No. _____

In The
Supreme Court of the United States

DEBORAH D. PETERSON,
PERSONAL REPRESENTATIVE OF THE ESTATE
OF JAMES C. KNIPPLE (DECEASED), ET AL.,

Petitioners,

v.

ISLAMIC REPUBLIC OF IRAN, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

JOHN VAIL
Counsel of Record
JOHN VAIL LAW PLLC
777 6th St., NW, Suite 410
Washington, DC 20001
(202) 589-1300
john@johnvaillaw.com

THOMAS FORTUNE FAY
COLE DOWDEN
FAY KAPLAN LLC
777 6th St., NW, Suite 410
Washington, DC 20001
(202) 589-1300
thomasfay@aol.com
cole.dowden@faykaplanlaw.com

Counsel for Petitioners

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

Victims of Respondent Iran's terrorism, in an effort to collect their judgments against Iran, attached accounts possessed by Respondent HSBC Bank USA, N.A. and designated "blocked assets" by the Department of the Treasury because of their connection to Respondent Iran. The Court of Appeals held that, as a prerequisite of attachment, the victims must prove that Iran is the true owner of the accounts. It also denied discovery related to true ownership.

The questions presented are:

1. Whether section 201(a) of the Terrorism Risk Insurance Act ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322, 2337, permits attachment of any "blocked asset" in which the terrorist party against whom a judgment is held has "any interest."

2. Whether this Court's decision in *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250 (2014), establishes entitlement to requested discovery regarding true ownership.

PARTIES TO THE PROCEEDING

Petitioners, who were plaintiffs-appellants below, are:

Deborah D. Peterson
Personally and as Representative of the Estates of James C. Knipple and Pauline V. Knipple and John D. Knipple

James Abbott
Personally and as Representative of the Estates of Terry Abbott and Mary Abbott

Tammi Ruark
(aka Tammi Thomas)
Personally and as Representative of the Estates of John Robert Allman and Robert R. Allman and Theodore H. Allman

Thomas C. Bates, Sr.
Personally and as Representative of the Estate of Ronny Kent Bates

Thomasine Baynard
Personally and as Representative of the Estate of James Baynard

Patrica (aka Patsy Ann) Calloway
Personally and as Representative of the Estate of Jess W. Beamon

Luddie Belmer
Personally and as Representative of the Estate of Alvin Burton Belmer

Debra Horner
Personally and as Representative of the Estate of Richard L. Blankenship

John R. Blocker
Personally and as Representative of the Estates of John W. Blocker and Alice Blocker

Joseph Boccia, Sr.
Personally and as Representative of the Estates of Joseph John Boccia, Jr. and Patricia Boccia

Edna Bohannon
Personally and as Representative of the Estate of Leon Bohannon

PARTIES TO THE PROCEEDING – Continued

Catherine and
John J. Bonk, Sr.
as Representatives of the
Estate of John Bonk, Jr.

Marie and Joseph Boulos
Personally and as Representatives of the Estate
of Jeffery Joseph Boulos

Theresa U. Roth Boyette
Personally and as Representative of the Estate of
John Norman Boyett

Myra Burley
Personally and as Representative of the Estates
of William Burley and
Claude Burley and
William Douglas Burley
(aka Douglas Burley)

Avenell Callahan
Personally and as Representative of the Estate of
Paul Callahan

Tammy Camara Howell
Personally and as Representative of the Estate
of Mecot (aka Ramon
Eugene) Camara

Brenda Haskill
(aka Brenda Haskell)
Personally and as Representative of the Estates
of Bradley Campus and
Clare (aka Clair) Campus

Robbie Nell Ceasar
Personally and as Representative of the Estate
of Johnnie Ceasar

James N. Conley, Jr.
Personally and as Representative of the Estate
of Robert Allen Conley

Charles F. Cook
Personally and as Representative of the Estate
of Charles Dennis Cook

Betty Copeland
Personally and as Representative of the Estate
of Johnny Len Copeland

Harold Cosner
Personally and as Representative of the Estates
of David Cosner and
Marva Lynn Cosner

Lorraine M. Coulman
Personally and as Representative of the Estate
of Kevin Coulman

PARTIES TO THE PROCEEDING – Continued

Heidi Crudale LeGault
Personally and as Representative of the Estate of Rick Crudale

Mary Mason
Personally and as Representative of the Estate of Russell Cyzick

Christine Devlin
(aka B. Christine Devlin)
Personally and as Representative of the Estate of Michael Devlin

Henry (aka Harry) Miller
Personally and as Representative of the Estates of Nathaniel Dorsey and Earline Miller

Michael Dunnigan
Personally and as Representative of the Estate of Timothy Dunnigan

Leona Mae Vargas
Personally and as Representative of the Estate of Bryan Earle

Jose Catano, Jr.
as Representative of the Estates of Danny R. Estes and Barbara Estes

Thomas and
Marilou C. Fluegel
as Representatives of the Estate of Richard Andrew Fluegel

Richard T. McNeil, Esq.
as Representative of the Estate of Michael D. Fulcher

Barbara Gallagher
Personally and as Representative of the Estate of Sean Gallagher

Juliana Rudkowski
(aka Julie Rudkowski)
Personally and as Representative of the Estate of George Gangur

Violet Garcia
Personally and as Representative of the Estates of Randall Garcia and Jess (aka Jesus) Garcia

Arlene M. Ghumm
Personally and as Representative of the Estates of Harold Ghumm and Jedaiah Ghumm

PARTIES TO THE PROCEEDING – Continued

Valerie Giblin
Personally and as Representative of the Estate of Timothy Giblin

Judy A. Gorchinski
Personally and as Representative of the Estate of Michael Gorchinski

Joseph Gordon
Personally and as Representative of the Estates of Richard Gordon and Alice Gordon and Norris Gordon

Patricia Wright
Personally and as Representative of the Estate of Davin M. Green

Darlene Hairston
Personally and as Representative of the Estate of Thomas Hairston

Christine Haskell Wells
as Representative of the Estate of Michael Haskell

Christopher Todd Helms
Personally and as Representative of the Estates of Mark Anthony Helms and Mary Ann Turek

Doris Hester
Personally and as Representative of the Estate of Stanley G. Hester

Cynthia D. Lake
(aka Cynthia H. Lake)
Personally and as Representative of the Estate of Donald Wayne Hildreth

Patricia Lee Holberton
(aka Lee Holberton)
Personally and as Representative of the Estate of Richard Holberton

Lisa H. Hudson
Personally and as Representative of the Estate of Dr. John Hudson

Mary Moore
Personally and as Representative of the Estate of Maurice Edward Hukill

Elizabeth Iacovino
Personally and as Representative of the Estates of Edward Iacovino, Jr. and Edward Iacovino, Sr.

Deborah Innocenzi
Personally and as Representative of the Estate of Paul Innocenzi, III

PARTIES TO THE PROCEEDING – Continued

John J. Jackowski, Sr.
Personally and as Representative of the Estate of James Jackowski

Elaine James
Personally and as Representative of the Estate of Jeffrey Wilbur James

Stephen Jenkins
Personally and as Representative of the Estates of Nathaniel Walter Jenkins and Nathalie C. Jenkins

Mary Lynn Buckner
Personally and as Representative of the Estate of Edward Anthony Johnston

Mark Jones
Personally and as Representative of the Estate of Steven Jones and Synoviere Jones

Karl and Joyce Julian
Personally and as Representatives of and Heirs to the Estate of Thomas Adrian Julian

Mary Ann Cobble
Personally and as Representative of the Estate of Thomas Keown

Kelly Kluck
Personally and as Representative of the Estates of Daniel Kluck and Shirley Martin

Freas Kreischer, Jr.
Personally and as Representative of the Estate of Freas H. Kreischer, III

William and Betty Laise
as Representatives of the Estate of Keith Laise

James J. Langon, III.
Personally and as Representative of the Estate of James Langon, IV

Joyce A. Houston (aka Joyce LaRiviere-Houston)
Personally and as Representative of the Estate of Michael Scott LaRiviere

Cheryl Cossaboom
Personally and as Representative of the Estate of Steven LaRiviere and Janet LaRiviere and Richard LaRiviere

PARTIES TO THE PROCEEDING – Continued

Marlys Lemnah
Personally and as Representative of the Estate of Richard G. Lemnah

Annette R. Livingston
Personally and as Representative of The Estate of Joseph R. ("Joel") Livingston, III

Maria Lyon
Personally and as Representative of the Estate of Paul D. Lyon, Jr.

Bill Macroglou
as Representative of the Estate of John Macroglou

Shirla Maitland
Personally and as Representative of The Estates of Samuel Maitland, Jr. and Leysnal Maitland and as Heir to Samuel Maitland, Sr.

Pacita Martin
Personally and as Representative of the Estate of Charlie Robert Martin

Anna Beard
Personally and as Representative of the Estates of David Massa and Christina Massa

Mary McCall
Personally and as Representative of the Estates of John McCall and Thomas McCall

Shirley Kirkwood
as Representative of the Estate of James E. McDonough

Muriel Persky
Personally and as Representative of the Estate of Timothy R. McMahon

Lisa Menkins Palmer
Personally and as Representative of the Estates of Richard Menkins, II and Richard H. Menkins and Margaret Menkins

Michael Meurer
Personally and as Representative of the Estates of Ronald Meurer and Mary Lou Meurer and John Meurer

PARTIES TO THE PROCEEDING – Continued

Rosalie Milano Donahue
(aka Rosalie Milano Donohue)
Personally and as Representative of the Estates of Joseph Peter Milano and Angela Milano (aka Angelina Milano)

Susan Ray
Personally and as Representative of the Estates of Joseph Moore

Debra Myers
Personally and as Representative of the Estates of Harry Douglas Myers and Geneva Myers

Tammy Freshour
Personally and as Representative of the Estate of David Nairn

Roger S. Olson
Personally and as Representative of the Estates of John Arne Olson and Bertha Olson and Sigurd Olson

Frances Owens
Personally and as Representative of the Estate of Joseph Albert Owens and James Owens

Judith K. Page
Personally and as Representative of the Estate of Connie Ray Page

Mary Ruth Ervin
Personally and as Representative of the Estate of Ulysses Gregory Parker

Sonia Pearson
Personally and as Representative of the Estates of John L. Pearson and Melrose Ricks

Ronald R. Perron
Personally and as Representative of the Estate of Thomas S. Perron

Nancy Brocksbank Fox
Personally and as Representative of the Estate of John Arthur Phillips, Jr.

Margaret Aileen Pollard
(aka Margaret E. Pollard)
Personally and as Representative of the Estate of William Roy Pollard

PARTIES TO THE PROCEEDING – Continued

Sandra Rhodes Young
Personally and as Representative of the Estate of Victor Mark Prevatt

Joseph Price
Personally and as Representative of the Estates of James Price and John Price

Kathleen Tara Prindeville
Personally and as Representative of the Estates of Patrick Kerry Prindeville and Paul Prindeville and Barbara D. Prindeville

Richard T. McNeil, Esq.
as Representative of the Estate of Diomedes J. Quirante

Clarence Richardson
Personally and as Representative of the Estate of Warren Richardson

Marion DiGiovanni
(aka Marian Di Giovanni)
as Representative of the Estate of Louis J. Rotondo

Barbara Rockwell
Personally and as Representative of the Estate of Michael Caleb Sauls

Lynn Dallachie
Personally and as Representative of the Estate of Charles Jeffrey Schnorf

Beverly Schultz
Personally and as Representative of the Estate of Scott Lee Schultz

Samuel Scott Scialabba
Personally and as Representative of the Estate of Peter Scialabba

Jon Christopher Scott
Personally and as Representative of the Estates of Gary Randall Scott and Mary Ann Scott and Larry L. Scott

Pauline Shipp
Personally and as Representative of the Estate of Thomas Alan Shipp

Geraldine Morgan
as Representative of the Estate of Jerryl Shropshire

PARTIES TO THE PROCEEDING – Continued

Anna Marie Simpson
as Representative
of the Estate of
Larry H. Simpson, Jr.

Terrence Smith
Personally and as Representative of the Estates of Kirk Hall Smith and Bobbie Ann Smith

Joseph K. Smith, Jr.
Personally and as Representative of the Estate of Thomas Gerard Smith and Angela Josephine Smith

Ana Smith-Ward
Personally and as Representative of the Estate of Vincent Smith

John Sommerhof
Personally and as Representative of the Estates of William Scott Sommerhof and William J. Sommerhof

Ila Wallace
Personally and as Representative of the Estate of Stephen Eugene Spencer

William J. and
Peggy A. Stelpflug
Personally and as Representatives of the Estate of William Stelpflug

Timothy P. O'Brien, Esq.
as Representative of the Estate of Horace Renardo ("Ricky") Stephens, Jr.

Dona Stockton
Personally and as Representative of the Estates of Craig Stockton and Donald Stockton

Melvina Stokes Wright
Personally and as Representative of the Estates of Jeffrey Stokes and Nelson Stokes, Sr.

Marcus L. Sturghill, Jr.
Personally and as Representative of the Estate of Eric D. Sturghill

Doreen Sundar
Personally and as Representative of the Estate of Devon Sundar

PARTIES TO THE PROCEEDING – Continued

James Thorstad, Sr.
Personally and as Representative of the Estates of Thomas Paul Thorstad and Susan Thorstad Hugis

Richard L. Tingley
Personally and as Representative of the Estate of Stephen Tingley

Donald H. Vallone
Personally and as Representative of the Estate of Donald H. Vallone, Jr.

Charles E. Corry
as Representative of the Estate of Eric Glenn Washington

Henry and Sandra Wigglesworth
Personally and as Representatives of the Estate of Dwayne Wigglesworth

Wesley Williams
Personally and as Representative of the Estates of Rodney J. Williams and Ruth Williams

Janet Williams
Personally and as Representative of the Estate of Scipio Williams, Jr.

Elizabeth Adams
Personally and as Representative of the Estate of Johnny Adam Williamson

Melia Winter Collier (aka Melia Redding Collier)
Personally and as Representative of the Estate of William Ellis Winter

Paul Woollett
Personally and as Representative of the Estate of Donald Elberan Woollett

Sandra D. Jones
Personally and as Representative of the Estate of Craig Wyche

Judith Carol Young
Personally and as Representative of the Estate of Jeffrey D. Young

Frank Comes, Sr.
Personally and as Representative of the Estate of Frank Comes, Jr.

PARTIES TO THE PROCEEDING – Continued

Margaret Hlywiak
Personally and as Representative of the Estate of John Hlywiak

Jack Hunt
as Representative of the Estate of Orval Hunt

Natalie Oliver Padgett
as Representative of the Estate of John Oliver

Donald R. Blankenship, Sr.
Personally and as Representative of the Estate of Mary Blankenship

Lavon Boyett
Personally and as Representative of the Estate of Norman Boyett, Jr.

Theresa Riggs
Personally and as Representative of the Estate of Billie Jean Bolinger

Elizabeth Cook
Personally and as Representative of the Estate of Mary A. Cook

Amy Coulman
as Representative of the Estate of Dennis P. Coulman (aka Dennis M. Coulman)

Robert Mahoney
as Representative of the Estate of Kathleen Devlin Mahoney

Sheriff Don Meadows
as Representative of the Estate of Claudine Dunnigan Lester

Michael Gallagher
Personally and as Representative of the Estates of James Gallagher and Maureen Pare

Nada K. Jurist
Personally and as Representative of the Estate of Dimitri Gangur

Rebecca G. Bowler
Personally and as Representative of the Estate of Leroy Ghumm

Evans Hairston
Personally and as Representative of the Estate of Julia Hairston

PARTIES TO THE PROCEEDING – Continued

Losie Hudson
Personally and as Representative of the Estate of Samuel Hudson

Shanda Hudson
as Representative of the Estate of Ruth Hudson

Jacklyn Seguerra
Personally and as Representative of the Estate of John J. Jackowski, Jr.

Mariah Biello
as Representative of the Estate of Shawn Biello (aka Shawn Biellow)

Robert Lemnah
Personally and as Representative of the Estates of Etta Lemnah and Clarence Lemnah

Tia Fox
(aka Tia Fox Livingston)
Personally and as Representative of the Estate of Joseph Livingston, II

Theresa Edwards
as Representative of the Estate of Kenty Maitland (aka Kenty Edwards)

Mary Thompson
Personally and as Representative of the Estates of Ruby Martin and Corene Jones Martin

Amanda Tyner and
Manuel S. Massa
as Representatives of the Estate of Manuel C. Massa, Jr.

Melissa L. Moore
Personally and as Representative of the Estates of Harry Moore and Michael Moore

Billie Ann Nairn
Personally and as Representative of the Estate of Campbell J. Nairn, Jr.

Gary Christian
as Representative of the Estate of Jana Christian

Vicki Olson
as Representative of the Estate of Randall D. Olson

Paul E. Draper, Esq.
as Representative of the Estate of Sharon Anita Parker

PARTIES TO THE PROCEEDING – Continued

Kenneth Garafalo
as a Representative
of the Estate of
Deborah J. Perron

Grant Brown
as Representative of
the Estate of
Christine M. Brown

Milton Quirante
Personally and as
Representative of
the Estates of
Belinda J. Quirante and
Godofredo R. Quirante

Robert Schnorf
Personally and as
Representative of the
Estates of Margaret
Midler Schnorf and
Richard C. Schnorf, Sr.

James P. Scialabba
Personally and as Repre-
sentative of the Estate
of Frank Scialabba

Karen R. Collard
Personally and as Repre-
sentative of the Estate
of Theresa Desjardins

Shirley Smith
Personally and as
Representative of the
Estate of Keith Smith

Horace Stephens
Personally and as Repre-
sentative of the Estate
of Joyce Stephens

Blanche F. Corry and
Vancine M. Washington
Personally and as Repre-
sentatives of the Estate
of Pearl Olaniji (aka
Pearlie Mae Olaniji)

Erma Smith
Personally and as Repre-
sentative of the Estate
of Dorothy Williams

Myra Green
Personally and as Repre-
sentative of the Estate
of Kenneth Watson

Tom Parker
as Representative of
the Estate of Jewelene
Williamson Dunlap

Glenn Wyche
Personally and as Repre-
sentative of the Estate
of James Cherry

PARTIES TO THE PROCEEDING – Continued

Allie Mae Moore
Personally and as Representative of the Estates of Johnny S. Moore and James O. Moore and Bronzell Warren

Jeffrey Nashton
Personally and as Representative of the Estate of Alex Nashton

Jean Tolliver
as Representative of the Estate of Grace Lewis

Pastor Danny Wheeler
Personally and as Representative of The Estate of Molly Wheeler

James P. Young
Personally and as Representative of the Estate of Nora Young

Thomas D. Young
Personally and as Representative of the Estate of Robert Young

Marvin Albright
Pablo Arroyo
Anthony Banks
Rodney Darrell Burnette
Glenn Dolphin
Frederick Daniel Eaves
Charles Frye
Truman Dale Garner
Larry Gerlach
Joseph P. Jacobs
Brian Kirkpatrick
Burnham Matthews
Timothy Mitchell
Lovelle "Darrell" Moore
Paul Rivers
Stephen Russell
Dana Spaulding
Craig Joseph Swinson
Michael Toma
Lilla Woollett Abbey
Eileen Prideville Ahlquist
Miralda (Judith Maitland) Alarcon (aka Miralda Judith Alarcon Delis de Maitland)
Anne Allman
DiAnne Margaret ("Maggie") Allman
Margaret E. Alvarez
Kimberly F. Angus (aka Ellwn Kimberly Fulcher)
Donnie Bates
Johnny Bates (aka Johnny Bates, Sr.)
Laura Bates
Margie Bates
Monty Bates
Thomas Bates, Jr.
Mary E. Baumgartner

