No. 16-_____

In The Supreme Court of the United States

MARY NELL WYATT, individually and as executrix of THE ESTATE OF RONALD E. WYATT; DANIEL WYATT; AMANDA LIPPELT; MICHELLE BROWN; MARVIN T. WILSON; RENETTA WILSON; MARTY R. WILSON; GINA R. BROWN; BRADLEY G. KEY; KIMI L. JOHNS; & BARRY T. KEY,

Plaintiffs-Petitioners,

v.

SYRIAN ARAB REPUBLIC,

Defendant,

(caption continued on inside cover)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENETH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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v.

FRANCIS GATES, individually and as administrator of THE ESTATE OF OLIN EUGENE "JACK" ARMSTRONG, PATI HENSLEY, SARA HENSLEY, & JAN SMITH,

Third-Party Defendants-Respondents,

and

FRANCIS GATES, individually and as administrator of THE ESTATE OF OLIN EUGENE "JACK" ARMSTRONG, PATI HENSLEY, SARA HENSLEY, & JAN SMITH,

Plaintiffs-Respondents

v.

SYRIAN ARAB REPUBLIC,

Defendant,

v.

MARY NELL WYATT, individually and as executrix of THE ESTATE OF RONALD E. WYATT; DANIEL WYATT; AMANDA LIPPELT; MICHELLE BROWN; MARVIN T. WILSON; RENETTA WILSON; MARTY R. WILSON; GINA R. BROWN; BRADLEY G. KEY; KIMI L. JOHNS; & BARRY T. KEY,

Claimants-Petitioners.

QUESTIONS PRESENTED

The questions presented are as follows:

1. Whether the Foreign Sovereign Immunities Act's requirement that a default judgment against a foreign state be served on that state in a specified manner (28 U.S.C. § 1608(e)) is merely hortatory, and noncompliance without any consequence, when the judgment creditors rely on any enforcement mechanism other than 28 U.S.C. § 1610(a) or (b).

2. Whether a district court retains jurisdiction, after the proper and timely filing of a notice of appeal, to enter an order under 28 U.S.C. § 2042 authorizing funds deposited into the district court's registry to be withdrawn in favor of one of the parties to the appeal in resolution of the very issue being debated on appeal.

PARTIES TO THE PROCEEDING

The petitioners are Mary Nell Wyatt, individually and in her capacity as executrix of The Estate of Ronald E. Wyatt; Daniel Wyatt; Amanda Lippelt; Michelle Brown; Marvin T. Wilson; Renetta Wilson; Marty R. Wilson; Gina R. Brown; Bradley G. Key; Kimi L. Johns; and Barry T. Key. None of the Petitioners are nongovernmental corporations. None of the estates represented have any parent corporations or issue any stock.

The petitioners are judgment creditors of the Syrian Arab Republic. (App. 81a-82a); *Wyatt v. Syrian Arab Rep.*, 908 F.Supp.2d 216 (D.D.C. 2012) *aff'd,* 554 F. App'x 16 (D.C. Cir. 2014). Syria did not participate before the court below and was not identified as a party before that court.

The respondents are Francis Gates, individually and in his capacity as administrator of The Estate of Olin Eugene "Jack" Armstrong, Pati Hensley, Sara Hensley, and another person pseudonymously referenced as "Jan Smith" whose identity is unknown to the petitioners. The respondents did not disclose the identity of "Mrs. Smith" to the court of appeals. The respondents, like the petitioners, are judgment creditors of the Syrian Arab Republic. (App. 85a-86a); *Gates v. Syrian Arab Rep.*, 646 F.Supp.2d 79 (D.D.C. 2009) *aff'd,* 646 F.3d 1 (D.C. Cir. 2011).

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PETITION FOR WRIT OF CERTIORARI

OPINIONS AND ORDERS BELOW

Petitioners respectfully petition for a writ of certiorari to review the Opinion of the United States Court of Appeals for the Seventh Circuit, dated August 31, 2015, reproduced in the Appendix (App. 1a-28a), and available at *Wyatt v. Syrian Arab Rep.*, 800 F.3d 331 (7th Cir. 2015). The district court's Memorandum Opinion & Order appealed from, dated October 22, 2014, is unpublished but is reproduced in the Appendix (App. 29a-36a) and available at *Gates v. Syrian Arab Rep.*, 2014 WL 5422983 (N.D. Ill. Oct. 22, 2014).

The petitioners noticed their appeal to the Seventh Circuit on October 22, 2014; it was docketed in that Court the same day. On November 6, 2014, the district court issued four additional unpublished documents significant to the appeal: 1) a Memorandum Opinion & Order denying petitioners' request for a stay, reproduced at (App. 40a-49a) and available at *Gates v. Syrian Arab Rep.*, 2014 WL 5784859 (N.D. Ill. Nov. 6, 2014); 2) a Judgment granting the respondents' motion for release of funds in the district court's registry, reproduced at (App. 37a); 3) an Order directing release of the aforementioned funds pursuant to 28 U.S.C. § 2042, reproduced at (App. 38a-39a), and 4) a second Judgment, as explained *infra*.

Three prior opinions of the district court, all unpublished, are available at *Gates v. Syrian Arab Rep.*, 2013 WL 6009491 (N.D. Ill. Nov. 13, 2013) *aff'd,* 755 F.3d 568 (7th Cir. 2014); *Gates v. Syrian Arab Rep.*,

2013 WL 1337223 (N.D. Ill. Mar. 29, 2013) *aff'd,* 755 F.3d 568 (7th Cir. 2014); and *Gates v. Syrian Arab Rep.*, 2013 WL 1337214 (N.D. Ill. Mar. 29, 2013).

Two prior unpublished turnover orders of the district court are pertinent to this petition and are reproduced at (App. 50a-80a).

The four material orders from the proceedings underlying this enforcement action are reproduced at (App. 81a-88a). The published opinions associated with those orders are available at *Wyatt v. Syrian Arab Rep.*, 908 F.Supp.2d 216 (D.D.C. 2012) *aff'd,* 554 F. App'x 16 (D.C. Cir. 2014); and *Gates v. Syrian Arab Rep.*, 646 F.Supp.2d 79 (D.D.C. 2009) *aff'd,* 646 F.3d 1 (D.C. Cir. 2011).

JURISDICTION

The Opinion of the court of appeals and a corresponding Judgment were entered on August 31, 2015. The petitioners' timely petition for rehearing was denied on September 29, 2015. (App. 89a-90a). On December 22, 2015, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including February 26, 2016. (Application No. 15A662). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS

28 U.S.C. 1608(a), (c), and (e); 1609; 1610; 2042; and the Terrorism Risk Insurance Act of 2002 ("TRIA"), § 201(a) and (d)(2), codified as a note to 28

U.S.C. 1610, are particularly pertinent to this petition. Given the length of those provisions, they are set out in the Appendix at (App. 91a-101a).

Under the Foreign Sovereign Immunities Act ("FSIA"), the assets of a foreign state are "immune from attachment[,] arrest[,] and execution except as provided in sections 1610 and 1611 of this chapter." 28 U.S.C. 1609. The petitioners rely on two exceptions to attachment immunity. One is provided by 28 U.S.C. 1610(g), pertaining to the enforcement of judgments arising from certain acts of terrorism. The other is provided by TRIA § 201, which applies "[n]otwithstanding any other provision of law," and thus applies notwithstanding § 1609. It too pertains to the enforcement of judgments arising from certain acts of terrorism. *Id.*

28 U.S.C. § 1608 governs the entry of default judgments against foreign states. Significant here, § 1608(e) demands: "A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section." *Id.* Section 1610(c) separately requires that certain enforcement actions are not "permitted" until a proper court has issued an order determining that "a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter." *Id.*

Finally, 28 U.S.C. § 2042 demands a specific order before any money deposited into the registry of a district court in the course of litigation may be withdrawn. It makes no exception for withdrawals

made in the enforcement of a previously entered order or judgment. *Id.*

STATEMENT

This petition involves three groups of judgment creditors of Syria, two of which are presently before the Court, competing over the scarce Syrian assets reachable by American courts to enforce their respective judgments.

A. The Baker Plaintiffs

The Baker Plaintiffs are victims of a 1985 terror attack, sponsored in part by Syria. On or about March 30, 2011, they received from the United States District Court for District of Columbia a 28 U.S.C. 1605A default judgment against Syria for $602 million.

On June 23, 2011, the Baker Plaintiffs filed a motion pursuant to § 1610(c), seeking authorization to enforce their judgment even though they had not complied with § 1608(e) (demanding that a default judgment against a foreign state be served on that state). That motion was opposed and was not granted until September 1, 2011.

On December 15, 2011, after learning from Treasury's Office of Foreign Assets Control that Syrian assets[1] were present in the Northern District of Illinois, the Baker Plaintiffs registered their judgment in

[1] They would later learn that the assets totaled approximately $80 million.

that District, thus initiating an enforcement action. Unfortunately for the Baker Plaintiffs, they were too late. The Gates Plaintiffs, the respondents herein, had registered their judgment in the Northern District on December 8, one week earlier. Hoping to nonetheless assert priority, the Baker Plaintiffs sought and obtained a second § 1610(c) order from the Northern District on the theory that § 1610(c) demands successive motions in each enforcement district. The Gates Plaintiffs, unlike the Baker Plaintiffs, had not sought a second § 1610(c) order.

B. The Gates Plaintiffs

The Gates Plaintiffs are likewise victims of Syrian-sponsored terrorism. They are family members of two civilian contractors who were kidnapped and beheaded by al-Qaeda in Iraq. On September 26, 2008, the Gates Plaintiffs received a 28 U.S.C. 1605A default judgment against Syria for $413 million. (App. 85a-86a). In an effort to comply with § 1608(e), they twice attempted to execute service on Syria via DHL. Those attempts were unsuccessful; the second attempt resulted in a November 20, 2008, letter from DHL stating that Syria had refused delivery. (App. 102a-103a). The Gates Plaintiffs would not again attempt delivery and thus never made the service required by § 1608(e).

On August 22, 2011, nearly three *years* later, but just two months after a similar motion by the Baker

Plaintiffs, the Gates Plaintiffs filed an emergency motion pursuant to § 1610(c), seeking authorization to enforce their judgment, even though they did not comply with § 1608(e). (App. 104a-112a) (arguing that Syria's appearance after entry of the default judgment "obviated" § 1608(e)'s service requirement). In an abbreviated order devoid of analysis, the Gates Plaintiffs' emergency motion was granted just one day after it was filed. (87a-88a) (failing to mention, let alone assess, the requirements of § 1608(e)). Thanks to the quick response they received on that motion, the Gates Plaintiffs were able to register their judgment in the Northern District of Illinois on December 8, 2011, which, as noted, was one week before the Baker Plaintiffs were able to register their judgment.

The Gates Plaintiffs litigated with the Baker Plaintiffs for some time to determine which among them had enforcement priority regarding the aforementioned Syrian assets. On May 13, 2013, and again on February 3, 2014, the district court issued turnover orders directing certain garnishees holding those assets to deposit them into the district court's registry. (App. 50a, 61a). Both of the turnover orders make clear that the Syrian assets were to be held in the court's registry and released to the rightful owner of those funds following remand by the Seventh Circuit. The first order states that if the Baker Plaintiffs appealed within thirty days (which they did), the Syrian assets would be "held [in the Court's registry] during the pendency of [the] appeal" and released subsequent to the appeal pursuant to an appropriate order to be

then issued. *See* (App. 79a). The second turnover order similarly states that the Syrian assets would be deposited in the district court's registry during the pendency of the appeal. (App. 56a). The order additionally states that the Syrian assets paid into the registry would only be released following remand and "*shall ultimately be distributed as directed by [the District] Court*." (App. a56) (emphasis added).

On June 18, 2014, the Baker Plaintiffs' appeal to the Seventh Circuit was decided in favor of the Gates Plaintiffs. *Gates v. Syrian Arab Rep.*, 755 F.3d 568 (7th Cir. 2014). Notably, in applying the judgment enforcement regime at issue here (*see* § 1610(g); TRIA § 201), the Seventh Circuit commented:

> [T]he FSIA does not provide a mechanism for distributing equitably among different victims any Syrian assets in the United States that are subject to attachment. Instead, victims who finally obtain judgments must then engage in the costly, burdensome, and often fruitless task of searching for available assets.
>
> These victims of terror can then find themselves pitted in a cruel race against each other—a race to attach any available assets to satisfy the judgments. The terms of the race are essentially winner-take-all rather than any equitable sharing among victims of similar losses. Under the FSIA's

> compensation scheme, a terrorism judgment against Syria can be satisfied only at the expense of other terrorism victims.

Id. at 571. The Mandate issued on August 7, 2014.

C. The Wyatt Plaintiffs

In August 1991, Marvin Wilson, one of the Wyatt Plaintiffs, and Ronald Wyatt, represented by his estate, the executrix of which is also one of the Wyatt Plaintiffs, were driving with a guide and others towards an archeological site in the mountains of Ararat in Turkey that, they believed, contained remnants of Noah's Ark.[2] While *en route* to the archeological site, they encountered a commercial passenger bus, which, they soon discovered, had been ambushed by armed Kurdistan Workers Party ("PKK") terrorists. With their weapons drawn, the PKK terrorists stormed the vehicle holding Wyatt and Wilson and took them captive at gunpoint. They later compelled Wyatt and Wilson to march approximately twenty-five miles at night, scalded by "icy winds" while denying them any sort of insulation. This continued, with varying degrees of intensity, for the next several weeks. Wyatt

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[2] The factual assertions in this and the next two paragraphs derive largely from *Wyatt v. Syrian Arab Rep.*, 908 F.Supp.2d 216 (D.D.C. 2012) and filings before that court (Dkt. No. 08-cv-502). They were briefly summarized by the Seventh Circuit below. (App. 7a).

and Wilson were permitted to sleep only during the day, without any cover in the freezing cold.

The PKK terrorists kept their captives constantly in fear. Occasionally, they would line up the captives in a row and point guns at them, as though the captives were about to be executed. The terrorists were heavily armed with guns, grenades, and knives and made very clear to their captives that they could be killed at any time, without notice. The terrorists additionally denied their captives access to necessary medical care, notwithstanding the treacherous ordeal they were made to endure. As a result, Mr. Wyatt suffered a permanent disability to his leg and Mr. Wilson lost 16 pounds in his twenty-one days of captivity.

The Wyatt Plaintiffs sued Syria and others in 2008 pursuant to 28 U.S.C. 1605A. Syria was aptly represented by Mr. Ramsey Clark, former Attorney General of the United States, who participated before the trial court for the purpose of contesting jurisdiction. Upon the district court's determination that jurisdiction properly rested, Syria refused to participate further. The district court conducted an evidentiary hearing as required by § 1608(e), and thereafter entered default judgment against Syria and in favor of the Wyatt Plaintiffs on December 17, 2012. (App. 81a-82a). It awarded the Wyatt Plaintiffs compensatory damages of $38,000,000 and punitive damages of $300,000,000. *Id.*[3] Syria timely appealed.

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[3] The district court's jurisdiction was provided by 28 U.S.C. 1330; 1331; 1332; 1605A.

The district court's Order and Judgment, of which Syria was plainly aware—it formed the basis of Syria's appeal—ordered the Plaintiffs to "forthwith, at their own cost and consistent with the requirements of 28 U.S.C. § 1608(e), send a copy of this Order and Judgment, and the Memorandum Opinion issued this date, to defendants." *Id.* The Wyatt Plaintiffs cross-appealed from that portion of the order, arguing that because Syria was obviously aware of the order, which it had appealed from, no further service was necessary under § 1608(e). The D.C. Circuit affirmed the district court's order in full, rejecting the Wyatt Plaintiffs' arguments regarding § 1608(e). *Wyatt v. Syrian Arab Rep.*, 554 F. App'x 16 (D.C. Cir. 2014) ("[S]ection [1608(e)] mandates precisely what the district court ordered. [The Wyatt Plaintiffs] argue that the purposes of the statute have been accomplished by other means. The statutory language, however, admits of no such exception."); *see also* (App. 7a-8a).

The Wyatt Plaintiffs successfully completed service as provided by § 1608(e). They then requested and, on May 19, 2014, received an Order pursuant to § 1610(c) permitting them to enforce their judgment. (App. 83a-84a). Fed. R. Civ. P. 62(a) then imposed a fourteen-day automatic stay, concluding June 2, 2014, before the Wyatt Plaintiffs could enforce their judgment. The Wyatt Plaintiffs, like the Baker Plaintiffs and the Gates Plaintiffs before them, were then aware that Syrian assets were frozen in the Northern District of Illinois.

But, on June 2, the *Gates* appeal was still pending before the Seventh Circuit; the *Gates* Mandate did not issue until August 7. Accordingly, the Wyatt plaintiffs could not—or reasonably believed that they could not—initiate their judgment enforcement actions in the Northern District before Thursday, August 7.

D. The Proceedings Below

Monday August 11, two business days later, the Wyatt Plaintiffs registered their judgment in the Northern District, initiating the *Wyatt* enforcement action.[4] Two days later, pursuant to 735 ILCS 5/2-1402, 735 ILCS 5/12-710, and Fed. R. Civ. P. 69, they submitted a citation for service on the Fiscal Department of the office of the Clerk of the Northern District to create a lien on the Syrian assets in that court's registry. It was served on August 14. The same day, they appeared as adverse claimants in the *Gates* enforcement action.[5] The Northern District of Illinois had jurisdiction over both enforcement actions pursuant to 28 U.S.C. 1330; 1331; 1332; 1605A; 1610; 1963; 2042 and due to the court's inherent authority to enforce

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[4] The *Wyatt* enforcement action yielded Seventh Circuit docket No. 14-3227. *See* (App. 10a-11a).

[5] The pertinent proceedings in the *Gates* enforcement action yielded Seventh Circuit docket No. 14-3344. *See* (App. 9a-10a).

judgments of other district courts of the United States.[6]

On August 15, the Wyatt Plaintiffs filed a motion in the *Wyatt* enforcement action for turnover and release of the Syrian assets and, on August 17, they formally opposed the Gates Plaintiffs' earlier-filed similar motion in the *Gates* enforcement action. The Wyatt Plaintiffs' principal argument was straightforward: Because the Gates Plaintiffs had failed to comply with § 1608(e), they had no ability to enforce their judgment. Accordingly, they could not establish enforcement priority over the Wyatt Plaintiffs, who were therefore entitled to the Syrian funds. *See* (App. 24a-25a).

On October 22, 2014, the district court denied the Wyatt Plaintiffs' motion and granted the Gates Plaintiffs' motion, although did not order release of the Syrian assets. (App. 32a-35a).

The Wyatt Plaintiffs noticed their appeal later the same day; it was likewise docketed in the Seventh Circuit on the same day. They immediately sought a stay of the release of the Syrian assets, which was denied by the district court (App. 47a-49a) and the Seventh

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[6] *See*, *e.g.*, *Chambers v. NASCO, Inc.,* 501 U.S. 32, 43-44 (1991); *Zbaraz v. Madigan*, 572 F.3d 370, 385 (7th Cir. 2009); *RMA Ventures California v. SunAmerica Life Ins.*, 576 F.3d 1070, 1074-75 (10th Cir. 2009); *see also S.E.C. v. Dollar General Corp.*, 378 Fed. App'x 511, 517 (6th Cir. 2010).

Circuit on November 6, 2014, and by this Court on the following day. (Application No. 14A492).

Also on November 6, 2014, the district court issued judgments in the *Wyatt* enforcement action and the *Gates* enforcement action, the latter granting the Gates Plaintiffs' request for release of the Syrian assets—approximately $80 million. (App. 37a) ("Motion 259 is granted."). Later the same day, the district court issued an order pursuant to 28 U.S.C. 2042 directing the Clerk of the Northern District to release those assets. (App. 38a-39a).

The Seventh Circuit affirmed the district court's decision of October 22. It assumed (as petitioners argued) that the Gates Plaintiffs had not complied with § 1608(e), but found their noncompliance to be of no consequence. (App. 24a-25a). Section 1608(e) provides that the holder of a default judgment "shall" serve a copy of the judgment on the foreign state, but does not expressly indicate what penalty awaits a party who does not comply. The Seventh Circuit found that penalty expressed in § 1610(c). (App. 25a-26a). The latter provision prohibits attachment or execution of a judgment until after the notice required by § 1608(e) has been provided. But, noted the court, § 1610(c) is limited on its face to enforcement actions made pursuant to § 1610(a) and (b), neither of which are applicable here. Because this enforcement action is not made pursuant to § 1610(a) or (b), and given that the court had held in *Gates* that § 1610(c) "does not apply to the attachment of assets to execute judgments under

§ 1610(g)," the Seventh Circuit reasoned that noncompliance with § 1608(e) is irrelevant (App. 26a-27a)—even though § 1608(e) concerns foreign relations and was enacted to ensure that the proper functionaries in foreign states learn of default judgments against them before those judgments are enforced. *See*, *e.g.*, *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 154 (D.C. Cir. 1994). Judgment creditors enforcing a judgment in the Seventh Circuit under TRIA, § 1610(g), or any provision other than § 1610(a) or (b), are apparently now "exempt" from the service requirement of § 1608(e). (App. 27a).

