

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>DEBORAH D. PETERSON, Personal Representative of the Estate Of James C. Knipple (Dec.), et al.</p> <p>Plaintiffs,</p> <p>v.</p> <p>ISLAMIC REPUBLIC OF IRAN; BANK MARKAZI a/k/a CENTRAL BANK OF IRAN; BANCA UBAE SpA; CITIBANK, N.A., and CLEARSTREAM BANKING, S.A.,</p> <p>Defendants.</p>	<p>Case No.: 10 CIV 4518(BSJ) (CWG)</p> <p>FILED UNDER SEAL CONTAINS CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE ORDER</p> <p><u>DECLARATION OF LIVIU VOGEL IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT</u></p>
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I, Liviu Vogel, an attorney duly admitted to practice law before the Courts of the State of New York, and this Court, declares under penalties of perjury:

1. I am a member of the firm of Salon Marrow Dyckman Newman & Broudy LLP, attorneys for Peterson Plaintiffs in the above-captioned action. I make this declaration in support of Plaintiffs' Motion for Partial Summary Judgment (the "Motion").

A. History of the Blocked Assets

2. This turnover action involves the roughly \$1.75 billion in funds comprised of securities and cash (the "Blocked Assets") owned by Defendant Bank Markazi a/k/a Central Bank of Iran ("Markazi") that are *currently* located in a "blocked," interest-bearing suspense account at Citibank (the "Blocked Account") and which are the subject of restraints (the "Restraints") described below.

3. The United States District Court, Southern District of New York issued a Writ of Execution, dated June 12, 2008 as to the Blocked Assets, which were levied upon by the United States Marshal at Citibank, N.A. on June 13, 2008. Those actions had the effect of restraining the Blocked Assets under CPLR §5232(a). True and correct copies of the Writ of Execution and the return of service by the United States Marshal evidencing the levy are annexed hereto as Exhibit A.

4. The Clerk of the United States District Court, Southern District of New York issued a Writ of Execution, dated October 17, 2008 as to the Blocked Assets, which were levied upon by the United States Marshal at Clearstream Banking S.A. on October 27, 2008. Those actions had the effect of restraining the Blocked Assets under CPLR §5232(a). True and correct copies of the Writ of Execution and the return of service by the United States Marshal evidencing the levy are annexed hereto as Exhibit B.

5. The Peterson Plaintiffs issued a Restraining Notice regarding the Blocked Assets dated June 16, 2008, and an Amended Restraining Notice dated June 20, 2008, and served the same upon Citibank, N.A. ("Citibank") on June 17, 2008 and June 24, 2008, respectively. True and correct copies of the Restraining Notice and Amended Restraining Notice served on Citibank are attached hereto as Exhibit C.

6. The Peterson Plaintiffs issued a Restraining Notice regarding the Blocked Assets dated June 16, 2008, and an Amended Notice dated June 20, 2008, and served the same upon Clearstream Banking, S.A. ("Clearstream") on June 16, 2008 and June 23, 2008, respectively. True and correct copies of the Restraining Notice and Amended Restraining Notice served on Clearstream are attached hereto as Exhibit D.

7. At a hearing on June 27, 2008, this Court ordered that the Blocked Assets remain restrained until further order of the Court. See a true and correct excerpt of the transcript of the June 27, 2008 hearing attached hereto as Exhibit E at p. 66, line 13 through p. 68, line 10.

8. Pursuant to the Peterson Plaintiffs' application dated May 28, 2009 for leave to serve a second restraining notice or for an order extending the restraining notices previously served upon Clearstream and Citibank, this Court, by way of an Order dated June 23, 2009, continued the restraint of the Blocked Assets until further order of this Court. A true and accurate copy of this Court's Order dated June 23, 2009 is attached hereto as Exhibit F ("The restraints will remain in place until the Court has determined whether Clearstream is, or could be made, a proper garnishee, assuming a fraudulent conveyance could be shown by Plaintiffs.").

9. This Court issued an order on May 10, 2010, a true and correct copy of which is attached hereto as Exhibit G, which continued the restraint of the Blocked Assets. *Id.* ("Plaintiffs' execution issued by this Court on June 12, 2008 and the levy by service of the execution initially made on Citibank on June 13, 2008, are hereby extended *nunc pro tunc* until 30 days after the date of this Order...").