PARTIES TO THE PROCEEDING – Continued

Anthony Baynard
Barry Baynard
Emerson Baynard
Philip Baynard
Timothy Baynard
Wayne Baynard
Stephen Baynard
Mary Ann Beck
Alue Belmer
Annette Belmer
Clarence Belmer
Colby Keith Belmer
Denise Belmer
Donna Belmer
Faye Belmer
Kenneth Belmer
Mary Frances Black
Donald Blankenship, Jr.
Douglas Blocker
Robert Blocker
James Boccia
Raymond Boccia
Richard Boccia
Ronnie (Veronica) Boccia
(aka Ronnie Weppler)
Leticia Boddie
Angela Bohannon
Anthony Bohannon
Carrie Bohannon
David Bohannon
Leon Bohannon, Sr.
Ricki Bohannon
Lydia Boulos
William A. Boyett
Susan Schnorf Breeden
Damion Briscoe
Rosanne Brunette
Kathleen Calabro
Rachel Caldera
Michael Callahan
Elisa Rock Camara (aka
Elisa Camara Thompson)
Candace Campbell
Elaine Capobianco
(aka Elaine Murphy)
Florene Martin Carter
Phyllis A. Cash (aka
Phyllis A. Tangerman)
Theresa Catano
Bruce Ceasar
Franklin Ceasar
(aka Frankie Ceasar)
Frederick Ceasar
(aka Freddie Ceasar)
Sybil Ceasar
Christine Devlin Cecca
(aka Christine A. Devlin)
Tammy Chapman
Sonia Cherry
Adele H. Chios
Sharon Rose Christian
Susan Ciupaska
LeShune Stokes Clark
Rosemary Clark
Jennifer Collier
Deborah M. Coltrane

PARTIES TO THE PROCEEDING – Continued

Roberta Li Conley
Alan Tracy Copeland
Donald Copeland
Jeffrey Cosner
Leanna Cosner
Bryan Thomas Coulman
Christopher J. Coulman
Robert D. Coulman
Robert Louis Coulman
Charlita Martin Covington
Amanda Crouch
(aka Amanda E. Moore)
Marie Crudale
Eugene Cyzick
Anne Deal
Lynn Smith Derbyshire
Daniel Devlin
Gabrielle Devlin
(aka Colleen Ann Devlin)
Richard Devlin
Sean Devlin
Ashley Doray
Rebecca Doss (aka
Rebecca Bruntmeyer)
Elizabeth Ann Dunnigan
(aka Elizabeth Ann
Bennett)
William Dunnigan
Janice Thorstad Edquist
Charles Estes
Frank Estes
Lori Fansler
(aka Lori Ray)
Angela Dawn Farthing
Arlington Ferguson
Hilton Ferguson
Linda Sandback Fish
Ruby Fulcher
Brian Gallagher
James Gallagher, Jr.
Kevin Gallagher
Mary Gangur
Ronald Garcia
Roxanne Garcia (aka
Roxanne V. Garcia Bates)
Russell Garcia
Suzanne Perron Garza
Jeanne Gattegno
Ashley Ghumm
Bill Ghumm
(aka Billy John Ghumm)
Edward Ghumm
Hildegard Ghumm
Jesse Ghumm
Moronica Ghumm
(aka Moronica B. Davis)
Donald Giblin
Jeanne Giblin
Michael Giblin
Tiffany Giblin
(aka Tiffany Blackwood)
Valerie Giblin
William Giblin
Thad Gilford-Smith
Rebecca Gintonio
Dawn Goff

PARTIES TO THE PROCEEDING – Continued

(aka Dawn Blankenship)
Christina Gorchinski
Kevin Gorchinski
Valerie Gorchinski
(aka Valerie M. Rico)
Linda Gordon
Paul Gordon
Andrea Grant
(aka Andrea Jackson)
Deborah Graves
Deborah Green
Liberty Quirante Gregg
Alex Griffin (aka
Alex R. Griffin Hunt)
Catherine E. Grimsley
(aka Catherine E.
Hachigan)
Megan Gummer
Lyda Woollett Guz
Tara Hanrahan
Mary Clyde Hart
Jeffrey Haskell
Kathleen S. Hedge
Marvin R. Helms
Clifton Hildreth
Julia Hildreth
Mary Ann Hildreth
Michael Wayne Hildreth
Sharon A. Hilton
Donald Holberton
Thomas Holberton
Tangie Hollifield
Elizabeth House
Lorenzo Hudson (aka
Samuel Lorenzo Hudson)
William J. Hudson
Nancy Tingley Hurlburt
Cynthia Perron Hurston
Kristin Innocenzi
Mark Innocenzi
Paul Innocenzi, IV
Bernadette Jaccom
Victoria Jacobus
Rebecca Jewett
Linda Martin Johnson
Ray Johnson
Rennitta Stokes Johnson
Sherry Johnson
Charles Johnston
Edwin Johnston
Mary Ann Johnston
Zandra LaRiviere Johnston
(aka Zandra Johnston-
Morgan)
Alicia Jones
Kia Briscoe Jones
Ollie Jones
Robin Copeland Jordan
Susan Scott Jordan
Adam Keown
Bobby Keown, Jr.
Bobby Keown, Sr.
Darren Keown
William Keown
Mary Joe Kirker
Michael Kluck

PARTIES TO THE PROCEEDING – Continued

John R. Knipple
Shirley L. Knox (aka Shirley L. McClellan)
Doreen Kreischer
Wendy L. Lange
Eugene LaRiviere
John M. LaRiviere
Lesley LaRiviere
Michael LaRiviere
Nancy LaRiviere
Robert LaRiviere
William LaRiviere
Cathy L. Lawton (aka Cathy L. Ceasar-Williams)
Fay Lemnah
Harold Lemnah
Ronald Lemnah
Joseph R. Livingston, IV
Robin M. Lynch
Earl Lyon
Francisco Lyon
June Lyon
Paul D. Lyon, Sr.
Valerie Lyon
Heather Macroglou (aka Heather M. Victor)
Virginia Boccia Marshall
John Martin
Renerio Martin
Edmund Massa
Joao ("John") Masssa
Jose ("Joe") Massa
Ramiro Massa
Valerie McCall
Gail McDermott
Julia A. McFarlin
George McMahon
Michael McMahon
Patty McPhee
Darren Menkins
Gregory Menkins
Jay T. Meurer
John Thomas Meurer
Penny Meyer
Peter Milano, Jr.
Patricia Miller
Helen Montgomery
Betty Moore
Kimberly Moore
Elizabeth Phillips Moy
Harry A. Myers
Campbell J. Nairn, III
William P. Nairn
Richard Norfleet (aka Richard Horner)
Deborah O'Connor
Karen L. Olson
Ronald J. Olson
David Owens
Deanna Owens
Steven Owens
Connie Mack Page
Geraldine Paolozzi
Henry James Parker
Helen M. Pearson

PARTIES TO THE PROCEEDING – Continued

John L. Pearson, Jr.
Brett Perron
Michelle Perron
Sharon Conley Petry
(aka Sharon Petrey)
Sandra Petrick
Donna Vallone Phelps
Harold Phillips
John Arthur Phillips, Sr.
Donna Tingley Plickys
Stacey Yvonne Pollard
(aka Stacey Pollard-Joyce)
Lee Hollan Prevatt
Victor Thornton Prevatt
Michael Prindeville
Sean Prindeville
Edgar Quirante
Sabrina Quirante
(aka Sabrina Quirante-
Nettles)
Laura M. Reininger
Alan Richardson
Beatrice Richardson
Eric Richardson
Lynette Richardson
Vanessa Richardson
Philiece Richardson-Mills
Belinda Quirante Riva
(aka Belinda J. Quirante, II)
Linda Rooney
Tara Smith Rose
(aka Tara Leigh Rose)
Marie McMahon Russell
Alicia Lynn Sanchez
(aka Alicia Lynn Shields)
Andrew Sauls
Henry Caleb Sauls
Riley A. Sauls
Richard Schnorf, Jr.
Dennis James Schultz
Dennis Ray Schultz
Jacqueline Scialabba
Kevin James Scott
Sheria Scott
Stephen Allen Scott
Bryan Richard Shipp
James David Shipp
Janice Shipp
Maurice Shipp
Raymond Dennis Shipp
Russell Shipp
Susan J. Sinsioco
Cynthia Smith
Donna Marie Smith
Holly Smith
Ian Smith
Janet Smith
Joseph K. Smith, III
Kelly B. Smith
Tadgh Smith
Timothy B. Smith
Jocelyn J. Sommerhof
Douglas Spencer
Christy Williford Stelpflug
(aka Christy Williford)
Joseph Stelpflug

PARTIES TO THE PROCEEDING – Continued

Kathy Nathan Stelpflug
(aka Kathy Nathan)
Laura Barfield Stelpflug
(aka Laura Barfield)
Keith Stephens
Richard Stockton
Irene Stokes (aka
Irene Gaines-Stokes)
Nelson Stokes, Jr.
Robert Stokes
Gwenn Stokes-Graham
(aka Gwendolyn Stokes-
Graham)
Marcus D. Sturghill
Nakeisha Lynn Sturghill
(aka NaKeisha Lynn
Sturghill)
Margaret Tella
Susan L. Terlson
Adam Thorstad
Barbara Thorstad
James Thorstad, Jr.
John Thorstad
Ryan Thorstad
Betty Ann Thurman
(aka Betty Ann Blocker)
Barbara Tingley
Russell Tingley
Keysha Tolliver
Karen Valenti
Anthony Vallone
Timothy Vallone
Denise Voyles
Kathryn Thorstad Wallace
Richard J. Wallace
Barbara Thorstad Warwick
Linda Washington
(aka Linda Howard-
Washington)
Diane Whitener
Daryl Wigglesworth
Darrin A. Wigglesworth
Mark Wigglesworth
Robyn Wigglesworth
Shawn Wigglesworth
Dianne Stokes Williams
Gussie Martin Williams
Johnny Williams
(aka Johnnie Williams)
Rhonda Williams
Ronald Williams
Scipio J. Williams
Delma Williams-Edwards
Tony Williamson
Michael Winter
Barbara Wiseman
Phyllis Woodford
Joyce Woodle
Beverly Woollett
John Wyche
John F. Young
John W. Young
Joanne Zimmerman
Stephen Thomas Zone
(aka Steven Thomas Zone)
Patricia Thorstad Zosso

PARTIES TO THE PROCEEDING – Continued

Jamaal Muata Ali
Margaret Angeloni
Jesus Arroyo
Milagros Arroyo
Olympia Carletta
Kimberly Carpenter
Joan Comes
Patrick Comes
Christopher Comes
Deborah Crawford
Barbara Davis
(aka Barbara Spaulding)
Alice Warren Franklin
Patricia Gerlach
Travis Gerlach
Megan Gerlach
Arminda Hernandez
Peter Hlywiak, Jr.
Peter Hlywiak, Sr.
Paul Hlywiak
Joseph Hlywiak
Cynthia Lou Hunt
Rosa Ibarro
(aka Rose Ibarra)
Andrew Scott Jacobs
Daniel Joseph Jacobs
Danita Jacobs
Kathleen Kirkpatrick
Lisa Magnotti (aka
Lisa Comes-Magnotti)
Wendy Mitchell
Marvin S. Moore
Jonnie Mae Moore-Jones
(aka Johnnie Mae Moore-
Jones)
Paul Oliver
Riley Oliver
Michael John Oliver (aka
Michael-John Oliver)
Ashley E. Oliver
Patrick S. Oliver
Kayley Oliver (aka
Kayley Oliver Hudson)
Tanya Russell
Wanda Russell
Jason Russell
Clydia Shaver
(aka Cydia Shaver)
Scott Spaulding
Cecilia Stanley
Mary Stilpen
(aka Mary Stilphen)
Kelly Swank
(aka Kelly Rodriguez)
Daniel Swinson
William Swinson
Dawn Swinson
Teresa Swinson
Jessica Watson (aka
Jessica Watson Stoccum)
Audrey Webb
Jonathan Wheeler
Benjamin Wheeler
Kerry Wheeler

PARTIES TO THE PROCEEDING – Continued

Andrew Wheeler
Brenda June Wheeler
Jill Wold

Respondents Islamic Republic of Iran and Iranian Ministry of Information and Security were defendants-appellees below and in the claims underlying this collection action.

Respondent HSBC Bank USA, N.A. (HSBC) was a party below as a garnishee, a respondent to a writ of attachment.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

PETITION FOR A WRIT OF CERTIORARI

Petitioners Deborah D. Peterson, et al., respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit is reported at 561 F. App'x 9 (D.C. Cir. 2014). The Court's denial of petition for rehearing en banc is unreported.

The opinion of the District Court is reported at 938 F. Supp. 2d 93. The District Court's denial of reconsideration is reported at 2013 WL 2250205.

JURISDICTION

The judgment of the Court of Appeals was entered on June 13, 2014. A petition for rehearing was filed on July 11, 2014. The petition for rehearing was denied on July 28, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 201(a) of the Terrorism Risk Insurance Act ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322, 2337, is reproduced at App. 24.

STATEMENT

In 1983 agents of Iran blew up a Marine Corps barracks in Beirut. Iran has been found liable to Petitioners – Marines, representatives of the estates of Marines, and dependents of Marines – for that terrorist act, making Petitioners judgment creditors of Iran.

In an effort to enforce their judgments, Petitioners discovered and attached assets in which the Department of the Treasury had determined that Iran had some property interest. The lower courts narrowly construed legislation designed to hold terrorist states more readily accountable for the horrors they have wrought and declined to give force to these attachments.

On April 30, 2008, the creditors served Respondent HSBC Bank USA, N.A. ("HSBC") with a Writ of Attachment on Judgment ("The Writ"). Dkt. #265.[1]

[1] References to the Docket are to the docket of the District Court for the District of Columbia in Case No. 01-2094. *See* App. 7.

The Writ was accompanied by two interrogatories, which asked HSBC:

> 1. Were you at the time of the service of the writ of attachment, or have you been between the time of such service and the filing of your answers to this interrogatory, indebted to [Iran] and, if so, how, and in what amount?
>
> 2. Had you at the time of the service of the writ of attachment, or have you had between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of [Iran] in you[r] possession or charge, and, if so, what?

Id. Also attached to the Writ was an exhibit that included a list of fifty-seven agencies and instrumentalities of Iran to which the interrogatories above could apply. The exhibit specified items to which the Writ could attach:

> This attachment applies to credits, accounts, accounts receivable, right to payment of money, general intangibles, deposits, deposit accounts, claim for payment of money, debts due, right to draw down on any line of credit or banking relationship, rights to receive and demand payment from any loan or credit account, rights to demand and receive any advance of money, funds or credit in which the obligor (debtor or person owing the money) is the *garnishee on this Writ of Attachment on Judgment (non wages)*, as listed on the front page of this Writ of Attachment,

> and the obligee (or creditor or person to whom the money is owed) is the Islamic Republic of Iran, or any of its ministries, divisions, subdivisions, agencies and/or instrumentalities . . . [.]

Id. (emphasis in original). HSBC replied "no" to each of the creditors' interrogatories and returned the Writ on May 6, 2008. Dkt. #493-1. The creditors had no reason to doubt HSBC's responses, and, relying on the bank's assertions, sought other avenues to collect their judgment.

On July 17, 2012, the United States Senate Permanent Subcommittee on Investigations released a report entitled, "U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History" (Hereafter, "Senate Report"). Dkt. #485, Exhibit D. The 335-page report describes HSBC's weak anti-money laundering policies. The report found that HSBC had a longstanding pattern of "opening U.S. correspondent accounts for high-risk affiliates without conducting due-diligence; facilitating transactions that hinder U.S. efforts to stop terrorists, drug traffickers, rogue jurisdictions, and other[s] from using the U.S. financial system; [and] providing U.S. correspondent services to banks with links to terrorism." Senate Report, pp. 3-4, Dkt. #485, Exhibit D. According to the Senate report, over the course of several years HSBC systematically thwarted regulations of the Office of Foreign Assets Control (OFAC) of the Department of the Treasury by stripping information from wire-transfer documents in

order to conceal transactions with sanctioned nations such as Iran. *Id.* at 115-16. At least into 2009, HSBC engaged in ongoing, undisclosed "U-turn" wire transfers with Iranian customers. These transactions involved Iranian entities as both originators and recipients and allowed Iran to receive United States currency that otherwise was forbidden to it. *Id.* at 164-65.[2]

Based on this new information, on November 14, 2012, the creditors issued subpoenas to HSBC, this time requesting, among other things:

> All documents and/or electronically stored information for the calendar years of 2008 through 2009 and pertaining to any and all financial transactions, communications concerning, payments to or from, accounts either controlled (directly or indirectly), or payable to the Islamic Republic of Iran or its known financial instrumentalities (i.e. Bank Melli, Bank Kshavari, Bank Markazi, Bank Sepah, Bank Tejarat, the Export Development Bank of Iran) or any other Iranian

[2] At all times relevant here OFAC filters have blocked any banking transaction between American and Iranian banks. Senate Report at 115. *See* 31 C.F.R. Part 535 (explaining the origin of Iranian sanctions). U-Turn transactions allowed Iranian clients to move money through non-Iranian foreign banks, change the local currency from that bank to dollars, and collect the dollars through the foreign intermediary. U.S. dollars could move through the world market without putting American businesses in direct contact with Iran. Senate Report at 115.

> Financial Institution subject to U.S. Sanctions against the Islamic Republic of Iran.

Dkt. #485, Exhibit E. On December 19, 2012, HSBC responded to the subpoenas. In its response, HSBC disclosed three electronic funds transfers (EFTs) with Iran that took place between service of the Writ and HSBC's answer to the Writ and that had not been disclosed in response to the 2008 interrogatories:

Recipient	Current Value	Date Blocked
Bank Melli PLC, London	$21,060.22	February 21, 2008
Bank Melli Iran/ Iranian Airport Co.	$2,713.05	March 12, 2008
Bank Mellat, Tehran, Iran	$508.38	March 24, 2008

Dkt. #485-40. HSBC had not completed funds transfers in those accounts because OFAC regulations required HSBC to block EFTs in which Iran had "any interest." Doc. 490-2; App. 10; 31 C.F.R. §§544.305, 594.306. Each of the Iranian recipients named in HSBC's 2012 response was listed in the exhibit to the Writ.

The creditors moved for sanctions, asking the court to enforce a provision of the governing D.C. garnishment statute that states, "[w]hen the garnishee has failed to answer the interrogatories served on him, . . . judgment shall be entered against him for the whole amount of the plaintiff's claim, and costs,

and execution may be had thereon." D.C. Code Title 16 §526(b).

The creditors pressed for answers to their original query, Dkt. #485, for all information pertaining to "payments to or from, accounts either controlled (directly or indirectly), or payable" to Iran, seeking to discern whether terrorist parties were either originators or beneficiaries of the blocked transactions. *See* Dkt. ##497,498. The District Court cut short this inquiry, interpreting TRIA in a manner that it found rendered the inquiry moot.

TRIA Section 201, which was intended to make it easier to collect judgments against terrorist parties, H.R. Conf. Rep. 107-779, 27, 2002 U.S.C.C.A.N. 1430, 1434, 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, or for which a terrorist party is not immune under [28 U.S.C. §1605(a)(7) (2000)], the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA, Section 201(a). TRIA defines the term "blocked asset" as "any asset seized or frozen by the United

States" under provisions of law including the Trading With the Enemy Act (50 U.S.C. App. §5(b)). TRIA §201(d)(2)(A).

The district court interpreted Section 201(a) of TRIA to allow judgment creditors of a state sponsor of terrorism to "execute on only the assets 'of' – or, in other words, 'belonging to' – the terrorist state committing the act." App. 12, quoting *Estate of Heiser v. Islamic Republic of Iran,* 885 F. Supp. 2d 429, 438 (D.D.C. 2012). According to the court, TRIA lacks a definition of which assets "belong to" a terrorist judgment creditor, and in the absence of direction in the statute, the court turned to property definitions within Article 4A of the Uniform Commercial Code (UCC) to fashion federal common law. Under the UCC, an electronic fund transfer does not "belong" to its terrorist beneficiary. *Id.* at 5. Because Iran was not the true owner of the blocked EFTs, the court found HSBC had no duty to disclose them and therefore denied further discovery and dismissed the case. The Court ignored the possibility, known to be real because of the Senate's findings regarding U-turn transactions, that Iran was an originator as well as a beneficiary of the transactions in question.

The Court of Appeals affirmed. App. 1. The Court of Appeals also affirmed denial of discovery designed to ascertain whether Iran was either an originator or a recipient – a true owner – of the disputed EFTs. App. 2.

