclude the service of process upon or the giving of notice to any person by any means authorized by FSIA § 1608, Federal Rule 4, CPLR § 5239 or any other statutory provision or rule of law.

7. If the documents being served on or delivered to a person are too voluminous to be sent by mail or overnight delivery service in a single envelope, or as attachments to a single e-mail, or in a single fax or SWIFT, the documents being mailed or delivered, e-mails, faxes or SWIFTS shall indicate the number of envelopes, e-mails, faxes or SWIFTS, as the case may be, that are being sent.

8. Any party to this proceeding may rely upon the procedures and methods of service authorized in this Order to make service of process upon or provide notice of this action to any other person.

9. To the extent necessary, the sealing order entered in this proceeding on June 26, 2009, is hereby modified, pending this Court entering an order in accordance with its January 11, 2010 endorsement of defendants' January 8, 2010 letter, to authorize the parties to serve copies of the Service Documents upon Third-Party Defendants in third-party proceedings in this proceeding and to give notice of this proceeding as this Court may direct, and nothing in that sealing order, or in any protective order or confidentiality order entered in this action or the Underlying Action, shall prevent any party from serving or delivering copies of the Service Documents to any such Third-Party Defendants or other person entitled to receive notice of this proceeding or from otherwise providing such persons with such information as may be reasonably appropriate to advise them of the blocked account balances, wire transfer proceeds, funds, accounts and assets that relate to them or in which they may have an

interest, but this provision of this Order shall not supersede paragraph 3 of this Order or authorize any party to disclose information to any person with respect to balances, proceeds, funds, accounts or assets that do not involve that person, as a party to a wire transfer, an account holder or otherwise, or in which that person does not have any involvement or interest.

10. Service in accordance with the provisions of this Order shall be deemed to satisfy all of the requirements for service under the FSIA, the Federal Rules and the CPLR and all of the requirements of due process of law.

Dated: New York, New York
January 22, 2010

SO ORDERED:


United States District Judge

ANNEX 327

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JEREMY LEVIN and DR. LUCILLE LEVIN, : Case No. 09 Civ. 5900 (RPP)

Plaintiffs, : **FILE UNDER SEAL**

-against- :

BANK OF NEW YORK, et al., :

Defendants. :

-----X

THE BANK OF NEW YORK MELLON, :

Third-Party Plaintiff, :

-against- :

 et al., :

Third-Party Defendants. : **DECLARATION OF J. KELLEY NEVLING, JR. IN SUPPORT OF THE BANK OF NEW YORK MELLON'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

-----X

J. KELLEY NEVLING, JR. declares under penalty of perjury as follows:

1. I am an attorney duly admitted to practice law in this Court and am Of Counsel to the firm of Levi Lubarsky & Feigenbaum LLP, the attorneys of record for defendant and third-party plaintiff The Bank of New York Mellon ("BNYM") in the above-captioned proceedings. I make this Declaration in support of BNYM's response to plaintiffs' motion for partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, in order to provide certain information to the Court and place certain business records of BNYM before the Court in connection with that motion. The information set forth in this declaration and the documents attached as Exhibits were obtained by me from BNYM or publicly available sources.

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2. The plaintiffs' summary judgment motion seeks the immediate turnover to plaintiffs of the proceeds of three blocked wire transfers that are being held by BNYM in a blocked account. These assets (the "BNYM Phase 1 Assets") were identified in Exhibit D to plaintiffs' complaint in this proceeding and were subsequently designated by plaintiffs for inclusion in Phase 1 of the proceeding.

3. The first of the BNYM Phase 1 Assets consists of the proceeds of a funds transfer in the amount of [REDACTED], together with accrued interest, that was blocked by BNYM on December 24, 2007. A printout of the electronic funds transfer instructions for this blocked funds transfer, which constitute a business record of BNYM, is annexed hereto as Exhibit A. This document reflects that the remitting bank for this funds transfer was [REDACTED], in Kazakhstan, and that BNYM was instructed to route the wire transfer through the [REDACTED] [REDACTED] en route to [REDACTED], which is specified in the funds transfer instructions as the beneficiary [REDACTED] [REDACTED] are not mentioned by name in Exhibit A, but I am informed there are codes in the document that refer to those branches). I have been informed and believe that these funds transfer instructions were not executed by BNYM and that it instead placed the proceeds of the funds transfer in a blocked account in accordance with regulations promulgated by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury. I am informed that BNYM has no information about this blocked wire transfer, or about any of the BNYM Phase 1 Assets, apart from the information contained in the wire transfer instructions that it received with respect thereto.

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4. The second of the BNYM Phase 1 Assets consists of the proceeds of a funds transfer in the amount of \$2,592,411.74, together with accrued interest, that was also blocked by BNYM on December 24, 2007. A printout of the electronic funds transfer instructions for this blocked funds transfer, which constitute a business record of BNYM, is annexed hereto as Exhibit B. This document reflects that the remitting bank for this transfer was [REDACTED], the same remitting bank as the previous transfer, and that BNYM was directed to route the funds transfer through the [REDACTED] [REDACTED], with the intended beneficiary of the funds transfer being [REDACTED] [REDACTED]. I have been informed and believe that these funds transfer instructions were not executed by BNYM and that it instead placed the proceeds of the funds transfer in a blocked account in accordance with OFAC Regulations.

5. Copies of certain pages from [REDACTED] website are annexed hereto as Exhibit C. They refer to [REDACTED] as a "a wholly owned subsidiary of [REDACTED]," an [REDACTED], and indicate that it is incorporated under the laws of [REDACTED]. Section 1603(b) of the Foreign Sovereign Immunities Act of 1976 ("FSIA"), 28 U.S.C. §§ 1602 et seq., defines the term "agency or instrumentality of a foreign state" to mean any entity that, inter alia, "(2) . . . is an organ of a foreign state . . . or a majority of whose shares or other ownership interest is owned by a foreign state . . . , and (3) . . . is neither a citizen of a State of the United States . . . nor created under the laws of any third country."

6. The third of the BNYM Phase 1 Assets consists of the proceeds of a funds transfer in the amount of \$2,692,307.69, together with accrued interest, that was blocked by BNYM on April 17, 2007. A printout of the electronic funds transfer

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instructions for this blocked funds transfer, which constitute a business record of BNYM, is annexed hereto as Exhibit D. This document reflects that the remitting bank for this transfer was [REDACTED], and that BNYM was instructed to route the funds transfer through two branches of [REDACTED] to the intended beneficiary, [REDACTED]. I have been informed and believe that these funds transfer instructions were not executed by BNYM and that it instead placed the proceeds of the funds transfer in a blocked account in accordance with OFAC Regulations.

7. Acting under my supervision, attorneys at my firm filed with the Court on December 31, 2009, a Third-Party Complaint designated as "Third-Party Complaint Against Wire Transfer Parties" dated December 31, 2009 (the "Wire Transfer Third-Party Complaint") that named BNYM as the Third Party Plaintiff and [REDACTED] [REDACTED] as Third-Party Defendants. The purpose of filing and serving this Third-Party Complaint was to make sure that all parties to the blocked funds transfers in Phase 1 of this Action had notice of this proceeding and an opportunity to appear and advise the Court of any objections they might have to turnover of the funds at issue in Phase 1 to the Plaintiffs or to other judgment creditors of the Islamic Republic of Iran.

8. I served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] by Federal Express on February 11, 2010, as authorized by the provisions of this Court's Order Regarding Notice and Service of

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Process that was entered on January 25, 2010. Thereafter my firm received confirmation by e-mail from Federal Express or from the Federal Express website that the documents in question had been delivered to [REDACTED] on February 18, 2010.

9. I served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] by Federal Express on February 11, 2010. Thereafter my firm received confirmation by e-mail from Federal Express or from the Federal Express website that the documents in question had been delivered to [REDACTED] on February 18, 2010.

10. I served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED], by United States mail on February 12, 2010. Thereafter my firm received confirmation from the website of the United States Postal Service that the documents in question had been delivered to [REDACTED] on February 18, 2010.

11. I served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] on March 11, 2010 by personally handing a copy of those and other relevant papers to Nancy Morton, a paralegal employed by [REDACTED] who had been identified to me by an in-house attorney for [REDACTED] as the proper person to receive service on its behalf.

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12. I served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] by Federal Express on February 11, 2010. Thereafter my firm received confirmation by e-mail from Federal Express or from the Federal Express website that the documents in question had been delivered to [REDACTED] on February 15, 2010.

13. I served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] by United States mail on April 15, 2010. Thereafter my firm received confirmation from the website of the United States Postal Service that the documents in question had been delivered to [REDACTED] on April 23, 2010.

14. Employees of Levi Lubarsky & Feigenbaum LLP ("LLF") also served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] by Federal Express on April 26, 2010. Thereafter my firm received confirmation by e-mail from Federal Express or from the Federal Express website that the documents in question had been delivered to [REDACTED] on April 29, 2010.

15. Employees of LLF also served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] Iran by DHL on April 27, 2010. Thereafter my firm received confirmation from the DIIL website that the documents in question had been delivered to [REDACTED] on May 1, 2010.

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16. I served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] by United States mail on March 18, 2010. Thereafter my firm received confirmation from the website of the United States Postal Service that the documents in question had been delivered to [REDACTED] on March 22, 2010.

17. I served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] by United States mail on April 15, 2010. Thereafter my firm received confirmation from the website of the United States Postal Service that the documents in question had been delivered to [REDACTED] on April 23, 2010.

18. Employees of LLF also served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] by Federal Express on April 26, 2010. Thereafter my firm received confirmation by e-mail from Federal Express or from the Federal Express website that the documents in question had been delivered to [REDACTED] on April 28, 2010.

19. Employees of LLF also served a redacted version of the Wire Transfer Third-Party Complaint, together with a Third Party Summons and a copy of the Plaintiffs' Complaint, upon [REDACTED] by DHL on April 27, 2010. Thereafter my firm received confirmation from the DHL website that the documents in question had been delivered to [REDACTED] on May 1, 2010.