10. On June 11, 2010, the Court again extended the restraint of the Blocked Assets. A true and correct copy of the Court's Order dated June 11, 2010 is attached hereto as Exhibit H ("Plaintiffs' execution issued by this Court on October 17, 2008 and the levy by service of the execution initially made on Clearstream on October 27, 2008, are hereby extended *nunc pro tunc* until 15 days after the date of this Order...").

11. On June 8, 2010, the Peterson Plaintiffs filed their complaint seeking turnover of the Blocked Assets, which had the effect of continuing the restraints on those assets pursuant to CPLR 5232(a) until transfer or payment of the Blocked Assets is made.

12. The Peterson Plaintiffs filed their Amended Complaint on October 20, 2010 and their Second Amended Complaint on December 7, 2011.

(i) Markazi's Ownership of the Blocked Assets

13. Markazi has repeatedly admitted that the Blocked Assets are Markazi's own property. In Markazi's First Memorandum of Law In Support of Its Motion to Dismiss the Amended Complaint for Lack of Subject Matter Jurisdiction dated May 11, 2011 ECF No. 18 ("Markazi's First MOL"), Markazi admitted its *full ownership*, not just "beneficial" ownership, of the Blocked Assets in no fewer than six different passages. *See* Markazi's First MOL at pp. 1, 5, 9, 10, 36, a true and correct copy of which is attached hereto as Exhibit I ("Over \$1.75 billion in securities belonging to Bank Markazi . . . are frozen in a custodial omnibus account at [Citibank]."); ("The Restrained Securities are the property of Bank Markazi, the Central Bank of Iran."); ("The aggregate value of the remaining bond instruments – *i.e.*, the Restrained Securities that are the property of Bank Markazi and the subject of this Turnover Action – is thus \$1.753 billion."); ("The Restrained Securities are the property of a Foreign Central Bank . . ."); ("[T]he Restrained Securities are presumed to be the property of Bank Markazi."); ("[T]he Restrained Securities are prima facie the property of a third party, Bank Markazi . . .").

14. Markazi has also submitted sworn testimony of two Markazi officers that the Blocked Assets are the "sole property of Bank Markazi and held for its own account."

See true and correct copy of the Affidavit of Gholamossein Arabieh dated October 17, 2010 attached hereto as Exhibit J at ¶ 2; and true and correct copy of the Affidavit of Ali Asghar Massoumi dated October 17, 2010 attached hereto as Exhibit K at ¶ 2.

15. Markazi has also admitted that it is the Central Bank of Iran, was formed under Iranian law in 1960, is 100% owned by the Government of Iran and is an instrumentality of the Government of Iran. See Exhibit I at p. 29 (“[I]t is undisputed that Bank Markazi is the Central Bank of Iran and, as such, is a sovereign instrumentality Under the FSIA, Bank Markazi plainly qualifies as an instrumentality of the IRI.”).

16. Attached as Exhibit L are true and correct copies of Markazi’s account opening documents regarding its Clearstream account. Those documents were produced by Clearstream in this litigation. They demonstrate that Markazi is 100% owned by the Islamic Republic of Iran. See Exhibit L at p.4/63 and p.11/63.

17. Attached as Exhibit M is a true and correct copy of Clearstream’s August 14, 2009 letter which authenticates (at p. 7) the account opening documents contained in Exhibit L.

(ii) The Blocking of Markazi’s Assets at Citibank in New York

18. On February 5, 2012, by Executive Order 13599 (“E.O. 13599”), President Obama declared “[a]ll property and interests in property of” Iran or Markazi held in the United States or by a “United States person” “blocked” pursuant to the President’s authority under the International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. § 1701. See the true and correct copy of E.O. 13599 attached hereto as Exhibit N at § 1.

19. The property blocked by means of E.O. 13599 includes the Blocked Assets. Accordingly, in a letter dated February 14, 2012, Citibank informed this Court that all of the assets restrained in this litigation have been blocked pursuant to E.O. 13599. A true and correct copy of Citibank's February 14, 2012 letter is attached hereto as Exhibit O.

