

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANA MARGARITA MARTINEZ,

Plaintiff,

v.

REPUBLIC OF CUBA,

Defendant.

07 Civ. 6607 (VM)

**FILED UNDER SEAL**

**STATEMENT OF INTEREST OF THE UNITED STATES**

PREET BHARARA  
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Southern District of New York  
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— Of Counsel —

**PRELIMINARY STATEMENT**

The United States (the “Government”) respectfully submits this supplemental Statement of Interest pursuant to 28 U.S.C. § 517,<sup>1</sup> to address the asserted applicability of a September 24, 2015 ruling in *Vera v. Republic of Cuba*, 12 Civ. 1596 (AKH), to this case.

On October 16, 2015, the Government submitted a Statement of Interest advising the Court of its position that assets held in seven bank accounts at [REDACTED] [REDACTED] that are blocked pursuant to the Cuban Assets Control Regulations (“CACR”) are not subject to attachment under the Terrorism Risk Insurance Act (“TRIA”) or the Foreign Sovereign Immunities Act (“FSIA”). In that submission, the Government explained that Plaintiff’s Motion for a Turnover Order should be denied, because Plaintiff failed to show that Cuba owns the accounts. *See* SOI at 12-13. TRIA and the FSIA permit the attachment of assets only if they are the property of a foreign state or its agencies or instrumentalities. *See id.* at 4-7. And electronic fund transfers (“EFTs”) blocked midstream—like the EFTs at issue here—are deemed property of Cuba for purposes of TRIA and the FSIA only if “the state itself or an agency or instrumentality thereof (such as a state-owned financial institution) transmitted the EFT directly to the bank where the EFT is held pursuant to the block.” *See id.* at 15 (quoting *Calderon-Cardona v. Bank of New York Mellon*, 770 F.3d 993 (2d Cir. 2014)); *see also Hausler v. JP Morgan Chase, N.A.*, 770 F.3d 207, 212 (2d Cir. 2014). Because Plaintiff failed to establish that Cuba transmitted the EFTs directly to [REDACTED], she failed to show that the assets were the property of Cuba, as required to attach the assets under TRIA and the FSIA. *See id.* at 15.

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<sup>1</sup> Pursuant to 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

On October 30, 2015, Plaintiff responded to the Government's Statement of Interest, arguing that assets in two of the largest accounts at issue (Accounts 1 and 2) are properly subject to attachment.<sup>2</sup> Plaintiff argues that a September 24, 2015 ruling in *Vera v. Republic of Cuba*, 12 Civ. 1596 (AKH), "recently rejected arguments similar to those raised in the Government's Statement of Interest," and that "it should be followed in order to avoid disparate judicial outcomes in the same district."<sup>3</sup> Opp. at 13, 14. The Government respectfully submits this supplemental Statement of Interest to advise the Court of its position that the ruling in *Vera* is contrary to the governing regulations, and in any event, does not support Plaintiff's position.

In *Vera*, a Cuban bank was attempting to move funds between two accounts in different banks, using intermediary banks. Ex. A, *Vera v. Republic of Cuba*, 12 Civ. 1596 (AKH) (S.D.N.Y. Sept. 24, 2015) (order granting motion for summary judgment) at 5. Judge Hellerstein held that because the originating and intermediary banks had "disclaimed" their interests in the EFT at issue, the funds were considered to have been transmitted to the blocked accounts directly by the Cuban bank, and were therefore the property of the Cuban bank for purposes of *Calderon-Cardona* and *Hausler*. *Id.* at 6. Plaintiff urges that, because [REDACTED] "has discharged any interest in" the blocked EFTs in Accounts 1 and 2, and because the identity of the EFT originators is unknown, this Court should find that the EFTs at issue are the property of a Cuban

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<sup>2</sup> With regard to the blocked assets in Accounts 3 through 7, Plaintiff requested that the Court reserve any ruling until the pending Petitions for Writ of Certiorari in *Calderon-Cardona* and *Hausler* are decided. The Government has no objection to that aspect of Plaintiff's request.