The Seventh Circuit additionally affirmed the district court's acts of November 6, 2014, as within its jurisdiction. (App. 2a). It reasoned that the district court's order and judgments of November 6 were merely "in aid of execution of a[n existing] judgment, not a new judgment" (App. 23a), notwithstanding that the district court had not previously issued any Rule 54 judgment or even a specific order directing the release of the Syrian assets to the Gates Plaintiffs. *See* 28 U.S.C. 2042 ("No money deposited [into the registry of a federal court associated with a pending action] shall be withdrawn *except by order of court*." (emphasis added)).

REASONS FOR GRANTING THE WRIT

The Seventh Circuit reached two issues of great significance and importance. First, it held that, at least under certain circumstances, the FSIA's requirement that a default judgment be served on the foreign

sovereign defendant is merely hortatory. Second, it significantly expanded a district court's jurisdiction in judgment enforcement actions to resolve issues and create substantial rights after a proper notice of appeal has been filed and docketed.

On the first issue, the Seventh Circuit created a conflict with every court that has considered the matter. By finding § 1608(e) to be either optional or nominally mandatory but toothless in all terrorism cases and many other FSIA cases, the decision below essentially guarantees that a significant number of future recipients of FSIA default judgments will not comply with § 1608(e). The decision thus likely deprives foreign states of the opportunity to contest future wrongly-entered default judgments, undermines the FSIA, and sews into the FSIA tremendous inconsistency and unpredictability. It is harmful to international comity and, for that reason alone, warrants further review.

On the second issue, the Seventh Circuit split sharply with the Tenth Circuit and effectively circumvented 28 U.S.C. 2042. It held that § 2042 orders are either 1) unnecessary or 2) do nothing other than effectuate the enforcement of prior *turnover* orders and may thus be entered after the docketing of an appeal from the turnover order being enforced. But § 2042 serves a unique purpose and permitting a district court to enter a § 2042 order during the pendency of an existing appeal from a prior order that forms the foundation of the § 2042 order risks "clashes between

institutions that occupy different tiers within the federal judicial system." *See U.S. v. Brooks*, 145 F.3d 446, 456 (1st Cir. 1998).

I. This Court should resolve the growing dispute over whether 28 U.S.C. 1608(e) applies in terrorism cases

A. The decision below fails to comply with the text of the FSIA and the principles of international comity that underlie it

The FSIA is "a comprehensive statute containing a set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies, or instrumentalities." *Rep. of Austria v. Altmann*, 541 U.S. 677, 691 (2004) (internal quotation marks omitted). Section 1608(e), a part of the FSIA, demands that default judgments against foreign states "be sent to the foreign state or political subdivision in [a prescribed] manner," and "admits of no...exception." § 1608(e); *Wyatt*, 554 F. App'x at 17. Thus, in codifying the rules governing sovereign immunity and creating clear rules governing immunity that are expected to be strictly applied by the courts, *see Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488 (1983); *Samantar v. Yousuf*, 560 U.S. 305, 313 (2010); *Rep. of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2258 (2014), Congress insisted that foreign states be informed of any default judgments entered against them.

In a seminal decision on the service requirement in § 1608, the D.C. Circuit explained Congress' insistence on direct service to the foreign state according to the detailed rules provided by § 1608: A foreign government cannot be expected to "possess a sophisticated knowledge of the United States legal system" and, as a result, Congress demanded that the state's "Ministry of Foreign Affairs, the department most likely to understand American procedure," receive service. *Transaero*, 30 F.3d at 154. Because serving the wrong department or agency of a foreign state does not necessarily put the state adequately on notice or enable it to adequately respond, the D.C. Circuit demanded strict compliance with the service requirements, refusing to accept jurisdiction in the absence of strict compliance. *Id.*

The congressional instance upon direct service to the Ministry of Foreign Affairs of the foreign state is no more pressing in the context of initial service under § 1608(a) as opposed to service of a default judgment under § 1608(e). As the D.C. Circuit explained in discussing a different but closely related feature of § 1608(e), "[t]he rationale for such extra protection of sovereigns is that the government is sometimes slow to respond and that the public fisc should be protected from claims that are unfounded but would be granted solely because the government failed to make a timely response." *Jerez v. Rep. of Cuba*, 775 F.3d 419, 423 (D.C. Cir. 2014) (internal quotation marks omitted); *see also Compania Interamericana Exp.-Imp. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 950-51

(11th Cir. 1996) ("Congress intended § 1608(e) to provide foreign states protection from unfounded default judgments rendered solely upon a procedural default."). That concern justifies the congressional zeal to ensure proper pre-enforcement notice of a default judgment, to enable the foreign state to vacate an improper judgment before any money changes hands. Indeed, allowing a default judgment against a foreign state to be enforced solely because knowledge of the default judgment did not reach the right people within the state to enable it to adequately protest "would very certainly imperil the amicable relations between governments and vex the peace of nations." *See Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 418 (1964) (internal quotation mark omitted). That risk to international comity and rapport, which animates the FSIA, *see Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2047 (2014), demands close scrutiny and is reason enough to assume that Congress meant what it said in demanding that default judgments "shall be sent to the foreign state...in the manner prescribed." § 1608(e); *see Daimler AG v. Bauman*, 134 S. Ct. 746, 763 (2014).

Compliance with § 1608(e) can be very time-consuming and expensive.[7] By rendering it toothless, the Seventh Circuit made noncompliance very likely, thus creating a considerable risk to international comity and rapport. Perhaps for that reason, *every* court (as

[7] The Wyatt Plaintiffs previously estimated that their compliance would cost more than $7,000.

far as petitioners are aware) to consider the question before the Seventh Circuit did below held that a judgment that was not served on the foreign state as required by § 1608 may not be enforced.

B. In finding § 1608(e) advisory, the Seventh Circuit created a conflict with the Second, Ninth, and D.C. Circuits

The Seventh Circuit stands alone in holding that FSIA judgment creditors may wholly disregard the service requirements of § 1608(e) without penalty.

A recent decision of the Ninth Circuit quoted the decision below approvingly in reaching a related, but substantively distinct, issue. *Bennett v. Islamic Rep. of Iran*, held that enforcement under § 1610(g) is not contingent upon a finding that the assets in question were used for some "commercial activity in the United States," as required by § 1610(a). 2016 WL 697604 at *5 (9th Cir. Feb. 22, 2016). Rejecting that position, the Ninth Circuit held that § 1610(g) is a "freestanding provision" that abrogates sovereign immunity with only limited regard to the other provisions of § 1610. *Id.* It did not reach § 1608(e). Nonetheless, it found support in the decision below to the extent of its holding that no § 1610(c) order is necessary for enforcement under § 1610(g). *Id.* at *6; (App. 26a-27a). But the Ninth Circuit did not hold, and (as explained immediately below) *could* not hold, that compliance with § 1608(e) is unnecessary.

The Seventh Circuit's decision that noncompliance with § 1608(e) carries *no* consequence is contrary to decisions of the Ninth, Second, and D.C. Circuits.

1. *Peterson v. Islamic Rep. of Iran*, much like this action, involved victims of state-sponsored terrorism seeking to enforce a default judgment against a foreign state. 627 F.3d 1117, 1122 (9th Cir. 2010). The Ninth Circuit inquired whether the default judgment had been properly served on the foreign state, noting that "[t]he FSIA provides that a court *may not order enforcement* of a default judgment until a copy of that judgment is 'sent to the foreign state or political subdivision in the manner prescribed for service in this section.'" *Id.* at 1129 (quoting § 1608(e)) (emphasis added). While it found that service had been proper,[8] the Ninth Circuit made clear that if service had been inadequate, it would have prohibited enforcement. *Id.* at 1129.

Indeed, a subsequent enforcement court in *Peterson*, which found service of the default judgment improper under Fifth Circuit law, refused to enforce the judgment on that ground. *Peterson v. Islamic Rep. of Iran*, 2012 WL 4485764 at *2-3 (S.D. Tex. 2012). That subsequent *Peterson* enforcement action did not

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[8] It found that the judgment creditors "erred" in their provision of service but held, unlike every other circuit court to consider the question, that "substantial compliance" with the service requirements is sufficient. *Peterson*, 627 F.3d at 1129; *see* (App. 25a).

purport to disagree with the Ninth Circuit over the necessity of compliance with § 1608(e) as a prerequisite to enforcement. Its disagreement with the Ninth Circuit, rather, was limited to the question of whether the judgment creditors had adequately complied with § 1608(e). *Id.* at *2. It thus plainly understood the Ninth Circuit's decision to hold that in the absence of compliance with § 1608(e), enforcement is precluded.

The Ninth Circuit's subsequent *Bennett* decision does not overrule *Peterson* and, in fact, cites it approvingly. 2016 WL 697604 at *5, *9. The two decisions can be easily reconciled by decoupling compliance with § 1608(e) and the order required by § 1610(c). Petitioners return to this point *infra*.

2. In *Byrd v. Rep. of Honduras*, the Second Circuit affirmed the vacatur of a § 1610(c) order. 613 F. App'x 31 (2d Cir. 2015) (summary order). It held that failure to serve a default judgment under § 1608(e) precludes enforcement:

> [Because t]he judgment was...a default judgment[,] notice to Honduras was required pursuant to § 1608(e). There is no question that plaintiffs did not provide such notice.... *Their failure to do so provides further ground to affirm the vacatur judgment*.

Id. at 35 (emphasis added). The Second Circuit had previously held similarly in a precedential decision. *Walters v. Indus. & Commercial Bank of China, Ltd.*, 651 F.3d 280, 288 (2d Cir. 2011).

While neither *Byrd* nor *Walters* involved enforcement under a provision other than § 1610(a) or (b), neither decision suggested any caveat for enforcement under alternative provisions, such as § 1610(g) or TRIA § 201.

In a subsequent enforcement action under § 1610(g) and TRIA, the Second Circuit resolved any doubt that might have lingered after *Byrd* and *Walters* regarding the necessity of compliance with § 1608(e) in terrorism cases. Citing *Peterson*, the Second Circuit noted that service of the default judgment pursuant to § 1608(e) is necessary "*before* a court may enforce [that] default judgment." *Harrison v. Rep. of Sudan*, 802 F.3d 399, 400, 406-08 (2d Cir. 2015) (emphasis added).

District courts within the Second Circuit have similarly held, demanding compliance with § 1610(c) as a prerequisite to enforcement under § 1610(f) and TRIA. *E.g.*, *Levin v. Bank of New York*, 2011 WL 812032 at *9-10 (S.D.N.Y. 2011). *Levin* involved judgment creditors and victims of state-sponsored terrorism seeking to enforce their judgment under § 1610(f) and TRIA. They argued, much as the Seventh Circuit did below, that they were exempt from compliance with § 1610(c) on the ground that § 1610(c) does not mention § 1610(f) or TRIA. Judge Robert Patterson of the Southern District of New York disagreed:

> The fact that section 1610(f)(1)A) refers to 1605(a)(7) and 1605A indicates that 1610(f)(1)(A) is not itself a stand-alone exception to sovereign immunity, but rather

> a section targeting the process of executing on assets owned by foreign governments. Section 1610(f)(1)(A) in no way...overrides or eliminates the procedural requirements of section 1610(c), and therefore should not be interpreted to do so.

Levin, 2011 WL 812032 at *9. *Levin* additionally held that TRIA should be treated no differently: "TRIA is codified as a note to section 1610, and must be read in the context of the overar[c]hing statutory scheme of the FSIA." *Id.* at *10.

Section 1610(g) similarly references § 1605A and is obviously codified in the context that *Levin* was discussing. Section 1610(g) goes a step further by expressly incorporating certain other procedural provisions of § 1610, demanding that the judgment be enforced "as provided in this section." § 1610(g)(1).[9] Under *Levin's* rationale, there is no question that compliance with § 1608(e) is a prerequisite to enforcement under § 1610(g).

Hausler v. JPMorgan Chase Bank, another decision of the Southern District of New York, relied on *Levin* in holding that "the federal statute to which the TRIA was appended as a note, the FSIA, requires that judgment holders [seeking to enforce their judgments under TRIA] obtain writs of execution [under] 28 U.S.C. § 1610(c)." 845 F.Supp.2d 553, 569 (S.D.N.Y. 2012) *rev'd on other grounds sub nom. Hausler v. JP*

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[9] Petitioners elaborate on the "as provided" clause *infra*.

Morgan Chase Bank, 770 F.3d 207 (2d Cir. 2014); *see also Glencore Denrees Paris v. Dep't of Nat. Store*, 2000 WL 913843 at *2 (S.D.N.Y. 2000) (listing non-compliance with § 1608(e) as a reason not to allow further proceedings against a particular defendant).

3. Finally, in a prior appeal in the Wyatt Plaintiffs' case, the D.C. Circuit expressly affirmed the applicability § 1608(e) and asserted that the Wyatt Plaintiffs' compliance with it is imperative. *Wyatt*, 554 F. App'x at 17. In so doing, it upheld the district court's inclusion in its Order and Judgment (the very judgment that the Wyatt Plaintiffs now seek to enforce) a requirement that the Wyatt Plaintiffs "forthwith, at their own cost and consistent with the requirements of 28 U.S.C. § 1608(e), send a copy of this Order and Judgment, and the Memorandum Opinion issued this date, to defendants." (App. 82a). Presumably, the district court's inclusion of that service obligation in the judgment rendered compliance with it a condition precedent to enforcement of the judgment. *See id.* In responding to the Wyatt Plaintiffs' objection to that requirement, the D.C. Circuit asserted that the district court's order merely repeats what § 1608(e) already "mandates." 554 Fed. App'x at 17.

The Seventh Circuit's holding below is inconsistent with the D.C. Circuit's prior directive to the Wyatt Plaintiffs.

C. The D.C. District Court, which sees most FSIA terrorism litigation, expressly rejected the Seventh Circuit's approach

After the Seventh Circuit decided *Gates* and *Wyatt*, a D.C. district court had the opportunity to consider the Seventh Circuit's conclusion that § 1608(e) does not apply or carries no significance in § 1610(g) enforcement actions. It sharply and explicitly rejected the Seventh Circuit's approach:

> The central—and flawed—premise in *Gates* is that § 1610(g) is a freestanding immunity exception that authorizes execution and attachment to satisfy judgments under § 1605A. In light of that premise, *Gates* found it critical that § 1610(c) places its conditions on any "attachment or execution referred to in subsections (a) and (b)" but not subsection (g). Section 1610(c)'s failure to cross-reference § 1610(g) could not have been a mere oversight, the *Gates* court felt, because Congress had made several conforming amendments to § 1610 when it added subsection (g); leaving subsection (c) untouched thus appeared deliberate.... Several features of the statute indicate, however, that § 1610(g) is not the freestanding immunity exception that *Gates* envisioned.

Owens v. Rep. of Sudan, ___ F.Supp.3d ___, 2015 WL 6530582 at *3 (D.D.C. Oct. 28, 2015) (internal citations omitted).

While *Owens* is not a decision of the D.C. Circuit, its express rejection of the Seventh Circuit's approach is very significant. This is so because nearly all FSIA terrorism cases start in the District of Columbia. (It is no coincidence that the *Baker*, *Gates*, and *Wyatt* actions all began there.) 28 U.S.C. 1391(f) governs the venue of litigation against foreign states. As pertinent to terrorism actions, it limits venue to the district (if any) where a substantial part of the events giving rise to the claim occurred or "the United States District Court for the District of Columbia." *Id.* Because, in such cases, there often is no district in which a substantial part of the underlying events took place, the District of Columbia is frequently the only viable venue.

Because judgments—including default judgments—in FSIA terrorism cases are generally issued out of the District of Columbia, the first determination as to whether a terror victim has adequately complied with § 1608(e) and whether he must seek (or is entitled to) an order under § 1610(c) is made in the District of Columbia. As such, the law in the District of Columbia has significant influence on the conduct of FSIA terrorism limitation. *Owens*, therefore, is likely to become highly influential and might carry more weight in determining the fate of future cases than the Seventh Circuit's decisions.

Petitioners argued *infra* that the Seventh Circuit's *Wyatt* decision split with the D.C. Circuit's prior *Wyatt* decision. The incongruity of those two decisions is unmistakable. If this Court were nonetheless to deem that incongruity not a *bona fide* conflict, petitioners respectfully submit that the express conflict between the Seventh Circuit and *Owens* nonetheless warrants this Court's intervention given the influence that the *Owens* decision is likely to carry.

D. The United States has rejected the Seventh Circuit's approach

The United States has repeatedly argued in cases around the country that § 1610(g) does not independently abrogate attachment immunity but, rather, "incorporates by reference the other requirements for attaching foreign state property provided under section 1610." *E.g.*, Brief of United States as Amicus Curiae Supporting Neither Party at 8, *Bennett v. Islamic Rep. of Iran*, 2016 WL 697604 (9th Cir. 2016) (Nos. 13-15442, 13-16100) ("*Bennett*, U.S. Amicus Br.").

As noted *supra*, the Ninth Circuit expressly rejected this argument and, in so doing, found support in the decision below. *Bennett*, 2016 WL 697604 at *6-*7. The Seventh Circuit held below that § 1608(e) is part of the "general process for executing a judgment against a foreign state" that applies only "in suits *other* than those for state-sponsored terrorism." (App. 4a) (emphasis added). Here, the Seventh Circuit

continued, the "Gates plaintiffs are seeking to execute a judgment for state-sponsored terrorism, so they may proceed through the execution provision specifically enacted for terrorism judgments, § 1610(g)," and need not comply with § 1610(c) or § 1608(e). (App. 26a-27a). While it did not say it in so many words, it is obvious that the Seventh Circuit found § 1610(g) to operate independently as "a freestanding exception to immunity that can be invoked independent of the rest of section 1610." *Contra Bennett*, U.S. Amicus Br. at 8.

E. The Seventh Circuit's reasoning fails on its own terms

The Seventh Circuit's decision below is erroneous. Even accepting its general premise, its conclusion that § 1610(c) does not apply fails to account for the fact that § 1610(c) is incorporated by § 1610(g). Additionally, even if one would assume § 1610(c) to be inapplicable, that says nothing about the applicability or impact of § 1608(e). Indeed, the Seventh Circuit's conclusion that § 1608(e) does not apply defies explanation.

1. The Seventh Circuit found § 1608(e) inapplicable to judgments being enforced under § 1610(g) and TRIA by noting that § 1610(c) singles out enforcement actions under § 1610(a) or (b). (App. 27a); *Gates*, 755 F.3d at 575 ("By its terms, then, § 1610(c) simply does not apply to execution or attachment under § 1610(g)."). It sought to apply the language of § 1610(c) with fidelity and sensitivity to § 1610(g)'s

legislative history and thus refused to (in its mind) expand § 1610(c). *Id.* at 575-76; (App. 27a).

The irony is that in so reasoning, the Seventh Circuit ignored a conspicuous provision in § 1610(g). That section provides for attachment of the property of a foreign state "as provided in this section." *Id.* Plainly, § 1610(g) expressly incorporates some other part of § 1610. The Seventh Circuit made no attempt to determine what the "as provided" clause intended to accomplish.

Because the statute and the legislative history do not expressly indicate which part of § 1610 was meant to be incorporated, it is necessary to parse the statutory language to determine what Congress likely intended. To do so, we first quote the operative language in full and then break it down into its constituent parts:

> [T]he property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section[.]

§ 1610(g)(1). Most of this paragraph is devoted to one topic: describing the property subject to attachment. That property must be either 1) "the property of a foreign state" where "a judgment is entered [against that

foreign state] under section 1605A," or 2) "the property of an agency or instrumentality of" a foreign state, regardless of whether the property is "a separate juridical entity" or an interest held by one, where "a judgment is entered [against the foreign state] under section 1605A." If the property meets either of those descriptions, it is "subject to attachment in aid of execution, and execution" for the purpose of satisfying the aforementioned judgment. How? In the manner "provided in this section[.]" *See id.* It is apparent that the "as provided" clause incorporates procedural rules set forth elsewhere in § 1610 that govern the *manner* of attachment.

Other possible explanations for the "as provided" clause are unsatisfying. *Bennett* opined that the clause incorporates only "procedures contained in § 1610(f)." 2016 WL 697604 at *6. But *Bennett* does not explain what parts of § 1610(f) are necessary to § 1610(g) or how they impact the proper interpretation of § 1610(g). Nor does *Bennett* explain why the "as provided" clause incorporates *only* provisions of § 1610(f), but not any other part of § 1610. *Id.* at *14 (Benson, *J.*, dissenting in part).

