No.

IN THE

Supreme Court of the United States

JENNY RUBIN, ET AL.,

Petitioners,

v.

ISLAMIC REPUBLIC OF IRAN, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 1609 of the Foreign Sovereign Immunities Act of 1976 ("FSIA") provides that the property of a foreign state and its agencies and instrumentalities is immune from execution and attachment unless that property falls within a statutory exception to immunity. *See* 28 U.S.C. § 1609. The Seventh Circuit interpreted this immunity as imposing limitations on discovery in aid of execution; it concluded, contrary to decisions from the Second and Ninth Circuits, that such discovery is limited under the FSIA to "specific property the plaintiff has identified" as potentially subject to attachment. Applying this test, the Seventh Circuit reversed an order compelling the Islamic Republic of Iran to provide general discovery regarding its assets in the United States, which Petitioners had requested in order to obtain the information necessary to enforce an outstanding judgment against Iran.

The question presented is whether Section 1609 of the FSIA permits discovery in aid of execution only with respect to specific property identified by the plaintiff as potentially subject to attachment.

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the following are parties to this proceeding:

Debra Rubin, Daniel Miller, Abraham Mendelson, Stuart Hersch, Renay Frym, Noam Rozenman, Elena Rozenman, and Tzvi Rozenman are petitioners in this Court and were plaintiffs-appellees below.

Field Museum of Natural History and University of Chicago, the Oriental Institute, were intervenors below and citation respondents in the district court, and they are respondents in this Court.

Deborah D. Peterson, as Personal Representative of the Estate of James C. Knipple, intervened in the district court while this case was pending on appeal, along with the other plaintiffs who were awarded damages in *Peterson* v. *Islamic Republic of Iran*, Nos. 01-2094 & 01-2684, Dkt. Entry 228, 515 F. Supp. 2d 25, 60-67 (D.D.C. Sept. 7, 2007); *see also* App., *infra*, 11a n.5. A list of these plaintiffs is reproduced in the Appendix, *infra*, at 128a-141a. Although they were intervenors-appellees below and are respondents in this Court, the Seventh Circuit concluded that "[t]heir presence . . . has no bearing on the merits of this appeal." *Id.* at 11a n.5.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Jenny Rubin, Debra Rubin, Daniel Miller, Abraham Mendelson, Stuart Hersch, Renay Frym, Noam Rozenman, Elena Rozenman, and Tzvi Rozenman respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-38a) is reported at 637 F.3d 783. The memorandum opinion and order of the magistrate judge (App., *infra*, 41a-82a) is unpublished but is electronically reported at 2008 WL 192321. The orders of the district court overruling objections to the magistrate judge's order (App., *infra*, 83a-92a) and granting partial reconsideration (*id.* at 93a-94a) are unpublished but are electronically reported at 2008 WL 2501996 and 2008 WL 2502039, respectively. The order of the court of appeals denying rehearing en banc (App., *infra*, 95a-96a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on March 29, 2011. A timely petition for rehearing en banc was denied on June 6, 2011. The Chief Justice extended the time in which to file a petition for a writ of certiorari to and including October 6, 2011. *See* No. 11A227. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1330, 1602 *et seq.*, are reproduced in the Appendix, *infra*, at 97a-127a.

STATEMENT

The Foreign Sovereign Immunities Act of 1976 ("FSIA") provides two primary forms of immunity for foreign states and their agencies and instrumentalities: jurisdictional immunity from suit, 28 U.S.C. § 1604, and non-jurisdictional immunity from post-judgment attachment and execution, *id.* § 1609, both of which are subject to various statutory exceptions. This case raises the important question whether American judgment creditors who have successfully sued a foreign state under one of its exceptions to immunity from suit are precluded by attachment immunity from obtaining discovery into the identity and location of the foreign state's assets in the United States.

The Seventh Circuit held below that, under the FSIA, "discovery in aid of execution is limited to the specific property the plaintiff has identified" as potentially subject to attachment, and thus that a district court "cannot compel a foreign state to submit to general discovery about all its assets in the United States." App., *infra*, 4a, 32a. That decision cannot be reconciled with the Second Circuit's decisions in *First City, Texas-Houston, N.A.* v. *Rafidain Bank*, 150 F.3d 172 (2d Cir. 1998), and *First City, Texas-Houston, N.A.* v. *Rafidain Bank*, 281 F.3d 48 (2d Cir. 2002), which held that discovery in aid of execution proceeds as usual under the Federal Rules of Civil Procedure once a foreign state's immunity from suit has been overcome, or with the Ninth Circuit's decision in *Richmark Corp.* v. *Timber Falling Consultants*, 959 F.2d 1468 (9th Cir. 1992), which upheld a general-assets discovery order against the arm of a foreign state. The Court should grant certiorari to resolve this circuit split on the scope of discovery

available to judgment creditors seeking information about a foreign state's assets in the United States.

1. Congress enacted the FSIA in 1976 to provide a "comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies, or instrumentalities." *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 488 (1983). The statute embraced a "restrictive theory of sovereign immunity," previously articulated by the State Department, that displaced the earlier practice of "generally grant[ing] foreign sovereigns complete immunity from suit in the courts of this country." *Id.* at 486, 488.

Under Section 1604 of the FSIA, "a foreign state shall be immune from the jurisdiction of the courts of the United States . . . except as provided in sections 1605 to 1607." 28 U.S.C. § 1604; *see also id.* § 1603(a) (defining "foreign state" to include "an agency or instrumentality of a foreign state"). Among other exceptions, the FSIA includes a terrorism provision: "A foreign state shall not be immune from the jurisdiction of courts of the United States" where "money damages are sought against a foreign state for personal injury or death that was caused by an act of . . . extrajudicial killing," or "the provision of material support or resources for such an act." 28 U.S.C. § 1605A (formerly 28 U.S.C. § 1605(a)(7)).

"If one of the specified exceptions [to immunity from suit] applies," then "a federal district court may exercise subject-matter jurisdiction" over the case. *Verlinden*, 461 U.S. at 489. In such a case, the FSIA provides that, with the exception of punitive damages, "the foreign state shall be liable in the same

manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606.

The FSIA contains separate provisions governing post-judgment attachment and execution. In particular, Section 1609 provides that "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. § 1609. The statutory exceptions to attachment immunity differ from those applicable to a foreign state's immunity from suit. As relevant here, Section 1610(a)(7) creates an exception to attachment immunity for "[t]he property in the United States of a foreign state . . . used for a commercial activity in the United States" if "the judgment [sought to be enforced] relates to a claim for which the foreign state is not immune under section 1605A" (*i.e.*, the terrorism exception). *Id.* § 1610(a)(7).

Although the FSIA contains detailed provisions governing immunity from suit and immunity from attachment and execution, "[t]he only section in the FSIA that directly addresses discovery" (App., *infra*, 24a n.10) simply permits stays in certain cases involving terrorism where discovery would "significantly interfere with a criminal investigation or prosecution, or a national security operation." 28 U.S.C. § 1605(g). For other discovery issues, however, "Congress kept in place a court's normal discovery apparatus in FSIA proceedings." *FG Hemisphere Assocs., LLC* v. *Democratic Republic of Congo*, 637 F.3d 373, 378 (D.C. Cir. 2011); *see also*, *e.g.*, H.R. Rep. No. 94-1487, at 23 (1976) (noting that the FSIA "does not attempt to deal with questions of discovery"), *reprinted in* 1976 U.S.C.C.A.N. 6604, 6621.

2. On September 4, 1997, Hamas orchestrated a triple suicide bombing on a crowded street in Jerusalem. App., *infra*, 4a. Petitioners are American citizens who were "grievously wounded in the September 4, 1997 bombing or suffered severe emotional and loss-of-companionship injuries as a result of being closely related to those who were physically hurt." *Ibid.*

Petitioners filed suit against the Islamic Republic of Iran in the United States District Court for the District of Columbia, alleging that Iran is responsible for the bombings because of the training and support it provided to Hamas. *See Campuzano* v. *Islamic Republic of Iran*, 281 F. Supp. 2d 258, 260 (D.D.C. 2003). Although Iran was properly served, it failed to appear and was held in default. *Id.* at 261. Accordingly, the district court conducted an evidentiary hearing to determine whether Petitioners could "establis[h] [their] claim[s] or right[s] to relief by evidence satisfactory to the court," 28 U.S.C. § 1608(e)—a precondition under the FSIA to entering a default judgment against a foreign state.

Following the evidentiary hearing, the district court found that Petitioners "established, by the requisite 'evidence satisfactory to the court' and by clear and convincing evidence, the court's subject-matter jurisdiction and the liability of [Iran] for the [Petitioners'] personal injuries caused by the September 4, 1997 bombing." *Campuzano*, 281 F. Supp. 2d at 270 (quoting 28 U.S.C. § 1608(e)).

The district court concluded that it had subject-matter jurisdiction under the terrorism exception because "the bombing was an act of extrajudicial killing that caused the plaintiffs' injuries." *Campuzano*, 281 F. Supp. 2d at 269-70. And Iran was liable for that

extrajudicial killing because it "directly provided material support and resources to Hamas" for the "specific purpose of carrying out acts of extrajudicial killing, including the bombing at issue here." *Id.* at 270. Indeed, Hamas "could not have carried out the bombing" without the "material support and resources" that Iran provided. *Id.* at 262. The district court awarded $71.5 million in compensatory damages. *See id.* at 274-77; *see also* App., *infra*, 5a.

3. Petitioners registered their judgment with the United States District Court for the Northern District of Illinois. App., *infra*, 2a. They sought to attach and execute on two collections of Persian artifacts owned by Iran and currently on loan to the University of Chicago's Oriental Museum, as well as a third collection of artifacts held by the Field Museum of Natural History that Petitioners allege was stolen from Iran in the 1920s and 1930s. *Ibid.* Petitioners argued, among other things, that the collections were attachable because they were "used for a commercial activity" and the underlying judgment was entered under the terrorism exception to the FSIA. 28 U.S.C. § 1610(a)(7).

Although the museums claimed that the collections were immune from attachment, the district court held that attachment immunity is personal to the foreign state and must affirmatively be pleaded. App., *infra*, 3a. Iran thereafter appeared in the litigation and asserted attachment immunity under Section 1609. *Ibid.*

Following Iran's appearance, Petitioners served it with discovery requests, including a request for production of documents under Federal Rule of Civil Procedure 34 and a notice of deposition under Rule 30(b)(6). App., *infra*, 9a. In addition to seeking in-

formation regarding the collections of Persian antiquities, Petitioners requested "'[a]ll documents . . . concerning any and all tangible and intangible assets . . . , in which Iran and/or any of Iran's agencies and instrumentalities has any legal and/or equitable interest, that are located within the United States.'" *Ibid.* They similarly sought to depose an officer or agent of Iran regarding any Iranian assets in the United States. *Ibid.* Iran moved for a protective order, arguing that the FSIA precluded general discovery into its assets in the United States. *Id.* at 9a-10a.

The magistrate judge denied Iran's motion for a protective order. He began by noting that the "parameters of discovery in this enforcement proceeding are defined by the Federal Rules of Civil Procedure in conjunction with the applicable rules of substantive law." App., *infra*, 49a. In particular, the FSIA "defines the subset of Iran's assets that is susceptible to attachment or execution," and the federal rules in turn "define the scope of discovery to which [Petitioners] are entitled." *Id.* at 70a. Thus, although "the substantive law of immunity defines what information may be 'relevant,' and therefore discoverable," Petitioners are "entitled to discover all information that is reasonably calculated to lead to admissible evidence." *Ibid.*

"By inquiring about Iran's assets generally," the magistrate judge noted, "the Plaintiffs, and ultimately the Court, will be able to determine which of those assets fall within the domain of assets that are amenable to attachment and execution" under the FSIA. App., *infra*, 70a. He therefore declined to "limit [Petitioners'] discovery requests to those categories of assets that are reachable under the FSIA," which

would "allo[w] Iran to be the judge of which assets are immune before providing any discovery." *Ibid.*

Iran objected to the magistrate judge's order, and the district court overruled those objections. Although the court initially believed that the discovery requests at issue did not include general-asset discovery, *see* App., *infra*, 92a, it revisited the issue—and upheld general-asset discovery—in response to a motion for reconsideration, *see id.* at 93a-94a. Thus, the district court explained, "Iran remains obligated to respond to the requests for discovery that were the subject of its objection, including discovery relating to its assets in the United States." *Id.* at 94a.

4. The Seventh Circuit reversed. The court emphasized that "the FSIA's immunity provisions aim to protect foreign sovereigns from the burdens of litigation, including the cost and aggravation of discovery." App., *infra*, 23a. It therefore "note[d]" a "'tension between permitting discovery to substantiate exceptions to statutory foreign sovereign immunity and protecting a sovereign's or sovereign agency's legitimate claim to immunity from discovery.'" *Id.* at 24a (quoting *Arriba Ltd.* v. *Petroleos Mexicanos*, 962 F.2d 528, 534 (5th Cir. 1992)). Although that tension had been recognized by *Arriba* in the context of "*jurisdictional* immunity" under Section 1604, the Seventh Circuit believed that "the same tension is present when *attachment* immunity under [Section] 1609 is at stake." *Ibid.*

The court attempted to resolve the perceived tension by noting that "property of a foreign state in the United States is *presumed* immune from attachment and execution." App., *infra*, 26a. "To overcome the presumption of immunity," the court noted, "the plaintiff must identify the particular foreign-state

property he seeks to attach and then establish that it falls within a statutory exception." *Ibid.* According to the Seventh Circuit, "[t]he district court's general-asset discovery order turns this presumptive immunity on its head." *Ibid.*

The Seventh Circuit concluded that "under the FSIA a plaintiff seeking to attach the property of a foreign state in the United States must identify the specific property that is subject to attachment and plausibly allege that an exception to [Section] 1609 attachment immunity applies." App., *infra*, 32a. "If the plaintiff does so, discovery in aid of execution is limited to the specific property the plaintiff has identified." *Ibid.* The Seventh Circuit thus vacated "[t]he general-asset discovery order issued in this case" as "incompatible" with its interpretation of the FSIA. *Ibid.*[1]

With five of the Seventh Circuit's ten active judges recused, the court denied rehearing en banc. *See* App, *infra*, 96a & n.1.

REASONS FOR GRANTING THE PETITION

According to the Seventh Circuit, judgment creditors who have successfully sued a foreign state may obtain "discovery in aid of execution" only with respect to the "specific property the plaintiff has identified" as arguably subject to attachment. App., *infra*, 32a. This holding incorrectly interprets the FSIA as imposing a freestanding limitation on discovery in

[1] The Seventh Circuit also held that the district court erred in concluding that it could consider immunity only if Iran appeared and asserted it. App., *infra*, 32a-38a. According to the Seventh Circuit, "[t]he immunity inheres in the property and does not depend on an appearance and special pleading by the foreign state itself." *Id.* at 37a.

attachment proceedings based on the foreign state's presumptive immunity from the burdens of litigation—even though, by definition, the judgment creditor has *already* overcome the foreign state's jurisdictional immunity from suit, and thus its right to be free from those very burdens.

In stark contrast to the Seventh Circuit, the Second Circuit has recognized that discovery in FSIA attachment proceedings is governed by the same rules that apply in other proceedings, and the Ninth Circuit has upheld a general-asset discovery order even broader than the one rejected by the Seventh Circuit here. If this case had been brought in the Second or Ninth Circuits, therefore, the discovery order would have been affirmed, whereas it was reversed by the Seventh Circuit. This Court's review is warranted to resolve this circuit split and provide much-needed guidance regarding the scope of discovery available to judgment creditors under the FSIA.

I. THE SEVENTH CIRCUIT INCORRECTLY INTERPRETED THE FOREIGN SOVEREIGN IMMUNITIES ACT AS LIMITING DISCOVERY IN EXECUTION PROCEEDINGS.

Under Federal Rule of Civil Procedure 69(a)(2), "the judgment creditor . . . may obtain discovery from any person—including the judgment debtor"—under the same rules that govern pre-trial discovery. *See*, *e.g.*, *Natural Gas Pipeline Co.* v. *Energy Gathering Inc.*, 2 F.3d 1397, 1405 (5th Cir. 1993). Under Rule 26(b)(1), in turn, "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." The district court concluded that Petitioners' request for general-asset discovery satisfies this standard because, "[b]y inquiring about Iran's assets generally, [Petitioners], and

ultimately the Court, will be able to determine which of those assets fall within the domain of assets that are amenable to attachment and execution." App., *infra*, 70a.

The FSIA does not expressly impose any limitations on the scope of discovery in execution proceedings; indeed, it does not, by its terms, limit the scope of discovery at all. Rather, "Congress kept in place a court's normal discovery apparatus in FSIA proceedings." *FG Hemisphere Assocs., LLC* v. *Democratic Republic of Congo*, 637 F.3d 373, 378 (D.C. Cir. 2011). Thus, the Seventh Circuit was forced to identify some *other* basis beyond the text of the statute for limiting discovery.

A. Reasoning by analogy to "other immunities," the Seventh Circuit concluded that "the FSIA's immunity provisions aim to protect foreign sovereigns from the burdens of litigation, including the cost and aggravation of discovery." App., *infra*, 23a-24a. As the Seventh Circuit noted, some courts have invoked this reasoning to limit discovery in the context of a foreign state's jurisdictional immunity from suit to those issues that bear directly on purported exceptions to that immunity. *See*, *e.g.*, *Arriba Ltd.* v. *Petroleos Mexicanos*, 962 F.2d 528, 534 (5th Cir. 1992), *quoted in* App., *infra*, 24a. But the Seventh Circuit is wrong that the same reasoning applies equally to attachment immunity.

1. The theory behind limiting discovery in the context of immunity from suit is based on the "nature of FSIA immunity, which is immunity not only from liability, but from the burdens of litigation as well." *Kelly* v. *Syria Shell Petroleum Dev. B.V.*, 213 F.3d 841, 847 (5th Cir. 2000); *see also*, *e.g.*, *Foremost-McKesson, Inc.* v. *Islamic Republic of Iran*, 905 F.2d

438, 449 (D.C. Cir. 1990) ("immunity involves protection from suit, not merely a defense to liability"). The same reasoning animates discovery limitations in cases involving the "other immunities" discussed by the Seventh Circuit. *See*, *e.g.*, *Behrens* v. *Pelletier*, 516 U.S. 299, 308 (1996) (qualified immunity provides "a right, not merely to avoid standing trial, but also to avoid the burdens of such pretrial matters as discovery" (emphasis and internal quotation marks omitted)).

Once the plaintiff has overcome a foreign state's jurisdictional immunity from suit, however, the foreign state no longer has any statutory "protection from the inconvenience of suit." *Dole Food Co.* v. *Patrickson*, 538 U.S. 468, 479 (2003). To the contrary, the FSIA expressly provides that, in such cases, "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606.

In this case, for instance, the district court in the underlying lawsuit specifically determined that, under the terrorism exception to the FSIA, Iran is not entitled to immunity from suit. *See Campuzano* v. *Islamic Republic of Iran*, 281 F. Supp. 2d 258, 270 (D.D.C. 2003); *see also* App., *infra*, 5a, 22a. That conclusion forecloses any further argument from Iran that the resulting proceedings—including the enforcement proceeding at issue here—somehow undermine any right to be free from the burdens of litigation. *See* App., *infra*, 78a ("Congress obviously did not intend Iran to be free from the burdens of litigation in cases such as this, where an express exception to immunity applied.").

To be sure, the foreign state's assets might remain protected from attachment and execution even

where it is not immune from suit. That is a necessary consequence of the fact that the exceptions to attachment immunity are different from the exceptions to jurisdictional immunity. *See*, *e.g.*, *De Letelier* v. *Republic of Chile*, 748 F.2d 790, 798-79 (2d Cir. 1984). But the fact that a judgment creditor ultimately might not be able to *attach* the foreign state's assets does not mean that he should be precluded from *discovery* to identify those assets in the first place. Particularly where, as here, the *only* form of immunity still at issue is attachment immunity, there is no sound basis for imposing limitations on that discovery under the FSIA.

2. The distinction between attachment immunity and jurisdictional immunity is well illustrated by the Second Circuit's decision in *First City, Texas-Houston, N.A.* v. *Rafidain Bank* (*"Rafidain I"*), 150 F.3d 172 (2d Cir. 1998).

In *Rafidain I*, First City sued the Central Bank of Iraq and Rafidain Bank, a commercial bank wholly owned by the Iraqi government, after Iraq repudiated its foreign debts in 1990, including debt owed to First City by Rafidain. It was "undisputed that both Rafidain and [the Central Bank] were 'agenc[ies] or instrumentalit[ies] of a foreign state'" under the FSIA. 150 F.3d at 174 (quoting 28 U.S.C. § 1603) (second and third alterations in original).

Although First City obtained default judgments against both entities, the Central Bank—but not Rafidain—successfully moved to set aside the judgment against it and then moved to dismiss under the FSIA. 150 F.3d at 174. First City conceded that the Central Bank "does not fit within an FSIA exception to sovereign immunity" and instead argued that the Central Bank "was effectively Rafidain's 'alter ego,'"

in which case the Central Bank would be subject to the court's jurisdiction "to the same extent as Rafidain." *Ibid.*

The district court dismissed First City's claims without permitting full discovery, emphasizing "the comity concerns implicated by allowing jurisdictional discovery from a foreign sovereign." 150 F.3d at 176. The Second Circuit reversed. It acknowledged that "the district court had in mind the appropriate considerations in addressing the question of discovery from a foreign sovereign." *Id.* at 177. Nonetheless, the Second Circuit concluded that, "by focusing exclusively on [the Central Bank's] immunity," the district court "fail[ed] to recognize that these comity concerns do not apply to Rafidain." *Ibid.*

Because the district court had subject-matter jurisdiction over Rafidain and had entered judgment against it, the Second Circuit held, "allowing First City to seek further discovery from Rafidain would not intrude upon the sovereign immunity, if any, of Rafidain." 150 F.3d at 177. "The district court should have permitted full discovery against Rafidain, which would have allowed First City a fair opportunity to conduct jurisdictional discovery without further impinging on [the Central Bank's] immunity." *Ibid.*

Thus, although the Second Circuit acknowledged that the scope of discovery against the Central Bank might be limited, it did not recognize any comparable limitations in First City's ability to obtain discovery against its judgment debtor Rafidain. The Seventh Circuit's facile conclusion that the "same" discovery concerns are raised by attachment immunity as by immunity from suit (App., *infra*, 24a) fails to grasp the critical distinction drawn in *Rafidain I*.

B. The Seventh Circuit also complained that "[d]iscovery orders that are broad in scope and thin in foundation unjustifiably subject foreign states to unwarranted litigation costs and intrusive inquiries about their American-based assets." App., *infra*, 27a. For that reason, the court noted, some cases have suggested that "'[d]iscovery should be ordered circumspectly and only to verify allegations of specific facts crucial to an immunity determination.'" *Ibid.* (quoting *EM Ltd.* v. *Republic of Argentina*, 473 F.3d 463, 486 (2d Cir. 2007), *Af-Cap, Inc.* v. *Chevron Overseas (Congo) Ltd.*, 475 F.3d 1080, 1095-96 (9th Cir. 2007), and *Conn. Bank of Commerce* v. *Republic of Congo*, 309 F.3d 240, 260 n.10 (5th Cir. 2002)). The Seventh Circuit erred, however, in transforming this discretionary guidance to district courts in ruling on discovery requests into an absolute bar on general-asset discovery under the FSIA.

As the Second Circuit noted in *Rafidain I*, a district court can appropriately "weig[h] the benefits of additional discovery against the intrusiveness to [the foreign state] of permitting such discovery." 150 F.3d at 175. In *Af-Cap*, for instance, the Ninth Circuit affirmed a district court's decision to deny "discovery requests [that] had 'gone too far.'" 475 F.3d at 1096. Particularly where the *only* issue in the case is whether specific property falls within a particular exception to attachment immunity, as in each of the cases cited by the Seventh Circuit, it could be appropriate to narrow the focus of discovery to that particular property. *See*, *e.g.*, *Conn. Bank of Commerce*, 309 F.3d at 260 n.10 (remanding for the district court to determine whether specific property satisfied a particular exception to the FSIA and indicating that the district court should limit discovery accordingly).

But this balancing inquiry is not "based on an interpretation of FSIA preemption." *Af-Cap Inc.*, 475 F.3d at 1096. Instead, it is a feature of the district court's "extensive control over the discovery process." *Flatow* v. *Islamic Republic of Iran*, 308 F.3d 1065, 1074 (9th Cir. 2002). That is precisely why the district court's determination is subject to review only for abuse of discretion. *See Rafidain I*, 150 F.3d at 175; *see also*, *e.g.*, *Af-Cap Inc.*, 475 F.3d at 1096 ("*de novo* review is not required").

The Seventh Circuit, in contrast, interpreted the FSIA as precluding general-asset discovery *as a matter of law*. *See*, *e.g.*, App., *infra*, 18a (characterizing the issue as "interpretation of the FSIA" and reviewing that issue de novo). And its conclusion was not that the district court abused its discretion in ordering discovery given the parties' comparative interests, but that it committed *legal error* in doing so. *See id.* at 32a ("The general-asset discovery order issued in this case is incompatible with the FSIA."). That conclusion is incorrect.