REASONS FOR GRANTING THE PETITION

The decision below is inconsistent with this Court's decision in *Zittman v. McGrath,* 341 U.S. 446 (1951), *see Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 509 (1991) (certiorari granted "to resolve an apparent conflict with this Court's precedents") and, despite apparently clear guidance from this Court, the question of whether TRIA authorizes attachment of any "blocked asset" of a terrorist party, or only those assets of which the terrorist party is the true owner, has vexed lower courts and has led to conflicting rulings. *Hausler v. JP Morgan Chase Bank, N.A.*, 740 F. Supp. 2d 525, 533-34 (S.D.N.Y. 2010); *Hausler v. JP Morgan Chase Bank, N.A.,* 845 F. Supp. 2d 553, 566-67 (S.D.N.Y. 2012) (appeal docketed, No. 12-1264 (2d Cir. Mar. 20, 2012); *Estate of Heiser v. Bank of Tokyo,* 919 F. Supp. 2d 411, 421-22 (S.D.N.Y. 2013); *Levin v. Bank of New York*, 2011 WL 812032 (S.D.N.Y. March 4, 2011) (*Levin I*); *Levin v. Bank of New York*, 2013 WL 5312502 (S.D.N.Y. 2013) (*Levin II*) (answering "no'); *Calderon-Cardona v. JPMorgan Chase Bank, N.A.*, 867 F. Supp. 2d 389, 405 (S.D.N.Y. 2011) (appeal docketed, No. 12-75 (2d Cir. Jan. 10, 2012)) (answering "yes"). *See Estate of Heiser v. Deutsche Bank Trust Co. Americas*, 2012 WL 5039065 (S.D.N.Y. Oct. 17, 2012) (staying decision pending resolution by Second Circuit); and *Gates v. Syrian Arab Republic,* 2013 WL 6009491, *4 (N.D. Ill. 2013), *aff'd,* 755 F.3d 568 (7th Cir. 2014) (finding no need to resolve issue, as ownership was clear). The issue is pending resolution in the

Second Circuit, the noted appeals having been argued February 11, 2013.

Courts, including the court below, and even courts which have decided differently, have failed to appreciate the simple distinction between execution, which transfers title and requires proof of true ownership, and attachment, a provisional remedy which allows property to be held for possible execution while true ownership is explored. TRIA, passed in response to victims of terrorism being thwarted in gaining access to the assets of terrorist parties, *Weininger v. Castro*, 462 F. Supp. 2d 457, 483 (S.D.N.Y. 2006) (quoting H.R. Conf. Rep. 107-779, at 27 (2002), 2002 U.S.C.C.A.N. 1430, 1434), specifically authorizes both and makes "the blocked assets of the terrorist party . . . subject to execution or attachment in aid of execution." TRIA §201(a). Justice requires that this Court resolve the controversy regarding its own precedent and regarding the interpretation of Congressional will.

Zittman is a World War II case in which creditors claimed interests in accounts held by German banks and located at Chase National Bank in New York. The case held that the provisional remedy of attachment was available without resolving whether the German banks were the true owners of the assets in those accounts.[3] *Id*. at 445, 451. The creditors, prior to

[3] *Zittman* and *Orvis* applied New York law regarding attachment. In *Am. Int'l Grp., Inc. v. Islamic Republic of Iran*, 657

(Continued on following page)

securing any judgment, served Chase with writs of attachment, which served as the basis for the exercise of *in rem* jurisdiction over the accounts. *Id*. at 450. Before judgments were secured the accounts in question were blocked by the federal Alien Property Custodian pursuant to an Executive Order issued pursuant to §5(b) of the Trading With the Enemy Act of 1917. *Id.* at 452. The Custodian brought a declaratory judgment action to ascertain priority interest in the accounts. *Id*. The Court found the attachments valid because attachment did not transfer any interest in the accounts to the creditors; it merely froze the accounts, provisionally, and in no way interfered with the power of the Custodian to preclude, upon execution, transfer of title in the accounts. *Id*. at 464.

Under the reasoning of the court below, the accounts in *Zittman* would not be subject to attachment absent a further showing of true ownership. The accounts here unquestionably are "blocked assets" under TRIA. So, by definition, were the accounts in *Zittman*: they were blocked under the Trading With the Enemy Act, 50 U.S.C.A. Appx. §5b, which makes them, by definition, "blocked assets" under TRIA. TRIA §201(d)(2)(A), Pub. L. No. 107-297, 116 Stat. 2322, 2337. The accounts here were blocked pursuant to OFAC regulations that required

---

F.2d 430, 440-41 (D.C. Cir. 1981), a case also dealing with the collection of blocked assets, the DC Circuit found New York law and the law of the District of Columbia, applicable here, to be the same.

an administrative determination by OFAC that Iran has "any interest" in them. App. 10; 31 C.F.R. §§544.305, 594.306. The accounts in *Zittman* had been blocked solely because of an administrative determination by the Alien Property Custodian that Germany had "any interest" in them. *Id*. at 451 & n. 18. The holding of the court below is untenable. *Zittman* makes clear that the Court below misinterpreted section 201(a) of TRIA when it required that before "blocked assets of [Iran]" are "subject to" attachment or execution, a creditor must prove not only that Iran had "any interest" in the property at issue, but also that Iran was the true owner of the property.

Failure to distinguish attachment and execution is the source of the court's error. The court was concerned that Congress, in enacting TRIA, did not intend to "pay[ ] Iran's victims with assets Iran does not own." *Heiser v. Islamic Republic of Iran*, 735 F.3d 934, 939 (D.C. Cir. 2013), cited, App. 3. That concern, while relevant to execution, is not relevant to attachment and is not consistent with *Zittman* or with *Orvis v. Brownell*, 345 U.S. 183 (1953), which follows *Zittman* and which recognizes that attachment merely gives creditors the opportunity to prove that execution is warranted. *Orvis*, 345 U.S. at 187.

This Court's decision in *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250 (2014) also recognizes the difference between ascertaining whether an asset is subject to execution and execution itself. *Republic of Argentina* was a dispute about entitlement to discovery regarding assets that might be

subject to execution. This Court noted that the reason for discovery was "that [the judgment-creditor] *does not yet know* what property [the judgment-debtor] has and where it is, once more whether it is executable under the relevant jurisdiction's law." *Id*. at 2257 (emphasis in original). In this case, the creditors sought to attach assets for exactly the same purpose: to discover whether it is executable.

Republic of Argentina supports not only the need to review the decision below for its consistency with this Court's precedents regarding attachment and execution, but also the need to review its consistency regarding discovery. *Republic of Argentina* requires that the creditors are entitled to find out whether the transactions in question fall even within the Court of Appeals' crimped interpretation of TRIA. The creditors had requested information about accounts in which Iran had any interest.[4] The Court of Appeals denied the requested discovery with the obviously

[4] Their original subpoena sought:

> All documents and/or electronically stored information for the calendar years of 2008 through 2009 and pertaining to any and all financial transactions, communications concerning, payments to or from, accounts either controlled (directly or indirectly), or payable to the Islamic Republic of Iran or its known financial instrumentalities (i.e., Bank Melli, Bank Kshavari, Bank Markazi, Bank Sepah, Bank Tejarat, the Export Development Bank of Iran) or any other Iranian Financial Institution subject to U.S. Sanctions against the Islamic Republic of Iran.

Dkt. #485, Exhibit E.

erroneous observation that the requested discovery concerned only whether Iran "was a beneficiary of the blocked EFTs, not an originator." App. 2. The District Court had not invoked that ground, finding only that because plaintiffs' motion for sanctions failed there was no need for discovery. App. 13.

Republic of Argentina counsels that the courts should not thwart the judgments Congress has made with regard to the capacity of victims of terrorism to collect judgments against terrorist parties who also are foreign sovereigns. 134 S. Ct. at 2258. A lower court's "limiting discovery in aid of execution of a foreign-sovereign judgment debtor's assets" is not consistent with this Court's mandate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN VAIL
Counsel of Record
JOHN VAIL LAW PLLC
777 6th St., NW, Suite 410
Washington, DC 20001
(202) 589-1300
john@johnvaillaw.com

THOMAS FORTUNE FAY
COLE DOWDEN
FAY KAPLAN LLC
777 6th St., NW, Suite 410
Washington, DC 20001
(202) 589-1300
thomasfay@aol.com
cole.dowden@faykaplanlaw.com

Counsel for Petitioners

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13-7086 **September Term, 2013**
FILED ON: JUNE 13, 2014

DEBORAH D. PETERSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES C. KNIPPLE (DECEASED), ET AL.,

APPELLANTS

V.

ISLAMIC REPUBLIC OF IRAN, ET AL.,

APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:01-cv-02094)

Before: BROWN, GRIFFITH and MILLETT, *Circuit Judges*

JUDGMENT

This case was considered on the record from the district court and on the briefs of the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). It is

ORDERED and **ADJUDGED** that the denial of the appellants' motion for sanctions and motion to schedule discovery be affirmed.

Appellants are family members and representatives of the estates of servicemen killed in the 1983 bombing of the U.S. Marine barracks in Beirut. In 2007, they obtained a default judgment of $2.7 billion against Iran for its role in the attacks, which they have been trying to collect ever since. As part of that effort, appellants obtained writs of attachment, directed at various financial institutions, for "any money, property, or credits" of Iran (or its listed instrumentalities) held by the banks. Appellants obtained those writs pursuant to section 201(a) of the Terrorism Risk Insurance Act of 2002 ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322, 2337, which "subject[s] to execution or attachment" "the blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)" against which a plaintiff holds a judgment. Iran is a terrorist party for purposes of TRIA.

Appellee HSBC Bank USA (HBUS) was one of the financial institutions appellants served with a writ. Although HBUS represented that it did not hold any property of Iran, appellants eventually learned that HBUS in fact held three "blocked" electronic funds transfers (EFTs) directed to Iranian banks totaling approximately $25,000. An EFT is a mechanism whereby a party with an account in one bank (the originator) can transfer funds to a party with an account in another bank (the beneficiary) via a third bank (the intermediary). HBUS, as intermediary, had blocked the three EFTs at issue here pursuant to federal regulations (distinct from TRIA) requiring U.S.

banks to block EFTs involving certain Iranian beneficiary banks. Thus, instead of crediting the beneficiary banks as it normally would, HBUS debited the account of the originator's bank and placed the proceeds into a special, frozen account at HBUS overseen by the U.S. government's Office of Foreign Assets Control. Appellants, believing that HBUS had lied by failing to disclose these three blocked EFTs, filed motions seeking sanctions and discovery, which the district court denied.

On appeal appellants argue that Iran has a property interest in the funds associated with the three blocked EFTs. This court's decision in *Heiser v. Islamic Republic of Iran*, 735 F.3d 934 (D.C. Cir. 2013), however, forecloses this argument. In *Heiser*, which also involved blocked EFTs originally destined for Iranian banks, we held that such EFTs were not subject to attachment because they were not owned by Iran. As we explained:

> Iran was not the beneficiary or originator, but the owner of the beneficiary's bank for each funds transfer, and legal title does not pass to the beneficiary's bank until it accepts the payment order from the intermediary bank. The Iranian beneficiary banks never received a payment order because the funds transfers were blocked at the intermediary banks, and they never held legal title to the money in the contested accounts.

Id. at 941 (internal citations, brackets, and quotation marks omitted). Because Iran had no ownership

interest in the accounts, we held that the funds were not subject to attachment under TRIA § 201. *Id.* The same is true here. Because the blocked EFTs are not the property of Iran, they did not fall within the scope of the attachment, and therefore HBUS's failure to disclose them is not sanctionable.

Appellants now claim that discovery is needed to explore whether Iran might be an originator of any of the blocked EFTs. But that was not the discovery they sought and were denied in the district court. That motion, brought before our ruling in *Heiser*, was based solely on the claim made in appellants' motion for sanctions that Iran was a beneficiary of the blocked EFTs, not an originator. The district court did not abuse its discretion denying the motion for sanctions and its accompanying discovery request. *Cf. Ned Chartering & Trading, Inc. v. Republic of Pakistan*, 294 F.3d 148, 155 (D.C. Cir. 2002) (district court did not abuse its discretion in denying further discovery where "the only possible relevant reason [for discovery] . . . was not presented to that court").

Accordingly, we affirm.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or

rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Jennifer M. Clark
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEBORAH PETERSON, *et al.*, **Plaintiffs,** **v.** **ISLAMIC REPUBLIC OF IRAN, *et al.*** **Defendants.**	**Civil No. 01-2094 (RCL)**

ORDER

(Filed Apr. 11, 2013)

Upon consideration of plaintiffs' motion for sanctions, ECF No. 485, and motion to schedule discovery and oral argument, ECF No. 494, and for the reasons given in the memorandum opinion issued this date, it is hereby

ORDERED that both motions are DENIED.

SO ORDERED.

Signed by Royce C. Lamberth, Chief Judge, on April 11, 2013.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEBORAH PETERSON, *et al.*, **Plaintiffs,** **v.** **ISLAMIC REPUBLIC OF IRAN, *et al.*** **Defendants.**	**Civil No. 01-2094 (RCL)**

MEMORANDUM OPINION

(Filed Apr. 11, 2013)

Plaintiffs moved for sanctions against garnishee HSBC Bank USA, N.A. ("HBUS") in the amount of roughly $2.7 billion (plus interest) based on their failure to disclose three blocked electronic fund transfers ("EFTs") of less than $25,000 in total. Pls.' Sanctions Mot., ECF No. 485. Plaintiffs also moved to schedule discovery and oral argument. Pls.' Scheduling Mot., ECF No. 494. Because HBUS committed no sanctionable conduct, the Court will DENY both motions.

I. BACKGROUND

This case is the lead action arising from the 1983 bombing of the United States Marine Barracks in Beirut, Lebanon, and it contains nearly 1,000 plaintiffs. *See In Re Islamic Republic of Iran Terrorism*

Litigation, 659 F. Supp. 2d 31, 101 (D.D.C. 2009). This Court entered final judgment in 2007, awarding plaintiffs roughly $2.7 billion. *Peterson v. Islamic Republic of Iran,* 515 F. Supp. 2d 25 (D.D.C. 2007).

In their efforts to collect on this award, plaintiffs served a Writ of Attachment on HBUS on April 30, 2008, which included the following two interrogatories:

> 1. Were you at the time of the service of the writ of attachment, or have you been between the time of such service and the filing of your answers to this interrogatory indebted to the defendant(s), and if so, how, and in what amount?
>
> 2. Had you at the time of the service of the writ of attachment, or have you had between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant(s) in you [sic] possession or charge, and, if so, what?

Interrogatories in Attachment, ECF No. 493-1. HBUS answered "No" to both questions and returned the document to plaintiffs on May 6, 2008. *Id.*

In 2012, plaintiffs issued a new subpoena to HBUS, seeking, *inter alia*:

> All documents and/or electronically stored information for the calendar years of 2008 through 2009 and pertaining to any and all financial transactions, communications

> concerning, payments to or from, accounts either controlled (directly or indirectly), or payable to the Islamic Republic of Iran or its known financial instrumentalities (i.e. Bank Melli, Bank Kshavari, Bank Markazi, Bank Sepah, Bank Tejarat, the Export Development Bank of Iran) or any other Iranian Financial Institution subject to U.S. Sanctions against the Islamic Republic of Iran.

Subpoena 4, ECF No. 485-39. In response, HBUS acknowledged several EFTs blocked pursuant to Office of Foreign Assets Control ("OFAC") regulations, including three before May 6, 2008 (the date HBUS responded to plaintiffs' initial interrogatories):

Recipient	**Current Value**[1]	**Date Blocked**
Bank Melli PLC, London	$21,060.22	Feb. 21, 2008
Bank Melli Iran/ Iranian Airport Co.	$2,713.05	Mar. 12, 2008
Bank Mellat, Tehran, Iran	$508.38	Mar. 24, 2008

HBUS's Resp. & Objections to Subpoena 3, ECF No. 485-40. An EFT "is nothing other than an instruction to transfer funds from one account to another." *Estate of Heiser v. Islamic Republic of Iran,* 885 F. Supp. 2d 429, 438 (D.D.C. 2012) (quoting *Shipping Corp. of*

[1] As of December 19, 2012. ECF No. 485-40.

India Ltd. V. Jaldhi Overseas Pte Ltd., 585 F.3d 58, 60 n.1 (2d Cir. 2009)). HBUS explains:

> Many international EFTs are denominated in U.S. dollars and are therefore routed through one or more 'intermediary banks' in the United States. The participants in such EFTs are (1) the originator, the person seeking to transfer funds to another person; (2) the originator's bank; (3) one or more intermediary banks; (4) the beneficiary's bank, where the beneficiary's account can be credited; and (5) the beneficiary, the party meant to receive the funds.

HBUS's Sanctions Opp'n 9. HBUS was an intermediary bank in the three transactions at issue. But these EFTs were blocked pursuant to OFAC regulations. *Id.* at 10; *see also* 31 C.F.R. pts. 544, 594. The originator bank's account at HBUS was debited, but, instead of passing along to the Iranian-affiliated beneficiary banks, the proceeds were placed in a blocked account at HBUS under OFAC's supervision.

II. LEGAL STANDARD

D.C. Code § 16-526(b) provides that "[w]hen the garnishee has failed to answer the interrogatories served on him, . . . judgment shall be entered against him for the whole amount of the plaintiff's claim, and costs, and execution may be had thereon."

III. ANALYSIS

Before reaching the main question, the Court notes the ambiguity in the D.C. Code section which gives plaintiffs the right to a judgment against a garnishee who "fail[s] to answer the interrogatories served on him." D.C. Code § 16-526(b). This provision's applicability to a garnishee who knowingly answers an interrogatory with false information is, on first glance, ambiguous. A literal reading of the provision might suggest that such a person has not "failed to answer," although they did so dishonestly. *See* HBUS's Sanctions Opp'n 10. Under this reading, however, the provision incentivizes garnishees to lie. This appears to be a rather unlikely result. However, the Court need not firmly resolve the question here.[2] As explained below, even if a "fail[ure] to answer" encompasses a garnishee's dishonest, incomplete, or misleading answer to an interrogatory, plaintiffs' motion would still fail.

HBUS's May 2008 statement that it was neither "indebted to" the defendants nor in possession of any [sic] "any goods, chattels, or credits of the defendants" will not support a motion for sanctions

[2] The Court notes, however, that the interpretive question may not be resolved by reading D.C. Code § 16-526(b) "in tandem" with Federal Rule of Civil Procedure 37(a)(4), which provides that "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond," *see* Pls.' Sanctions Reply 19, because the latter provision applies "only to parties to the case" and HBUS is not a party. *Alexander v. FBI,* 186 F.R.D. 170, 180 (D.D.C. 1999).

pursuant to D.C. Code § 16-526(b) because these were legally accurate statements.

Interpreting the legal significance of the terms of the interrogatory requires looking to plaintiffs' statutory authority for pursuing these assets in the first place. Section 201(a) of the Terrorism Risk Insurance Act ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322 (2002), allows a person holding a judgment against a state sponsor of terrorism to attach and execute on "the blocked assets of that terrorist party." This provision allows plaintiffs to "execute on only the assets 'of' – or, in other words, 'belonging to' – the terrorist state committing the act." *Heiser,* 885 F. Supp. 2d at 438. This provision "preempt[s] District of Columbia law." *Id.* at 444. However, the statute does not provide standards to determine which assets "belong to" defendants. To answer that question, the Court "looks to Restatements, legal treatises, and state decisional law to find and apply what are generally considered to be the well-established standards of state common law, a method of evaluation which mirrors – but is distinct from – the federal common law approach." *Id.* (quoting *Estate of Doe v. Islamic Republic of Iran,* 808 F. Supp. 2d 1, 23 n.7 (D.D.C. 2011)) (internal quotations omitted). Relying on Article 4A of the UCC, this Court has concluded that a blocked EFT does not "belong to" the terrorist party who was the intended beneficiary of the transaction, and thus may not be executed on by judgment creditors under TRIA

§ 201. *Heiser,* 885 F. Supp. 2d at 448;[3] *see also Calderon-Cardona v. JPMorgan Chase Bank, NA.,* 867 F. Supp. 2d 389, 400-05 (S.D.N.Y. 2011) (Cote, J.).[4]

Under *Heiser,* defendants had no property interest in these blocked EFTs. Accordingly, HBUS's 2008 statements that it was not "indebted to" defendants and did not possess any of their "goods, chattels, or credits" were legally accurate, notwithstanding their failure to mention these blocked EFTs. These accurate statements cannot support plaintiffs' motion for sanctions. Because this motion for sanctions fails, the Court also rejects plaintiffs' motion to schedule discovery and oral argument.

---

[3] Plaintiffs in that case have taken an appeal on this issue. *See Estate of Heiser v. Islamic Republic of Iran,* 12-cv-7101 (D.C. Cir. Appeal Docketed Oct. 5, 2012). The appeal appears to have been fully briefed as of March 18, 2013, but oral argument has not yet been scheduled.