Conversely, the United States argues that the "as provided" clause incorporates all of the limitations of § 1610(a) and (b), thus limiting enforcement under § 1610(g) to cases where the property sought to be attached is involved in some capacity in a "commercial activity in the United States." *Bennett*, U.S. Amicus Br. 7-8. That is even less satisfying than *Bennett's* approach because it renders § 1610(a)(7) and (b)(3)

superfluous[10] and because it interprets the "as provided" clause to further describe the property being attached. But, as petitioners demonstrated, most of the operative language of § 1610(g) describes that property in great detail. After doing so, the statute

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[10] As petitioners read § 1610(a)(7) and (b)(3), those sections differ from § 1610(g) in that they do not require a judgment under 28 U.S.C. 1605A (or, prior to its repeal, 28 U.S.C. 1605(a)(7)). Both apply whenever the judgment sought to be enforced "*relates* to a claim for which the [sovereign actor] is not immune [under or by virtue of] section 1605A." § 1610(a)(7) and (b)(3) (emphasis added). Thus, a judgment entered under some other statute that relates to a § 1605A claim may not be enforced under § 1610(g) but may be enforced under § 1610(a)(7) or (b)(3).

That understanding of § 1610(a)(7) and (b)(3) is impossible if one adopts the government's approach. The government assumes that, through the "as provided" clause, § 1610(g) directly and entirely incorporates § 1610(a)(7) and (b)(3) and is limited by them. If, as petitioners argue, § 1610(a)(7) and (b)(3) are also *broader* than § 1610(g), trying to read the three provisions together becomes a real challenge. Indeed, if the government were correct, Congress should have simply cross-referenced § 1610(a)(7) and (b)(3) within § 1610(g) rather expressly limiting itself to judgments entered under § 1605A and then walking back that limitation with an opaque reference to some unnamed other provision.

moves on to state what § 1610(g) does to that property (it renders it subject to attachment). Only then does § 1610(g) incorporate other provisions of § 1610 through the "as provided" clause. It is inconceivable that, in that clause, Congress returned to its prior task of attempting to define the property available for attachment. If that were its objective, Congress would have done so earlier in § 1610(g), presumably by simply including a "commercial use" limitation in the operative language of § 1610. Rather, the "as provided" clause helps to define the process by which the previously described property is subject to attachment.

Specifically, that clause 1) incorporates the limitation on enforcement in § 1610(c); 2) grants permission to attach prior to the entry of judgment and prior to compliance with § 1610(c) in the specific instances outlined in § 1610(d); and 3) incorporates the requirement in § 1610(f)(2) that the Secretaries of Treasury and State "make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state." *Id.* Section 1610(c) is thus applicable to § 1610(g) actions.

2. Even if § 1610(c) were inapplicable, that would not mean that compliance with § 1608(e) is optional or that noncompliance carries no downside. In holding otherwise, the Seventh Circuit offered a syllogism:

a. All judgment creditors proceeding under § 1610(g) need not comply with § 1610(c)
b. "[S]ervice of default judgments under § 1608(e) is one of § 1610(c)'s solicitous notice requirements"
c. Therefore, judgment creditors proceeding under § 1610(g) "are...exempt from § 1608(e)."

(App. 27a). The obvious problem is that the "minor premise," which should presumably be restated as "No one other than those who must comply with § 1610(c) is bound to comply with § 1608(e)," is neither supported nor correct. The fact that § 1610(c) mentions § 1608(e) does not mean that § 1610(c) provides the *only* penalty for noncompliance with § 1608(e). The Seventh Circuit merely assumed that to be the rule and relied on its assumption to reach its conclusion regarding § 1608(e).

Section 1608(e) demands that someone send the foreign state a copy of the default judgment, using the imperative "shall." *Id.* The word "shall" implies a mandate and the absence of any discretion.[11] *Huffman v. W. Nuclear, Inc.*, 486 U.S. 663, 664 (1988); *see also Wyatt*, 554 Fed. App'x at 17. If a default judgment holder subject to § 1608(e) is permitted to enforce its judgment despite failing to comply with § 1608(e), the

[11] According to Black's Law Dictionary, the only sense of the word "shall" that is "acceptable under strict standards of drafting" is the imposition of an affirmative "duty" or "requirement." BLACK'S LAW DICTIONARY 1407 (8th ed. 2004).

statute is nugatory. On what basis can the statute declare that a default judgment holder *shall* do something if that party suffers no detriment from disregarding the requirement?

Rather, without regard to § 1610(c), § 1608(e) mandates service on the foreign state as a precondition to the enforcement. Unlike § 1610(c), which limits the abrogation of sovereign immunity effected by the other provisions of § 1610,[12] § 1608(e) creates a jurisdictional limitation on the enforcement of default judgments. That jurisdictional limitation is not advisory.

II. This Court should resolve the conflict between the Seventh and Tenth Circuits on the scope of a district court's jurisdiction to release funds from its registry during the pendency of an appeal

The initiation of a legitimate appeal, properly noticed, "is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam); *Kusay v. U.S.*, 62 F.3d 192, 194 (7th Cir. 1995) ("[T]he notice of appeal transfers jurisdiction to the court of

[12] *See* 28 U.S.C. 1609.

appeals[.]").[13] When the district court exercises jurisdiction during the pendency of an appeal, "any [such] action...is a nullity." *Id.*

As the Seventh Circuit correctly noted, the general rule described in the prior paragraph has a significant exception: A district court may "take further action in aid of execution of a judgment that has not been stayed or superseded," notwithstanding the pendency of an appeal. (App. 23a) (internal quotation marks and citation omitted). On that point, there is no dispute. A district court's judgment normally takes effect, and is thus enforceable, when entered. *Coleman v. Tollefson*, 135 S. Ct. 1759, 1764 (2015); *see also Garrick v. Weaver*, 888 F.2d 687, 695 (10th Cir. 1989).

Nevertheless, the Tenth Circuit refused to permit a district court, during the pendency of an appeal, to authorize a party to execute a judgment on funds previously deposited into the court's registry in the course of the same litigation. *Id.* at 694-95. *Garrick* involved a fee dispute between a personal injury plaintiff and her attorneys. The plaintiff and defendant had settled and the defendant requested leave to deposit the stipulated judgment into the court's registry and

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[13] The Fourth Circuit has held that jurisdiction does not pass until the appeal is *docketed*. *Fobian v. Storage Tech. Corp.*, 164 F.3d 887, 891 (4th Cir. 1999). The distinction is without difference here because the appeal was noticed and docketed on the same day, both well before the district court's *ultra vires* acts.

withdraw from the case while the plaintiff and her attorneys litigated over the fee arrangement. *Id.* at 689-90. The magistrate presiding over the case entered a judgment resolving the fee dispute and granted the defendant's request to deposit the judgment with the court.[14] The plaintiff objected, demanding permission to enforce her judgment notwithstanding any pending appeal regarding the fee dispute. *Id.* at 690.

On appeal, the plaintiff again argued:

> [T]he magistrate erred in determining he did not have jurisdiction to order disbursement of the funds from the clerk of the court, at least where no party had requested a stay of judgment.... [The plaintiff] contends that because the magistrate did not grant a stay[,] she was entitled to execute on the judgment following expiration of the ten-day automatic stay provided in Rule 62(a) and thus the magistrate erred in refusing to release the funds from the registry of the court.

Id. at 694-95. The Tenth Circuit disagreed, relying on 28 U.S.C. 2042. *Id.* at 695. Once funds are deposited

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[14] *Garrick* was presided over by a magistrate with consent of the parties. *Garrick*, 888 F.2d at 689 ("The case was heard by the magistrate after reference by the district court pursuant to 28 U.S.C. section 636(c)."). That fact is irrelevant to the Tenth Circuit's holding and *Garrick's* impact on this litigation.

into the court's registry, those funds may not be released without court order. *Id.* Because an appeal had already been noticed by the time the plaintiff requested release of the deposited funds, the district court lacked authority to order release of those funds as § 2042 required. *Id.* The Tenth Circuit explained:

> We recognize that generally a party obtaining a judgment can execute on the judgment following the ten-day automatic stay during an appeal in the absence of a stay. In this case, however, the funds already were in the registry of the court. It is well settled that funds in the registry of the court cannot be executed against in the absence of court order... Once a notice of appeal is filed, jurisdiction over the case is transferred to the court of appeals. [When that happened,] the magistrate was deprived of power over the case except insofar as he retained jurisdiction in aid of the appeal. Th[at] residual power...extends to preserving the status quo by permitting the settlement funds...to be deposited into the registry. We hold that the magistrate's power in aid of the appeal does not extend to *approving disbursement of the funds in accordance with the very order being appealed*. The disposition of the settlement funds is the heart of the controversy before this court.

Id. (citations omitted) (emphasis in original).

Garrick is intuitively correct. Execution against funds deposited into the court's registry is necessarily different from execution on funds held by the judgment debtor. "Funds deposited in the registry of a federal district court are *in custodia legis*. As such, the district court's control over the funds is virtually supreme." *U.S. v. Rubenstein*, 971 F.2d 288, 294 (9th Cir. 1992). As a result, the district court has a distinct obligation to verify that a judgment creditor seeking to take possession of those funds has met its burden of demonstrating entitlement to those funds. Specifically, one seeking such funds must affirmatively demonstrate its own strength of title; it is not sufficient to simply demonstrate "the weakness of the title of another claimant." *Use of Home Indem. v. Am. Employers' Ins.*, 192 F.Supp. 873, 876 (D.N.D. 1961) (citing *U.S. v. Chapman*, 281 F.2d 862, 867 (10th Cir. 1960)); *Hansen v. U.S.*, 340 F.2d 142, 144 (8th Cir. 1965). That increased burden is apparent in § 2042's requirement for a specific court order authorizing withdrawal. *Rubenstein*, 971 F.2d at 294. Reflecting on that fact, *Garrick* correctly concluded that a district court that issues a § 2042 order is not merely effecting the enforcement of a previously entered judgment. It is rather reaching a distinct conclusion that effects new rights. A district court that has been deprived of its jurisdiction may not enter such an order. *Garrick*, 888 F.2d at 695.

Here, the Seventh Circuit sanctioned precisely what *Garrick* forbade. It held that the district court's § 2042 order, issued after the Wyatt Plaintiffs noticed

their appeal, did nothing other than put into effect prior turnover orders of the district court. (App. 23a) (erroneously describing those turnover orders as "judgment[s]").[15]

Those prior turnover orders were necessarily tentative and did not authorize release of the funds in the court's registry. *See* (App. 56a, 79a) ("[T]he funds paid into the Court registry under this sub-paragraph shall remain in the registry until further order of this Court."). Under Tenth Circuit law, there is no question that the district court lacked authority to issue a § 2042 order after the Wyatt Plaintiffs noticed their appeal. Further, under Tenth Circuit law, there is no question that the district court's *ultra vires* § 2042 order is "null and void" and the Gates Plaintiffs have no legal right to funds released to them. *Garcia v. Burlington N. R. Co.*, 818 F.2d 713, 721 (10th Cir. 1987). This Court should resolve this conflict between the Seventh and Tenth Circuits.

[15] The Seventh Circuit was made aware of *Garrick* but opted not to address it. *See* Pet. C.A. Br. at 51-52 (7th Cir. No. 14-3227, DE 50-1).

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Argued: May 20, 2015 Decided: Aug. 31, 2015

Nos. 14-3327 & 14-3344

MARY NELL WYATT, individually and as Executrix of the Estate of RONALD E. WYATT, *et al.*,
Plaintiffs-Appellants,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,

v.

FRANCIS GATES, *et al.*,
Third-Party Defendants-Appellees.

FRANCIS GATES, *et al.*,
Plaintiffs-Appellees,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendant,

v.

MARY NELL WYATT, individually and as Executrix of the Estate of RONALD E. WYATT, *et al.*,
Claimants-Appellants.

Appeals from the United States District Court for the
Northern District of Illinois, Eastern Division
Nos. 11 C 8715 and 14 C 6161 —
Virginia M. Kendall, *Judge*.

Before:
BAUER, FLAUM, and HAMILTON, *Circuit Judges*

HAMILTON, *Circuit Judge*. These appeals address attempts to execute final judgments against the nation of Syria obtained by two groups of United States victims of Syrian state-sponsored terrorism. Both groups of victims have won judgments under the Foreign Sovereign Immunities Act. Both seek to satisfy their judgments by seizing the same Syrian assets located in the Northern District of Illinois.

We affirm the actions of the district court, which ordered the assets disbursed to the appellees, whom we refer to as the Gates plaintiffs. The legal issue we decide on the merits is that plaintiffs who win judgments in state-sponsored terrorism cases against foreign governments under 28 U.S.C. § 1605A, and who seek to attach property under § 1610(g), are not required to comply with the notice requirement of § 1608(e) before executing their judgments. The Foreign Sovereign Immunities Act contains extensive procedural protections for foreign sovereigns in United States courts, but Congress has amended the Act to cut back some of those protections in cases of state-sponsored terrorism. Before dealing with the

merits of this issue at the end of this opinion, however, we must first deal with a complex procedural history and several jurisdictional challenges.

To explain, we begin by introducing the legal framework for remedies for state-sponsored terrorism under the Foreign Sovereign Immunities Act, the parties and their claims, and the involved procedural history of these appeals. We then address challenges to our jurisdiction and conclude by addressing the merits of these appeals.

I. *Legal, Factual, and Procedural Background*

A. *Terrorism and the Foreign Sovereign Immunities Act*

The default rule of United States law is that foreign states are immune from suit and attachment of assets in United States courts, but the Foreign Sovereign Immunities Act (FSIA) provides a number of exceptions and special procedures for such cases. The FSIA is comprehensive, so all cases against foreign sovereigns must be fitted into its statutory framework. *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. —, 134 S. Ct. 2250, 2255–56 (2014); *Gates v. Syrian Arab Republic*, 755 F.3d 568, 571 (7th Cir. 2014) (earlier appeal involving same Syrian assets at issues in these appeals).

The FSIA now contains provisions specific to claims for state-sponsored terrorism. Section 1605A removes sovereign immunity in actions for money damages for personal injury or death resulting from

an act of state-sponsored terrorism. 28 U.S.C. § 1605A. Once plaintiffs obtain a judgment under § 1605A, they may proceed to attach assets to execute that judgment under § 1610. Subsection § 1610(g) allows plaintiffs with a judgment against a state sponsor of terrorism to attach and execute the judgment against property of the foreign state itself and any agency and instrumentality of the state.

Other provisions of § 1610 establish the more general process for executing a judgment against a foreign state in suits other than those for state-sponsored terrorism, such as more ordinary contract or tort cases arising out of a foreign state's commercial activities. Subsections 1610(a) and (b) describe the property of foreign states that is generally subject to attachment to satisfy a judgment. Subsection 1610(c) delays attachment and execution under § 1610(a) and (b) until a court determines that a reasonable period of time has elapsed following the entry of judgment. Subsection 1610(c) also requires compliance with § 1608(e), which directs a plaintiff who obtains a default judgment to serve the foreign state with a copy of the judgment in a specific manner.

The interplay of these more general provisions and the special provisions for state-sponsored terrorism are at the center of the dispute between these two groups of victims. In *Gates*, we described the perhaps unintended consequences of this statutory scheme in previous appeals by a third group of victims seeking the same assets in dispute here:

> [T]he FSIA does not provide a mechanism for distributing equitably among different victims any Syrian assets in the United States that are subject to attachment. Instead, victims who finally obtain judgments must then engage in the costly, burdensome, and often fruitless task of searching for available assets.
>
> These victims of terror can then find themselves pitted in a cruel race against each other—a race to attach any available assets to satisfy the judgments. The terms of the race are essentially winner-take-all rather than any equitable sharing among victims of similar losses. Under the FSIA's compensation scheme, a terrorism judgment against Syria can be satisfied only at the expense of other terrorism victims.

Gates, 755 F.3d at 571.

B. *The Gates Plaintiffs*

In both of these appeals, the appellees are the Gates plaintiffs. They are defending the district court's decision to release confiscated Syrian funds to them to satisfy their judgment. The Gates plaintiffs are relatives of Olin Eugene "Jack" Armstrong and Jack L. Hensley. Hensley and Armstrong were kidnapped in September 2004 by al-Qaeda when the two men were working as contractors in Iraq for the U.S. military. They were gruesomely murdered, and the

killings were captured on a video that was made public by al-Qaeda. The Gates plaintiffs sued Syria under the FSIA for sponsoring al-Qaeda's terrorism. (Syria has been on the list of state sponsors of terrorism since the list was created in 1979.)

On September 26, 2008, the Gates plaintiffs obtained a default judgment in the United States District Court for the District of Columbia for $413 million against Syria. A month later, on October 23, the court clerk sent a copy of the default judgment to the Syrian Foreign Ministry via a private delivery service, but the delivery was rejected and the delivery agent was told "the shipment is no longer required." The next day, Syria filed a notice of appeal challenging the district court's personal jurisdiction over Syria.

While that appeal was pending, the Gates plaintiffs sought to take steps to execute their judgment against Syria. The Wyatt plaintiffs, who had filed their own suit against Syria, moved to intervene in the Gates case in the District of Columbia, asserting a prior claim on Syrian assets in the District of Columbia because they had filed their suit earlier. The district court stayed enforcement of the *Gates* judgment pending appeal and denied as moot the Wyatt motion to intervene.

On May 20, 2011, the United States Court of Appeals for the District of Columbia Circuit found personal jurisdiction proper and affirmed the district court's default judgment in favor of the Gates plaintiffs. *Gates v. Syrian Arab Republic*, 646 F.3d 1, 5

(D.C. Cir. 2011). The Gates plaintiffs then filed a motion in the District of Columbia district court for a § 1610(c) order authorizing them to enforce their judgment because a "reasonable time" had passed after entry of judgment and notice to Syria. 28 U.S.C. § 1610(c). The district court agreed that § 1610(c) had been satisfied and authorized the Gates plaintiffs to proceed to attachment and execution of the judgment.

C. *The Wyatt Plaintiffs*

In both of the current appeals, the appellants are the Wyatt plaintiffs. They are also victims of terrorism sponsored by Syria. They are the relatives of Ronald Wyatt and Marvin T. Wilson, two biblical archaeologists who were captured in Turkey in August 1991 by armed members of the Kurdistan Workers' Party (PKK), a militant Kurdish organization. The two men were held in captivity for 21 days under harsh conditions and in constant fear for their lives. The Wyatt plaintiffs sued the Syrian government for sponsoring PKK terrorism.

Over a year after the District of Columbia Circuit affirmed the *Gates* judgment, the Wyatt plaintiffs obtained on December 17, 2012 a default judgment against Syria in the United States District Court for the District of Columbia for $338 million. The district court ordered the Wyatt plaintiffs to serve a copy of the default judgment on Syria pursuant to 28 U.S.C. § 1608(e). Syria appealed the judgment, and the Wyatt plaintiffs cross-appealed, arguing that service under 28 U.S.C. § 1608(e) was unnecessary because

Syria had participated actively in the litigation and obviously knew of the default judgment. On January 30, 2014, the United States Court of Appeals for the District of Columbia Circuit affirmed the judgment against Syria and rejected the Wyatt plaintiffs' cross-appeal, holding that § 1608(e) is a "clear and unambiguous statute" that required service of the default judgment. *Wyatt v. Syrian Arab Republic*, 554 Fed. App'x 16, 17 (D.C. Cir. 2014) (mem).

To comply with 28 U.S.C. § 1608(e), the Wyatt plaintiffs then served a copy of the judgment on the Syrian government, which had already appealed the same judgment. The Wyatt plaintiffs then sought a § 1610(c) order from the District of Columbia district court to authorize them to enforce their judgment because a "reasonable time" had passed. On May 19, 2014, that court ruled that the Wyatt plaintiffs had complied with § 1610(c) and authorized them to proceed to attachment and execution of the judgment.

D. *The Northern District of Illinois Litigation*

In the meantime, however, while the Wyatt plaintiffs had still been seeking a final judgment and § 1610(c) order in the District of Columbia, the Gates plaintiffs had taken steps to execute their judgment against Syrian assets. They subpoenaed the Office of Foreign Assets Control in the U.S. Treasury Department to identify Syrian assets in the United States that could be attached to satisfy their judgment. The Office responded under a protective order and told the

Gates plaintiffs that some Syrian assets were located in the Northern District of Illinois.

1. *Procedural History of Appeal No. 14-3344*

The Gates plaintiffs registered their judgment from the District of Columbia action with the district court in the Northern District of Illinois as case No. 11-cv-8715 and served a citation to discover assets on JP Morgan Chase Bank. The bank identified responsive accounts belonging to agencies and instrumentalities of Syria that were held by the bank itself and by AT&T. See 28 U.S.C. § 1610(g) (authorizing the attachment of and execution of a judgment against "the property of an agency or instrumentality" of a state liable for sponsoring terrorism). The Gates plaintiffs responded by serving AT&T with a citation to discover assets and pursued other responsive accounts at JP Morgan Chase Bank.