II. THE SEVENTH CIRCUIT'S DECISION CREATES A CIRCUIT SPLIT WITH THE SECOND AND NINTH CIRCUITS.

As the Seventh Circuit acknowledged, "Congress passed the FSIA for the purpose of providing a clear, uniform set of standards to govern foreign-sovereign immunity determinations." App., *infra*, 20a. The Seventh Circuit's decision, however, undermines this congressionally prescribed uniformity by interpreting the FSIA to impose limitations on post-judgment discovery that have been rejected by the Second and Ninth Circuits. This Court's review is warranted to reconcile these conflicting decisions.

A. As discussed above, the Second Circuit held in *Rafidain I* that "permit[ting] full discovery" against a judgment debtor "would not intrude upon [its] sovereign immunity." 150 F.3d at 177. That decision cannot be reconciled with the Seventh Circuit's conclusion that, under the FSIA, "discovery in aid of execution is limited to the specific property the plaintiff has identified." App., *infra*, 32a. Even if there were any conceivable doubt on this point, it would be eliminated by the Second Circuit's subsequent decision in *First City, Texas-Houston, N.A.* v. *Rafidain Bank* ("*Rafidain II*"), 281 F.3d 48 (2d Cir. 2002).

Following the Second Circuit's remand in *Rafidain I*, First City served discovery requests on Rafidain, which ignored them. *See Rafidain II*, 281 F.3d at 51. The district court compelled discovery and held Rafidain in contempt when it continued to ignore the discovery requests. *See ibid.* Over seven months later, Rafidain appeared and moved to vacate the contempt order for lack of subject-matter jurisdiction. *See ibid.* The district court denied the motion, and Rafidain appealed. *See id.* at 51-52.

The Second Circuit affirmed. Once First City had established an exception to Rafidain's immunity from suit, the court explained, that is sufficient to "sustain the court's jurisdiction through proceedings to aid collection of a money judgment rendered in the case, including discovery pertaining to the judgment debtor's assets." 281 F.3d at 53-54. Thus, "where subject matter jurisdiction under the FSIA exists to decide a case, jurisdiction continues long enough to allow proceedings in aid of any money judgment that is rendered in the case," including discovery. *Id.* at 54.

Moreover, the Second Circuit emphasized, "[d]iscovery of a judgment debtor's assets is conducted routinely under the Federal Rules of Civil Procedure." *Rafidain II*, 281 F.3d at 54. In particular, the Second Circuit cited with approval the Eighth Circuit's conclusion that "[t]he remedies of a judgment creditor include the ability to question the judgment debtor about the nature and location of assets that might satisfy the judgment." *Aviation Supply Corp.* v. *R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 317 (8th Cir. 1993), *quoted in Rafidain II*, 281 F.3d at 54.

The Seventh Circuit's decision below runs directly contrary to this reasoning. Whereas the Second Circuit would permit discovery against a foreign-state judgment creditor to proceed as usual under the federal rules, the Seventh Circuit instead viewed such discovery as strictly limited by the FSIA.

The Seventh Circuit believed that *Rafidain II* could be distinguished on the ground that the judgment debtor was an "*instrumentality* of a foreign sovereign," and "the immunity exceptions in the FSIA for property owned by an *instrumentality* of a foreign state are much broader than the exceptions for property owned by the foreign state itself." App., *infra*, 29a-30a. But the Seventh Circuit never explained how this purported distinction is relevant.

The FSIA specifically includes "an agency or instrumentality of a foreign state" within the definition of "foreign state." 28 U.S.C. § 1603(a). For this reason, an instrumentality of a foreign state is presumptively immune from attachment under Section 1609—just like the foreign state itself. If the Seventh Circuit were correct that a foreign state's presumptive immunity from attachment is sufficient to preclude full discovery into its assets, therefore, that

same reasoning would similarly preclude such discovery from an instrumentality of the foreign state.

The critical distinction between this case and *Rafidain II* is not that foreign states enjoy broader attachment immunity than their instrumentalities, but instead that the Seventh Circuit viewed that attachment immunity as giving rise to non-statutory limitations on discovery, whereas the Second Circuit in *Rafidain II* did not.

B. The Seventh Circuit's interpretation of the FSIA is also inconsistent with the Ninth Circuit's opinion in *Richmark Corp.* v. *Timber Falling Consultants*, which upheld an order requiring a Chinese state-owned company to provide "discovery [regarding its] assets worldwide" that was designed to "identif[y] [the company's] current assets in order to execute [a] judgment." 959 F.2d 1468, 1471, 1475 (9th Cir. 1992).

The plaintiff in *Richmark*—Timber Falling Consultants—obtained a $2.2 million default judgment against Beijing Ever Bright Industrial Co., "an arm of the [People's Republic of China] government." 959 F.2d at 1471-72. Ever Bright appealed this judgment to the Ninth Circuit but did not post a supersedeas bond. While the appeal was pending, TFC served a "number of discovery requests and interrogatories which sought to identify [Ever Bright's] assets worldwide." *Id.* at 1472.

The district court compelled discovery, and Ever Bright responded with "written notification" from the Chinese government that "almost all of its financial information was classified a state secret and could not be disclosed." 959 F.2d at 1472. The district court again ordered Ever Bright to comply with the discovery requests and imposed contempt sanctions

when it failed to do so. *Id.* at 1472-73. Ever Bright appealed.

The Ninth Circuit affirmed the discovery orders and sanctions over Ever Bright's objection that doing so "would violate its 'immunity' from execution" under the FSIA. 959 F.2d at 1477.[2] Because it had been "ordered by the Chinese government to withhold the information," Ever Bright protested, the only way it could avoid "having to violate either the district court's orders or the PRC's laws" would be to "post a supersedeas bond" in its appeal of the default judgment or simply "pay the judgment." *Ibid.*

The Ninth Circuit acknowledged that the FSIA "does not empower United States courts to levy on assets located outside the United States." 959 F.2d at 1477 (citing 28 U.S.C. § 1610). But "[t]hat provision merely limits the power of United States courts" rather than "vest[ing] in [Ever Bright] a 'right' not to pay a valid judgment against it." *Id.* at 1477-78. "TFC can seek to execute the judgment in whatever foreign courts have jurisdiction over [Ever Bright's] assets," the Ninth Circuit continued, but "TFC needs discovery to determine which courts those are." *Id.* at 1478. Although "Beijing may be *able* as a practical matter to conceal its assets from the district court and therefore avoid execution of TFC's judgment," "it has no *right* to do so." *Ibid.*

Unlike the Seventh Circuit's decision below, the Ninth Circuit's holding in *Richmark* would permit

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[2] The Ninth Circuit modified the contempt award in one respect that is irrelevant here: Although the district court had ordered Ever Bright to pay the sanctions to TFC, the Ninth Circuit concluded that they should instead be payable to the court. *See Richmark*, 959 F.2d at 1482.

the discovery requested by Petitioners. Indeed, the discovery sought here, which is limited to Iran's assets in the United States, is far narrower than the "worldwide" discovery permitted in *Richmark*. And while the Seventh Circuit required Petitioners to identify the "specific property that is subject to attachment," App., *infra*, 32a, the Ninth Circuit permitted broad discovery into Ever Bright's assets even though TFC had not identified any specific property—in the United States or elsewhere—that it could arguably have attached.

The Seventh Circuit's only response to *Richmark* is that "Ever Bright was an instrumentality of the People's Republic of China, and the discovery order at issue in *Richmark* was limited to Ever Bright's assets." App., *infra*, 29a. But this is just as unpersuasive in attempting to distinguish *Richmark* as it was for *Rafidain II*: Both foreign states and their instrumentalities are presumptively immune from attachment. *See supra* at 18-19.

* * *

The Second and Ninth Circuits would have affirmed the general-asset discovery order at issue here as consistent with the FSIA; the Seventh Circuit, adopting a different interpretation of the statute, invalidated it. This Court's review is warranted to resolve this conflict.

III. THE QUESTION PRESENTED IS IMPORTANT.

"[T]he courts of the United States undoubtedly have a vital interest in providing a forum for the final resolution of disputes and for enforcing these judgments." *Reinsurance Co. of Am., Inc.* v. *Administratia Asigurarilor de Stat*, 902 F.2d 1275, 1280 (7th Cir. 1990). The FSIA represents Congress's at-

tempt to balance this weighty interest with the comity interests of foreign states. By limiting the ability of American judgment creditors to obtain the information necessary to enforce their judgments against foreign states, however, the Seventh Circuit has shifted the balance away from the congressional design—and admittedly imposed additional "cost[s]" on "Americans who have been injured in tort or contract by foreign states or their agencies or instrumentalities." App., *infra*, 32a.

A. The stakes in this case and many others like it could not be higher. Following Congress's express decision to allow victims of terrorism to pursue lawsuits against foreign sponsors of terrorism notwithstanding sovereign immunity, *see* 28 U.S.C. § 1605A, numerous terrorism victims have successfully sued countries like Iran and been awarded more than $19 billion in damages, *see*, *e.g.*, Jennifer K. Elsea, Cong. Research Serv., RL 31258, *Suits Against Terrorist States by Victims of Terrorism* 67 (2008), *available at* http://www.fas.org/sgp/crs/terror/RL31258.pdf; *see also id.* at 69-74 & tbls. A-1, A-2 (collecting citations). Many of these judgments remain outstanding; as of 2008, unpaid judgments against Iran *alone* exceeded $9.6 billion, and over $11 billion altogether. *See id.* at 75 tbl. B-1.

For American judgment creditors to collect on these unpaid judgments, they must have the "opportunity to locate potentially attachable assets of the foreign state." App., *infra*, 30a. The Seventh Circuit insisted that its opinion would not deny them that opportunity because they could instead "us[e] private means to identify potentially attachable assets . . . located in the United States," *id.* at 31a, or "enlist the assistance of the Secretary of the Treasury and

the Secretary of State," *ibid.* (citing 28 U.S.C. § 1610(f)(2)(A)). Neither of these options is a realistic alternative to the usual procedure for obtaining discovery in aid of execution under Rule 69(a)(2).

As the Seventh Circuit noted, the FSIA provides that the Treasury and State Departments "should make every effort" to "assist any judgment creditor" in "locating . . . the property of th[e] foreign state." 28 U.S.C. § 1610(f)(2)(A), *quoted in* App., *infra*, 31a. But it *also* provides that the President may waive any such assistance. *See id.* § 1610(f)(3). "The President has chosen to waive this provision repeatedly," and that has "ma[de] it difficult, if not impossible, to collect . . . damages" using the assistance of the Executive Branch. *See* Alan H. Collier, *The Foreign Sovereign Immunities Act and Its Impact on Aviation Litigation*, 69 J. Air L. & Com. 519, 535 (2004).[3] Because "the efforts of judgment holders to enforce their judgments" have "often [been] hampered," rather than aided, "by the executive branch," William P. Hoye, *Fighting Fire with . . . Mire? Civil Remedies and the New War on State-Sponsored Terrorism*, 12 Duke J. Comp. & Int'l L. 105, 119 (2002), the Seventh Circuit's assertion that Petitioners and other victims of terrorism can rely on the Executive Branch for assistance is hollow indeed.

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[3] *See*, *e.g.*, James Cooper-Hill, *If the Non-Person King Gets No Due Process, Will* International Shoe *Get the Boot?*, 32 Denv. J. Int'l L. & Pol'y 421, 442 (2004) (noting the "relentless resistance to be of any assistance"); W. Michael Reisman & Monica Hakimi, *Illusion and Reality in the Compensation of Victims of International Terrorism*, 54 Ala. L. Rev. 561, 574 (2003) (chronicling "the executive's resistance to ensuring that the victims receive compensation").

The suggestion that terrorist victims must resort to "private means" in order to collect on their lawfully obtained judgments is even farther from the mark. The Seventh Circuit provided no authority for its apparent assumption that any "private means" would be available, let alone that they would likely be effective in locating foreign assets held in the United States. The judgment debtor is in a unique position to know the identity and location of its assets, which explains why courts routinely permit discovery on the issue rather than forcing judgment creditors to obtain the information by "private means." *See*, *e.g.*, *Nat'l Serv. Indus., Inc.* v. *Vafla Corp.*, 694 F.2d 246, 250 (11th Cir. 1982) ("A judgment creditor is entitled to discover the identity and location of any of the judgment debtor's assets, wherever located.").

The Seventh Circuit claimed that the "cost[s]" imposed by its decision were simply a "consequence of the balance struck by the FSIA." App., *infra*, 31a-32a. Petitioners disagree with that assertion, but in any event this Court's review is warranted before such a "cost" is imposed on Petitioners and numerous others like them.

B. Although the sweeping consequences of the Seventh Circuit's decision for cases like this one are sufficient to warrant the Court's review, those consequences extend far beyond tort suits. The United States has long been a "major source of private international credit," *Allied Bank Int'l* v. *Banco Credito Agricola de Cartago*, 757 F.2d 516, 522 (2d Cir. 1985), and American lenders currently hold many billions of dollars in foreign sovereign debt, *see* David Reilly, *Euro Pain Could Blow Back on Big U.S. Banks*, Wall St. J., May 14, 2010, at B14. As a result, "the United States has a strong interest in en-

suring the enforceability of valid debts under the principles of contract law, and in particular, the continuing enforceability of foreign debts owed to United States lenders." *Pravin Banker Assocs.* v. *Banco Popular Del Peru*, 109 F.3d 850, 855 (2d Cir. 1997).

The existence of a well-functioning market for sovereign debt depends on investors' confidence that they will be able to enforce loan agreements with foreign countries in accordance with their terms—and to collect on any judgments successfully obtained. "Experience shows that debt markets work best when the rights of creditors are protected most effectively." Andrei Shleifer, *Will the Sovereign Debt Market Survive?*, 93 Am. Econ. Rev. 85, 85 (2003).

The "heart of the problem" for investment in sovereign debt is that "it has become exceedingly difficult for creditors to actually collect on their debts." *See* Hal S. Scott, *Sovereign Debt Default: Cry for the United States, Not Argentina* 9 (Wash. Legal Found., Working Paper No. 140, 2006), *available at* http://www.wlf.org/upload/Scott%20WP%20Final.pdf. If creditors cannot be certain that they could obtain the information necessary to execute on a judgment in their favor—even after having successfully litigated the case on its merits—then they will take that information into account in determining whether to lend to foreign countries at all (and, if so, at what rate). *Cf.* Alexander Hamilton, *First Report on the Public Credit* (Jan. 14, 1790), *in* 2 *The Works of Alexander Hamilton* 227, 228 (Henry Cabot Lodge ed. 1904) ("[W]hen the credit of a country is in any degree questionable . . . it never fails to give an extravagant premium, in one shape or another, upon all the loans it has occasion to make.").

Further, there is a large secondary market in sovereign debt that could be jeopardized if that debt becomes more difficult to enforce because it is impossible to obtain information about the debtor's assets. The secondary market enables the primary market to function by allowing primary creditors to reduce their exposure to questionable debts. *See* Fernando Broner *et al.*, *Sovereign Risk and Secondary Markets*, 100 Am. Econ. Rev. 1523, 1523 (2010). For this reason, the "long term effect" of "rendering otherwise valid debts unenforceable" would be "significant harm to . . . developing nations and their institutions seeking to borrow capital" in the United States. *Elliott Assocs., L.P.* v. *Banco de la Nacion*, 194 F.3d 363, 380 (2d Cir. 1999). If the "holders of debt instruments" know that they will "have substantial difficulty selling those instruments [in the secondary market] if payment were not voluntarily forthcoming," that would "add significantly to the risk of making loans to developing nations with poor credit ratings"—and "[t]he additional risk would naturally be reflected in higher borrowing costs to such nations." *Ibid.*

The enforceability of sovereign debt has assumed increased significance because of the widespread sovereign debt crisis that has plagued the global economy. *See* Mark Landler & Binyamin Appelbaum, *U.S. Pushes Europe to Act with Force on Debt Crisis*, N.Y. Times, Sept. 23, 2011, at A1. Although defaults on sovereign debt were once regarded as an issue only for developing nations, the current crisis threatens American-held debt even from developed countries such as Italy and Ireland. *See* Reilly, *supra*, at B14. This Court's review is warranted to ensure that the remedies available for enforcing such

debts are properly calibrated in accordance with the balance struck by Congress.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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October 6, 2011

APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

No. 08-2805

JENNY RUBIN, et al.,

Plaintiffs-Appellees,

and

DEBORAH D. PETERSON, et al.,

Intervenors-Appellees,

v.

THE ISLAMIC REPUBLIC OF IRAN,

Defendant-Appellant,

and

FIELD MUSEUM OF NATURAL HISTORY AND
UNIVERSITY OF CHICAGO, THE ORIENTAL INSTITUTE,

Intervenors.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 03 CV 9370—**Blanche M. Manning**, *Judge*.

ARGUED OCTOBER 26, 2009—
DECIDED MARCH 29, 2011

Before BAUER and SYKES, *Circuit Judges*, and SIMON, *District Judge*.*

SYKES, *Circuit Judge*. The Islamic Republic of Iran appeals two orders issued in connection with a long-running effort to collect on a large judgment entered against it for its role in a 1997 terrorist attack. The plaintiffs are American citizens who were injured in a brutal suicide bombing in Jerusalem, Israel, carried out by Hamas with the assistance of Iranian material support and training. The victims obtained a $71 million default judgment against Iran in federal district court in Washington, D.C. , and then registered that judgment in the Northern District of Illinois for the purpose of attaching two collections of Persian antiquities owned by Iran but on long-term academic loan to the University of Chicago's Oriental Institute. They also sought to attach a third collection of Persian artifacts owned by Chicago's Field Museum of Natural History. They contend that this collection, too, belongs to Iran but was stolen and smuggled out of the country in the 1920s or 1930s and later sold to the museum. Iran's appeal requires us to consider the scope and operation of § 1609 of the Foreign Sovereign Immunities Act of 1976 ("FSIA"), 28 U.S.C. §§ 1330(a), 1602-1611, which provides that a foreign state's property in the United States is immune from attachment unless a specific statutory exception to immunity applies.

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* The Honorable Philip P. Simon, Chief Judge of the United States District Court for the Northern District of Indiana, sitting by designation.

The district court held that the immunity codified in § 1609 is an affirmative defense personal to the foreign sovereign and must be specially pleaded. Because Iran had not appeared in the attachment proceeding, this ruling had the effect of divesting the collections of their statutory immunity unless Iran appeared and affirmatively asserted it. So Iran appeared and made the immunity claim. In response the plaintiffs served Iran with requests for discovery regarding *all* Iranian-owned assets located anywhere in the United States. Not surprisingly, Iran resisted, maintaining that such far-flung and open-ended discovery about its American-based property was inconsistent with the FSIA. The district court disagreed and ordered general-asset discovery to proceed. Iran appealed.

The district court's discovery order effectively rejected Iran's claim of sovereign immunity and is therefore immediately appealable under the collateral-order doctrine. The court's earlier order, which denied § 1609 immunity in the absence of an appearance by the foreign state, is also properly before this court. That order raises closely related questions about sovereign-property immunity and is revived for review by Iran's interlocutory appeal of the general-asset discovery order.

Both orders are seriously flawed; we reverse. The district court's approach to this case cannot be reconciled with the text, structure, and history of the FSIA. Section 1609 of the Act provides that "the property in the United States of a foreign state *shall* be immune from attachment" *unless* an enumerated exception applies. (Emphasis added.) This section codifies the longstanding common-law principle that a foreign state's property in the United States is pre-

sumed immune from attachment. This presumptive immunity, when read with other provisions of the FSIA, requires the plaintiff to identify the specific property he seeks to attach; the court cannot compel a foreign state to submit to general discovery about all its assets in the United States. The presumption of immunity also requires the court to determine—sua sponte if necessary—whether an exception to immunity applies; the court must make this determination regardless of whether the foreign state appears.

I. Background

This appeal has its roots in a vicious terrorist attack. On September 4, 1997, Hamas carried out a triple suicide bombing in the crowded Ben Yehuda Street pedestrian mall in Jerusalem. *See Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 261 (D.D.C. 2003). Five bystanders were killed and nearly 200 were injured. Hamas claimed responsibility for the bombing, and Israeli police arrested two Hamas operatives who participated in the attack. *Id.* at 261-62. They and other members of their Hamas cell gave Israeli authorities information about the planning, financing, and execution of this act of terrorism. The two were later convicted of multiple counts of murder and attempted murder. *Id.*

The plaintiffs here—Jenny Rubin and her mother, Deborah Rubin; Stuart Hersh and his wife, Renay Frym; Noam Rozenman and his parents, Elena and Tzvi Rozenman; Daniel Miller; and Abraham Mendelson—are American citizens who were grievously wounded in the September 4, 1997 bombing or suffered severe emotional and loss-of-companionship injuries as a result of being closely related to those who were physically hurt. These victims filed suit

against Iran in federal district court in Washington, D.C., alleging that Iran was responsible for the bombings as a result of the training and support it had provided to Hamas. *Id.* Jurisdiction was predicated on § 1605(a)(7) (1996) of the FSIA, and the district court consolidated the action with another suit filed by a separate group of victims of the bombing. *Id.* at 261. Iran was properly served but defaulted. Pursuant to the requirements of § 1608(e) of the FSIA, the district court held a three-day evidentiary hearing before issuing a default judgment against Iran for $71.5 million in compensatory damages.[1] *Id.* at 272-77.

At this point the plaintiffs faced a problem familiar to Iran's judgment creditors: They had won a significant judgment but enforcement options were limited. A nationwide search for attachable Iranian assets eventually led to Chicago and its rich collection of ancient artifacts housed in the city's major museums. The plaintiffs registered their judgment

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[1] The victims also received an award of punitive damages against other defendants—senior Iranian officials—but this attachment proceeding involves only Iran itself. Liability against Iran and its officials was premised on § 1605(a)(7), read in conjunction with the "Flatow Amendment," 28 U.S.C. § 1605 note, to create a private cause of action against foreign sovereigns for acts of terrorism, including extrajudicial killings. In a separate case, the D.C. Circuit later held that no such private cause of action against foreign sovereigns (as opposed to individuals) exists. *See Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024, 1033 (D.C. Cir. 2004). Congress responded by supplying a cause of action through the National Defense Authorization Act of 2008, Pub. L. No. 110181, 122 Stat. 3, which amended this section of the FSIA. This history has no effect on the merits of this appeal.

with the United States District Court for the Northern District of Illinois and served the University of Chicago's Oriental Institute and later the Field Museum of Natural History with a Citation to Discover Assets pursuant to Rule 69(a) of the Federal Rules of Civil Procedure and chapter 735, section 5/2-1402 of the Illinois Compiled Statutes.[2] The plaintiffs identified three specific collections in the museums' possession that they sought to attach and execute against: the Persepolis and Chogha Mish Collections at the Oriental Institute, and the Herzfeld Collection at the Field Museum.[3]

The first two are collections of Persian antiquities recovered in excavations in the Iranian city of Persepolis in the 1930s and on the Chogha Mish plain in southwestern Iran in the 1960s. Archaeologists from the University of Chicago led these excavations, and Iran loaned the artifacts to the Oriental Institute for long-term study and to decipher the Elamite writing that appears on some of the tablets included among the discoveries. The terms of the academic loan require the Oriental Institute to return the collections to Iran when study is complete. The Institute says it has finished studying the Chogha Mish Collection and is ready to return it to Iran pending resolution of a claim before the Iran-

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[2] The Field Museum and the Oriental Institute have jointly briefed this appeal. We refer to them collectively as "the museums" unless the context requires otherwise.

[3] The Rubin plaintiffs are pursuing similar litigation against Boston-area museums that possess artwork owned by Iran. *See Rubin v. Islamic Republic of Iran*, 456 F. Supp. 2d 228 (D. Mass. 2006).

United States Claims Tribunal in the Hague.[4] Study of the Persepolis Collection is apparently ongoing, although the Institute says it has returned parts of this collection to Iran.

The third group of artifacts is known as the Herzfeld Collection, after the German archaeologist Ernst Herzfeld who worked on excavations in Persia for 30 years in the early twentieth century. *See* Wikipedia, Ernst Herzfeld, http://en.wikipedia.org/wiki/Ernst_Herzfeld (last visited Mar. 10, 2011). The Field Museum purchased a set of prehistoric pottery, metalworks, and ornaments from Herzfeld in 1945. The plaintiffs contest the Field Museum's title; they claim that Iran owns this collection because Herzfeld stole the artifacts and smuggled them out of the country in the 1920s and 1930s. Iran, however, does not claim ownership of the Herzfeld Collection.