[4] Judge Cote has adopted the same approach as this Court, but several judges in the Southern District of New York have not. *See Estate of Heiser v. Bank of Tokyo,* 11-cv-1601, 2013 WL 342684 (S.D.N.Y. Jan. 29, 2013) (Castel, J.); *Hausler v. JP Morgan Chase Bank, N.A.,* 845 F. Supp. 2d 553, 563 (S.D.N.Y. 2012) (Marrero, J.); *Levin v. Bank of New York,* 09-cv-5900, 2011 WL 812032 (S.D.N.Y. Mar. 4, 2011) (Patterson, J.); *Hausler v. JP Morgan Chase Bank, NA.,* 740 F. Supp. 2d 525, 534 (S.D.N.Y. 2010) (Marrero, J.).

IV. CONCLUSION

For the foregoing reasons, both of plaintiffs' motions are DENIED. An order shall issue with this opinion.

Signed by Royce C. Lamberth, Chief Judge, on April 11, 2013.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEBORAH PETERSON, *et al.*, **Plaintiffs,** **v.** **ISLAMIC REPUBLIC OF IRAN, *et al.*** **Defendants.**	**Civil No. 01-2094 (RCL)**

ORDER

(Filed May 22, 2013)

Upon consideration of plaintiffs' motion for reconsideration, ECF No. 503, and for the reasons given in the memorandum opinion issued this date, it is hereby

ORDERED that the motion is denied.

SO ORDERED.

Signed by Royce C. Lamberth, Chief Judge, on May 22, 2013.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEBORAH PETERSON, *et al.*, **Plaintiffs,** **v.** **ISLAMIC REPUBLIC OF IRAN, *et al.*** **Defendants.**	**Civil No. 01-2094 (RCL)**

MEMORANDUM OPINION

(Filed May 22, 2013)

The Court recently denied plaintiffs' motion for sanctions against garnishee HSBC Bank USA, N.A. ("HBUS"). *Peterson v. Islamic Republic of Iran,* 01-cv-2094, 2013 WL 1460188 (D.D.C. Apr. 11, 2013). Plaintiffs now move for reconsideration of that decision pursuant to Federal Rule of Civil Procedure 60(b). Pls.' Mot., ECF No. 503. The Court denies the motion.

I. BACKGROUND[1]

Plaintiffs' motion for sanctions argued that garnishee HBUS failed to properly disclose three blocked

[1] The Court presumes familiarity with the background of the case, and only provides those facts essential to the disposition of the present motion.

electronic fund transfers ("EFTs") in response to a 2008 interrogatory. *Peterson,* 2013 WL 1460188, at *1. These three EFTs were disclosed by HBUS in 2012. Relying on its earlier opinion in *Estate of Heiser v. Islamic Republic of Iran,* 885 F. Supp. 2d 429, 438 (D.D.C. 2012), the Court found that Iran "had no property interest in these blocked EFTs," and therefore "HBUS's 2008 [interrogatory response] statements that it was not 'indebted to' defendants and did not possess any of their 'goods, chattels, or credits' were legally accurate, notwithstanding their failure to mention these blocked EFTs." *Peterson,* 2013 WL 1460188, at *3. Because HBUS's statements were legally accurate, the Court held, they could not be sanctionable. *Id.*

II. LEGAL STANDARD

Rule 60 provides, in pertinent part, that "the court may relieve a party . . . from a final judgment, order, or proceeding for . . . (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party . . . [or] (6) any other reason that justifies relief." Fed. R. Civ. P. 60(b)(3) & (6). To obtain relief under (b)(3), the moving party must show (1) that the other party engaged in fraud, misrepresentation, or misconduct; and (2) that this misconduct prevented the moving party from fully and fairly presenting his *case. Summers v. Howard Univ.,* 374 F.3d 1188,1193 (D.C. Cir. 2004). To obtain relief under (b)(6), the moving party must demonstrate "extraordinary circumstances." *Marino*

v. Drug Enforcement Admin., 685 F.3d 1076, 1079 (D.C. Cir. 2012).

III. ANALYSIS

A. Plaintiffs Do Not Merit Relief Under Rule 60(b)(3)

Plaintiffs purport to show that HBUS engaged in "fraud, misrepresentation, or misconduct" which "substantially interfered" with their ability to fully and fairly present their case. Pls.' Reply 3. They point to three categories of allegedly fraudulent conduct: (1) HBUS's failure in 2008 to disclose the three EFTs, Pls.' Mot. 9-10; Pls.' Reply 3-4; (2) HBUS's ongoing failure to accurately disclose its Iran-related assets, as demonstrated by alleged inconsistencies between those EFTs listed in HBUS's 2012 disclosures and those listed in a 2008 Office of Foreign Asset Control ("OFAC") disclosure, Pls.' Mot. 10 (citing Pl.'s Mot, Ex. C, under seal); Pls.' Reply 5-6; and (3) HBUS's mischaracterization of its legal procedures and compliance department, Pls.' Mot. 4-9; Pls.' Reply 3-4.

The first category of allegedly fraudulent conduct – HBUS's alleged 2008 disclosure failure – fails to support plaintiffs' motion because it is precisely the subject of the very opinion and order that plaintiffs are challenging. The Court already found that HBUS's responses to the 2008 interrogatories did not support a motion for sanctions. *Peterson,* 2013 WL 1460188, at *3. Plaintiffs will not obtain a different

result merely by invoking the same conduct again in a motion for reconsideration.

The second category of allegedly fraudulent conduct – HBUS's alleged ongoing disclosure failure – does not appear to be fraudulent. Plaintiffs point to a 2008 OFAC memorandum, listing four undated blocked transactions between January 1, 2007 and June 30, 2008 held by HSBC, and complain that this memo lists "a different number of Iranian entities, none of which were those named by HBUS" in its 2012 disclosure. Pls.' Mot. 10. HBUS explains that the first two of the 2008 OFAC-listed transactions actually correspond to two of the three transactions listed in the 2012 disclosure; the amounts are slightly different because of the change in value between 2008 and 2012, and the names are different because the 2008 OFAC disclosure lists the originator of the transaction, while the 2012 HBUS disclosure lists the beneficiary. HBUS's Opp'n 8 n.4, ECF No. 508-3. HBUS further explains that the third transaction listed in the 2008 OFAC disclosure was not included in the HBUS 2012 disclosure because it was outside the time-frame of that disclosure. HBUS's Opp'n 8. Finally, HBUS explains that the fourth transaction listed in the 2008 OFAC disclosure was not included in the HBUS 2012 disclosure because it had been released to the remitter in 2010 and was not held by HBUS as of 2012. HBUS's Opp'n 8.

Even if these discrepancies were evidence of fraud, plaintiffs would not be entitled to relief under (b)(3) because they failed to demonstrate how such

"fraud" prevented them from fully and fairly making their case. *See Summers,* 374 F.3d at 1193. That plaintiffs appear to have possessed the allegedly inconsistent OFAC disclosure since 2008 – well before they filed the sanctions motion at issue here – makes it even more doubtful that such "fraud" imposed any burden on their ability to make their case.

The third category of allegedly fraudulent conduct – HBUS's alleged mischaracterization of its legal procedures and compliance department – fails to support plaintiffs' motion because it is irrelevant to the case at hand. The Court's denial of the motion for sanctions rested only on the legal accuracy of the challenged interrogatory responses – the adequacy of HBUS's compliance office has no bearing on that determination. There is no reason why such "fraud" would be any burden on plaintiffs' ability to make their case.

B. Plaintiffs Do Not Merit Relief Under Rule 60(b)(6)

Plaintiffs attack the Court's April opinion by raising the same legal arguments the Court rejected. Pls.' Mot. 11-23. Such arguments do not amount to the kind of "extraordinary circumstances" that could merit relief under Rule 60(b)(6). *See Marino,* 685 F.3d at 1079.

Plaintiffs also complain that the "legal analysis upon which this Court rested its April 11, 2013 [*sic*] is far from settled" because the *Heiser* opinion upon

which the Court relied is pending on appeal, and because several district judges in the Southern District of New York have reached a different conclusion on the same legal issue. Pls.' Reply 11. Plaintiffs fail to note that the Court *explicitly* recognized both of these facts in the challenged opinion. *Peterson,* 2013 WL 1460188, at *3 nn.3-4. Since the Court already considered these facts, they do not amount to the kind of "extraordinary circumstances" that would merit relief under Rule 60(b)(6). *See Marino,* 685 F.3d at 1079.

IV. CONCLUSION

Plaintiffs' motion for reconsideration is denied. An order shall issue with this opinion.

Signed by Royce C. Lamberth, Chief Judge, on May 22, 2013.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13-7086 **September Term, 2013**
1:01-cv-02094-RCL
Filed On: July 28, 2014

Deborah D. Peterson, Personal Representative of the Estate of James C. Knipple (Deceased), et al.,

Appellants

v.

Islamic Republic of Iran, et al.,

Appellees

BEFORE: Garland*, Chief Judge, and Henderson, Rogers, Tatel, Brown, Griffith, Kavanaugh, Srinivasan, Millett, Pillard, and Wilkins, Circuit Judges

ORDER

Upon consideration of appellants' petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

---

* Chief Judge Garland did not participate in this matter.

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Jennifer M. Clark
Deputy Clerk

TERRORISM RISK INSURANCE ACT
Pub. L. No. 107-297, 116 Stat. 2322, 2337

TITLE II – TREATMENT OF TERRORIST ASSETS

SEC. 201. SATISFACTION OF JUDGMENTS FROM BLOCKED ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM.

(a) In General. – 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.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued September 24, 2013
Decided November 19, 2013

No. 12-7101

FRAN HEISER, INDIVIDUALLY AND AS CO-ADMINISTRATOR OF THE ESTATE OF MICHAEL HEISER, ET AL.,
APPELLANTS

V.

ISLAMIC REPUBLIC OF IRAN, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:00-cv-02329)

Dale K. Cathell argued the cause for appellants. With him on the briefs was *Richard M. Kremen*.

James L. Kerr argued the cause for appellees Wells Fargo Bank, N.A., et al. With him on the brief was *Karen E. Wagner*.

Benjamin M. Shultz, Attorney, U.S. Department of Justice, argued the cause for *amicus curiae* United States of America. With him on the brief were *Stuart F. Delery*, Principal Deputy Assistant Attorney General, *Ronald C. Machen*, U.S. Attorney, and *Mark B. Stern* and *Sharon Swingle*, Attorneys.

Before: BROWN, *Circuit Judge*, and EDWARDS and RANDOLPH, *Senior Circuit Judges*.

Opinion for the court filed by *Senior Circuit Judge* RANDOLPH.

RANDOLPH, *Senior Circuit Judge*: In 1996, an explosion tore apart the Khobar Towers apartment complex in Dhahran, Saudi Arabia. Nineteen American military personnel died and hundreds of others were wounded. Investigations revealed that the terrorist organization Hezbollah had attacked the Towers with Iran's assistance. The opinion in *Estate of Heiser v. Islamic Republic of Iran* (*Heiser I*), 466 F. Supp. 2d 229, 252-54, 260-65 (D.D.C. 2006), describes Iran's intimate involvement in planning, supporting, and approving the attack.

The estate of Michael Heiser, one of the victims, and other victims' families and estates, sued Iran and several of its agencies and instrumentalities alleging their liability for the attacks. Plaintiffs obtained a default judgment, *id*. at 356, later modified under the 2008 National Defense Authorization Act, *Estate of Heiser v. Islamic Republic of Iran* (*Heiser II*), 659 F. Supp. 2d 20, 22-23, 30-31 (D.D.C. 2009). The judgment now totals approximately $591 million in punitive and compensatory damages. *Estate of Heiser v. Islamic Republic of Iran* (*Heiser III*), 885 F. Supp. 2d 429, 450 (D.D.C. 2012). The propriety of that judgment is not before us.

Plaintiffs, attempting to collect on this judgment, had writs of attachment issued to Bank of America,

N.A., and Wells Fargo, N.A., seeking any assets held by the banks in which Iran had an interest. The banks responded with lists of accounts having some connection to Iran, after which plaintiffs moved for the banks to turn over the funds in these accounts. In response, the banks conceded that some accounts were potentially subject to attachment. *Id.* at 447 n.6. These "uncontested accounts" are the subject of an interpleader action in the district court. *Id*. at 434, 449.

The remaining "contested accounts" are the subject of this appeal. *Id*. at 432. The accounts contain the proceeds of electronic funds transfers that were blocked under various sanctions programs the Treasury Department's Office of Foreign Assets Control implemented. *Id.* at 432-33, 446. These concepts need to be explained.

An electronic funds transfer is a series of transactions by which one party, called the "originator," transfers money through the banking system to another party, called the "beneficiary." *See* U.C.C. § 4A-104(a).[1] Suppose O wants to transfer $100 to B. If O and B have an account at Bank X, then the

[1] The following explanation is drawn from *Shipping Corp. of India, Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58, 60 n.1 (2d Cir. 2009) and 3 JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE § 22-1 (5th ed. 2008). *See also Heiser III*, 885 F. Supp. 2d at 446-47; 7 LARY LAWRENCE, ANDERSON ON THE UNIFORM COMMERCIAL CODE §§ 4A-101:1, 4A-101:6, 4A-103:4, 4A-104:4 to 104:11 (rev. ed. 2007).

transaction is simple. O can instruct Bank X, which will debit O's account and credit B's account with $100. But suppose O has an account at Bank X, and B has an account at Bank Y. Unless Banks X and Y are members of the same lending consortium, they must involve a third "intermediary" bank with which Banks X and Y both have accounts. The transaction would proceed as follows: (1) O instructs Bank X to pay B; (2) Bank X debits O's account and forwards instructions to the intermediary bank; (3) the intermediary bank debits Bank X's account, credits Bank Y's account, and forwards instructions to Bank Y; and (4) Bank Y credits B's account. The entire process occurs rapidly through a sequence of electronic debits and credits.

In this case, electronic funds transfers were never completed because of blocking regulations.[2] The

[2] Blocking regulations are promulgated under the International Emergency Economic Powers Act, Pub. L. No. 95-223, tit. II, 91 Stat. 1625, 1625-26 (1977) (codified at 50 U.S.C. §§ 1701-1706), which gives the President "broad powers" to impose economic sanctions on actors who threaten American interests. *Consarc Corp. v. U.S. Treasury Dep't*, 71 F.3d 909, 914 (D.C. Cir. 1995). Although Iran-specific blocking regulations exist, *see* 31 C.F.R. pts. 535 (Iranian Assets Control Regulations), 560 (Iranian Transactions and Sanctions Regulations), 561 (Iranian Financial Sanctions Regulations), 562 (Iranian Human Rights Abuses Sanctions Regulations), the transfers in this case were blocked under two different programs: Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. pt. 544; *see* Exec. Order No. 13,382, 70 Fed. Reg. 38,567 (June 28, 2005), and Global Terrorism Sanctions Regulations, 31 C.F.R. pt. 594; *see* Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

intermediary banks – affiliated with either Wells Fargo or Bank of America – electronically screened each funds transfer they received. The screening found references to one of several designated Iranian banks. Because of those references, the banks froze the transfers and deposited the proceeds in separate accounts. The money never reached the beneficiaries or their banks, but instead became the subject of litigation.

The blocking regulations cast a wide net. The regulations froze and prohibited the "transfer[ ]" of "property and interests in property" of designated entities. *See* 31 C.F.R. §§ 544.201(a), 594.201(a). These terms were defined broadly. *See id.* §§ 544.308, 544.309, 594.309, 594.312. Assets could be blocked even though Iran had no "traditional legal interests" in them. *Holy Land Found. for Relief & Dev. v. Ashcroft*, 333 F.3d 156, 162-63 (D.C. Cir. 2003) (internal quotation marks omitted). Blocking was not based on legal ownership.

The breadth of the blocking regulations is evident here. Iranian entities were not the originators of the funds transfers.[3] Nor were they the ultimate beneficiaries. The transfers were blocked because the

[3] One of the *uncontested* accounts holds the proceeds of a funds transfer for which an Iranian entity was an originator's bank, and another holds proceeds of a transfer with which an Iranian entity had an unknown relationship. The question whether a judgment creditor can attach assets that bear those relationships to Iran is not before the court.

beneficiaries' banks were Iranian. They were blocked, in other words, because Iranian banks would have had a contingent future possessory interest in the funds.

These are the funds that plaintiffs seek in satisfaction of their judgment against Iran. Plaintiffs argue that the Iranian banks' contingent possessory interests are sufficient for them to attach the contested accounts under two statutes. The first, 28 U.S.C. § 1610(g), "subject[s] to attachment" "the property of a foreign state . . . and the property of an agency or instrumentality of such a state" against which a plaintiff holds a judgment under 28 U.S.C. § 1605A. The second, § 201(a) of the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322, 2337 (codified at 28 U.S.C. § 1610 Note "Satisfaction of Judgments from Blocked Assets of Terrorists, Terrorist Organizations, and State Sponsors of Terrorism"), "subject[s] to execution or attachment" "the blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)" against which a plaintiff holds a judgment under 28 U.S.C. § 1605(a)(7).[4]

---

[4] The National Defense Authorization Act of 2008 repealed 28 U.S.C. § 1605(a)(7) and replaced it with 28 U.S.C. § 1605A. *Heiser II*, 659 F. Supp. 2d at 23. Plaintiffs' original judgment was awarded under the former provision. *Heiser I*, 466 F. Supp. 2d at 248, 265-66, 356-59. The modified judgment, including punitive damages, was awarded under the latter. *Heiser II*, 659 F. Supp. 2d at 23-24.

The United States submitted a statement of interest to the district court, and has filed a brief amicus curiae in this appeal. The government took "no position" on the question whether Iran owns the contested accounts. United States Amicus Br. at 1. It addressed only the proper construction of § 201 and § 1610(g). The government argued that the statutes "do not . . . permit a plaintiff to satisfy a judgment against a terrorist party by attaching property that the terrorist party does not own." United States Amicus Br. at 2. The government's interpretation of § 201 and § 1610(g) is the same as the banks'.

The district court held that the contested accounts were not attachable under either statute. It first held that the word "of" in § 201 and § 1610(g) denotes ownership and that Iran must therefore own any accounts plaintiffs may seek to attach. *Heiser III*, 885 F. Supp. 2d at 437-43. It then determined that ownership of the contested accounts should be governed by a federal rule of decision because the Foreign Sovereign Immunities Act, which includes both § 201 and § 1610(g), preempts state law. *Id.* at 443 -45. The court adopted Uniform Commercial Code Article 4A as a federal rule of decision. *Id.* at 445-47. Applying Article 4A principles, the district court found that Iran did not own the contested accounts.

The court therefore denied plaintiffs' motion for a turnover of the funds. *Id.* at 447-49.[5]

The parties agree that most of the requirements of § 201 and § 1610(g) are satisfied. Iran is obviously a "foreign state." Section 201 defines a "terrorist party" as "a foreign state designated as a state sponsor of terrorism," 28 U.S.C. § 1610 Note (d)(4), and Iran has been so designated, *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 67-68 (D.D.C. 2010). The funds are also property and blocked assets. *Heiser III*, 885 F. Supp. 2d at 433, 437, 442. As discussed above, plaintiffs hold a judgment under 28 U.S.C. § 1605(a)(7), which was modified under 28 U.S.C. § 1605A. *See supra* note 4.

Whether plaintiffs can attach the contested accounts thus depends on whether those accounts are the "property" or "blocked assets" *of* Iran. Plaintiffs ask us to treat the word "of" as encompassing any Iranian relationship with the contested accounts. Although the word "of" may signify ownership, plaintiffs claim that an ownership definition is inappropriate

---

[5] The district court's holding that § 201 and § 1610(g) require Iran to own the contested accounts accords with *Calderon-Cardona v. JPMorgan Chase Bank, N.A.*, 867 F. Supp. 2d 389, 403-07 (S.D.N.Y. 2011). Three other opinions from the same district have disagreed and held that § 201 does not require an ownership interest for attachment. *Hausler v. JPMorgan Chase Bank, N.A.*, 845 F. Supp. 2d 553, 562-68 (S.D.N.Y. 2012); *Levin v. Bank of N.Y.*, No. 09-CV-5900, 2011 WL 812032, at *13-19 (S.D.N.Y. Mar. 4, 2011); *Hausler v. JP Morgan Chase Bank, N.A.*, 740 F. Supp. 2d 525, 533-39 (S.D.N.Y. 2010).

here. Instead, they say the word "of" should draw its meaning from the surrounding language. In § 201 Congress used "of" to modify "blocked assets," and assets may be blocked on the basis of Iranian interests far less significant than ownership. This language choice, according to plaintiffs, conveys Congress's intent to compensate victims of terrorism with blocked assets. Thus, plaintiffs conclude, the contested accounts may be attached for the same reason they were blocked: because an Iranian bank would have served as a bank to the ultimate beneficiary.