The Gates plaintiffs litigated for two years in Illinois seeking a court order granting them the Syrian funds to satisfy their judgment. Part of that litigation was defending the priority of their claim against a competing claim by the Baker plaintiffs, another group of victims of terrorism seeking to satisfy their own judgment against Syria. The Baker plaintiffs intervened in the Gates suit in 2012. The district court ruled that the Gates plaintiffs had priority over the Baker plaintiffs and issued two turnover orders. A May 13, 2013 order directed the release of the funds held by AT&T, and a February 3, 2014 order directed

the release of the funds held by JP Morgan Chase. The Baker plaintiffs appealed those orders to this court. On June 18, 2014, we issued an opinion affirming both of the district court's turnover orders. *Gates*, 755 F.3d 568.

The Gates plaintiffs promptly moved for an order directing the clerk of the Northern District of Illinois to release the assets to them. Two days later, on August 17, 2014, the Wyatt plaintiffs took their first action regarding the Gates lawsuit in Illinois. The Wyatt plaintiffs filed not a motion to intervene but a memorandum of opposition contesting the Gates plaintiffs' right to the assets. The Gates plaintiffs moved to strike the filing. The district court held a hearing and on October 22, 2014 granted the Gates plaintiffs' motion to release funds. The Wyatt plaintiffs' appeal of that order was docketed as No. 14-3344.

2. *Procedural History of Appeal No. 14-3327*

On August 11, 2014, the Wyatt plaintiffs had also filed a separate action in the Northern District of Illinois, No. 14-cv-6161. They named Syria as the defendant and the Gates plaintiffs as third-party defendants. In that action, the Wyatt plaintiffs registered their judgment from the District of Columbia action and served a citation to discover assets on the clerk of court for the Northern District of Illinois. (By that time, JP Morgan Chase and AT&T had placed the disputed funds in the district court's registry.) The

Wyatt plaintiffs also moved for the turnover and release of the assets. The Gates plaintiffs moved to dismiss the complaint for failure to state a claim and lack of jurisdiction. Also on October 22, 2014, the district court dismissed the Wyatt plaintiffs' complaint. The court also denied the Wyatt plaintiffs' motion to stay that decision a few weeks later. The Wyatt plaintiffs' appeal of those orders was docketed as No. 14-3327.

II. *Jurisdiction*

Jurisdiction is a threshold issue that we must address before discussing the merits. *India Breweries, Inc. v. Miller Brewing Co.*, 612 F.3d 651, 657 (7th Cir. 2010). We first explain why we have jurisdiction to hear these appeals and then why the district court had jurisdiction to enter the orders the Wyatt plaintiffs ask us to review.

A. *Appellate Jurisdiction*

The Gates plaintiffs challenge on two grounds our jurisdiction to hear these appeals. First, they argue the Wyatt plaintiffs had no right to challenge the turnover order awarding the assets to the Gates plaintiffs. This argument challenges our jurisdiction to hear appeal No. 14-3344. Second, the Gates plaintiffs argue that both appeals are moot because we have no power to order a meaningful remedy. We address these arguments in turn.

1. *Right of Wyatt Plaintiffs to Challenge the Turnover Order*

The Gates plaintiffs maintain that we do not have jurisdiction over No. 14-3344 because the Wyatt plaintiffs never properly became, or tried to become, parties to the case in the district court, so that they have no right to appeal the order releasing the funds. The Gates plaintiffs complain that the Wyatt plaintiffs flouted the Federal Rules of Civil Procedure by failing to apply for intervention under Rule 24, which requires a party seeking intervention to file a timely motion stating the grounds for intervention, accompanied by a pleading setting forth the claim. Without a motion to intervene, say the Gates plaintiffs, the Wyatt plaintiffs never became parties to the Gates action and cannot appeal the order in that case.

The Wyatt plaintiffs respond that the Gates action in Illinois sought to attach Syrian assets to execute the final judgment of another federal court, so their ability to participate should be governed by Illinois law. Federal Rule of Civil Procedure 69(a) provides that attachment and execution procedures to satisfy a federal judgment "must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." The Wyatt plaintiffs contend they were not required to intervene to assert their claim to the Syrian assets.

Intervention is ordinarily the proper path to assert rights in a federal civil case to which one is not yet a party. There are a few exceptions to that general rule,

however. In entertaining the appeal of a law firm challenging distribution of fees out of a class settlement, we held the firm was a party even though it never intervened: "Intervention isn't the only route for becoming a party. Nonparties in a trial court can participate as parties to the appeal without formal intervention if the outcome of the appeal would be likely to determine (not just affect) their rights." *In re Trans Union Corp. Privacy Litig.*, 664 F.3d 1081, 1084 (7th Cir. 2011). In *Trans Union*, we relied in part on *SEC v. Enterprise Trust Co.*, 559 F.3d 649, 651 (7th Cir. 2009), which held that persons claiming rights in property in receivership could appeal the district court's approval of the receiver's plan without having formally intervened.

Because Rule 24 intervention is not quite the exclusive method for joining a lawsuit to appeal a district court order, we apply Rule 69 and look to Illinois law on attachment and execution to determine whether this procedure was proper.[1] Illinois law on the procedure for attachment and execution of a judgment gives adverse claimants to property the right to appear and maintain a claim before their interest in

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[1] We took this approach in a non-precedential decision involving quite similar issues. *United States v. Macchione*, 309 Fed. App'x 53, 55 (7th Cir. 2009) (looking to Illinois law to determine the right of adverse claimants to appear even without formal intervention).

the property is extinguished. The statute on these supplementary proceedings provides:

> If it appears that any property, chose in action, credit or effect discovered, or any interest therein, is claimed by any person, the court shall, as in garnishment proceedings, permit or require the claimant to appear and maintain his or her right. The rights of the person cited and the rights of any adverse claimant shall be asserted and determined pursuant to the law relating to garnishment proceedings.

735 Ill. Comp. Stat. 5/2-1402(g). This provision incorporates the law of garnishment proceedings, which provides:

> *In the event any indebtedness or other property due from or in the possession of a garnishee is claimed by any other person, the court shall permit the claimant to appear and maintain his or her claim*. A claimant not voluntarily appearing shall be served with notice as the court shall direct. If a claimant fails to appear after being served with notice in the manner directed, he or she shall be concluded by the judgment entered in the garnishment proceeding.

735 Ill. Comp. Stat. 5/12-710(a) (emphasis added). The statute further provides that an adverse claimant who appears and files a timely claim is "a party to the garnishment proceeding" whose "claim shall be tried and

determined with the other issues in the garnishment action." 735 Ill. Comp. Stat. 5/12-710(b).

The Wyatt plaintiffs argue that these statutes permit them, without Rule 24 intervention, to oppose the release of funds in the Gates case in district court and to appeal the court's adverse decision because they are adverse claimants entitled to an opportunity to have their claim heard. They interpret these statutes to mean that their claim on the assets can be resolved only after they received proper notice and an opportunity to appear and maintain their claim. Because they never received notice, they argue, the district court, and this court on appeal, must address their claim to the assets to give them the opportunity to be heard granted by Illinois law.

The Wyatt plaintiffs rely on an Illinois decision holding it was reversible error to deny an adverse claimant the opportunity to prove his claim. See *B.J. Lind & Co. v. Diacou*, 278 N.E.2d 526, 529 (Ill. App. 1971) (reversing citation judgment and directing on remand that "all parties be afforded the opportunity to prove their respective claims"). Illinois law undoubtedly favors giving an adverse claimant an opportunity to be heard before extinguishing the claim. See 735 Ill. Comp. Stat. 5/2-1402(g) ("If it appears" there is an adverse claim, "the court shall, as in garnishment proceedings, permit or require the claimant to appear and maintain his or her right."); *Bloink v. Olson*, 638 N.E.2d 406, 411 (Ill. App. 1994) (holding that if third party claims entitlement to assets of judgment debtor, "a trial must be held to

ascertain the parties' rights to the disputed property").

On the other hand, there are reasons to distinguish the Wyatt plaintiffs' procedural maneuver from the usual adverse claim contemplated by these statutes and cases. First, the Wyatt plaintiffs presented their adverse claim only after the Gates plaintiffs had obtained a final judgment awarding them the assets. Second, the Wyatt plaintiffs do not claim that either the Gates plaintiffs or the parties holding the assets (Chase and AT&T) can be faulted for failing to give notice of the proceedings. The Wyatt plaintiffs acquired their claim to the Syrian assets months after the district court ordered the turnover of the assets. At the time of the turnover proceedings, neither the Gates plaintiffs nor the parties holding the assets had notice of an adverse claim by the Wyatt plaintiffs.

Illinois law tells us, however, that the first distinguishing fact—the Wyatt plaintiffs' attempt to upset a final judgment—does not necessarily bar their attempt to have their claim heard. More than a century ago, an Illinois appellate court heard the appeal of an adverse claimant who appeared before the district court two weeks after judgment was entered in favor of a judgment creditor. *Paepcke-Leicht Lumber Co., v. Becker, for Use of*, 124 Ill. App. 311, 312 (1906). The adverse claimant moved to vacate the judgment, but the trial court refused to upset the judgment or allow the claimant to interplead in the case. The appellate court reversed: "It is no answer to appellant's claim that a judgment was entered prior to his motion for

leave to interplead. The court had ample power to vacate that judgment during the term at which it was rendered." *Id*. at 317. The *Paepcke-Leicht Lumber* case signals that the final judgment in favor of the Gates plaintiffs does not bar us from considering the merits of the Wyatt plaintiffs' claim.

Illinois law is less clear, however, on the second issue: whether an adverse claimant is entitled to maintain her claim even when neither the judgment creditor nor the parties holding the assets had notice of the claim. Several cases, including *Paepcke-Leicht Lumber*, hold that an adverse claim should be heard whether notice of the garnishment proceedings is given to the holder of the assets before or after assignment of funds in the account when there are sufficient funds in the account. *Id.* ("The bank should have stated, in its answer to the interrogatories, for its own protection, the claim of which appellant had apprised it."); *Chott v. Tivoli Amusement Co.*, 82 Ill. App. 244, 248-49 (1899) ("If the garnishee has notice or information that a third party claims an interest in the fund or property in controversy, he must, if he would protect himself against such claim, disclose it by his answer, even though he can not, of his own knowledge, swear to the existence of the claim or its precise nature."). These cases indicate that the failure to give notice to a *known* claimant can justify consideration of a post-judgment claim. That does not mean that prior knowledge of the claim is necessary for a court to hear it. No Illinois case that we are aware of answers whether prior knowledge is required.

As a federal court applying state law, our duty is to apply Illinois law as we believe the Illinois Supreme Court would, and in doing so, we accord great weight to the decisions of appellate courts. *Liberty Mutual Fire Ins. Co. v. Statewide Ins. Co.*, 352 F.3d 1098, 1100 (7th Cir. 2003). The question is admittedly close, but we believe the Illinois courts would more likely than not entertain the adverse claim on the merits, even when the garnishee and judgment creditor had no prior knowledge of the claim, so long as the claimant had also been given no notice of the attachment litigation. We would not be surprised if the Illinois courts were to decide this question the other way, given the great interest in finality of judgments, but our prediction is consistent with the preference in Illinois law for giving adverse claimants a fair opportunity to be heard before extinguishing their claims. A rule flatly barring courts from hearing later-raised adverse claims would risk placing even fraudulent prior claims beyond review. At the same time, we recognize that the approach we adopt today is subject to abuse by fraudulent and frivolous claims by greedy interlopers and bystanders. In such cases (but this is not one), courts have available and should employ sanctions and other tools firmly to discourage such abuse. For these reasons, we conclude that the Wyatt plaintiffs' failure to seek to intervene in the district court does not bar them from appealing the district court's turnover order.

2. *Mootness of Both Appeals*

The Gates plaintiffs next argue that both appeals are moot because the funds that were in the custody of the district court have already been disbursed to them. They claim it is no longer possible for this court or the district court to fashion meaningful relief for the Wyatt plaintiffs because we do not have the power to order that money now in the hands of the Gates plaintiffs be returned to the court or given to the Wyatt plaintiffs. See *A.B. v. Housing Auth. of South Bend*, 683 F.3d 844 (7th Cir. 2012) (a case is moot if no form of meaningful relief is possible). In the absence of a live controversy, the Gates plaintiffs argue, the appeals should be dismissed. See *Milwaukee Police Ass'n v. Board of Fire & Police Comm'rs of Milwaukee*, 708 F.3d 921 (7th Cir. 2013).

We hold the cases are not moot because we have the equitable power to require the return of the funds if the order releasing them was erroneous. As the Supreme Court explained almost a hundred years ago, it is a "principle, long established and of general application, that a party against whom an erroneous judgment or decree has been carried into effect is entitled, in the event of a reversal, to be restored by his adversary to that which he has lost thereby. This right, so well founded in equity, has been recognized in the practice of the courts of common law from an early period." *Arkadelphia Milling Co. v. St. Louis Southwestern Railway Co.*, 249 U.S. 134, 145 (1919); see also *In re Zurn*, 290 F.3d 861, 862 (7th Cir. 2002)

(noting that litigant should return money obtained from a judgment reversed on appeal but observing that state court was right forum for dispute); *Buzz Barton & Associates, Inc. v. Giannone*, 483 N.E.2d 1271, 1275 (Ill. 1985) ("[I]f a party has received benefits from an erroneous decree or judgment, he must, after reversal, make restitution, and if he has sold the property erroneously adjudged to belong to him, he must account to the true owners for its value.").

The Gates plaintiffs point out that these cases cited by the Wyatt plaintiffs involved bilateral relations, where the court ordered one party to return funds wrongfully obtained from the other party to the case. But the presence of an additional party—here the funds originally belonged to Syria but were disbursed to the Gates plaintiffs and now are sought by the Wyatt plaintiffs—does not defeat our jurisdiction to correct a disbursement if it was wrongful. We have considered this question in interpleader cases and held that we have jurisdiction to set aside an erroneous distribution order and to direct the defendant who received the funds to pay them to another defendant, the rightful recipient. *Smith v. Widman Trucking & Excavating, Inc.*, 627 F.2d 792, 798–99 (7th Cir. 1980); see also *General Railway Signal Co. v. Corcoran*, No. 89 C 9360, 1992 WL 220604, at *4–5 (N.D. Ill. Sept. 4, 1992) (Rovner, J.) (declining to limit *Smith* to Rule 60(b) motions and concluding that a district court retains jurisdiction to vacate an order of distribution

regardless of whether the court or a claimant holds the funds).[2]

Accordingly, if the Wyatt plaintiffs were to prevail on the merits and demonstrate that the turnover orders were issued erroneously, we would have the power to order the Gates plaintiffs to return the funds. Because it is possible for a court to award meaningful relief, the appeals are not moot.[3]

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[2] To be clear, no one contends that any party to this dispute has committed any sort of fraud on any court. But if we accepted the Gates plaintiffs' argument that we have no jurisdiction even to consider the Wyatt plaintiffs' claim, then it would also be beyond our jurisdiction to correct an order disbursing funds even if it had been obtained by fraud. That troubling proposition could allow litigants to use the court's imprimatur to legalize fraud. During oral argument, the Gates plaintiffs responded to the fraud hypothetical by saying that Rule 60(b)—which lists fraud as a ground for relief from a final judgment—could be used to correct the fraud. But that answer implicitly concedes that it would be possible to fashion a remedy, which means that the appeals are not moot and that we have jurisdiction to decide the merits.

[3] To support their mootness argument, the Gates plaintiffs also rely on *Porco v. Trustees of Indiana University*, 453 F.3d 390, 394–95 (7th Cir. 2006). That case is plainly distinguishable. We held Porco's suit was moot because the Eleventh Amendment precluded us from ordering the defendant, a state

B. *Jurisdiction of the District Court*

The Wyatt plaintiffs raise a different jurisdictional issue, challenging the jurisdiction of the district court. They contend that the district court had no jurisdiction to issue the November 6 order releasing the funds after the Wyatt plaintiffs filed their notice of appeal on October 22, 2014, which divested the district court of jurisdiction. The Wyatt plaintiffs argue that the court's November 6 order—granting the Gates plaintiffs' motion for release of the funds—is void because it was entered without jurisdiction. See *Kusay v. United States*, 62 F.3d 192, 194 (7th Cir. 1995) (declaring that any action by the district court after the notice of appeal was filed but before the mandate from the court of appeals issues is a "nullity").[4]

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university, to return money that had been disbursed according to a court order. The Eleventh Amendment poses no bar to relief in this suit because none of the Gates plaintiffs is a state.

[4] The district court's November 6 order also denied the Wyatt plaintiffs' motion to stay the release of funds. The district court clearly had jurisdiction to deny the Wyatt plaintiffs' motion to stay the release of the funds. Federal Rule of Appellate Procedure 8(a)(1)(A) provides that a party to an appeal should "ordinarily move first in the district court for…a stay of the judgment or order of a district court pending appeal." That rule would make no sense if a district court

Our cases holding that the notice of appeal transfers exclusive jurisdiction to the court of appeals have explained that the district court is divested of control over only "those aspects of the case involved in the appeal." *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1240 (7th Cir. 1986). That rule "does not prevent the court from handling collateral matters such as the award of costs and … the collection of a judgment." *Chicago Truck Drivers Pension Fund v. Central Transport, Inc.*, 935 F.2d 114, 119–20 (7th Cir. 1991). Even after a notice of appeal has been filed, the district court retains the power to take further action "in aid of execution of a judgment that has not been stayed or superseded." *Henry*, 808 F.2d at 1240.

The district court's November 6, 2014 order was in aid of execution of a judgment, not a new judgment that exceeded its jurisdiction. The district court had ordered the turnover of the funds to the Gates plaintiffs on May 13, 2013 and February 3, 2014. After that decision was affirmed on appeal by this court and the case was returned to the district court in August 2014, the Wyatt plaintiffs filed their opposition. The district court considered the Wyatt plaintiffs' claim but ultimately issued a final judgment against them, dismissing their claim, on October 22. The district court and this court declined to stay that judgment pending appeal. The court's November 6 order for release of the funds was therefore a proper execution of

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lacked jurisdiction to rule on the motion for a stay of its judgment pending appeal.

its judgments awarding the funds to the Gates plaintiffs and denying the Wyatt plaintiffs' opposition. The district court was acting within its jurisdiction.

III. *The Priority of the Competing Claims*

We come at last to the merits of the dispute. The Gates plaintiffs registered their judgment and served a citation to discover assets on December 8, 2011. Under Illinois law, that gave the Gates plaintiffs a perfected lien on the assets as of that date. See *Gates*, 755 F.3d at 578, citing 735 Ill. Comp. Stat. 5/2-1402(m). If the Gates plaintiffs' judgment, attachment, and execution are valid, then they plainly have priority over the Wyatt plaintiffs, who did not register a judgment and serve a citation to discover assets until nearly three years later.

The Wyatt plaintiffs claim that the Gates plaintiffs are not entitled to the Syrian assets identified in the Northern District of Illinois because the Gates plaintiffs failed to comply with § 1608(e) of the FSIA. That provision requires that a foreign state be served with any default judgment entered against it: "A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section." 28 U.S.C. § 1608(e). For the purposes of our discussion of this argument, we assume that the Wyatt plaintiffs are correct in asserting

that the Gates plaintiffs have not complied with the service requirements of § 1608(e).[5]

The Wyatt plaintiffs' argument fails to deal with the structure and terms of the FSIA, and in particular with its special provisions for claims for state-sponsored terrorism. The statutory consequence of failing

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[5] The Gates plaintiffs had the clerk of court send a copy of the default judgment to Syria via a private courier service, but the delivery was rejected in Syria. Section 1608(a)(2) requires that documents that are served by mail be sent "requiring a signed receipt," which the Gates plaintiffs admit they never obtained. The Gates plaintiffs claim that they satisfied § 1608(e) even though they never received a signed receipt. Most courts have interpreted § 1608 to require strict compliance with the specific rules for service on foreign states. E.g., *Magness v. Russian Federation*, 247 F.3d 609, 615 (5th Cir. 2001) ("We conclude that the provisions for service of process upon a foreign state or political subdivision of a foreign state outlined in section 1608(a) can only be satisfied by strict compliance."); but see *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1129 (9th Cir. 2010) ("The Ninth Circuit has adopted a substantial compliance test for the FSIA's notice requirements and…the defendant had actual notice."). We do not decide what § 1608(e) requires, nor whether the Gates plaintiffs have satisfied those requirements, because the Gates plaintiffs were entitled to execute their judgment against the Syrian assets without complying with § 1608(e).

to satisfy the service requirement in § 1608(e) is that plaintiffs with a judgment against a foreign state cannot obtain authorization under § 1610(c) to proceed to attachment and execution of that judgment. Section 1610(c) provides:

> No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

28 U.S.C. § 1610(c). Subsections (a) and (b) list categories of assets of foreign states, and of their agencies and instrumentalities, that can be attached in aid of execution of a judgment obtained through a suit authorized by the FSIA. Accordingly, a plaintiff who does not serve a copy of the default judgment to satisfy § 1608(e) is not entitled to authorization to execute the judgment under § 1610(c).