The plaintiffs alleged that these three collections are subject to attachment under two provisions in the FSIA: (1) the exception to § 1609 attachment immunity for "property in the United States of a for-

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[4] The Iran-United States Claims Tribunal was established in January 1981 under the terms of the Algiers Accords, which resolved the crisis precipitated by Iran's seizure of American hostages at the United States Embassy during the Iranian Revolution in 1979. *Ministry of Defense & Support for the Armed Forces of the Islamic Republic of Iran v. Elahi*, 129 S. Ct. 1732, 1736 (2009). After the hostages were taken, President Carter blocked Iranian assets within the United States. In connection with the release of the hostages, the Algiers Accords restored the financial position of Iran to that which existed before the crisis. *Id.* The Tribunal adjudicates property claims between the two states and their nationals in accordance with the terms of the Algiers Accords. *Id.*

eign state . . . used for a commercial activity" where the underlying judgment "relates to a claim for which the foreign state is not immune," 28 U.S.C. § 1610(a)(7); and (2) the "blocked assets" provision of the Terrorism Risk Insurance Act of 2002 ("TRIA"), which provides that the blocked assets of a terrorist party or its agency or instrumentality are subject to execution to satisfy a judgment obtained under the FSIA's terrorism exception, Pub. L. No. 107-297, Title II, § 201(a), 116 Stat. 2322, 2337 (2002) (codified at 28 U.S.C. § 1610 note). The museums responded that the collections are immune from attachment under § 1609 of the FSIA and that neither the commercial exception in § 1610(a)(7) nor the "blocked assets" provision of TRIA applies.

The plaintiffs moved for partial summary judgment, asking the court to hold that § 1609 immunity is an affirmative defense that only the foreign state itself can assert. This question first came before a magistrate judge, who issued a report and recommendation agreeing with the plaintiffs that § 1609 immunity is personal to the foreign state and must be affirmatively pleaded. The museums objected. The United States entered the fray, filing a statement of interest on the side of the museums. The district judge was not impressed and entered an order agreeing with the magistrate judge that the foreign state itself must specially plead § 1609 immunity.

Instead of taking an immediate appeal, the museums asked the court to certify the order for appeal under 28 U.S.C. § 1292(b), but other events in the litigation soon overtook this request. Two days before the museums filed their § 1292(b) motion, Iran appeared in the district court and asserted § 1609

attachment immunity. This dramatically altered the course of the proceedings. The plaintiffs promptly shifted their attention to Iran, seeking discovery not just on the three museum collections but on *all* Iranian assets in the United States. Since then, the plaintiffs and Iran have been embroiled in litigation concerning the proper scope of these discovery requests. The dispute spawned numerous motions, multiple rulings by the magistrate judge and the district court, and now this appeal. We will not try to provide a complete account of what transpired below but instead offer the following summary.

After Iran made its appearance, the plaintiffs served it with a request for production of documents under Rule 34 and a notice of deposition under Rule 30(b)(6) of the Federal Rules of Civil Procedure. The document request had ten sections. The first nine sought materials relating to the Persepolis, Chogha Mish, and Herzfeld Collections. The tenth request was significantly more ambitious. In relevant part, it demanded that Iran turn over "[a]ll documents, including without limitation any communication or correspondence, concerning any and all tangible and intangible assets, of whatever nature and kind, in which Iran and/or any of Iran's agencies and instrumentalities has any legal and/or equitable interest, that are located within the United States . . . ." The Rule 30(b)(6) notice sought to depose an officer or agent designated by Iran to testify on its behalf regarding its assets in the United States.

Iran sought a protective order shielding it from these discovery requests and also moved for summary judgment seeking a declaration that the Persepolis, Chogha Mish, and Herzfeld Collections are immune from execution and attachment under the

FSIA. The plaintiffs countered with a motion under Rule 56(f) of the Federal Rules of Civil Procedure requesting additional discovery before responding to Iran's summary-judgment motion. This motion was completely separate from the plaintiffs' earlier discovery requests under Rules 30(b)(6) and 34, but it led to significant confusion regarding which discovery requests were actually on the table. In addition to the Rule 56(f) motion, the plaintiffs also separately moved to compel Iran to comply with its previous document requests under Rule 34 and its deposition notice under Rule 30(b)(6).

The magistrate judge eventually granted the plaintiffs' Rule 56(f) motion for additional discovery. The judge said the plaintiffs were entitled to the following discovery from Iran: (1) any documents relating to the three contested collections of Persian artifacts; (2) documents that might support the plaintiffs' theory that the Oriental Institute was effectively Iran's agent; and (3) a Rule 30(b)(6) deposition of an officer or agent authorized to testify on Iran's behalf. The magistrate judge also granted the plaintiffs' motion to compel, but only "[i]nasmuch" as the discovery was necessary for the plaintiffs to respond to Iran's request for partial summary judgment. Iran objected but was overruled by the district court.

The plaintiffs interpreted these rulings as compelling Iran to comply in full with all their discovery and deposition requests under Rules 30(b)(6) and 34. Iran read the orders much more narrowly and thought it was only required to produce discovery relating directly to its motion for summary judgment. In particular the parties disputed whether Iran was required to provide general-asset discovery. Iran sought clarification, or in the alternative, a protec-

tive order. The magistrate judge denied Iran's motion for a protective order and explicitly ordered general-asset discovery to proceed. The district judge affirmed, dismissing Iran's concerns about sovereign immunity as "overblown." But the judge was laboring under a misapprehension; she said the plaintiffs were "not seeking general asset discovery about every conceivable asset of Iran's in the United States."

Of course, general-asset discovery was *precisely* what the plaintiffs were seeking and indeed what the magistrate judge had ordered. His order plainly stated that "Iran will comply with [the plaintiffs'] requests for general asset discovery[,]" and this holding was the focal point of Iran's objection before the district court. In a motion to reconsider, the plaintiffs noted the district judge's error. The judge then acknowledged the oversight and issued a one-page order compelling Iran to submit to the plaintiffs' requests for general-asset discovery. Iran appealed under the collateral-order doctrine and also sought review of the district court's earlier order declaring that § 1609 sovereign-property immunity must be asserted by the foreign state itself. We permitted the museums to intervene on appeal, and the United States appeared as an amicus in support of reversal.[5]

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[5] After Iran filed this appeal, another group of judgment creditors against Iran was granted leave to intervene in the district court. The lead plaintiff in this group is Deborah Peterson. After intervening, the Peterson plaintiffs participated in this appeal. Their presence, however, has no bearing on the merits of the appeal.

II. Discussion

A. Appellate Jurisdiction

Before we address the merits, there is a threshold question about appellate jurisdiction—two questions, actually, because two interlocutory orders have been appealed: (1) the district court's general-asset discovery order; and (2) the court's earlier order rejecting § 1609 sovereign-property immunity in the absence of an appearance by Iran. Jurisdiction over the general-asset discovery order is a relatively straightforward matter. The jurisdictional analysis regarding the court's earlier order is slightly more complicated.

It is well-established that "as a general rule, an order authorizing discovery in aid of execution of judgment is not appealable until the end of the case." *In re Joint E. & S. Dists. Asbestos Litig.*, 22 F.3d 755, 760 (7th Cir. 1994). However, the order at issue here invades Iran's sovereign immunity, and it is equally well-established that orders denying claims of immunity may be immediately appealed under the collateral-order doctrine. *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985); *Nixon v. Fitzgerald*, 457 U.S. 731, 742-43 (1982); *Empress Casino v. Blagojevich*, Nos. 09-3975 & 10-1019, 2011 WL 710467, at *5 (7th Cir. Mar. 2, 2011). This includes interlocutory orders denying claims of sovereign immunity under the FSIA. *Rush-Presbyterian-St. Luke's Med. Ctr. v. Hellenic Republic*, 877 F.2d 574, 576 n.2 (7th Cir. 1989); *Segni v. Commercial Office of Spain*, 816 F.2d 344, 347 (7th Cir. 1987).

It is true that *Segni* and *Rush Presbyterian* concerned a foreign state's *jurisdictional* immunity from suit under 28 U.S.C. § 1604, not *attachment* immunity under § 1609.[6] But the Fifth Circuit has held that the denial of attachment immunity under § 1609 of the FSIA may be immediately appealed under the collateral-order doctrine, *FG Hemisphere Assocs. v. République du Congo*, 455 F.3d 575, 584 (5th Cir. 2006), and we agree with this sensible conclusion. There is no reason the collateral-order doctrine should apply any differently in cases raising the attachment immunity of foreign-state property under § 1609 than in cases raising foreign-state jurisdictional immunity under § 1604. The FSIA protects foreign sovereigns from court intrusions on their immunity in its various aspects, and interlocutory appeal is appropriate regardless of which form of immunity is at stake. Because the district court's general-asset discovery order effectively rejected Iran's claim of attachment immunity under § 1609, we have jurisdiction to review it under the collateral-order doctrine.

The question of appellate jurisdiction over the court's earlier order is trickier. That order, too, had the effect of denying a claim of attachment immunity under the FSIA. The district court held that § 1609 immunity is an affirmative defense that can be as-

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6 In full, 28 U.S.C. § 1604 provides:

> Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

serted only by the foreign sovereign itself. Up to that point in the litigation, the museums were advancing the claim of attachment immunity, and because Iran had not appeared, the court's order effectively stripped the collections of their statutory immunity. The court's earlier order thus falls within the scope of the collateral-order doctrine and was immediately appealable.

But orders immediately appealable under the collateral-order doctrine are "final decisions" under 28 U.S.C. § 1291, and subject to exceptions not applicable here, must be appealed within 30 days of entry. *See* FED. R. APP. P. 4(a)(1)(A); 28 U.S.C. § 2107(a); *Otis v. City of Chicago*, 29 F.3d 1159, 1166-67 (7th Cir. 1994) (en banc). Rather than filing an immediate appeal, the museums asked the court to certify the order for interlocutory appeal under § 1292(b). This was unnecessary, for reasons we will explain in a moment. In the meantime Iran appeared, becoming the lead defendant, and the focus shifted to discovery disputes. The § 1292(b) motion apparently got lost in the shuffle. Although the motion was fully briefed, the district court didn't address it until after this appeal was filed; at that point the court simply dismissed it as moot.

In *Weir v. Propst*, 915 F.2d 283, 285 (7th Cir. 1990), we "clarif[ied] the relationship between the collateral-order doctrine and section 1292(b) certification in the recurrent setting of appeals from denial of immunity." We explained that a § 1292(b) certification is unnecessary for an appeal under the collateral-order doctrine; orders denying immunity are "appealable—without any of the rigamarole involved in a 1292(b) appeal—under section 1291, by virtue of *Mitchell v. Forsyth*." *Id.* We also said that a request

for § 1292(b) certification "may not be used to circumvent the time limitations on filing an appeal under section 1291." *Id.* The "deadlines in Rule 4(a) for appeals in civil cases apply to all appealable orders, including collateral orders, specifically orders denying immunity, . . . [and] [i]f the deadline is missed, the order is not appealable." *Id.* at 286. If that occurs, "[t]he defendant must then wait until another appealable order (normally, the final judgment) is entered, upon appeal of which he can challenge any interlocutory order that has not become moot." *Id.*

We reiterated this point in *Otis*, although in somewhat more sweeping terms: "[A] litigant entitled to appeal under the collateral order doctrine must act within 30 days and if this time expires without appeal must wait until the final judgment to pursue the issue." 29 F.3d at 1167. This passage in *Otis* relied on *Weir* and should be read with the earlier opinion. The failure to timely appeal an immunity order under the collateral-order doctrine does not necessarily postpone review until the end of the case; it postpones review until another appealable order is entered. This will usually be the final judgment, but not always. And here, there is "another appealable order," *Weir*, 915 F.2d at 286, not the final judgment, that has provided the next opportunity for review. The district court's general-asset discovery order rejected Iran's claim of sovereign immunity, and Iran's timely appeal of *that* order permits review of the earlier—and closely related—immunity decision.[7]

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[7] The museums cite *United States v. Michelle's Lounge*, 39 F.3d 684 (7th Cir. 1994), as support for the proposition that the court's earlier order may be reviewed with Iran's timely interlocutory appeal of the later collateral order. But *Michelle's*

[Footnote continued on next page]

This conclusion finds support in decisions from the Third and Fifth Circuits. *See In re Montgomery County*, 215 F.3d 367, 372 (3d Cir. 2000) (quoting *Weir's* statement that when a collateral order is not timely appealed, "[t]he defendant must then wait until another appealable order (normally, the final judgment) is entered, upon appeal of which he can challenge any interlocutory order that has not become moot"); *Kenyatta v. Moore*, 744 F.2d 1179, 1186-87 (5th Cir. 1984) (interlocutory appeal that is not timely pursued can be revived upon entry of final judgment or some other appealable order); *but cf. Mille Lacs Band of Chippewa Indians v. Minnesota*, 48 F.3d 373, 375 (8th Cir. 1995) (deciding not to review earlier orders of the district court—whether or not they fell within the collateral-order doctrine—on interlocutory review of a later injunction because the earlier orders were not timely appealed and were not inextricably linked to the injunction issue that was properly before the court).

Moreover, in the particular circumstances of this case, permitting review of the first immunity order as part of Iran's appeal from the second reflects sound appellate management, not an unwarranted expansion of the scope of collateral-order review.

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Lounge simply held that an unappealed collateral order can be reviewed following the entry of final judgment, *id*. at 692, an uncontroversial proposition not at issue in this case. *Michelle's Lounge* does not address the precise question presented here: Whether a collateral order that is not timely appealed is revived for review when a timely appeal is taken from a later collateral order.

Both orders raise important and closely related questions regarding the scope and operation of the FSIA. Questions of foreign-sovereign immunity are sensitive, and lower-court mistakes about the availability of immunity can have foreign-policy implications. More particularly here, the district court's refusal to consider § 1609 attachment immunity without an appearance by the foreign state precipitated Iran's appearance and led directly to the imposition of the general-asset discovery order against it. The latter order was timely appealed, and the two substantially overlap.[8] Review of both orders now will clarify the rest of the litigation. Iran's timely appeal of the court's general-asset discovery order brings up the court's earlier order denying § 1609 attachment immunity unless Iran appeared.[9]

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[8] Iran's appearance did not moot the earlier order. Iran entered the case only because the district court refused to consider the question of § 1609 immunity unless Iran appeared and raised it. Iran's appearance, in turn, exposed it to the general-asset discovery requests and the court's order that it comply. Iran would like to withdraw from this case but is inhibited from doing so by the district court's holding that § 1609 attachment immunity must be asserted by the foreign sovereign. This is a sufficient continuing interest to support an ongoing live controversy about the court's earlier order.

[9] The Supreme Court's recent decision in *Ortiz v. Jordan*, 131 S. Ct. 884 (2011), does not affect our conclusion. The issue in Ortiz was whether the denial of a motion for summary judgment based on qualified immunity could be appealed following a full trial on the merits. *Id.* at 888-89. The Supreme Court said "no." *Id.* at 893. The denial of a motion for summary judgment based on qualified immunity may be immediately appealed under *Mitchell v. Forsyth*, 472 U.S. 511 (1985), subject to the limitations of *Johnson v. Jones*, 515 U.S. 304 (1995); alternatively, the defense may be renewed and litigated at trial.

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B. Attachment Immunity Under § 1609 of the FSIA

On the merits this appeal challenges the district court's interpretation of the FSIA. Our review is de novo. *Autotech Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 749 (7th Cir. 2007).

The FSIA was enacted in 1976, but the doctrine of foreign-sovereign immunity developed at common law very early in our nation's history. *Samantar v. Yousuf*, 130 S. Ct. 2278, 2284 (2010); *Republic of the Phillipines v. Pimentel*, 553 U.S. 851, 865 (2008); *Republic of Austria v. Altmann*, 541 U.S. 677, 688-89 (2004). "For more than a century and a half, the United States generally granted foreign sovereigns complete immunity from suit in the courts of this country." *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 486 (1983). Chief Justice Marshall's opinion in *The Schooner Exchange v. McFaddon*, 7 Cranch 116 (1812), articulated the general principle, and "[a]lthough the narrow holding of The Schooner Exchange was only that the courts of the United States lack jurisdiction over an armed ship of a foreign state found in our port, that opinion came to be regarded as extending virtual absolute immunity to foreign sovereigns." *Verlinden*, 461 U.S. at 486.

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The Court held in Ortiz that the failure to take an immediate appeal of the denial of immunity on summary judgment precludes review of that order following a trial on the merits; to obtain review of an immunity claim in that situation, the defendant must preserve it at trial in a motion for judgment as a matter of law under Rule 50(b) of the Federal Rules of Civil Procedure. *Ortiz*, 131 S. Ct. at 892-93.

The doctrine "is premised upon the 'perfect equality and absolute independence of sovereigns, and th[e] common interest in impelling them to mutual intercourse.'" *Pimentel*, 553 U.S. at 865 (quoting *Schooner Exchange*, 7 Cranch at 137); *see also Nat'l City Bank of N.Y. v. Republic of China*, 348 U.S. 356, 362 (1955) (Foreign-sovereign immunity is based on "reciprocal self-interest [] and respect for the 'power and dignity' of the foreign sovereign.").

Foreign-sovereign immunity "is a matter of grace and comity on the part of the United States," not a constitutional doctrine. *Verlinden*, 461 U.S. at 486. Accordingly, federal courts "consistently . . . deferred to the decisions of the political branches—in particular, those of the Executive Branch—on whether to take jurisdiction over actions against foreign sovereigns and their instrumentalities." *Id.* Eventually, a "two-step procedure developed for resolving a foreign state's claim of sovereign immunity, typically asserted on behalf of seized vessels." *Samantar*, 130 S. Ct. at 2284. The diplomatic representative of the foreign state would request that the State Department issue a "suggestion of immunity." *Id.* If the State Department did so, the court would surrender jurisdiction. *Id.* In the absence of a suggestion of immunity, however, the court would "'decide for itself whether the requisites for such immunity existed.'" *Id.* (quoting *Ex parte Republic of Peru*, 318 U.S. 578, 587 (1943)). To make this decision, the court "inquired 'whether the ground of immunity is one which it is the established policy of the [State Department] to recognize.'" *Id.* (quoting *Republic of Mexico v. Hoffman*, 324 U.S. 30, 36 (1945)). The process thus entailed substantial judicial deference to the Executive Branch whether the State Department issued a suggestion of immunity or not.

In practice the State Department would usually request immunity in all actions against friendly foreign sovereigns. *Samantar*, 130 S. Ct. at 2285; *Verlinden*, 461 U.S. at 486. That changed in 1952 when the State Department adopted a new "restrictive" theory of foreign-sovereign immunity. *Samantar*, 130 S. Ct. at 2285; *Verlinden*, 461 U.S. at 486. The "Tate Letter" (Jack B. Tate, Acting Legal Advisor to the Department of State, writing to the Attorney General) announced that foreign-sovereign immunity would thenceforward be "confined to suits involving the foreign sovereign's public acts, and [would] not extend to cases arising out of a foreign state's strictly commercial acts." *Verlinden*, 461 U.S. at 487.

This policy shift was not codified into law, and its implementation gave rise to some practical and political difficulties as the State Department struggled to maintain a consistent standard for evaluating grants of immunity for foreign sovereigns. *Samantar*, 130 S. Ct. at 2285; *Altmann*, 541 U.S. at 690-91; *Verlinden*, 461 U.S. at 487. In 1976 Congress passed the FSIA for the purpose of providing a clear, uniform set of standards to govern foreign-sovereign immunity determinations. Under the FSIA, courts, not the State Department, decide claims of foreign-sovereign immunity according to the principles set forth in the statute. *See* 28 U.S.C. § 1602 (congressional findings and declaration of purpose); *Samantar*, 130 S. Ct. at 2285; *Altmann*, 541 U.S. at 691; *Verlinden*, 461 U.S. at 487-88.

For the most part, the FSIA codified the restrictive theory of sovereign immunity announced in the Tate Letter. *Samantar*, 130 S. Ct. at 2285; *Altmann*, 541 U.S. at 691; *Verlinden*, 461 U.S. at 488. The Act contains two primary forms of immunity. Section

1604 provides jurisdictional immunity from suit: "[A] foreign state shall be immune from the jurisdiction of the courts of the United States and of the States" except as otherwise provided in the Act. 28 U.S.C. § 1604. Section § 1609, the provision at issue here, codifies the related common-law principle that a foreign state's property in the United States is immune from attachment and execution:

> 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*.

Id. § 1609 (emphasis added). The term "foreign state" includes "a political subdivision of a foreign state or an agency or instrumentality of a foreign state." *Id.* § 1603(a).

In keeping with the restrictive theory of foreign-sovereign immunity, the FSIA carves out certain exceptions to the jurisdictional immunity of foreign states described in § 1604 (*see* §§ 1605-1607) and the immunity of foreign-state property from attachment and execution described in § 1609 (*see* §§ 1610, 1611). Accordingly, under § 1604 foreign states and their agencies and instrumentalities are immune from suit unless statutory exception applies. Under § 1609 foreign-state property in the United States is likewise immune from attachment or execution unless an exception applies. Under the exceptions listed in §§ 1610 and 1611, property owned by a foreign state's instrumentalities is generally more amenable to attachment than property owned by the foreign state itself. *See id*. § 1610(a) (exceptions applicable

to foreign-state property), (b) (exceptions applicable to foreign-instrumentality property); *see also* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE U.S. § 460 cmt. b.

In their underlying suit against Iran, the plaintiffs established jurisdiction via § 1605(a)(7), an exception to jurisdictional sovereign immunity for actions "in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources . . . for such an act." 28 U.S.C. § 1605(a)(7) (repealed and reenacted as § 1605A(a)(1), Pub. L. No. 110-181, Div. A, Title X, § 1083(a)(1), (b)(1)(A)(iii), Jan. 28, 2008, 122 Stat. 338, 341). In the execution proceeding, they relied on the following exception to § 1609 attachment immunity:

> (a) The property in the United States of a foreign state . . . used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State . . . if—
>
> > (7) the judgment relates to a claim for which the foreign state is not immune under section 1605A, regardless of whether the property is or was involved with the act upon which the claim is based.

Id. § 1610(a)(7). They also claimed that Iran's assets are attachable under § 201 of the TRIA as "blocked assets" of a terrorist party. Pub. L. No. 107-297, Title II, § 201(a), 116 Stat. 2322, 2337 (2002).

The district court did not address the applicability of either of these exceptions. Instead, the court held that the attachment immunity conferred by § 1609 is personal to the foreign state, which must appear and affirmatively plead it. When Iran made its appearance and specifically raised § 1609, the court continued to sidestep the immunity question and instead ordered general-asset discovery regarding *all* of Iran's assets in the United States, not just the three museum collections the plaintiffs identified in the attachment citations. Both of these orders are incompatible with the text, structure, and history of the FSIA, and also conflict with relevant precedent. We address the second order first.

1. The general-asset discovery order

Execution proceedings are governed by Rule 69(a) of the Federal Rules of Civil Procedure and "must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." FED. R. CIV. P. 69(a)(1). Discovery requests in aid of execution may be made pursuant to either the federal rules or the corresponding rules of the forum state, *id*. Rule 69(a)(2), but either way, the FSIA plainly applies and limits the discovery process.

As a general matter, it is widely recognized that the FSIA's immunity provisions aim to protect foreign sovereigns from the burdens of litigation, including the cost and aggravation of discovery. *See Pimentel*, 553 U.S. at 865; *Dole Food Co. v. Patrickson*, 538 U.S. 468, 479 (2003); *Rush-Presbyterian*, 877 F.2d at 576 n.2; *Kelly v. Syria Shell Petroleum Dev. B.V.*, 213 F.3d 841, 849 (5th Cir. 2000); *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, 905 F.2d 438, 449 (D.C. Cir. 1990). This is consistent

with the Supreme Court's treatment of other immunities—for example, the qualified immunity of governmental officials. *See*, *e.g.*, *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1953 (2009) ("The basic thrust of the qualified-immunity doctrine is to free officials from the concerns of litigation, including avoidance of disruptive discovery." (quotation marks omitted)). A potential difficulty arises, however, when an asserted exception to immunity turns on disputed facts. The FSIA does not directly address the extent to which a judgment creditor may pursue discovery to establish that the property he is seeking to attach fits within one of the statutory exceptions to the attachment immunity conferred by § 1609.[10]

In *Arriba Ltd. v. Petroleos Mexicano*s, the Fifth Circuit aptly took note of the "tension between permitting discovery to substantiate exceptions to statutory foreign sovereign immunity and protecting a sovereign's or sovereign agency's legitimate claim to immunity from discovery." 962 F.2d 528, 534 (5th Cir. 1992). *Arriba* involved § 1604 *jurisdictional* immunity, but the same tension is present when *attachment* immunity under § 1609 is at stake. The district court's decision to order nationwide discovery of all Iranian assets fails to appreciate this basic point. That much is evident in the magistrate judge's rationale for the discovery order:

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[10] The only section in the FSIA that directly addresses discovery is 28 U.S.C. § 1605(g). That provision allows the Attorney General, under certain circumstances, to stay any request for discovery against the United States in any action brought against a foreign state on the basis of the "terrorism" exception to § 1604, as defined in § 1605(a)(7).