20. On December 31, 2009 the defendant banks also filed with this Court a third-party complaint, identified as "Third-Party Complaint Against the United

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States and Other Plaintiffs in Actions Against Iran” dated December 31, 2009. The Third-Party Defendants (other than the United States of America) in that action, who are described in the Third-Party Complaint as the Greenbaum Judgment Creditors, the Acosta Judgment Creditors, the Peterson Judgment Creditors, the Rubin Judgment Creditors, the Bonk Plaintiffs and the Valore Plaintiffs, were served at various times in February 2010 by service upon counsel of record for those parties, as authorized by this Court’s order signed on January 11, 2010, as appears from the affidavits of service on file with the Court (see Docket Nos. 71-78, 83-108). The purpose of filing and serving this Third-Party Complaint was to make sure that all other persons who were judgment creditors of, or were suing, the Islamic Republic of Iran and who had taken steps to notify the defendant banks that they were seeking to execute on or assert claims any assets that might be subject to levy to satisfy such a judgment had notice of this proceeding and an opportunity to appear and advise the Court of any objections they might have to turnover of the funds at issue in Phase 1 to the Plaintiffs or any claims that their rights in such assets took precedence over Plaintiffs’ claims.

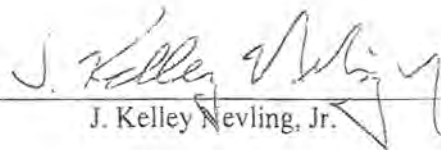
21. On March 22, 2010, the defendant banks filed with this Court another third-party complaint, identified as “Defendants’ and Third-Party Plaintiffs’ Second Third-Party Complaint Against Other Plaintiffs in Actions Against Iran” dated March 22, 2010. The Third-Party Defendants in that action, who are described in the Third-Party Complaint as the Silvia Plaintiffs, the Brown Plaintiffs and the Bland Plaintiffs, were served in March 2010 by service upon counsel of record for those parties, as authorized by this Court’s order signed on January 11, 2010, as appears from the affidavits of service on file with the Court (see Docket Nos. 135-37, 148-150).

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22. On May 27, 2010, Defendants BNYM and JPMorgan Chase Bank, N.A. filed with this Court another third-party complaint dated May 27, 2010. The Third-Party Defendants in that action (referred to in the Plaintiffs' Rule 56.1 Statement as the "Heiser Judgment Creditors") were served on May 28, 2010 by service upon counsel of record for those parties, as authorized by this Court's order signed on May 26, 2010.

23. Annexed hereto as Exhibit E is a copy of the answer filed by [REDACTED] to BNYM's Third-Party Complaint Against Wire Transfer Parties, and annexed hereto as Exhibit F is a copy of the answer filed thereto by [REDACTED].

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York on September 15, 2010.


J. Kelley Nevling, Jr.

ANNEX 328

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JEREMY LEVIN and DR. LUCILLE LEVIN, :

Plaintiffs, :

-against- :

BANK OF NEW YORK, JPMORGAN :
CHASE, SOCIETE GENERALE and :
CITIBANK, :

Defendants. :

-----X

JPMORGAN CHASE BANK, N.A., :

Third-Party Plaintiff, :

-against- :



Case No. 09 Civ. 5900 (RPP)

FILED UNDER SEAL

**THIRD-PARTY
COMPLAINT
AGAINST WIRE
TRANSFER PARTIES**

 :
 :
 Third-Party Defendants. :
 -----X

Defendant and Third-Party Plaintiff JPMorgan Chase Bank, N.A.

("JPM"), improperly sued in the first above-captioned action as "JPMorgan Chase," by its attorneys, Levi Lubarsky & Feigenbaum LLP, as its third-party complaint, alleges as follows:

Nature of the Proceeding

1. Third-Party Plaintiff JPM has brought this third-party proceeding pursuant to section 5239 of the New York Civil Practice Law and Rules ("CPLR"), Rule 22 of the Federal Rules of Civil Procedure ("FRCP"), sections 1335 and 2361 of Title 28, United States Code, section 134 of the New York Banking Law and CPLR § 1006 in order to seek a determination from the Court as to the rights of all claimants and other interested parties with respect to the proceeds of six wire transfers that were halted by JPM, and the proceeds of which are being held by JPM, as required by Executive Orders issued by the President of the United States and blocking regulations issued by the United States Department of the Treasury. Plaintiffs Jeremy and Lucille Levin, the plaintiffs in the first above-captioned proceeding, have recovered a judgment against the Islamic Republic of Iran ("Iran") in a separate action, and they have now commenced the first above-captioned proceeding to obtain an order directing the defendants in that proceeding, including JPM, to turn over to them any such blocked funds that belong to Iran or its agencies or instrumentalities, based on their contention that they were the

victims of an act of terrorism by an organization that received substantial support from Iran and so are entitled to have execution against such blocked funds. Plaintiffs have designated the six wire transfers in question for inclusion in phase one of the first above-captioned proceeding and have indicated that they intend to seek the prompt turnover to them of the proceeds of these wire transfers to satisfy their judgment. JPM has commenced this third-party proceeding to seek a determination as to whether plaintiffs are entitled to the immediate turnover of such funds and whether any other party to the wire transfers in question, or any person having any involvement in any business dealings or other transaction related to those wire transfers, has a claim to or interest in such proceeds that is superior to the rights of Plaintiffs with respect thereto or that would preclude Plaintiffs from executing on such funds to satisfy their judgment.

The Parties

2. Defendant and Third-Party Plaintiff JPMorgan Chase Bank, N.A. is a national banking association organized and existing under the laws of the United States of America, with its main office (as set forth in its Articles of Association) in the State of Ohio, that has offices and branches in the County and State of New York.

3. Upon information and belief, Third-Party Defendant [REDACTED] is a corporation organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

4. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

5. Upon information and belief, Third-Party Defendant [REDACTED] is a corporation organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

6. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

7. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

8. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

9. Upon information and belief, Third-Party Defendant [REDACTED] is a corporation organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

10. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED]. Upon information and belief, [REDACTED] is the successor entity as the result of a merger in 2007 between [REDACTED] and [REDACTED].

11. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in the [REDACTED].

12. Upon information and belief, Third-Party Defendant [REDACTED] is a citizen of [REDACTED].

13. Upon information and belief, Third-Party Defendant [REDACTED] is a corporation organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

14. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

15. Upon information and belief, Third-Party Defendant [REDACTED] is a corporation organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

16. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

17. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

18. Upon information and belief, Third-Party Defendant [REDACTED] is a corporation organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

19. Upon information and belief, Third-Party Defendant [REDACTED] is a corporation organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

20. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

21. Upon information and belief, the Third-Party Defendants were the originators, originators' banks, intermediary banks, beneficiaries' banks or beneficiaries of or in one or more of the six wire transfers halted by JPM, the proceeds of which are held by JPM in blocked accounts, that are involved in phase one of the first above-captioned proceeding (the "Turnover Proceeding").

Jurisdiction and Venue

22. This Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C § 1331, because it arises under the laws and treaties of the United States, in particular the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1601 et seq., and the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322 (2002) ("TRIA"), and pursuant to 28 U.S.C. § 1367, because the matters at issue in this proceeding are so related to the Turnover Proceeding, which is within the original jurisdiction of this Court, that they form part of the same case or controversy. Upon information and belief, this Court also has subject matter jurisdiction over this proceeding

pursuant to 28 U.S.C. § 1332 because this is a proceeding between citizens of a state of the United States and citizens or subjects of one or more foreign states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

23. Upon information and belief, venue of this special proceeding is properly set in this judicial district pursuant to 28 U.S.C. § 1391(a) and (b) because the Turnover Proceeding seeks to enforce a judgment that has been filed in this judicial district and the property that is the subject of this proceeding is located in this district. Upon information and belief, venue is also proper in this county and judicial district pursuant to CPLR § 5221(a), subd. 4, because the judgment that the Turnover Proceeding seeks to enforce has been entered as a judgment with this Court, at a courthouse within this county and judicial district.

Factual Background

24. Upon information and belief, Jeremy and Lucille Levin (“Plaintiffs”), the plaintiffs in the Turnover Proceeding, were previously the plaintiffs in an action entitled *Jeremy Levin, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 05-2494 (GKO), which was brought in the United States District Court for the District of Columbia (the “D.C. Court”) in 2005 (the “Underlying Action”). Upon information and belief, on or about February 6, 2008 the D.C. Court entered a default judgment in the Underlying Action for Plaintiffs and against, *inter alia*, Iran in the amount of \$28,807,719 (the “Judgment”). Upon information and belief, the Judgment was based on findings by the D.C. Court that Plaintiff Jeremy Levin had been kidnapped by Hizbollah in Lebanon in 1984, held prisoner for nearly a year and suffered personal injuries during

his captivity and that Iran had provided material support and resources to Hizbollah to such an extent that it could be held liable for Hizbollah's actions.

25. The Judgment was registered with this Court on or about April 20, 2009, and the complaint in the Turnover Proceeding alleges that on June 19, 2009, Plaintiffs delivered a writ of execution with respect to the Judgment to the United States Marshal's Office for the Southern District of New York.

26. On or about June 26, 2009, Plaintiffs commenced the Turnover Proceeding against JPM and three other banks with offices in New York City (the "Defendants"). The complaint in the Turnover Proceeding seeks the entry of an order directing Defendants to turn over to Plaintiffs the following assets, to the extent Plaintiffs can show that such assets belong to Iran or an agency or instrumentality of Iran: (a) the funds held by Defendants in deposit accounts that have been blocked by Defendants, pursuant to Executive Orders issued by the President of the United States and regulations issued and administered by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury; and (b) the proceeds of wire transfers that were routed through one of the Defendants but halted by Defendants, pursuant to Executive Orders issued by the President of the United States and OFAC regulations. A copy of the complaint in the Turnover Proceeding (redacted in certain ways as to each Third-Party Defendant so as to preserve the confidentiality of information that appears not to relate to the Third-Party Defendant being served) is being served on all Third-Party Defendants with this third-party complaint.