<sup>3</sup> In response to the Government's Statement of Interest, Plaintiff also argued that *Calderon-Cardona* and *Hausler* do not apply, because those cases examined transfers between a foreign originating bank and a U.S. intermediary bank, whereas the transfers at issue in this case were between a foreign financial institution and a U.S. branch of the same financial institution. *See* Opp. at 10-13. Plaintiff fails to explain why such a distinction should affect the applicability of the holdings in *Calderon-Cardona* and *Hausler* to this case.

agency or instrumentality, and are therefore subject to attachment under TRIA and the FSIA. Opp. at 13, 16-17.

This Court should decline Plaintiff's invitation to apply the reasoning in *Vera* here. The court's reasoning in *Vera* conflicts with the governing regulations, and was therefore incorrect in the Government's view. Under Office of Foreign Assets Control ("OFAC") regulations, a foreign bank cannot surrender or release its interest in property intended to be transferred to Cuba but blocked in the United States. See 31 C.F.R. §§ 515.201(b)(2), 515.310. Indeed, any such attempted surrender or release would be null and void, and could not be the basis for the recognition of any interest or right with respect to that property. 31 C.F.R. § 515.203(a). In any event, the court's holding in *Vera* is unavailing to Plaintiff, because, while it was undisputed in *Vera* that a Cuban bank originated the EFT at issue there, there is no evidence that a Cuban agency or instrumentality originated the EFTs at issue here.

### **ARGUMENT**

#### **I. CONTRARY TO THE *VERA* HOLDING, A BANK CANNOT DISCLAIM ITS INTEREST IN PROPERTY BLOCKED PURSUANT TO THE CACR**

In *Vera*, the plaintiffs filed a petition seeking turnover of a \$3 million EFT "emanating from Cuba, or its agencies or instrumentalities, transmitted to New York banks for clearance purposes, and blocked pursuant to the [CACR]." Ex. A at 2. In response to the petition, HSBC Bank USA N.A. ("HSBC"), the New York intermediary bank that held the blocked account, filed an interpleader petition to resolve claims on the \$3 million transfer. *Id.* at 2. HSBC stated that the blocked transfer was initiated by a Cuban bank, Banco Internacional de Comercia, S.A. ("BICSA"), which instructed ING Bank France, Succursale de ING Bank N.V. ("ING") to transfer the \$3 million from a BICSA account at ING to another BICSA account at Banco Bilbao Vizcaya Argentaria, S.A. ("BBVA"). *Id.* at 3. Consistent with this statement, the parties later

stipulated that a Cuban bank had initiated the \$3 million transfer, and was also the intended beneficiary of the transfer. *Id.* at 4. Neither BICSA nor ING responded to the interpleader petition. *Id.* at 3.

The plaintiffs in *Vera* moved for summary judgment. Ex. A at 1. In response, HSBC “reiterate[d] its position as merely a stakeholder in [the] dispute,” but also opposed the motion, arguing that the blocked EFT was not subject to attachment under TRIA or the FSIA, because the plaintiff could not establish that the EFT was the property of Cuba for purposes of New York law. *Id.* at 4-5. In making this argument, HSBC relied on the Second Circuit’s decisions in *Calderon-Cardona* and *Hausler* holding that an EFT blocked midstream is the property of a foreign state only if the state or its agency or instrumentality transmitted the EFT directly to the bank holding the blocked EFT. *See id.* HSBC reasoned that, because the funds were transmitted to HSBC (a U.S. bank) by HSBC Bank plc, a United Kingdom bank, the EFT was not Cuban property for purposes of TRIA or the FSIA. *Id.*