The banks and the United States both reject this interpretation, citing Supreme Court cases defining "of" in various statutes as requiring ownership. *See Bd. of Trs. of the Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 131 S. Ct. 2188, 2195-96 (2011); *Poe v. Seaborn*, 282 U.S. 101, 109 (1930). The district court relied, in part, on these and other Supreme Court decisions. *Heiser III*, 885 F. Supp. 2d at 438. While the decisions establish that "of" denotes ownership in some statutes, the word may carry a different meaning in others. *See, e.g.*, *Prot. & Advocacy for Persons with Disabilities v. Mental Health & Addiction Servs.*, 448 F.3d 119, 125-26 (2d Cir. 2006). None of the Supreme Court decisions the parties or the district court cited purport to define "of" conclusively and for all purposes. Its meaning depends on context.

With respect to § 201 and § 1610(g), plaintiffs' interpretation conflicts with the established principle that "a judgment creditor cannot acquire more property rights in a property than those already held by

the judgment debtor." 50 C.J.S. *Judgments* § 787 (2013); *see United States v. Winnett*, 165 F.2d 149, 151 (9th Cir. 1947); *Zink v. Black Star Line, Inc.*, 18 F.2d 156, 157 (D.C. Cir. 1927); *Lewis v. Smith*, 15 F. Cas. 498, 498-99 (C.C.D.C. 1825) (No. 8,332). If a debtor merely holds property as an intermediary for a third party, but does not own the property, then a creditor cannot attach it. *See Carpenter v. Nat'l City Bank of Chi.*, 48 App. D.C. 133, 134-35, 136 (D.C. Cir. 1918). These principles carry significant weight because "statutes should be interpreted consistently with the common law." *Manoharan v. Rajapaksa*, 711 F.3d 178, 179 (D.C. Cir. 2013) (per curiam) (quoting *Samantar v. Yousuf*, 560 U.S. 305, 130 S. Ct. 2278, 2289 (2010)). Congress can "abrogate" the traditional common-law principles governing execution of judgments, but to do so it must "speak directly to the question addressed by the common law." *Id.* at 179-80 (quoting *United States v. Texas*, 507 U.S. 529, 534 (1993) (internal quotation marks omitted)).

Congress has not done so here. The statutory text is silent on this issue. Nothing in the legislative histories of § 201 or § 1610(g) suggests that Congress intended judgment creditors of foreign states to be able to attach property those states do not own. Indeed, a House Report addressing § 1610(g) states that the section was intended to let debtors attach assets in which foreign states have "beneficial ownership." H.R. REP. NO. 110-477, at 1001 (2007) (Conf. Rep.). The House Report on the Terrorism Risk Insurance Act does state that § 201's purpose "is to

deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism . . . by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties." H.R. REP. NO. 107-779, at 27 (2002) (Conf. Rep.). But this merely repeats the language of the statute. It does not show that Congress's "comprehensive[ ]" solution was to abrogate the common law.

Plaintiffs cite the floor debate over § 201 to argue that Congress wanted to compensate terrorism victims with blocked assets. But plaintiffs misinterpret the debate. Congress had a narrower concern. Even before the Terrorism Risk Insurance Act was passed, 28 U.S.C. § 1610(f)(1) purportedly allowed creditors holding judgments under § 1605(a)(7) (and, later, under § 1605A) to attach blocked property. But the President was authorized to "waive any provision" of § 1610(f)(1) "in the interest of national security." 28 U.S.C. § 1610(f)(3). The President waived § 1610(f)(1) in almost all cases after finding that attachment of blocked property would "impede the ability of the President to conduct foreign policy" and "impede the effectiveness of . . . prohibitions and regulations upon financial transactions." Determination to Waive Requirements Relating to Blocked Property of Terrorist-List States, 63 Fed. Reg. 59,201 (Oct. 21, 1998).[6]

[6] Section 1610(f) was passed as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, Treasury Department Appropriations

(Continued on following page)

Congress responded to this perceived "flaunting [flouting of?] the law," 148 CONG. REC. 23,121 (Nov. 19, 2002) (statement of Sen. Harkin), by passing § 201, which "builds upon and extends the principles in section 1610(f)(1) . . . and eliminates the effects of any Presidential waiver issued prior to the date of enactment." H.R. REP. NO. 107-779, at 27; *see also Ministry of Def. v. Elahi*, 556 U.S. 366, 386 (2009). The floor debate clearly demonstrates that at least some members of Congress wanted to use Iran's assets to pay its victims, whether or not the executive agreed. But that purpose is a far cry from paying Iran's victims with assets Iran does not own.

Adopting plaintiffs' interpretation of § 201 and § 1610(g) risks punishing innocent third parties. Plaintiffs' position is that these sections allow a creditor to satisfy a judgment with property the debtor does not own. But if the debtor does not own that property, then someone else must. And that someone could, and very well might, be an innocent person who then unjustly bears the costs of the

---

Act, tit. I, § 117(d), 112 Stat. 2681-480, 2681-491 to -492. The original language allowing the President to waive the "requirements of this section," was codified as a note to 28 U.S.C. § 1610(g). *See id.* That language was repealed by the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, div. C, § 2002, 114 Stat. 1464, 1543, which added the current language allowing the President to waive "any provision of paragraph (1)." The President then executed a superseding waiver pursuant to this new language. Determination to Waive Attachment Provisions Relating to Blocked Property of Terrorist-List States, 65 Fed. Reg. 66,483 (Oct. 28, 2000).

debtor's wrong. This court has construed "strictly against the garnisher" a statute "in derogation of the common law," because it risked penalizing "a garnishee who owed the principal defendant nothing." *Austin v. Smith*, 312 F.2d 337, 340-43 (D.C. Cir. 1962); *see also Rieffer v. Home Indem. Co.*, 61 A.2d 26, 27 (D.C. 1948) ("The weight of authority clearly favors a strict construction of attachment statutes."), *modified on other grounds*, 62 A.2d 371 (D.C. 1948). And the need to protect innocent parties is particularly acute with blocked assets. In a statement of interest submitted in a different case, the government explained that the Sudan Sanctions Regulations – which have similar breadth to the sanctions in this case, *see* 31 C.F.R. §§ 538.201, 538.301, 538.310, 538.313 – could block "personal remittances by persons not subject to sanctions" merely because the remittances were sent through a Sudan-owned bank. Statement of Interest of the United States of America at 6-7, *Rux v. ABN Amro Bank N.V.*, No. 08-CV-6588 (S.D.N.Y. Apr. 14, 2009), ECF No. 132. These personal remittances could include tuition payments for health care training or money paid by a Sudanese embassy employee to purchase a personal vehicle. *Id.* Exhibit 1 at ¶¶ 14-15 (Decl. of John E. Smith).

The record does not disclose whether the originators or beneficiaries in this case are entirely innocent. But they may be. And that prospect would be contrary to Congress's intent. If potentially innocent parties pay plaintiffs' judgment, then the punitive purpose of these provisions is not served. Quite the opposite. To

the extent innocent parties pay some part of a terrorist state's judgment debt, the terrorist state's liability is ultimately reduced. Congress could not have intended such a result.

Plaintiffs claim that even if Iranian ownership is required, they should still prevail because Iran actually owns the contested accounts. They argue that ownership interests include any interest in the property bundle, including the Iranian banks' contingent future possessory interests in the accounts, an interpretation that harmonizes with the broad definitions of "property" and "interests in property" contained in the blocking regulations. Plaintiffs urge us not to adopt U.C.C. Article 4A as a rule of decision, reasoning that federal law preempts this Uniform Commercial Code provision.

We agree with plaintiffs that Article 4A does not apply of its own force. But it is not correct to treat this as an issue of preemption. Federal law, specifically § 201 and § 1610(g), is controlling. The question is the content of this federal law.

Congress has not provided a rule for determining ownership under § 201 or § 1610(g). Nor has Congress directed the federal courts to adopt state ownership rules under this statutory scheme. *See* RICHARD H. FALLON, JR. ET AL., HART & WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 632-33 (6th ed. 2009); Paul J. Mishkin, *The Variousness of "Federal Law": Competence and Discretion in the Choice of National and State Rules for Decision*, 105 U. PA. L.

REV. 797, 797 n.1, 811 (1957). Our task is thus the "normal judicial filling of statutory interstices." Henry J. Friendly, *In Praise of* Erie – *and of the New Federal Common Law*, 39 N.Y.U. L. REV. 383, 421 (1964). We must fashion a "rule of decision" for applying § 201's and § 1610(g)'s ownership requirement, and that rule, though federal, may sometimes "follow state law." *Id.* at 410; *see Clearfield Trust Co. v. United States*, 318 U.S. 363, 366-68 (1943).

Article 4A provides an appropriate rule of decision. Article 4A is a particularly convenient and appropriate measure of ownership because it has been adopted by all fifty states and the District of Columbia, and addresses ownership of electronic funds transfers, the issue presented in this case. *See Heiser III*, 885 F. Supp. 2d at 447. The Uniform Commercial Code is often used as the basis of federal common-law rules. *See* Caleb Nelson, *The Persistence of General Law*, 106 COLUM. L. REV. 503, 510-11 & n.33 (2006). To be clear, we do not hold that the District's or any state's version of Article 4A applies of its own force. Rather, we hold that Article 4A is a proper federal rule of decision for applying the ownership requirements of § 201 and § 1610(g).

Applying the principles of Article 4A, we agree with the district court that Iran does not own the contested accounts. *Heiser III*, 885 F. Supp. 2d at 447-49. Iran was not the beneficiary or originator, but the owner of the beneficiary's bank for each funds transfer, and "[l]egal title does not pass to the beneficiary's bank until it accepts the payment order from the

intermediary bank." *Id.* at 448; *see Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58, 71 (2d Cir. 2009); *Regions Bank v. Provident Bank, Inc.*, 345 F.3d 1267, 1277 (11th Cir. 2003). The Iranian beneficiary banks never received a payment order because the funds transfers were blocked at the intermediary banks, and they never held legal title to the money in the contested accounts. *Heiser III*, 885 F. Supp. 2d at 448. Article 4A's subrogation provisions further support this view. If the intermediary bank is prohibited from completing a transfer, then the originator is subrogated to its bank's right to a refund. U.C.C. § 4A-402(d)-(e). As the district court explained, this provision means that claims on an interrupted funds transfer ultimately belong to the originator, not the beneficiary or its bank. *Heiser III*, 885 F. Supp. 2d at 448.

Because plaintiffs could not attach the contested accounts under either § 201 or § 1610(g) without an Iranian ownership interest in the accounts, and because Iran lacked an ownership interest in the accounts, the order of the district court is

Affirmed.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEANNETTE HAUSLER,	:	
Petitioner,	:	09 Civ. 10289 (VM)
– against –	:	**DECISION AND ORDER**
JPMORGAN CHASE BANK, N.A., CITIBANK, N.A., UBS AG, THE ROYAL BANK OF SCOTLAND, N.V., AND BANK OF AMERICA, N.A.,	:	(Filed Feb. 22, 2012)
Respondents.	:	

VICTOR MARRERO, United States District Judge.

Petitioner Jeannette Hausler ("Hausler" or "Petitioner") brings this action as the successor and personal representative of the Estate of Robert Otis Fuller ("Fuller") pursuant to § 201(a) of the Terrorism Risk Insurance Act of 2002 (the "TRIA"), 28 U.S.C. § 1610 note, to execute a default judgment entered by a Florida state court (the "Florida Judgment"). The Florida Judgment held the Republic of Cuba, Fidel and Raul Castro, and the Cuban Revolutionary Armed Services (collectively, the "Judgment Debtors") liable for the torture and extrajudicial killing of Fuller. To enforce the Florida Judgment in this Court, Hausler has brought several turnover petitions

against JPMorgan Chase Bank, N.A., Citibank, N.A., UBS AG, The Royal Bank of Scotland, N.V. (f/k/a ABN AMRO Bank, N.V.), and Bank of America, N.A. (collectively, "Respondents" or "Garnishee Banks"). At issue here are two of those turnover petitions – Petitions I and III – in which Hausler seeks to execute upon accounts created and maintained by Respondents as repositories for sums blocked in the course of electronic fund transfers ("EFTs") involving the Judgment Debtors or their agencies or instrumentalities (the "Blocked Funds").

On September 13, 2010, the Court issued a Decision and Order, which found that the TRIA preempts state property law and renders assets frozen from blocked EFTs subject to attachment and execution. *See generally Hausler v. JP Morgan Chase Bank, N.A.,* 740 F. Supp. 2d 525 (S.D.N.Y. 2010) (the "September 2010 Decision"). The September 2010 Decision also expressly endorsed the Respondents' use of interpleader to include in this action any other entities or individuals that might assert competing claims to the Blocked Funds. *Id.* at 541-42. Though familiarity with the September 2010 Decision is presumed, the Court will begin by briefly outlining the parties before it and the posture of this litigation.

I. BACKGROUND[1]

A. PETITIONER

The Florida Judgment, recognized by the United States District Court for the Southern District of Florida and given full faith and credit by this Court on September 26, 2008, arose from what the Florida Judgment held to be the extrajudicial killing and torture of Fuller by the Judgment Debtors in the aftermath of the Cuban revolution.

In this action, Hausler, acting on her own behalf and as representative of her deceased brother Fuller, seeks to enforce the Florida Judgment for compensatory damages by requesting the turnover of various assets held in the United States by the Garnishee Banks, financial institutions that are in possession of funds blocked or frozen pursuant to the Cuban Asset Control Regulations (the "CACRs"), 31 C.F.R. Part 515, issued and administered by the United States Treasury Department's Office of Foreign Assets Control ("OFAC").[2]

---

[1] The sources from which the following factual summary is derived are listed in a note following the order portion of this decision and order.

[2] For a complete explication of the operation and applicability of the CACRs and the role of OFAC, see the September 2010 Decision at 527.

B. GARNISHEE BANKS

Each of the Garnishee Banks served as the intermediary for the EFTs described in Petitioner's turnover petitions. In the case of each EFT, the Garnishee Bank, in accordance with the CACRs and OFAC instructions, blocked the transmission of funds after determining that the Judgment Debtors or their agencies or instrumentalities were involved in the EFT at issue. Specifically, the Garnishee Banks blocked the EFTs after determining that certain Cuban banks were involved in the transactions. Those banks are Banco Nacional de Cuba, Banco Financiero Internacional, S.A., Banco Popular de Ahorro and Banco Internacional de Comercio S.A. (collectively, the "Cuban Banks"). Also in accordance with the CACRs, the Garnishee Banks placed the proceeds of the blocked EFTs into interest-bearing accounts, where the Blocked Funds remain to this day.

After being served with the turnover petitions aimed at these blocked EFTs, the Garnishee Banks argued that the TRIA did not permit the attachment and execution of blocked assets resulting from illegal EFTs because New York state law provides that originators and beneficiaries of EFTs do not own the subject funds while the funds are possessed by intermediary banks. The Court rejected this argument and found the Blocked Funds subject to attachment and execution under the TRIA. *See* September 2010 Decision at 530-39.

In light of the Court's September 2010 Decision, and without any interest of their own in the Blocked Funds, the Garnishee Banks then filed interpleader actions under Rule 22 of the Federal Rules of Civil Procedure to inoculate themselves against potential liability that might arise should entities not already before the Court claim interest in the Blocked Funds. The Garnishee Banks undertook the interpleader proceedings in recognition of the Court's discussions of that procedure in the September 2010 Decision. *See* September 2010 Decision at 541-42. Respondents commenced the relevant interpleader actions (the "Interpleader Petitions") on April 21, 2010, as to Petition I, and October 29, 2010, as to Petition III.

C. ADVERSE CLAIMANT RESPONDENTS

Ultimately, several entities from various countries responded to the Interpleader Petitions and now assert claims to the Blocked Funds. Each respondent to the Interpleader Petitions alleges that it possesses an interest in the Blocked Funds that is superior to that of the Petitioner. As relevant to the motions now before the Court, the following parties responded to the Interpleader Petitions: Shanghai Pudong Development Bank Co., Ltd. ("SPDB"); Banco Bilbao Vizcaya Argentaria Panama, S.A. and Banco Bilbao Vizcaya Argentaria, S.A. (together, "BBVA"); Premuda S.p.A. ("Premuda"); Novafin Financiere, S.A. ("Novafin"); LTU Lufttransport-Unternehmen GmbH ("LTU"); Caja de Ahorros y Monte de Piedad de Madrid ("Caja Madrid"); and Estudios Mercados y

Suministros, S.L. and Philips Mexicana S.A. de C.V. ("Philips Mexicana/EMS"). These entities will be referred to collectively as the "Adverse Claimant Respondents" or "ACRs."

Each ACR presents factual circumstances which it asserts support its asserted interest in particular blocked funds. The ACRs also put forward legal arguments under New York law to support their claims to ownership of or superior interest in the funds in particular frozen accounts.

The factual patterns presented by the ACRs compose variations on a single theme: Each ACR argues that its own clerical mistakes caused the EFTs to be blocked. The facts presented by each ACR will be reviewed in brief.

On July 9, 2011, SPDB initiated an EFT, through Citibank in the United States, in which Bank of China was to be the beneficiary's bank and Eximbank was to be the ultimate beneficiary. According to SPDB's factual submissions, Citibank blocked this EFT because a non-required field in the supporting payment order contained a reference to Banco National de Cuba. Shortly after the transaction was blocked, SPDB notified Citibank that it believed the blocking was an error. Though SPDB has corresponded with Citibank regarding the status of the blocked

funds, SPDB has never applied to OFAC for a license to unblock the funds.[3]

BBVA initiated three of the wire transfers at issue in the Petition III interpleader complaint. Each of these transactions involved Banco Financiero Internacional, S.A. ("BFI"), a Cuban bank. The first transaction, initiated in January 1996, sought to transfer funds into an account held at BFI by a Dutch company. Though BBVA agreed to execute this transfer through its Paris branch, instead, it routed the transfer through Bank of America, and stated that the beneficiary bank was BFI. Bank of America then froze the EFT pursuant to the CACRs. The second transaction, which occurred in September 2005, involved an attempted transfer from a BFI account held at BBVA's Paris branch to another BFI account held at BBVA's Panamanian branch. Rather than simply debiting and crediting those two accounts, however, BBVA routed an EFT through Citibank. The final BBVA transaction involved a similar situation: In January 2004, Banco Internacional de Comercio S.A., another Cuban bank, sought to transfer money from a BBVA Paris account to a BBVA Panama

[3] The CACRs explicitly provide procedures to unblock transactions that have been blocked as the result of a mistake. *See* 31 C.F.R. § 515.201(e) ("When a transaction results in the blocking of funds at a banking institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.").

account. Instead, BBVA Paris routed the funds through Citibank in New York, where the funds were frozen pursuant to the CACRs. Since each of these transactions was blocked, BBVA has communicated with personnel at Bank of American [sic] and Citibank regarding the status of the frozen accounts. There is no indication that BBVA has ever sought an OFAC license to unblock the frozen funds in which it now asserts an interest.

On or about March 7, 2007, Permuda initiated a transfer described in the Petition III Interpleader Petition, in which it requested that Citibank transfer funds to an account at BFI held by a Cuban ship management company. Citibank blocked these funds pursuant to the CACRs. Subsequently, Permuda filed with OFAC a request for a license to unblock the funds, which OFAC denied.

On November 21, 2006, Novafin initiated an EFT to Banco Internacional de Comercio S.A. ("BICSA"), a Cuban bank. Though BICSA asked that the transfer be made in Euros – and therefore routed through Europe rather than the United States – Novafin mistakenly transferred U.S. dollars, and therefore the EFT was routed through Citibank in the United States. Citibank, accordingly, blocked the transfer pursuant to the CACRs. In 2006, 2007 and 2008, Novafin applied to OFAC for a license to unblock these frozen funds. Novafin has provided no information regarding the status of these applications; apparently, OFAC has declined to unblock these funds.

LTU also initiated a transfer described in the Petition III Interpleader Petition. That transaction was blocked on or about October 26, 2005 because the beneficiary listed was BICSA. LTU contends that BICSA was not the intended beneficiary and that its designation as such was a data-entry mistake. There is no evidence that LTU has sought an OFAC unblocking license at any point.

