

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE MINISTRY OF DEFENSE AND SUPPORT FOR THE ARMED FORCES OF THE
ISLAMIC REPUBLIC OF IRAN, as Successor in Interest to the Ministry of War of the
Government of Iran,

Petitioner-Appellant,

v.

RENAY FRYM, et al.,

Claimants-Appellees,

CUBIC DEFENSE SYSTEMS, INC., as Successor in Interest to Cubic International Sales
Corporation,

Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

**BRIEF FOR THE UNITED STATES AS
AMICUS CURIAE SUPPORTING AFFIRMANCE**

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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF INTEREST	1
STATEMENT OF THE ISSUES	2
PERTINENT STATUTES AND REGULATIONS.....	3
STATEMENT OF THE CASE.....	3
I. Statutory And Regulatory Background	3
A. Sanctions Under The International Emergency Economic Powers Act	3
B. The Foreign Sovereign Immunities Act and TRIA.....	7
II. Factual Background And Procedural History.....	10
SUMMARY OF ARGUMENT	15
ARGUMENT.....	18
I. Allowing Attachment Would Be Consistent With The Algiers Accords.....	18
II. The Judgment Is A “Blocked Asset” Under TRIA.....	23
A. The Judgment Is Blocked Under The 2012 Executive Order	23

B. The Judgment Is Blocked Under A Separate Sanctions Regime Governing Proliferators Of Weapons Of Mass Destruction25

III. Section 1610(g) Only Applies To Property Used In Commercial Activity27

CONCLUSION33

CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(A)

CERTIFICATE OF SERVICE

ADDENDUM

TABLE OF AUTHORITIES

Cases:	<u>Page</u>
<i>Bank Melli Iran v. Weinstein</i> , No. 10-947, 2012 WL 1883085 (May 24, 2012)	28
<i>Campuzano v. Islamic Republic of Iran</i> , 281 F. Supp. 2d 258 (D.D.C. 2003).....	12, 13
<i>Dames & Moore v. Regan</i> , 453 U.S. 654 (1981).....	5
<i>First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba</i> , 462 U.S. 611 (1983).....	8, 29, 30
<i>Flatow v. Islamic Republic of Iran</i> , 308 F.3d 1065 (9th Cir. 2002)	30
<i>In re Magnacom Wireless, LLC</i> , 503 F.3d 984 (9th Cir. 2007).....	32
<i>Iran v. United States</i> , 28 Iran-U.S. Cl. Trib. Rep. 112 (1992)	20
<i>Ministry of Def. v. Cubic Def. Sys., Inc.</i> , 29 F. Supp. 2d 1168 (S.D. Cal. 1998).....	11
<i>Ministry of Def. v. Cubic Def. Sys., Inc.</i> , 236 F. Supp. 2d 1140 (S.D. Cal. 2002).....	12
<i>Ministry of Def. v. Cubic Def. Sys., Inc.</i> , 385 F.3d 1206 (9th Cir. 2004)	12

<i>Ministry of Def. v. Cubic Def. Sys., Inc.,</i> 495 F.3d 1024 (9th Cir. 2007)	12, 23
<i>Ministry of Def. v. Elahi,</i> 546 U.S. 450 (2006) (per curiam).....	12
<i>Ministry of Def. v. Elahi,</i> 556 U.S. 366 (2009).....	10, 11, 12, 16, 21, 23, 24
<i>Peterson v. Islamic Republic of Iran,</i> 627 F.3d 1117 (9th Cir. 2010)	32
<i>Republic of Argentina v. NML Capital, Ltd.,</i> 134 S. Ct. 2250 (2014).....	29
<i>Rubin v. Islamic Republic of Iran,</i> 270 F.R.D. 7 (D.D.C. 2010).....	13
<i>Saudi Arabia v. Nelson,</i> 507 U.S. 349 (1993).....	7
<i>Sumitomo Shoji Am., Inc. v. Avagliano,</i> 457 U.S. 176 (1982).....	19
<i>TRW, Inc. v. Andrews,</i> 534 U.S. 19 (2001).....	30
<i>United States v. Sperry Corp.,</i> 493 U.S. 52 (1989).....	4
<i>Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines,</i> 965 F.2d 1375 (5th Cir. 1992)	30

Statutes:

28 U.S.C. § 1605.....7

28 U.S.C. § 1605(a)(7) (2000).....7, 8, 9, 12, 13

28 U.S.C. § 1605A9, 13, 28, 30

28 U.S.C. § 1605A(c)9

28 U.S.C. § 1606.....7

28 U.S.C. § 1607.....7

28 U.S.C. § 1609.....7, 28

28 U.S.C. § 1610.....7

28 U.S.C. § 1610(a).....17, 29

28 U.S.C. § 1610(a) (2006)7

28 U.S.C. § 1610(a)(7)30

28 U.S.C. § 1610(b).....17, 29

28 U.S.C. § 1610(b) (2006)7

28 U.S.C. § 1610(b)(3)30

28 U.S.C. § 1610(d)17, 29

28 U.S.C. § 1610(e).....7, 29

28 U.S.C. § 1610(f).....7

28 U.S.C. § 1610(f)(1)	29
28 U.S.C. § 1610(g).....	passim
28 U.S.C. § 1610(g)(1)	29
28 U.S.C. § 1610(g)(1)(A)-(E).....	29
28 U.S.C. § 1610(g)(2)	10
50 U.S.C. §§ 1701-1706	3
50 U.S.C. § 1701.....	3
50 U.S.C. § 1701(a)	26
50 U.S.C. § 1702(a)	3, 26
Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, 126 Stat. 1214 (2012)	28
National Defense Authorization Act for Fiscal Year 2008 Pub. L. No. 110-181, 122 Stat. 3 (2008)	9, 31
Terrorism Risk Insurance Act Pub. L. No. 107-297, § 201, 116 Stat. 2322, 2337 (2002)	8, 9
Regulations:	
31 C.F.R. § 535.215	5
31 C.F.R. § 535.215(a)	20
31 C.F.R. § 535.540(f)	24