Judge Hellerstein rejected this argument. The court ruled that, because HSBC Bank plc was not interpled, and because ING did not respond to the interpleader petition, “any potential interest in the chain of transactions leading from BICSA to HSBC has been disclaimed.” Ex. A at 6. The court concluded—without citing any legal authority—that, for the purposes of *Calderon-Cardona* and *Hausler*, the blocked assets were to be “considered to have been transmitted to HSBC directly from BICSA.” *Id.* Thus, *Vera* appears to stand for the proposition that where originating and intermediary banks “disclaim” interest in blocked assets, the assets may be considered to be the property of the originator. Because the originator in *Vera* was an instrumentality of Cuba, Judge Hellerstein found that the blocked EFT was Cuba’s property, and that it was therefore attachable under TRIA and the FSIA. *Id.*

The reasoning in *Vera* is contrary to the governing regulations. Under the CACR, a foreign bank is prohibited from disclaiming any interest in property subject to the jurisdiction of the United States, if Cuba also has an interest in that property. Specifically, section 515.201(b)(2) of the CACR prohibits “[a]ll transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States” if the transfers involve property in which Cuba (or its agency or instrumentality) has or had “any interest of any nature whatsoever, direct or indirect.” The word “transfer” is specifically defined to include “any actual or purported act or transaction, . . . the purpose, intent, or effect of which is to create, *surrender, release, transfer, or alter, directly or indirectly any . . . interest with respect to any property.*” 31 C.F.R. § 515.310 (emphasis added).

In *Vera*, there was no dispute that the blocked EFT was subject to the jurisdiction of the United States or that Cuba had an interest in the property. Therefore, under the CACR, ING and HSBC Bank plc were prohibited from “surrender[ing]” or “releas[ing]” their interests in the EFT that was blocked in New York and intended for a Cuban beneficiary. Moreover, the CACR specifically provides that any transfer in violation of the CACR involving property in which Cuba has an interest “is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.” 31 C.F.R. § 515.203(a); *see also Zarmach Oil Services, Inc. v. U.S. Dep’t of the Treasury*, 750 F. Supp. 2d 150, 157 (D.D.C. 2010) (“OFAC regulations . . . provide only one method by which the Sudanese Government’s interest in the funds may be extinguished: a valid license from OFAC . . . and contain no provision by which the efforts of a sanctions target and a company it wishes to do business with can, on their own, ‘un-block’ assets frozen by OFAC.” (citations omitted)). Thus, under the CACR, any “disclaimer” by ING or HSBC Bank plc would be “null and void,” and

could not operate to transfer the property interest in the blocked asset to Cuba, or its agencies or instrumentalities.

Plaintiff's argument in this case that [REDACTED] disclaimer of interest in Accounts 1 and 2 in this case renders them attachable under TRIA and the FSIA is therefore unavailing. Under the CACR, the foreign [REDACTED] entities cannot surrender or release their interests in the blocked EFTs, as they are property subject to the jurisdiction of the United States in which Cuba has an interest as the intended beneficiary. *See* 31 C.F.R. §§ 515.201(b)(2), 515.310. Any attempt to do so would be "null and void." *See* § 515.203(a). For this reason, the reasoning in *Vera* should be rejected. That decision did not consider, let alone correctly analyze, the impact of the CACR on intermediary banks' purported attempt to "disclaim" an interest in an asset subject to the regulations.

## **II. THE *VERA* HOLDING DOES NOT SUPPORT PLAINTIFF'S POSITION**

Setting aside the error in *Vera*, Judge Hellerstein's reasoning in that case is inapplicable here for the additional reason that there is no indication that Cuba was the originator of the blocked EFTs in Accounts 1 and 2. In *Vera*, the parties stipulated that a Cuban bank was both the originator and beneficiary of the blocked EFT. *See* Ex. A at 4, 5. But here, as Plaintiff concedes, there is no originator information available for the blocked transfers. *See* Opp. at 17.