Caja Madrid initiated two wire transfers described in the Petition III Interpleader Petition, one on August 25, 2000 and another on May 22, 2002, Each of those transactions was initiated in response to a request from Caja Madrid's client, Banco Polular de Ahorro de la Habana, to transfer deposits from one Caja Madrid account to another Caja Madrid account, with both accounts located in Spain. In both instances, clerks at Caja Madrid mistakenly created international payment orders rather than executing internal transfers. When those international payment orders were routed through Citibank in the United States, the transfers were frozen pursuant to the CACRs. Caja Madrid promptly notified Citibank of the mistaken transactions and Citibank responded by informing Caja Madrid that the only way to unblock the funds was through OFAC's licensing procedures.

On April 7, 2004, Philips Mexicana initiated an EFT to pay Adverse. Claimant Respondent EMS for installation services related to certain medical equipment to be shipped from the Netherlands. EMS was the beneficiary and its bank, BICSA, was to ultimately receive the payment. Though Philips

Mexicana intended to route the payment through a Mexican bank, its treasurer mistakenly routed the EFT through Bank of America in New York. Bank of America, recognizing that BICSA was a Cuban entity, blocked the EFT. There is no evidence suggesting that Philips Mexicana or EMS have sought any license from OFAC.

To summarize: Each of the ACRs has presented undisputed facts indicating that the Blocked Funds were frozen only because of its own inadvertence and mistaken paperwork.

D. THE INSTANT MOTIONS

Now before the Court are various motions filed in the wake of the Garnishee Banks' complaints in interpleader. Petitioner moves for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) or summary judgment pursuant to Federal Rule of Civil Procedure 56 ("Rule 56"), and seeks turnover orders related to the Blocked Funds targeted in Petitions I and III. (Docket Nos. 264, 268.) Adverse Claimant Respondent SPDB opposes Petitioner's motion for judgment on the pleadings or summary judgment in regard to Petition I, and moves for summary judgment denying Petitioner's application for the turnover of the Blocked Funds at issue in Petition I. (Docket No. 342.) The other ACRs oppose Petitioner's motion for judgment on the pleadings or summary judgment as to Petition III, and seek summary judgment denying Petitioner's request for

turnover as to the Blocked Funds at issue in that Petition. (Docket Nos. 309, 313, 320, 325, 328, 330, 340.)

In her motions for judgment on the pleadings, Petitioner argues that the ACRs are not proper parties in this litigation and that the ACRs' motions for summary judgment must therefore be ignored. Though the ACRs argue that they were properly interpled by the Garnishee Banks, the ACRs, in an abundance of caution, have also filed motions to intervene. (*See* Dockets No. 311, 319, 324, 336, 337, 354.)

Finally, Petitioner moves to strike the ACRs' Rule 56.1 Statements as improper and immaterial. (Docket No. 381.) Petitioner's motion to strike is based upon the argument that the ACRs are not parties to the turnover petitions.

Because the Court specifically anticipated and endorsed the intervention of the Adverse Claimant Respondents and the Garnishee Banks' use of interpleader, the Adverse Claimant Respondents' motions to intervene are GRANTED and Petitioner's motion to strike is DENIED.[4]

---

[4] "Rooted in equity, interpleader is a handy tool to protect a stakeholder from multiple liability and the vexation of defending multiple claims to the same fund." *Washington Elec. Coop., Inc. v. Paterson, Walke & Pratt, P.C.,* 985 F.2d 677, 679 (2d Cir. 1993). "[W]hat triggers interpleader is 'a real and reasonable fear of double liability or vexatious, conflicting claims.'" *Id.*

(Continued on following page)

In view of the facts presented in the various Rule 56.1 Statements and declarations and in consideration of the arguments set forth in the voluminous briefing before the Court, Petitioner's motions for summary judgment are GRANTED and the Adverse

---

(*quoting Indianapolis Colts v. Mayor of Baltimore,* 741 F.2d 954, 957 (7th Cir. 1984), *cert. denied,* 470 U.S. 1052 (1985)). As a remedial joinder device, interpleader is to be liberally construed. *See State Farm Fire & Cas. Co. v. Tashire,* 386 U.S. 523, 533 (1967); *6247 Atlas Corp. v. Marine Ins. Co.,* 155 F.R.D. 454, 461 (S.D.N.Y. 1994) (stating that both rule and statutory interpleader should be liberally construed). As such, and as courts have done in numerous similar cases, the Court has permitted the Garnishee Banks to use interpleader to resolve any potential competing claims to the Blocked Funds in this litigation. *See* September 2010 Decision at 541-42. For other examples of the use of interpleader petitions in cases involving the execution of judgments under the TRIA, *see e.g. Levin v. Bank of New York,* 09 Civ. 5900, 2011 WL 812032, at *2 (S.D.N.Y. Mar. 04, 2011); *Weininger v. Castro,* 462 F. Supp. 2d 457, 500 (S.D.N.Y. 2006).

Because the use of interpleader is appropriate, the interests advanced by the ACRs are properly before the Court. The Court's review of the ACRs' supporting factual submissions is therefore material to the resolution of the competing claims to the Blocked Funds. As such, Petitioner's motion to strike those factual submissions, under Federal Rule of Civil Procedure 12(f), must be denied. *See Lipsky v. Commonwealth United Corp.,* 551 F.2d 887, 894 (2d Cir. 1976) ("Rule 12(f) should be construed strictly against striking portions of the pleadings on the grounds of immateriality. . . ."). Additionally, because consideration of the materials targeted by Petitioner's motion to strike actually permits the Court to reach a determination on Petitioner's motion for summary judgment, which turns out favorable to her, it is clear that Petitioner can complain of no prejudice.

Claimant Respondents' motions for summary judgment are DENIED.

The grounds for the Court's ruling are set forth below. First, the Court will briefly reprise certain aspects of its reasoning, presented in depth in the September 2010 Decision, supporting the conclusion that the TRIA preempts state property law, including a discussion of relevant subsequent decisions. Next, the Court will answer the substantive question at issue here, namely, whether, under the TRIA and related statutes, any of the ACRs have presented claims to the Blocked Funds superior to that of Petitioner. Finally, the Court will briefly dispose of the ACRs' backstop constitutional arguments.

II. TRIA PREEMPTS STATE PROPERTY LAW

A. THE SEPTEMBER 2010 DECISION

The Court will not exhaustively recapitulate its reasoning in support of the conclusion that TRIA preempts state property law and, therefore, that the Blocked Funds are available for attachment and execution under the TRIA. Suffice it to say that, in light of the Adverse Claimant Respondents' arguments and the recent case law they cite in support of their claims, the Court has closely reexamined its September 2010 Decision regarding this issue and remains persuaded that its prior ruling should be reaffirmed. The central issue presented by the instant motions is whether Petitioner is entitled to the

turnover of the Blocked Funds. However, a few points regarding preemption do bear repeating.

First, the Court held that the TRIA preempts state property law because, when read in conjunction with the CACRs, the TRIA defines the range of Cuban property interests in assets frozen in the United States that constitute "blocked assets of [a] terrorist party." The CACRs broadly define the range of Cuban property interests subject to being blocked under OFAC's direction, and the TRIA expressly makes those blocked assets available for attachment and execution to satisfy certain judgments. *See* September 2010 Decision at 532. Indeed, the Second Circuit has recognized, albeit in dicta, that the "plain language" of the TRIA provides for execution upon "assets that would otherwise be blocked" under OFAC regulations. *Smith ex rel. Estate of Smith v. Federal Res. Bank of N.Y.,* 346 F.3d 264, 270-71 (2d Cir. 2003).

Moreover, the CACRs are not merely regulations made relevant by reference in the TRIA; the CACRs are themselves an integral part of the statutory context in which the language of the TRIA must be understood. In 1996, Congress codified the CACRs into federal law, requiring that the executive branch "enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations." 22 U.S.C. § 6032(c); *see also Empresa Cubana del Tabaco v. Culbro Corp.,* 399 F.3d 462, 465 (2d Cir. 2005) ("In 1996 Congress codified the

Regulations in the Cuban Liberty and Democratic Solidarity Act of 1996.").[5] Thus, a court interpreting the TRIA must do so in a manner that harmonizes that statute with the CACRs.

Second, the statutory purposes of the TRIA cast it in stark contrast to those federal statutory provisions dealing with the attachment and execution of assets that have been found not to preempt state property law. *See* September 2010 Decision at 536. The TRIA is the product of a Congressional effort to "deal *comprehensively* with the problem of enforcement of judgments rendered on behalf of victims of terrorism." *Id.* at 531 (citing H.R. Conf. Rep. No. 107-779 at 27 (emphasis added)). Though Congress contemplated the use of state procedural law to enforce judgments, *id.* at 527, the TRIA represents Congress's recognition that federal law must provide the substantive rules governing the recovery of terrorism-related judgments, *id.* at 536-37. Additionally, Congress's purpose in enacting the TRIA was to address foreign policy goals such as deterring acts of terrorism and restricting the economic activity of terrorist

[5] It is worth noting that the CACRs expressly invoke and incorporate state law in certain circumstances, suggesting that the regulations are meant to supersede state law where they do not directly integrate it. The CACRs permit state agencies to petition for licenses to unblock and confiscate assets where the relevant state laws regarding abandoned property satisfy certain conditions. *See* 31 C.F.R. § 515.554 ("Transfers of abandoned property under State laws.").

parties. *Id.* at 537. In essence, the TRIA, as supplemented by the CACRs and the OFAC procedures, represents Congress's policy determination that under some circumstances, such as those prevailing here, in a choice between a claim to assets asserted by a victim of an act of a terrorist state and embodied in a judgment interest obtained under federal law, and a claim of an interest in the same assets arising from a commercial transaction and asserted under state law, the federal interest is superior and must be given priority in any court dispute over release of the assets.

Third, and relatedly, the use of state property law to dictate the range of assets that are executable under the TRIA would generate absurd results. If the TRIA does not preempt state law, the application of state law in proceedings to enforce judgments obtained pursuant to the TRIA could lead to divergent outcomes depending on the fortuity of which state happened to be the physical site of the blocking of electronic transfers. Even worse, the availability of blocked assets for execution under the TRIA could be manipulated by intermediary banks such as Respondents, who appear unconstrained in determining where to locate the accounts created when they block an EFT pursuant to the CACRs and, therefore, could prevent assets from turnover under the TRIA simply by placing such accounts in states with favorable property law. Such results are inconsistent with the creation of this otherwise wholly-federal scheme designed to advance a foreign policy goal. *See Propper*

v. Clark, 337 U.S. 472, 485 (1949) ("The Trading with the Enemy Act is national in range. The effect of a federal freezing order should be the same on subsequent transfers of title in all states.")

Fourth, the Court observed yet another pertinent consequence were it to find that state property law governs the disposition of the Blocked Funds under the TRIA. According to Respondents and the ACRs, state law prevents execution against the Blocked Funds under the TRIA, yet no party challenges the propriety of blocking the funds under the CACRs. Therefore, the application of state property law here would lead to the Blocked Funds remaining as such until unforeseen future events might allow the return of the funds to Cuba, its agencies, instrumentalities or business creditors. *See* 22 U.S.C. § 6064 (establishing conditions for termination of Cuban embargo administered through CACRs). Such an outcome cannot be mandated by the TRIA because it would frustrate its core objective, to satisfy judgments held by victims of Cuban terrorism, and would stymie Congress's broader purpose in permitting suits against state sponsors of terrorism by diminishing the costs of doing business with known terrorist states or their agents and instrumentalities.

In fact, some of the Adverse Claimant Respondents did avail themselves of the CACRs' procedures by filing applications for licenses with OFAC, some of which were denied outright. Thus, failing to persuade OFAC of the merits of their claimed interest in the Blocked Funds – presumably with the same arguments

they make here – the funds remain in Respondents' control, as there is no indication on the record that the ACRs took any other administrative or judicial appeal from OFAC's rulings. By seeking summary judgment in these proceedings based on essentially the same factual presentation that failed to persuade OFAC, the ACRs would achieve an end-run around the CACRs and OFAC if the Court ruled in their favor; they would obtain from this Court the relief which OFAC denied them and which they did not challenge further in the CACRs process or judicial review thereof.

With this partial review of the September 2010 Decision in mind, it is now appropriate to turn to an examination of three relevant opinions handed down by federal courts in the last fifteen months.

B. SUBSEQUENT RELEVANT DECISIONS

Since the Court issued the September 2010 Decision, two other decisions in this district have considered whether state property law defines what "blocked assets of [a] terrorist party" are subject to attachment and execution under the TRIA: *Levin v. Bank of New York,* 09 Civ. 5900, 2011 WL 812032 (S.D.N.Y. Mar. 04, 2011) and *Calderon-Cardona v. JPMorgan Chase Bank, N.A.,* 11 Civ. 3283, 2011 WL 6155987 (S.D.N.Y. Dec. 7, 2011). Additionally, the United States Supreme Court, in *Board of Trustees of the Leland Stanford Junior University v. Roche Molecular Systems, Inc.,* 131 S. Ct. 2188 (2011)

("*Stanford*"), confronted the relevant issue of whether the word "of" should be read to connote ownership in the context of a statutory provision governing patent rights. A corollary issue emerging from *Stanford* and argued by the parties here is whether the Supreme Court's interpretation of the word "of" in *Stanford* extends more widely to define the meaning of that word as employed universally or more specifically to other statutory schemes.

1. Levin

Levin dealt with a TRIA petition to attach and execute against blocked EFTs to satisfy an underlying judgment against the Islamic Republic of Iran ("Iran"). *Levin,* 2011 WL 812032, at *1. In reviewing the text and purposes of the TRIA, the *Levin* Court concluded that "[i]t is plainly the intention of [the] TRIA . . . to make blocked assets available to plaintiffs." *Id.* at *18. *Levin* agreed with this Court's conclusion that the TRIA preempted state law because the "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." *Id.* at *17. Therefore, *Levin* looked to the regulations promulgated to block assets related to Iran and found that, under those regulations, EFTs were subject to blocking, attachment and execution. *Id.* The *Levin* Court's approach to interpreting the

TRIA tracked closely with this Court's approach in the September 2010 Decision.

There is another noteworthy aspect of the *Levin* decision: *Levin* dealt extensively with the priority of interests held by various parties with judgments against Iran. The *Levin* petitioner, holding a judgment against a terrorist party, filed suit in the Southern District of New York to execute upon assets held in this district and blocked pursuant to OFAC regulations associated with Iran. *Id.* at *2. As in this case, the *Levin* respondent banks used interpleader petitions to bring before the court other entities with asserted interests in the blocked funds targeted for turnover, and several adverse claimants responded. Unlike this case, however, those adverse claimants were not foreign banks involved in the underlying EFTs, but rather other individuals who held judgments against Iran and who also sought to execute judgments under the TRIA.[6] *Id.* at *2.

---

[6] One international bank, Commerzbank, did respond to the interpleader petitions in *Levin,* asserting an interest in a frozen account as the beneficiary's bank in the underlying EFT. *See Levin v. Bank of N.Y.,* 09 Civ. 5900, Answer of Third Party Defendant Commerzbank AG to the Interpleader Complaint of Société Générale, at 3 (Apr. 20, 2010) (Docket No. 156). However, Commerzbank later withdrew its claim to the blocked fund. *See Levin v. Bank of N.Y.,* 09 Civ. 5900, Stipulation of Dismissal of Interpleader Action and Crossclaim Against Commerzbank AG with Prejudice, at 2 (July 26, 2010) (Docket No. 235). As such, the *Levin* decision does not address the level of priority of Commerzbank's asserted interest in the blocked fund relative to

(Continued on following page)

In assessing the relative superiority of the claims to the blocked funds, the *Levin* Court looked to provisions of the TRIA and the related Foreign Sovereign Immunities Act ("FSIA"). *Id.* at *6-10. The *Levin* Court, therefore, employed federal law to determine which of the claimants held the superior interest in any given fund. In so doing, the *Levin* Court pointed to the FSIA House Report, which specifically disclaimed the attachment and execution standards of some states as being insufficient for purposes of executing judgments against foreign sovereigns. *Id.* at *7 (*quoting* H.R. Rep. No. 1487, 94th Cong., 2d Sess. 30, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6604, 6629.). Moreover, because Congress codified the TRIA as a note to the FSIA, the former "must be read in the context of the overarching statutory scheme of the FSIA." *Id.* at *10.

In sum, the *Levin* Court found that the TRIA preempts state law because "[t]he language of [the] TRIA is broad, subjecting *any asset* to execution that is seized or frozen pursuant to the applicable sanctions schemes." *Id.* at *16. Moving on to determine whether any interest in the blocked EFTs existed superior to that of the petitioning judgment debtor, *Levin* looked to the federal statutory scheme in which the TRIA is enmeshed, not to any ownership interests asserted by non-judgment holders under any other body of law.

---

the interests of the judgment creditors. *Levin,* 2011 WL 812032, at *4.

2. Calderon-Cardona

On December 7, 2011, in an action seeking to enforce a judgment against the People's Republic of Korea ("North Korea") by executing upon blocked EFTs, another court in this district had occasion to assess whether the TRIA preempts state law for purposes of defining "blocked assets of [a] terrorist party." The *Calderon-Cardona* Court denied the petitioner's motion for turnover because North Korea was not a "terrorist party" as defined in the statute. *Calderon-Cardona,* 2011 WL 6155987, at *3-8.

The *Calderon-Cardona* Court went on, in the alternative, to consider the preemption question addressed in the September 2010 Decision and *Levin.* The *Calderon-Cardona* Court found that the TRIA did not preempt state property law and that the phrase, "blocked assets of [a] terrorist party," restricted the application of the TRIA to only those assets owned by a terrorist party under state-law definitions of ownership. *Id.* at *12. The Court rested this conclusion on its finding that the word "of" indicated ownership, and that ownership could be determined only by recourse to state property law. *Id.* at *8-9.

The *Calderon-Cardona* Court parsed the phrase "blocked assets of that terrorist party" into two components: "blocked assets" and "of that terrorist party." *Id.* at *8. As to the former, there was no doubt that the underlying EFTs at issue had been blocked pursuant to OFAC regulations regarding North Korea.

As to the later, the Court found that the word "of" indicated that the terrorist party had to have actual ownership of the blocked assets; since the TRIA and accompanying regulations did not define "ownership," the determination of whether the subject accounts were eligible for attachment and execution hinged on state property law. *Id.* at *8-9. The principal critique presented in *Calderon-Cardona* against the use of the CACRs (or similar OFAC regulations as to other nations) to interpret the TRIA as preempting state law is that such regulations operate only to supply content to the phrase "blocked assets," and provide no definition to the phrase, "of that terrorist party." *Id.* at *12. According to the *Calderon-Cardona* Court, then, a finding of preemption based on the definition of "blocked assets" in OFAC regulations "effectively reads the phrase 'of that terrorist party' out of the statute." *Id.* at *13.

This argument, however, overlooks a very basic aspect of the TRIA: The statute is not directed at a single terrorist entity and does not relate to a single set of blocking regulations. The TRIA expressly defines "[t]he 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 (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act. . . ." Terrorism Risk Insurance Act, Pub. L. 107-297, Title II, § 201(d)(2), 116 Stat. 2337 (2002). The phrase "of that terrorist party" provides the necessary, though perhaps perfunctory, instruction that the "blocked

assets" available for execution are only those assets blocked pursuant to the particular regulation or administrative action directed at the particular terrorist-party judgment debtor. In other words, the TRIA does not permit a party with a judgment against Iran to execute against funds blocked pursuant to the CACRs, regulations which are, of course, targeted at Cuba.

The pivotal analytical step in the *Calderon-Cardona* opinion was the determination that the word "of" required that the noun referred to as the terrorist party after "of" legally own the assets referred to as the noun before "of."[7] *Id.* at *8, *14 ("According to the Supreme Court, the word 'of denotes ownership'. There is no relevant body of federal law under which petitioners can claim ownership of blocked EFTs."). The authority for that proposition was the Supreme Court's recent *Stanford* decision.

[7] Examples of alternative definitions of "of" are so numerous that it seems a court of law need not enumerate them. To provide a measure of completeness, however, this footnote, excluding the following citation and parenthetical thereto, contains six examples of uses of the word that indicate relationships other than those of formal ownership. *See also Stanford,* 131 S. Ct. at 2196 (describing use of "of" to define ownership as "a common definition" and describing alternative interpretation of statutory phrase as "plausible" in different statutory context).