31 C.F.R. § 535.579(a)	5
31 C.F.R. § 544.101	27
31 C.F.R. § 544.201	5, 25
31 C.F.R. § 560.101	27
31 C.F.R. § 560.210(f)	6, 24
31 C.F.R. § 560.211(a)	6, 23
31 C.F.R. § 560.304(a)	23

Rules:

Fed. R. App. P. 29(a)	1
-----------------------------	---

Legislative Materials:

154 Cong. Rec. 11-12 (2008)	31
H.R. 1585, 110th Cong. § 1083 (enrolled)	31
H.R. Rep. No. 110-477 (2007)	31

Other Authorities:

44 Fed. Reg. 65956 (Nov. 15, 1979)	4
72 Fed. Reg. 71991 (Dec. 19, 2007)	6, 25
Declaration of the Government of the Democratic and Popular Republic of Algeria, U.S.-Iran, Jan. 19, 1981, 20 I.L.M. 224	4, 18, 19

Exec. Order No. 12170, 44 Fed. Reg. 65729 (Nov. 14, 1979)	4
Exec. Order No. 12281, 46 Fed. Reg. 7923 (Jan. 19, 1981)	5, 20
Exec. Order No. 12282, 46 Fed. Reg. 7925 (Jan. 19, 1981)	5
Exec. Order No. 12957, 60 Fed. Reg. 14615 (Mar. 15, 1995)	6, 27
Exec. Order. No. 13382, 70 Fed. Reg. 38567 (June 28, 2005).....	5, 25, 26
Executive Order No. 13539, 77 Fed. Reg. 6659 (Feb. 5, 2012)	6, 23, 24, 27
Letter from M.H. Zhaedin-Labbaf, Agent of the Islamic Republic of Iran, to Allen S. Weiner, Agent of the United States of America (Jan. 14, 1999), <i>available at</i> http://www.justice.gov/osg/briefs/2008/3mer/1ami/2007-0615.mer.ami.pdf , at 83a-85a	18
Presidential Determination No. 99-1, 63 Fed. Reg. 59201 (Oct. 21, 1998).....	7, 8
Presidential Determination No. 2001-03, 65 Fed. Reg. 66483 (Oct. 28, 2000).....	8
Restatement (Third) of Foreign Relations Law of the United States § 326(2).....	19

STATEMENT OF INTEREST

The United States emphatically condemns the terrorist actions that give rise to this case, and expresses its deep sympathy for the victims and their family members who have pursued legal action against Iran and related entities. The United States is committed to aggressively pursuing those responsible for violence against U.S. nationals.

Against that backdrop, and under the authority conferred by Fed. R. App. P. 29(a), the United States submits this *amicus curiae* brief to address three issues. First, we explain that the district court's attachment order does not violate the Algiers Accords, a 1981 agreement between the United States and Iran. As a party to that agreement, and one of the two entities that is bound by it, the United States has a strong interest in the Court's interpretation of the Accords. And that is particularly true here: Iran has separately sought damages from the United States before an international tribunal, based on the same incorrect understanding of the agreement that Appellant advances here.

Our brief also explains that the confirmed arbitral award at issue is a "blocked asset" under two separate sanctions regimes administered by the Treasury Department's Office of Foreign Assets Control ("OFAC").

Appellant's contrary argument is premised on a misunderstanding of the relevant sanctions regimes, and threatens to interfere with OFAC's ability to administer the relevant sanctions programs in the national interest.

Finally, our brief explains that the district court erred in its interpretation of 28 U.S.C. § 1610(g), a provision of the Foreign Sovereign Immunities Act. Contrary to the district court's view, Section 1610(g) does not override immunity unless the foreign sovereign's assets are used in commercial activity. By concluding otherwise, the district court endorsed an interpretation that could have detrimental effects on U.S. foreign policy interests.

STATEMENT OF THE ISSUES

Iran's Ministry of Defense won an arbitration award against a U.S. company. After the Ministry confirmed its award in federal court, creditors attached the judgment to satisfy outstanding claims against Iran, which related to Iran's terrorist activities. The questions presented are:

1. Whether the attachment placed the United States in violation of the 1981 Algiers Accords.

2. Whether the confirmed award constitutes a “blocked asset” for purposes of the Terrorism Risk Insurance Act.

3. Whether 28 U.S.C. § 1610(g) authorizes a terrorism victim to attach a foreign state’s assets that were not used in commercial activity.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

I. Statutory And Regulatory Background

A. Sanctions Under The International Emergency Economic Powers Act

Under the International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. §§ 1701-1706, the President can impose economic sanctions to respond to “unusual and extraordinary” international threats. 50 U.S.C. §§ 1701, 1702(a). These sanctions are generally administered by the Treasury Department’s Office of Foreign Assets Control (“OFAC”). Several such sanctions are relevant to this appeal.

1. After the November 1979 seizure of the U.S. Embassy in Tehran, President Carter invoked IEEPA to block transactions in “all property and

interests in property of the Government of Iran” that had specified ties to the United States. *Exec. Order No. 12170*, 44 Fed. Reg. 65729 (Nov. 14, 1979). OFAC implemented this order through regulations that prohibited any transaction involving property in which Iran had “any interest of any nature whatsoever,” unless authorized by an OFAC license. *See* 44 Fed. Reg. 65956 (Nov. 15, 1979).

The Iranian hostage crisis was ultimately resolved in 1981 by the Algiers Accords, an international agreement between the United States and Iran. *See* Declaration of the Government of the Democratic and Popular Republic of Algeria, U.S.-Iran, Jan. 19, 1981, 20 I.L.M. 224; *United States v. Sperry Corp.*, 493 U.S. 52, 55-56 (1989). Among other things, the United States committed to “restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979,” and agreed to arrange “for the transfer to Iran of all Iranian properties” (with certain exceptions). 20 I.L.M. at 224, 227. The Accords also established an international claims tribunal in the Hague (“Claims Tribunal”), which would (among other things) resolve claims by the United States and Iran

regarding each other's performance under the agreement. *Id.* at 230-32; *see also Dames & Moore v. Regan*, 453 U.S. 654, 662-66 (1981).