Plaintiff asks this Court to "infer" that Cuba was the originator of the EFTs here from the lack of originator information on the accounts. Without citing any legal or evidentiary support, Plaintiff speculates that "the originator's identity was purposefully omitted or scrubbed from the wire information" for the accounts at issue. Opp. at 12; *see also id.* at 17-18 (referring to the "purposeful omission of the originator information contained in the wire transfer" without citation of evidence relating to the banks or accounts at issue). Plaintiff argues that the supposed

“purposeful omission” of originator information should cause the Court to infer that Cuba was the originator of the blocked EFTs, and therefore, under *Vera*’s flawed reasoning, the owner of the blocked accounts. Opp. at 17-18. But Plaintiff fails to cite a single fact to support her speculation that the lack of originator information for the EFTs at issue was purposeful, much less that Cuba was the originator.

In fact, the only evidence on this point leads to the opposite conclusion. See Ex. B, Letter from [REDACTED], to Rhonda A. Anderson, Esq. (Nov. 5, 2015). In a November 5, 2015, letter to Plaintiff’s counsel (copying the Government), [REDACTED] counsel explained that the blocked EFTs at issue involve old transactions for which “[t]he absence of [originator] information at this late date is not surprising,” particularly in light of the fact that the [REDACTED] entity involved has “undergone various mergers and acquisitions.” *Id.* at 1. And the mere fact that the EFTs were blocked does not support Plaintiff’s claim, because the EFTs’ intended recipient was Cuba, which would trigger a block of the transfer regardless of the originator’s identity or nationality. In short, there is no evidence that Cuba originated the EFTs at issue, and therefore, no cause to apply the reasoning in *Vera*. Accordingly, this Court may rule that *Vera* would not apply to permit attachment of Accounts 1 and 2 in this case without addressing whether that case was correctly decided.

**CONCLUSION**

For the foregoing reasons, and for the reasons articulated in the Government's October 16, 2015, Statement of Interest, Plaintiff has not shown that the assets at issue in the Turnover Order are subject to attachment under TRIA or the FSIA.

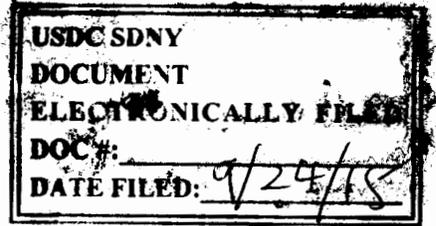
Dated: New York, New York  
December 14, 2015

Respectfully submitted,

PREET BHARARA  
United States Attorney

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# EXHIBIT A



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
ALDO VERA, JR., as Personal Representative of  
the Estate of Aldo Vera, Sr.,

Plaintiff,

-against-

THE REPUBLIC OF CUBA,

Defendant.  
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**ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT  
FOR TURNOVER AGAINST  
HSBC**

12 Civ. 1596 (AKH)

ALDO VERA, JR., as Personal Representative of  
the Estate of Aldo Vera, Sr., and

JEANNETTE FULLER HAUSLER, and  
WILLIAM FULLER, as court-appointed co-  
representatives of the ESTATE OF ROBERT OTIS  
FULLER, deceased, on behalf of all beneficiaries of  
the Estate and the ESTATE OF ROBERT OTIS  
FULLER; and

ALFREDO VILLOLDO, individually, and  
GUSTAVO E. VILLOLDO, individually and as  
Administrator Executor, and Personal  
Representative of the ESTATE OF GUSTAVO  
VILLOLDO ARGILAGOS,

Petitioners,

-against-

BANCO BILBAO VIZCAYA ARGENTARIA  
(S.A.); BANK OF AMERICA N.A.; BANK OF  
NEW YORK MELLON; BARCLAY'S BANK  
PLCS; CITIBANK N.A.; CREDIT SUISSE AG,  
NEW YORK BRANCH; DEUTSCHE BANK  
TRUST COMPANY AMERICAS; HSBC BANK  
(HSBC BANK USA, N.A.); INTESA SANPAOLA  
S.P.A.; JP MORGAN CHASE BANK N.A.; RBS  
CITIZENS, N.A.; ROYAL BANK OF CANADA;  
SOCIETE GENERALE; UBS AG; WELLS