20. E.O. 13599 recognizes and responds to the critical role that Markazi plays in Iran's ongoing efforts to conceal and facilitate its evasion of international sanctions and other illegal conduct. *See* Exhibit N at p. 1 (highlighting the "deceptive practices of [Markazi] and other Iranian banks to conceal transactions of sanctioned parties, the deficiencies in Iran's anti-money laundering regime and the weaknesses in its implementation, and the continuing and unacceptable risk posed to the international financial system by Iran's activities").

21. As a result, E.O. 13599 declares "[a]ll property and interests in property of" Iran or Markazi held in the United States or by a "United States person" "blocked" pursuant to the President's authority under IEEPA, 50 U.S.C. § 1701 et seq. *See* Exhibit N at § 1.

22. Section 7 of E.O. 13599 further provides that, "[f]or the purposes of this order: (a) the term 'person' means an individual or entity; [and] (c) the term 'United States person' means any . . . entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States." *See* Exhibit N at § 7.

23. Consistent with IEEPA, E.O. 13599 blocks any property within the possession or control of any person subject to the jurisdiction of the United States regardless of the property's location. *See* Exhibit N at § 1.

24. The execution of E.O. 13599 transformed the Markazi assets that the Court had previously restrained by means of Orders issued on June 27, 2008, June 23, 2009, May 10, 2010, and June 11, 2010, into "blocked" assets within the meaning of the TRIA. *See* Exhibit O.

25. Thus, no entity located in the United States or United States person can transfer, pay, export, withdraw, or otherwise deal in those blocked assets. *See* Exhibit N at § 1.

26. Citibank is an entity located in the United States. *See* true and correct copy of Citibank's Third-Party Petition Alleging Claims in the Nature of Interpleader, attached hereto as Exhibit P at ¶ 25.

27. Citibank complied with its obligations under E.O. 13599 by reporting to the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") that it had placed the Blocked Assets in the interest-bearing Blocked Account. *See* Exhibit O.

28. In compliance with E.O. 13599, Citibank advised this Court on February 14, 2012 "that the restrained funds at issue in this litigation have been designated as blocked funds and are being held in a Citibank account established in accordance with OFAC regulations." *See* Exhibit O.

29. Citibank maintains the Blocked Account in this District. *See* Exhibit P at ¶ 24.

30. Markazi's recently March 15, 2012 brief in support of vacating the Restraints ("Markazi's Second MOL") acknowledges that, "[b]ecause Bank Markazi plainly has an 'interest in' the Restrained Bonds, those assets have been blocked pursuant to" E.O. 13599. *See* the true and correct copy of Markazi's Second MOL attached hereto as Exhibit Q at p. 8.

31. The Blocked Assets will soon consist solely of cash housed in the Citibank Blocked Account in this District. Indeed, the last bond in the Blocked Assets will mature and be converted to cash on April 25, 2012. *See* true and correct copy of Clearstream's July 30, 2010 letter to the Court attached hereto as Exhibit R (at CBL Ex. C).

B. The Peterson Plaintiffs' Judgment

32. On May 30, 2003, the United States District Court for the District of Columbia issued an opinion, in the consolidated action styled *Peterson v. Islamic Republic of Iran*, 01-cv-2094 (RCL) ("Peterson Action"), finding that (a) the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS") legally responsible for providing material financial and logistical support to help carry out the murder of the 241 American servicemen at the United States Marine barracks in Beirut, Lebanon on October 23, 1983 and (b) the surviving family members suffered and would continue to suffer mental anguish and loss of society. A true and accurate copy of the May 30, 2003 Memorandum and Order from the United States District Court for the District of Columbia, which is a public record, is attached hereto as Exhibit S.

33. On September 7, 2007, the United States District Court for the District of Columbia entered a Default Judgment ("Judgment") against Iran and MOIS, jointly and severally, in the Peterson Action, awarding economic and compensatory damages totaling

\$2,656,944,877.00. A true and correct copy of the September 7, 2007 Memorandum and Judgment from the United States District Court for the District of Columbia, which is a public record, is attached hereto as Exhibit T.