The President implemented the Algiers Accords by, *inter alia*, directing the transfer of certain Iranian properties to Iran "as directed . . . by the Government of Iran." *Exec. Order No. 12281*, 46 Fed. Reg. 7923, 7923 (Jan. 19, 1981); *see also* 31 C.F.R. § 535.215. The President also lifted the earlier ban on transactions in Iranian property, *see Exec. Order No. 12282*, 46 Fed. Reg. 7925, 7925 (Jan. 19, 1981), and OFAC thereafter licensed transactions "involving property in which Iran" has an interest where: "(1) The property comes within the jurisdiction of the United States . . . after January 19, 1981, or (2) The interest in the property of Iran . . . arises after January 19, 1981." 31 C.F.R. § 535.579(a).

2. The United States has subsequently taken actions against Iran, and various Iranian entities, to respond to post-1981 events. The President invoked IEEPA in 2005 to block the assets of designated persons involved in "the proliferation of weapons of mass destruction and the means of delivering them." *Exec. Order. No. 13382*, 70 Fed. Reg. 38567, 38567 (June 28, 2005); *see also* 31 C.F.R. § 544.201. One entity eventually designated was

an Iranian entity known in English as the “Ministry of Defense and Armed Forces Logistics” or the “Ministry of Defense and Support For Armed Forces Logistics,” among other names. 72 Fed. Reg. 71991, 71992 (Dec. 19, 2007).

Separately, the President invoked IEEPA in February 2012 to block (among other things) “[a]ll property and interests in property of the Government of Iran . . . that are in the United States.” *Executive Order No. 13539*, 77 Fed. Reg. 6659, 6659 (Feb. 5, 2012); *see also* 31 C.F.R. § 560.211(a). The President did so “in order to take additional steps with respect” to a national emergency that had first been declared in 1995, and that stemmed from various dangerous policies of the Iranian government. 77 Fed. Reg. at 6659; *Exec. Order No. 12957*, 60 Fed. Reg. 14615, 14615 (Mar. 15, 1995). The 2012 blocking order exempted the “property and interests in property of the Government of Iran” that had been blocked in 1979, and that were then made subject to the 1981 transfer directives implementing the Algiers Accords. 77 Fed. Reg. at 6660; *see also* 31 C.F.R. § 560.210(f).

B. The Foreign Sovereign Immunities Act and TRIA

1. Under the Foreign Sovereign Immunities Act (“FSIA”), a “foreign state” is generally immune from the jurisdiction of U.S. courts except as set out in the exceptions to immunity in 28 U.S.C. §§ 1605-1607. Originally, the FSIA did not contain an exception for cases involving torture or extreme abuse outside the United States. *See Saudi Arabia v. Nelson*, 507 U.S. 349, 362-63 (1993). Congress later amended the statute to add a “terrorism exception,” codified at 28 U.S.C. § 1605(a)(7) (2000).

In addition to codifying a general principle of foreign sovereign immunity from suit, the FSIA provides that foreign state property is generally immune from attachment, *see* 28 U.S.C. § 1609, subject to several exceptions codified at 28 U.S.C. § 1610. These exceptions apply only to property used for “a commercial activity in the United States.” 28 U.S.C. §§ 1610(a)-(b) (2006).¹ Additionally, prior to 2008 these exceptions permitted a

¹ The statute does not contain this “commercial activity” language in 28 U.S.C. § 1610(e), which waives immunity in certain foreclosure actions with respect to the “vessels of a foreign state.” The statute also creates a special rule for certain terrorism cases, but permits the President to waive that rule. 28 U.S.C. § 1610(f). President Clinton did so before the rule ever took effect. *Presidential Determination No. 99-1*, 63 Fed. Reg. 59201 (Oct. 21,

foreign state's creditors to attach assets owned by that state, but did not generally let them reach assets owned by an agency or instrumentality of the state (such as a government-owned company). *See First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 624-28 (1983).

2. In 2002, Congress enacted the Terrorism Risk Insurance Act ("TRIA"), Pub. L. No. 107-297, § 201, 116 Stat. 2322, 2337 (codified in relevant part at 28 U.S.C. § 1610 note). Section 201(a) of the statute, as originally enacted, provides:

Notwithstanding any other provision of law . . . , in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under [28 U.S.C. § 1605(a)(7) (2000)], the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a).

1998); *Presidential Determination No. 2001-03*, 65 Fed. Reg. 66483 (Oct. 28, 2000). That presidential waiver remains in force today.

Generally speaking, “blocked assets” include assets “seized or frozen by the United States” under IEEPA. *See* TRIA § 201(d)(2). TRIA thus permits attachment in certain cases where attachment might otherwise have been precluded by the FSIA, or by IEEPA sanctions regimes that prohibit transactions involving blocked property.

3. Congress took further action as part of the National Defense Authorization Act for Fiscal Year 2008 (“NDAA”), Pub. L. No. 110-181, 122 Stat. 3 (2008). There, Congress repealed the terrorism exception to sovereign immunity that had been codified at 28 U.S.C. § 1605(a)(7), and replaced it with a new terrorism exception codified at 28 U.S.C. § 1605A. *See* NDAA, Pub. L. No. 110-181, § 1083(a), (b)(1)(A)(iii), (b)(3)(D). Unlike its predecessor, Section 1605A provides an explicit private right of action for U.S. citizens injured by state sponsors of terrorism. *See* 28 U.S.C. § 1605A(c). The NDAA also allows various plaintiffs, in specified circumstances, to convert their actions to suits under Section 1605A. NDAA § 1083(c)(2).

The NDAA additionally creates a special attachment provision for plaintiffs holding a Section 1605A judgment against a foreign state. *See* 28

U.S.C. § 1610(g) (“Section 1610(g)”). For such plaintiffs, “the property of a foreign state against which a judgment is entered under [S]ection 1605A . . . , is subject to attachment . . . as provided in this section,” even though the property may be owned by an agency or instrumentality of the foreign state rather than the foreign state itself. *Id.* Section 1610(g) further states that such property is not “immune from attachment . . . because of action taken by the government against that state” under IEEPA or the Trading With the Enemy Act. *Id.* § 1610(g)(2).