27. In phase one of the Turnover Proceeding, Plaintiffs are seeking the immediate turnover of certain of the assets that are the subject of the Turnover

Proceeding, including the proceeds of six wire transfers that were halted by JPM, the proceeds of which (the “JPM Phase One Assets”) are being held by JPM. Upon information and belief, Plaintiffs contend that the JPM Phase One Assets are subject to execution to satisfy the Judgment because, inter alia, they constitute “blocked assets of” Iran, or of an “agency or instrumentality of” Iran, within the meaning of TRIA § 201(a). Documents identifying the JPM Phase One Assets in which each Third-Party Defendant may, according to JPM’s records, have an interest or be involved or connected with in some way, are being served on such Third-Party Defendant as Exhibit A to this third-party complaint, provided however that each Third-Party Defendant is being served solely with documents relating to the JPM Phase One Assets that may relate to it.

28. Upon information and belief, some of the Third-Party Defendants in this proceeding may have claims to or rights with respect to the JPM Phase One Assets that are superior to the Plaintiffs’ rights to seize those funds to satisfy the Judgment, because such Third-Party Defendants are not agencies or instrumentalities of Iran and those proceeds belong to them, or because their rights in such proceeds are superior to the rights of any agencies or instrumentalities of Iran with respect thereto.

29. Upon information and belief, the Third-Party Defendants in this proceeding may also have claims or rights in the JPM Phase One Assets that are superior to the Plaintiffs’ rights to seize those proceeds to satisfy the Judgment because such proceeds are not subject to execution under applicable law.

First Claim for Relief

30. Repeats and realleges each and every allegation set forth in paragraphs 1 through 29 of this third-party complaint to the same extent as if those allegations were set forth here in full.

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

32. In the circumstances set forth above, JPM is entitled to an order determining the rights of the Plaintiffs and the Third-Party Defendants in and to the JPM Phase One Assets.

Second Claim for Relief

33. Repeats and realleges each and every allegation set forth in paragraphs 1 through 29 of this third-party complaint to the same extent as if those allegations were set forth here in full.

34. As set forth above, Plaintiffs are asserting claims that they are entitled to execute on the JPM Phase One Assets, but some or all of the Third-Party Defendants may also have claims to or rights in some or all of the JPM Phase One Assets that may take priority over Plaintiffs’ claims to those assets or claims that the Plaintiffs are not entitled to execute on some or all of the JPM Phase One Assets to satisfy the Judgment.

35. By reason of the foregoing, JPM is exposed to the risk of multiple and inconsistent liability with respect to the JPM Phase One Assets.

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

Third Claim for Relief

37. Repeats and realleges each and every allegation set forth in paragraphs 1 through 29, 31, 32 and 34 through 36 of this third-party complaint to the same extent as if those allegations were set forth here in full.

38. By reason of the foregoing, JPM is entitled to a declaratory judgment determining its rights and the rights of the Third-Party Defendants, the Plaintiffs and others with respect to the JPM Phase One Assets.

WHEREFORE Defendant and Third-Party Plaintiff JPMorgan Chase Bank, N.A. respectfully requests the entry of a judgment

(1) determining its rights and the rights of the Third-Party Defendants and other interested parties in the JPM Phase One Assets;

(2) determining whether any of the Third-Party Defendants is an agency or instrumentality of the Islamic Republic of Iran;

(3) determining with respect to each of JPM Phase One Assets whether the Plaintiffs have met their burden of proof with respect to the other requirements and conditions set forth in section 201 of TRIA for execution against such assets;

(4) determining that the service made by JPMorgan Chase Bank, N.A. of this third-party complaint, the third-party summonses and other relevant documents constitutes good and sufficient service under CPLR § 5239 and any other applicable provision of law;

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

(6) determining whether JPMorgan Chase Bank, N.A. is a proper garnishee and has properly been subjected to execution of the Judgment with respect to JPM Phase One Assets;

(7) determining whether and to what extent, if any, each of the JPM Phase One Assets is subject to execution to satisfy the Judgment or any judgment entered heretofore or hereafter against the Islamic Republic of Iran in favor of any party to any other third-party proceeding brought by JPMorgan Chase Bank, N.A., and the extent to which any person is entitled to the turnover of such assets;

(8) discharging JPMorgan Chase Bank, N.A. from any and all liability to the Third-Party Defendants and any and all other claimants and interested persons with respect to any portion of the JPM Phase One Assets that may be turned over to Plaintiffs in satisfaction of the Judgment, or to any party to any other third-party proceeding brought by JPMorgan Chase Bank, N.A.;

(9) awarding to JPMorgan Chase Bank, N.A. its costs and expenses in this proceeding, including reasonable attorneys' fees; and

(10) awarding to JPMorgan Chase Bank, N.A. such other and further relief as may be just and proper.

Dated: New York, New York
December 31, 2009

LEVI LUBARSKY & FEIGENBAUM LLP

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ANNEX 329

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JEREMY LEVIN and DR. LUCILLE LEVIN, :

Plaintiffs, :

-against- :

BANK OF NEW YORK, JPMORGAN
CHASE, SOCIETE GENERALE and
CITIBANK, :

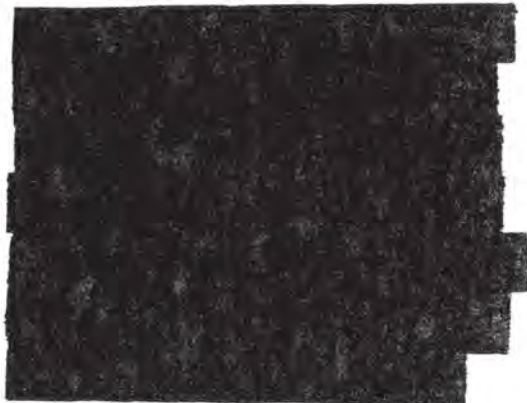
Defendants. :

-----X

THE BANK OF NEW YORK MELLON, :

Third-Party Plaintiff, :

-against- :



Third-Party Defendants. :

-----X

Case No. 09 Civ. 5900 (RPP)

FILED UNDER SEAL

THIRD-PARTY
COMPLAINT
AGAINST WIRE
TRANSFER PARTIES

Defendant and Third-Party Plaintiff The Bank of New York Mellon, improperly sued in the first above-captioned proceeding as "Bank of New York" ("BNYM"), by its attorneys, Levi Lubarsky & Feigenbaum LLP, as its third-party complaint, alleges as follows:

Nature of the Proceedings

1. Third-Party Plaintiff BNYM has brought this third-party proceeding pursuant to section 5239 of the New York Civil Practice Law and Rules (“CPLR”), Rule 22 of the Federal Rules of Civil Procedure (“FRCP”), sections 1335 and 2361 of Title 28, United States Code, section 134 of the New York Banking Law and CPLR § 1006 in order to seek a determination from the Court as to the rights, if any, of all claimants and other interested parties with respect to the proceeds of three wire transfers that were halted by BNYM, and the proceeds of which are being held by BNYM, as required by Executive Orders issued by the President of the United States and blocking regulations issued by the United States Department of the Treasury. Plaintiffs Jeremy and Lucille Levin, the plaintiffs in the first above-captioned proceeding, have recovered a judgment against the Islamic Republic of Iran (“Iran”) in a separate action, and they have now commenced the first above-captioned proceeding to obtain an order directing the defendants in that proceeding, including BNYM, to turn over to them any such blocked funds that belong to Iran or its agencies or instrumentalities, based on their contention that they were the victims of an act of terrorism by an organization that received substantial support from Iran and so are entitled to have execution against such blocked funds. Plaintiffs have designated the three wire transfers in question for inclusion in phase one of the first above-captioned proceeding and have indicated that they intend to seek the prompt turnover to them of the proceeds of these wire transfers to satisfy their judgment. BNYM has commenced this third-party proceeding to seek a determination as to whether Plaintiffs are entitled to the immediate turnover of such funds and whether any other party to the wire transfers in question, or any person having

any involvement in any business dealings or other transaction related to those wire transfers, has a claim to or interest in such proceeds that is superior to the rights of Plaintiffs with respect thereto or that would preclude Plaintiffs from executing on such funds to satisfy their judgment.

The Parties

2. Defendant and Third-Party Plaintiff The Bank of New York Mellon is a bank chartered and operating under the laws of the State of New York with its principal place of business in the State of New York.

3. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

4. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

5. Upon information and belief, Third-Party Defendant [REDACTED] is either a branch of [REDACTED] or a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

6. Upon information and belief, Third-Party Defendant [REDACTED] is either a branch of [REDACTED] or a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED].

7. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED]

8. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED]

9. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED]

10. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED]

11. Upon information and belief, Third-Party Defendant [REDACTED] is a bank organized and existing under the laws of [REDACTED] with its principal place of business in [REDACTED]

12. Upon information and belief, the Third-Party Defendants were the originators, originators' banks, intermediary banks, beneficiaries' banks or beneficiaries of or in one or more of the three wire transfers halted by BNYM, the proceeds of which are held by BNYM in blocked accounts, that are involved in phase one of the first above-captioned proceeding (the "Turnover Proceeding").

Jurisdiction and Venue

13. This Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331, because it arises under the laws and treaties of the United States, in particular the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1601 et seq., and the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322 (2002) (“TRIA”), and pursuant to 28 U.S.C. § 1367, because the matters at issue in this proceeding are so related to the Turnover Proceeding, which is within the original jurisdiction of this Court, that they form part of the same case or controversy. Upon information and belief, this Court also has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1332 or 28 U.S.C. § 1335, because this proceeding is either a proceeding between citizens of a state of the United States and citizens or subjects of one or more foreign states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, or it involves money or property of the value of \$500 or more in the custody or possession of BNYM and there are at least two Third-Party Defendants of diverse citizenship.

14. Upon information and belief, venue of this special proceeding is properly set in this judicial district pursuant to 28 U.S.C. § 1391(a) and (b) because the Turnover Proceeding seeks to enforce a judgment that has been filed in this judicial district and the property that is the subject of this proceeding is located in this district. Upon information and belief, venue is also proper in this county and judicial district pursuant to CPLR § 5221(a), subd. 4, because the judgment that the Turnover Proceeding seeks to enforce has been entered as a judgment with this Court, at a courthouse within this county and judicial district.

