

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

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SHLOMO LEIBOVITCH, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Case No. 1:08-CV-01939
	:	
THE SYRIAN ARAB REPUBLIC, et al.,	:	Chief Judge Ruben Castillo
	:	
Defendants.	:	
	:	
	X	

STATEMENT OF INTEREST BY THE UNITED STATES

The United States respectfully submits this Statement of Interest in response to the Court's order dated August 29, 2017, seeking the United States' views.¹

BACKGROUND

Plaintiffs are victims of a terrorist attack in Israel carried out by the group Palestine Islamic Jihad ("PIJ") in 2003, and they hold a \$67 million default judgment against Iran for its material support to the PIJ. *See* Pls.' Mem. of Law in Supp. of Their Mot. to Compel Third-Party Resp't the Boeing Co.'s Compliance with Subpoenas & Citations to Discover Assets at 2, ECF No. 233. In connection with their efforts to locate Iranian assets for potential execution, Plaintiffs have requested discovery from non-party the Boeing Company ("Boeing") regarding Boeing's approximately \$16 billion deal with Iran Air to supply commercial passenger aircraft

¹ Title 28 of the United States Code section 517 authorizes the Attorney General to send any officer of the Department of Justice "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."

and related parts and services. *See* Pls.’ Reply & Opp’n to Boeing’s Opp’n to Pls.’ Mot. to Compel and Its Cross-Mot. to Quash the Subpoenas & to Dismiss the Citation to Discover Assets at 2, ECF No. 250.

Boeing contests Plaintiffs’ actions, arguing that this post-judgment proceeding was brought for the purpose of interfering with U.S. foreign policy toward Iran by executing upon assets involved in Boeing’s sale of commercial passenger aircraft to Iran Air. Among other things, Boeing argues that the Court should dismiss Plaintiffs’ request to compel discovery because it would require the Court to resolve nonjusticiable political questions by revisiting a policy decision—the U.S. commitment to allow for the sale of commercial passenger aircraft and related parts and services to Iran—that was made by the political branches as part of concluding and implementing the Joint Comprehensive Plan of Action (“JCPOA”). *See* Non-Party the Boeing Co.’s Mem. of Law in Opp’n to Pls.’ Mot. to Compel and in Supp. of Its Cross-Mot. to Quash the Subpoenas & to Dismiss the Citation to Discover Assets at 1-2, ECF No. 245. The JCPOA, which was concluded on July 14, 2015, by the United States, Russia, France, the United Kingdom, China, and Germany (“the P5+1”) and Iran, seeks to address the international community’s concerns regarding Iran’s nuclear program.² In exchange for Iran’s implementation of specified steps to constrain its nuclear program, as verified by the International Atomic Energy Agency on January 16, 2016, the P5+1 provided Iran with relief from certain national and multilateral sanctions. JCPOA at 2; *see also* Director General, International Atomic Energy Agency, *Verification and Monitoring in the Islamic Republic of*

² The full text of the JCPOA is available at <https://www.state.gov/documents/organization/245317.pdf>.

Iran in light of United Nations Security Council Resolution 2231 (2015) at 1 (2016), available at <https://www.iaea.org/sites/default/files/gov-inf-2016-1.pdf>.

Following briefing by the parties, the Court issued an order on August 29, 2017, requesting a statement from the United States as to “whether, in its view, permitting the discovery sought by Plaintiffs will, as Boeing argues, ‘interfere with U.S. foreign policy toward Iran by obstructing a key component of the international nuclear deal.’” Minute Order dated Aug. 29, 2017, ECF No. 258.