II. Factual Background And Procedural History

Much of the relevant factual background is described in *Ministry of Defense v. Elahi*, 556 U.S. 366 (2009). We recite the key points.

1. In 1977, Iran’s Ministry of Defense (“the Ministry”) entered into a contract with Cubic Defense Systems (“Cubic”) to supply Iran with an air combat training system. *Id.* at 370. The contract ran into difficulties as the Iranian political situation deteriorated. MER 330-31.² Eventually, and prior to November 1979, the Ministry and Cubic agreed that they would discontinue the contract temporarily, and that Cubic would try to sell the

² The Ministry’s Excerpts of Record are abbreviated “MER.”

system to another buyer and settle accounts with the Ministry later. MER 342, 349; *see also Elahi*, 556 U.S. at 372.

On January 19, 1981, the United States unblocked Iranian assets. *Elahi*, 556 U.S. at 370-71. Approximately eight months later, Canada agreed to buy a modified version of the training system from Cubic. Delivery was completed in October 1982, but Cubic never remitted any money to Iran. MER 364-65; *Elahi*, 556 U.S. at 372.

The Ministry thereafter pursued a claim against Cubic before the International Court of Arbitration. The arbitrators issued their decision in May 1997, and they concluded that Cubic had not abided by the parties' modified agreement. *Elahi*, 556 U.S. at 372. After accounting for the Ministry's advance payments to Cubic, the funds Cubic spent, Canada's payments for the modified system, and other associated items, the arbitrators awarded the Ministry \$2.8 million plus interest. *Id.*

2. Cubic did not comply with the decision, and the Ministry sought confirmation of its award in the U.S. District Court for the Southern District of California, which issued a confirming judgment. *See Ministry of Def. v. Cubic Def. Sys., Inc.*, 29 F. Supp. 2d 1168 (S.D. Cal. 1998). But before the

Ministry could collect, an individual named Darius Elahi attempted to attach this Cubic judgment. *Ministry of Def. v. Cubic Def. Systems, Inc.*, 236 F. Supp. 2d 1140, 1152 (S.D. Cal. 2002).

Elahi's actions triggered a series of appeals. See *Ministry of Def. v. Cubic Def. Sys., Inc.*, 385 F.3d 1206 (9th Cir. 2004); *Ministry of Def. v. Elahi*, 546 U.S. 450 (2006) (per curiam); *Ministry of Def. v. Cubic Def. Sys., Inc.*, 495 F.3d 1024 (9th Cir. 2007). Eventually, the Supreme Court concluded that Elahi could not attach the Cubic judgment. *Elahi*, 556 U.S. at 387.

3. In the interim, two other sets of claimants appeared. MER 566, 609. The first was France Mokhateb Rafii. She held a judgment against Iran, obtained under the terrorism exception in 28 U.S.C. § 1605(a)(7) (2000), as a result of Iran's role in her father's 1991 murder. See Findings of Fact and Conclusions of Law, at 1, *Rafii v. Islamic Republic of Iran*, No. 01-850 (D.D.C. Dec. 2, 2002), ECF No. 21; MER 616.

The second set of claimants – plaintiffs from *Rubin v. Islamic Republic of Iran*, No. 01-1655 (D.D.C.) (“Rubin plaintiffs”) – held a judgment against Iran due to Iran's role in a 1997 terrorist attack. See *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 261-62 (D.D.C. 2003); MER 602-04.

Like Raffi, the Rubin plaintiffs initially obtained their judgment under the immunity exception in 28 U.S.C. § 1605(a)(7) (2000). *See Campuzano*, 281 F. Supp. 2d at 269-71. After the NDAA was passed in 2008, a district court converted their judgment to one obtained under 28 U.S.C. § 1605A. *See Rubin v. Islamic Republic of Iran*, 270 F.R.D. 7, 9 & n.3 (D.D.C. 2010).

Both sets of claimants (collectively, “the Claimants”) told the district court in this case that that they could attach the Cubic judgment under TRIA because the judgment was a “blocked asset.” MER 526-27. The Rubin plaintiffs additionally argued that their attachment was authorized by Section 1610(g). MER 528-29.

The Ministry opposed these attachment efforts, MER 263-85, and the district court invited the United States to express its views on various issues in the case. MER 165-66. The government explained that the Cubic judgment constituted a “blocked asset” attachable under TRIA. MER 144-47. The government also explained that the proposed attachment was consistent with the Algiers Accords. MER 147-48. The government did not opine on the applicability of Section 1610(g) – an issue on which the district

court had not specifically requested the government's views. *See* MER 138-49, 165-66.

The district court allowed the attachment. The court explained that the attachment would not contravene the Algiers Accords because that agreement had simply committed the United States to restore Iran to its pre-November 1979 position. As of November 1979, Iran had no interest in the confirmed arbitral award, which had not come into existence until 1998. MER 30-32 (citing the Supreme Court's *Elahi* decision). The court endorsed the United States' interpretation of the Algiers Accords, which the court held was entitled to deference. MER 32-33.

Additionally, the court held that the Cubic judgment was a "blocked asset" within TRIA's meaning. MER 36. This was so under two different blocking regimes: the President's 2012 blocking order (which applies to Iranian government property not subject to the 1981 transfer directives), and the Weapons of Mass Destruction Proliferators Sanctions (which apply to property of the Ministry). MER 38-42. Accordingly, the court concluded that the assets could be attached under TRIA. MER 42-47.

Although the above analysis was sufficient to allow attachment, the court *also* held in the alternative that the Rubin plaintiffs could obtain attachment under Section 1610(g). In doing so, the court found it irrelevant that the property at issue had not been used in commercial activity. In the court's view, although such a requirement applied in other attachments specifically authorized by Section 1610, such a requirement did not apply when attachment was pursued under Section 1610(g). MER 47-52.

SUMMARY OF ARGUMENT

The Claimants are seeking to attach a 1998 judgment confirming an arbitral award. That attachment is authorized by TRIA and does not run afoul of the Algiers Accords. This Court should affirm the judgment on that basis.