Factual Background

15. Upon information and belief, Jeremy and Lucille Levin (“Plaintiffs”), the plaintiffs in the Turnover Proceeding, were previously the plaintiffs in an action entitled *Jeremy Levin, et al. v. Islamic Republic of Iran, et al.*, Civil Action No. 05-2494 (GKO), which was brought in the United States District Court for the District of Columbia (the “D.C. Court”) in 2005 (the “Underlying Action”). Upon information and belief, on or about February 6, 2008, the D.C. Court entered a default judgment in the Underlying Action for Plaintiffs and against, *inter alia*, Iran in the amount of \$28,807,719 (the “Judgment”). Upon information and belief, the Judgment was based on findings by the D.C. Court that Plaintiff Jeremy Levin had been kidnapped by Hizbollah in Lebanon in 1984, held prisoner for nearly a year and suffered personal injuries during his captivity and that Iran had provided material support and resources to Hizbollah to such an extent that it could be held liable for Hizbollah’s actions.

16. The Judgment was registered with this Court on or about April 20, 2009, and the complaint in the Turnover Proceeding alleges that on June 19, 2009, Plaintiffs delivered a writ of execution with respect to the Judgment to the United States Marshal’s Office for the Southern District of New York.

17. On or about June 26, 2009, Plaintiffs commenced the Turnover Proceeding against BNYM and three other banks with offices in New York City (the “Defendants”). The complaint in the Turnover Proceeding seeks the entry of an order directing Defendants to turn over to Plaintiffs the following assets, to the extent Plaintiffs can show that such assets belong to Iran or an agency or instrumentality of Iran: (a) the funds held by Defendants in deposit accounts that have been blocked by Defendants,

pursuant to Executive Orders issued by the President of the United States and regulations issued and administered by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury; and (b) the proceeds of wire transfers that were routed through one of the Defendants but halted by Defendants, pursuant to Executive Orders issued by the President of the United States and OFAC regulations. A copy of the complaint in the Turnover Proceeding (redacted in certain ways as to each Third-Party Defendant so as to preserve the confidentiality of information that appears not to relate to the Third-Party Defendant being served) is being served on all Third-Party Defendants with this third-party complaint.

18. In phase one of the Turnover Proceeding, Plaintiffs are seeking the immediate turnover of certain of the assets that are the subject of the Turnover Proceeding, including the proceeds of three wire transfers that were halted by BNYM, the proceeds of which (the "BNYM Phase One Assets") are being held by BNYM. Upon information and belief, Plaintiffs contend that the BNYM Phase One Assets are subject to execution to satisfy the Judgment because, inter alia, they constitute "blocked assets of" Iran, or of an "agency or instrumentality of" Iran, within the meaning of TRIA § 201(a). Documents identifying the BNYM Phase One Assets in which each Third-Party Defendant may, according to BNYM's records, have an interest or be involved or connected with in some way, are being served on such Third-Party Defendant as Exhibit A to this third-party complaint, provided however that each Third-Party Defendant is being served solely with documents relating to the BNYM Phase One Assets that may relate to it.

19. Upon information and belief, some of the Third-Party Defendants in this proceeding may have claims to or rights with respect to the BNYM Phase One Assets that are superior to the Plaintiffs' rights to seize those funds to satisfy the Judgment, because such Third-Party Defendants are not agencies or instrumentalities of Iran and those proceeds belong to them, or because their rights in such proceeds are superior to the rights of any agencies or instrumentalities of Iran with respect thereto.

20. Upon information and belief, the Third-Party Defendants in this proceeding may also have claims or rights in the BNYM Phase One Assets that are superior to the Plaintiffs' rights to seize those proceeds to satisfy the Judgment because such proceeds are not subject to execution under applicable law.

First Claim for Relief

21. Repeats and realleges each and every allegation set forth in paragraphs 1 through 20 of this third-party complaint to the same extent as if those allegations were set forth here in full.

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

23. In the circumstances set forth above, BNYM is entitled to an order determining the rights of the Plaintiffs and the Third-Party Defendants in and to the BNYM Phase One Assets.

Second Claim for Relief

24. Repeats and realleges each and every allegation set forth in paragraphs 1 through 20 of this third-party complaint to the same extent as if those allegations were set forth here in full.

25. As set forth above, Plaintiffs are asserting claims that they are entitled to execute on the BNYM Phase One Assets, but some or all of the Third-Party Defendants may also have claims to or rights in some or all of the BNYM Phase One Assets that may take priority over Plaintiffs' claims to those assets or claims that the Plaintiffs are not entitled to execute on some or all of the BNYM Phase One Assets to satisfy the Judgment.

26. By reason of the foregoing, BNYM is exposed to the risk of multiple and inconsistent liability with respect to the BNYM Phase One Assets.

27. In these circumstances BNYM is entitled to interplead all other parties who may have claims to the BNYM Phase One Assets and obtain a determination by the Court, pursuant to Banking Law § 134, Rule 22 of the FRCP, 28 U.S.C. §§ 1335 and 2361 and CPLR § 1006, of the rights of all interested parties with respect thereto.

Third Claim for Relief

28. Repeats and realleges each and every allegation set forth in paragraphs 1 through 20, 22, 23 and 25 through 27 of this third-party complaint to the same extent as if those allegations were set forth here in full.

29. By reason of the foregoing, BNYM is entitled to a declaratory judgment determining its rights and the rights of the Third-Party Defendants, the Plaintiffs and others with respect to the BNYM Phase One Assets.

WHEREFORE Defendant and Third-Party Plaintiff The Bank of New York Mellon respectfully requests the entry of a judgment

(1) determining its rights and the rights of each of the Third Party Defendants and other interested parties in the BNYM Phase One Assets;

(2) determining whether any of the Third-Party Defendants is an agency or instrumentality of the Islamic Republic of Iran;

(3) determining with respect to each of BNYM Phase One Assets whether the Plaintiffs have met their burden of proof with respect to the other requirements and conditions set forth in section 201 of TRIA for execution against such assets;

(4) determining that the service made by The Bank of New York Mellon of this third-party complaint, the third-party summonses and other relevant documents constitutes good and sufficient service under CPLR § 5239 and any other applicable provision of law;

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

(6) determining whether The Bank of New York Mellon is a proper garnishee and has properly been subjected to execution of the Judgment with respect to any of the BNYM Phase One Assets;

(7) determining whether and to what extent, if any, of each of the BNYM Phase One Assets is subject to execution to satisfy the Judgment or any judgment

entered heretofore or hereafter against the Islamic Republic of Iran in favor of any party to any other third-party proceeding brought by The Bank of New York Mellon, and the extent to which any person is entitled to the turnover of such assets;

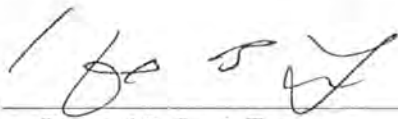
(8) discharging The Bank of New York Mellon from any and all liability to the Third-Party Defendants and any and all other claimants and interested persons with respect to any portion of the BNYM Phase One Assets that may be turned over to Plaintiffs in satisfaction of the Judgment, or to any party to any other third-party proceeding brought by the Bank of New York Mellon;

(9) awarding to The Bank of New York Mellon its costs and expenses in this proceeding, including reasonable attorneys' fees; and

(10) awarding to The Bank of New York Mellon such other and further relief as may be just and proper.

Dated: New York, New York
December 31, 2009

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ANNEX 330

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
JEREMY LEVIN and DR. LUCILLE LEVIN, :
: :

Plaintiffs, :
: :

- against - :
: :

BANK OF NEW YORK, JPMORGAN CHASE, :
SOCIETE GENERALE, and CITIBANK, :
: :

Defendants. :
: :

Case No. 09 Civ. 5900 (RPP)

----- x
THE BANK OF NEW YORK MELLON, :
JPMORGAN CHASE BANK, N.A., SOCIETE :
GENERALE and CITIBANK, N.A., :
: :

Third-Party Plaintiffs, :
: :

- against - :
: :

STEVEN M. GREENBAUM, STEVEN M. :
GREENBAUM (as administrator of the estate of :
JUDITH GREENBAUM), ALAN D. :
HAYMAN, SHIRLEE HAYMAN, et al., :
: :

Third-Party Defendants. :
: :
----- x

**MEMORANDUM OF LAW OF CITIBANK, N.A. AND JPMORGAN
CHASE BANK, N.A. IN RESPONSE TO PLAINTIFFS' PARTIAL MOTION FOR
SUMMARY JUDGMENT ON CLAIMS FOR TURNOVER ORDER PHASE ONE ASSETS**

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Citibank, N.A. (“Citi”) and JPMorgan Chase Bank, N.A. (“JPMorgan”) (collectively, the “Banks”), respectfully submit this Memorandum of Law in response to the motion filed by plaintiffs Jeremy and Dr. Lucille Levin (“Plaintiffs”) seeking partial summary judgment and a turnover order as to each garnishee bank, dated July 13, 2010 (the “Motion”). The Motion seeks turnover of certain blocked assets designated by Plaintiffs for inclusion in Phase 1 of this proceeding that were blocked prior to June 30, 2008 (the “Phase 1 Assets”), and which are set forth therein. The response is limited to the Phase 1 Assets that are the subject of Plaintiffs’ Motion.