FARGO BANK, NA; BROWN BROTHERS :  
 HARRIMAN & CO.; MERCANTIL COMMERCE :  
 BANK, N.A.; STANDARD CHARTERED BANK; :  
 AND BANCO SANTADER, S.A., :  
 :  
 Respondents. :  
 \_\_\_\_\_ X

ALVIN K. HELLERSTEIN, U.S.D.J.:

Petitioners Aldo Vera, Jr., Jeanette Fuller Hausler, William Fuller, Alfredo

Villoldo and Gustavo Villoldo (collectively, “Petitioners”), move for summary judgment against Third-Party Petitioner HSBC Bank USA N.A. (“HSBC”) and any other party served by HSBC’s Third-Party Petition Alleging Claims in the Nature of Interpleader (Dkt. No. 451) (the “Interpleader Petition”) for turnover of the \$3 million with accrued interest which was the subject of the Interpleader Petition (Dkt. No. 795). For the reasons set forth below, Petitioners’ motion is GRANTED.

**BACKGROUND**

**I. The Prior Proceedings**

Petitioners filed an Amended Omnibus Petition for Turnover (the “Amended Petition”), alleging claims under the Terrorism Risk Insurance Act of 2002 (“TRIA”), 28 U.S.C. §§ 1610 note and 1610(g), and the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. § 1602 *et seq.*, seeking turnover of electronic fund transfers (“EFTs”), emanating from Cuba, or its agencies or instrumentalities, transmitted to New York banks for clearance purposes, and blocked pursuant to the Cuban Asset Control Regulations (“CACR”).

In response to the Amended Petition, HSBC filed the Interpleader Petition, to determine any claims that may exist as the proceeds of a SWIFT transfer in the amount of \$3 million received by HSBC, which was blocked pursuant to the CACR (the “Blocked Account”). HSBC stated it was filing its petition “to bring before the Court additional parties who have

claimed or may claim interest in property held by HSBC that Petitioners seek to have turned over to them, thereby exposing HSBC to double or multiple liability.” (Dkt. No. 451 at 2.) HSBC filed the Interpleader Petition against Banco Bilbao Vizcaya Argentaria, S.A. (“BBVA”), Banco Internacional de Comercia, S.A. (“BICSA”), and ING Bank France, Succursale de ING Bank N.V. (“ING”). (*Id.*)

In the Interpleader Petition, HSBC stated, upon information and belief, that the payment in the Blocked Account “was initiated as the result of BICSA’s instruction to ING to transfer \$3 million from an account maintained by BICSA at ING to an account maintained by BICSA at BBVA. HSBC received the payment from HSBC Bank plc, which originated the transfer as correspondent bank for ING.” (*Id.* at 4.) BICSA is a commercial bank of the Banco Central de Cuba.<sup>1</sup>

BBVA was the only party, apart from Petitioners, which responded to the Interpleader Petition. (Dkt. No. 633.) BBVA argued as an affirmative defense that “[t]his Court lacks subject matter jurisdiction over this action under the [FSIA].” (*Id.* at 3.) I have previously found BBVA’s arguments concerning subject matter jurisdiction to be without merit. *Vera v. Republic of Cuba*, 40 F.Supp.3d 367 (S.D.N.Y. 2014). ING and BICSA did not respond to the Interpleader Petition.

## II. Petitioners’ Motion

On June 25, 2015, Petitioners filed a Motion for Summary Judgment concerning the Interpleader Petition and the Blocked Account. Petitioners attach to their motion a Deferred Prosecution Agreement between ING and the United States government (the “Deferred Prosecution Agreement”), along with a stipulated Statement of Facts (the “Statement of Facts”),

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<sup>1</sup> [http://www.bc.gob.cu/English/commercial\\_banks.asp#BICSA](http://www.bc.gob.cu/English/commercial_banks.asp#BICSA)

in which ING admits to violating United States and New York State laws by moving billions of dollars illegally through the U.S. financial system on behalf of entities subject to U.S. economic sanctions, including Cuba. (See Dkt. Nos. 797-1 & 797-2.) In order to prevent those funds from being blocked, ING stripped information from the transactions that would identify them as relating to Cuba, its agencies, or instrumentalities. (*Id.*)