The critical point here, however, is that the Gates plaintiffs are not executing their judgment under § 1610(c) or under § 1610(a) or (b), the provisions cross-referenced in § 1610(c). The Gates plaintiffs obtained § 1610(c) authorization from the district court in the District of Columbia, which the Wyatt plaintiffs claim was an error. That order was unnecessary. The Gates plaintiffs are seeking to execute a judgment for state-sponsored terrorism, so they may proceed

through the execution provision specifically enacted for terrorism judgments, § 1610(g).

As we held in *Gates*, "§ 1610(c) simply does not apply to the attachment of assets to execute judgments under § 1610(g) for state-sponsored terrorism." 755 F.3d at 575. We reached that conclusion based on the structure and language of the FSIA and its legislative history. We also found that conclusion was consistent with the legislative purpose behind the 2008 FSIA Amendments that added § 1610(g) to the statute. The purpose of those amendments was "to make it easier for terrorism victims to obtain judgments and to attach assets." *Id*. at 576. "Exempting attachments under § 1610(g), that is, attachments stemming from terrorism-related judgments, from § 1610(c)'s solicitous notice requirements is entirely consistent with the liberalizing purpose of the 2008 Amendments." *Id*. at 576–77.

The service of default judgments under § 1608(e) is one of § 1610(c)'s solicitous notice requirements, from which attachments under § 1610(g) are exempt. The Gates plaintiffs, as terrorism victims who obtained a judgment under § 1605A, could proceed to attachment and execution under § 1610(g) without complying with § 1610(c). That means they are also exempt from § 1608(e), at least as a prerequisite for attachment and execution. A failure to comply with § 1608(e) does not render invalid their attachment of assets and satisfaction of their judgment for state-sponsored terrorism.

The Gates plaintiffs were therefore entitled to priority, so we affirm the district court's orders challenged in these appeals disbursing funds to the Gates plaintiffs and dismissing the Wyatt plaintiffs' challenges to them. We affirm without needing to address several alternative arguments for affirmance, including whether these appeals amount to improper collateral challenges to the District of Columbia court's issuance of a § 1610(c) order to the Gates plaintiffs, whether the mandate rule foreclosed the Wyatt plaintiffs' efforts after *Gates*, and whether the Wyatt plaintiffs waived their challenges by not pursuing their unsuccessful effort to intervene in the Gates case in the District of Columbia years before judgment was entered.

The orders of the district court are AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

11-cv-8715 (VMK); 14-cv-6161 (VMK)

October 22, 2014

FRANCIS GATES, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,

MARY NELL WYATT, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants.

MEMORANDUM OPINION AND ORDER

Plaintiffs Frances Gates, individually and as administrator for the estate of Olin Eugene Armstrong, Pati Hensley, Sara Hensley and Jan Smith (together "Gates Plaintiffs") move for a release of funds entered

into the Court's registry pursuant to this Court's previous orders directing JP Morgan Chase and AT&T to turnover Syrian funds to the Court's registry. (Dkt. Nos. 163, 238). These funds had been placed in the Court's registry pending the appeals of those orders. Those appeals are complete and the Seventh Circuit affirmed those orders. *See Gates v. Syrian Arab Republic*, 755 F.3d 568 (7th Cir. 2014). Following the Gates Plaintiffs' motion for release of funds, a group of non-party "adverse claimants" led by Mary Nell Wyatt (together the "Wyatt Plaintiffs") filed a memorandum in this case seeking to block the distribution of funds to the Gates Plaintiffs and to redirect those funds to the Wyatt Plaintiffs. The Wyatt Plaintiffs also filed a parallel action in this Court seeking distribution of the funds held in the Court's registry. *See* 14 C 6161.

For the reasons set out below, the Gates Plaintiffs' motion is granted and the Wyatt Plaintiffs' parallel action is dismissed.

BACKGROUND

The Court assumes familiarity with the general background of this case. *See generally Gates*, 755 F.3d 568. Only limited procedural facts are relevant for current purposes. The Gates Plaintiffs seek to satisfy a money judgment they hold against the Syrian Arab Republic for injuries they or members of their families suffered as victims of terrorism sponsored by Syria. *See Gates v. Syrian Arab Republic*, 580 F.3d 53 (D.D.C. 2008), *aff'd*, 646 F.3d 1 (D.C. Cir. 2011). The

Gates Plaintiffs obtained this judgment subject to the Foreign Sovereign Immunity Act. *See* 28 U.S.C. § 1605A. Following protracted litigation to locate Syrian assets subject to this Court's jurisdiction, the Court ordered various assets turned over to the Court's registry in order to satisfy that judgment. (Dkt. Nos. 163, 238). The orders provided that the funds would be placed in the Court's registry during the pendency of appeals of those orders and would be distributed when those appeals were complete. Those appeals are now complete and the Seventh Circuit affirmed each of the turnover orders in favor of the Gates Plaintiffs. *See Gates*, 755 F.3d at 580-81. Following the Seventh Circuit's mandate, the Gates Plaintiffs moved the Court to release funds held in the Court's registry. (Dkt. No. 251).

Enter the Wyatt Plaintiffs. The Wyatt Plaintiffs, not parties to this or any previous related case, filed a memorandum in opposition to the Gates Plaintiffs' motion for release of funds. (Dkt. No. 261). While not seeking to intervene under Federal Rule of Civil Procedure 24, the Wyatt Plaintiffs argue that they have a right to be heard as adverse claimants with an interest in the Syrian funds in the Court's registry. The Wyatt Plaintiffs argue that this Court should not release the funds to the Gates Plaintiffs because of the Gates Plaintiffs allegedly did not comply with the FSIA's procedures for providing notice of default judgments to sovereigns against whom default had been

entered. *See* 28 U.S.C. 1608(e). Thus, the Wyatt Plaintiffs argue, the Gates Plaintiffs' default judgment is unenforceable.

DISCUSSION

A. The Gates Plaintiffs' motion to release funds is granted

In accordance with the mandate of the Seventh Circuit, the Court grants the Gates Plaintiffs' motion to release funds from the Court's registry. The Gates Plaintiffs are directed to advise the Court whether the proposed order attached their August 7, 2014 motion (Dkt. No. 251-3) remains appropriate given the litigation that has taken place subsequent to their motion.

B. The Seventh Circuit's mandate resolves any question of § 1608(e) compliance

Both the Gates and Wyatt Plaintiffs have put forward a variety of arguments related to the propriety of the Wyatt Plaintiffs' presence in this case.[6] The Court need not resolve these arguments because the Wyatt Plaintiffs' argument fails on the merits. The

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[6] The Gates Plaintiffs argue that the Wyatt Plaintiffs lack prudential, but not Article III, standing to assert Syria's right to notice under § 1608(e) and that their intervention was improper. The Wyatt Plaintiffs argue that their presence here is appropriate under an Illinois statute, made applicable by Fed. R. Civ. P. 69, that allows adverse claimants to appear as a matter of right in garnishment proceedings.

Seventh Circuit's mandate puts the Gates Plaintiffs' compliance with the notice provisions of § 1608(e) beyond doubt. The Wyatt Plaintiffs' argue that the Court should read an implied caveat into the Seventh Circuit's clear mandate. The Wyatt Plaintiffs attack the enforceability of the District Court for the District of Columbia's order entering default judgment in favor of the Gates Plaintiffs. The Wyatt Plaintiffs allege that the Gates Plaintiffs have not complied with the 28 U.S.C. § 1608(e), which prescribes the manner in which parties who seek default judgments against foreign sovereigns must provide notice of that default. The argument fails because the Seventh Circuit has already resolved it in the Gates Plaintiffs' favor.

The Court may not reconsider "on remand an issue expressly or impliedly decided by a higher court absent certain circumstances." *United States v. Adams*, 746 F.3d 734, 744 (7th Cir. 2014) (quoting *United States v. Polland*, 56 F.3d 776, 779 (7th Cir. 1995)). The Seventh Circuit affirmed the Court's turnover orders, stating in no uncertain terms that the "Gates [P]laintiffs have complied with the requirements of FSIA and have established a priority lien on the Syrian funds at issue in these appeals." *Gates* , 755 F.3d at 580-81 (7th Cir. 2014). The Seventh Circuit did not equivocate, but instead affirmed this Court's order to distribute the funds to the Gates Plaintiffs. *See id.* ("we AFFIRM both of the district court's order to have Syrian assets turned over to the Gates plaintiffs").

The Seventh Circuit found specifically that the Gates Plaintiffs had complied with 28 U.S.C.

§ 1610(c), which by its terms requires compliance with § 1608(e). *See id.* at 577 ("the Gates plaintiffs complied with § 1610(c) in the District of Columbia") Section 1610(c) requires the court to determine that notice required under § 1608(e) has been provided. The Wyatt Plaintiffs do not dispute that the Gates Plaintiffs possess a § 1610(c) order from the District of Columbia. That order allows the Gates Plaintiffs to "pursue specific attachments without worry over any lingering § 1610(c) requirements." *Id.* (citation omitted). The Wyatt Plaintiffs attack directly a § 1610(c) requirement about which the Seventh Circuit was clear that there is to be no lingering doubt. For this Court to hold otherwise would be to contravene directly a clear directive of the Seventh Circuit. Therefore, the Court finds that the Seventh Circuit's mandate conclusively puts to rest any doubts as to the Gates Plaintiffs' compliance with § 1608(e).

C. The Wyatt Plaintiffs' (14 C 6161) complaint is dismissed with prejudice

The Wyatt Plaintiffs have filed a parallel action seeking disbursement of the funds subject to the turnover orders in the Gates Plaintiffs' favor. "Priority of competing liens is determined based on the order in which the competing liens were obtained." *Gates*, 755 F.3d at 573 (citing *Fed. Nat'l Mortgage Ass'n v. Kuipers*, 732 N.E.2d 723, 726 (Ill. App. Ct. 2000). The Gates Plaintiffs obtained and perfected a lien on the Syrian funds held in JP Morgan Chase Bank on December 8, 2011 when it served JP Morgan with a

citation to discover assets. They obtained and perfected a lien on electronic funds held by AT&T on February 9, 2012 when it served AT&T with a citation to discover assets. *See Gates*, 755 F.3d at 568 ("Service of a citation to discover assets creates and perfects a lien under Illinois law at the time of service.") (citing 735 ILCS 5/2-1402(m)). Assuming that the Wyatt Plaintiffs obtained a lien when they registered their judgment and served the Clerk of Court with a citation to discover assets, that lien is inferior to the Gates Plaintiffs' because the Gates Plaintiffs' lien was first in time. The "FSIA does not provide a mechanism for distributing equitably among different victims any Syrian assets in the United States that are subject to attachment." *Id.* at 571. Because the Gates Plaintiffs have a superior claim to the entirety of the funds sought by the Wyatt Plaintiffs, the Wyatt Plaintiffs' complaint seeks no relief that the Court can grant. Thus, the Wyatt Plaintiffs' parallel action, 14 C 6161, is dismissed with prejudice.

D. Sanctions are Inappropriate

The Court declines to address the Gates Plaintiffs' request for sanctions, as it is improperly raised. *See* Fed. R. Civ. P. 11(c)(2) ("[a] motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b)").

CONCLUSION

For the reasons stated herein, grants the Gates Plaintiffs' motion to release funds and dismisses the Wyatt Plaintiffs' complaint in 14 C 6161 with prejudice.

/s/
Virginia M. Kendall
United States District
Court Judge
Northern District of Illinois

Date: October 22, 2014

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

11-cv-8715 (VMK)

November 6, 2014

FRANCIS GATES, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,

JUDGMENT IN A CIVIL CASE

Baker plaintiffs' Rule 60(b) motion 307 is denied. Wyatt plaintiffs' motion to stay 295 is denied. Motion 259 is granted. Motion 317 to strike the status report is dismissed as moot. Emergency motion to appear by telephone on 11/10/2014 314 is denied. Motion 309 for leave to appear by telephone on 11/10/2014 is denied. Motions 264 and 266 are terminated as moot.

Decided by Judge Virginia M. Kendall on a motion.

Date: 11/6/2014

Thomas G. Bruton, Clerk of Court
Tresa S. Abraham, Deputy Clerk

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

11-cv-8715 (VMK)

November 6, 2014

FRANCIS GATES, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,[7]

ORDER DIRECTING CLERK TO RELEASE FUNDS FROM COURT REGISTRY

WHEREAS, this case came on before the Court on motion filed by the Gates Plaintiffs and it appearing this Court's turnover orders in favor of the Gates Plaintiffs were affirmed and the mandate of the Seventh Circuit Court of Appeals having been received, the Court finds the Gates Plaintiffs are entitled to withdraw the funds previously deposited into the Court Registry pending appeal. Pursuant to

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[7] [This order was additionally entered in case number 12-cv-2983, which is not pertinent to this petition. Accordingly, that portion of the caption is redacted.]

Fed.R.Civ.P. 67(b) and 28 U.S.C.A. § 2042, it is hereby directed and ordered that the Clerk of Court shall release all funds from the Court Registry, (inclusive of all principal and interest, but less court registry fees), and that such funds be disbursed to the Gates Plaintiffs in care of their lead counsel, Mr. John F. Salter, Esquire, of the Barnes Law Group, LLC, in accordance with wiring instructions to be provided by Mr. Salter to the clerk via separate written correspondence or whatever other legal and reasonable arrangements the Clerk of Court may require.

SO ORDERED AND ADJUDGED
This 6th day of November, 2014

Enter: /s/
Virginia M. Kendall
United States District
Court Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

11-cv-8715 (VMK); 14-cv-6161 (VMK)

November 6, 2014

FRANCIS GATES, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,

MARY NELL WYATT, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants.

MEMORANDUM OPINION AND ORDER

The Baker Plaintiffs' Rule 60(b) motion is denied. The Wyatt Plaintiffs' motion to stay is denied. The Court's October 22, 2014 order (Dkt. No. 287) remains in effect.

On June 18, 2014 the Seventh Circuit affirmed this Court's orders "to have Syrian assets turned over to the Gates Plaintiffs." *Gates v. Syrian Arab Republic*, 755 F.3d 568, 581 (7th Cir. 2014). In accordance with that mandate, the Gates Plaintiffs moved this Court to release funds held in the Court's registry to them. (Dkt. No. 259). The Wyatt Plaintiffs, a new group of plaintiffs who were not parties to this case, filed an opposition to that motion claiming that the Gates Plaintiffs were not entitled to the funds and that the new group was. (Dkt. No. 261). On October 22, 2014 the Court granted the Gates Plaintiffs' motion to release funds held in the Court's registry. (Dkt. No. 287). Though the Court harbored doubts about the procedural propriety of the Wyatt Plaintiffs' filing, the Court found that the arguments presented failed on the merits and directed the Clerk of Court to release the funds in the Court's registry to the Gates Plaintiffs.

As an initial matter, the Court's October 22, 2014 order definitively directed the Clerk of Court to release the funds held in the Court's registry to the Gates Plaintiffs. That the Court requested a proposed order from the Gates Plaintiffs does not affect the finality of the October 22 order. The Court solicited the Gates Plaintiffs' input because the Gates Plaintiffs had previously submitted a proposed order following the Seventh Circuit's mandate. The Court intended to address all of the points raised in the previous proposed order, but significant litigation had taken place since the Gates Plaintiffs submitted that order. The

Court's intention in soliciting a new proposed order was to ensure that the Gates Plaintiffs did not desire to amend their proposed form of judgment following that additional litigation. The Gates Plaintiffs' subsequent filing makes clear that they believed nothing more was necessary to distribute the funds, their subsequent briefing on the current motion to stay notwithstanding. (*See* Dkt. No. 288). To the extent that the purpose of the October 22 order was unclear, the Court now clarifies that the October 22 order directed the Clerk of Court to release the funds held in the Court's registry to the Gates Plaintiffs.

The Wyatt Plaintiffs ask the Court to stay its October 22 order pending their appeal. While the Court presently harbors the same procedural doubts, the Court once again finds that the Wyatt Plaintiffs' arguments would fail on the merits and thus denies their motion.

The Baker Plaintiffs, the losing party in the Seventh Circuit, then filed a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure urging this Court to reconsider its previous turnover order directing JP Morgan Chase Bank to turn over the proceeds of blocked electronic funds transfers that originated with Banque Centrale de Syrie, an instrumentality of Syria. (Dkt. No. 307). The Baker Plaintiffs argue that two subsequent Second Circuit cases represent an intervening change in the law and that justifies reconsideration. The Court denies the motion because the Baker Plaintiffs waived their right to a Rule 60(b) motion by failing to make the argument

on their direct appeal, because the intervening opinions are not binding on this Court, and because they would not require the result that the Baker Plaintiffs desire even if they were.

As a threshold matter, the Court retains jurisdiction over both of the pending motions addressed in this Order. The Wyatt Plaintiffs argue that the Court lacks the authority to distribute the funds because the filing of their notice of appeal divests the Court of jurisdiction to all issues relating to the appeal. The Wyatt Plaintiffs are correct that the filing of a notice of appeal generally divests a district court "of its control over those aspects of the case involved in the appeal." *See, e.g.*, *United States v. Brown*, 732 F.3d 781 (7th Cir. 2013) (internal quotation marks omitted).The [*sic*] Court need take no further action to distribute the funds, however. The Court ordered the Clerk of Court to distribute the funds on October 22. That order remains in effect. Thus, whether the Court retains jurisdiction over any aspect of this case is immaterial to the distribution of the funds held in the registry pursuant to that Order; the Court has done all that is necessary to release the funds. The Court retains jurisdiction over the Baker Plaintiffs' Rule 60(b) motion because that motion is not an "aspect[] of the case involved in the appeal." *Id.*

A. Baker Plaintiffs' Rule 60(b) Motion

The Baker Plaintiffs ask the Court to reconsider its previous order transferring blocked EFT funds from JPMCB to the Court's registry. (Dkt. No. 220). In that

order, this Court held that blocked EFTs held at JPMCB constituted the "property" BCS because BCS was both originator and beneficiary of the EFT and all intermediary banks had disclaimed ownership of the funds. (Dkt. No. 220 p. 9). The Baker Plaintiffs claim that two Second Circuit cases, *Calderon-Cardona v. Bank of New York Mellon*, No 13-75, 2014 WL 5368880 (2d Cir. Oct. 23, 2014) and *Hausler v. JP Morgan Chase Bank, N.A.*, No. 12-1265, 2104 WL 5420141 (2d Cir. Oct. 27, 2014) (per curiam), constitute an intervening change in the law that justifies relief from the Court's previous order. *Cf. Katherein v. City of Evanston, Ill.*, 752 F.3d 680, 685 (7th Cir. 2014) (district court may "revisit an issue if an intervening change in the law...warrants reexamining the claim") (internal quotation marks omitted). The Baker Plaintiffs have waived their right to bring this Rule 60(b) motion by not addressing these issues on their direct appeal. *See Kiswani v. Phoenix Sec. Agency, Inc.*, 584 F.3d 741, 743 (7th Cir. 2009). Moreover, "[n]othing the [Second] Circuit decides is binding on district courts outside its territory. Opinions bind [district courts] only within a vertical hierarchy." *United States v. Glaser*, 14 F.3d 1213, 1216 (7th Cir. 1994) (internal quotation marks omitted); *see also Hays v. United States*, 397 F.3d 564, 567 (7th Cir. 2005) ("Even if it is on point, a [Second] Circuit decision is not binding on courts in other circuits.").

Even if the Court were to entertain the Rule 60(b) motion on the merits, however, the Court would deny the motion. If binding, the intervening Second Circuit

opinions would not require the Court to reach a conclusion other than the one it previously reached. Applying New York's U.C.C., the Second Circuit held that "EFTs are neither the property of the originator nor the beneficiary while briefly in the possession of an intermediary bank." *Calderon-Cardona*, 2014 WL 5368880 at *6 (citing *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58, 71 (2d Cir. 2009)). "Because EFTs function as a chained series of debits and credits between the originator, the originator's bank, any intermediary banks, the beneficiary's bank, and the beneficiary, the 'only party with a claim against an intermediary bank is the sender to that bank, which is typically the originator's bank.' " *Id.* (quoting *Export-Import Bank of U.S. v. Asia Pulp & Paper Co.*, 609 F.3d 111, 118 (2d Cir. 2010)). The Bakers urge, therefore, that Commerzbank, the bank in which BCS held its funds and the institution that transferred the funds to JPMCB is the only party with a property interest in the blocked EFTs.