PRELIMINARY STATEMENT

Plaintiffs have a judgment against the Islamic Republic of Iran and various Iranian government entities (“Iran”), and are now seeking to execute against certain assets blocked pursuant to an Executive Order or regulations promulgated and/or administered by the Office of Foreign Assets Control (“OFAC”) of the United States Department of the Treasury, which assets are held in accounts at the Banks and other financial institutions in New York. Iran has long been the subject of numerous blocking and sanctions programs, some specifically targeted at Iran, others as part of sanctions aimed at terrorist parties and their supporters worldwide, which have the effect of directing banks (and other financial institutions) to interrupt and/or block certain transactions and/or assets. *See Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Elahi (“Elahi”)*, 129 S. Ct. 1732 (2009) (discussing the blocking and unblocking of Iranian assets); *Bank of New York v. Rubin*, 484 F.3d 149 (2d Cir. 2007), *aff’g in part and vacating in part* 2006 WL 633315 (S.D.N.Y. Mar. 15, 2006) (discussing the history and background of the economic sanctions programs against Iran); *In re Islamic Republic of Iran Terrorism Litigation*, 659 F. Supp. 2d 31, 36 n.1 (D.D.C. 2009) (same); *see generally* Jennifer K.

Elsa, Cong. Research Serv. Suits Against Terrorist States by Victims of Terrorism (Updated August 8, 2008) (hereinafter “Elsa, Suits Against Terrorist States”).¹

The difficulties inherent in collecting a judgment against Iran by victims of terrorism are well known and the Banks have no interest in thwarting Plaintiffs’ efforts to collect assets in satisfaction of their judgment. *See generally In re Islamic Republic of Iran Terrorism Litigation*, 659 F. Supp. 2d at 40-58; Elsa, Suits Against Terrorist States. Rather, the Banks have sought to ensure that Plaintiffs identify which accounts should be the focus of these proceedings, and requested that the Court determine the person and entities to whom notice must be provided, and the form and manner of notice that meets statutory and due process requirements. Thus, the Banks have sought to ensure that the rights of other judgment holders (and terrorism victims) as well as absent third-party claimants are respected and the Banks are protected from the risk of multiple and inconsistent liability. The Banks take no position here on which of the other

¹ The legal issues attendant to attaching assets under Section 201(a) of the Terrorism Risk Insurance Act of 2002, 28 U.S.C. § 1610 note (“TRIA”) that are blocked pursuant to OFAC regulations – particularly electronic funds transfers (“EFTs”) – were raised by the Banks at the onset of these proceedings. The Banks requested that the United States be apprised of these proceedings so it could express its views on these issues. Declaration of Sharon L. Schneier in Support of Citibank’s Response, dated September 15, 2010, filed herewith (“Schneier Decl.”) Ex. 1. Indeed, this Court wrote to the Department of State and OFAC notifying those agencies of these proceedings and encouraging their participation. As directed by the Court the Parties have served the United States with copies of all papers (including those subject to the Protective Order) in this case. 28 U.S.C. § 517 authorizes the Attorney General to attend to the interest of the United States in any proceeding in which the United States is not a party. Nevertheless, we understand that the Government has not indicated its position on the issues here. *See* Plaintiffs’ Memorandum of Law at 27 n.4. Judge Lamberth (who has presided over many cases brought against Iran by terrorism victims) has similarly recognized that “the appearance of the United States in actions against Iran has greatly assisted the Court,” and invited the United States to file briefs addressing issues before that Court. *See In re Islamic Republic of Iran Terrorism Litigation*, 659 F. Supp. 2d at 137.

As more fully set forth herein, the United States did file Statements of Interest in *Rux v. ABN AMRO Bank N.V.*, No. 08 Civ. 06588 (AKH) (S.D.N.Y.) (the “*Rux* Litigation”), which dealt with blocked wire transfers under the Sudan Sanctions Regulations, and other issues relevant to the Court’s consideration of the Motion. Copies of those Statements of Interest are annexed to the Schneier Decl. as Exs. 2–5 and are discussed *infra* at A.3.

victims who obtained judgments against Iran – and have opposed Plaintiffs’ Motion – should have priority in executing on particular assets. These judgment holders have, consistent with the Court’s orders, been brought into these proceedings as third-party defendants so that these issues could be addressed and resolved with the participation of all necessary parties, and they have set forth their various positions for the Court’s consideration.

It is undisputed that to order the turnover of the Phase 1 Assets, the Court must find that Plaintiffs (or the other judgment holders) have demonstrated that those “blocked assets” are in fact owned by Iran or its agencies or instrumentalities. *Weininger v. Castro*, 462 F. Supp. 2d 457, 494-500 (S.D.N.Y. 2006). To meet their burden, Plaintiffs point, in part, to the fact that OFAC has ordered the blockage of the accounts and/or wire transfers that are the subject of the Motion. OFAC has set forth its position regarding the legal title of the blocked assets or whether any of the assets may be attachable in the *Rux* Litigation, and made clear that the fact that OFAC has blocked a particular transaction is not determinative of who owns the property. *See* August 22, 2008 Statement of Interest filed by OFAC, *Rux* Litigation, Schneier Decl., Ex. 2; Declaration of John E. Smith, ¶¶ 10-15, *Rux* Litigation, Schneier Decl., Ex. 3. *See also* Nov. 21, 2008 Statement of Interest of the United States of America, *Rux* Litigation, Schneier Decl., Ex. 4. *See infra* A.3. The issue of whether the beneficiary of a wire transfer could have an attachable interest – such as those sought by Plaintiffs here – has been questioned by OFAC. *See* Jan. 12, 2009 Statement of Interest of the United States of America at 2, 10 n.5, *Rux* Litigation, Schneier Decl., Ex. 5. OFAC has also made clear that “the mere fact that [] property at issue here has been blocked pursuant to [OFAC Sanctions Regulations] – even in the absence of any claimant’s objection – does not, without more, establish it as property of [the terrorist party] for purposes of attachability under TRIA, nor does it establish that the Petitioners are entitled to the

assets under Rule 69.” Nov. 21, 2008 Statement of Interest of the United States of America at 11, *Rux* Litigation, Schneier Decl., Ex. 4.

Recently, The Honorable Victor Marrero of this Court issued a decision in *Hausler v. JPMorgan Chase*, No. 09 Civ. 10289 (VM) (S.D.N.Y. Sept. 10, 2010) (the “*Hausler* Decision”), and held that electronic funds transferred (“EFTs”) blocked under the Cuban Asset Control Regulations issued by OFAC are subject to execution under TRIA.² The Court held, *inter alia*, that “blocked assets” under TRIA are broadly defined as any assets blocked under OFAC regulations and those assets, which include those that Cuba has an “interest in” rather than “ownership of” are therefore subject to an appropriate turnover proceeding. It did so without distinguishing between the various “interests” that the various parties may have in an EFT. *Hausler* Decision, slip op. at 20. The Court also rejected several recent Second Circuit decisions which establish that funds transfers in the hands of intermediary banks³ are not assets of the originator or the beneficiary of the funds transfer.⁴ The Court ruled, *inter alia*, that TRIA

² In *Hausler*, The Clearing House Association L.L.C. was granted leave to file an *amicus curiae* brief, a copy of which is provided to this Court. Schneier Decl., Ex. 6. In that proceeding, Petitioner seeks to execute against the proceeds of thirty international EFTs that have been blocked pursuant to the Cuban Asset Control Regulations. The Respondents moved to dismiss the turnover petition insofar as it seeks turnover and execution against blocked wire transfers in respect of which the alleged Cuban Government party is either the beneficiary or the beneficiary’s bank (docket Nos. 53-55), which was opposed by Petitioners. Docket No. 72. On September 10, 2010, Judge Marrero issued a Decision and Order denying the motion. Schneier Decl., Ex. 7.

³ Under New York law, an “[i]ntermediary bank” is a “receiving bank other than the originator’s bank or the beneficiary’s bank.” N.Y. U.C.C. § 4-A-104(2).

⁴ See, e.g., *Scanscot Shipping Services GmbH v. Metales Tracomex Ltda.*, ___ F.3d ___, 2010 WL 3169304, at *1 (2d Cir. Aug. 12, 2010) (“EFTs in the temporary possession of an intermediary bank are not the property of either the originator or the beneficiary of the EFT, ... [and] cannot be subject to attachment under [Fed. R. Civ. P. Supp.] Rule B where the defendant is either the originator or the beneficiary.”) (citation omitted); *Export-Import Bank of the United States v. Asia Pulp & Paper Co., Ltd.* (“*Asia Pulp & Paper*”), 609 F.3d 111, 120 (2d Cir. 2010) (“[C]redits in an intermediary bank are credits in favor of the originator’s bank, and are not property of either the originator or the beneficiary.”); *Shipping Corp. of India Ltd. v. Jaldhi*

preempted state law and rejected the argument that the underlying property rights of parties to an EFT – which are at issue here in Phase 1 – are governed by Article 4-A of the Uniform Commercial Code (“U.C.C.”). The Court further noted that “even if Article 4-A were applicable here ... Article 4-A does not address the issue of interests in as opposed to ownership of EFTs, and thus would not necessarily foreclose execution under TRIA” and the OFAC regulations.

Hausler Decision, slip op. at 22-23.

While the Banks respectfully disagree with the Court’s decision in *Hausler*, given the posture of this case we raise these points and authorities for the Court’s benefit and, in the event this case proceeds to Phase 2 (or other proceedings), the Banks reserve the right to address these issues more fully. In all events, this Court must find that Plaintiffs have demonstrated their entitlement to turnover of the Phase 1 Assets under TRIA and Rule 69 of the Federal Rules of Civil Procedure.

STATEMENT OF FACTS

A. Background

1. The Original Action

Plaintiffs filed a lawsuit in the District of Columbia on December 30, 2005 against the Islamic Republic of Iran and various Iranian government entities (“Iran”) under 28 U.S.C. § 1605(a)(7) (2007) of the Foreign Sovereign Immunities Act (“FSIA”) to seek compensation from Iran for injuries suffered in connection with the 1984 kidnapping of plaintiff Jeremy Levin in Beirut, Lebanon, by Hezbollah terrorists with the training and support of Iran. *See* Complaint, ¶¶ 1, 2, 15. On February 6, 2008, the United States District Court for the District of Columbia

Overseas Pte Ltd. (“Jaldhi”), 585 F.3d 58, 71 (2d Cir. 2009) (“EFTs in the temporary possession of an intermediary bank are not property of either the originator or the beneficiary under New York law.”), *cert. denied*, 130 S. Ct. 1896 (2010).

awarded Plaintiffs a judgment in the amount of \$28,807,719 (including prejudgment interest), plus post-judgment interest at the applicable federal rate. *See id.*, ¶¶ 26 and Ex. A thereto. The judgment was registered in this district on or about April 20, 2009. Plaintiffs' Statement of Undisputed Facts, ¶ 6.