Regarding the \$3 million, the Stipulation of Facts states: “ING France processed U.S. dollar payments on behalf of Cuban entities. In 2002, a \$3 million payment on behalf of a Cuban bank was blocked by another financial institution. Senior managers from ING France and headquarters in Amsterdam tried unsuccessfully to recover the funds. ... ING France ... had contravened its prior practice of not mentioning ‘the name of the ultimate beneficiary’ in SWIFT payment messages for the Cuban bank. In other words, ING France ... had failed to adhere to a general policy of deceiving other unaffiliated financial institutions in order to evade U.S. economic sanctions.” (Dkt. No. 797-2 at ¶ 54.)

Petitioners argue that they are entitled to turnover of the Blocked Account as they have a valid claim for money blocked pursuant to TRIA and FSIA as victims of terrorism and heirs of victims of terrorism, and no other party has put forth a valid claim. Petitioners argue based on the Stipulation of Facts that the \$3 million which was blocked was property of Cuba that was simply being moved between accounts, and, as such, should not be returned.

In opposition, HSBC reiterates its position as merely a stakeholder in this dispute. (Dkt. No. 799.) HSBC also adds an additional argument, that it should not be required to turn over the proceeds of the Blocked Account to Petitioners, because, it states, the recent Second Circuit decisions *Calderon-Cardona v. Bank of New York Mellon*, 770 F.3d 993 (2d Cir. 2014) and *Hausler v. JP Morgan Case Bank, N.A.*, 770 F.3d 207 (2d Cir. 2014) rule that the funds in

the Blocked Account are not subject to attachment under TRIA or FSIA. HSBC argues that the funds were transmitted electronically to HSBC by HSBC Bank plc, a foreign banking institution organized under the laws of the United Kingdom, not an agency or instrumentality of Cuba. (*Id.* at 8-10; Dkt. No 800 at ¶ 8.)

### LEGAL STANDARD

Under the well-established summary judgment standard, a “court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In deciding the motion, the court must “resolve all ambiguities, and credit all factual inferences that could rationally be drawn, in favor of the party opposing summary judgment.” *Roe v. City of Waterbury*, 542 F.3d 31, 35 (2d Cir. 2008). The court should also “eschew credibility assessments.” *Amnesty Am. v. Town of West Hartford*, 361 F.3d 113, 122 (2d Cir. 2004). However, “[t]he mere existence of a scintilla of evidence in support of the [non-moving] party’s position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-moving party].” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

### DISCUSSION

As described in my Order dated May 7, 2015, (the “Order”) Petitioners in the above-captioned case are involved in post-judgment discovery, collection, and execution on Cuban assets available to them. (*See* Dkt. No. 767.) For assets frozen in the United States, the question presented is determining whose rights are paramount. Under U.S. policy, funds should not be returned to Cuba, or an agency or instrumentality of Cuba.

The facts concerning the Blocked Account are undisputed: BICSA, a Cuban bank, was attempting to move money between two of its accounts, one at ING and one at BBVA.

In order to complete this transfer, ING instructed HSBC Bank plc, its correspondent bank, to initiate the transfer, and HSBC Bank plc sent a SWIFT transfer of \$3 million to HSBC. As ING had failed to remove the information from the transfer identifying the ultimate beneficiary of the transfer—and thus failed in its scheme to evade U.S. banking regulations—the money was blocked.