Calderon-Cardona did not address the facts present here. There, the terrorist party had no interested [*sic*] that exceeded "that of an originator or beneficiary in a midstream EFT." *Ruth Calderon-Cardona v. JPMorgan Chase Bank, N.A.*, 867 F. Supp. 2d 389, 407 (S.D.N.Y. 2011), *rev'd on other grounds Calderon-Cardona*, 2014 WL 5368880. Likewise in *Hausler*, the terrorist party was the beneficiary of the blocked EFTs at issue. *See Hausler v. JPMorgan Chase Bank, N.A.*, 845 F. Supp. 2d 553, 560 (S.D.N.Y. 2012), *rev'd*

on other grounds Hausler, 2104 WL 5420141. Non-terrorist entities whose property was not subject to attachment had attempted to transfer funds to the terrorist party but the funds were blocked midstream and never became the property of the terrorist party. Therefore, under U.C.C. Article 4A which governs EFTs, the transferring entity had a claim to the funds and the originator had a right of refund from that transferring bank. *See* U.C.C. § 4A-402(d). In other words, the judgment would have been satisfied from funds that did not belong to a terrorist party. Here, that risk is not present. BCS was both originator and beneficiary of the EFTs at issue. Moreover, the transferor immediately preceding JPMCB has disclaimed any interest in the funds. (*See* 11 C 8715 Dkt. No. 185-1). Under the U.C.C., the only party to whom those funds would belong would be BCS.

Moreover, authority from the D.C. Circuit supports precisely this Court's decision with respect to BCS's property interest in the EFT funds. *See Heiser v. Islamic Republic of Iran*, 735 F.3d 934 (D.C. Cir. 2013). In *Heiser*, the D.C. Circuit prohibited attachment of EFT funds directed to Iran when a non-terrorist party was the originator. Also analyzing Article 4A of the U.C.C., the D.C. Circuit noted that "claims on an interrupted funds transfer ultimately belong to the originator, not the beneficiary or its bank." *Id.* at 941. Here, the Court has already found, and no party contests, that BCS is the originator of the EFT funds at issue. Under the reasoning of *Heiser*, the funds would belong to BCS and would therefore be attachable.

The Court's conclusion is also consistent with the purpose of the FSIA and TRIA. The broad purpose of the statutory regime is to compensate victims of state sponsored terrorism at the expense of state sponsors of terror. *See Heiser*, 735 F.3d at 940 ("If potentially innocent parties pay plaintiffs' judgment, then the punitive purpose of these provisions is not served."); *see also* Brief for the United States as Amicus Curiae Supporting Appellees, *Heiser*, 735 F.3d 934 (No. 12-7101), 2013 WL 937817. The purpose is not to compensate those victims at the expense of innocent parties. The Court agrees that it is absolutely necessary to ensure that judgments are paid with property of terrorist states because using assets not owned by terrorist parties would *reduce* the cost of terrorism, a result clearly contrary to the public interest and statutory purpose. As noted above, that risk is not present here. BCS was both originator and beneficiary of the EFTs at issue. Commerzbank, who would have a claim against the intermediary bank under the Second Circuit's interpretation of the U.C.C., has disclaimed any interest in those funds. It is clear that neither the originator nor the beneficiary of the EFTs is entirely innocent. In short, the EFTs are attachable.

B. Wyatt Plaintiffs' Motion to Stay Pending Appeal

The Wyatt Plaintiffs ask the Court to stay all proceedings—presumably referring to the distribution of the funds in the Court's registry—pending their appeal. As noted above, the Court has already issued an order to distribute the funds to the Gates Plaintiffs

and that order remains in effect. To the extent that distribution by the Clerk of Court constitutes a proceeding in this Court, the motion is denied. The party seeking a stay pending appeal "must show that it has a significant probability of success on the merits; that it will face irreparable harm absent a stay; and that a stay will not injure the opposing party and will be in the public interest." *Hinrichs v. Bosma*, 440 F.3d 393, 396 (7th Cir. 2006). The Wyatt Plaintiffs fail to demonstrate that they have a significant probability of success on the merits. The Court followed the clear mandate of the Seventh Circuit in ordering the distribution of the funds in the Court's registry. While the Wyatt Plaintiffs' are correct that the Seventh Circuit has the power to overturn its own decisions, it requires "a compelling reason to overturn circuit precedent." *McClain v. Retail Food Employers v. Joint Pension Plan*, 413 F.3d 582, 586 (7th Cir. 2005). The Wyatt Plaintiffs have pointed to no compelling reason that the Seventh Circuit's previous ruling will be overturned. The Wyatt Plaintiffs have likewise not demonstrated that they will suffer irreparable harm if the funds are distributed to the Gates Plaintiffs. The irreparable injury the Wyatt Plaintiffs point to is the possibility that they will be denied their ability to recover the funds at issue. As the Seventh Circuit noted when denying the Baker Plaintiffs' motion to stay, "such risks are present any time [a] judgment requires a transfer of money or property. Those risks alone are not enough to call for a stay of the mandate." *Gates v.*

Syrian Arab Republic, No. 13-2280, slip op. 4 (7th Cir. July 30, 2013); (*See* Dkt. No. 251-1 p. 3).

/s/
Virginia M. Kendall
United States District
Court Judge
Northern District of Illinois

Date: November 6, 2014

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

11-cv-8715 (VMK)

February 3, 2014

FRANCIS GATES, *et al.*,
Plaintiffs,

V.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,[8]

JUDGEMENT AND ORDER DIRECTING THE TURNOVER OF FUNDS INTO COURT REGISTRY AND FULL DISCHARGE OF CITATION RESPONDENT JPMORGAN CHASE BANK, N.A.

WHEREAS, this case came on before the Court on motion, filed by plaintiffs-interpleader defendants Francis Gates, Individually and as Administrator of the Estate of Olin Eugene "Jack" Armstrong, Pati Hensley, Sara Hensley and Jan Smith (the "Gates Plaintiffs"), for the turnover of assets under Fed. R.

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[8] [This order was additionally entered in case number 12-cv-2983, which is not pertinent to this petition. Accordingly, that portion of the caption is redacted.]

Civ. P. 69(a) and 735 ILCS 512-1402(c) and a judgment in the Interpleader Action (Case Number 12-cv-02983) commenced by interpleader plaintiff JPMorgan Chase Bank, N.A. ("JPMCB"); and

WHEREAS, this Judgment and Order also involves claims, to the same assets of which the Gates Plaintiffs seek the turnover, asserted by Patrick Scott Baker, Jerry Baker, Lois Baker, Estate of David Baker, Craig Baker (individually and as the personal representative of the Estate of David Baker), Stacie Baker, Scarlett Rogenkamp, Estate of Hetty E. Peterson, Patricia A. Henry (individually and as the substitute executrix and successor in interest of the Estate of Scarlett Rogenkamp and as the executrix of the Estate of Hetty E. Peterson), Estate of Vernon W. Peterson, Valerie Peterson (sued as executor of the Estate of Vernon W. Peterson), Katharine D. Doris, Paul G. Peterson, Michelle Y. Holbrook, Jackie Nink Pflug, Rylma Nink, Eugene Nink, Gloria Nink, Mary Nink and Scott Pflug (collectively, the "Bakers"), all of whom are intervenors in Case No. 11-cv-8715 and interpleader defendants in Case No. 12-cv-2983; and

WHEREAS, the Gates Plaintiffs were the plaintiffs in an action in the United States District Court for the District of Columbia entitled *Francis Gates. et al. v. Syrian Arab Republic. et al.*, Case No. CA 06-1500 (RMC) (D.D.C.), in which they recovered a judgment against the Syrian Arab Republic (the "SAR") in the amount of $412,909,587, and the Bakers were the plaintiffs in an action in the United States District Court for the District of Columbia entitled *Patrick*

Scott Baker. et al. v. Great Socialist People's Libyan Arab Jamahirya. et al., Case No. 03-cv-0749 (JMF) (D.D.C.), in which they recovered a judgment against the SAR, the Syrian Air Force and General Muhammed al-Khuli in the amount of $601,969,151.50; and

WHEREAS, the Gates Plaintiffs, by motion filed September 5, 2013 and entitled "Third Motion For Turnover Of Assets From Third-Party Citation Respondent JPMorgan Chase Bank, N.A. And For Interpleader Judgment Order" (the "Third Turnover Motion" (DE #183, Case No. 11-cv-8715; DE #108, Case No. 72-cv-2983), moved for an order directing the turnover to them of approximately $76,364,178.20 held by JPMCB in a blocked account with account number #403267482 (the "Blocked Account"); and

WHEREAS, JPMCB blocked the wire transfer, made in August 2011 in the amount of $76,340,000, underlying the Blocked Account because Banque Centrale de Syrie, also known as Central Bank of Syria ("BCS"), which was both the originator and beneficiary of the wire transfer, appeared to be subject to blocking sanctions under Syrian Sanctions Regulations, 31 C.F.R. Part 542 (2013) (the "SSRs"); and

WHEREAS, on April 23,2012, JPMCB commenced this interpleader action under Fed. R. Civ. P. 22, 28 U.S.C. §§ 1335 and 2361., and 735 Ill. Comp. Stat.5/2-409 for a determination of the interpleader defendants' rights to the Blocked Account; and

WHEREAS, JPMCB filed an amended interpleader complaint (DE #21) on June 8, 20t2, naming

as interpleader defendants the Gates Plaintiffs and the Baker Parties, as judgment creditors of the SAR, Qatar National Bank ("QNB"), Commerzbank AG and Commerzbank Aktiengesellschaft New York Branch (collectively, "Commerzbank"), and BCS; and

WHEREAS, this Court has previously ruled, in its Memorandum Opinion and Order filed on March 29,2013 (DE #747, Case No. 11-cv-8715), that BCS is an agency or instrumentality of the SAR, and that BCS is not subject to the central bank immunity under § 1611(b) of the Foreign Sovereign Immunity Act ("FSIA"); and

WHEREAS, JPMCB served BCS with the interpleader complaint in accordance with FSIA §§ 1608(b) and (c), and Fed. R. Civ. P. 4(*l*) and completed service on June 13,2013 (DE. #79), giving BCS, under FSIA § 1608(d), until August 8, 2013 to respond to the interpleader complaint; and

WHEREAS, BCS never responded to the interpleader complaint, and this Court, upon oral motion made at a status conference on August 28,2013, held BCS in default, converting its holding into a Minute Entry (DE #104) entered later that day; and

WHEREAS, Commerzbank answered the interpleader complaint, disclaimed any interest in the Blocked Account, and later made an unopposed motion to dismiss the interpleader complaint as against it; and

WHEREAS, this Court, at a conference held on November 13, 2013, granted Commerzbank's motion to dismiss the interpleader complaint as against it; and

WHEREAS, QNB, rather than answer the interpleader complaint, entered into a stipulation of dismissal with JPMCB, dated May 10,2013, under which it disclaimed an interest in the Blocked Account, agreed to give JPMCB a discharge, and in return was dismissed from the action with prejudice; and

WHEREAS, the May 10, 2013 stipulation between QNB and JPMCB was later converted to a judgment entered by the Court on July 11, 2013 (DE #86); and

WHEREAS, the Gates Plaintiffs answered the interpleader complaint (DE #121), as did the Bakers (DE #30); and

WHEREAS, the Bakers later moved under Fed. R. Civ. P. 12(c) to dismiss the interpleader complaint, and this Court denied that motion by Minute Entry filed November 13, 2013 (DE #140); and

WHEREAS, the Bakers, on or about October 15,2012, commenced an action in the United States District Court for the Southern District of New York entitled *Baker et al. v. National Bank of Egypt et al.*, No. 12-cv-07698 (the "New York Action"), in which they moved on October 11, 2013 for the turnover of the Blocked Account; and

WHEREAS, the Bakers' turnover motion in the New York Action is still pending as of the time of this Judgment and Order; and

WHEREAS, by Memorandum Opinion and Order filed on March 29, 2013 (DE #147, Case No. 11-cv-8715), this Court, in denying the Bakers' motion for reconsideration of two earlier orders of this Court,

held that insofar as it has personal jurisdiction over JPMCB, it also has jurisdiction over blocked accounts held at JPMCB, regardless of where those accounts are physically located; and

WHEREAS, this Court, as it has previously determined, has subject matter jurisdiction over this interpleader action and personal jurisdiction over all interpleader defendants, including BCS; and

WHEREAS, on June 17,2013, the Bakers filed an appeal, still pending as of the time of this Judgment and Order, from the Court's two March 29,2013 Orders, among other rulings, to the United States Court of Appeals for the Seventh Circuit (the "seventh Circuit Appeal"); and

WHEREAS, this Court, by Memorandum Opinion and Order filed November 13, 2013 (DE #139, Case No. 72-cv-2983;DE #210, Case No. 11-cv-8715), ruled on the Gates Plaintiffs' Third Turnover Motion, and the Bakers are expected to appeal that ruling by consolidating it with the Seventh Circuit Appeal or filing a separate appeal;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The Gates Plaintiffs' Third Turnover Motion is granted.

2. The Court's Memorandum Opinion filed November 13, 2013, and all the factual findings and legal conclusions set forth in that Opinion, are hereby incorporated by reference. The Court directs the turnover of the funds in the Blocked Account as follows:

a. The Gates Plaintiffs are entitled to the entry of this Judgment and Order directing JPMCB to turn over the funds in the Blocked Account, including accrued interest thereon, in accordance with the terms set forth herein.

b. Within thirty (30) days of the date of entry of this Judgment and Order, and in light of the pendency of the Seventh Circuit Appeal and the expectation that the Bakers will also appeal from this Judgment and Order (or consolidate it with their pending appeal), JPMCB shall deposit the funds in the Blocked Account into the Court's registry pursuant to Fed. R. Civ. P.67. Subject to sub-paragraph 2(j) below, the funds shall be held in the registry during the pendency of the Seventh Circuit Appeal (or from any separate appeal from this Judgment and Order that the Bakers may file), and shall ultimately be distributed as directed by this Court.

c. If the Seventh Circuit determines that the Seventh Circuit Appeal, or any separate appeal from this Judgment and Order, is premature, or determines that this Judgment and Order is otherwise not appealable, that determination shall have no effect on the discharges of JPMCB, Commerzbank and QNB, and the restraints and injunctions against the institution of legal proceedings against them, set forth in sub-paragraphs 2(g)-(i) below. Those discharges and injunctions shall remain binding and in full force and effect.

d. The payment of the funds in the Blocked Account into the Court registry shall have no bearing

upon any issue that has been raised in the Seventh Circuit Appeal, or that may be raised in any separate appeal from this Judgment and Order, as to whether the Gates Plaintiffs or the Bakers have a priority claim to the funds in the Blocked Account. Nor shall the payment be relied upon by any party in connection with any such appellate issue.

e. This Judgment and Order supersedes and overrides any provisions of 31 C.F.R. Part 542, any other regulations promulgated by United States Treasury Department's Office of Foreign Assets Control ("OFAC"), or any Presidential Executive orders that otherwise require JPMCB to hold the funds in the Blocked Account or prohibit the payment of those funds to the Court registry in satisfaction of this Judgment and Order. *See*, *e.g.*, *Weininger v. Castro*, 462 F. Supp. 2d 457, 499 (S.D.N.Y. 2006) ("[T]he U.S. Department of Justice has indicated that '[i]n the event the Court determines that the funds are subject to TRIA [Terrorism Risk Insurance Act of 2002], the funds may be distributed without a license from [OFAC]'").

f. Subject only to JPMCB's payment of the funds in the Blocked Account into the Court's registry, JPMCB, including its parent and affiliated companies, having already been discharged and released from any and all liability or obligation to QNB with respect to the Blocked Account and the funds therein, is hereby discharged and released from any and all liability or obligations to the Gates Plaintiffs, the Bakers, the SAR, BCS, Commerzbank, and any other person or entity with respect to the Blocked Account or the funds

in the Blocked Account. Any claims of any such persons or entities against JPMCB, with respect to the Blocked Account and the funds therein, are hereby dismissed with prejudice.

g. Commerzbank and QNB, together with any of their affiliates, are hereby discharged and released from any and all liability or obligation to the Gates Plaintiffs, the Bakers, the SAR, BCS, JPMCB, and any other person or entity with respect to the Blocked Account and the funds therein. Any claims of any such persons or entities with respect to the Blocked Account are hereby dismissed with prejudice.

h. The Gates Plaintiffs, the Bakers, the SAR, BCS, any third-party claimant, and all other persons or entities are hereby permanently restrained and enjoined from instituting or pursuing any other pending or future legal actions or proceedings, in any court, tribunal or arbitration forum, against JPMCB, Commerzbank and QNB with respect to the Blocked Account and funds therein.

i. Subject only to JPMCB's payment of the funds in the Blocked Account into the Court's registry, all writs of execution, citations or other judgment enforcement devices, including, but not limited to, the Third-Party Citations to Discover Assets against JPMCB filed by the Gates Plaintiffs, as extended by the Court, and filed by the Bakers, as extended by the Court, are hereby terminated pursuant to Illinois Supreme Court Rule 277.

j. JPMCB shall receive an award of $150,000 for its reasonable attomeys' fees and expenses in connection with this interpleader action regarding the Blocked Account. That award shall be paid as follows: After JPMCB has deposited the funds in the Blocked Account into the Court registry pursuant to sub-paragraph 2(b) above, the Court registry shall then pay $150,000, out of those deposited funds, to JPMCB or to its counsel on JPMCB's behalf in accordance with wire or other payment instructions to be provided by JPMCB. The Court registry shall make that payment as soon as practicable following its receipt of JPMCB's payment instructions. The Court registry's payment to JPMCB of $150,000 shall be in full and complete satisfaction of any and all claims that JPMCB has made or could make for its attorneys' fees and expenses incurred in connection with this interpleader action.

k. This Judgment and Order shall be filed under seal, but a redacted version of this Judgment and Order, which deletes the bank account number of and exact amount held in the Blocked Account, shall be electronically filed with this Court by the Gates Plaintiffs' counsel.

l. This Judgment and Order is a final and appealable judgment within the meaning of Fed. R. Civ. P. 54(b), and there is no just cause for delay of the enforcement or appeal of this judgment and order.

m. This Court shall retain jurisdiction over the Gates Plaintiffs' action and this interpleader action to

enforce any violation of one or more of the terms of this Judgment and Order.

SO ORDERED AND ADJUDGED.
This 3rd day of February, 2014

Enter: /s/
Virginia M. Kendall
United States District
Court Judge

APPENDIX G

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

11-cv-8715 (VMK)

May 13, 2013

FRANCIS GATES, *et al.*,
Plaintiffs,

V.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,[9]

JUDGEMENT AND TURNOVER ORDER DIRECTING TURNOVER OF FUNDS TO PLAINTIFFS AND FULL DISCHARGE OF CITATION RESPONDENTS AT&T CORP. AND AT&T SERVICES, INC., AND PARTIAL DISCHARGE OF CITATION RESPONDENT JPMORGAN CHASE BANK, N.A.

This case came on before the Court on motions, filed by Plaintiffs Francis Gates, Individually and as Administrator of the Estate of Olin Eugene "Jack" Armstrong, Pati Hensley, Sara Hensley and Jan

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[9] [This order was additionally entered in case number 12-cv-2983, which is not pertinent to this petition. Accordingly, that portion of the caption is redacted.]

Smith (the "Gates Plaintiffs"), for turnover of assets, pursuant to Fed.R.Civ.P . 69(a) and 735 ILCS 5/2-1402(c), seeking an order directing a turnover to Plaintiffs of all assets by Third-Party Citation Respondents, and AT&T Corp. and AT&T Services, Inc. (hereinafter collectively, "AT&T") and certain assets by JPMorgan Chase Bank, N.A. ("JPMCB") for monies that AT&T owes to an agency or instrumentality of Defendant Syrian Arab Republic (hereinafter, "SAR"). These Turnover Motions (hereinafter docket entries in this proceeding will be referred to as "DE _") (DE## 56 and 77) are GRANTED for the reasons described more fully in the (sealed) Memorandum Opinion and Order entered September 28.2012. See also DE#l19. Further, and for reasons explained more fully in its Memorandum Opinion of March 29, 2013 (DE #145), the Court DENIES the Motion for Reconsideration filed by the Baker Intervenors. The Court makes the following findings of fact and conclusions of law and adopts the following terms that shall govern the turnover and discharge of the parties.

1. This Judgment and Order decides motions made pursuant to 735 ILCS 5/2-l402(c), made applicable to these proceedings through Fed.R.Civ.P. 69(a), for turnover of amounts identified by JPMCB and AT&T in response to Third Party Citations served upon them for money AT&T owes to the Syrian Telecommunications Establishment (hereinafter "STE"), as set forth in Schedule A to JPMCB's Answer to Third-Party Citation executed on January 17.2012

and in AT&T's Declaration executed on March 8, 2012 and the exhibits thereto.