3. Stanford

On June 6, 2011, the Supreme Court rendered its decision in *Stanford.* The *Stanford* opinion interpreted the phrase "invention of the contractor" within a provision of the Bayh-Doyle Act that deals with ownership of patents which cover inventions created in the course of federally-funded research. *Id.* at 2196. The Court found that the phrase referred only to inventions owned by the contractor after assignment from the inventor, and not to all inventions created by employees of the contractor in the course of a federally-funded project. *Id.* at 2196-99.

The Court's conclusion was based on several characteristics of the patent statutes at issue there that are materially absent in the TRIA and related statutes.

First and foremost, the Court found that the rejected interpretation would render the phrase "of the contractor" a nullity because that phrase would serve only to limit "invention" to those conceived during federally-funded research, a limitation already imparted by other language in the statute. *Id.* at 2196. Indeed, the Court began its analysis by contrasting the provision at issue with language elsewhere in the patent statutes that expressly divests an inventor of ownership of a patent. *Id.* at 2195. "Such language is notably absent" from the provision at issue in *Stanford,* and a finding that ownership was transferred implicitly would have been irreconcilable with related provisions permitting a contractor to

"elect to retain title to" inventions it first conceived of or reduced to practice. *Id.* at 2196.

Moreover, the Court refused to infer, from the phrase "invention of the contractor," the removal of inventors' ownership rights in contravention of "two centuries of patent law." *Id.* Though the ACRs argue, by analogy, that the TRIA should not be interpreted to preempt long-standing state definitions of property ownership employed in the execution of judgments, the comparison is misplaced. In *Stanford,* the Court was dealing with a federal statutory provision in the context of centuries of federal statutory patent law. Therefore, the Court read the provision before it in a manner consistent with that body of law.

To view the TRIA in the expansive Anglo-American history of the execution of judgments and ignore the more relevant and recent federal statutory context regarding judgments against foreign and terrorist entities – as the ACRs would have the Court do – would be to misconstrue the purposes of the statute. In any event, such an approach is inconsistent with the Supreme Court's focus on the pertinent federal statutory context in *Stanford.* The TRIA's preemption of state law is simply not a "sea change" accomplished through an "idiosyncratic" and "oblique[ ]" interpretation of the statute at issue. *Id.* at 2199. Rather, the TRIA's preemption of state law represents a purposeful and incremental step Congress took building upon very recent enactments to which the TRIA is expressly connected. Though a finding of preemption may employ a plausible alternate

meaning of the word "of" – one among numerous other definitions given to the term in any English dictionary – than that employed in *Stanford,* such a conclusion is by no means contrary to the reasoning set forth in that decision.

III. PETITIONER'S RIGHT TO EXECUTE ON BLOCKED FUNDS

A. INTRODUCTION AND STANDARD OF REVIEW

In its September 2010 Decision, the Court authorized the Interpleader Petitions at issue to "provide ample additional opportunity for the assertion of any superior claims"[8] by "any interested third party [ ] not yet . . . on notice of the blocked EFTs."[9] September 2010 Decision at 541.

---

[8] New York procedural law, which governs proceedings seeking to execute upon money judgments through Federal Rule of Civil Procedure 69, requires Petitioner to proceed against the Garnishee Banks and permits "other claimants to the . . . money . . . to intervene," if they have not been joined or interpleaded, to allow the Court to weigh all interests asserted in the subject property. *Koehler v. Bank of Bermuda Ltd.,* 911 N.E.2d 825, 828 (2009) (internal citation omitted). This state procedure is aimed at creating "a full-fledged test of precisely [to] whom the disputed property or debt belongs." *Id.* (internal citation omitted).

[9] None of the Adverse Claimant Respondents contest that they were on notice of the Blocked Funds; indeed, many of the ACRs tout their periodic communications with the Garnishee Banks regarding the Blocked Funds as evidence of their superior claims to those funds.

The Petitioner and ACRs have cross-moved for summary judgment;[10] each motion presents essentially the same related questions: (1) Does Petitioner hold a superior interest in the Blocked Funds? And, (2) is Petitioner entitled to execute upon those Blocked Funds?

To prevail on a motion for summary judgment, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, [must] 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). The movant bears the burden to demonstrate that there is no genuine issue of material fact. *F.D.I.C. v. Great Am. Ins. Co.,* 607 F.3d 288, 292 (2d Cir. 2010) (*citing Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986)). 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. New*

[10] Petitioner styles her motions as seeking "judgment in her favor: (1) pursuant to Fed. R. Civ. P. 12(c) on the pleadings . . . [and] (2) granting turnover pursuant to Fed. Rules Civ. P. 56 and 69 and CPLR 5225(b) [and (c)] of the funds in the blocked accounts that are the subject of this proceeding[.]" Petitioner's Notices of Motion (Docket Nos. 264 and 268.) Because the motions before the Court cannot be disposed of by recourse to the pleadings alone, but rather are dictated by the import of undisputed facts, the Court applies the summary judgment standard of Federal Rule of Civil Procedure 56 as set forth herein.

York, 316 F.3d 93, 100 (2d Cir. 2002) (citations omitted). 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) (citation omitted).

Because the Court finds that there is no genuine dispute as to any material fact regarding the relative priorities of the interests in the Blocked Funds asserted by the parties and that Petitioner is entitled to execute upon the Blocked Funds under the TRIA as a matter of law. Petitioner's motions are GRANTED, and those of the ACRs are DENIED.

B. PRIORITY OF INTEREST

The substantive standard to determine whether a TRIA petitioner's interest in frozen assets mandates an order of turnover is supplied by the TRIA and related federal statutes. *See, e.g., Smith ex rel. Estate of Smith,* 346 F.3d at 271 n.6 (finding that TRIA does not guarantee blocked funds will be available for judgment and mentioning unblocking, confiscation or claims of other victims, as reasons blocked funds may not be available for terrorist judgment creditors suing under TRIA); *Levin,* 2011 WL 812032, at *6-10 (evaluating claims of priority of interest in frozen assets by examining various claimants' satisfaction of procedural requirements set forth in FSIA), The task before the Court, then, is to determine whether the

ACRs have presented an interest in the Blocked Funds, cognizable under the applicable federal statutory framework, which is superior to that of Petitioner. In view of the applicable federal statutes, the Court has little difficulty finding that Petitioner holds the superior interest in the Blocked Funds.

The Second Circuit has held that "the plain meaning of" the TRIA "is to give terrorist victims who actually receive favorable judgments a right to execute against assets that would otherwise be blocked." *Smith ex rel. Smith,* 346 F.3d at 271. The legislative history of the TRIA reinforces this plain-meaning interpretation. According to the House Conference Report, Congress's intent was to "establish that such judgments [against terrorist states] are to be enforced . . . [and] are enforceable against any assets or property" referenced by the TRIA. H.R. Conf. Rep. No. 107-779, at 1434 (2002). Thus, any evaluation under the TRIA of the priority of interests in the Blocked Funds must begin with the understanding that "terrorist victims" holding judgments, as a group, must be first in line.

In some instances – as in *Levin* – there may be multiple holders of judgments against terrorist entities. Under such circumstances, the federal statute to which the TRIA was appended as a note, the FSIA, requires that judgment holders obtain writs of execution. 28 U.S.C. § 1610(c). The order in which judgment holders obtain such writs is then an appropriate determinant of the order of priority among terrorist judgment holders. *See, e.g., Levin,*

2011 WL 812032, at *6-8. Here, however, no competing judgment holders have asserted claims to the Blocked Funds.

The TRIA and the analysis in *Levin* dictate a focus on determining how to distribute blocked assets to terrorist judgment holders. This focus would seem to ignore parties, like the ACRs here, who do not hold terrorism-related judgments, but assert property interests in blocked assets arising from the commercial transactions underlying the Blocked Funds and their business relationships with the agencies or instrumentalities of a terrorist state.[11] That the statutory scheme here apparently ignores the interests of those parties in assessing the priority of interests in blocked assets, though, is appropriate for two reasons.

---

[11] This conclusion is buttressed by the inclusion in the TRIA of a provision added to the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended by section 686 of Public Law 107-228, which expressly authorized the Secretary of the Treasury to promulgate guidelines for the distribution of account balances and proceeds in satisfaction of judgments held against Iran. *See* Terrorism Risk Insurance Act § 201(d). The inclusion of this provision, authorizing the administrative division of the relatively scarce available funds associated with Iran, further demonstrates that, under the TRIA, the focus is upon determining the relative priority of judgment holders, not protecting the more general, unperfected interests of commercial parties to blocked transactions. *See also* H.R. Conf. Rep. No. 107-779, at 1434 ("Unfortunately, several victims and families of victims who brought suit against Iran, were left out of the 2000 Act. The Conferees have sought to correct this injustice.").

First, commercial parties who assert ownership interests in blocked assets have other avenues of redress. Again, the CACRs provide specific mechanisms through which parties like the ACRs may seek to unblock assets or obtain licenses to use blocked assets in accordance with whatever rights they may establish in those assets. If such parties dispute OFAC decisions, they may seek judicial review. *See, e.g., Zarmach Oil Services v. U.S. Dep't of the Treasury,* 750 F. Supp. 2d 150 (D.D.C. 2010) (reviewing OFAC decision denying license to unblock funds). Such parties need not, therefore, seek to vindicate their asserted property interests by intervening in execution proceedings. Congress drafted the TRIA against the backdrop of statutory and regulatory provisions, including the CACRs, which require licenses to unblock; this restriction suggests that the TRIA should be read in consideration of these alternative opportunities for parties without terrorism-related judgments to assert interests in blocked assets. *See* September 2010 Decision at 532-33 (noting that "when drafting TRIA, Congress was presumably aware of . . . OFAC regulations").

Second, it cannot be overlooked that nearly every ACR has expressly admitted to doing business with the agencies or instrumentalities of a designated terrorist state. By and large, the ACRs' purposes in engaging in the EFTs at issue here were to transmit money to, from or through Cuban government entities. The TRIA is part of a statutory framework created to inhibit business with specified terrorist

states like Cuba; an ordering of interests that assigns lower priority to those asserted by Cuba's business partners is consonant with that purpose. The TRIA facilitates the recovery on judgments held by victims of international terrorism; concomitantly, the statutes upon which the TRIA is built are aimed at inhibiting international transactions with terrorist entities, their agencies or instrumentalities through United States financial institutions. On a fundamental level, then, it would undermine those purposes if, in United States court judgment execution proceedings, foreign banks doing business with the instrumentalities of a terrorist state were found to have a superior interest in the frozen assets as compared to that of a holder of a judgment against that very terrorist state. The Court has been presented with no compelling reason to arrive at such a distortion of Congressional intent articulated in a comprehensive and carefully calibrated statutory scheme.

There is no dispute as to the facts presented in the declarations and Rule 56.1 Statements of the ACRs. The ACRs' interests in the Blocked Funds are based on the circumstances of the underlying EFTs and their own mistaken routing of those EFTs through the United States. Because Petitioner is the holder of a judgment eligible for execution under the TRIA, the Court finds, as a matter of law, that the Petitioner's interest in the Blocked Funds is superior to the interests of the ACRs.

C. PETITIONER'S RIGHT TO EXECUTE ON BLOCKED FUNDS

The ACRs challenge Petitioner's right to execute the Florida Judgment against the Blocked Funds by asserting that Petitioner has failed to establish that there is no genuine issue of material fact regarding the status of the Cuban Banks as "agencies or instrumentalities" of Cuba. The TRIA permits execution upon only the "the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)." 28 U.S.C. § 1610 note, § 201(a). If the Cuban Banks are not agencies or instrumentalities of Cuba, then the Blocked Funds are beyond the reach of the TRIA.

Petitioner has carried her burden to show that there is no genuine issue of material fact as to the Cuban Banks' status as agencies or instrumentalities of Cuba for two independent and sufficient reasons: First, the Cuban Banks have, by their default in this action, admitted to that status. Second, Petitioner has submitted expert affidavits supporting the conclusion that the Cuban Banks are, in fact, agencies or instrumentalities of Cuba; the ACRs have failed to offer any evidence whatsoever to contest or contradict Petitioner's submissions.

1. The Cuban Banks' Default

The Cuban Banks have, by defaulting on the turnover petitioners in this action, admitted to being "agencies or instrumentalities" of Cuba. The turnover

petitions filed by Hausler alleged that each Cuban Bank was an agency or instrumentality of Cuba and that the Blocked Funds are assets of agencies or instrumentalities of Cuba. (*See, e.g.,* Petition III for Turnover Order Pursuant to Fed. R. Civ. P. Rule 69 and C.P.L.R. § 5225(b), at 8, July 7, 2010 (Docket No. 31).) The Cuban Banks failed to appear in this interpleader litigation or to dispute that fact, and, as a result, have admitted that "agencies or instrumentalities of Cuba [] have an interest in the" Blocked Funds. *See Cotton v. Slone,* 4 F.3d 176, 181 (2d Cir. 1993); *Weininger,* 462 F. Supp. 2d at 495-96. The Court accepts that factual allegation as true insofar as the parties against whom the allegation was levied – the Cuban Banks – have failed to contest it and no party to the pleadings in which that allegation was made – the turnover petitions – has contested it.

2. Proffered Evidence of "Agency or Instrumentality"

Notwithstanding the Cuban Banks' default and consequential admission of their status as agencies or instrumentalities, the ACRs assert that they are independently entitled to dispute Petitioner's allegation of that status. Even assuming that the ACRs may contest factual allegations in a pleading to which they are not a party and to which the subjects of those allegations have themselves conceded, the ACRs have failed to raise a material issue of fact regarding the Cuban Banks' status.

The FSIA defines "agency or instrumentality" as any entity that (1) is "a separate legal person, corporate or otherwise," (2) is "an organ of a foreign state" or "whose shares or other ownership interest is owned by a foreign state," and (3) is "neither a citizen of a State of the United States . . . nor created under the laws of any third country." 28 U.S.C. § 1603(b)(1)-(3). The ACRs do not contest that the Cuban Banks satisfy the first and third requirements, and instead assert only that the Petitioner has failed to demonstrate that the Cuban Banks are "organs" of Cuba.

The Second Circuit has set forth a balancing analysis to be used in determining whether an entity is an "organ of a foreign state."

> Although there is no specific test for "organ" status under the FSIA, various factors are relevant: (1) whether the foreign state created the entity for a national purpose; (2) whether the foreign state actively supervises the entity; (3) whether the foreign state requires the hiring of public employees and pays their salaries; (4) whether the entity holds exclusive rights to some right in the [foreign] country; and (5) how the entity is treated under foreign state law.

Filler v. Hanvit Bank, 378 F.3d 213, 217 (2d Cir. 2004); *see also European Cmty. v. RJR Nabisco, Inc.,* No. 02-CV-5771, 2011 WL 1841796, at *11 (E.D.N.Y. May 13, 2011) ("*Filler* invites district courts to engage in a balancing process, without particular emphasis on any given factor and without requiring that every

factor weigh in favor of, or against, the entity[.]") (internal citations and quotations omitted). As this Court has previously stated, "[i]n assessing whether these entities are agencies or instrumentalities of Cuba, the Court is 'mindful that the instrumentality and its related government – not the plaintiff – will frequently possess most of the information needed . . . and it may be difficult for the plaintiff to obtain discovery from them.'" *Weininger,* 462 F. Supp. 2d at 495 (*quoting Alejandre v. Telefonica Larga Distancia, de Puerto Rico, Inc.,* 183 F.3d 1277, at 1285 n.19 (11th Cir. 1999)). The Court must assess whether the Cuban Banks are "agencies or instrumentalities" of Cuba in light of the information that the parties have put before it on these motions for summary judgment. *See generally* Fed. R. Civ. P. 56(c). However, it is worth noting that neither the ACRs nor the Petitioner has access to the Cuban Banks' documents or information.

Instead, Petitioner has provided the expert testimony of Professor Jaime Suchlicki, the Director of the Institute for Cuban and Cuban-American Studies at the University of Miami.[12] This Court and

[12] Under Rule 56, the non-movant may object to the consideration of "material cited to support . . . a fact [that] cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). Though the Suchlicki Affidavits themselves may or may not be admissible as evidence at trial, the expert opinions contained therein are certainly amenable to presentation in forms that would be admissible. In short, the Court may consider and credit the Suchlicki Affidavits in the summary

(Continued on following page)

others have frequently reviewed and credited expert affidavits in concluding that entities are organs of foreign states in procedural circumstances similar to the instant motions. *See, e.g., Levin,* 2011 WL 812032, at *20-21; *Estate of Heiser v. Islamic Republic of Iran,* Nos. 00-cv-2329, 01-cv-2104, 2011 WL 3489109, at *7-8 (D.D.C. Aug. 10, 2011).

Professor Suchlicki's opinion is presented in individual affidavits addressing each of the Cuban Banks (the "Suchlicki Affidavits"). The information presented in the Suchlicki Affidavits is based upon Professor Suchlicki's forty-year career as a leading expert on Cuba. The affidavits directly address several of the *Filler* considerations. The Suchlicki Affidavits detail, for example, the relationship between Cuba and the Cuban Banks, and how the Cuban Banks are state-owned corporations with executives who are chosen by and beholden to Cuba's political leadership. The Suchlicki Affidavits also describe how several of the Cuban Banks were created by specific

---

judgment context because this expert testimony would be admissible as such if Professor Suchlicki was called to testify in person.

Moreover, because *Filler* directs the Court to examine a foreign state's relationship with its putative agency or instrumentality, the analysis implicates foreign law. As such, "the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence." Fed. R. Civ. P. 44.1. The Suchlicki Affidavits are appropriately considered by the Court under this rule as well.

Cuban laws and endowed with specific responsibilities and abilities by the Cuban government. The Suchlicki Affidavits also provide general information about how Cuban financial institutions typically work – a necessity given the fact that entities like the Cuban Banks are not transparent and refuse to litigate their status in courts of this country.[13]

In light of the evidence presented by the Suchlicki Affidavits supporting a finding that the Cuban Banks are organs of Cuba, the ACRs must counter evidence with evidence; they cannot "rel[y] upon conclusory statements or mere allegations . . . to defeat a summary judgment motion." *Davis,* 316 F.3d at 100 (*citing Ying Jing Gan v. City of New York,* 996 F.2d 522, 532-33 (2d Cir. 1993)). *See also* Fed. R. Civ. P. 56(c) ("A party asserting that a fact . . . is genuinely disputed must support the assertion by: (A) citing to

[13] The Cuban Banks' refusal to appear and contest allegations of their agency or instrumentality in this and similar litigation is related to another of Petitioner's strong arguments for finding that at least one of the Cuban Banks is an agency or instrumentality of Cuba: the Southern District of New York has previously concluded as such with regard to Banco Nacional. *See Banco Nacional de Cuba v. Chemical Bank N.Y. Trust Co.,* 594 F. Supp. 1553, 1564 (S.D.N.Y. 1984); *Weininger,* 462 F. Supp. 2d at 498. The ACRs argue that these previous decisions cannot bind them, citing the doctrine of issue preclusion. Whether or not these cases definitively dispose of the question of "agency or instrumentality" in this case, they certainly show that the ACRs' substantive position on that issue has been rejected by prior courts. Coupled with the ACRs' failure to present any evidence suggesting that the Cuban Banks are not organs of Cuba, those past findings render the ACRs' position untenable here.

particular parts of materials in the record . . . or declarations . . . or (B) showing that the materials cited do not establish the absence . . . of a genuine dispute. . . .”). Here, the ACRs merely decry the Suchlicki Affidavits as deficient and conclusory; they have not set before the Court any information or evidence that supports rejecting the conclusion compelled by the information presented in Suchlicki Affidavits.

In sum, because the Cuban Banks have defaulted in this action, they are deemed to have admitted to being “agencies or instrumentalities” of Cuba. Even if the default of the Cuban Banks were not decisive, the Suchlicki Affidavits provide sufficient facts – facts that the ACRs neither sufficiently dispute nor contradict – to establish that the Cuban Banks are agencies or instrumentalities of Cuba. As evinced by the submissions now before the Court, there is no dispute as to the material facts regarding the scope of the Cuban Banks’ interests in the Blocked Funds. In the September 2010 Decision, this Court already held that interests such as those of the Cuban Banks’ are sufficient as a matter of law to render the Blocked Funds subject to attachment and execution under the TRIA. Accordingly, Petitioner has demonstrated that there is no genuine dispute as to any material fact necessary to support her entitlement to execute upon the Blocked Funds.