> By inquiring about Iran's assets generally, the Plaintiffs, and ultimately the Court, will be able to determine which of those assets fall within the domain of assets that are amenable to attachment and execution under the FSIA and TRIA. The Court will not limit the Plaintiffs' discovery requests to those categories of assets that are reachable under the FSIA and TRIA, allowing Iran to be the judge of which assets are immune before providing any discovery. That determination goes to the merits of the case and will be made by the Court alone.

Rubin v. Islamic Republic of Iran, No. 03 C 9370, 2008 WL 192321, at *15 (N.D. Ill. Jan. 18, 2008). The district judge adopted this reasoning in toto.

This approach is inconsistent with the presumptive immunity of foreign-state property under § 1609. As a historical matter, "[p]rior to the enactment of the FSIA, the United States gave absolute immunity to foreign sovereigns from the execution of judgments. This rule required plaintiffs who successfully obtained a judgment against a foreign sovereign to rely on voluntary repayment by that State." *Autotech*, 499 F.3d at 749. The FSIA "codified this practice by establishing a general principle of immunity for foreign sovereigns from execution of judgments," subject to certain limited exceptions. *Id.* The statutory scheme thus "modified the rule barring execution against a foreign state's property by '*partially* lowering the barrier of immunity from execution, so as to make this immunity conform more closely with the provisions on jurisdictional immunity.'" *Id.* (second emphasis omitted) (quoting *Conn.*

Bank of Commerce v. Republic of Congo, 309 F.3d 240, 252 (5th Cir. 2002)).

Importantly here, the exceptions to attachment immunity are narrower than the exceptions to jurisdictional immunity: "Although there is some overlap between the exceptions to jurisdictional immunity and those for immunity from execution and attachment, there is no escaping the fact that the latter are more narrowly drawn." *Id.* We noted in *Autotech* that "[t]he FSIA says that immunity from execution is waived only for specific '*property*.' As a result, in order to determine whether immunity from execution or attachment has been waived, the plaintiff must identify specific property upon which it is trying to act." *Id.* at 750. Under the FSIA "[t]he only way the court can decide whether it is proper to issue the writ [of attachment or execution] is if it knows which property is targeted." *Id.* In other words, "[a] court cannot give a party a blank check when a foreign sovereign is involved." *Id.*

As our discussion in *Autotech* makes clear, § 1609 of the FSIA codifies the common-law rule that property of a foreign state in the United States is *presumed* immune from attachment and execution. To overcome the presumption of immunity, the plaintiff must identify the particular foreign-state property he seeks to attach and then establish that it falls within a statutory exception. The district court's general-asset discovery order turns this presumptive immunity on its head. Instead of confining the proceedings to the specific property the plaintiffs had identified as potentially subject to an exception under the FSIA, the court gave the plaintiffs a "blank check" entitlement to discovery regarding *all*

Iranian assets in the United States. This inverts the statutory scheme.

Three other circuits have addressed the question of discovery in the context of attachment proceedings against foreign-state property in the United States under the FSIA, and all have agreed that the court must proceed narrowly, in a manner that respects the statutory presumption of immunity and focuses on the specific property alleged to be exempt. The Second, Fifth, and Ninth Circuits have repeated an identical message to the district courts: "'[D]iscovery should be ordered circumspectly and only to verify allegations of specific facts crucial to an immunity determination.'" *EM Ltd. v. Republic of Argentina*, 473 F.3d 463, 486 (2d Cir. 2007) (quoting *First City, Texas-Houston, N.A. v. Rafidain Bank*, 150 F.3d 172, 176 (2d Cir. 1998)); *Conn. Bank of Commerce*, 309 F.3d at 260 n.10 (quoting *Arriba*, 962 F.2d at 534); *AfCap, Inc. v. Chevron Overseas (Congo) Ltd.*, 475 F.3d 1080, 1095-96 (9th Cir. 2007) (emphasis omitted) (quoting *Conn. Bank of Commerce*, 309 F.3d at 260 n.10).[11] We agree. Discovery orders that are broad in scope and thin in foundation unjustifiably subject foreign states to unwarranted litigation costs and intrusive inquiries about their American-based assets. One of the purposes of the immunity codified in § 1609 is to shield foreign states from these burdens.

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[11] In *Af-Cap* the district court had limited discovery on grounds unrelated to the FSIA. The Ninth Circuit affirmed and also concluded that the discovery limitations were consistent with the requirements of the FSIA. *Af-Cap, Inc. v. Chevron Overseas (Congo) Ltd.*, 475 F.3d 1080, 1096 (9th Cir. 2007).

The plaintiffs note that these decisions from other circuits took language from *Arriba*, 962 F.2d at 534, the Fifth Circuit case dealing with exceptions to § 1604 jurisdictional immunity, and adapted it to the context of attachment immunity under § 1609. They claim that broader discovery should be available under § 1609 than § 1604. This argument is based on their reading of § 1606 of the FSIA, which provides that if an exception to § 1604 jurisdictional immunity applies, "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. The plaintiffs contend that once a court has exercised jurisdiction over a foreign sovereign and entered a judgment against it, § 1606 entitles them to the same broad discovery as any other litigant seeking to execute on a judgment under Rule 69(a). The critical error in this argument is that it mixes the scope of *liability* with the scope of *execution*. Although Iran may be found liable in the same manner as any other private defendant, the options for executing a judgment remain limited. That is the point of § 1609. It is true that §§ 1604 and 1609 provide different kinds of immunity to foreign sovereigns, but there is no reason to read § 1609 to allow for more intrusive discovery than its § 1604 counterpart. To the contrary, as we observed in *Autotech*, the exceptions to § 1609 attachment immunity are drawn more narrowly than the exceptions to § 1604 jurisdictional immunity.

The plaintiffs cite two cases as support for the general-asset discovery order. The first is *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468 (9th Cir. 1992), which involved a contract dispute between an American company and Beijing Ever Bright Industrial Co., a company controlled by the People's Republic of China. The American company

won a default judgment against Ever Bright on a breach-of-contract claim and then sought general discovery in order to identify Ever Bright's assets; the district court authorized the discovery. Ever Bright appealed and the Ninth Circuit affirmed. *Richmark* is distinguishable from this case. Ever Bright was an instrumentality of the People's Republic of China, and the discovery order at issue in *Richmark* was limited to Ever Bright's assets. As we have noted, the immunity exceptions in the FSIA for property owned by an *instrumentality* of a foreign state are much broader than the exceptions for property owned by the foreign state itself.[12] *See* 28 U.S.C. § 1610(a) (exceptions to immunity of foreign-state property), 1610(b) (exceptions to immunity for foreign-instrumentality property); *see also Autotech*, 499 F.3d at 749-50. Even so, we held in *Autotech* that a judgment creditor seeking to invoke an exception to § 1609 immunity must first identify the property on which it seeks to execute. *Id.*

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[12] The commercial-activity exception in § 1610(b) allows a judgment creditor to execute against any property of an agency or instrumentality of a foreign state in the United States so long as the agency or instrumentality has been found to have engaged in commercial activity. On the other hand, § 1610(a), the FSIA exception invoked in this case, allows execution against the property of a foreign state in the United States only if that property has been used for commercial activity. *See Autotech Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 749-50 (7th Cir. 2007); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE U.S. § 460 cmt. b ("For purposes of post-judgment attachment and execution, the [FSIA] draws a sharp distinction between the property of states and the property of state instrumentalities . . . .").

The plaintiffs also cite *First City, Texas-Houston, N.A. v. Rafidain Bank*, 150 F.3d 172, 177 (2d Cir. 1998), which affirmed an order permitting a judgment creditor to conduct general discovery against Rafidain Bank, an instrumentality of Iraq. *Rafidain Bank* is also distinguish-able; as in *Richmark* the order in question authorized general discovery against an *instrumentality* of a foreign sovereign, not the foreign sovereign itself. Equally important, the Second Circuit authorized broad discovery so that the judgment creditor would have an opportunity to substantiate its claim that the defendant instrumentality of Iraq was the alter ego of the Central Bank of Iraq—a claim that if proven would have allowed the judgment creditor to pursue the assets of the Central Bank. Neither *Richmark* nor *Rafidain Bank* provide support for the discovery order in this case.[13]

Finally, the plaintiffs lodge a policy objection to restricting discovery to the particular foreign-state property sought to be attached. They maintain that limiting discovery in this way would effectively deny judgment creditors the opportunity to locate potentially attachable assets of the foreign state. This contention merits several responses.

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[13] The Restatement of Foreign Relations explains that the FSIA provides weaker immunity protection for the property of foreign-state instrumentalities because "instrumentalities engaged in commercial activities are akin to commercial enterprises." RESTATEMENT (THIRD) OF THE LAW OF FOREIGN RELATIONS OF THE U.S. § 460 cmt. b. But because "the primary function of [foreign] states is government . . . , their amenability to post-judgment attachment should be limited to particular property." *Id.*

First, it is an exaggeration to suggest that limiting discovery to the specific property identified for attachment completely forecloses the opportunity of judgment creditors to discover *any* attachable assets of the foreign-state judgment debtor. Targeted discovery regarding specifically identified assets may prove fruitful, and the plaintiff may in the end be permitted to execute on the specified property. It is true that limiting discovery to the specific property identified for attachment restricts the plaintiff's ability to use the coercive power of the court to identify *other* attachable foreign-state assets, but that is a consequence of the balance struck by the FSIA. Nothing in the statutory scheme prevents judgment creditors from using private means to identify potentially attachable assets of foreign states located in the United States. Moreover, the FSIA includes a provision for judgment creditors in certain cases to enlist the assistance of the Secretary of the Treasury and the Secretary of State in identifying and executing against the assets of a foreign sovereign. Section 1610(f)(2)(A) provides:

> 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 [enacted Jan. 28, 2008]) 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.

(Emphasis added.) The plaintiffs secured their judgment against Iran under § 1605(a)(7) and thus are eligible for this assistance from the United States.

There is no question that the attachment immunity codified in § 1609 of the FSIA has a cost, and that cost is borne primarily by Americans who have been injured in tort or contract by foreign states or their agencies or instrumentalities. The FSIA embodies a judgment that our nation's foreign-policy interests justify this particular allocation of legal burdens and benefits. Accordingly, we conclude that under the FSIA a plaintiff seeking to attach the property of a foreign state in the United States must identify the specific property that is subject to attachment and plausibly allege that an exception to § 1609 attachment immunity applies. If the plaintiff does so, discovery in aid of execution is limited to the specific property the plaintiff has identified. The general-asset discovery order issued in this case is incompatible with the FSIA.[14]

2. The appearance order

The foregoing discussion also highlights the flaws in the district court's earlier order in which the court held that attachment immunity under § 1609 is an affirmative defense that can only be asserted by the foreign state itself. This ruling fails to give effect to the statutory text: "[T]he property in the United States of a foreign state *shall* be immune from attachment arrest and execution *except* as provided in

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[14] In light of this holding, we need not consider Iran's alternative argument that the general-asset discovery order violates the Algiers Accords, 20 I.L.M. 224 (1981).

sections 1610 and 1611 of this chapter." 28 U.S.C. § 1609 (emphasis added). As we have explained, the statute cloaks the foreign sovereign's property with a presumption of immunity from attachment and execution unless an exception applies; under § 1609 *the property* is protected by immunity and may not be attached absent proof of an exception. It follows from this language that the immunity does not depend on the foreign state's appearance in the case. The immunity inheres in the property itself, and the court must address it regardless of whether the foreign state appears and asserts it.

Again, we can find helpful analogous principles in the operation of § 1604 jurisdictional immunity. The Supreme Court has confirmed that the FSIA's immunity from suit arises presumptively, and "even if the foreign state does not enter an appearance to assert an immunity defense, a District Court still must determine that immunity is unavailable under the Act." *Verlinden*, 461 U.S. at 493-94 & n.20.[15]

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15 The district court justified its appearance ruling almost entirely on an out-of-context reading of a sliver of FSIA legislative history that appears in this footnote in the Court's opinion in *Verlinden*. Just before the sentence we have quoted above, the Court notes that "[t]he House Report on the [FSIA] states that 'sovereign immunity is an affirmative defense that must be specially pleaded.'" *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 493 n.20 (1983) (quoting H.R. Rep. No. 94-1487, at 17 (1976)). But immediately after this reference, the Court says quite clearly that the House Report got this point wrong: "Under the Act, however, subject matter jurisdiction turns on the existence of an exception to foreign sovereign immunity, 28 U.S.C. § 1330(a). Accordingly, even if the foreign state does not enter an appearance to assert an immunity defense, a District Court still must determine that immunity is unavailable under the Act." *Id*. This footnote, read as a whole, does not support

[Footnote continued on next page]

This conclusion is unsurprising; the immunity conferred by § 1604 is jurisdictional. The Court in *Verlinden* read § 1604 together with a separate provision of the FSIA, codified at 28 U.S.C. § 1330(a), which provides:

> The district courts shall have original jurisdiction . . . of any . . . action against a foreign state as defined in section 1603(a) of this title as to any claim for relief . . . to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or any applicable international agreement.

28 U.S.C. § 1330(a); *Verlinden*, 461 U.S. at 493-94.[16]

[Footnote continued from previous page]

the district court's order. In a bit of charitable understatement, we have previously characterized this passage of FSIA legislative history as "not entirely accurate." *Frovola v. Union of Soviet Socialist Republics*, 761 F.2d 370, 373 (7th Cir. 1985).

16 A complication arises when a foreign-state instrumentality has a questionable claim to jurisdictional immunity. *See*, *e.g.*, *Kunglig Jarnvagsstyrelsen v. Dexter & Carpenter*, 32 F.2d 195 (2d Cir. 1929) (The plaintiff, apparently a private corporation, was served with a counterclaim and then attempted to invoke foreign-sovereign immunity by claiming it was an instrumentality of Sweden.). In this situation, we have held that before a foreign instrumentality may be entitled to the presumption of immunity under § 1604, it must establish a prima facie case that it fits the FSIA's definition of a foreign state. *See*, *e.g.*, *Enahoro v. Abubakar*, 408 F.3d 877, 882 (7th Cir. 2005). However, when the plaintiff sues the foreign sovereign itself, the immunity issue is uncomplicated; immunity is presumed, and the court must find an exception with or without an appearance by the foreign state.

Though not jurisdictional, the immunity conferred by § 1609 is similarly a default presumption, one that inheres in the property of the foreign state. When a judgment creditor seeks to attach property to satisfy a judgment obtained under the FSIA, the district court is immediately on notice that the immunity protections of § 1609 are in play. In particular, where the plaintiff seeks to attach property of the foreign state *itself*, immunity is presumed and the court must find an exception—with or without an appearance by the foreign state—not as a jurisdictional matter but to give effect to the statutory scheme. *See* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE U.S. § 460 cmt. b (explaining the distinction in the FSIA between the property of foreign states and the property of foreign-state instrumentalities).

This reading of § 1609 is confirmed by several provisions in § 1610 governing exceptions to attachment immunity. For example, § 1610(a)(1) states that § 1609 immunity does not apply where "the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication." This strongly suggests that immunity from execution is presumed and waiver of immunity is the exception.[17] Section 1610(c) is even more telling. That provision governs the issuance of an attachment order under either § 1610(a) or (b) when the foreign state is in default:

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[17] We have previously rejected the notion that a foreign state's failure to make an appearance before the court could itself constitute an implicit waiver of sovereign immunity. *See Frolova*, 761 F.2d at 378.

> 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 [governing service, time to answer, and default].

28 U.S.C. § 1610 (c). The waiting period required by § 1610(c) ensures that a defaulting foreign state is provided adequate notice before an attachment order issued under either § 1610(a) or (b)—the "commercial" exceptions to § 1609 immunity—will take effect. This provision makes it clear that even when the foreign state fails to appear in the execution proceeding, the court must determine that the property sought to be attached is excepted from immunity under § 1610(a) or (b) before it can order attachment or execution.

Our conclusion that the court must address § 1609 immunity even in the absence of an appearance by the foreign state is also consistent with the common-law practice that the FSIA codified. As we have explained, the attachment immunity of foreign-state property, like the jurisdictional immunity of foreign states, was historically determined without regard to the foreign state's appearance in the case. The court either deferred to the State Department's suggestion of immunity or made the immunity determination itself, by reference to the State Department's established policy regarding foreign-sovereign immunity. *See Republic of Mexico v. Hoffman*, 324 U.S. 30, 35-36 (1945) (common-law doctrine of foreign-sovereign immunity required judicial deference

to executive determinations of immunity because "[t]he judicial seizure" of the property of a foreign state may be regarded as "an affront to its dignity and may . . . affect our relations with it"). This practice continued after the issuance of the Tate Letter and the State Department's shift to the restrictive theory of foreign-sovereign immunity.

To date, two circuits have addressed whether the foreign state must appear and assert § 1609 attachment immunity, and both have concluded that the answer is "no." In the most recent case, the Peterson plaintiffs (who have intervened here) sought to execute their judgment against certain Iranian receivables; the Ninth Circuit concluded that the district court must independently raise and decide whether the property is immune from attachment under § 1609. *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1126-28 (9th Cir. 2010). Similarly, the Fifth Circuit has held that "the [foreign state's] presence is irrelevant" to the question whether the property the plaintiff seeks to attach is excepted from § 1609's presumptive immunity. *Walker Int'l Holdings Ltd. v. Republic of Congo*, 395 F.3d 229, 233 (5th Cir. 2004). A district court in Massachusetts also agrees. *See Rubin v. Islamic Republic of Iran*, 456 F. Supp. 2d 228, 231-32 (D. Mass. 2006) (execution proceeding brought by the Rubin plaintiffs to attach property in the possession of a museum at Harvard University but alleged to belong to Iran).

We now join these courts in concluding that under § 1609 of the FSIA, the property of a foreign state in the United States is presumed immune from attachment and execution. The immunity inheres in the property and does not depend on an appearance and special pleading by the foreign state itself. The

party in possession of the property may raise the immunity or the court may address it sua sponte. Either way, the court must independently satisfy itself that an exception to § 1609 immunity applies before ordering attachment or other execution on foreign-state property in the United States.

For the foregoing reasons, we REVERSE the district court's general-asset discovery order and its earlier order requiring Iran to appear and affirmatively plead § 1609 immunity, and REMAND for further proceedings consistent with this opinion.

APPENDIX B

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

April 1, 2011

Before

Hon. DIANE S. SYKES, Circuit Judge

JENNY RUBIN, et al., Plaintiffs-Appellees, and DEBORAH D. PETERSON, Intervening-Appellee, No. 08-2805 v. ISLAMIC REPUBLIC OF IRAN, Defendant-Appellant, and FIELD MUSEUM OF NATURAL HISTORY, et al., Intervenors.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:03-cv-09370 Blanche M. Manning, Judge.

On March 31, 2011, counsel for intervenor the Field Museum of Natural History filed a letter with this court on behalf of the Museum and intervenor the University of Chicago's Oriental Institute. In the letter, which we construe as a motion to correct our opinion of March 29, 2011, counsel asks us to alter

footnote 3 at page 6 of the slip opinion, which currently begins: "The Rubin plaintiffs are pursuing similar litigation against Boston-area museums that possess artwork owned by Iran." Counsel suggests changing the sentence to: "The Rubin plaintiffs are pursuing similar litigation against Boston-area museums that possess artwork alleged to be owned by Iran."

The motion is **GRANTED**. Footnote 3 shall be amended as suggested. We agree with counsel that this change correctly represents the status of the Boston-area action and is consistent with our characterization of the action later in the opinion as "execution proceedings brought by the Rubin plaintiffs to attach property in the possession of a museum at Harvard University but alleged to belong to Iran."

APPENDIX C

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

JENNY RUBIN, et al., Plaintiffs-Judgment Creditors, v. **THE ISLAMIC REPUBLIC OF IRAN**, et al., Defendants-Judgment Debtors, v. **THE UNIVERSITY OF CHICAGO**, et al., Citation Third-Party Respondents.	Case No. 03 C 9370 Judge Blanche M. Manning Magistrate Judge Martin C. Ashman

MEMORANDUM OPINION AND ORDER

Currently before the Court is the Islamic Republic of Iran's "Motion for Clarification on Rulings Regarding Plaintiffs' Motion to Compel, or in the Alternative, Motion for Protective Order." Iran's motion asks the Court to "clarify" its discovery order of April 17, 2007, by stating that the April 17 order allowed Plaintiffs to engage in continued discovery only to the extent necessary to gather sufficient information to oppose Iran's "Motion to Declare Property Exempt" from execution, which is currently pending before the Court. In the alternative, Iran moves this Court for a protective order barring certain discovery

requests by Plaintiffs relating to the Herzfeld and Chogha Mish artifact collections, as well as Plaintiffs' attempts discover all of Iran's assets within the United States. After considering the arguments of the parties, as well as a Statement of Interest prepared by the Department of Justice on behalf of the United States, the Court finds for the reasons stated below that the Plaintiffs are entitled to discovery pursuant to Federal Rule of Civil Procedure 56(f), as provided in the Court's April 17 order, and also to general discovery of Iran's assets in the United States pursuant to Federal Rule of Civil Procedure 69(a). Therefore, both prongs of Iran's motion are denied.

I. Background

A. Factual Framework

Although the Court has recited the facts of this case several times in previous opinions, the Court will review them once more here in order to provide context for the discussion that follows. In September 2003, Plaintiffs Jenny Rubin, Deborah Rubin, Daniel Miller, Abraham Mendelson, Stuart E. Hersch, Renay Frym, Noam Rozenman, Elena Rozenman, and Tzvi Rozenman ("Plaintiffs"), obtained a default judgment against the Islamic Republic of Iran, the Iranian Ministry of Information and Security, Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi-Rafsanjani, and Ali Fallahian-Khuzestani for damages they suffered when three suicide bombers affiliated with the terrorist organization Hamas detonated bombs in a pedestrian mall on Ben Yehuda street in downtown Jerusalem. *See Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 261-68. Iran's liability and that of the individual defendants in that case, who were high-ranking officials of the Iranian

government, was premised on the court's finding that Iran was actively funding Hamas's terrorist activities and that the bombing that injured the Plaintiffs would not have occurred without the involvement of Iran and its officials. *Id.* at 262. The *Campuzano* court found that Iran's support for Hamas brought Iran within the jurisdiction of the United States Courts pursuant to a provision of the Foreign Sovereign Immunities Act ("FSIA") that creates an exception to sovereign immunity for certain acts of "extrajudicial killing." *Id.* at 269-272. The total amount of damages awarded to the Plaintiffs in the instant case was in excess of 200 million dollars. *Id.* at 275-77, 279.

In an attempt to enforce their judgment against Iran, the Plaintiffs instituted a citation proceeding in this Court against Citation Respondents the University of Chicago, Gil Stein, and the Field Museum of Natural History, seeking execution or attachment of Persian artifacts belonging to Iran that are currently in the Citation Respondents' possession. *Rubin v. Islamic Republic of Iran*, 349 F. Supp. 2d 1108, 1110-1111 (N.D. Ill. 2004) ("*Rubin I*"). These artifacts fall into three groups: the Persepolis Collection, the Chogha Mish Collection, and the Herzfeld Collection. *Rubin v. Islamic Republic of Iran*, No. 03 C 9370, 2007 WL 1169701, at *2 (N.D. Ill. April 17, 2007) ("*Rubin III*"). The Citation Respondents resisted execution and attachment, arguing that the artifacts were immune from execution under the provisions of the FSIA governing the enforcement of judgments against foreign sovereigns. *Rubin v. Islamic Republic of Iran*, 408 F. Supp. 2d 549, 551 (N.D. Ill. 2005) ("*Rubin II*").

After this Court ruled that the defense of sovereign immunity under the FSIA was personal to Iran and could not be raised by the Citation Respondents, Iran entered the case in order to file a motion before this Court asserting that the artifacts are immune from execution under the FSIA. *Rubin III*, 2007 WL 1169701, at *1. The parties and the Court treated this motion as the equivalent of a motion for summary judgment by Iran. *Id.* The Plaintiffs opposed Iran's motion and argued that they were entitled, under Federal Rule of Civil Procedure 56(f), to further discovery in order to support their theory that the artifacts are amenable to attachment pursuant to provisions of the FSIA and the Terrorist Risk Insurance Act ("TRIA"). Specifically, the Plaintiffs sought discovery regarding whether the artifacts are "blocked" assets amenable to attachment under the TRIA or were used for commercial purposes by the University of Chicago acting as Iran's agent, rendering them amenable to attachment under the FSIA's "commercial use" exception to immunity. *Id.* at *4-8. In its April 17 opinion, which was subsequently affirmed by Judge Manning on July 26, 2007, this Court agreed with the Plaintiffs that further discovery was needed regarding the Plaintiffs' TRIA and FSIA theories and granted the Plaintiffs' Rule 56(f) motion while declining to rule on the merits of Iran's motion. *Id.* at *11. In the same opinion, this Court rejected Iran's argument that it had made only a "special and limited appearance" for the sole purpose of asserting its FSIA sovereign immunity defense. *Id.* at *11-13. Therefore, the Court held that Iran was not immune from merits discovery while its motion for summary judgment was pending. *Id.* at *12-13.