On October 6, 2008, OFAC responded to a subpoena served by the Plaintiffs by producing, *inter alia*, a list identifying assets reported to OFAC as blocked due to an apparent nexus with designated entities of Iran pursuant to various Executive Orders and under OFAC regulations ("OFAC Attachment A"). This information, produced pursuant to a September 30, 2008 protective order entered by the United States District Court for the District of Columbia, provided the names of financial institutions in the United States that had reported such blocked funds, the names of the remitters of the funds, and the amount reported blocked in the twelve month period prior to June 30, 2008.

2. The Proceedings in the Southern District of New York

On or about June 26, 2009, Plaintiffs commenced a proceeding in this Court under, *inter alia*, the TRIA, 28 U.S.C. § 1610, Rule 69 of the Federal Rules of Civil Procedure and Sections 5225(b), 5232 and 5234(b) of the C.P.L.R., seeking to execute the judgment against certain blocked assets identified by OFAC in OFAC Attachment A and held in accounts of the defendants (collectively, the "Defendant Banks").

Plaintiffs served the Defendant Banks with an Information Subpoena dated September 28, 2009 (the "Information Subpoena"), which Citi answered with respect to Phase 1 assets on October 30, 2009. *See* Declaration of Suzelle Smith, dated July 13, 2010 ("Smith Decl."), Ex. 11. Also, on March 2, 2010, Citi also produced documents in response to Plaintiffs Request for Production dated January 26, 2010. *See* Schneier Decl., ¶ 9 and Ex. 8. All discovery was produced subject to the protections of the protective order entered on September 29, 2008 by

the District Court for the District of Columbia and the Stipulation and Order dated October 26, 2009 and “So-Ordered” on the same day by the Honorable Robert P. Patterson in this proceeding. Smith Decl., Ex. 14.

JPMorgan served its answers to the Information Subpoena on October 27, November 6 and December 9, 2009 and it produced documents on March 1, 2010 in response to Plaintiffs’ January 26, 2010 Request for Production. JPMorgan’s answers to the Information Subpoena and certain of the documents produced by it were also designated as “Confidential.” Declaration of J. Kelley Nevling Jr. (“Nevling Decl.”) ¶ 14.

At the request of the parties, on January 11, 2010 this Court entered an Order Authorizing Third-Party Interpleader Complaints and divided the proceeding into two phases. In Phase 1, the Court would determine the right of Plaintiffs to execute and collect on assets selected by Plaintiffs (the “Phase 1 Assets” as identified in Exhibits A-D of the Complaint) from among those listed in OFAC Attachment A. Phase 2 would involve other assets within the scope of the complaint. By Order of June 23, 2010, the Court clarified that determination of Plaintiffs’ rights to any assets blocked by OFAC subsequent to those listed in OFAC Attachment A would be part of a separate proceeding with respect to Phase 2.⁵

3. The Applicable Sanctions Programs

Iran has been the subject of numerous blocking and sanctions programs, some specifically targeted at Iran, others as part of sanctions aimed at terrorist parties and their supporters worldwide. *See, e.g.*, 31 C.F.R. Parts 535, 544, 560, 594-597 (2010). *See also Elahi*,

⁵ Both Plaintiffs and the Court have expressly excluded from the scope of this proceeding assets referred to as the “Clearstream Assets” which are subject to an attachment and turnover proceeding before another judge in this district. *See* Letter from counsel for Plaintiffs to Judge Patterson dated June 1, 2010 at 3, and Order dated June 10, 2010 at 2-3, Smith Decl., Exs. 45 and 46, respectively.

129 S. Ct. 1732; *Bank of New York v. Rubin*, 484 F.3d 149 (discussing the history and background of the economic sanctions programs against Iran); *In re Republic of Iran Terrorism Litigation*, 659 F. Supp. 2d at 36 n.1 (same); Elsea, Suits Against Terrorist States.

The sanctions regulations provide a long list of the types of property that can be blocked, *see, e.g.*, 31 C.F.R. § 544.308 (2010), and broadly define the interest that Iran must have in such property to permit seizure, *see id.* § 544.305 (2010) (“an interest of any nature whatsoever, direct or indirect.”). Funds transfers are not within the list of seizable property or property interests. *See also* 31 C.F.R. §§ 594.306 and 595.307 (2010).

Certain Phase 1 assets have been blocked pursuant to such Executive Orders and OFAC regulations, on the grounds that a person or entity identified by the Secretary of State or the Treasury Department is either a proliferator of weapons of mass destruction or designated as one of its supporters and has an “interest” in the blocked asset. *See* 31 C.F.R. Part 544 (2010); Executive Order No. 13,382, 70 Fed. Reg. 38,567 (July 1, 2005). Other Phase 1 assets were blocked pursuant to Executive Order No. 13,224, 66 Fed. Reg. 49,079 (September 25, 2001) because a person or entity who allegedly has an “interest” in the asset has been placed on the Specially Designated Global Terrorist Sanctions list, and accordingly the asset must be blocked. *See* 31 C.F.R. Parts 594, 595 (2010).

The Defendant Banks make no independent assessment of the terrorist status of an account holder or wire transfer party that is subject to blocking pursuant to these regulations. Rather, they simply block (1) any account in their possession where the designated name appears, and (2) any wire transfer when the designated name appears in the string of parties to the wire transfer. If an EFT or account is blocked, the assets are placed in an interest bearing “blocked” or “suspense” account. *See infra* B.2.

Courts have recognized the breadth of the OFAC regulations with respect to defining the interest in property that subjects that property to seizure and “have repeatedly upheld OFAC’s authority to interpret broadly the term ‘any interest’ in the identical provisions of the [International Emergency Economic Powers Act], and its predecessor statute, the [Trading With Enemy Act].” *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57, 67 (D.D.C. 2002), *aff’d*, 333 F.3d 156 (D.C. Cir. 2003). The fact that OFAC has blocked a particular transaction, funds property or asset is not determinative of who owns the property. *Bank of New York v. Norilsk Nickel*, 14 A.D.3d 140, 147, 789 N.Y.S.2d 95, 100 (1st Dep’t 2004) (OFAC blocking regulations are “based on interests in property and the use to which such property [is] put, not based on who own[s] the property in question.”). OFAC itself has made this point advising Plaintiffs in its cover letter to the Plaintiffs that “OFAC has made no determination as to the ownership or other cognizable property interest of Iran in any of the identified assets” and for purposes of the sanctions programs “in many cases the interest may be partial, or may fall short of title to the property.” Smith Decl., Ex. 2 at 2 & n.4. This same point was made by OFAC in the *Rux* Litigation in a declaration submitted to the Court by the Associate Director of its Office of Program Policy and Implementation in support of its formal Statement of Interest in that proceeding:

A minor and subordinate property interest of a sanctions target ... can trigger a blocking, even where some other non-sanctioned party has a superior ownership interest in the property. ... OFAC Regulations require the blocking of assets far beyond what the sanctions target actually owns. *Indeed, much of the property that is blocked pursuant to an OFAC-administered sanctions program would not normally be considered to be owned by the sanctions target.*

Declaration of John E. Smith, ¶ 9 (emphasis provided), Schneier Decl., Ex. 3. *See also* Nov. 21, 2008 Statement of Interest of the United States of America at 10, *Rux* Litigation, Schneier Decl.,

Ex. 4 (“the fact that the assets are blocked establishes only that the Government of Sudan has some blockable ‘property interest’ – as that term is broadly defined by OFAC for purposes of the SSR regime – in the assets”); Aug. 22, 2008 Letter of the United States of America at 3, *Rux* Litigation, Schneier Decl., Ex. 2 (discussing the broad regulatory definition of “property interest” which results in wire transfers that are blocked but may not be attachable under TRIA). Nevertheless, Judge Marrero essentially concluded that an interest sufficient to render the asset subject to blocking under OFAC regulations is equally sufficient to make that asset – including an EFT – eligible for attachment under TRIA by plaintiffs holding a judgment against the applicable terrorist party.

4. The Other Judgment Debtors

Pursuant to the January 11, 2010 Order authorizing interpleader, as supplemented thereafter, Defendants served third-party complaints on all those individuals and/or entities who they had reason to believe may assert or have an interest in the Phase 1 assets. These parties include owners of blocked deposit accounts or parties to blocked EFTs which are subject to Phase 1. Smith Decl., Exs. 23-36. Timely answers to the third-party complaints were served by the plaintiffs or judgment holders in *Acosta v. Islamic Republic of Iran*, Case No. 06-745 (D.D.C.); *Greenbaum v. Islamic Republic of Iran*, Case No. 02-2148 (D.D.C.); *Rubin v. Islamic Republic of Iran*, Case No. 01-1655 (D.D.C.); *Valore v. Islamic Republic of Iran*, Case No. 03-1959 (D.D.C.); *Bonk v. Islamic Republic of Iran*, Case No. 08-1273 (D.D.C.); *Estate of James Silvia v. Islamic Republic of Iran*, Case No. 06-750 (D.D.C.); *Estate of Anthony K. Brown v. Islamic Republic of Iran*, Case No. 08-531 (D.D.C.); *Estate of Stephen B. Bland v. Islamic Republic of Iran*, Case No. 05-2124 (D.D.C.); *Estate of Michael Heiser v. Islamic Republic of Iran*, Case No. 00-2329 (D.D.C.); *Estate of Millard D. Campbell v. Islamic Republic of Iran*, Case No. 01-2104 (D.D.C.); and *Peterson v. Islamic Republic of Iran*, Case No. 01-2094 (D.D.C.). Smith Decl., Exs. 37-43.

None of the deposit account holders or wire transfer parties interpled by Citi answered or otherwise responded to the third-party complaint. Only one of the parties to the wire transfer blocked by JPMorgan that is included in Phase 1 of this proceeding has filed an answer.