DISCUSSION

This proceeding implicates several important foreign policy interests of the United States, including: the ability of U.S. victims of terrorism to seek compensation for their injuries; implementation of the U.S. commitment under the JCPOA to allow for the sale of commercial passenger aircraft and related parts and services to Iran; and the appropriate scope of discovery into foreign state property in U.S. courts. This Statement of Interest addresses these foreign policy interests in relation to this proceeding and the requested discovery. The United States does not take a position on whether the Court should order the requested discovery, including whether the discovery sought would be relevant to identifying assets that would be subject to execution in satisfaction of a judgment. Instead, and without opining on a number of other issues that are raised by the parties’ pleadings, the United States wishes to make clear that the United States is implementing its JCPOA commitments, and that those commitments do not require the Executive Branch to take any specific action with respect to efforts by judgment creditors of Iran to pursue post-judgment discovery or other enforcement proceedings. However, as in any case regarding discovery with respect to a foreign sovereign, if the Court were to determine the requested discovery to be legally appropriate, the United States believes the Court should

supervise such discovery carefully, taking into account the sensitive nature of discovery into property of foreign states and their agencies and instrumentalities.

First, the United States condemns the terrorist actions that gave rise to the case, and expresses its deepest sympathy for the victims and their family members. The United States is committed to vigorously pursuing those responsible for violence against U.S. nationals, and it has an interest in U.S. victims of terrorism being able to seek compensation for their injuries.

Second, the United States remains a participant in the JCPOA and continues to implement its commitments under the deal as part of a broader strategy toward Iran, a key element of U.S. foreign policy. As part of the JCPOA, the United States committed to:

[a]llow for the sale of commercial passenger aircraft and related parts and services to Iran by licensing the (i) export, re-export, sale, lease or transfer to Iran of commercial passenger aircraft for exclusively civil aviation end-use, (ii) export, re-export, sale, lease or transfer to Iran of spare parts and components for commercial passenger aircraft, and (iii) provision of associated service[s], including warranty, maintenance, and repair services and safety-related inspections, for all the foregoing, provided that licensed items and services are used exclusively for commercial passenger aviation.

JCPOA Annex II § 5.1.1, *available at*

<https://www.state.gov/documents/organization/245320.pdf>.

The civil aviation-related commitment was—and continues to be—a key component of the sanctions relief provided to Iran under the JCPOA. In furtherance of that commitment, in September 2016, the United States issued a license to Boeing to authorize transactions associated with the proposed sales to Iran Air, as described above. *See* Non-Party the Boeing Co.’s Mem. of Law in Opp’n to Pls.’ Mot. to Compel and in Supp. of Its Cross-Mot. to Quash the Subpoenas & to Dismiss the Citation to Discover Assets at 2-3. However, the United States is not a party to any contract or agreement between Boeing and Iran Air and has not taken part in any negotiations between those parties related to transactions contemplated by such an agreement.

As a result, the United States does not have certain information regarding Boeing and Iran Air's commercial arrangements that may be relevant to the Court's question regarding discovery. The United States does not know, for example, whether there are contractual provisions that address the confidentiality of requested documents or information, or to what extent the parties have structured their transaction to account for the risk of discovery proceedings involving judgment-holders. Moreover, the JCPOA does not require the United States to take any specific action with respect to efforts by judgment creditors of Iran to pursue post-judgment discovery or other enforcement proceedings, including in the matter pending before the Court, nor do any other U.S. commitments under the JCPOA.

The United States also has a substantial interest in ensuring that any U.S. court supervising post-judgment discovery into presumptively immune foreign-state property carefully adhere to basic principles of relevance and be sensitive to the significant comity, reciprocity, and foreign relations concerns raised by overly broad and burdensome discovery. Any court-ordered discovery in aid of execution on the assets of a foreign state or its agency or instrumentality should, as a general matter, take into consideration whether the discovery is directed at property that would be subject to execution in satisfaction of a judgment pursuant to the Foreign Sovereign Immunities Act, as well as considerations of international comity and the potential reciprocal implications for the United States in foreign courts. *See Republic of Argentina v. NML Capital Ltd.*, 134 S. Ct. 2250, 2258 n.6 (2014) (acknowledging the range of considerations district courts will need to take into account in this context).

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In light of the range of interests that are implicated by this proceeding, the United States will continue to monitor this proceeding and if necessary may file a further Statement of Interest at a later stage.

Dated: February 2, 2018

Respectfully submitted,

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