In the wake of this ruling, the Plaintiffs reiterated their demand that Iran produce documents and deposition testimony in connection with a number discovery requests that the Plaintiffs had propounded upon Iran shortly after its entry into the case. Iran objected and ultimately filed the instant motion. In its motion and the accompanying memorandum, Iran specifically objects to Plaintiffs' Deposition Topic 3(a) and Document Category 10(a), which seek information regarding any of Iran's assets "that are or were the subject of any proceedings brought in the Iran-United States Claims Tribunal." (Iran's Mem. at 7.) Iran also objects to Plaintiffs' Deposition Topics 2(a)-(c) and Document Categories 4-6 as they relate to the Chogha Mish collection. Iran argues that these requests seek information regarding the existence of an agency relationship between Iran and the University of Chicago and are irrelevant because the only issue concerning the Chogha Mish collection is whether it is a "blocked" asset subject to attachment under the TRIA. (Iran's Mem. at 26-27.) Next, Iran objects to Plaintiffs' Deposition Topic 3(b), which seeks testimony regarding Iran's assets that are listed in the United States Treasury Department's 2005 "Terrorist Assets Report," arguing that the United States is the proper deponent on that topic. (Iran's Mem. at 25.) Iran's final specific objection is to Plaintiffs' Document Categories 8 and 9, which seek information about the famed archaeologist Ernst Herzfeld, including the circumstances under which he removed artifacts from Iran and the reasons for the termination of his employment relationship with the University of Chicago. (Iran's Mem. at 27.) Iran argues that these requests are beyond the scope of discovery provided for in the Court's April 17 order because they are not necessary in order for the

Plaintiffs to oppose Iran's motion for summary judgment.

Iran also argues more broadly that it is not subject to general discovery of its assets within the United States. In support of this position, Iran maintains that the Court's April 17 order permits discovery only on topics that are relevant to the Plaintiffs' opposition to Iran's motion for summary judgment. In the alternative, Iran argues that: (a) general asset discovery is not permitted under the FSIA or the TRIA; (b) general asset discovery is barred by the executive agreement between the United States and Iran that brought an end to the hostage crisis of 1979-81, known as the Algiers Accords; (c) Iran is protected from general asset discovery by customary international law and principles of comity; (d) general discovery is inappropriate in this case because the underlying judgment is subject to question; (e) Iran was not properly served with notice of the default judgment in the underlying case and has not been properly served with the Plaintiffs' discovery requests; and (f) the provisions of the FSIA and the TRIA that the Plaintiffs rely on in attempting to enforce their judgment may be unconstitutional. For these reasons, Iran asks the Court to issue a protective order declaring that Iran is not obligated to provide general discovery regarding its assets in the United States.

B. Legal Framework

1. *Federal Rules of Civil Procedure*

Notwithstanding the many layers of complexity in this case, at its heart the instant motion arises out of a discovery dispute. Therefore, the Court begins by discussing the applicable procedural rules.

a. *Rule 69*

Federal Rule of Civil Procedure 69, which governs execution proceedings in the federal courts, was the subject of amendments that became effective on December 1, 2007.[1] Rule 69(a), the only portion of the rule relevant to this case, is now subdivided into two parts. Rule 69(a)(1) provides that:

> A money judgment is enforced by a writ of execution . . . . The procedure on execution-and in proceedings supplementary to and in aid of judgment or execution-must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

Fed. R. Civ. P. 69(a)(1). The second part of Rule 69(a) addresses discovery issues in execution proceedings, stating that:

> In aid of the judgment or execution, the judgment creditor . . . may obtain discovery from any person-including the judgment debtor-as provided in these rules or by the procedure of the state where the court is located.

Fed. R. Civ. P. 69(a)(2).

While the Advisory Committee Notes to the 2007 amendments indicate that the changes "are intended to be stylistic only," the separation of the section governing discovery from the section governing enforcement procedures appears to codify the distinction already recognized by federal courts between the

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[1] A fact surprisingly not addressed in either party's briefs.

portion of Rule 69(a) providing for discovery and the portion dealing with enforcement rules. *See, e.g., In re Clerici*, 481 F.3d 1324, 1336 n. 17 (11th Cir. 2007) (interpreting pre-amendment Rule 69(a)'s requirement of state procedures to apply to the second sentence of 69(a) (governing execution procedures) and not to the third sentence (governing discovery in aid of execution)); *Consolidated Freightways Corp. of Delaware v. Kresser Motor Serv., Inc.*, No. 94 C 0323, 1995 WL 683587, at *1 (N.D. Ill. November 16, 1995) (distinguishing between rules governing enforcement procedures and rules governing discovery procedures under Rule 69(a)); *Blaw Knox Corp. v. AMR Indus., Inc.*, 130 F.R.D. 400, 402 (E.D. Wisc. 1990) (same).

Because the instant dispute involves discovery issues, the second prong of 69(a) applies, and Plaintiffs are entitled to conduct discovery "as provided in [the Federal Rules of Civil Procedure] *or* by the procedure of the state where the court is located." Fed. R. Civ. P. 69(a)(2) (emphasis added). *See also Consolidated Freightways*, 1995 WL 683587, at *1 ("[T]he language of Rule 69(a) 'clearly contemplates that plaintiff has a choice between using the federal discovery rules and using the practice of the state.'") (*quoting Evans v. Chicago Football Franchise Ltd. P'ship*, 127 F.R.D. 492, 493 (N.D. Ill. 1989).) When, as in this case, a plaintiff chooses to use the federal rules, "the post-judgment discovery proceeds according to the federal rules governing pre-trial discovery." *Consolidated Freightways*, 1995 WL 683587, at *1 (*citing Natural Gas Pipeline Co. v. Energy Gathering Inc.*, 2 F.3d 1397, 1405 (5th Cir. 1993)). This is consistent with the Advisory Committee Notes to the 1970 amendment to Rule 69(a), which state that one purpose of the rule is to assure that "in aid of execution on a judgment, all discovery procedures provided

in the [federal] rules are available."[2] It is clear, therefore, that the parameters of discovery in this enforcement proceeding are defined by the Federal Rules of Civil Procedure in conjunction with the applicable rules of substantive law, which the Court addresses in Section 2 below.

b. *Rule 26*

Federal Rule of Civil Procedure 26(b) governs the scope of discovery and represents the baseline from which the Court begins its analysis. Rule 26(b)(1) states that:

> Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party . . . . For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1). The rule "vests this Court with broad discretion in determining the scope of discovery, which the Court exercises mindful that the standard for discovery . . . is 'widely recognized as one that is necessarily broad in its scope in order to allow the parties essentially equal access to the operative facts.'" *Scott v. Edinburg*, 101 F. Supp. 2d 1017, 1021 (N.D. Ill. 2000) (quoting *Craig v. Exxon*

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[2] While the rule has been amended twice since the 1970 amendment, both the 1987 amendment and the 2007 amendment make clear that the changes in those years were stylistic or technical only, and did not change the substance of the rule.

Corp., No. 97 C 8936, 1998 WL 850812, at *1 (N.D. Ill. December 2, 1998)). Therefore, a discovery request is relevant "if there is any possibility that the information sought may be relevant to the subject matter of the action." *Rubin I*, 349 F. Supp. 2d at 1111. Given the broad scope of discovery, courts seldom place significant restrictions upon the discovery process, and the burden rests with the objecting party to show that a particular request is improper. *Id.*

2. Substantive Legal Standards

Because Rule 26(b)(1) allows discovery regarding "any matter . . . that is relevant to the claim or defense of any party," the scope of discoverable information in any case depends on the applicable substantive law. As the instant case is a proceeding to enforce a money judgment against the government of Iran, the applicable substantive law is the law that governs execution or attachment of property belonging to foreign sovereigns-the FSIA and TRIA. Only information that may be relevant to a "claim or defense" that is cognizable under those statutes can be discovered in this case.

a. *The FSIA*

The Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, enacted in 1976, displaced an earlier regime in which the federal courts "abided by 'suggestions of immunity' from the State Department" with "a comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies or instrumentalities." *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 488 (1983). § 1604 of the FSIA provides that foreign states are generally immune from the jurisdiction of the courts of the United States, but that immunity is qualified

by a number of exceptions that are listed in § 1605 of the statute. The district court that granted the judgment the Plaintiffs seek to enforce here found that it had jurisdiction over Iran by virtue of the exception provided in § 1605(a)(7) for extrajudicial killings committed by or supported by a "state sponsor of terrorism." *Campuzano*, 281 F. Supp. 2d at 269-72. § 1606 provides that a foreign state that is not immune because it falls within one of the exceptions in § 1605 is "liable in the same manner and to the same extent as a private individual," except that it cannot be held liable for punitive damages. 28 U.S.C. § 1606.

The jurisdictional immunity provided in § 1604 of the FSIA is complemented by § 1609, which provides that "the property in the United States of a foreign state shall be immune from attachment arrest and execution," subject to a series of exceptions listed in § 1610 of the statute, 28 U.S.C. § 1609. Therefore, a plaintiff's ability to obtain a judgment does not necessarily entail the right to enforce that judgment; in some cases, the FSIA may create a right without a remedy. *See Letelier v. Republic of Chile*, 748 F.2d 790, 798 (2d Cir. 1984) (finding that, because property owned by a foreign state was immune from execution, plaintiff had a right without a remedy under the FSIA). In this case, the Plaintiffs seek to enforce their judgment against Iran pursuant to the exception provided by § 1610(a) for "property in the United States of a foreign state . . . used for a commercial activity in the United States." Under § 1610(a)(7), this property is amenable to execution in cases where the underlying judgment is based on 28 U.S.C. § 1605(a)(7), as is the case here. Therefore, the crucial issue with respect to the FSIA is whether Iran

has property within the United States that has been used for commercial activity.

b. *The TRIA*

The Terrorism Risk Insurance Act, enacted in 2002 and codified at 28 U.S.C. § 1610 note, provides another mechanism for the enforcement of judgments against foreign states in cases where liability for the underlying judgment was predicated on the "state sponsor of terrorism" exception to immunity codified in § 1605(a)(7) of the FSIA. § 201(a) of the TRIA provides that "in every case in which a person has obtained a judgment . . . on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) . . . the blocked assets of that terrorist party . . . shall be subject to execution or attachment in aid of execution . . . ." TRIA § 201(a), codified at 28 U.S.C. § 1610 note. "Blocked assets" are defined as "any asset seized or frozen by the United States under . . . sections 202 and 203 of the International Emergency Economic Powers Act." TRIA § 201(d)(2), codified at 28 U.S.C. § 1610 note.

Executive Order No. 12,170, issued on November 14, 1979, blocked all Iranian assets within the United States. Exec. Order No. 12,170, 44 Fed. Reg. 65, 729 (Nov. 14, 1979). Executive Order No. 12,281 subsequently provided that all "properties" of Iran should be transferred according to the wishes of the Iranian government, effectively unblocking them. Exec. Order No. 12,281, 46 Fed. Reg. 7,923 (Jan. 19, 1981). The Treasury Department regulations implementing this order defined the "properties" that were unblocked as "all uncontested and non-contingent liabilities and property interests of the Government of Iran"; "contested" properties contin-

ued to be blocked. 31 C.F.R. § 535.333(a). The regulations provide that a property is "contested" if the holder of the property believes, based on the bona fide written opinion of an attorney, that Iran "does not have title or has only partial title to the asset." 31 CF.R. § 535.333(c). Therefore, with respect to the TRIA, the crucial issue in this case is whether Iran has property within the United States that was blocked in 1979 and that remained blocked because title was "contested" as that term is defined in the Treasury Department regulations.

II. Discussion

In light of the substantive and procedural rules discussed in the preceding section, it would appear that the Plaintiffs are authorized by Rule 69(a)(2) to use all of the discovery tools provided by the federal rules to seek information that meets Rule 26(b)'s lax relevancy standard because it is "reasonably calculated" to lead to the discovery of admissible evidence regarding whether Iran has property in the United States that has been used for commercial purposes (under the FSIA) or that remains blocked due to a title dispute (under the TRIA). However, Iran raises a number objections to the Plaintiffs' discovery requests. Iran has the burden of showing that the Plaintiffs' requests are improper, *Rubin I*, 349 F. Supp. 2d at 1111. As a threshold matter, the Court will address the Plaintiffs' argument that Iran's motion should be denied as untimely. The Court then addresses each of Iran's objections in turn, moving from the more specific objections to the more general.

A. Timeliness

The Plaintiffs urge the Court to deny Iran's motion summarily. Plaintiffs argue that Iran's objec-

tions are untimely and accuse Iran of filing serial motions based on arguments that should have been raised in the context of its motion for summary judgment. (Pls.' Mem. at 4-6.) The Plaintiffs note that they served Iran with the disputed discovery requests in July and early August 2006, and argue that Iran is a year late in moving for a protective order. The Court disagrees and finds that Iran's motion is not untimely.

The Plaintiffs are correct that the party moving for a protective order "must obtain the protective order before the date set by [the] Federal Rules of Civil Procedure for compliance with the discovery request." *Stewart v. Kaplan*, No. 87 C 3720, 1988 WL 10883, at *1 (N.D. Ill. February 8, 1988) (*citing* 8 Wright & Miller, Federal Practice and Procedure: Civil, § 2035, at 262-63 (1970).). However, the Court finds that Iran did raise a timely objection when it filed for a protective order on August 10, 2006. (Dkt. 182.) Furthermore, while the instant motion raises objections to the same discovery requests that Iran objected to in its original motion for a protective order, the Court finds that the instant motion is not barred as a "serial" motion. At the time of Iran's first motion for a protective order, the parties and the Court were focused on discovery issues relating to the Persepolis, Herzfeld, and Chogha Mish collections and their immunity under the FSIA and TRIA. Iran appears to have been operating under the assumption that all of the discovery issues were resolved by this Court's April 17 order until the current disagreement became apparent in August 2007. (Iran's Mem. at 5.) Therefore, this case is distinguishable from those cases in which "serial" motions are filed "one at a time . . . to suit a litigant's convenience." *Divane v. Krull Elec. Co., Inc.*, No. 95 C 6108,

2002 WL 31844987, at *1 (N.D. Ill. December 18, 2002). The Court has broad discretion to manage its docket and allow successive motions for "good reasons." *See Whitford v. Boglino*, 63 F.3d 527, 530 (7th Cir. 1995). Because "good reasons" exist for Fran to raise the issues in this motion again, Iran's motion is not barred.

B. Assets Listed in the 2005 Terrorist Assets Report

Iran objects to the Plaintiffs' Deposition Topic 3(b), which seeks testimony "[i]dentifying and describing . . . [a]ll assets of Iran . . . referred to in the 2005 'Terrorist Assets Report' published by the United States Department of the Treasury." The relevance of this information for discovery purposes is clear: obtaining information regarding this property may enable the Plaintiffs to determine whether any of it is subject to execution or attachment under the FSIA or the TRIA. Iran's objection rests on the fact that the United States, not Iran, prepared the report, which does not specifically name any property. (Iran's Mem, at 25.) Iran also claims that, with respect to any blocked property, the United States is technically in possession because "[t]o seize or freeze assets transfers possessory interest in the property." *Smith v. Fed. Reserve Bank of New York*, 346 F.3d 264, 272 (2d Cir. 2003). Therefore, Iran argues, the Plaintiffs must serve a citation on the United States and seek discovery regarding the assets in the Report from the Treasury Department. The Court disagrees.

The fact that an executive order blocking or seizing property creates a possessory interest in the government may be relevant if and when the Plaintiffs actually seek to enforce their judgment by executing

against the property listed in the Report.[3] At this stage of the proceeding, however, the Plaintiffs are merely seeking to discover information about the assets. The Plaintiffs, as judgment creditors, are entitled under Rule 69(a) to a "very thorough examination of the judgment debtor," *OHM Res. Recovery Corp. v. Indus. Fuels & Res., Inc.*, No. S90-511, 1991 WL 146234, at *3 (N.D. Ind. July 24, 1991), and the assets referred to in the Report belong to Iran. The fact that the United States compiled the Report is irrelevant. Iran does not argue that supplying the information poses an undue burden, which might be grounds for denying the Plaintiffs' request. *See* Fed. R. Civ. P. 26(c). Iran merely argues that the United States is in a better position to identify the properties. The Plaintiffs have no obligation to seek discovery from any other entity merely because that entity could provide the information more easily. The assets are Iran's; it is not as though Iran is a patently improper source for this information. If Iran truly cannot identify the properties referred to in the Report, it may say so. If Iran can identify them, it is obligated to provide this relevant information and may not shift its burden to the United States.

C. Discovery Regarding the Existence of an Agency Relationship Between Iran and the University of Chicago With Respect To the Chogha Mish Collection

Iran next objects to the Plaintiffs' Deposition Topics 2(a)-(c) and Document Categories 4-6. Iran

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[3] The Court notes that a "possessory interest" in an asset is not the same as actual possession, which may be more relevant for the purposes of an enforcement proceeding.

argues that these discovery requests are improper in that they seek information regarding a possible agency relationship between Iran and the University of Chicago with respect to the loan of the Chogha Mish collection. Because the Plaintiffs seek to execute against the Chogha Mish artifacts pursuant to the TRIA's exception for blocked property rather than the FSIA's exception for property used for commercial purposes, Iran argues that the issue of agency is irrelevant. (Iran's Mem. at 26-27.) The Plaintiffs admit that they do not seek to execute against the Chogha Mish collection under the FSIA and agree that discovery regarding the existence of an agency relationship with respect to the Chogha Mish collection is irrelevant. Therefore, the Plaintiffs have withdrawn Deposition Topics 2(b) and (c) and Document Requests 5 and 6.

Notwithstanding their abandonment of the agency argument, the Plaintiffs argue that Deposition Topic 2(a) and Document Request 4 are within the scope of discovery. The Plaintiffs assert that these requests may be relevant to whether the Chogha Mish artifacts are "blocked assets" under § 201 of the TRIA because title to the artifacts is contested. The Court agrees. While Deposition Topics 2(b) and (c) clearly focus on the relationship between the parties to the loan and the use of the artifacts in the United States, Deposition Topic 2(a) relates to the "terms, conditions, nature and purpose of the loan," and may be relevant to the existence of a dispute over title to the collection. Similarly, Document Requests 5 and 6 relate to the use of the artifacts in the United States and the relationship between Iran and the University of Chicago, while Document Request 4 seeks more general information about the nature and terms of the loan that may be relevant to whether Iran's title

to the artifacts is in question. Therefore, the Plaintiffs are entitled to the information requested in Deposition Topic 2(a) and Document Request 4.

D. Document Requests Regarding Ernst Herzfeld

Iran objects to the Plaintiffs' Document Requests 8 and 9, which seek all documents pertaining to the alleged theft or unauthorized removal of artifacts from Iran by Ernst Herzfeld and documents regarding Herzfeld's employment relationship with the University of Chicago. Iran's argument appears to be that the Plaintiffs' requests are improper because the information they seek is not necessary in order for the Plaintiffs to respond to Iran's motion for summary judgment. (Iran's Mem. at 27.) The Court disagrees.

As discussed more fully in the next section of this opinion, the fact that Iran has filed a motion for summary judgment and the Court has granted the Plaintiffs' motion for additional discovery in order to respond to Iran's motion does not mean that all other discovery has been stayed. Therefore, the Plaintiffs continue to be entitled to discovery from Iran on all relevant topics. The Plaintiffs believe that Herzfeld may have illegally removed the artifacts that form the Herzfeld collection from Iran. The Plaintiffs believe that the effect of Herzfeld's alleged "predations" is that the artifacts in the Herzfeld collection remain the property of Iran. Therefore, documents pertaining to Herzfeld's employment and termination by the University of Chicago and his possible theft or improper removal of artifacts from Iran may demonstrate the existence of a bona fide question regarding their ownership, which in turn may be relevant to whether they are subject to execution as blocked as-

sets under the TRIA. Because the information sought may be relevant to an issue in this case, Document Requests 8 and 9 are proper.

E. The Court's April 17, 2007 Order

Iran argues that the Plaintiffs' discovery requests are improper to the extent that they seek information that is not necessary in order to address the specific issues raised by Iran's pending motion for summary judgment. In making this argument, Iran relies on this Court's order of April 17, 2007, which was subsequently upheld by Judge Manning on July 26, 2007. The April 17 order dealt with Iran's motion for summary judgment, which was predicated on Iran's argument that the Persepolis, Chogha Mish, and Herzfeld collections are immune from execution as a matter of law, and the Plaintiffs' Rule 56(f) motion for a continuance to conduct further discovery in order to respond to Iran's motion. This Court held that the Plaintiffs were "entitled to discover information to support their arguments under the FSIA and the TRIA," and granted their motion to continue discovery. *Rubin III*, 2007 WL 1169701, at *1. In overruling Iran's objections to this Court's order, Judge Manning wrote on July 26, 2007, that "[the Court] recently granted the plaintiffs' requests for discovery they allegedly needed to adequately respond to a motion for summary judgment." *Rubin v. Islamic Republic of Iran*, No. 03 C 9370, 2007 WL 2219105, at *1 (N.D. Ill. July 26, 2007). In light of this language, Iran argues that the Plaintiffs are entitled only to discovery that relates to the issues raised by Iran's motion for summary judgment, *i.e.*, whether the Persepolis, Chogha Mish, and Herzfeld collections are immune from attachment under the FSIA and TRIA.

Iran's argument is lacking in several respects. Iran appears to assume that, with the exception of the discovery specifically allowed by the Court, discovery was automatically stayed by the filing of Iran's motion for summary judgment. This is incorrect. *See Bodnar v. John Hancock Funds, Inc.*, No. 2:06 CV 87, 2007 WL 1577914, at *2 (N.D. Ind. May 30, 2007) ("The filing of a motion to dismiss or for summary judgment by itself does not mandate a stay of discovery pending resolution of that motion."). Rather, a stay of discovery is appropriate when "the material facts are undisputed," *Walsh v. Heilmann*, 472 F.3d 504, 505 (7th Cir. 2006), or when the discovery sought will not help to resolve a motion that may dispose of the claim to which the discovery relates. *See Sprague v. Brook*, 149 F.R.D. 575, 577-78 (N.D. Ill. 1993).

This Court's earlier opinion and Judge Manning's opinion focused on the Plaintiffs' need for discovery regarding the immunity of the Persepolis, Chogha Mish, and Herzfeld collections. Before the Court at that time were Iran's motion to declare those specific properties exempt and the Plaintiffs' request, under Rule 56(f), for more time to carry on discovery before answering that motion. The Court granted the Plaintiffs' Rule 56(f) motion, effectively continuing Iran's motion. *See* Fed. R. Civ. P. 56(f) (authorizing the court to "order a continuance to permit . . . discovery to be had"). Had Tran argued that *all* of its assets were immune from execution as a matter of law, the Court would have had occasion to address general asset discovery in its order of April 17. As the case now stands, the requests that Iran objects to—regarding assets other than the Persepolis, Chogha Mish, and Herzfeld collections—explore claims that cannot possibly be resolved by

Iran's pending motion for summary judgment because they concern properties that have yet to be identified. Therefore, as to Iran's other assets, this is not a situation where the material facts are undisputed—they are unknown—or where additional discovery will be rendered moot if Iran's motion for summary judgment is granted. Therefore, the Court's April 17 order does not limit the Plaintiffs to discovery related to the issues raised in Iran's motion for summary judgment.

F. Iran's Objections To General Discovery

The bulk of Iran's brief is devoted to a raft of arguments in support of the proposition that Iran should not be required to answer the Plaintiffs' requests for general information regarding Iran's assets in the United States. As a threshold issue, Iran maintains that it was not properly served with notice of the default judgment in the underlying case and that it has not been properly served with the Plaintiffs' requests to discover its assets. Moving on to substantive objections, Iran first argues that the Plaintiffs' attempts to obtain general discovery of Iran's assets, if successful, will create a lien on those assets in violation of the Algiers Accords. (Iran's Mem. at 7-10.) Next, Iran argues that general asset discovery is prohibited under the FSIA and the TRIA. (*Id.* at 13-17.) Iran then argues that the Court should exercise its discretion to deny general discovery because allowing such discovery would be unprecedented and would contradict principles of customary international law. (*Id.* at 18-20.) Finally, Iran argues that the Court should not allow general discovery because the underlying judgment is flawed and because Iran believes that the FSIA and the TRIA are unconstitutional. (*Id.* at 20-23.)

1. Sufficiency of Service

Iran argues that general discovery is inappropriate because Iran was not properly served with notice of the default judgment that the Plaintiffs seek to enforce in this proceeding. § 1608(a) of the FSIA, which "delineates the 'exclusive procedures' for effecting service of process upon a foreign state," lists four methods for service. *Alberti v. Empresa Nicaraguense De La Carne*, 705 F.2d 250, 253 (7th Cir. 1983). Because § 1608(a) "lists the methods in descending order of preference," a plaintiff must use the first option if it is possible before moving on to the second, and so on. *Doe I v. State of Israel*, 400 F. Supp. 2d 86, 101 (D.D.C. 2005). § 1608(e) provides that a plaintiff who obtains a default judgment must send a copy to the foreign state defendant "in the manner prescribed for service in this section." Because § 1610(c) of the FSTA prohibits a court from allowing attachment or execution until "a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e)," Iran argues that the Plaintiffs' failure to properly give notice of the default judgment precludes attachment or execution in aid of the judgment and renders discovery of its assets improper and unnecessary. The Court disagrees with this interpretation of § 1608(e)'s notice requirement.