2. The Gates Plaintiffs filed an Initial Motion for Turnover (DE ## 20-23) against JPMCB on February 6 and 7, 2012 seeking the turnover of funds deposited by AT&T in an account with JPMCB that were later transferred by JPMCB, in the amount of [redacted] (the "Blocked Amount"), into a separate blocked account Account No. [redacted] (hereinafter referred to as the "Blocked Account"). This motion was denied (DE #74) on the ground that the motion was directed solely to JPMCB, which was not indebted to STE, and not to AT&T. The Gates Plaintiffs had in the meantime filed an Initial Motion for Turnover against AT&T, seeking the turnover by AT&T of the funds held in the Blocked Account (DE #56). In addition to the funds held in that Blocked Account, AT&T identified other monies that it owes STE but had not deposited into the Blocked Account and therefore, the Gates Plaintiffs filed a Second Motion for Turnover (DE #77) to encompass all assets identified at that time by AT&T in response to the Third-Party Citation to discover assets that was served upon it.

The Judgment Entered in Favor of Plaintiffs and Against SAR

3 The Gates Plaintiffs filed an action, Case No. 06-cv-01500 (D.D.C.) (the "D.C. case") against the SAR in the United States District Court for the District of Columbia (the "D.C. Court") and obtained a final judgment, entered September 28, 2008, against the SAR

for acts of state-sponsored terrorism that facilitated the kidnapping, torture and murder-by-beheading of two Americans in 2004: Olin Eugene Armstrong and Jack L. Hensley. This judgment was acquired under the "terrorism exception," 28 U.S.C. § 1605A. of the Foreign Sovereign Immunities Act. of 1976, 28 U.S.C. §§ 1602 et seq.(the "FSIA").

4. After judgment was entered against it in the D.C. case, the SAR entered an appearance by counsel and unsuccessfully appealed said judgment. The judgment was affirmed as final and valid by the United States Court of Appeals for the District of Columbia Circuit. *Gates v. Syrian Arab Republic,* 646 F.3d 1 (D.C. Cir. 2011).

5. The Gates Plaintiffs hold an unsatisfied judgment against the SAR (the "D.C. Judgment") in the amount of $412,909.587.00 (plus post-judgment interest at the legal rate). Of this judgment amount, $112,909,587.00 was awarded in compensatory damages and $300,000,000.00 was awarded in punitive damages.

6. On August 23, 2011, The D.C. Court entered an Order pursuant to 28 U.S.C. § 1610(c) authorizing enforcement of the D.C. Judgment against the Syrian Arab Republic.

Registration of the D.C. Judgment with This Court and the Third-Party Citation to Discover Assets F iled against JPMCB

7. On December 8, 2011, Plaintiffs registered the D.C. Judgment with this Court (See, DE #1).

8. The D.C. Judgment remains unsatisfied.

9. On December 8. 2011, the Gates Plaintiffs sought and had the Clerk of this Court issue a Third-Party Citation to Discover Assets directed to JPMCB (the "JPMCB Citation") that was served on JPMCB on December 8, 2011.

10. On December 12, 2011, the Gates Plaintiffs mailed a copy of the JPMCB Citation and the related Citation Notice of the Third-Party Citation to Discover Assets to the SAR, the judgment debtor, as required under 735 ILCS 5/2-l402(b). (DE #8).[10]

11. On January 17, 2012, JPMCB served on counsel for the Gates Plaintiffs and filed under seal its Answer to Third-Party Citation to Discover Assets (DE #18) (the "JPMCB Answer"). Schedule A to the JPMCB Answer, and the documents produced with Schedule A, both of which were provided to counsel for the Gates Plaintiffs after a protective order (DE # 17) was entered in this case to protect the financial privacy of JPMCB's customers and others who had dealt with JPMCB, disclosed that JPMCB had withdrawn the Blocked Amount from an account of AT&T and deposited that amount in the Blocked Account on or about August 31, 2011.

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[10] Because the Protective Order entered in this case on January 13, 2012 [DE#l7] covered JPMCB's confidential documents and customer information provided therein, the Third- Party Citations were filed in a redacted format.

Gates Plaintiffs' Third-Party Citations to Discover Assets against AT&T

12. On February 9, 2012, the Gates Plaintiffs sought and had the Clerk of this Court issue two Third-Party Citations to Discover Assets and served the Third Party [*sic*] Citations that same day on AT&T Corp. and AT&T Services, Inc. (DE's # 47.48, 50 and 51).

13. The Third-Party Citations to Discover Assets were both returnable on February 28, 2012, and by agreement of the parties the date was extended to March 12, 2012 or until a Protective Order was entered in this case.

14. On February 9, 2012, the Gates Plaintiffs mailed a copy of the Citation and the Citation Notice of the Third-Party Citations to Discover Assets to AT&T Corp. to the judgment debtor SAR, as required under 735 ILCS 5/2-l402(b). (DE # 49).

15. On February 9, 2012, the Gates Plaintiffs mailed a copy of the Citation and Citation Notice of the Third-Party Citations to Discover Assets to AT&T Services, Inc. to the judgment debtor SAR, as required under 735 ILCS 5/2-1402(b). (DE # 52).

The Full Response by AT&T to the Third-Party Citation to Discover Assets Reveals Additional Assets that Are Subject to an Immediate Turnover Order'

16. On February 28. 2012, and because of the earlier Protective Order with JPMCB [DE#l7], AT&T

provided a partial response to the Citations to Discover Assets, disclosing that AT&T owes STE the Blocked Amount, which is held in. the Blocked Account at JPMCB.

17. A Protective Order concerning AT&T's response to the Third Party Citation to Discover Assets was entered by the Court on March 5, 2012. See, DE# 72.

18. On March 8, 2012, AT&T provided its response to the Third-Party Citation to Discover Assets with a Declaration made by Dino Persichilli, who is the Director-International Billing and Settlements for AT&T and an Exhibit A that summarized the assets responsive to the Third-Party Citation. AT&T's Response shows funds that AT&T owes STE in connection with bilateral voice termination arrangements reside in three buckets: 1) a Blocked Account with JPMCB; 2) internal accounts payable; and (3) [*sic*] recent settlements that have been "calculated but not converted from Special Drawing Rights ("SDRs") to U.S. dollars." (See, DE #77, Exhibit 1, ¶¶ 5-9.) The amounts described "represent all of the monies that AT&T considers due and owing to STE" as of the time of the response. (DE #77, Exhibit 1, 10.)

19. AT&T identified the Blocked Account as containing a balance, including accrued interest, slightly in excess of the Blocked Amount transferred into the Blocked Account in August 2011 (DE #77, Exhibit 1, ¶¶ 5-6).

20. AT&T identified the internal accounts payable holding [redacted] that AT&T owes to STE. (DE #77, Exhibit 1, ¶8)

21. Finally, AT&T identified settlements payable that hold [redacted] SDR's that would be converted to U S. Dollars when AT&T transfers the amount to its internal accounts payable. (DE #77, Exhibit 1, ¶ 9).

STE is an Agency and/or Instrumentality of the SAR, Therefore the Funds Being Held by JPMCB and AT&T Are Subject to Turnover to Plaintiffs

22. STE is an "agency and/or instrumentality of a foreign state, "the SAR, as that term is defined in FSIA § 1602(b), and so is an agency or instrumentality" of the SAR under FSIA § 1610(g), 28 U.S.C. § 1610(g), and section 201 of the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322, codified as a note to 28 U.S.C. § 1610 ("TRIA"). This Court so ruled in its Order dated March 7, 2012 (DE # 74.pp. 11-12).

23. The Court finds that each of the three categories of funds identified by AT&T is a blocked asset of the STE, an agency or instrumentality of the SAR, that is subject to execution to satisfy the Gates Plaintiffs' judgment under FSIA § 1610(g) and TRIA § 201.

24. TRlA provides in section 201(a) that:

> [I]n 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.

25. The SAR was designated by the U.S. Secretary of State as a state sponsor of terrorism in 1979 and remains so designated today. See *Gates,* 646 F.3d at 2. The SAR is therefore a "terrorist party" as that term is used by TRIA.

26. The record in the D.C. case establishes that the D.C. Judgment is a "judgment...on a claim based upon an act of terrorism," within the meaning of TRIA § 201.

27. The amounts to be turned over pursuant to this Judgment and Turnover Order do not exceed the compensatory damages awarded to the Gates Plaintiffs under the D.C. Judgment.

28. The Gates Plaintiffs have established that the funds at issue are blocked assets of the SAR or its agencies and/or instrumentalities within the meaning of TRIA. Accordingly, these funds may be used to satisfy the D.C. Judgment of the Gates Plaintiffs.

29. At the outset of the D.C. case, the Gates Plaintiffs served the summons and complaint in that action, together with a notice of suit and a translation of the summons, complaint and notice of suit into Arabic,

upon the SAR by delivering those documents to the Clerk of the D.C. Court, who caused them to be sent to the head of the ministry of foreign affairs of the SAR via DHL courier. The Clerk of the D.C. Court later received a signed delivery confirmation of those documents from DHL (See Docket Entries Nos. 3 and 6 in. the D.C. Case). This constituted valid service on the SAR pursuant to FSIA § 1608(a)(3) and established the jurisdiction of the D.C. Court over the SAR pursuant to 28 U.S.C. § 1330. See *Gates,* 646 F.3d at 4-5; *Weininger v. Castro*, 462 F. Supp. 2d 457, 470 (S.D.N.Y. 2006) ("[A) court acquires personal jurisdiction over a foreign state or instrumentality of a foreign state where the court has subject matter jurisdiction pursuant to the FSIA and where service has been made on the foreign state or instrumentality as specified by FSIA § 1608") (see also pp. 475 and 491).

30. After the entry of the D.C. Judgment against the SAR, the Gates Plaintiffs served the D.C. Judgment, together with a copy of the D.C. Court's memorandum decision and a translation of the D.C. Judgment and memorandum decision into Arabic, upon the SAR by delivering those documents to the Clerk of the D.C. Court, who caused them to be sent to the head of the ministry of foreign affairs of the SAR via DHL courier on October 23, 2008 (Docket Entry No. 47 in the D.C. case).

31. The Gates Plaintiffs then made a motion in the D.C. Court on December 17, 2008, as required by FSIA § 1610(c), for leave to commence enforcement proceedings with respect to the D.C. Judgment (Docket Entry

No. 51 in the D.C. case). The SAR appeared by its counsel, Ramsey Clark. Esq. and Lawrence W. Schilling, Esq., to oppose the motion (Docket Entry No. 58), and the motion was denied on the ground that the SAR had questioned the validity of the initial service upon it and that issue was then on appeal (Docket Entry No. 63 in the D.C. Case). After the propriety of the service was upheld on appeal, 646 F.3d at 4-5, the Gates Plaintiffs renewed their motion in the D.C. Court for leave to enforce their judgment, pursuant to FSIA § 1610(c). and [*sic*] it was granted (Docket Entries Nos. 91-92 in the D.C. Case).

32. This Court has subject matter jurisdiction over this action based on 28 U.S.C. §§ 1330, 1331 and 1367.

33. This Court has in personam jurisdiction over JPMCB and AT&T because they have appeared in this action without raising a defense of lack of personal jurisdiction.

34. This Court has in personam jurisdiction over Intervenors Patrick Scott Baker, Jerry Baker, Lois Baker, Estate of David Baker, Craig Baker (individually and as the personal representative of the Estate of David Baker), Stacie Baker, Scarlett Rogenkamp, Estate of Hetty E. Peterson, Patricia A. Henry (individually and as the substitute executrix and successor in interest of the Estate of Scarlett Rogenkamp and as the executrix of the Estate of Hetty E.Peterson), Estate of Vernon W. Peterson, Valerie Peterson (sued as executor of the Estate of Vernon W. Peterson). Katharine D. Doris, Paul G. Peterson, Michelle Y. Holbrook, Jackie Nink Pflug, Rylma Nink, Eugene

Nink, Gloria Nink, Mary Nink and Scott Pflug (the "Bakers") based on their voluntary intervention in this action (DE ## 28, 29, 34 and 46). The Court notes that the Baker Parties object co this Court's turnover Order because, the Baker Parties claim, the assets being sought for turnover are not situated in this District, but rather, according to JPMCB, are situated in New York. The Court notes that the Baker Parties further object to this Court's turnover Order because, the Baker Parties claim, the Gates Plaintiffs were required to obtain an Order in this District under 28 U.S.C. § 1610(c), but the Gates Plaintiffs did not do so. The Court has overruled the Baker Parties' objections and intends by this Judgment and Turnover Order to fully and finally adjudicate all claims to the assets in the Blocked Account and the other funds and assets described in paragraphs 19 through 21 of this Judgment and Turnover Order.

35. This Court has in personam jurisdiction over the SAR and STE based on the service of process made on the SAR in the D.C. case, which provides a continuing basis for jurisdiction pursuant to 28 U.S.C. § 1330 in this ancillary proceeding, and the fact that STE has been held to be an agency or instrumentality of the SAR.

36. The Gates Plaintiffs mailed copies of their Third-Party Citation to Discover Assets addressed to JPMCB and their two Third-Party Citations to Discover Assets addressed to AT&T to STE and Syrian Telecom at their addresses in Damascus, Syria, and to the attorney who had appeared for the SAR in the D.C.

case, Ramsey Clark. of Clark & Schilling, 37 West 12th Street, New York, NY 10011 (DE ##22, 27, 39, 40, 44, 49, 52, 56, 76, 77 and 78). The Gates Plaintiffs also mailed copies of their Initial Motion for Turnover against JPMCB, their Initial Motion for Turnover against AT&T and their Second Motion for Turnover Against AT&T to the Minister of Foreign Affairs of the SAR and Mr. Clark at those addresses (DE ## 22, 56 and 77). These forms of notice, together with the notice given to the SAR in the D.C. case of the entry of the D.C. Judgment against it and the fact that the SAR appeared by counsel in that case to oppose the entry of a section 1610(c) order, constituted sufficient notice of these proceedings to the SAR and STE to satisfy the requirements of 735 ILCS 5/2-1402(b) and all other requirements of law and due process of law.

37. Based on the service of the D.C. Judgment upon the SAR through the Clerk of the D.C. Court via DHL in the D.C. case and the fact that the SAR actually appeared by counsel to oppose the entry of an order authorizing the enforcement of the D.C. Judgment pursuant to FSIA § 1610(c), the requirements of FSIA 1608(e) for serivice of the D.C. Judgment upon the SAR have been satisfied. See *Baker v. Socialist People's Libyan Arab Jmuahirya.* 810 F. Supp. 2d 90, 101 (D.D.C. 2011) ("[N]o further notice of the [entry of the] final [default] judgment was required after the [SAR] filed an appearance in the case").

38. The Court finds, over the objection of the Baker Parties, that the Gates Plaintiffs have fully satisfied the requirements of FSIA § 1610(c) by obtaining the

order of the D.C. Court dated August 23. 2011 and entered on August 30, 2011 (Docket No . 92 in the D.C. case), and they are under no obligation to obtain. another such order from this Court prior to enforcing the D.C. Judgment.

39. The Court finds, over the objection of the Baker Parties, that the Gates Plaintiffs have achieved priority over the Bakers in the enforcement of their D.C. Judgment against the SAR with respect to the Blocked Account and the other funds and assets described in paragraphs 19 through 21 of this Judgment and Turnover Order because they served their Third-Party Citation to Discover Assets addressed to JPMCB on JPMCB on December 8, 2011, before the Bakers served their Garnishment Summons on JPMCB on December 16, 2011 (see DE # 74), and they serve-d their Third-Party Citations to Discover Assets addressed to AT&T upon AT&T on February 9, 2012, before the Bakers served their Third-party [*sic*] Citations to discover assets on AT&T on March 7, 2012 (DE # 74).

40. The Gates Plaintiffs have satisfied the reporting requirements of 31 C.F.R. § 501.605 by providing counsel for Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury with notice of this action (see, e.g., DE # 37).

41. For the foregoing reasons, expressed fully in Memorandum Opinions issued March 29, 2013 (DE#l45); September 28, 2012, and March 7, 2012 (DE#74), it is hereby ORDERED, ADJUDGED AND DECREED that:

a. The Gates Plaintiffs are entitled to the entry of a turnover order directing JPMCB and AT&T to turn over the following amounts held for, or owed to, STE;

b. Subject to sub-paragraph 4l(p), JPMCB shall, within sixty (60) days of the date of entry of this Judgment and Turnover Order (hereinafter "Turnover Judgment"), transfer all of the funds held by JPMCB in the Blocked Account, inclusive of accrued interest, which constitute funds AT&T owes to STE, to the Gates Plaintiffs;

c. Subject to sub-paragraph 4l(p), AT&T shall, within sixty (60) days of the date of entry of this Turnover Judgment transfer to the Gates Plaintiffs the funds AT&T owes to STE held in AT&T's internal accounts payable in the amount of [redacted] or such higher amount as may have accrued since the service of the Third-Party Citations to Discover Assets on AT&T;

d. Subject to sub-paragraph 41(p), AT&T shall, within sixty (60) days of the date of entry of this Turnover Judgment transfer to the Gates Plaintiffs the funds AT&T owes to STE and held as internal settlements with STE of [redacted] SDRs, or such higher amount as may have accrued since the service of the Third-Party Citation to Discover Assets on AT&T, converted into US Dollars;

e. The payments required by subparagraphs b, c and d of this paragraph 21 shall be made by wire transfer to a bank account designated by counsel of

record for the Gates Plaintiffs, in a letter on the stationery of said counsel, addressed to counsel of record for JPMCB and AT&T, and to such persons at JPMCB as JPMCB may request, which shall, in the case of the Blocked Account, enclose a copy of the signed judgment and refer to that account by its account number;

f Upon receipt of the funds referred to in sub-paragraphs b. c and d of this paragraph 41, counsel of record for the Gates Plaintiffs shall promptly provide a written acknowledgement to counsel for JPMCB and AT&T of receipt of the funds and shall file a satisfaction of judgment in this action;

g. This Turnover Judgment supersedes and overrides any provisions of 31 C.F.R. Part 542 or any other OFAC Regulations or Presidential Executive Order that purport to require JPMCB and AT&T to hold the funds in the Blocked Account, or any other funds being turned over to the Gates Plaintiffs pursuant to the provisions of this Judgment and Turnover Order, in a blocked account or to prohibit the payment of those funds to the Gates Plaintiffs in satisfaction of their Judgment *(see*, *e.g.*, *Weininger,* 462 F. Supp. 2d at 499 ("[T]he U.S. Department of Justice has indicated that '[i]n the event the Court determines that the funds are subject to TRIA, the funds may be distributed without a license from [OFAC]'"));

h. The Bakers' claims to the Blocked Account, the funds in the Blocked Account and the assets and funds referred to in sub-paragraphs c and d of this paragraph 41 of this Turnover Judgment are hereby dismissed with prejudice;

i. Respondent JPMCB, together with its parent and affiliated companies, is hereby discharged and released from any and all liability or obligation to the Gates Plaintiffs, the Bakers, AT&T, the SAR, STE, and any other person or entity with respect to the Blocked Account or the funds in the Blocked Account (except for its obligations under sub-paragraph b of this paragraph 41 of this Turnover Judgment and except for those funds that are the subject of Gates Plaintiff's Second Motion for Turnover (DE #39)), and any claims of any such persons with respect to the Blocked Account or the funds in the Blocked Account are hereby dismissed with prejudice

j. Respondents AT&T Corp. and AT&T Services, Inc., together with any of their affiliates, are hereby discharged and released from any and all liability or obligation to the Gates Plaintiffs, the Bakers, the SAR, the STE, JPMCB and any other person or entity with respect to the Blocked Account, the funds in the Blocked Account the funds referred to in subparagraphs c and d of this paragraph 41 of this Turnover Judgment, and any corresponding indebtedness for these amounts (except for their obligations under subparagraphs b, c and d of this paragraph 41 of this Turnover Judgment), and any claims of any such persons with respect to the Blocked Account, the funds in the Blocked Account or the funds referred to in subparagraphs c and d of this paragraph 41 of this Turnover Judgment, and any corresponding indebtedness for these amounts, are hereby dismissed and concluded with prejudice;

k. The Gates Plaintiffs, the Bakers, the SAR, the STE, any third-party claimant and all other persons or entities with notice of this Turnover Judgment are hereby restrained and enjoined from instituting or pursuing any other legal actions or proceedings, whether pending or future, against Respondents JPMCB, AT&T Corp. and AT&T Services Inc. and as to funds which any affiliated entities of JPMCB, AT&T Corp. and AT&T Services hold that are covered by this Turnover Order, in any court or tribunal or before any arbitration panel or arbitrator with respect to the Blocked Account, the funds in the Blocked Account, the funds referred to in sub-paragraphs b, c and d of this paragraph 41 of this Turnover Judgment and any corresponding indebtedness of AT&T for these amounts;

l. The Third-Party Citations to Discover Assets against AT&T Corp. and AT&T Services filed by the Gates parties (DE ##47 and 50) as extended by the Court and the Baker parties (DE #74) against AT&T are hereby terminated pursuant to Illinois Supreme Court Rule 277;

m. No party shall seek to recover from any other party any court costs, transcript costs or other or similar costs. Each party is to bear its own costs and attorneys fees;

n. This Turnover Judgment shall be filed under seal, but a redacted version of this Turnover Judgment, redacted to delete any bank account number, and the exact amounts held by JPMCB or AT&T

for the STE, shall be electronically filed by counsel for the Gates Plaintiffs as to be publicly available;

o. Inasmuch as the claims of the Gates Plaintiffs and the Bakers to the Blocked Account, the funds in the Blocked Account and the funds described in paragraphs 20 and 21 of this Turnover Judgment constitute separate and discrete claims, and those claims are finally disposed of by this Turnover Judgment, this Turnover Judgment is a final judgment, within the meaning of Rule 54 of the Federal Rules of Civil Procedure, and there is no just reason for delay in the entry of it as a judgment; and

p. If, within 30 days of the date of this Order, any party shall file a notice of appeal of this Turnover Judgment, the funds directed herein to be transferred to the Gates Plaintiffs shall be deposited into the Court's registry pursuant to Fed. R. Civ. P. 67 within 30 days thereafter and shall be held there during the pendency of such appeal. After the resolution of the appeal, the funds shall be distributed in accordance with this Order or with any mandate or direction provided as a result of the appeal. If after the filing of a notice of appeal, the Seventh Circuit Court of Appeals determines that the appeal is premature or that this Turnover Judgment is otherwise not appealable, the discharges of JPMCB and AT&T and the restraints and injunctions against the institution of legal proceedings set forth in this paragraph 41, shall remain in full force and effect, and the funds paid into the Court registry under this sub-paragraph shall remain in the registry until further order of this Court. The

payment. of the funds into the Court registry shall have no bearing upon and shall not be relied upon by any party in connection with any issue raised in an appeal of this matter or otherwise regarding whether the Gates Plaintiffs or the Bakers have a priority claim to the funds.

q. This order is final and appealable and there is no just cause for delay of the enforcement or appeal of this order.