1. The Claimants' TRIA execution is consistent with the Algiers Accords. The Accords merely committed the United States in 1981 to "restore" Iran to its 1979 financial position in so far as possible. It did not require the United States to improve Iran's financial position. And it certainly did not require the United States to provide Iran with properties that were not yet in existence in 1979. As a result, the Ministry cannot

prevail on its claims because the Supreme Court has already held that Iran's interest in the Cubic judgment post-dates 1981. *See Ministry of Def. v. Elahi*, 556 U.S. 366 (2009).

Furthermore, even if the Cubic judgment did come within the scope of the Algiers Accords, the district court's attachment order was still consistent with the Accords. An attachment does not deprive Iran of the full benefit of the judgment; it reduces Iran's outstanding liability to the Claimants for its post-1981 terrorist activities. Nothing in the Accords guaranteed that Iran would receive a special immunity from future creditors for post-1981 actions.

2. The Ministry further errs in contending that the Cubic judgment is not "blocked" for purposes of TRIA. As an initial matter, the property is unambiguously blocked under a 2012 executive order that applies to Iranian government property. The Ministry invokes the exception to that blocking order for property that was blocked in 1979 and then subject to the 1981 transfer directive. But the Supreme Court held in *Elahi* that Iran's interest in the Cubic judgment did not arise until after 1981. Necessarily,

therefore, that judgment would not have been blocked in 1979 or subject to the 1981 transfer directive.

Furthermore, the Cubic judgment is independently blocked under a different sanctions regime targeting proliferators of weapons of mass destruction. That sanctions regime was not in any way modified by the 2012 executive order, which implements a different sanctions regime responding to a different national emergency.

3. Because the Cubic judgment is eligible for TRIA attachment as a “blocked asset,” and because such attachment would not run afoul of the Algiers Accords, this Court can and should affirm the district court’s decision. Nonetheless, the Court should also take this opportunity to reject the district court’s interpretation of Section 1610(g). By its plain text, Section 1610(g) only authorizes its specified attachments “as provided in this section.” 28 U.S.C. § 1610(g). Since Section 1610 elsewhere requires that attachable property have been used for “a commercial activity in the United States,” *id.* § 1610(a), (b), (d), it is apparent that Section 1610(g) carries forward this requirement.

ARGUMENT

I. Allowing Attachment Would Be Consistent With The Algiers Accords

Repeating an argument that Iran has made in a pending dispute before the Claims Tribunal,³ the Ministry contends that the Algiers Accords prohibit the Claimants' attachment. The Ministry is wrong.

1. When the United States entered into the 1981 Algiers Accords to resolve the hostage crisis, it undertook to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979." 20 I.L.M. at 224. The agreement also stated that the United States would "arrange . . . for the transfer to Iran of all Iranian properties which are located in the United States," subject to certain exceptions. *Id.* at 227. The longstanding position of the United States is that this simply required the United States to return, as directed by Iran, specified Iranian properties that were in existence and subject to U.S. jurisdiction as of January 19, 1981

³ See Letter from M.H. Zhaedin-Labbaf, Agent of the Islamic Republic of Iran, to Allen S. Weiner, Agent of the United States of America (Jan. 14, 1999), available at <http://www.justice.gov/osg/briefs/2008/3mer/1ami/2007-0615.mer.ami.pdf>, at 83a-85a.

(the date of the Accords). The United States had no transfer obligation with respect to property that Iran acquired after the date of the Accords.

This interpretation of the Accords, offered by the United States Government, is entitled to “great weight.” *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 184-85 & n. 10 (1982); *see also* Restatement (Third) of Foreign Relations Law of the United States § 326(2). It also draws support from the Accords’ plain text. The Accords oblige the United States to return specified properties that “*are located* in the United States and abroad,” 20 I.L.M. at 226-27 (emphasis added); the use of the present tense shows that the assets to be transferred had to have been in existence at the time of the agreement.

That reading also accords with common sense. It is unreasonable to think that the United States had pledged to guarantee to restore Iran to its 1979 financial position indefinitely into the future, regardless of any post-1981 actions that Iran might make, and regardless of any efforts that Iran itself might undertake to bring future assets into the United States. The United States pledged only to “restore” Iran’s financial position, 20 I.L.M. at 224, not to freeze it for all time.

This interpretation also finds support in Executive Order No. 12281, which the Claims Tribunal has understood to be “part of the ‘practice’ of [the Algiers Accords] for purposes of its interpretation.” *Iran v. United States*, 28 Iran-U.S. Cl. Trib. Rep. 112, 129 (1992). That executive order directed U.S. holders of Iranian properties to transfer the properties as directed by Iran “after the effective date of this Order,” which was January 19, 1981. 46 Fed. Reg. at 7923. By tying the transfer obligation to the order’s “effective date,” the order made clear that the United States did not undertake in the Algiers Accords any obligation with regard to properties in the future. And to the extent the Executive Order itself might be ambiguous on that score, any ambiguity was cleared up by OFAC’s implementing regulations, which expressly applied the transfer directive only to “properties held on January 18, 1981.” 31 C.F.R. § 535.215(a).

2. In light of the above, the Claimants’ attachment plainly would not place the United States in violation of the Accords, since the Claimants are attaching property that did not exist in 1981. As the Supreme Court has already held, the specific asset that the Claimants are trying to attach is not the training system itself (which was sent to Canada in 1982). Rather, they

are trying to attach the “judgment enforcing [the] arbitration award based upon Cubic’s failure to account to Iran for Iran’s share of the proceeds of that system’s sale.” *Elahi*, 556 U.S. at 375-76. Iran’s interest in that judgment did not arise until 1998, and its interest “in the property that underlies” that judgment did not even arise until 1982. *Id.* at 376-77. Because the judgment did not exist or come within U.S. jurisdiction until after 1981, attaching that judgment would not run afoul of the Algiers Accords.

The Ministry nonetheless asserts that the Supreme Court “acknowledged . . . that Iran’s property interest could be characterized” as the property underlying the judgment. Ministry Br. 44. But the Ministry is wrong – the Court squarely held that the judgment itself was the targeted asset. *Elahi*, 556 U.S. at 376. While the Court went on to discuss an alternative theory that the relevant asset was actually the proceeds of the 1982 sale, it never adopted that theory. *See id.* at 376-77. And that theory would not aid the Ministry anyway, since the Court held that Iran’s interest in the proceeds did not arise until 1982, *id.*, a date that is also after the Algiers Accords.