In this case, the parties agree that the first two methods of service provided for in § 1608(a)—delivery of the summons in accordance with a bilateral arrangement for service and delivery in accordance with an international convention—were not available to the Plaintiffs. After the Plaintiffs were unsuccessful in their attempt to serve Iran by mail (the third option under § 1608(a)), the Plaintiffs

served Iran through diplomatic channels (the final option under § 1608(a)). The district court in the underlying case ruled that the Plaintiffs had properly served Iran with notice of their lawsuit and ordered them to serve Iran with notice of the default judgment by the same means. *Campuzano*, 281 F. Supp. 2d at 272; (Pls.' Mem., Ex. C.). Because the Plaintiffs did not attempt to give notice of the default judgment by mail before using diplomatic channels, Iran believes that they violated the order of preference established by § 1608(a) and, by extension, violated § 1610(e).

To accept this argument, the Court would have to interpret § 1608(e)'s requirement that notice of default be given "in the manner prescribed for service in this section" to mean that, regardless of the means by which the summons was served, a plaintiff must follow § 1608(a)'s order of preference when giving notice of a default judgment. In a case like this one, that would mean attempting to give notice by mail even though service by mail had already failed. Evidently the Washington, D.C., district court, which ordered the Plaintiffs to skip this likely futile step, did not interpret § 1608(e) this way, and neither does this Court. The most natural interpretation is that "in the manner prescribed for service in this section" means "using the method that was prescribed by § 1608(a) for service of the summons." In other words, whatever method of service was appropriate in initiating the suit is appropriate in giving notice of the default judgment. Here, the method prescribed by § 1608(a) was service through diplomatic channels, since there was no applicable treaty or international agreement and service by mail failed. Therefore, that same method—service through diplomatic

channels—was appropriate in giving notice of the default judgment.

This reading also has the advantage of being sensible: why would the statute require a plaintiff to go through the empty formality of trying "preferable" methods of service that have already proven futile? As this Court interprets the statute, it does not. This is consistent with other courts' holdings that "the purpose of the FSTA is to ensure actual notice to foreign states of the fact and substance of pending litigation," not to mire plaintiffs in a labyrinth of procedural requirements. *Antoine v. Alias Turner, Inc.*, 66 F.3d 105, 109 (6th Cir. 1995) (internal quotes omitted). Because service by mail failed and service of the summons through diplomatic channels was proper, notice of the default judgment through diplomatic channels was sufficient to satisfy § 1608(e) and § 1610(c).

Iran also argues that it need not provide the requested discovery because it has not been properly served with the Plaintiffs' requests. Iran's argument is predicated on its assumption that the Plaintiffs' discovery requests must be served in accordance with Illinois state law governing execution or the stringent service requirements of the FSIA. With respect to the FSIA, however, the Seventh Circuit has noted that "[n]othing in the FSIA explicitly requires that notice of a motion . . . be given in accordance with the procedures for serving process," and has looked to the federal rules in determining the appropriate standard for service in that context. *Autotech Technologies LP v. Integral Research & Development Corp.*, 499 F.3d 737, 747-49 (7th Cir. 2007). The FSIA is similarly silent with respect to discovery requests. Therefore, the Court follows the Seventh

Circuit's lead and looks to the federal rules. This approach is further supported by the text of Rule 69(a)(2), which governs the Plaintiffs' discovery requests in this case. Under Rule 69(a)(2), "post-judgment discovery proceeds according to the federal rules governing pre-trial discovery." *Consolidated Freightways*, 1995 WL 683587, at *1. Under the federal rules governing pre-trial discovery, service of a deposition notice on a party's attorney is sufficient. This rule has been applied in the context of Rule 69(a) discovery requests. *Cerami v. Robinson*, 85 F.R.D. 371, 372 (S.D.N.Y. 1980). Therefore, the Court finds that the Plaintiffs' discovery requests were properly served on Iran's attorney, whose appearance for Iran in this case is a matter of record.

2. The Algiers Accords

Iran urges the Court to deny the Plaintiffs' requests for general asset discovery because to allow such discovery would violate the United States' obligations under the Algiers Accords, the bilateral agreement that resolved the 1979 hostage crisis. Pursuant to the Accords, the United States and Iran formed the Iran-United States Claims Tribunal to facilitate neutral third-party arbitration of claims that were then pending in the United States Courts against Iran and its state enterprises. *See Dames & Moore v. Regan*, 453 U.S. 654, 664-65 (1981). While Article VII of the Claims Settlement Declaration provides that claims brought before the Claims Tribunal are "excluded from the jurisdiction of the courts of Iran, or of the United States," the Supreme Court has held that the Accords did not alter the jurisdiction of the federal courts but rather "effected a change in the substantive law governing the lawsuit." *Id.* at 685. Therefore, the pendency of a claim

before the Claims Tribunal provides a substantive defense to a suit based on the same claim in a federal court. *Id.*

Within this framework, Iran makes two arguments. First, Iran argues that the Plaintiffs' request for discovery regarding Iran's assets "that are or were the subject of any proceedings brought in the Iran-United States Claims Tribunal" must be denied because the Claims Tribunal's jurisdiction over such assets is exclusive. However, Iran's own brief acknowledges the Supreme Court's holding in *Dames & Moore*, quoted above, that the Algiers Accords did not actually strip the federal courts of jurisdiction over claims to assets that are the subject of claims before the Tribunal, but merely provided a substantive defense. It may be the case that the assets the Plaintiffs seek to discover with this request will ultimately be immune from attachment and execution because they are the subject of claims before the Claims Tribunal. This immunity does not imply that the Plaintiffs may not inquire as to what these assets are in their attempt, authorized by Rule 69(a)(2), to get a picture of Iran's assets in the United States in order to learn how they might enforce their judgment. Therefore, the Plaintiffs are entitled to discovery regarding Iran's assets that are or have been the subject of claims before the Claims Tribunal.

Iran also raises a second, broader argument based on the Algiers Accords. Pointing to the language of the Accords, Executive Order No. 12,281 (which unblocked Iranian assets in the United States), and several decisions of the Claims Tribunal, Iran claims that all liens on Iranian assets in the United States are prohibited, Iran then argues that discovery requests issued pursuant to Rule 69(a) cre-

ate a lien on the properties that they seek to discover. Combining these two propositions, Iran argues that all of the Plaintiffs' discovery requests must be denied because they would create forbidden liens upon Iranian assets within the United States. These arguments are unpersuasive.

Iran premises its argument that the Algiers Accords forbid all liens on any Iranian property in the United States on Executive Order No. 12,281, which implemented the Accords by unblocking Iranian property in the United States and prohibiting the exercise of "any right, power, or privilege . . . with respect to the properties . . . referred to in Section 1-101 of this Order," Exec. Order No. 12,281, 46 Fed. Reg. 7,923. Section 1-101 in turn refers to "[a]ll persons . . . in possession or control of properties . . . owned by Iran." *Id.* Read together, these sections make clear that any prohibition contained in the order applies to those properties of Iran that were in the "possession or control" of persons subject to the jurisdiction of the United States on January 19, 1981, the date of the order. Thus there is no basis in the order for a blanket prohibition of discovery regarding all assets. Iran also relies on a Claims Tribunal decision stating that the United States' promise in the Accords to "remove and bar claims against Iran in the U.S. courts and instead to bring them before the Tribunal" would "best be effected by . . . preventing the exercise of liens, as was done by . . . Executive Order No. 12281 . . . ." Iran-U.S. Claims Tribunal Award No. 529-A15-FT at ¶ 49 (May 6, 1992). The Tribunal's references to the Algiers Accords and Executive Order No. 12,281 indicate that its statement about liens concerned properties that were the subject of claims that Iran and the United States referred to the Tribunal, not the entire universe of Ira-

nian assets regardless of when they were acquired. Therefore, the Court does not agree that the Algiers Accords forbid all liens against all Iranian assets in the United States, as Iran seems to believe.

The question of whether the Algiers Accords forbid liens on Iranian properties and the scope of that prohibition are not essential to the resolution of the instant dispute, however, because there is a much simpler reason for rejecting Iran' argument: Rule 69(a)(2) discovery requests do not create a lien on the property they seek to discover. Iran argues that the Plaintiffs' discovery requests are a "citation to discover assets" under Illinois law, which provides that "the judgment or balance due on judgment becomes a lien when a citation is served . . . ." 735 ILCS 5/2-1402(m). In making this argument, Iran relies on Rule 69(a)(1), which provides that "[t]he procedure on execution . . . and in proceedings on and in aid of execution shall be in accordance with [the law of the state where the district court sits]." However, as discussed in Section I.B.1.a above, it is the second prong of Rule 69(a) (now codified separately as Rule 69(a)(2)) that governs matters of discovery. This Court agrees with other courts that have interpreted the second prong of Rule 69(a) that "the post-judgment discovery proceeds *according to the federal rules* governing pre-trial discovery." *Consolidated Freightways*, 1995 WL 683587, at *1 (emphasis added).

Anticipating this conclusion, Iran argues that even if the Plaintiffs' discovery requests are governed by the federal rules, they nonetheless create a lien upon the assets they seek to discover. Iran does not identify any case in which a court has held that a discovery request pursuant to Rule 69(a) automati-

cally creates a lien. Rather, Iran relies on similarities in the "purpose and effect" of Rule 69(a) and 735 ILCS 5/2-1402(m) as well as the similar language of the statutes, arguing that "except in name, one cannot be distinguished from the other." (Iran's Mem. at 9.) In fact, the Court finds another distinction: while 735 ILCS 5/2-1402(m) expressly provides that "the judgment or balance due on judgment becomes a lien when a citation is served," Rule 69(a)(2) contains no such language referring to a lien. Iran provides no reason why the Court should ignore this crucial difference in the plain language of the statutes, which is the starting point of all interpretation. Furthermore, because the Court has already found that this issue is governed by the federal rules rather than state law, there is no reason to accord any special significance to an analogous Illinois statute. It cannot be the case that the meaning of the federal rules changes from district to district in light of the procedural law of the state where each court sits. This issue is governed by Federal Rule 69(a)(2), and the Court declines Iran's invitation to read Illinois law into the federal rules. Therefore, the Plaintiffs' discovery requests do not create a lien on the assets they seek to discover. Because there is no lien, Iran's argument that the Algiers Accords bar any liens on any Iranian property is irrelevant, and the Plaintiffs are entitled to the discovery they seek.

3. The FSIA and TRIA

Iran also argues that the Plaintiffs are not entitled to general asset discovery because "there is no basis under the FSIA or TRIA for discovery of 'all' assets." (Iran's Mem. at 13.) The crux of Iran's argument is that, because the FSIA and TRIA limit the assets against which the Plaintiffs can enforce their

judgment, the Plaintiffs are not entitled to discover all of Iran's assets. This argument appears to conflate the substantive law of the FSIA and TRIA, which defines the subset of Iran's assets that is susceptible to attachment or execution, with the federal rules of procedure, which define the scope of discovery to which the Plaintiffs are entitled. The Court does not agree with the Plaintiffs that the FSIA and TRIA are irrelevant; as discussed above, the substantive law of immunity defines what information may be "relevant," and therefore discoverable, under Rule 26(b). At the same time, the Plaintiffs are entitled to discover all information that is reasonably calculated to lead to admissible evidence. By inquiring about Iran's assets generally, the Plaintiffs, and ultimately the Court, will be able to determine which of those assets fall within the domain of assets that are amenable to attachment and execution under the FSIA and TRIA. The Court will not limit the Plaintiffs' discovery requests to those categories of assets that are reachable under the FSIA and TRIA, allowing Iran to be the judge of which assets are immune before providing any discovery. That determination goes to the merits of the case and will be made by the Court alone.

4. Challenges to the Underlying Judgment

Iran urges the Court to deny general discovery on the basis that "the underlying judgment is subject to serious question," and proceeds to identify several aspects of the *Campuzano* court's decision on the merits with which it disagrees. (Iran's Mem. at 20, 21.) Specifically, Iran disagrees with that court's holding that § 1605(a)(7) of the FSIA creates a private cause of action against a foreign state and its holding that the Plaintiffs' common law tort claims

were valid bases for recovery. (*Id.* at 20, 21.) Because Iran failed to appear in the underlying case, the only basis upon which it may now challenge the judgment is a lack of personal or subject-matter jurisdiction in the rendering court. *See Bd. of Trustees, Sheet Metal Workers' Nat'l Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031, 1034-35 (7th Cir. 2000). Iran does not dispute that it was properly served with notice of the initial lawsuit, creating personal jurisdiction. Furthermore, Iran's attacks on the underlying judgment amount to an allegation that the Plaintiffs failed to state a claim upon which relief could be granted, which is an affirmative defense that is waiveable and therefore non-jurisdictional. *See* Fed. R. Civ. P. 12(b)(6). Because they do not address personal or subject matter jurisdiction, Iran's challenges to the underlying judgment are non-cognizable collateral attacks on a final judgment.

It appears that Iran's purpose in highlighting the alleged weaknesses of the court's ruling in the underlying case is not so much to negate that ruling as to persuade this Court that it should not allow general discovery against Iran to enforce a "questionable" judgment. As Iran states in its brief: "We are not certain that there will ever be a case in which to set this precedent, but we submit that *this case* is not it." (Iran's Mem. at 20 (emphasis in original).) The Court will not entertain this argument. The Seventh Circuit has repeatedly recognized that vital societal interests are served by finality in litigation. *See, e.g., Robinson v. City of Harvey*, 489 F.3d 864, 869 (7th Cir. 2007) (referring to "the long-recognized public interest in the finality of litigation"); *Hurley v. Motor Coach Indus., Inc.*, 222 F.3d 377, 379-80 (7th Cir. 2000) (noting the "strong interests in finality, efficiency, and economy that attach to a completed tri-

al"); *Bell v. Eastman Kodak Co.*, 214 F.3d 798, 800-01 (7th Cir. 2000) (stating that "collateral attack, especially in civil cases, is disfavored because of the social interest in expedition and finality in litigation"). Finality would cease to be a meaningful concept if courts were to give greater effect to judgments they agreed with on the merits and less effect to those they disagreed with. Therefore, the alleged weaknesses of the judgment in the underlying case, being non-jurisdictional, are irrelevant to the enforcement of the judgment in this Court.

5. Constitutional Challenges to the FSIA and TRIA

Iran also argues that the FSIA and TRIA are unconstitutional. As discussed above, arguments regarding the merits of the underlying judgment that are not relevant to either personal or subject matter jurisdiction cannot be the basis for a collateral attack. However, the FSIA and TRIA are relevant to this enforcement proceeding because they define which of Iran's properties in the United States may be amenable to attachment and execution. If the statutes were unconstitutional, the Plaintiffs would have no basis for executing against Iran's assets and no need for discovery. Therefore, the Court briefly addresses Iran's constitutional arguments.

The kernel of Iran's disagreement with both the FSIA and the TRIA is that under each statute the immunity of a foreign state's property depends on whether it has been designated a "sponsor of terrorism" by the State Department. (Iran's Mem. at 22.) Iran's first argument is that, by making immunity contingent on a determination by the executive branch, Congress improperly delegated its legislative authority and violated the doctrine of separation of

powers. The Seventh Circuit has expressed doubt that Congress can delegate the power to define the jurisdiction of the federal courts to the executive branch. *See United States v. Mitchell*, 18 F.3d 1355, 1360 n.7 (7th Cir. 1994). In this case, however, the Court finds that there is no delegation issue because both § 1605(a)(7) of the FSIA and the TRIA were enacted *after* Iran was designated as a state sponsor of terrorism by the State Department.[4] Because Iran was already designated as a state sponsor of terrorism, its immunity was stripped by an act of Congress when Congress incorporated the existing list of terrorist states compiled by the State Department into the FSIA and the TRIA. *See Rein v. Socialist People's Libyan Arab Jamahiriya*, 162 F.3d 748, 764 (2d Cir. 1998) (holding that Libya's loss of immunity under § 1605(a)(7) was the result of a legislative act of Congress because Libya was on the list of state sponsors of terrorism when § 1605(a)(7) was enacted). Iran's loss of immunity was not the result of an executive exercise of delegated authority, and therefore Iran's separation of powers argument fails.

Iran next argues that its rights under the Due Process Clause have been violated because the FSIA and TRIA make the immunity of its property in the United States contingent on a "politically motivated" determination by the State Department that Iran is a state sponsor of terrorism. While the Seventh Circuit has not taken a position on whether a foreign sovereign has rights under the Due Process Clause, courts in the District of Columbia Circuit have ad-

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[4] Section 1605(a)(7) was enacted in 1996; the TRIA was enacted in 2002. Iran was designated a "State Sponsor of Terrorism" on January 19, 1984.

dressed the issue and held that a foreign state is not a "person" for the purposes of the Due Process Clause. *See Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 96 (D.C. Cir. 2002) (holding that "foreign states are not 'persons' protected by the Fifth Amendment"); *Wyatt v. Syrian Arab Republic*, 362 F. Supp. 2d 103, 115 (D.D.C. 2005) (citing *Price* and holding that Syria could not raise a due process challenge to the exercise of jurisdiction by a federal court). The logic of *Price* is persuasive. First, the Supreme Court has expressed an "understanding that in common usage the term 'person' does not include the sovereign." *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 64 (1989) (internal quotes omitted). The Supreme Court has also held that States of the Union are not "persons" for Due Process purposes. *See South Carolina v. Katzenbach*, 383 U.S. 301, 323-24 (1966). In light of these holdings, this Court agrees with the D.C. Circuit that "it would be highly incongruous to afford greater Fifth Amendment rights to foreign nations, who are entirely alien to our constitutional system, than are afforded to the states." *Price*, 294 F.3d at 96. Therefore, Iran's due process argument fails.

Iran next argues that the FSIA and TRIA, to the extent that they prescribe different treatment for Iran as a state sponsor of terrorism, violate Iran's right to equal protection of the laws. Iran does not take issue with Congress's decision to treat state sponsors of terrorism differently than other sovereigns. Rather, Iran argues that it has been denied equal protection because it has been designated a state sponsor of terrorism while other unnamed states that also provide material support for terrorist activity have not. (Iran's Mem. at 22.) Because it challenges the unequal application of the classifica-

tion to itself and not the classification *per se*, Iran's claim is best categorized under Seventh Circuit precedent as a "class of one" equal protection claim. A "class of one" claim "may be brought where (1) the plaintiff alleges that he has been intentionally treated differently from others similarly situated and (2) that there is no rational basis for the difference in treatment or the cause of the different treatment is a totally illegitimate animus toward the plaintiff . . . ." *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616, 638 (7th Cir. 2007) (internal quotes and citations omitted).

As a threshold matter, the logic of *Price* suggests that Iran, as a foreign sovereign, is not a "person" for equal protection purposes any more than it is a "person" with due process rights. This is particularly clear when "foreign sovereign" is substituted for "person" in the text of the Fourteenth Amendment[5], rendering it incomprehensible: "No State shall . . . deny any [foreign state] within its jurisdiction the equal protection of the law." U.S. Const. amend. XIV, § 1. The Court need not decide that issue, however, because Iran's claim is doomed for a more mundane reason: Iran cannot make the necessary showing for its "class of one" equal protection claim. First, despite its vague allusions to "other states" that fund extra-judicial killings in violation of inter-

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[5] While the Fourteenth Amendment does not apply to the federal government, the Fifth Amendment has been interpreted to contain a guarantee of equal protection under federal law, and the Supreme Court's approach to Fifth Amendment equal protection claims has been "precisely the same as to equal protection claims under the Fourteenth Amendment." *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975).

national law, Iran has not identified a similarly situated state that has been left off of the list of state sponsors of terrorism. Moving to the second prong of the standard articulated in *St. John's*, Iran does not argue that its differential treatment is lacks a rational basis, only that it is "politically motivated." This falls short of the required showing that its treatment results from "totally illegitimate animus." Because Iran's allegations fail to meet both prongs of the Seventh Circuit's standard for "class of one" equal protection claims, Iran's equal protection challenge to the FSIA and TRIA fails.

Iran's next argument is that § 1605(a)(7) of the FSIA violates customary international law because it "permit[s] jurisdiction over terrorist acts that have no nexus to the United States."[6] This argument ignores an important nexus between acts that give rise to jurisdiction under § 1605(a)(7) and the United States: sovereign immunity is lifted under this section only when either the claimant or the victim was a United States national at the time of the act that gives rise to the claim. *See* 28 U.S.C. § 1605(a)(7)(B)(ii). It is entirely conventional for the United States or any other nation to assert legislative jurisdiction over conduct that has an effect on its own nationals. *See* Restatement (Third) of Foreign Relations Law of the United States, § 402(2). Furthermore, while Congress is presumed to intend to comply with international legal norms, *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164

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[6] Iran's brief includes the TRIA in this argument; because the TRIA addresses enforcement of judgments rather than jurisdiction, the Court assumes Iran meant this argument to apply to the FSIA only.

(2004), "customary international law is not applicable in domestic courts when there is a controlling legislative act" to the contrary. *Bradvica v. I.N.S.*, 128 F.3d 1009, 1014 n.5 (7th Cir. 1997). Therefore, Iran's arguments based on principles of customary international law are not persuasive.

6. Comity

Iran's final argument is that principles of comity, along with the potential impact on U.S. foreign relations of an order granting the Plaintiffs' discovery requests, indicate that the Court should not allow general asset discovery in this case. The United States, in its Third Statement of Interest, makes a similar point, urging the Court to "exercise circumspection in light of the potential foreign policy implications of requiring broad discovery of a foreign sovereign." (United States' Statement of Interest at 2.) While the Court respects Iran's sovereignty and that of all foreign states, the Court finds that comity does not negate the Plaintiffs' right to general asset discovery in this case.

The Supreme Court has stated that foreign sovereign immunity is a matter of "grace and comity on the part of the United States." *Verlinden*, 461 U.S. at 486. To that end, the FSIA provides that foreign sovereigns are generally immune from suit, 28 U.S.C. § 1604, and that the property of foreign sovereigns in the United States is generally immune from attachment or execution, 28 U.S.C. § 1609. In enacting the FSIA, however, Congress codified exceptions to these general rules, establishing that these immunities were not limitless. *See Verlinden*, 461 U.S. at 488 ("For the most part, the Act codifies, as a matter of federal law, the restrictive theory of sovereign immunity."). In enacting § 1605(a)(7) and the TRIA,

Congress further limited foreign sovereigns' immunity from suit and enforcement of judgments. The exceptions are as much a part of the legal landscape that the Court and the parties must navigate as the general rule, and if they are to have any meaning, the Plaintiffs and the Court must be able to determine when they apply. Therefore, general asset discovery is necessary in this case in order to determine whether particular property falls within the exceptions to the general rule of immunity.

Iran argues that the FSIA demonstrates Congress's intent to prevent foreign sovereigns from bearing the "burdens of litigation," including discovery. (Iran's Mem. at 15.) But Iran's citation to the Seventh Circuit's opinion in *Enahoro v. Abubakar* is inapposite, because *Enahoro* dealt with a district court's denial of the appellant's claim that he was immune from the jurisdiction of the district court under the FSIA. 408 F.3d 877, 880 (7th Cir. 2005). The Seventh Circuit held that a denial of sovereign immunity may be immediately appealed in order to prevent the party claiming immunity from facing the burden of trial only to discover on appeal that the trial never should have happened. *Id.* In this case, a court has already determined that Iran was not immune from suit, a conclusion that Iran does not contest. *Campuzano*, 281 F. Supp. 2d at 269-72. Congress obviously did not intend Iran to be free from the burdens of litigation in cases such as this, where an express exception to immunity applied. Now that the Plaintiffs have a judgment, the question is whether any of Iran's property in the United States falls within an exception to the general rule of immunity from attachment and execution. Iran's immunity from the burdens of litigation is no longer at issue.