IV. THE ADVERSE CLAIMANT RESPONDENTS' BACKSTOP ARGUMENTS

The ACRs make two additional arguments against the turnover of the Blocked Funds that merit discussion. First, the ACRs assert that, even if the plain meaning of the TRIA does mandate pre-emption of state property law,[14] the statute should be construed

[14] The ACRs argue that this Court should reevaluate its finding of preemption in light of the general presumption against preemption, an argument which had not been briefed prior to the September 2010 Decision. In advancing the applicability of the presumption against preemption, the ACRs rely upon *Export-Import Bank of U.S. v. Asia Pulp & Paper Co., Ltd.,* 609 F.3d 111 (2d Cir. 2010). In *Asia Pulp & Paper,* however, the Second Circuit based its invocation of the presumption on the failure of the statute there to supply a definition of property interests subject to attachment and execution. The September 2010 Decision, however, found that the TRIA, read in its proper context, does define the relevant range of property interests. *See* September 2010 Decision at 531-32, Moreover, the presumption against preemption applies only to "field[s] which the States have traditionally occupied," *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 485 (1996) (citation omitted), and though states are certainly the traditional fount of property law, federal law has long determined the rules governing suits against foreign governments, their agencies and instrumentalities, as well as laws implicating United States foreign policy and diplomatic interests. *See, e.g., N.Y. SMSA Ltd. P'ship v. Town of Clarkstown,* 612 F.3d 97, 104 (2d Cir. 2010) ("The presumption has not generally been applied when a local government regulates in an area 'where there has been a history of significant federal presence.'" (*quoting United States v. Locke,* 529 U.S. 89, 108 (2000)); *Weinstein,* 609 F.3d 43, 53 (2d Cir. 2010) (discussing treaties negotiated at conclusion of World War II governing relationship between nations and their instrumentalities and agencies for purposes of executing judgments against foreign nations).

(Continued on following page)

in harmony with state property law to avoid running afoul of the Takings Clause. Second, the ACRs assert that the TRIA does not apply retroactively to govern the disposition of assets blocked during transactions that occurred prior to the enactment of the statute.

These arguments fail, in part, because each asks the Court to consider the turnover of blocked funds outside the context of the initial blocking of those funds. The TRIA makes available for attachment and execution assets that have been blocked pursuant to the CACRs or other international sanctions regimes. The Supreme Court has long "recognized that the congressional purpose in authorizing blocking orders is to put control of foreign assets in the hands of the President." *Dames & Moore v. Regan,* 453 U.S. 654, 673 (1981) (internal quotations omitted). From the moment they are blocked, the Blocked Funds become "'bargaining chip[s]' to be used by the President," and are "at his disposal." *Id.* The Trading With the Enemy Act (the "TWEA"), which the TRIA cites directly, permits the executive not only to "temporarily freeze assets," but also to "direct and compel" the "transfer, withdrawal, transportation, . . . or exportation of . . . any property in which any foreign country has any interest. . . ." *Id.* at n.5. In other words, both before

---

Because the TRIA supplies a substantive definition of interests in property and governs an area of law that is historically within the purview of the federal government, the presumption against preemption cannot operate to alter the reading of the statute presented by the Court in the September 2010 Decision.

and after the passage of the TRIA, once assets are blocked, parties with an interest in those assets have no reasonable expectation that their interests will not be diminished or extinguished. *See also Smith ex rel. Estate of Smith,* 346 F.3d at 271 (finding that TRIA did not "divest" executive authority to confiscate blocked assets); *In re Islamic Republic of Iran Terrorism Litig.,* 659 F. Supp. 2d 31, 123 (D.D.C. 2009) ("[N]othing prevents the President from seizing Iranian assets and vesting title to them in the U.S. Treasury, as Presidents have often done in the interest of important foreign policy objectives."). Simply put, it would be unreasonable to rely upon frozen funds remaining as such until the relevant restrictions are lifted. This was the case both before and after the passage of the TRIA.

With that basic understanding in mind, the ACR's remaining arguments regarding the Takings Clause and the retroactive application of the TRIA may be easily dispensed.

A. THE TAKINGS ARGUMENT

The ACRs argue that if the TRIA is interpreted to permit turnover here, the statute violates the Takings Clause and is unconstitutional as applied to blocked assets owned by third parties. Accordingly, the ACRs submit that the TRIA must be construed to avoid this unconstitutional outcome.

The canon of constitutional avoidance counsels that "where an otherwise acceptable construction of a

statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. and Const. Trades Council,* 485 U.S. 568, 575 (1988). Thus, to influence the interpretation of a statute based on this doctrine, an otherwise superior reading must create a serious constitutional infirmity.

The ACRs have failed to raise the specter of a serious constitutional defect in the Court's interpretation of the TRIA.

> Although the Fifth Amendment states that no "private property [shall] be taken for public use, without just compensation," . . . the Supreme Court has made clear that "[t]he government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain."

United States v. Davis, 648 F.3d 84, 97 (2d Cir. 2011) (internal citations omitted) (alterations in original).

For decades, Courts have rejected Takings Clause challenges to various applications of federal statutes that are related to the TRIA and deal with the execution or disposition of assets held in the United States but subject to foreign claims of interest. Courts have long recognized that "the [f]ederal [g]overnment is not barred by the Fifth Amendment from securing for

itself and our nationals priority against" foreign creditors who also assert interests in property frozen in the United States pursuant to federal law. *United States v. Pink,* 315 U.S. 203, 228 (1942);[15] *see also Tole S.A. v. Miller,* 530 F. Supp. 999, 1004 (S.D.N.Y. 1981) (summarizing *Pink* as "reject[ing] the contention of various foreign creditors of a Russian corporation that the Government of the United States had unconstitutionally taken property without just compensation by distributing American-based assets of the corporation to American citizens"). Over half a century ago, the Second Circuit recognized that even the "seizure of assets of non-enemy alien[s]" is a proper exercise of federal power where the seizure is "a means of avoiding the use of the property" to facilitate trade with enemy states. *Sardino v. Federal Reserve Bank of N.Y.,* 361 F.2d 106, 112 (2d Cir. 1966) (*quoting Silesian American Corp. v. Clark,* 332 U.S. 469, 476 (1947)). Such is the case here, where many of the frozen EFTs were initiated to transmit assets to, from, or through Cuba's agencies and instrumentalities involving American financial institutions, and where several of the ACRs base their claims to the Blocked Funds on their having satisfied, through alternate channels of payment, those underlying

[15] The TRIA, just as the Litvinov Assignment at issue in *Pink,* seeks to provide financial redress for a class of American citizens – here, victims of international acts of terrorism, in *Pink,* Americans harmed by the Soviet nationalization of the Russian economy. *Pink,* 315 U.S. at 210.

obligations to the Cuban entities that occasioned the blocking of the EFTs in the first place.

The purposes of the statutory scheme here at issue – to provide redress to victims of terrorism, to punish terrorist entities by making their frozen assets subject to execution, and to discourage economic activity involving American financial institutions benefiting terrorist entities – defeat the ACRs' takings argument because they constitute public purposes beyond the mere redistribution of one private entity's property to another private party. *Cf. Kelo v. City of New London,* 545 U.S. 469, 490 (2005) (Kennedy, J., concurring) (holding that the takings clause forbids "transfers intended to confer benefits on particular, favored private entities with only incidental or pretextual public benefits"). The Second Circuit and other Courts of Appeals have endorsed as advancing valid public purposes statutes related to economic sanctions regimes that govern the blocking or execution of assets held in the United States. *See Weinstein,* 609 F.3d 43 at 54 (rejecting takings claim where foreign bank's "own conduct . . . opened it to liability for judgments already entered against" terrorist state); *Paradissiotis v. United States,* 304 F.3d 1271, 1275 (Fed. Cir. 2002) (finding that blocking Libyan assets constituted "valid regulatory measure[ ] taken to serve substantial national security interests[,] [which] may adversely affect individual contract-based interests and expectations, but those effects have not been recognized as compensable takings for Fifth Amendment purposes").

Finally, a related point as to the ACRs' takings argument: The ACRs' takings argument is premised on the assertion that they are the legal owners of the Blocked Funds. The Petitioner lacks the basis to dispute the facts the ACRs allege in support of their claims to ownership, but assuming the ACRs do own the Blocked Funds, those assets are available for attachment and execution under the TRIA only because of the conduct of the ACRs themselves. They chose to do business with Cuba and its agencies or instrumentalities and they routed that business through the United States – whether by mistake or otherwise – and thus the assets in question were caught in the TRIA/CACRs net. Moreover, many of the ACRs have failed to seek, and all have failed to obtain the administrative relief the statute provides them: licenses from OFAC permitting them to unblock and retain the Blocked Funds, an act which would have removed the assets from the reach of the TRIA.[16] Where an entity's own conduct and

[16] Indeed, the opportunity to seek a license under the CACRs and assert their claims to actual ownership undermines the ACRs' citation to *United States v. Broverman,* 180 F. Supp. 631, 635 (S.D.N.Y. 1959). The ACRs invoke *Broverman* for the proposition that "serious constitutional questions" would be raised by "taking of property of friendly aliens without just compensation." *Id.* However, that statement in *Broverman* is preceded by a explanation that the federal government had the power under the TWEA "to vest property of friendly as well as enemy foreign interests" and that no constitutional questions were raised because the statutory scheme provided for an opportunity for those friendly interests to be asserted. *Id.* So too here, as the ACRs have recourse to the OFAC licensing

(Continued on following page)

affirmative choices, in the context of statutory or regulatory changes, result in its continued exposure to liability, such entities cannot then sustain a takings claim. *See Meriden Trust and Safe Deposit Co. v. F.D.I.C.,* 62 F.3d 449, 455 (2d Cir. 1995) ("Meriden Trust chose to maintain its insured status after transferring its commercial banking activities to Central Bank, even in light of [a] provision added by [an intervening federal statute], thus voluntarily subjecting itself to a known obligation. Therefore, no unconstitutional taking occurred.").

Since there are several shortcomings with the ACRs' takings argument, the ACRs have failed to present a serious constitutional problem created by reading the TRIA to preempt state property law. Accordingly, the canon of constitutional avoidance does not alter the Court's conclusion on that point.

B. THE RETROACTIVITY ARGUMENT

Finally, the ACRs argue that even if the TRIA does preempt state property law, it cannot be applied retroactively to support the turnover of assets frozen prior to the passage of the TRIA and owned by entities that are neither terrorist parties nor their agencies or instrumentalities.

---

procedure and judicial review should they disagree with any OFAC licensing decisions. *See,* 31 C.F.R. § 501.801 (providing detailed instructions for applying for license to unblock frozen funds).

A "statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective." *Landgraf v. USI Film Prods.,* 511 U.S. 244, 269 (1994) (internal quotations omitted). Determining whether a statute has retroactive effect is "not always a simple task, because '[a] statute [is not impermissibly retroactive] merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law.'" *Martinez v. I.N.S.,* 523 F.3d 365, 370 (2d Cir. 2008) (*quoting Landgraf,* 511 U.S. at 269) (alterations in original). "[T]he court must assess 'the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event,'" and determine "whether the new provision attaches new legal consequences to events completed before its enactment." *Id.* (*quoting Landgraf,* 511 U.S. at 269-70). "If so, then the traditional presumption against retroactivity pertains and the new statute must be construed as inapplicable to the event or act in question owing to the absence of a clear indication from Congress that it intended such a result." *Id.* (internal quotations and alterations omitted). Evaluating whether a "particular rule operates 'retroactively' comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event," which should be guided by "familiar

considerations of fair notice, reasonable reliance, and settled expectations." *Landgraf,* 511 U.S. at 270.

The proper focus, then, of the retroactivity inquiry in this case is to ask whether the passage of the TRIA "deprive[d]," third parties who hold interests in assets frozen under the CACRs "of legitimate expectations." *General Motors Corp. v. Romein,* 503 U.S. 181, 191 (1992). The circumstances of this case simply cannot support the ACRs' contention that the TRIA upset their expectations as to the Blocked Funds.

Assets frozen in the United States under OFAC regulations are subject to a myriad of sources of potential diminution – including attachment and execution to satisfy judgments. As discussed above, the International Emergency Economic Powers Act (and the TWEA before it) provided the President with the discretion to confiscate assets blocked pursuant to OFAC regulations. *See Smith ex rel. Smith,* 346 F.3d at 271. This was true before the passage of the TRIA; it is still true. The President's authority to summarily dispose of blocked assets destroys any claim that the ACRs could have justifiably relied upon the Blocked Funds remaining in interest-bearing accounts until the ascension of a democratic regime in Cuba and a détente in U.S.-Cuban relations. Moreover, both prior to and after the passage of the TRIA, the same straightforward and obvious means to protect their interests from this persistent risk was and is available to the ACRs: Pursue an OFAC license.

When the ACRs participated in the EFTs, there was no doubt that routing such transactions through the United States would result in their being blocked. Once blocked – even at the time that the transactions were initiated – those funds were subject to United States jurisdiction and could be employed toward a panoply of ends pursuant to Congressional statutory policy and previously-delegated executive power. Under such circumstances, the application of the TRIA to funds blocked prior to its passage does not upset expectations or alter the legal consequences of routing EFTs through the United States to the agencies and instrumentalities of a terrorist state. When the ACRs engaged in that conduct, they could not have had a reasonable expectation that the Blocked Funds would be blocked indefinitely and maintained in safe-keeping, available only to them. Accordingly, orders granting turnover of the Blocked Funds in this case do not amount to an impermissibly retroactive application of the TRIA.

V. ORDER

For the reasons stated above, it is hereby

ORDERED that the motions to intervene of Banco Bilbao Vizcaya Argentaria Panama, S.A. and Banco Bilbao Vizcaya Argentaria, S.A. (Docket No. 336), Premuda S.p.A. (Docket No. 311), Novafin Financiere, S.A. (Docket No. 319), LTU Lufttransport-Unternehmen (Docket No. 324), Caja de Ahorros y Monte de Piedad de Madrid (Docket No.

337), and Shanghai Pudong Development Bank Co. Ltd. (Docket No. 354) are GRANTED; and it is further

ORDERED that the motion to strike of Petitioner Jeannette Hausler (Docket No. 380) is DENIED; and it is further

ORDERED that the motions of Petitioner Jeannette Hausler for judgment on the pleadings (Docket Nos. 264 and 268) are GRANTED; and it is further

ORDERED that the cross motions for summary judgment of Banco Bilbao Vizcaya Argentaria Panama, S.A. and Banco Bilbao Vizcaya Argentaria, S.A. (Docket No. 309), Premuda S.p.A. (Docket No. 313), Novafin Financiere, S.A. (Docket No. 320), LTU Lufttransport-Unternehmen (Docket No. 325), Caja de Ahorros y Monte de Piedad de Madrid (Docket No. 330), Estudios Mercados y Suministros, S.L. and Philips Mexicana S.A. de C.V. (Docket No. 340), and Shanghai Pudong Development Bank Co. Ltd. (Docket No. 342) are DENIED.

ORDERED that, within ten (10) days of the date of this Order, Petitioner submit a letter, of no more than five (5) pages in length, describing the posture of the case as it pertains to remaining adverse claimants in light of this Decision and Order, and specifically addressing the extent to which the Court's decision herein might apply to the resolution of any such claims.

SO ORDERED.

Dated: New York, New York
February 21, 2012

/s/ [Illegible]
VICTOR MARRERO
U.S.D.J.

*NOTE: The factual summary herein and facts discussed throughout this opinion are derived from the following documents and any exhibits attached thereto: Declaration of James W. Perkins in Support of Motion for Judgment on the Pleadings Concerning Citibank's Interpleader Petition and For Turnover Order – Tranche I, filed April 15, 2011 (Docket No. 265); Petitioner's Rule 56.1 Statement, filed April 15, 2011 (Docket No. 267); Declaration of James W. Perkins in Support of Motion for Judgment on the Pleadings Concerning Petition III Interpleader and For Turnover Order, filed April 15, 2011 (Docket No. 269); Petitioner's Rule 56.1 Statement, filed April 15, 2011 (Docket No. 271); Declaration of James W. Perkins in Support of Motion for Judgment on the Pleadings Concerning Petition III Interpleader and For Turnover Order, filed May 4, 2011 (Docket No. 295); Rule 56.1 Statement of Banco Bilbao Vizcaya Argentaria Panama, S.A., Banco Bilbao Vizcaya Argentaria, S.A., filed May 18, 2011 (Docket No. 310); Affidavit of Arnaud Bensoussan in Opposition to Motion for Judgment on the Pleadings and for Summary Judgment and in Support of Cross-Motion for Summary Judgment, filed May 18, 2011 (Docket No.

315); Rule 56.1 Statement of Premuda S.p.A., filed May 18, 2011 (Docket No. 316); Affidavit of Marta Bosch-Bessa in Support of Cross Motion for Summary Judgment, filed May 18, 2011 (Docket No. 317); Declaration of Antonio De Benedetto in Support of Cross Motion for Summary Judgment, filed May 18, 2011 (Docket No. 322); Rule 56.1 Statement of Novafin Financiere, S.A., filed May 18, 2011 (Docket No. 323); Declaration of Cornelia Eichler in Support of Cross Motion for Summary Judgment, filed May 18, 2011 (Docket No. 326); Adverse Claimants-Respondents' Response to Petitioner's Local Rule 56.1 Statement of Undisputed Facts, filed May 18, 2011 (Docket No. 329); Rule 56.1 Statement of LTU Lufttransport-Unternehmen, filed May 18, 2011 (Docket No. 332); Rule 56.1 Statement of Caja de Ahorros y Monte de Piedad de Madrid, filed May 18, 2011 (Docket No. 334); Declaration of Juancarlos Sanchez for Adverse-Claimant Respondent Caja de Ahorros Y Monte de Piedad de Madrid in Opposition to Petitioner's Motion for Judgment on the Pleadings and for Summary Judgment and in Support of Caja Madrid's Cross-Motion for Summary Judgment; filed May 18, 2011 (Docket No. 335); Declaration of Cipriano Uceda in Opposition to Petitioner's Motion and in Support of Cross-Motion for Summary Judgment, filed May 18, 2011 (Docket No. 341); Declaration of Cesar Carrasco in Opposition to Petitioner's Motion and in Support of Cross-Motion for Summary Judgment, filed May 18, 2011 (Docket No. 343); Rule 56.1 Statement of Shanghai Pudong Development Bank Co. Ltd., filed May 18, 2011 (Docket No. 345);

Response of Shanghai Pudong Development Bank CO., Ltd. to Petitioner's Local Rule 56.1 Statement of Undisputed Facts, filed May 18, 2011 (Docket No. 346); Local Rule 56.1 Statement of Philips Mexicana S.A. de C.V. and Estudios Mercados y Suministros, S.L. in Opposition to Petitioner Hausler's Motion and in Support of their Cross-Motion for Summary Judgment, filed May 18, 2011 (Docket No. 349) ; Declaration of Glenn M. Kurtz in Support of the Memorandum of Law of Shanghai Pudong Development Bank Co., Ltd. In Support of Cross-Motion for Summary Judgment and in Opposition to Petitioner's Motion for Judgment on the Pleadings and for Turnover Concerning Petition I, filed May 18, 2011 (Docket No. 350); Statement of Philips Mexicana S.A. DE C.V. and Estudios Mercados y Suministros S.L. in Response to Petitioner Hausler's Statement of Unconstestd Facts Pursuant to Local Rule 56.1, filed May 18, 2011 (Docket No. 352); Declaration of Yang Yi in Support of Shanghai Pudong Development Bank Co., Ltd.'s Cross-Motion for Summary Judgment and Opposition to Petitioner's Motion for Summary Judgment, filed May 18, 2011 (Docket No. 353); Garnishee-Respondents' Response to Petitioner's Local Rule 56.1 Statement of Undisputed Facts (Tranche III), filed May 18, 2011 (Docket No. 355); Garnishee-Respondents' Response to Petitioner's Local Rule 56.1 Statement of Undisputed Facts (Tranche I), filed May 18, 2011 (Docket No. 356); Petitioner's Opposition to Cross-Movants' Statements Pursuant to Local Rule 56.1, filed June 3, 2011 (Docket No. 376); Declaration of James W. Perkins in

Reply on Motions for Judgment on Pleadings and for Summary Judgment and in Opposition to Cross Motions, filed June 3, 2011 (Docket No. 374); Declaration of Glenn M. Kurtz in Support of Shanghai Pudong Development Bank Co., Ltd.'s (I) Opposition to Petitioner's Motion to Strike Its Response to Petitioner's Rule 56.1 Statement and (II) Cross-Motion to Intervene, filed June 17, 2011 (Docket No. 408). Except where specifically referenced, no further citation to these sources will be made.