3. Even if the Ministry were correct that the relevant asset was the underlying training system, attachment would still not place the United States in violation of the Accords. As noted above, the Accords simply direct the United States to “restore” Iran to its November 1979 financial position. An attachment here would not violate that requirement, as it would merely be used to satisfy an outstanding judgment against Iran for events that postdate the Accords. Iran would still benefit from the full value of its judgment, since its outstanding liability to the Claimants would be reduced by that amount.

Without addressing this point specifically, the Ministry seems to assume that the Accords let Iran shield assets from creditors indefinitely, even for debts that postdate the Accords. But such an interpretation would mean that instead of “restoring” Iran’s financial position, the Accords had improved that position by giving Iran a special immunity from future creditors. That is contrary to how the Iran-U.S. Claims Tribunal has understood the agreement. *See* MER 482 (2009 Tribunal decision, which found that the United States had no obligation to “improve Iran’s financial position, rather than merely restore it”). It is also contrary to the

longstanding construction of the Algiers Accords held by the United States Government.

II. The Judgment Is A “Blocked Asset” Under TRIA

The district court correctly concluded that the judgment is a “blocked asset” under two different IEEPA-based sanctions regimes, either of which would support attachment under TRIA.

A. The Judgment Is Blocked Under The 2012 Executive Order

Subject to certain exceptions, Executive Order 13539 blocks (among other things) “[a]ll property and interests in property of the Government of Iran . . . that are in the United States.” 77 Fed. Reg. at 6659; *see also* 31 C.F.R. § 560.211(a).⁴ This Court has already found that the Ministry is “an inherent part of the state of Iran,” *Ministry of Defense*, 495 F.3d at 1036, *rev’d on other grounds by Ministry of Defense v. Elahi*, 556 U.S. 366 (2009), meaning that the Ministry’s judgment would be covered by this blocking order.

The Ministry nonetheless claims that the blocking order does not apply because it exempts the “property and interests in property of the

⁴ The order also defines “Government of Iran” as including “any political subdivision, agency, or instrumentality thereof.” 77 Fed. Reg. at 6660; *see also* 31 C.F.R. § 560.304(a).

Government of Iran” that had been blocked in 1979 and then made subject to the 1981 transfer directive. Ministry Br. 30-40; *see also* 77 Fed. Reg. at 6660; 31 C.F.R. § 560.210(f). But as the district court properly recognized, that argument is squarely foreclosed by the Supreme Court’s decision in *Elahi*, which held that Iran’s “interest in the Cubic Judgment” arose after January 1981. *Elahi*, 556 U.S. at 376. Accordingly, the Ministry’s extended discussions of the 1977 contract with Cubic, and principles of Iranian contract law, are entirely irrelevant. *See* Ministry Br. 32-36.

Also irrelevant is the Ministry’s assertion that 31 C.F.R. § 535.540(f) governed the proceeds of Cubic’s sale to Canada. *See* Ministry Br. 36-40. As explained above, the Supreme Court held that the relevant asset here is *not* the proceeds of the sale, but the judgment confirming the arbitral award. *Elahi*, 556 U.S. at 376. In any event, Section 535.540(f) only requires sale proceeds to be transferred to Iran when the sale of otherwise blocked property is made pursuant to a specific type of OFAC license. The Supreme Court concluded in *Elahi* that the training system was *not* blocked after January 1981, *see Elahi*, 556 U.S. at 377, which meant that this regulation would have been irrelevant. And as the district court noted,

Cubic has no record of ever having received a license of the type contemplated by Section 535.540. MER 34 n.31.

B. The Judgment Is Blocked Under A Separate Sanctions Regime Governing Proliferators Of Weapons Of Mass Destruction

Apart from the fact that the judgment is blocked under the 2012 Executive Order, it is also blocked under an IEEPA sanctions regime targeting proliferators of weapons of mass destruction. That sanctions regime implements Executive Order 13382, *see* 70 Fed. Reg. at 38567; 31 C.F.R. § 544.201, and among other things it blocks the property of an Iranian entity known variously as the “Ministry of Defense and Armed Forces Logistics” and the “Ministry of Defense and Support for Armed Forces Logistics,” as well as by the acronyms “MODSAF” and “MODAFL.” 72 Fed. Reg. at 71992.

The district court – deferring to the expressed views of the United States – concluded that the Ministry was the exact entity targeted by this designation. MER 39. Since the Ministry had an interest in the judgment, the judgment became a blocked asset under this sanctions regime. *Id.*

On appeal, the Ministry no longer disputes that it is the targeted entity. Instead, it contends that this entire sanctions regime has been *sub silentio* modified by President Obama's subsequent 2012 executive order. Ministry Br. 40-44. If the Court addresses this argument – notwithstanding the Ministry's apparent waiver by failing to raise it in district court – the Court should reject it. The argument reflects a fundamental misunderstanding of IEEPA sanctions regimes.

Under IEEPA, the President can respond to a specific foreign threat by declaring a “national emergency with respect to such threat,” and then taking various actions in response, including blocking transactions in property with a sufficient connection to a foreign sanctions target. 50 U.S.C. §§ 1701(a), 1702(a). The Weapons of Mass Destruction Proliferators Sanctions, which implement a 2005 executive order, are part of the government's response to a previously-recognized “national emergency . . . regarding the proliferators of weapons of mass destruction and the means of delivering them.” 70 Fed. Reg. at 38567.

By contrast, the 2012 executive order is part of a separate sanctions regime, implemented in response to a separate emergency specifically

related to Iranian policies. *See* 77 Fed. Reg. at 6659; 60 Fed. Reg. at 14615. Nothing about the 2012 order purports to modify the Weapons of Mass Destruction Proliferators Sanctions. Thus even if the Ministry is correct that the judgment is not blocked under the 2012 executive order, that fact has no bearing on whether the judgment is separately blocked under the Weapons of Mass Destruction Proliferators Sanctions (or under any other sanctions regime). *Accord* 31 C.F.R. § 560.101 (explaining that the regulations implementing the 2012 executive order are “separate from, and independent of” the OFAC regulations implementing other sanctions regimes); *id.* § 544.101 (same, as to the Weapons of Mass Destructions Proliferators Sanctions).