The Court respects the interests of the United States and its right to make its position known in cases with important foreign policy ramifications. *See Republic of Austria v. Altmann*, 541 U.S. 677, 714 (2004) (recognizing that the United States may enter a statement recommending dismissal in a variety of factual scenarios). The United States' Statement of Interest advises the Court that "[c]ourts confronted with the issue of post-judgment discovery in cases arising under the FSIA generally have exercised their discretion to carefully limit such discovery so as to avoid intruding on the sovereignty of a foreign state." (United States' Statement of Interest at 3.) However, the cases it cites are not particularly relevant to the factual and procedural situation the Court faces here. In *Connecticut Bank of Commerce v. Republic of Congo*, the Fifth Circuit stated in a footnote that the district court in an enforcement proceeding "should order discovery circumspectly and only to verify allegations of specific facts crucial to [the] immunity determination." 309 F.3d 240, 260 n.5 (5th Cir. 2002) (internal quotes omitted; brackets in original). In *Af-Cap, Inc. v. Chevron Overseas (Congo) Ltd.*, the Ninth Circuit quoted this language with approval 475 F.3d 1080, 1095-96 (9th Cir. 2007). However, in each case the plaintiffs had specifically identified property that they sought to attach and the only issue was the amenability of that property to enforcement proceedings. *See Connecticut Bank*, 309 F.3d at 247-48 (amenability of garnishees' debts owed to the Congo to garnishment); *Af-Cap*, 475 F.3d at 1085 (amenability of specific intangible obligations owed to the Congo to attachment). If the immunity of the artifacts that are the subject of Iran's pending motion to dismiss were the only issue in this case, the Court would follow those

courts in limiting the scope of discovery. However, as discussed above, the Plaintiffs have exercised their right as judgment creditors to discovery under Rule 69(a)(2), expanding the scope of this proceeding.

This Court has already held that when Iran appeared in this Court to assert its defense of sovereign immunity with respect to the three collections of artifacts in Citation Respondents' possession, it made a general appearance. *Rubin III*, 2007 WL 1169701, at *11-13. In doing so, Iran availed itself of this forum and took the risk that the Plaintiffs might expand their inquiries beyond the three sets of artifacts then at issue in order to satisfy their hefty outstanding judgment. As discussed above, nothing prohibits them from doing so. While the Court respects Iran's sovereignty and recognizes that it has discretion to limit the scope of discovery, it cannot limit discovery to the point of nullifying Congressional intent. Congress has decided that judgment creditors are entitled to broad discovery of judgment debtors' assets. Congress has also decided that the "grace and comity" generally extended to foreign sovereigns should be limited in specific ways, particularly when those sovereigns promote terrorist acts that injure U.S. nationals. *See Reins. Co. of America, Inc. v. Administratia Asigurarilor de Stat*, 902 F.2d 1275, 1283-84 (7th Cir. 1990) (Easterbrook, J., concurring) (general principles of international law, such as those found in the Restatement of Foreign Relations, are subsumed by the specific provisions of the FSIA). If the limitations Congress enacted in the FSIA and the TRIA are to have any practical effect, the Plaintiffs must be allowed to use the tools of discovery to ascertain whether Iran has attachable properties in the United States. *See id.* at 1284 (Easterbrook, J., concurring) (Romania's interest in protecting state se-

crets could not preclude Rule 69 discovery when to do so would frustrate enforcement under the FSIA).

Finally, contrary to Iran's assertion, there is precedent for broad discovery of the assets of foreign governments and their instrumentalities in enforcement proceedings. *See, e.g., Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1471 (9th Cir. 1992) (upholding district court's order granting discovery of worldwide assets of Beijing Ever Bright Industrial Co., described as "an arm of the [Chinese] government."); *First City, Texas-Houston, N.A. v. Rafidain Bank*, 281 F.3d 48, 49-50 (2d Cir. 2002) (ordering district court to permit judgment creditor "to conduct full discovery" pursuant to Rule 69 against Rafidain, an "alter ego" of the Central Bank of Iraq). As in those cases, broad discovery is required in this case in order to give the Plaintiffs and the Court a meaningful opportunity to ascertain whether Iran has any property within the United States against which the Plaintiffs may enforce their judgment.

III. Conclusion

For the reasons set forth above, Iran's motion for clarification and for a protective order is denied. Iran will comply with the Plaintiffs' requests for general asset discovery. The Court notes that it has been nearly five years since this case began and eighteen months since Iran entered the proceeding, yet the litigation is still at the discovery stage. The Court believes that the parties have had ample opportunity to litigate the scope of discovery. Therefore, no further motions objecting to discovery may be filed without leave of the Court.

ENTER ORDER:

/s/

MARTIN C. ASHMAN
United States Magistrate Judge

Dated:
January 18, 2008

APPENDIX D

United States District Court,
Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Blanche M. Manning
CASE NUMBER	03 CV 9370
DATE	May 23, 2008
CASE TITLE	*Rubin v. Islamic Republic of Iran*

DOCKET ENTRY TEXT

Defendant Islamic Republic of Iran's objection [317-1] to the Magistrate Judge's Order of January 18, 2008 is overruled. Iran shall produce the requested discovery no later than June 27, 2008. The status hearing previously scheduled for June 5, 2008, is rescheduled to July 8, 2008, at 11:00 a.m.

STATEMENT

Having previously obtained a judgment against defendant Iran in the District Court for the District of Columbia, the plaintiffs ("Rubin") have filed this suit seeking to execute or attach certain Iranian artifacts under Federal Rule of Civil Procedure 69. Rubin and Iran are currently engaged in discovery. In response to some of the requests served upon it by Rubin, Iran sought a protective order from the Magistrate Judge. The Magistrate Judge denied Iran's request for a protective order, which led Iran to file the instant objection.

To succeed with its objection, Iran must establish that the Magistrate Judge's order was "clearly erroneous or contrary to law." *See* Fed. R. Civ. P. 72(a). Iran identifies four points on which it contends the Magistrate Judge's order was clearly erroneous or contrary to law, which the court considers in turn.

Discovery is Not Available Under Federal Rule of Civil Procedure 69(a)

First, Iran contends that discovery is not available under Federal Rule of Civil Procedure 69(a) because Rubin is attempting to execute a judgment under federal statutes rather than state law. Rule 69(a) reads as follows:

> (1) ***Money Judgment; Applicable Procedure.*** A money judgment is enforcement by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.
>
> (2) ***Obtaining Discovery.*** In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment creditor—as provided in these rules or by the procedure of the state where the court is located.

Fed. R. Civ. P. 69(a). According to Iran's interpretation, subsection 1 states that the procedure for executing a money judgment is provided either by (a) the law of the state where the court sits, or (b) if a federal statute applies, then the procedure for exe-

cuting a money judgment is provided exclusively by the federal statute. Consistent with that interpretation, Iran contends that subsection 2 applies only if the parties are proceeding under state procedural law because, if subsection 1 requires parties to proceed under a federal statute, discovery is available only if the federal statute provides for it.

The parties agree that two federal statutes apply to Rubin's attempts to execute its judgment against Iran—the Foreign Sovereign Immunities Act, *see* 28 U.S.C. § 1602, and the Terrorism Risk Insurance Act, *see* 28 U.S.C. § 1610. The FSIA places limits on executing judgment against property owned by foreign sovereigns, while the TRIA creates exceptions to the limitations imposed by the FSIA. Neither statute contains any provision that discusses a party's entitlement to discovery.

Because the FSIA and TRIA are both silent on the issue of discovery, Iran contends that Rubin is not entitled to discovery. But the FSIA and TRIA also lack any procedures for executing a judgment. Therefore, under Iran's interpretation, litigants could never execute judgments against foreign sovereigns. But such an interpretation would render meaningless those provisions of the FSIA and TRIA that make some properties subject to execution: there would be no reason to make some properties subject to execution if, in fact, nothing was subject to execution. *See McClain v. Retail Food Employers Joint Pension Plan*, 413 F.3d 582, 587 (7th Cir. 2005) (statutes should be interpreted so as not to render one part meaningless).

Iran's interpretation not only violates the rules of statutory interpretation, but is also unsupported by the text of the rule itself. Subsection 2 permits dis-

covery in "aid of the judgment or execution." The text does not limit the availability of discovery only to those cases in which execution is proceeding under state law. Moreover, Iran has cited no authority stating that discovery is available only in cases proceeding under state law, and unavailable in cases where a federal statute limits what is subject to execution.

The court has carefully reviewed the Magistrate Judge's order, the parties' briefs, and the authorities cited in each. Based upon its review and for the reasons stated above, the court agrees with the Magistrate Judge's interpretation of Rule 69(a) and his conclusion that discovery is available in aid of execution, whether the execution proceedings are governed by state or federal law.

Discovery Regarding Chogha Mish Collection (Document Request 4 and Deposition Topic 2(a))

Next, Iran objects to the Magistrate Judge's order allowing Rubin to obtain information about the terms, conditions, nature and purpose of Iran's loan to the University of Chicago of Persian artifacts that comprise the Chogha Mish collection. Presumably Rubin believes that details about the loan may reveal that Iran's ownership of the collection is contested, in which event the collection may be considered a "blocked asset" subject to execution under § 201 of the TRIA.

Iran identifies two reasons why the Magistrate Judge's decision was clearly erroneous or contrary to law. First, it contends that information about Iran's loan of artifacts to the University of Chicago is irrelevant because a "title contest could exist with or without a loan and regardless of the purpose and

terms of that loan." (R.317 at 4.) While it is possible that Iran's loan is unrelated to any title contest, it is equally possible that the loan was the genesis of any title dispute. As Rubin pointed out in her response brief, presumably the Chogha Mish collection is in the United States rather than Iran as a result of the loan, so if a title dispute does exist, the loan would be at the heart of the dispute. Because discovery is permissible if there is "any possibility" that the information sought is relevant, the Magistrate Judge correctly concluded that Rubin is entitled to the information it requested about Iran's loan to the University of Chicago of the artifacts in the Chogha Mish collection. *See Smith v. Aon Corp.*, No. 04 CV 6875, 2007 WL 495306, at *2 (N.D. Ill. Feb. 14, 2007) (internal quotation marks and citation omitted).

Second, Iran contends that the Magistrate Judge erred by denying its request for a protective order because, at first, Rubin sought information about the loan to support its theory that the University of Chicago acted as Iran's agent, but now seeks the information to support its theory that a title dispute may exist over Iran's ownership of the collection. Iran argues that this "moving-target style of arguing should not be permitted." (R.317 at 4.) However, it offers no authority to support its argument that a discovery request should be denied if the reasons given to justify the request change. Nor has it identified any prejudice it would suffer as a result of the change in reason. Accordingly, Iran has forfeited this argument. *See United States v. Useni*, 516 F.3d 634, 658 (7th Cir. 2008) (undeveloped arguments unsupported by citations to authority are forfeited).

Discovery Regarding Alleged Theft of Artifacts from Iran (Documents Requests 8 & 9)

Next, Iran contends that the Magistrate Judge's order was clearly erroneous or contrary to law because it rejected Iran's request for a protective order regarding information about the University of Chicago's termination of Ernst Herzfeld, the alleged result of Herzfeld's theft of artifacts from Iran while working for the university. Iran objects to the Magistrate Judge's ruling on what appears to be two bases.

First, it contends that the requested discovery is irrelevant to the pending motion for summary judgment. However, general discovery has not been stayed pending the resolution of the motion for summary judgment. Therefore, nothing stands in Rubin's way of obtaining discovery about information relevant to the case, even if that information is not relevant to the pending motion for summary judgment.

Second, Iran contends that Rubin should direct its request about Herzfeld's termination to the University of Chicago since the university, not Iran, fired Herzfeld. However, the university's termination of Herzfeld was apparently at the behest of Iran. It is therefore conceivable that Iran has information about Herzfeld's termination and, if it does, Rubin is entitled to obtain that information.

The FSIA, the Algiers Accords, and Principles of International Comity Prohibit Discovery Regarding Iran's Assets

In addition to the arguments about specific discovery requests raised above, Iran also argues that Rubin is generally prohibited from seeking discovery about Iran's assets. According to Iran, by ordering

Iran to disclose information about its assets, the Magistrate Judge's order violates the Foreign Sovereign Immunity Act, the Algiers Accords, and principles of international comity.

Service Under the FSIA

Iran contends that discovery is prohibited under the FSIA because Rubin has not complied with the statute's terms. Specifically, Iran contends that in the District Court of Columbia, Rubin failed to properly serve it with a copy of the default judgment she obtained, the judgment upon which Rubin is now attempting to collect through the instant proceeding.

Under 28 U.S.C. § 1610(c), execution of a default judgment against a foreign state may proceed only if the judgment was served in accordance with § 1608(e). Section § 1608(e) requires a default judgment to be served in the manner prescribed for service of summons and complaint as set out in § 1608(a). Section § 1608(a) sets out four methods of service in order of preference. In other words, service under the second method is available only "if service through the first method is unavailable *or has proven unsuccessful*." *Doe v. State of Israel*, 400 F. Supp. 2d 86, 101 (D.D.C. 2005) (emphasis added).

Rubin initiated her suit against Iran in 2001 by attempting to serve Iran. The parties agree that service under the first two methods set out in § 1608(a) are unavailable because there are no agreements or treaties between the United States and Iran governing service. Therefore, Rubin first attempted service of summons and complaint through the third method under § 1608(a), service by mail, but that method did not work. As a result, Rubin relied on the fourth method, service through diplomatic channels, which succeeded.

When the time came to serve Iran with a copy of the default judgment Rubin obtained, the district court permitted Rubin to serve the judgment upon Iran through diplomatic means without first requiring it to attempt service by mail, which had previously proven unsuccessful. (R.1 at 4.) Service through diplomatic means again succeeded. *See Campuzano v. Islamic Republic of Iran*, No. 01 CV 1655, Docket Entry # 35 (D.D.C. Sept. 13, 2004).

Iran now contends that because the methods of service in § 1608(a) are set out in order of preference, Rubin was required to attempt to serve the default judgment by mail before resorting to service through diplomatic means. However, a less preferred method of service becomes available once the more preferred method "has proven unsuccessful." Iran does not take issue with the Magistrate Judge's conclusion that service by mail was attempted but failed. Because service by mail had already "proven unsuccessful," service through diplomatic means was an acceptable alternative. In other words, Rubin was not required to engage in a futile attempt to serve by mail when service by mail had already proven to be unsuccessful, and therefore service through diplomatic means was proper.

The Algiers Accords

Next, Iran argues that the Algiers Accords prohibit the court from allowing Rubin to request discovery about any property that is the subject of a claim before the Iran-United States Claims Tribunal. Therefore, Iran contends, the Magistrate Judge erred in permitting general asset discovery, which could conceivably require Iran to disclose information about assets subject to claims before the Tribunal.

As the Magistrate Judge noted, Rubin's discovery requests merely seek information in order to segregate those assets that are subject to execution from those that are not because they are the subject of a claim before the Tribunal. As the Supreme Court noted, the pendency of a claim before the Tribunal does not divest federal courts of jurisdiction, but rather provides to defendants a substantive defense. *Dames & Moore v. Regan*, 453 U.S. 654, 664-65 (1981). Accordingly, the court may allow Rubin to obtain discovery about Iran's assets, though Iran may ultimately assert a defense based upon the Algiers Accords should Rubin attempt to pursue assets that are the subject of a claim before the Tribunal.

International Comity

Finally, Iran argues that under the FSIA, the TRIA, and principles of international comity, many of its assets are immune from attachment and, therefore, the court must guard Iran's rights as a foreign sovereign by permitting discovery about only those assets that are not immune. In support, Iran cites *Autotech Techs. LP Integral Research & Dev. Corp.*, 499 F.3d 737, 740 (7th Cir. 2007), in which the Seventh Circuit held that a plaintiff "must identify specific property upon which it is trying to act," and vacated a writ of execution issued by the district court that allowed the plaintiffs to seize the foreign state's assets generally. However, *Autotech* prohibits only the attachment or execution of assets described only generally; it does not purport to place similar restrictions on discovery into what assets are and are not immune from attachment or execution. In fact, it places the burden on the plaintiff to identify which assets are immune and which are amenable to attachment or execution, *see id.* at 750, presumably a

burden that can be met only after reaping the benefits of discovery.

Moreover, Rubin is not seeking general discovery about every conceivable asset of Iran's in the United States. The only discovery requests that Iran has identified in its objection to the Magistrate Judge's order are requests for information about Persian artifacts in the possession of the Field Museum and the University of Chicago, and any disputes over the ownership of those artifacts. Thus, Iran's concerns that subjecting it to "broad-based discovery" about its assets in the United States will cause "other states worldwide . . . to ignore long-standing principles of comity and sovereign immunity and issue broad assets discovery against the United States and other nations in the name of whatever policies the states wish to pursue" appears to be overblown. Rubin is not seeking "broad assets discovery," but rather has limited its requests to information about a discrete collection of artifacts that it believes falls within an exception to the immunity otherwise afforded a foreign sovereign's assets.

Accordingly, Iran has identified no basis for concluding that the Magistrate Judge's order was clearly erroneous or contrary to law, and its objection is therefore overruled. Iran shall produce the requested materials no later than June 27, 2008.

APPENDIX E

United States District Court,
Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Blanche M. Manning
CASE NUMBER	03 CV 9370
DATE	June 23, 2008
CASE TITLE	*Rubin v. Islamic Republic of Iran*

DOCKET ENTRY TEXT

The plaintiffs' motion for reconsideration [349-1] is granted.

STATEMENT

The plaintiffs ("Rubin") have filed a motion asking the court to reconsider the statements made in the penultimate paragraph of its May 23, 2008, order. The May 23 order overruled defendant Iran's objections to a discovery order entered by Magistrate Judge Ashman on January 18, 2008. The paragraph in question states that Rubin's discovery requests involve only Persian artifacts held by two Chicago institutions, as opposed to Iranian assets located in the United States generally.

Motions for reconsideration are generally disfavored. *See Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990). However, these motions can serve a valuable func-

tion by helping, under appropriate circumstances, to ensure judicial accuracy. *Seymour v. Hug*, 413 F. Supp. 2d 910, 934 (N.D. Ill. 2005).

Rubin's motion for reconsideration has served the purpose of identifying a factual error in the court's May 23 order. The court had misapprehended the scope of Rubin's requests for discovery, and as a result erroneously stated that they sought discovery relating only to Persian artifacts in Chicago. In fact, Rubin has requested information about Iranian assets wherever they are located in the United States.

Accordingly, the court grants the motion for reconsideration and strikes the penultimate paragraph from its May 23 order. The remainder of the order is unaffected and Iran remains obligated to respond to the requests for discovery that were the subject of its objection, including discovery relating to its assets in the United States. As the Magistrate Judge noted in his January 18, 2008, once Iran filed an appearance in this case in order to assert immunity from execution upon its assets, it also voluntarily obligated itself to comply with requirements imposed on all litigants, including the obligation to respond to requests for discovery. Iran relies upon *Autotech Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 740 (7th Cir. 2007), to support its argument that it is not subject to general requests for information about its assets. But as the court noted in the May 23, 2008, order, *Autotech* requires specificity only for writs of execution, and does not purport to prohibit general requests for discovery of all assets owned by a foreign sovereign that are located in the United States.

APPENDIX F

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

June 6, 2011

Before

WILLIAM J. BAUER, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

PHILIP P. SIMON, *District Judge*[*]

No. 08-2805

JENNY RUBIN, et al.,
Plaintiffs-Appellees,

and

DEBORAH D. PETERSON, et al.,
Intervenors-Appellee,

v.

THE ISLAMIC REPUBLIC OF IRAN,
Defendant-Appellant,

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 03 CV 9370

Blanche M. Manning, *Judge*.

[*] The Honorable Philip P. Simon, Chief Judge of the United States District Court for the Northern District of Indiana, sitting by Designation.

and

FIELD MUSEUM OF
NATURAL HISTORY and
UNIVERSITY OF
CHICAGO, THE
ORIENTAL INSTITUTE,
Intervenors.

ORDER

On consideration of the petition for rehearing and for rehearing en banc, no judge in active service has requested a vote on the petition for rehearing en banc,[1] and all of the judges on the original panel have voted to deny rehearing. It is therefore ordered that the petition for rehearing and for rehearing en banc is **DENIED**.

[1] The Honorable Frank H. Easterbrook, Chief Judge, and the Honorable Richard A. Posner, Joel M. Flaum, Ilana Diamond Rovner, and Diane P. Wood, Circuit Judges, took no part in the consideration of this case.

APPENDIX G

28 U.S.C. § 1330 provides:

§ 1330. Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title.

28 U.S.C. § 1602 provides:

§ 1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

28 U.S.C. § 1603 provides:

§ 1603. Definitions

For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial

activity carried on by such state and having substantial contact with the United States.

28 U.S.C. § 1604 provides:

§ 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

28 U.S.C. § 1605 provides:

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in

immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards,

(C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

(7) Repealed. Pub. L. 110-181, Div. A, § 1083(b)(1)(A)(iii), Jan. 28, 2008, 122 Stat. 341.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That—

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party deter-

mined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

(e), (f) Repealed. Pub. L. 110-181, Div. A, Title X, § 1083(b)(1)(B), Jan. 28, 2008, 122 Stat. 341.

(g) Limitation on discovery.—

(1) In general.—**(A)** Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) Sunset.—**(A)** Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would—

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) Evaluation of evidence.—The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) Bar on motions to dismiss.—A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

(5) Construction.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

28 U.S.C. § 1605A provides:

§ 1605A. Terrorism exception to the jurisdictional immunity of a foreign state

(a) In general.—

(1) No immunity.—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

(2) Claim heard.—The court shall hear a claim under this section if—

(A)(i)(I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; or

(II) in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act, the foreign state was

designated as a state sponsor of terrorism when the original action or the related action under section 1605(a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) was filed;

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

(B) the act described in paragraph (1) is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia.

(b) Limitations.—An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment

of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) not later than the latter of—

(1) 10 years after April 24, 1996; or

(2) 10 years after the date on which the cause of action arose.

(c) Private right of action.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3),

for personal injury or death caused by acts described in subsection (a) (1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

(d) Additional damages.—After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

(e) Special masters.—

(1) In general.—The courts of the United States may appoint special masters to hear damage claims brought under this section.