34. The Judgment was entered under 28 U.S.C. § 1605(a)(7) and remains unsatisfied in the amount of \$2,656,944,877.00, plus post-judgment interest at the legal rate against Iran and MOIS.

35. On March 24, 2008, the Peterson Plaintiffs registered the September 7, 2007 Judgment with this Court pursuant to 28 U.S.C. § 1963, under case number M18-302, judgment number 080472. A true and correct copy of the September 7, 2007 Judgment as registered with this Court, which is a public record, is attached hereto as Exhibit U.

36. The Peterson Plaintiffs filed a Summons and Complaint on June 8, 2010 and an Amended Complaint on October 20, 2010 against Iran, Markazi, Banca UBAE SpA ("UBAE"), Citibank and Clearstream for, among other relief, a turnover of the now Blocked Assets.

37. On November 19, 2010, UBAE voluntarily accepted service in Italy of the Summons and Complaint pursuant to the Hague Convention. A true and correct copy of UBAE's acceptance of service is attached hereto as Exhibit V.

38. The Summons and Complaint, in English and Italian, were served on UBAE in Italy on November 19, 2010, pursuant to the Hague Convention. The Amended Complaint, in English and Italian, was served on UBAE in Italy on November 30, 2010, pursuant to the Hague Convention. True and accurate copies of the Certificates of Service on UBAE are attached hereto as Exhibit W.

39. The Summons and Complaint were served on Clearstream in New Jersey on September 30, 2010, pursuant to the CPLR. A true and correct copy of the Affidavit of Service on Clearstream in New Jersey is attached as Exhibit X.

40. The Summons and Complaint, in English and French, were served on Clearstream in Luxembourg on October 27, 2010 pursuant to the Hague Convention. On October 18, 2010, Clearstream voluntarily accepted service of the Summons and Complaint in Luxembourg. A true and correct copy of the Certificate of Service and Clearstream's acceptance of service of the Summons and Complaint is attached hereto as Exhibit Y.

41. The Amended Complaint was served on Clearstream in New York, New York and Luxembourg, with a copy to their attorneys White & Case, LLP, via first class mail on December 29, 2010. True and accurate copies of the Certificates and Affidavit of Service on Clearstream are attached hereto as Exhibit Z.

42. The Summons and Complaint were served on Citibank in New York, New York on September 29, 2010. True and accurate Affidavits of Service on Citibank are attached hereto as Exhibit AA.

43. The Summons, Complaint, Amended Complaint, Notice of Suit, and other supporting documents, in English and Farsi, were served on Markazi on December 12, 2010, via DHL Express Worldwide Courier Service pursuant to 28 U.S.C. § 1608(a)(3). A true and accurate proof of delivery on Markazi is attached hereto as Exhibit BB.

44. On November 24, 2010, the Peterson Plaintiffs attempted service on Iran pursuant to 28 U.S.C. § 1608(a)(3) by sending, through the Clerk of the Court and in a package prepared by the Clerk of the Court via international mail, return receipt

requested, a copy of the Summons, Complaint, Amended Complaint, Notice of Suit, together with a Farsi translation of each. The addressee and intended recipient, the Ministry of Foreign Affairs in Iran, refused delivery on November 28, 2010, at 9:22 A.M. and the package was returned to Plaintiffs. Therefore, on January 5, 2011, Peterson Plaintiffs attempted service on Defendants pursuant to 28 U.S.C. § 1608(a)(4) by sending a copy of the Summons, Complaint, Amended Complaint and the Notice of Suit, together with a Farsi translation of each (the "Service Documents"), by way of the Clerk of the Court to the United States Department of State for service on Iran through diplomatic channels. On July 6, 2011, the Embassy of the United States at Bern, Switzerland under Embassy note number 20488 dated July 5, 2011, transmitted the Service Documents to the Swiss Ministry of Foreign Affairs for further transmission to the American Interests Section of the Swiss Embassy in Tehran, Iran. On July 12, 2011, the Swiss Embassy in Tehran served the Iranian Ministry of Foreign Affairs with the Service Documents directed to Iran under diplomatic note number 1084 –IE dated July 11, 2011. On July 12, 2011, the Iranian Ministry of Foreign Affairs refused the Service Documents. On October 14, 2011, the United States Department of State wrote to Ruby J. Krajick, Clerk of this Court, enclosing a copy of the certification from the Foreign Interests Section of the Embassy of Switzerland in Tehran. Pursuant to 28 U.S.C. § 1608(c)(1) in the case of service under subsection (a)(4) of 28 U.S.C. § 1608, service shall be deemed to have been effectuated as of the date of transmittal indicated in the certified copy of the diplomatic note. The Service Documents were properly served on Iran pursuant to 28 U.S.C. § 1608(a)(4) on July 12, 2011. True and correct copies of the foregoing are attached hereto as Exhibit CC.