III. Section 1610(g) Only Applies To Property Used In Commercial Activity

Because the Cubic judgment is a blocked asset under TRIA, and because attaching that asset is consistent with the Algiers Accords, the

district court was correct in permitting the Claimants to attach it.⁵ This Court can and should affirm for that simple reason.

The Court should also take this opportunity, however, to reject the district court's reading of Section 1610(g).⁶ Under the FSIA's baseline rule, "the property in the United States of a foreign state [is] immune from attachment . . . except as provided" elsewhere in the FSIA. 28 U.S.C. § 1609. Section 1610 goes on to permit attachment in various circumstances, but it expressly restricts its immunity waiver to foreign state property used for a "commercial activity in the United States." *Id.*

⁵ The United States does not contest that the Rubin plaintiffs can invoke TRIA as a basis for attachment. In *Bank Melli Iran v. Weinstein*, No. 10-947 (S. Ct.), the United States took the position that TRIA is categorically unavailable to plaintiffs holding a Section 1605A judgment against a foreign state (a category that includes the Rubin plaintiffs). Such plaintiffs' sole attachment remedy, the brief explained, arises under Section 1610(g). See Brief for the United States as Amicus Curiae, *Bank Melli Iran v. Weinstein*, No. 10-947, 2012 WL 1883085 (May 24, 2012). Subsequently, however, Congress amended TRIA and added language indicating that it is applicable to Section 1605A judgment holders. See Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, § 502(e), 126 Stat. 1214, 1260 (enacted Aug. 10, 2012). In light of this amendment, we do not urge the interpretation of TRIA that we previously advanced in *Bank Melli*.

⁶ Unlike the Rubin plaintiffs, Raffi did not obtain her judgment under 28 U.S.C. § 1605A. As a result, she is ineligible to invoke Section 1610(g). See 28 U.S.C. § 1610(g).

§ 1610(a); *see also id.* § 1610(b), (d); *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2256 (2014).⁷

That restriction is important, because the plain text of Section 1610(g) indicates that specified foreign state property is “subject to attachment . . . as provided in this section.” 28 U.S.C. § 1610(g)(1) (emphasis added). The “section” referred to is Section 1610. Because Section 1610 elsewhere requires that attachable property have been used for a “commercial activity in the United States,” Section 1610(g) plainly incorporates that requirement.

The district court made no attempt to address the crucial “as provided in this section” language, *see* MER 47-52, and for that reason its analysis should be rejected. Furthermore, the district court mistakenly saw significance in the fact that Section 1610(g) allows attachment “regardless of” five listed factors. 28 U.S.C. § 1610(g)(1)(A)-(E); *see also* MER 48-49.

That aspect of the statute merely clarifies that Congress intended to override the multi-factor test created in *First Nat’l City Bank v. Banco Para El*

⁷ The “commercial activity” language does not appear in 28 U.S.C. § 1610(e), which waives immunity in certain foreclosure actions with respect to the “vessels of a foreign state.” But that exception has no applicability here. And while there is no “commercial activity” language in 28 U.S.C. § 1610(f)(1), that provision has never taken effect, *see supra* n.1.

Comercio Exterior de Cuba (“*Bancec*”), 462 U.S. 611 (1983), for determining when a creditor can look to the assets of a separate juridical entity to satisfy a claim against a foreign sovereign. *See id.* at 628-34. The five factors listed in the statute paraphrase almost perfectly the so-called *Bancec* factors that courts had sometimes applied to determine if such assets are attachable. *See Flatow v. Islamic Republic of Iran*, 308 F.3d 1065, 1071 n.9 (9th Cir. 2002); *Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines*, 965 F.2d 1375, 1380 n.7 (5th Cir. 1992).

The district court’s reading also renders portions of Section 1610 superfluous, contrary to the “cardinal principle of statutory construction” that a statute should be construed to avoid superfluity. *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal quotation marks omitted). As already noted, Section 1610(g) creates a special attachment rule for plaintiffs holding a judgment procured through 28 U.S.C. § 1605A. Yet 28 U.S.C. § 1610(a)(7) (which governs the property of a foreign state) and 28 U.S.C. § 1610(b)(3) (which governs the property of an agency or instrumentality) *also* abrogate sovereign immunity for such judgment holders. And those statutes restrict their abrogation to property used in

“commercial activity.” Those provisions would be entirely pointless if Section 1610(g) separately abrogated the commercial activity requirement.

Legislative history further undermines the district court’s reading. In the relevant conference report, Congress explained its understanding that “property used for purposes of maintaining a diplomatic or consular mission” would not be subject to attachment. H.R. Rep. No. 110-477, at 1001 (2007) (conf. rep.).⁸ If Section 1610(g) indiscriminately reached all of a foreign state’s properties, such a carve-out would be impossible. The better inference is that Congress understood the statute to continue immunity for those properties – like diplomatic properties – that are not used in commercial activity.

⁸ The cited conference report is the report for H.R. 1585. That version of the NDAA was ultimately vetoed by the President because of his concerns that the attachment provision, as applied to Iraq, would interfere with Iraqi reconstruction efforts. *See* 154 Cong. Rec. 11-12 (2008). Two weeks later, Congress amended the bill so that it allowed the President to exempt Iraq from the applicability of sections 1605A and 1610(g), and Congress otherwise left the relevant parts of the NDAA unaltered. *Compare* NDAA § 1083 *with* H.R. 1585, 110th Cong. § 1083 (enrolled bill, as sent to the President). As a result, the conference report for H.R. 1585 is highly probative as to the meaning of the NDAA; indeed, the NDAA expressly recognizes that H.R. Rep. No. 110-477 (2007) is part of the NDAA’s legislative history. *See* NDAA § 1(b).