SO ORDERED.
This 13th day of May, 2013.

Enter:

/s/
Virginia M. Kendall
United States District
Court Judge

APPENDIX H

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 08-cv-502 (RCL)

Dec. 17, 2012

MARY NELL WYATT, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,

ORDER AND JUDGMENT

For the reasons expressed in the Findings of Fact and Conclusions of Law issued this date, and in light of the representations to the court of Mr. Ramsay Clark, counsel for the defendant, that the defendant would not participate in this case after contesting jurisdiction, it is hereby

ORDERED that a default judgment is hereby granted in light of the Clerk's entry of default, ECF No. 31, and the failure of defendant to appear at subsequent proceedings; and it is further

ORDERED that final judgment is entered in favor of plaintiffs and against defendant Syria in this matter; and it is further

ORDERED that plaintiffs are entitled to a total damages award of $338,000,000, to be distributed as follows:

-- Marvin Wilson and the Estate of Ronald Wyatt are each entitled to $5,000,000 in pain and suffering damages;

-- Renetta Wilson and Mary Nell Wyatt are each entitled to $4,000,000 in solatium damages;

-- Daniel Wyatt, Amanda Lippelt, Michelle Schelles, Marty Wilson, Kimi Johns, Gina Wilson, Bradley Key, and Barry Key, are each entitled to $2,500,000 in solatium damages;

-- plaintiffs are entitled to one award of $300,000,000 in punitive damages, to be distributed equally among the plaintiffs; and it is further

ORDERED that plaintiffs shall forthwith, at their own cost and consistent with the requirements of 28 U.S.C. § 1608(e), send a copy of this Order and Judgment, and the Memorandum Opinion issued this date, to defendants.

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

SO ORDERED.

Signed December 17, 2012 by Royce C. Lamberth, Chief Judge.

APPENDIX I

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 08-cv-502 (RCL)

May 19, 2014

MARY NELL WYATT, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,

ORDER

In April 2013, plaintiffs filed a Motion [52] for Entry of an Order Pursuant to 28 U.S.C. § 1610(c). This Court entered a June 2013 Order [55] denying that motion without prejudice to reconsideration after appeal. Now that the Court of Appeals has issued a mandate [56] affirming the judgment, the Court considers plaintiffs' renewed motion [59] and the exhibits attached thereto.

It is hereby ORDERED that the motion granted. The Court finds, pursuant to 28 U.S.C.§ 1610(c), that a reasonable period of time has elapsed since this Court's entry of judgment and the defendant's receipt of notice of that judgment. The plaintiffs may proceed with their judgment enforcement efforts, particularly

including the attachment and execution of assets that may be used in satisfaction of this Court's December 17, 2012 judgment.

IT IS SO ORDERED.

Signed by Royce C. Lamberth, U.S. District Judge, on May 19, 2014.

APPENDIX J

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 06-cv-1500 (RMC)

Sept. 26, 2008

FRANCIS GATES, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,

ORDER

For the reasons stated in the Memorandum Opinion filed simultaneously with this Order, it is hereby

ORDERED that judgment is entered in favor of Plaintiffs on their claim under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602 *et seq*.; and it is

FURTHER ORDERED that default judgment is entered in favor of Plaintiffs in the following amounts:

Economic Damages to the Estate of Jack Armstrong – $1,051,377.00

Pain and Suffering to the Estate of Jack Armstrong – $50,000,000.00

Punitive Damages to the Estate of Jack Armstrong – $150,000,000.00

Solatium to Francis Gates – $3,000,000.00

Solatium to Jan Smith – $1,500,000.00

Economic Damages to the Estate of Jack Hensley – $1,358,210.00

Pain and Suffering to the Estate of Jack Hensley – $50,000,000.00

Punitive Damages to the Estate of Jack Hensley – $150,000,000.00

Solatium to Pati Hensley – $3,000,000.00

Solatium to Sara Hensley – $3,000,000.00

IT IS FURTHER ORDERED that Plaintiffs' state law claims are **DISMISSED**. This case is closed. This is a final appealable order. See Fed. R. App. P. 4(a).

SO ORDERED.

Date: September 26, 2008

/s/

Rosemary M. Collyer
United States District
Court Judge

APPENDIX K

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 06-cv-1500 (RMC)

Aug. 23, 2011

FRANCIS GATES, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,

ORDER

The Court having considered the Motion of the Plaintiffs for an Order Under 28 U.S.C. § 1610(c) Authorizing Enforcement Of Judgment of September 26, 2008,

IT IS HEREBY ORDERED that pursuant to 28 U.S.C. § 1610(c), the Court finds that a reasonable period of time has elapsed from the entry of final judgment and notice to Syria thereof to the date of entry of this Order for attachment and execution to proceed, and accordingly, Plaintiffs are hereby authorized to enforce this Court's judgment.

IT IS SO ORDERED on this the 23[rd] day of August 2011

/s/
Rosemary M. Collyer
United States District
Court Judge

APPENDIX L

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Sept. 29, 2015

Nos. 14-3327 & 14-3344

MARY NELL WYATT, individually and as Executrix of the Estate of RONALD E. WYATT, *et al.*,
Plaintiffs-Appellants,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,

v.

FRANCIS GATES, *et al.*,
Third-Party Defendants-Appellees.

FRANCIS GATES, *et al.*,
Plaintiffs-Appellees,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendant,

v.

MARY NELL WYATT, individually and as Executrix of the Estate of RONALD E. WYATT, *et al.*,
Claimants-Appellants.

Appeals from the United States District Court for the
Northern District of Illinois, Eastern Division
Nos. 11 C 8715 and 14 C 6161 —
Virginia M. Kendall, *Judge*.

Before:

WILLIAM J. BAUER, *Circuit Judge*
JOEL M. FLAUM, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*

O R D E R

On consideration of appellants' petition for rehearing and rehearing en banc, filed on September 11, 2015, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition.

Accordingly, the petition for rehearing is **DENIED**.

APPENDIX M

STATUTES INVOLVED IN THIS PETITION

28 U.S.C. 1608(a), (c), (e) – Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or
(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or
(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or
(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form

of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and
(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

28 U.S.C. 1609 – Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

28 U.S.C. 1610 – Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or
(2) the property is or was used for the commercial activity upon which the claim is based, or
(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—
(A) which is acquired by succession or gift, or
(B) which is immovable and situated in the United States:
Provided, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or
(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or
(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or
(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon

a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or
(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or
(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune

from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and
(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f) (1)
(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)),[1] section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, regulation, or license issued pursuant

thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)

(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries—

(i) may provide such information to the court under seal; and

(ii) should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

(3) Waiver.— The President may waive any provision of paragraph (1) in the interest of national security.

(g) **Property in Certain Actions**.—

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

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

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

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

(D) whether that government is the sole beneficiary in interest of the property; or

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

(2) **United states sovereign immunity inapplicable**.— Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated

by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) **Third-party joint property holders**.—Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

28 U.S.C. 2042 – Withdrawal

No money deposited under section 2041 of this title shall be withdrawn except by order of court.

In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.

Terrorism Risk Insurance Act of 2002, § 201(a) and (d)(2), codified as a note to 28 U.S.C. 1610

(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 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable. * * *

(d) **Definitions**.— In this section, the following definitions shall apply: * * *

(2) **Blocked asset**.—The term 'blocked asset' means—

(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) [now 50 U.S.C. 4305(b)] or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702); and

(B) does not include property that—

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the

United States in connection with a transaction for which the issuance of such license has been specifically required by statute other than the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or

(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

APPENDIX N

LETTER FROM DHL TO DC DISTRICT COURT AND THE GATES PLAINTIFFS

DHL Express

November 20, 2008

US District Court for the District of Columbia
c/o Perlis Law Firm
Attention: Edward McAllister
333 Constitution Ave, NW
Washington DC 20001
Fax: (202) 955-3806

Airway bill#:	7837617815
Date Shipped:	October 23, 2008
Shipper:	US District Court for the District of Columbia
Consignee:	Ministry of Foreign Affairs Damascus Syria

Dear Mr. MacAllister,

In response to your inquiry concerning the above referenced shipment, DHL Express has traced this shipment through our shipping cycle and has ascertained the following:

This shipment was attempted to be delivered on November 2, 2008 and was refused. The consignee advised our courier that the shipment was no longer required.

DHL sincerely regrets any inconvenience that may have resulted with regards to this shipment. We value our relationship with our customers and hope you will allow us to continue providing services to your company.

Sincerely,

John Gniot
International Research Specialist
1-877-297-6031 x4891

APPENDIX O

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 06-cv-1500 (RMC)

Aug. 22, 2011

FRANCIS GATES, *et al.*,
Plaintiffs,

v.

SYRIAN ARAB REPUBLIC, *et al.*,
Defendants,

PLAINTIFFS' EMERGENCY MOTION FOR ORDER UNDER 28 U.S.C. § 1610(c) AUTHORIZING ENFORCEMENT OF JUDGMENT AND MEMORANDUM IN SUPPORT THEREOF

Pursuant to 28 U.S.C. § 1610(c) Plaintiffs Francis Gates, et al. ("Plaintiffs") hereby move this Court for an order authorizing enforcement of the final judgment entered September 28, 2008 in the amount of $412,909,587 on the basis that nearly three years have elapsed since the date of entry of appearance in this case by counsel for SYRIAN ARAB REPUBLIC (hereinafter "Syria or Defendant or Syrian Defendant") following the entry of judgment and therefore a "reasonable period of time has elapsed following the entry of judgment" and notice to Syria of the final

judgment through its appearance to appeal the judgment. The October 24, 2008 Notice of Appeal filed by Syria, through its counsel, transformed the formerly default proceeding into an actively contested case, thereby voiding any notice requirement under 28 U.S.C. § 1608(e) required for default proceedings, and entitling the Plaintiffs to entry of an Order now pursuant to 28 U.S.C. § 1610(c) permitting the commencement of enforcement proceedings.

Although 28 U.S.C. § 1608(e) requires a plaintiff to translate a default judgment and serve it upon the absent foreign sovereign, this requirement has been obviated by Syria's appearance in the case. Immediately after entry of the default judgment, Syria entered an appearance through counsel and filed an appeal of the judgment. Since that time, Syria has contesting this case vigorously and consistently. It would confound logic to require Plaintiffs to now serve the now final judgment upon Syria when over three years ago its counsel entered an appearance to appeal that very judgment, challenged the judgment at the court of appeals and now over three months have passed since the court of appeals affirmed the final judgment on May 20, 2011. *Gates v. Syrian Arab Republic*, No. 08-7118, 09-7108, 2011 U.S. App. LEXIS 10338 (D.C. Cir. May 20, 2011). What was a default judgment on September 28, 2008 can no longer be considered a default judgment, as Syria entered the proceedings on October 24, 2008, and has actively contested the judgment by appeal and through

proceedings in the District Court, resulting in the affirmation of the judgment by the court of appeals.

Counsel for Plaintiffs sought consent for this Motion from counsel for Syria on August 22, 2011. Counsel for Syria advised that Syria does not consent to the Motion. Plaintiffs file this motion on an emergency basis due to the rapidly fluctuating state of affairs in Syria and the three years taken to process the appeals in this case, which caused Plaintiffs an unusually long delay before their being able to pursue enforcement of their final judgment.

PROCEDURAL BACKGROUND

Plaintiffs brought this action on August 25, 2006 pursuant to the provisions of the Foreign Sovereign Immunities Act, ("FSIA"), codified at 28 U.S.C. § 1602, *et seq*. The Syria [*sic*] Defendants were served with process on October 30, 2006. Though served, none of the Syrian Defendants answered and the Clerk of the Court consequently entered defaults against them.

On September 26, 2008, the District Court entered an order establishing liability and damages against Syria pursuant to 28 U.S.C. § 1605A after holding a three day bench trial. [Dkt. Entry #42-43]. Plaintiffs then attempted to serve Syria notice of the final judgment on October 23, 2008 under 28 U.S.C. § 1608(a)(3). [Dkt. #47]. The attempted delivery on November 2, 2008 was refused and the driver was told "the shipment is no longer required". Exhibit 1. This would remain a truly enigmatic statement from Syria's agent in its Foreign Ministry were it not for the

timing of Syria's appeal, which occurred on October 24, 2008. [Dkt. #48]. The service of the final judgment was "no longer required" because Syria had already filed an appeal.

On October 24, 2008, Syria entered an appearance and filed a notice of appeal that challenged the District Court's jurisdiction and whether Plaintiffs had properly perfected service of the original complaint. [Dkt. Entry #48]. The appeal commenced.

On February 23, 2009, an Order was entered by the Court of Appeals, holding Syria's appeal in abeyance "pending the district court's decision whether it intends to vacate the default judgment or otherwise grant relief to Appellants." On March 6, 2009, the District Court ordered Syria to file a motion that contained all arguments for relief under any subpart of Fed. R. Civ. P. 60(b). On August 20, 2009, the District Court denied Syria's resulting Federal Rule 60(b) Motion to Vacate that argued the District Court did not have jurisdiction and that service had not been perfected. [Dkt. Entry #74-75]. Syria filed a second notice of appeal that challenged the District Court's August 20, 2009 ruling, which was consolidated with Syria's notice of appeal filed in 2008. [Dkt. Entry #48]. On May 20, 2011 the Court of Appeals affirmed the District Court's rulings, finding that the District Court possessed jurisdiction over the case, 2011 U.S. App. LEXIS 10338 at *8, that service of the complaint and summons had been perfected, *id.* at *10-11, and found that Plaintiffs need not serve Syria anew with a 28 U.S.C. § 1605A complaint. *Id.* at *15. On June 22,

2011, the mandate issued affirming the judgments of the District Court appealed from by Syria. [Dkt. Entry #90].

ARGUMENT

28 U.S.C. § 1610(c) authorizes post-judgment enforcement against foreign sovereigns, "after having determined that a reasonable period of time has elapsed following the entry of judgment" and the, "giving of any notice required under section 1608(e) of this chapter [28 U.S.C. § 1608(e)]." Post-judgment enforcement is appropriate now because more than three years have elapsed since the entry of judgment and furthermore it has been more than three months since the Court of Appeals affirmed that judgment upon appeal by Syria. No notice is required under 28 U.S.C. § 1608(e), which creates service requirements for default proceedings, as Syria appeared and actively litigated this case since October 24, 2008.

I. THE KEY CONSIDERATION UNDER 28 U.S.C. § 1610(c) IS WHETHER SYRIA HAS HAD SUFFICIENT NOTICE AND TIME TO RESPOND

Syria has had a copy of the final judgment since October 24, 2008 and the decision by the Court of Appeals affirming that judgment since May 20, 2011. Syria engaged counsel and authorized the taking of an appeal and their counsel entered an appearance and filed an appeal of the judgment on October 24, 2008 and has vigorously contested this case since that date. Accordingly, Syria and its counsel received a copy of

the judgment and took the necessary action to preserve their appellate rights. 28 U.S.C. § 1610(c) requires the passage of a "reasonable period of time" between the receipt of notice by a foreign sovereign before allowing post-judgment attachment or execution. In *NED Chartering and Trading, Inc. v. Republic of Pakistan*, Chief Judge Royce C. Lamberth defined a "reasonable period of time":

> the defendants argue that the plaintiff's writ, in being issued 21 days after the entry of judgment, was not issued after a "reasonable period of time ha[d] elapsed."

130 F. Supp. 2d 64, 66 (D.D.C. 2001). The standard for determining whether post-judgment levy and execution may be directed against a foreign sovereign judgment-debtor under 28 U.S.C. § 1610(c) is one of reasonableness, which is partially determined by whether the foreign sovereign has been allowed sufficient time to engage in a executive or legislative process to consider, pay, or decline payment of the judgment. *Id.* at 67 *citing to* H.R. Rep. 1487, 94th Cong., 2d Sess. 1, 30 (1976). A period of 2-3 months is considered a "reasonable time". *Id. citing Gadsby & Hannah,* 698 F. Supp. at 486 (finding two months to be a "reasonable period of time"); *Ferrostaal Metals Corp. v. S.S. Lash Pacifico,* 652 F. Supp. 420, 423 (S.D.N.Y. 1987) (three months). In *NED Chartering and Trading, Inc.*, Judge Lamberth ruled that a period of six weeks "is a sufficient period of time to satisfy the requirements of section 1610(c)." *Id.* In this case, Syria has been aware of the final judgment since

October 24, 2008 and the Order of the Court of Appeals affirming that judgment since May 20, 2011. Thus, it has been more than three years since entry of the judgment and more than ninety days since the affirmation of the Court's final judgment, which is consistent with time frame considered "reasonable" by the *NED Chartering* court. *See*, 130 F. Supp. 2d at 67.

28 U.S.C. § 1610(c) also requires the, "giving of any notice required under section 1608(e) of this chapter [28 U.S.C. § 1608(e)]." 28 U.S.C. § 1608(e) states that, "a copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section." However, this has not been a default proceeding since the filing of a notice of appeal by Syria's counsel to challenge the final judgment, followed by three years of active litigation regarding that judgment, resulting in the May 20, 2011 Order by the Court of Appeals affirming the judgment. Syria obviously has undertaken a consultative process with its counsel regarding the final judgment during these three years of litigation regarding the judgment, which satisfies the primary purpose of 28 U.S.C. § 1608(e) to ensure that a foreign sovereign has sufficient notice of a judgment entered against it.

Unlike the circumstances found surrounding the issuance of most default judgments, Syria has engaged counsel who entered their appearance and noticed an appeal early in the post-judgment setting. For the next three years, Syria has had the assistance of counsel who are internationally recognized and

well-experienced in FSIA state-sponsored terrorism litigation. Syria's counsel has represented Syrian defendants in several cases brought against them for their sponsorship of terrorism against US citizens. Syria's quick action in this case to maintain its appellate rights confirm that it is informed in its understanding of the final judgment which it has appealed.

One of the factors that Judge Lamberth looked to in *NED Chartering,* was whether the foreign sovereign judgment debtor had had time to pay the judgment, if that was its intention. F. Supp. 2d at 67. Foreign sovereigns act through their bureaucracies and if the foreign government intends to pay the judgment, it should be given time to do so. *Id.* In this case, Syria has appealed the judgment and displayed no intention to pay it. Counsel has had more than enough time to inform Syria of the ramifications of this judgment under 28 U.S.C. § 1605A. Even if Syria intended to pay the judgment, which is not the case, it has had more than sufficient time therefore to take appropriate internal action, or at least communicate to Plaintiffs that a payment is being arranged. However, Syria has not communicated any intention of paying this judgment.

CONCLUSION

Post-judgment enforcement is appropriate now because more than three years have elapsed since the entry of judgment and three months since the Court

of Appeals affirmed that judgment and no further notice is required under 28 U.S.C. § 1608(e), which addresses default proceedings and Syria has actively litigated this case since October 24, 2008.

Plaintiffs respectfully request that this Court grant the Motion for order authorizing and allowing post-judgment enforcement pursuant to 28 U.S.C. § 1610(c).

August 22, 2011

/s/

Steven R. Perles (No. 326975)
Edward MacAllister (No. 494558)
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