45. On July 1, 2011, the Peterson Plaintiffs attempted service on MOIS pursuant to 28 U.S.C. § 1608(a)(3) by sending, through the Clerk of the Court and in a package prepared by the Clerk of the Court via international mail, return receipt requested, a copy of the Summons, Complaint, Amended Complaint and Notice of Suit, together with a Farsi translation of each. The recipient, the Ministry of Foreign Affairs in Iran, refused delivery on July 9, 2011, at 12:25 p.m., and the package was returned to Plaintiff. On August 9, 2011, the Peterson Plaintiffs attempted service on MOIS pursuant to 28 U.S.C. § 1608(a)(4) by sending a copy of the Summons, Complaint, Amended Complaint and Notice of Suit, together with a Farsi translation of each (the "Service Documents"), by way of the Clerk of the Court to the United States Department of State for service through diplomatic channels. On September 8, 2011, the Embassy of the United States at Bern, Switzerland under Embassy note number 20728 dated September 7, 2011, transmitted the Service Documents to the Swiss Ministry of Foreign Affairs for further transmission to the American Interests Section of the Swiss Embassy in Tehran, Iran. On September 26, 2011, the Swiss Embassy in Tehran served the Iranian Ministry of Foreign Affairs with the Service Documents directed to MOIS under diplomatic note number 1122-IE dated September 18, 2011. On September 26, 2011, the Iranian Ministry of Foreign Affairs refused the Service Documents. On November 14, 2011, the United States Department of State wrote to Ruby J. Krajick, Clerk of this Court, enclosing a copy of the certification from the Foreign Interests Section of the Embassy of Switzerland in Tehran. Pursuant to 28 U.S.C. § 1608(c)(1) in the case of service under subsection (a)(4) of 28 U.S.C. § 1608, service shall be deemed to have been effectuated as of the date of transmittal indicated in the certified copy of the diplomatic note. The

Service Documents were properly served on MOIS pursuant to 28 U.S.C. § 1608(a)(4) on September 26, 2011. True and correct copies of the foregoing are attached hereto as Exhibit DD.

46. Default was entered against Iran and MOIS by this Court on November 17, 2011, and November 28, 2011, respectively, for their failure to file an answer or otherwise move with respect to the Peterson Plaintiffs' Amended Complaint. True and accurate copies of the Clerk's Certificates of Default entered against Iran and MOIS are attached hereto as Exhibit EE.

47. On December 7, 2011, the Peterson Plaintiffs filed their Second Amended Complaint. That complaint was served on counsel for Defendants Markazi, Clearstream, Citibank and UBAE. *See* a true and correct copy of the Certificate of Service of December 7, 2011 attached hereto as Exhibit FF.

48. On July 29, 2011, Citibank served its Third-Party Petition Alleging Claims in the Nature of Interpleader on Defendants Clearstream, Markazi and UBAE. *See* a true and correct copy of Citibank's Certificate of Service of its Third-Party Petition Alleging Claims in the Nature of Interpleader Exhibit GG.

49. According to the Official website of the U.S. Department of State, the Department of State first designated Iran as a state sponsor of terror under that statute on January 19, 1984, and Iran has maintained its place on that list of terrorist states until the present. *See* <http://www.state.gov/j/ct/rls/crt/2010/170260.htm>.

I hereby declare this 2nd day of April 2012, under the penalties of perjury under the law of the United States of America, that the foregoing is true to the best of my knowledge.

Dated: New York, New York
April 2, 2012

A handwritten signature in black ink, appearing to read 'L. Vogel', written over a horizontal line.

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