Finally, this Court's decision in *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117 (9th Cir. 2010), is not to the contrary. In that case, which did not involve a proposed attachment under Section 1610(g), this Court briefly stated in a footnote that Section 1610(g) lets "judgment creditors . . . reach any U.S. property in which Iran has any interest." *Id.* at 1123 n.2. That footnote is dicta. *See, e.g., In re Magnacom Wireless, LLC*, 503 F.3d 984, 993-94 (9th Cir. 2007) ("[S]tatements made in passing, without analysis, are not binding precedent."). And it certainly does not purport to address the "commercial activity" requirement. *Peterson* thus provides no reason to depart from Section 1610(g)'s clear meaning.

CONCLUSION

The district court's judgment should be affirmed for the simple reason that the Cubic judgment is a blocked asset under TRIA, and its attachment will not violate the Algiers Accords. The Court should also reject the district court's mistaken interpretation of 28 U.S.C. § 1610(g).

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July 3, 2014

**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 32(A)**

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Book Antiqua, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 32(a)(7)(B) because it contains **6306 words**, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

/s/ Benjamin M. Shultz
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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2014, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, which constitutes service on all parties under the Court's rules because all participants in the case are registered CM/ECF users..

/s/ Benjamin M. Shultz
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ADDENDUM

ADDENDUM CONTENTS

<u>Item</u>	<u>Page</u>
Terrorism Risk Insurance Act (TRIA), Pub. L. No. 107-297, § 201 (excerpts)	A1
28 U.S.C. § 1610(g).....	A3
50 U.S.C. § 1701.....	A8
31 C.F.R. § 535.540.....	A9

**Terrorism Risk Insurance Act (TRIA), Pub. L. No. 107-297, § 201
(excerpts)**

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

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

...

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

(1) ACT OF TERRORISM.—The term “act of terrorism” means—

(A) any act or event certified under section 102(1); or

(B) to the extent not covered by subparagraph (A), any terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii))).

(2) BLOCKED ASSET.—The term “blocked asset” means—

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

(B) does not include property that—

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

States in connection with a transaction for which the issuance of such license has been specifically required by statute other than the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or **(ii)** in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

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

(4) TERRORIST PARTY.— The term “terrorist party” means a terrorist, a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))), or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

28 U.S.C. § 1610

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

- (1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or
- (2) the property is or was used for the commercial activity upon which the claim is based, or
- (3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or
- (4) the execution relates to a judgment establishing rights in property-
 - (A) which is acquired by succession or gift, or
 - (B) which is immovable and situated in the United States:
Provided, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or
- (5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or
- (6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or
- (7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section

was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if--

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a) (2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

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

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if --

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

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

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), 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.

50 U.S.C. § 1701

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

31 C.F.R. § 535.540

(a) Specific licenses may be issued in appropriate cases at the discretion of the Secretary of the Treasury for the public sale and transfer of certain tangible property that is encumbered or contested within the meaning of § 535.333(b) and (c) and that, because it is blocked by § 535.201, may not be sold or transferred without a specific license, provided that each of the following conditions is met:

- (1)** The holder or supplier of the property has made a good faith effort over a reasonable period of time to obtain payment of any amounts owed by Iran or the Iranian entity, or adequate assurance of such payment;
- (2)** Neither payment nor adequate assurance of payment has been received;
- (3)** The license applicant has, under provisions of law applicable prior to November 14, 1979, a right to sell, or reclaim and sell, such property by methods not requiring judicial proceedings, and would be able to exercise such right under applicable law, but for the prohibitions in this part, and
- (4)** The license applicant shall enter into an indemnification agreement acceptable to the United States providing for the applicant to indemnify the United States, in an amount up to 150 percent of the proceeds of sale, for any monetary loss which may accrue to the United States from a decision by the Iran-U.S. Claims Tribunal that the United States is liable to Iran for damages that are in any way attributable to the issuance of such license. In the event the applicant and those acting for or on its behalf are the only bidders on the property, the United States shall have the right to establish a reasonable indemnification amount.

(b) An applicant for a license under this section shall provide the Office of Foreign Assets Control with documentation on the points enumerated in paragraph (a) of this section. The applicant normally will be required to submit an opinion of legal counsel regarding the legal right claimed under paragraph (a)(3) of this section.

(c) Any sale of property licensed under this section shall be at public auction and shall be made in good faith in a commercially reasonable manner. Notwithstanding any provision of State law, the license applicant shall give detailed notice to the appropriate Iranian entity of the proposed sale or transfer at least 30 days prior to the sale or other transfer. In addition, if the license applicant has filed a claim with the Iran-U.S. Claims Tribunal, the license applicant shall give at least 30 days' advance notice of the sale to the Tribunal.

(d) The disposition of the proceeds of any sale licensed under this section, minus such reasonable costs of sale as are authorized by applicable law (which will be licensed to be deducted), shall be in accordance with either of the following methods:

(1) Deposit into a separate blocked, interest-bearing account at a domestic bank in the name of the licensed applicant; or

(2) Any reasonable disposition in accordance with provisions of law applicable prior to November 14, 1979, which may include unrestricted use of all or a portion of the proceeds, provided that the applicant shall post a bond or establish a standby letter of credit, subject to the prior approval of the Secretary of the Treasury, in favor of the United States in the amount of the proceeds of sale, prior to any such disposition.

(e) For purposes of this section, the term proceeds means any gross amount of money or other value realized from the sale. The proceeds shall include any amount equal to any debt owed by Iran which may have constituted all or part of a successful bid at the licensed sale.

(f) The proceeds of any such sale shall be deemed to be property governed by § 535.215 of this part. Any part of the proceeds that constitutes Iranian property which under § 535.215 is to be transferred to Iran shall be so transferred in accordance with that section.

(g) Any license pursuant to this section may be granted subject to conditions deemed appropriate by the Secretary of the Treasury.

(h) Any person licensed pursuant to this section is required to submit a report to the Chief of Licensing, Office of Foreign Assets Control, within ten business days of the licensed sale or other transfer, providing a full accounting of the transaction, including the costs, any payment to lienholders or others, including payments to Iran or Iranian entities, and documentation concerning any blocked account established or payments made.