(2) Transfer of funds.—The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c), to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(f) Appeal.—In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

(g) Property disposition.—

(1) In general.—In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a

lien of lis pendens upon any real property or tangible personal property that is—

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

(2) Notice.—A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

(3) Enforceability.—Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

(h) Definitions.—For purposes of this section--

(1) the term "aircraft sabotage" has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(2) the term "hostage taking" has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages;

(3) the term "material support or resources" has the meaning given that term in section 2339A of title 18;

(4) the term "armed forces" has the meaning given that term in section 101 of title 10;

(5) the term "national of the United States" has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(6) the term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

(7) the terms "torture" and "extrajudicial killing" have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

28 U.S.C. § 1606 provides:

§ 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

28 U.S.C. § 1607 provides:

§ 1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

(a) for which a foreign state would not be entitled to immunity under section 1605 or 1605A of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

28 U.S.C. § 1608 provides:

§ 1608. 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.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality 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 agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dis-

patched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(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.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(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 provides:

§ 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 provides:

§ 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, 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), 1605(b), or 1605A of this chapter, 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)), 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. § 1611 provides:

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state

shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

APPENDIX H

The following plaintiffs were awarded damages in *Peterson* v. *Islamic Republic of Iran*, Nos. 01-2094 & 01-2684, Dkt. Entry 228, 515 F. Supp. 2d 25, 60-67 (D.D.C. Sept. 7, 2007):

1. Personal Representatives and Estates of Deceased Servicemen

James Abbott (as Personal Representative of the Estate of Terry Abbott); Robert B. Allman (as Personal Representative of the Estate of John Robert Allman); Thomas C. Bates, Sr. (as Personal Representative of the Estate of Ronny Kent Bates); Thomasine Baynard (as Personal Representative of the Estate of James Baynard); Patricia Calloway (as Personal Representative of the Estate of Jess W. Beamon); Luddie Belmer (as Personal Representative of the Estate of Alvin Burton Belmer); Debra Horner (as Personal Representative of the Estate of Richard D. Blankenship); John R. Blocker (as Personal Representative of the Estate of John W. Blocker); Joseph Boccia, Sr. (as Personal Representative of the Estate of Joseph John Boccia, Jr.); Edna Bohannon (as Personal Representative of the Estate of Leon Bohannon); Catherine Bonk (as Personal Representative of the Estate of John Bonk, Jr.); Joseph Boulos and Marie Boulos (as Personal Representatives of the Estate of Jeffrey Joseph Boulos); Theresa Roth (as Personal Representative of the Estate of John Norman Boyett); Myra Burley (as Personal Representative of the Estate of William Burley); Avenell Callahan (as Personal Representative of the Estate of Paul Lynn Callahan); Billie Jean Bolinger (as Personal Representative of the Estate of Mecot

Camara); Clare Campus (as Personal Representative of the Estate of Bradley Campus); Robbie Ceasar (as Personal Representative of the Estate of Johnnie D. Ceasar); James N. Conley (as Personal Representative of the Estate of Robert Allen Conley); Charles F. Cook (as Personal Representative of the Estate of Charles Dennis Cook); Betty Copeland (as Personal Representative of the Estate of Johnny Len Copeland); Harold L. Cosner (as Personal Representative of the Estate of David Cosner); Lorraine Mary Coulman (as Personal Representative of the Estate of Kevin Coulman); Heidi Legault (as Personal Representative of the Estate of Rick Robert Crudale); Mary M. Mason (as Personal Representative of the Estate of Russell E. Cyzick); B. Christine Devlin (as Personal Representative of the Estate of Michael J. Devlin); Earline Miller (as Personal Representative of the Estate of Nathaniel G. Dorsey); Michael Robert Dunnigan (as Personal Representative of the Estate of Timothy J. Dunnigan); Leona Mae Vargas (as Personal Representative of the Estate of Bryan L. Earle); Barbara Estes (as Personal Representative of the Estate of Danny R. Estes); Thomas Fluegel and Marilou C. Fluegel (as Personal Representatives of the Estate of Richard Andrew Fluegel); Ruby A. Fulcher (as Personal Representative of the Estate of Michael D. Fulcher); Barbara Gallagher (as Personal Representative of the Estate of Sean Gallagher); Juliana Rudkowski (as Personal Representative of the Estate of George Gangur); Jess Garcia (as Personal Representative of the Estate of Randall J. Garcia); Leroy Ghumm (as Personal Representative of the Estate of Harold D. Ghumm); Valerie Giblin (as Personal Representative of the Estate of Timothy Giblin); Judy A. Gorchinski (as Personal Representative of the Estate of Michael Gorchinski);

Alice Gordon (as Personal Representative of the Estate of Richard Gordon); Patricia Wright (as Personal Representative of the Estate of Davin M. Green); Julia Hairston (as Personal Representative of the Estate of Thomas Hairston); Jeffrey Haskell (as Personal Representative of the Estate of Michael S. Haskell); Mary Ann Turek (as Personal Representative of the Estate of Mark Anthony Helms); Doris P. Hester (as Personal Representative of the Estate of Stanley G. Hester); Cynthia D. Lake (as Personal Representative of the Estate of Donald Wayne Hildreth); Patricia Lee Holberton (as Personal Representative of the Estate of Richard H. Holberton); Lisa Hudson (as Personal Representative of the Estate of Dr. John R. Hudson); Henry Hukill, Jr. (as Personal Representative of the Estate of Maurice Edward Hukill); Elizabeth Iacovino (as Personal Representative of the Estate of Edward Iacovino, Jr.); Deborah Innocenzi (as Personal Representative of the Estate of Paul Innocenzi III); John J. Jackowski, Sr. (as Personal Representative of the Estate of James Jackowski); Elaine M. James (as Personal Representative of the Estate of Jeffrey Wilbur James); Nathalie C. Jenkins (as Personal Representative of the Estate of Nathaniel Walter Jenkins); Mary L. Buckner (as Personal Representative of the Estate of Edward Anthony Johnston); Ollie Jones (as Personal Representative of the Estate of Steven Jones); Karl Julian, Joyce Julian, and Shawn Biello (as Personal Representatives of the Estate of Thomas Adrian Julian); Mary A. Cobble (as Personal Representative of the Estate of Thomas Keown); Shirley Martin (as Personal Representative of the Estate of Daniel Kluck); Deborah D. Peterson (as Personal Representative of the Estate of James C. Knipple); Freas Kreischer, Jr. (as Personal Representative of the Es-

tate of Freas H. Kreischer III); William Laise and Betty Laise (as Personal Representatives of the Estate of Keith Laise); James J. Langon, Sr. (as Personal Representative of the Estate of James J. Langon IV); Joyce Houston (as Personal Representative of the Estate of Michael Scott LaRiviere); Cheryl A. Cossaboom (as Personal Representative of the Estate of Steven LaRiviere); Marlys Lemnah (as Personal Representative of the Estate of Richard Lemnah); Annette Livingston (as Personal Representative of the Estate of Joseph R. Livingston III); Maria Lyon (as Personal Representative of the Estate of Paul D. Lyon, Jr.); Bill Macroglou (as Personal Representative of the Estate of John Macroglou); Shirla Maitland (as Personal Representative of the Estate of Samuel Maitland, Jr.); Pacita G. Martin (as Personal Representative of the Estate of Charlie Robert Martin); Anna Beard (as Personal Representative of the Estate of David Massa); Mary McCall (as Personal Representative of the Estate of John McCall); Shirley Kirkwood (as Personal Representative of the Estate of James E. McDonough); Muriel Persky (as Personal Representative of the Estate of Timothy R. McMahon); Richard H. Menkins and Margaret Menkins (as Personal Representatives of the Estate of Richard Menkins, Jr.); Mary Lou Meurer (as Personal Representative of the Estate of Ronald Meurer); Rosalie Donahue (as Personal Representative of the Estate of Joseph Peter Milano); Susan Ann Ray (as Personal Representative of the Estate of Joseph Moore); Geneva Myers (as Personal Representative of the Estate of Harry Douglas Myers); Tammy Freshour (as Personal Representative of the Estate of David Nairn); Roger S. Olson (as Personal Representative of the Estate of John Arne Olson); Frances L. Owens (as Personal Representative of the Estate of Joseph

Albert Owens); Judith K. Page (as Personal Representative of the Estate of Connie Ray Page); Mary Ruth Ervin (as Personal Representative of the Estate of Ulysses Gregory Parker); Sonia Pearson (as Personal Representative of the Estate of John L. Pearson); Ronald R. Perron (as Personal Representative of the Estate of Thomas S. Perron); Nancy B. Fox (as Personal Representative of the Estate of John Arthur Phillips, Jr.); Margaret Pollard (as Personal Representative of the Estate of William Roy Pollard); Sandra Rhodes Young (as Personal Representative of the Estate of Victor Mark Prevatt); John R. Price, Jr. (as Personal Representative of the Estate of James Price); Kathleen Tara Prindeville (as Personal Representative of the Estate of Patrick Kerry Prindeville); Belinda J. Quirante (as Personal Representative of the Estate of Diomedes J. Quirante); Clarence Richardson (as Personal Representative of the Estate of Warren Richardson); Marian Rotondo DiGiovanni (as Personal Representative of the Estate of Louis J. Rotondo); Barbara E. Rockwell (as Personal Representative of the Estate of Michael Caleb Sauls); Lynn Dallachie (as Personal Representative of the Estate of Charles Jeffrey Schnorf); Beverly Schultz (as Personal Representative of the Estate of Scott Lee Schultz); Samuel Scott Scialabba (as Personal Representative of the Estate of Peter Scialabba); Mary Ann Scott (as Personal Representative of the Estate of Gary Randall Scott); Pauline Shipp (as Personal Representative of the Estate of Thomas Alan Shipp); Geraldine Morgan and Simon Watkins (as Personal Representatives of the Estate of Jerryl D. Shropshire); Anna Marie Simpson (as Personal Representative of the Estate of Larry H. Simpson, Jr.); Bobbie Ann Smith (as Personal Representative of the Estate of Kirk Hall Smith); Joseph K. Smith (as Per-

sonal Representative of the Estate of Thomas Gerard Smith); Ana Smith-Ward (as Personal Representative of the Estate of Vincent Lee Smith); William Sommerhof (as Personal Representative of the Estate of William Scott Sommerhof); Ila Wallace (as Personal Representative of the Estate of Stephen Eugene Spencer); William J. Stelpflug and Peggy Stelpflug (as Personal Representatives of the Estate of William Stelpflug); Karl Goodman (as Personal Representative of the Estate of Horace Renardo Stephens, Jr.); Dona Stockton (as Personal Representative of the Estate of Craig Stockton); Irene Stokes (as Personal Representative of the Estate of Jeffrey Stokes); Marcus L. Sturghill, Jr. (as Personal Representative of the Estate of Eric D. Sturghill); Doreen Sundar (as Personal Representative of the Estate of Devon Sundar); James Thorstad (as Personal Representative of the Estate of Thomas Paul Thorstad); Richard Tingley and Barbara Tingley (as Personal Representatives of the Estate of Stephen Dale Tingley); Donald H. Vallone (as Personal Representative of the Estate of Donald H. Vallone, Jr.); Charles Corry (as Personal Representative of the Estate of Eric Glenn Washington); Henry Wigglesworth and Sandra Wigglesworth (as Personal Representatives of the Estate of Dwayne Wigglesworth); Ruth Williams (as Personal Representative of the Estate of Rodney J. Williams); Janet Williams (as Personal Representative of the Estate of Scipio C. Williams, Jr.); Jewelene Dunlap Williamson (as Personal Representative of the Estate of Johnny Adam Williamson); Melia Winter Collier (as Personal Representative of the Estate of William Ellis Winter); Paul Woolett (as Personal Representative of the Estate of Donald Elberan Woollett); Sandra D. Jones (as Personal Representative of the Estate of Craig Wyche); Judith

Young (as Personal Representative of the Estate of Jeffrey D. Young)

2. Injured Servicemen

Marvin Albright; Pablo Arroyo; Anthony Banks; Rodney Darrell Burnette; Frank Comes, Jr.; Glenn Dolphin; Frederick Daniel Eaves; Charles Frye; Truman Dale Garner; Larry Gerlach; John Hlywiak; Orval Hunt; Joseph P. Jacobs; Brian Kirkpatrick; Burnham Matthews; Timothy Mitchell; Lovelle Moore; Jeffrey Nashton; John Oliver; Paul Rivers; Stephen Russell; Dana Spaulding; Craig Joseph Swinson; Michael Toma; Danny Wheeler; Thomas D. Young

3. Family Members of Deceased Servicemen

Lilla Woollett Abbey; James Abbott; Estate of Mary Abbott; Elizabeth Adams; Eileen Prindeville Ahlquist; Miralda Alarcon; Anne Allman; Robert Allman; Estate of Theodore Allman; DiAnne Margaret Allman; Margaret E. Alvarez; Kimberly F. Angus; Donnie Bates; Johnny Bates; Laura Bates; Margie Bates; Monty Bates; Thomas Bates, Jr.; Thomas C. Bates, Sr.; Mary E. Baumgartner; Anthony Baynard; Barry Baynard; Emerson Baynard; Philip Baynard; Thomasine Baynard; Timothy Baynard; Wayne Baynard; Stephen Baynard; Anna Beard; Mary Ann Beck; Alue Belmer; Annette Belmer; Clarence Belmer; Colby Keith Belmer; Denise Belmer; Donna Belmer; Faye Belmer; Kenneth Belmer; Luddie Belmer; Shawn Biellow; Mary Frances Black; Donald Blankenship, Jr.; Donald Blankenship, Sr.; Estate of Mary Blankenship; Alice Blocker; Douglas Blocker; John R. Blocker; Robert Blocker; James Boccia; Joseph Boccia, Sr.; Patricia Boccia; Raymond Boccia; Richard Boccia; Ronnie Boccia; Leticia Boddie; Angela Bohannon; Anthony Bohannon; Carrie Bohannon;

David Bohannon; Edna Bohannon; Leon Bohannon, Sr.; Ricki Bohannon; Billie Jean Bolinger; Joseph Boulos; Lydia Boulos; Marie Boulos; Rebecca Bowler; Lavon Boyett; Estate of Norman E. Boyett, Jr.; Theresa U. Roth Boyett; William A. Boyett; Susan Schnorf Breeden; Damion Briscoe; Christine Brown; Rosanne Brunette; Mary Lynn Buckner; Estate of Claude Burley; Estate of William Douglas Burley; Myra Burley; Kathleen Calabro; Rachel Caldera; Avenell Callahan; Michael Callahan; Patricia Calloway; Elisa Rock Camara; Theresa Riggs Camara; Candace Campbell; Clare Campus; Elaine Capobianco; Florene Martin Carter; Phyllis A. Cash; Theresa Catano; Bruce Ceasar; Franklin Ceasar; Fredrick Ceasar; Robbie Nell Ceasar; Sybil Ceasar; Christine Devlin Cecca; Tammy Chapman; James Cherry; Sonia Cherry; Adele H. Chios; Jana M. Christian; Sharon Rose Christian; Susan Ciupaska; LeShune Stokes Clark; Rosemary Clark; Mary Ann Cobble; Karen Shipp Collard; Jennifer Collier; Melia Winter Collier; Deborah M. Coltrane; James N. Conley, Jr.; Roberta Li Conley; Charles F. Cook; Elizabeth A. Cook; Estate of Mary A. Cook; Alan Tracy Copeland; Betty Copeland; Donald Copeland; Blanche Corry; Harold Cosner; Jeffrey Cosner; Leanna Cosner; Estate of Marva Lynn Cosner; Cheryl Cossaboom; Bryan Thomas Coulman; Christopher J. Coulman; Dennis P. Coulman; Lorraine M. Coulman; Robert D. Coulman; Robert Louis Coulman; Charlita Martin Covington; Amanda Crouch; Marie Crudale; Eugene Cyzick; Lynn Dallachie; Anne Deal; Lynn Smith Derbyshire; Theresa Desjardins; Christine Devlin; Daniel Devlin; Gabrielle Devlin; Richard Devlin; Sean Devlin; Rosalie Donahue; Ashley Doray; Rebecca Doss; Chester Dunnigan; Elizabeth Ann Dunnigan; Michael Dunnigan; William Dunnigan; Clau-

dine Dunnigan; Janice Thorstad Edquist; Mary Ruth Ervin; Barbara Estes; Charles Estes; Frank Estes; Lori Fansler; Angela Dawn Farthing; Arlington Ferguson; Hilton Ferguson; Linda Sandback Fish; Nancy Brocksbank Fox; Tia Fox; Tammy Freshour; Ruby Fulcher; Barbara Gallagher; Brian Gallagher; Estate of James Gallagher; James Gallagher, Jr.; Kevin Gallagher; Michael Gallagher; Dimitri Gangur; Mary Gangur; Jess Garcia; Ronald Garcia; Roxanne Garcia; Russell Garcia; Violet Garcia; Suzanne Perron Garza; Jeanne Gattegno; Arlene Ghumm; Ashley Ghumm; Bill Ghumm; Edward Ghumm; Hildegard Ghumm; Estate of Jedaiah Ghumm; Jesse Ghumm; Leroy Ghumm; Moronica Ghumm; Donald Giblin; Jeanne Giblin; Michael Giblin; Tiffany Giblin; Valerie Giblin; William Giblin; Thad Gilford-Smith; Rebecca Gintonio; Dawn Goff; Christina Gorchinski; Judy Gorchinski; Kevin Gorchinski; Valerie Gorchinski; Alice Gordon; Joseph Gordon; Linda Gordon; Estate of Norris Gordon; Paul Gordon; Andrea Grant; Deborah Graves; Deborah Green; Liberty Quirante Gregg; Alex Griffin; Catherine E. Grimsley; Megan Gummer; Lyda Woollett Guz; Darlene Hairston; Tara Hanrahan; Mary Clyde Hart; Brenda Haskill; Jeffrey Haskell; Kathleen S. Hedge; Christopher Todd Helms; Marvin R. Helms; Doris Hester; Clifton Hildreth; Julia Hildreth; Mary Ann Hildreth; Michael Wayne Hildreth; Sharon A. Hilton; Donald Holberton; Patricia Lee Holberton; Thomas Holberton; Tangie Hollifield; Debra Horner; Elizabeth House; Joyce A. Houston; Tammy Camara Howell; Lisa H. Hudson; Lorenzo Hudson; Lucy Hudson; Ruth Hudson; Estate of Samuel Hudson; William J. Hudson; Estate of Susan Thorstad Hugis; Nancy Tingley Hurlburt; Cynthia Perron Hurston; Estate of Edward Iacovino, Sr.; Elizabeth Iacovino;

Deborah Innocenzi; Kristin Innocenzi; Mark Innocenzi; Paul Innocenzi IV; Bernadette Jaccom; John Jackowski, Jr.; John Jackowski, Sr.; Victoria Jacobus; Elaine James; Nathalie C. Jenkins; Stephen Jenkins; Rebecca Jewett; Linda Martin Johnson; Ray Johnson; Rennitta Stokes Johnson; Sherry Johnson; Charles Johnston; Edwin Johnston; Mary Ann Johnston; Zandra LaRiviere Johnston; Alicia Jones; Corene Martin Jones; Kia Briscoe Jones; Mark Jones; Ollie Jones; Sandra D. Jones; Estate of Synovure Jones; Robin Copeland Jordan; Susan Scott Jordan; Joyce Julian; Karl Julian; Nada Jurist; Adam Keown; Bobby Keown, Jr.; Bobby Keown, Sr.; Darren Keown; William Keown; Mary Joe Kirker; Kelly Kluck; Michael Kluck; Estate of John D. Knipple; John R. Knipple; Estate of Pauline Knipple; Shirley L. Knox; Doreen Kreischer; Freas H. Kreischer, Jr.; Cynthia D. Lake; Wendy L. Lange; James Langon III; Eugene LaRiviere; Janet LaRiviere; John M. LaRiviere; Lesley LaRiviere; Michael LaRiviere; Nancy LaRiviere; Richard LaRiviere; Estate of Richard G. LaRiviere; Robert LaRiviere; William LaRiviere; Cathy L. Lawton; Heidi Crudale LeGault; Estate of Clarence Lemnah; Etta Lemnah; Fay Lemnah; Harold Lemnah; Marlys Lemnah; Robert Lemnah; Ronald Lemnah; Annette R. Livingston; Joseph R. Livingston IV; Estate of Joseph R. Livingston, Jr.; Robin M. Lynch; Earl Lyon; Francisco Lyon; June Lyon; Maria Lyon; Paul D. Lyon, Sr.; Valerie Lyon; Heather Macroglou; Kathleen Devlin Mahoney; Kenty Maitland; Leysnal Maitland; Samuel Maitland, Sr.; Shirla Maitland; Virginia Boccia Marshall; John Martin; Pacita Martin; Renerio Martin; Ruby Martin; Shirley Martin; Mary Mason; Cristina Massa; Edmund Massa; Joao Massa; Jose Massa; Manuel Massa, Jr.; Ramiro Massa; Mary McCall;

Estate of Thomas McCall; Valerie McCall; Gail McDermott; Julia A. McFarlin; George McMahon; Michael McMahon; Patty McMahon; Darren Menkins; Gregory Menkins; Margaret Menkins; Richard H. Menkins; Jay T. Meurer; John Meurer; John Thomas Meurer; Mary Lou Meurer; Michael Meurer; Penny Meyer; Angela Milano; Peter Milano, Jr.; Earline Miller; Henry Miller; Patricia Miller; Helen Montgomery; Betty Moore; Harry Moore; Kimberly Moore; Mary Moore; Melissa Lea Moore; Estate of Michael Moore; Elizabeth Phillips Moy; Debra Myers; Geneva Myers; Harry A. Myers; Billie Ann Nairn; Campbell J. Nairn III; Estate of Campbell J. Nairn, Jr.; William P. Nairn; Richard Norfleet; Deborah O'Connor; Pearl Olaniji; Estate of Bertha Olson; Karen L. Olson; Randal D. Olson; Roger S. Olson; Ronald J. Olson; Estate of Sigurd Olson; David Owens; Deanna Owens; Frances Owens; Estate of James Owens; Steven Owens; Connie Mack Page; Judith K. Page; Lisa Menkins Palmer; Geraldine Paolozzi; Maureen Pare; Henry James Parker; Sharon Parker; Helen M. Pearson; John L. Pearson, Jr.; Sonia Pearson; Brett Perron; Deborah Jean Perron; Michelle Perron; Ronald R. Perron; Muriel Persky; Deborah D. Peterson; Sharon Conley Petry; Sandra Petrick; Donna Vallone Phelps; Harold Phillips; John Arthur Phillips, Sr.; Donna Tingley Plickys; Margaret Aileen Pollard; Stacey Yvonne Pollard; Lee Hollan Prevatt; Victor Thornton Prevatt; John Price; Joseph Price; Estate of Barbara D. Prindeville; Kathleen Tara Prindeville; Michael Prindeville; Paul Prindeville; Sean Prindeville; Belinda J. Quirante; Edgar Quirante; Estate of Godofredo Quirante; Milton Quirante; Sabrina Quirante; Susan Ray; Laura M. Reininger; Alan Richardson; Beatrice Richardson; Clarence Richardson; Eric Richardson; Lynette Rich-

ardson; Vanessa Richardson; Philiece Richardson-Mills; Melrose Ricks; Belinda Quirante Riva; Barbara Rockwell; Linda Rooney; Tara Smith Rose; Tammi Ruark; Juliana Rudkowski; Marie McMahon Russell; Alicia Lynn Sanchez; Andrew Sauls; Henry Caleb Sauls; Riley A. Sauls; Margaret Medler Schnorf; Richard Schnorf (brother); Richard Schnorf (father); Robert Schnorf; Beverly Schultz; Dennis James Schultz; Dennis Ray Schultz; Frank Scialabba; Jacqueline Scialabba; Samuel Scott Scialabba; Jon Christopher Scott; Kevin James Scott; Estate of Larry L. Scott; Mary Ann Scott; Sheria Scott; Stephen Allen Scott; Jacklyn Seguerra; Bryan Richard Shipp; James David Shipp; Janice Shipp; Maurice Shipp; Pauline Shipp; Raymond Dennis Shipp; Russell Shipp; Susan J. Sinsioco; Ana Smith-Ward; Estate of Angela Josephine Smith; Bobbie Ann Smith; Cynthia Smith; Donna Marie Smith; Erma Smith; Holly Smith; Ian Smith; Janet Smith; Joseph K. Smith III; Joseph K. Smith, Jr.; Keith Smith; Kelly B. Smith; Shirley L. Smith; Tadgh Smith; Terrence Smith; Timothy B. Smith; Jocelyn J. Sommerhof; John Sommerhof; William J. Sommerhof; Douglas Spencer; Christy Williford Stelpflug; Joseph Stelpflug; Kathy Nathan Stelpflug; Laura Barfield Stelpflug; Peggy Stelpflug; William Stelpflug; Horace Stephens, Sr.; Joyce Stephens; Keith Stephens; Dona Stockton; Estate of Donald Stockton; Richard Stockton; Irene Stokes; Nelson Stokes, Jr.; Estate of Nelson Stokes, Sr.; Robert Stokes; Gwenn Stokes-Graham; Marcus D. Sturghill; Marcus L. Sturghill, Jr.; NaKeisha Lynn Sturghill; Doreen Sundar; Margaret Tella; Susan L. Terlson; Mary Ellen Thompson; Adam Thorstad; Barbara Thorstad; James Thorstad, Jr.; James Thorstad, Sr.; John Thorstad; Ryan Thorstad; Betty Ann Thurman; Barbara Tingley; Richard L. Tingley;

Russell Tingley; Keysha Tolliver; Mary Ann Turek; Karen Valenti; Anthony Vallone; Donald H. Vallone; Timothy Vallone; Leona Mae Vargas; Denise Voyles; Ila Wallace; Kathryn Thorstad Wallace; Richard J. Wallace; Barbara Thorstad Warwick; Linda Washington; Vancine Washington; Kenneth Watson; Diane Whitener; Daryl Wigglesworth; Darrin A. Wigglesworth; Henry Wigglesworth; Mark Wigglesworth; Robyn Wigglesworth; Sandra Wigglesworth; Shawn Wigglesworth; Dianne Stokes Williams; Gussie Martin Williams; Janet Williams; Johnny Williams; Rhonda Williams; Ronald Williams; Ruth Williams; Scipio J. Williams; Wesley Williams; Delma Williams-Edwards; Tony Williamson; Jewelene Williamson; Michael Winter; Barbara Wiseman; Phyllis Woodford; Joyce Woodle; Beverly Woollett; Paul Woollett; Melvina Stokes Wright; Patricia Wright; Glenn Wyche; John Wyche; John F. Young; John W. Young; Judith Carol Young; Sandra Rhodes Young; Joanne Zimmerman; Stephen Thomas Zone; Patricia Thorstad Zosso

4. Family Members of Injured Servicemen

Jamaal Muata Ali; Margaret Angeloni; Jesus Arroyo; Milagros Arroyo; Olympia Carletta; Kimberly Carpenter; Joan Comes; Patrick Comes; Christopher Comes; Frank Comes, Sr.; Deborah Crawford; Barbara Davis; Alice Warren Franklin; Patricia Gerlach; Travis Gerlach; Megan Gerlach; Arminda Hernandez; Margaret Hlywiak; Peter Hlywiak, Jr.; Peter Hlywiak, Sr.; Paul Hlywiak; Joseph Hlywiak; Cynthia Lou Hunt; Rosa Ibarro; Andrew Scott Jacobs; Daniel Joseph Jacobs; Danita Jacobs; Kathleen Kirkpatrick; Grace Lewis; Lisa Magnotti; Wendy Mitchell; Estate of James Otis Moore; Estate of Johnney S. Moore; Marvin S. Moore; Alie Mae

Moore; Jonnie Mae Moore-Jones; Estate of Alex W. Nashton; Paul Oliver; Riley Oliver; Michael John Oliver; Ashley E. Oliver; Patrick S. Oliver; Kayley Oliver; Tanya Russell; Wanda Russell; Jason Russell; Clydia Shaver; Scott Spaulding; Cecilia Stanley; Mary Stilpen; Kelly Swank; Estate of Kenneth J. Swinson; Estate of Ingrid M. Swinson; Daniel Swinson; William Swinson; Dawn Swinson; Teresa Swinson; Bronzell Warren; Jessica Watson; Audrey Webb; Jonathan Wheeler; Benjamin Wheeler; Estate of Marlis Wheeler; Kerry Wheeler; Andrew Wheeler; Brenda June Wheeler; Jill Wold; Estate of Nora Young; James Young; Estate of Robert Young