B. The Deposit Accounts and Wire Transfers That Are the Subject of the Motion

In addition to certain deposit accounts held by Citi in the name of certain Iranian banks (which are alleged to be agencies or instrumentalities of Iran), Plaintiffs also seek turnover of an EFT that was blocked by Citi based on the fact that the beneficiary of that transfer was established by the National Iranian Oil Company and is allegedly an agency or instrumentality of Iran. *See* Affidavit of Patrick Clawson (“Clawson Aff.”), ¶ 28; Plaintiffs’ Undisputed Material Fact No. 56. In the case of the Citi wire transfer at issue in this Motion, the originator is a non-Iranian corporate party located in Kuwait, and no Iranian-owned bank served as the originator bank. The wire transfer, which was routed through Citi in New York as the intermediary bank, was blocked in transit solely because the beneficiary bank is designated on the Weapons of Mass Destruction (“WMD”) list or has been determined by the U.S. Treasury to contribute to a listed WMD entity or to be owned or controlled by one. *See* 31 C.F.R. § 544.201(a) (2010); Schneier Decl., Ex. 8. *See* Clawson Aff., ¶ 28 and links to websites cited therein for a description of the beneficiary of the wire transfer.

Plaintiffs are also seeking the turnover of the proceeds of a wire transfer that was originated by a non-Iranian party located in South America and routed through JPMorgan in New York City as the intermediary bank. Both the beneficiary of the wire transfer and the beneficiary’s bank appear to have their principal places of business in Iran. The beneficiary’s bank has been designated by OFAC as a “Specially Designated National” (“SDN”), *i.e.*, an entity whose assets must be blocked by United States bank pursuant to OFAC Regulations. This designation was apparently made pursuant to 31 C.F.R. Parts 594, 595 and 597 (2010), because

of the bank's involvement in financing terrorist organizations. *See* Nevling Decl. ¶ 3, Exs. A-C. In 2010, OFAC also identified the beneficiary of the wire transfer as an entity indirectly owned by Iran and made it subject to the Iranian Transactions Regulations (the "ITR Regulations"). 31 C.F.R. Part 560 (2010). The ITR Regulations are not, however, blocking regulations and this designation occurred long after this wire transfer was blocked. Nevling Decl. ¶ 3.

1. Wire Transfers

As stated in N.Y. U.C.C. § 4-A-104(1), a funds transfer is actually nothing more than a "series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order." The Second Circuit explained the mechanics and the nature of the debts owed between the parties at each stage of an EFT in *Jaldhi*, 585 F.3d at 60 n.1 and *Scanscot Shipping Services*, 2010 WL 3169304. In *Jaldhi* the Second Circuit explained this process as follows:

An EFT is nothing other than an instruction to transfer funds from one account to another. When the originator and the beneficiary each have accounts in the same bank that bank simply debits the originator's account and credits the beneficiary's account. When the originator and beneficiary have accounts in different banks, the method for transferring funds depends on whether the banks are members of the same wire transfer consortium. If the banks are in the same consortium, the originator's bank debits the originator's account and sends instructions directly to the beneficiary's bank upon which the beneficiary's bank credits the beneficiary's account. If the banks are not in the same consortium—as is often true in international transactions—then the banks must use an intermediary bank. To use an intermediary bank to complete the transfer, the banks must each have an account at the intermediary bank (or at different banks in the same consortium). After the originator directs its bank to commence an EFT, the originator's bank would instruct the intermediary to begin the transfer of funds. The intermediary bank would then debit the account of the bank where the originator has an account and credit the account of the bank where the beneficiary has an account. The originator's bank and the beneficiary's bank would then adjust the accounts of their respective clients.

585 F.3d at 60 n.1.

When a wire transfer is interrupted by an order of attachment or blocking order issued by OFAC, the correspondent account of the sending (or originator's) bank is debited, but the next step in the process, the acceptance of the transfer by authorizing a debit of the intermediary bank's account with the next bank in the chain, does not take place.

ARGUMENT

POINT I

UNDER TRIA ONLY BLOCKED ASSETS OF A TERRORIST PARTY OR ITS AGENCIES OR INSTRUMENTALITIES CAN BE TURNED OVER TO A TERRORISM VICTIM

Attachment of a foreign state's property in the United States is governed by the FSIA, 28 U.S.C. §§ 1330, 1602-1611. *See Karaha Bodas Company, LLC v. Perusahaan Pentarbangaan Minyak Dan Gas Bumi Negara*, 313 F.3d 70, 82 (2d Cir. 2002) (discussing attachment of foreign sovereign's property). The FSIA further provides that when a foreign state is not protected by sovereign immunity it "shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. The FSIA also prescribes the circumstances under which attachment and execution may be obtained against the property of foreign states to satisfy a judgment.

TRIA, which is codified as a note to Section 1610, creates an exception to the immunity of a foreign state's assets for the blocked assets of a foreign state that is a sponsor of terrorism under certain circumstances. Section 201(a) of TRIA provides in pertinent part as follows:

Notwithstanding any other provision of law, ... in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of

execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.⁶

TRIA § 201(a), codified at 28 U.S.C. § 1610 note (emphasis added). TRIA also authorizes a court to enter an order executing against blocked assets notwithstanding that the transfer of blocked property would otherwise be prohibited by federal law pursuant to blocking regulations like the sanction regulations at issue here. *See* TRIA § 201(a); 31 C.F.R. Part 535 (2010). TRIA § 201(d)(2) defines the term “blocked asset” to mean “any asset seized or frozen by the United States under section 5(b) of the Trading with the Enemy Act or under sections 202 and 203 of the International Emergency Economic Powers Act.” TRIA § 201(a), codified at 28 U.S.C. § 1610 note. Plaintiffs here are entitled to turnover under TRIA if they establish that the property is a “blocked asset of [a] terrorist party,” or an “agency or instrumentality” of that terrorist party. *See* TRIA § 201(a), codified at 28 U.S.C. § 1610 note.

In *Hausler*, Judge Marrero concluded that “Congress explicitly directed that TRIA and [the Cuban Sanctions Regulations] are to be considered in tandem, which establishes a comprehensive statutory scheme that eschews any need for consideration of state definitions of property.” *Hausler* Decision, slip op. at 17. The Court further reasoned that “TRIA’s phrase ‘blocked assets of that terrorist party’ contemplates execution, subject to appropriate turnover proceedings, against all assets blocked pursuant to the [Cuban Sanctions Regulations], including those in which Cuba possesses an interest in [sic], rather than actual ownership or title to, a blocked asset.” *Id.*, slip op. at 20. The Banks submit that Judge Marrero erred in rejecting OFAC’s own reading of the inter-relationship between its regulations and TRIA.

⁶ In *Smith ex rel. Smith v. Federal Reserve Bank of New York*, 346 F.3d 264, 271 (2d Cir. 2003), the Second Circuit held that the “notwithstanding” clause applies only when some other provision of law “conflicts” with TRIA.

POINT II

STATE LAW DEFINES THE SUBSTANTIVE PROPERTY RIGHTS THAT ARE SUBJECT TO EXECUTION BY TRIA

TRIA does not create ownership interests in property and the statute does not define what is an “asset” or who has a property interest in an “asset”.⁷ Rather, TRIA – when applicable – merely lifts the veil of sovereign immunity conferred by the FSIA. *See Weininger*, 462 F. Supp. 2d at 478; *see also* Nov. 21, 2008 Statement of Interest of the United States of America at 10, *Rux* Litigation, Schneier Decl., Ex. 4. Where a federal statute does not provide a basis for determining when such assets are the property of the terrorist party, courts look to state law to make that determination. In *Asia Pulp & Paper*, the Second Circuit made clear that “[i]n the absence of a superseding federal statute or regulation, state law generally governs the nature of any interests in or rights to property that an entity may have.” 609 F.3d at 117 (citing *Barnhill v. Johnson*, 503 U.S. 393, 398 (1992)). In that case, the Court specifically rejected the argument of

⁷ In *Norilsk Nickel*, the First Department held that Article 4-A of the U.C.C. was not preempted by OFAC regulations that, like the sanctions regulations, required seizure of property in which a sanctioned entity had “an interest of any nature whatsoever, direct or indirect.” 14 A.D.3d at 147, 789 N.Y.S.2d at 100 (quoting 31 C.F.R. § 585.303). The Court explained that the terms “‘interest’ and ‘title’ are clearly not synonymous” and OFAC blocked assets based on “how the funds would be used, not on the passage of title to the funds pursuant to the U.C.C.” 14 A.D.3d at 147, 789 N.Y.S.2d at 100; *see also Global Relief Found., Inc. v. O’Neill*, 315 F.3d 748, 753 (7th Cir. 2002) (“The function of the IEEPA strongly suggests that beneficial rather than legal interests matter. . . . Thus the focus must be on how assets could be controlled and used, not on bare legal ownership.”); *Holy Land Found. for Relief & Dev. v. Ashcroft*, 333 F.3d 156, 162-63 (D.C. Cir. 2003) (same). Thus, federal and state law rather than conflict simply address different issues. *Norilsk Nickel*, 14 A.D.3d at 147, 789 N.Y.S.2d at 100.

The *Norilsk Nickel* case suggests in dictum that when the blocking regulations are ultimately lifted the proceeds of the blocked EFT should be transmitted to the beneficiary. The Court does not cite to any U.C.C. provision to support that proposition, and other cases that have analyzed the U.C.C. more carefully have reached a different conclusion. *See Allied Maritime, Inc. v. Descatrade S.A.*, 09 Civ. 3684, 2009 U.S. Dist. LEXIS 117383, at *7 n.17 (S.D.N.Y. Dec. 16, 2009), *aff’d*, No. 09-5329-cv, 2010 U.S. App. LEXIS 18430 (2d Cir. Sept. 3, 2010). In any event, the issue of how to unwind a blocked EFT when blocking regulations are lifted raise different considerations from the issue of whether the funds are subject to execution while blocked.

the Export-Import Bank of the United States (“Ex-Im Bank”) that the Federal Debt Collection Procedures Act (the “FDCPA”) should govern its attempt to execute against a midstream EFT. Rather, as explained in *Asia Pulp & Paper*, these federal rules “create[] no property rights but merely attach[] consequences, federally defined, to rights created under state law.” 609 F.3d at 117 (quoting *United States v. Craft*, 535 U.S. 274, 278 (2002) (internal quotation marks omitted)); *Jaldhi*, 585 F.3d at 70 (“When there is no federal maritime law to guide our decision, we generally look to state law to determine property rights.”). Judge Marrero found state law to be inapplicable, finding that “blocked assets” under TRIA was essentially synonymous with the blockable “property interest” as that term is broadly defined for purposes of OFAC regulations. *Hausler* Decision, slip op. at 21-22.