As HSBC implicitly admitted in the Interpleader Petition, HSBC Bank plc has no interest in the proceeds of a Blocked Account. HSBC Bank plc was merely acting as a correspondent bank—an agent—for ING, which was acting as an agent for BICSA. As HSBC Bank plc was not interpled, and ING did not respond, and has therefore quitclaimed any interest it could have, the only remaining interests are BICSA and Petitioners. The funds cannot be returned to BICSA, a Cuban bank, and thus Petitioners are entitled to them. That is what U.S. law provides. *See* 28 U.S.C. § 1602 *et seq.*; 28 U.S.C. §§ 1610 note and 1610(g)

The proceeds of the Blocked Account are attachable by Petitioners under TRIA and FSIA. Petitioners are victims of terrorism, or heirs of victims of terrorism, and the blocked funds are the property of BICSA, a Cuban bank.<sup>2</sup> As set forth in the Order, any potential interest in the chain of transactions leading from BICSA to HSBC has been disclaimed, and therefore, for the purposes of *Calderon-Cardona* and *Hausler*, the Blocked Account is considered to have been transmitted to HSBC directly from BICSA. Since the funds cannot be returned, they are blocked here, giving this court jurisdiction, and giving Petitioners, judgment creditors of Cuba, paramount rights to them.

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<sup>2</sup> No separate license is required from the Office of Foreign Assets Control (“OFAC”) before the funds may be distributed to Petitioners. *See Harrison v. Republic of Sudan*, 14-121-cv (2d Cir. September 23, 2015).

**CONCLUSION**

For the foregoing reasons, Petitioners' motion for summary judgment (Dkt. No. 795) is GRANTED. Petitioners and HSBC shall submit a joint turnover order, modeled after the previous turnover orders issued in this case, by September 29, 2015.

The Clerk shall mark the motion (Dkt. No. 795) terminated.

SO ORDERED.

Dated: September 24, 2015  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge

# EXHIBIT B

November 5, 2015

VIA E-MAIL

Rhonda A. Anderson, Esq.  
Rhonda A. Anderson, P.A.  
2655 LeJeune Road, Suite 540  
Coral Gables, FL 33134

Re: Martinez v. Rep. of Cuba  
07 Civ. 6607 (VM)

Dear Ms. Anderson:

I write on behalf of my clients, [REDACTED], to correct the record with respect to certain contentions in Plaintiffs' Response in Opposition to Statement of Interest of the United States ("Response"). Docket No. 84. In the Response, you contend, with respect to two EFTs involving [REDACTED], that information concerning the originators of the EFTs was "stripped" or "scrubbed." See, e.g., Response at 9 n.4, 12, 14, 17.

These contentions are incorrect and have no basis in the record. The [REDACTED] predecessor entity [REDACTED] did not engage in any such conduct. Certainly, there is no evidence of any such conduct. The most that can be said is -- as I have told you on the telephone and as our document production showed -- that no information or records are available at this time regarding the originators of the EFTs. The absence of such information at this late date is not surprising. The transactions at issue date back more than 19 and 15 years, respectively, and, as you acknowledge in the Response, [REDACTED] has undergone various mergers and acquisitions. Response at 11-12.

The EFTs at issue here bear no resemblance to those at issue in Vera v. Republic of Cuba, on which you rely. In Vera, a Cuban bank known as BICSA sought to move dollars from one of its accounts to another of its accounts. The originator's bank (an ING entity) engaged in stripping; a different bank (the intermediary bank, an HSBC entity) caught the reference to BICSA and blocked the EFT.

Rhonda A. Anderson, Esq.

November 5, 2015

Here, by contrast, [REDACTED] was both the originator's bank and the intermediary bank that blocked the EFTs. It should be obvious that if [REDACTED] had been engaged in stripping, it would not have blocked the EFTs. [REDACTED], furthermore, is not a Cuban bank seeking to move dollars from one of its accounts to another. The far more plausible inference is that persons or entities in Europe purchased [REDACTED] and originated the EFTs in order to pay for those purchases.

[REDACTED] has previously agreed that it will not oppose your motion for turnover. And, to be clear, [REDACTED] does not oppose that motion. The purpose of this letter is to correct the record. We have copied the same counsel on whom you served the Response. We are not filing this letter with the Court.

Very truly yours,

[REDACTED]

cc: John Clopper, Esq.  
[REDACTED]