Under Article 4-A of the U.C.C., which governs the rights and liabilities that arise in the funds-transfer process, including the rights of the creditors of EFT participants to attach funds involved in an EFT, it is clear that an intermediary bank never holds property of the originator or beneficiary of an EFT. N.Y. U.C.C. § 4-A-502 official cmt. 4 (McKinney 2001). *See Scanscot Shipping Services*, 2010 WL 3169304 at *1 (“EFTs in the temporary possession of an intermediary bank are not the property of either the originator or the beneficiary of the EFT, ... [and] cannot be subject to attachment under Rule B where the defendant is either the originator or the beneficiary.”) (citation omitted); *Jaldhi*, 585 F.3d at 71 (“a beneficiary has no property interest in an EFT because ‘until the funds transfer is completed by acceptance by the beneficiary’s bank of a payment order for the benefit of the beneficiary, the beneficiary has no property interest in the funds transfer which the beneficiary’s creditor can reach.’”) (quoting N.Y. U.C.C. § 4-A-502 official cmt. 4 (court’s emphasis)); *Asia Pulp & Paper*, 609 F.3d at 121 (“[A]n originator and intended beneficiary have no legal claim or contractual rights against an

intermediary bank in the event that a funds transfer is not completed.”); *see also Goodearth Maritime Ltd. v. Calder Seacarrier Corp.*, No. 09-5068-cv, 2010 U.S. App. LEXIS 14450, at *2 (2d Cir. July 14, 2010) (summary order).⁸ In *Asia Pulp & Paper* the Second Circuit concluded that “an originator or intended beneficiary’s interests and rights in a midstream EFT, if any, are not sufficiently ‘essential,’ ‘material,’ ‘firmly or solidly established,’ ‘weighty,’ or ‘direct and tangible,’ to constitute a ‘substantial ... interest’ under the FDCPA” and rejected the argument that a creditor could attach a midstream EFT. 609 F.3d at 122 (omission in original).⁹

⁸ In *Goodearth Maritime*, 2010 U.S. App. LEXIS 14450 at *7-8, a summary order made non-precedential by Second Circuit Local Rule 32.1.1(a), a Second Circuit panel directed that an EFT subject to a pre-*Jaldhi* Rule B attachment be released to the intended beneficiary. Subsequent to the attachment the beneficiary had obtained an arbitral award against the originator in the full amount of the EFT, and had asked the district court to release the EFT to it. The Court also weighed the equities in that case noting that the funds should have been transferred to the intended beneficiary long ago were it not for the Court’s erroneous decision in *Winter Storm Shipping, Ltd v. TPI*, 310 F.3d 263 (2d Cir. 2002), and the beneficiary was entitled to those funds in the face of competing claims to the funds by the originator’s creditor. The Court there found that the originator could not receive the funds directly from the intermediary bank because they were not in privity, but failed to explain how N.Y. U.C.C. § 4-A-402 would permit the funds to be released to the beneficiary, a party lacking in privity. The decision appears to be at odds with the Second Circuit’s subsequent decision in *Allied Maritime, Inc. v. Descatrade S.A.*, No. 09-5329-cv, 2010 U.S. App. LEXIS 18430 (2d Cir. Sept. 3, 2010). *See n.9 infra*.

⁹ Article 4-A expressly addresses the ownership of the “funds” involved in a wire transfer. Section 4-A-502(4) identifies the entities from which a creditor can properly seek the attachment or garnishment of funds involved in a funds transfer. *See also* N.Y. U.C.C. § 4-A-502, official cmt. 4 (McKinney 2001) (“A creditor of the beneficiary cannot levy on the property of the originator and until the funds transfer is completed by acceptance by the beneficiary’s bank of a payment order for the benefit of the beneficiary, the beneficiary has no property interest in the funds transfer which the beneficiary’s creditor can reach....”). Article 4-A also provides a framework for the unwinding of failed transfers. Where an intermediary bank is obligated to refund a payment, but is unable to do so, the originating bank which sent the intermediary bank the payment order is generally entitled to retain the payment it received subject to the originator’s claim for a refund from that originating bank. *See* N.Y. U.C.C. § 4A-402(4) (“the bank receiving payment is obliged to refund payment to the extent the sender was not obligated to pay”); N.Y. U.C.C. § 4A-402 official cmt. 2 (McKinney 2001) (referring to this as the “money-back guarantee”); *Grain Traders, Inc. v. Citibank, N.A.*, 160 F.3d 97, 102 (2d Cir. 1998) (“we ... conclude that § 4-A-402 allows each sender of a payment order to seek a refund only from the receiving bank it paid”). In *Allied Maritime*, 2010 U.S. App. LEXIS 18430 at *11-13, the Second Circuit recognized that the “money-back guarantee” provision of the U.C.C. caused

These decisions are consistent with OFAC's statement in the *Rux* Litigation that "[t]he beneficiary of a wire transfer holds *no* interest subject to attachment under the UCC." *See* Jan. 12, 2009 Statement of Interest of the United States of America at 2, 10 n.5 (emphasis added), Schneier Decl., Ex. 5. As OFAC has noted, "any attempt to attach more than [Iran's] interest in any particular property would appear to exceed TRIA's scope." *Id.*, at 10. Judge Marrero's broad-brush treatment of all entities in the chain of a wire transfer as essentially having identical property interests or claims to the wire transfer proceeds blocked in the hands of an intermediary bank goes too far and fails to recognize OFAC's view on whether these blocked assets constitute assets that are properly subject to turnover under TRIA.

A. Plaintiffs Must Establish the Judgment Debtor's Right to Possession of the Blocked EFTs to Obtain Turnover Under the C.P.L.R.

The C.P.L.R. provisions upon which Plaintiffs rely, and made applicable here by Rule 69 of the Federal Rules of Civil Procedure, impose essentially the same requirement. *See Smith ex rel. Smith*, 346 F.3d at 269 (noting that any judgment issued under TRIA would proceed according to New York law); *see* Nov. 21, 2008 Statement of Interest at 10 ("[o]nce a determination is made that particular assets are 'of that terrorist party' ... the Court will still need to make a determination of whether the assets are attachable under Rule 69 of the Federal Rules of Civil Procedure.") (citations omitted), Schneier Decl., Ex. 4. The C.P.L.R. allows a judgment creditor to bring a proceeding against a garnishee that either is in "possession or custody of money or ... property in which the judgment debtor has an interest" (§ 5225(b)) or "is or will

funds in a blocked wire transfer to flow back through a wire transfer chain toward the originator, not toward the beneficiary, when frozen funds are unblocked. In that case, the Second Circuit held that, where the underlying wire transfer was interrupted by an invalid process of maritime attachment and garnishment, the right to repayment of the funds did not, nonetheless, give rise to an attachable property interest in the otherwise unattachable funds held in a suspense account by an intermediary bank.

become indebted to the judgment debtor” (§ 5227). *See also* C.P.L.R. § 5225(b) (New York’s turnover statute authorizes a court to order turnover only “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.”). However, in order to execute a judgment against the property held or the debt owed by the garnishee the judgment creditor must first establish that it belongs (in the case of property) or is owed (in the case of debt) to the judgment debtor. *See, e.g., Cont’l Commerce Corp. v. York Plastic Prods. Corp.*, 237 N.Y.S.2d 278, 280 (Sup. Ct. Kings County 1963) (“Since movant has failed to produce proof to satisfy the court that the said third party is indebted to the judgment creditor, the motion is denied.”); *Beauvis v. Allegiance Sec. Inc.*, 942 F.2d 838, 840-41 (2d Cir. 1991) (to obtain turnover under C.P.L.R. § 5225(b) the movant must establish the following that the judgment debtor “has an interest” in the property the creditor seeks to reach).

The *Hausler* Decision leaves unclear the appropriate role of the C.P.L.R. in these turnover proceedings or whether its requirements are to be considered essentially co-extensive or identical with those imposed by TRIA in order for a court to order turnover of blocked assets to satisfy a judgment.

CONCLUSION

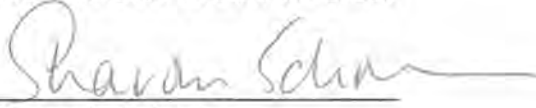
The Banks respectfully request that the Court issue an Order determining (a) whether Plaintiffs have met their burden of proof and the requirements set forth in Section 201(a) of TRIA, Rule 69 of the Federal Rules of Civil Procedure and Article 52 of the C.P.L.R. with respect to the Phase 1 Assets, and as to which no objection has been interposed, and as to which Plaintiffs seek turnover/execution against; (b) that the Banks have made good and sufficient service of the pleadings and submissions, and has otherwise provided appropriate and sufficient notice in accordance with this Court’s January 11, 2010 Order, as amended thereafter, and other

applicable provisions of law; (c) which of the Phase 1 Assets at issue in this proceeding are subject to turnover/execution to satisfy the judgment; (d) discharging the Banks from liability to any and all parties who may have a claim to the Phase 1 Assets that are subject to turnover/execution; and (e) such further and additional relief as may be appropriate.

Dated: New York, New York
September 15, 2010

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

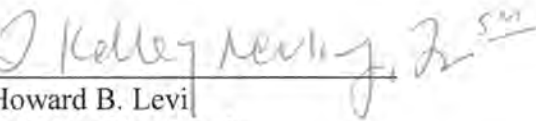
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