No. 16-1094

IN THE

Supreme Court of the United States

REPUBLIC OF SUDAN,

Petitioner,

v.

RICK HARRISON, *et al.*,

Respondents.

On Writ of Certiorari to the U.S. Court of Appeals for the Second Circuit

JOINT APPENDIX

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CERTIORARI GRANTED JUNE 25, 2018

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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA (WASHINGTON, D.C.)

1:10-cv-01689-RCL

RICK HARRISON *et al.,*
v.
REPUBLIC OF SUDAN,

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
10/04/2010	1	COMPLAINT against REPUBLIC OF SUDAN (Filing fee $ 350, receipt number 4616033180) filed by DAVID MORALES, MARGARET LOPEZ, GINA MORRIS, SHELLY SONGER, JOHN BUCKLEY, MARTIN SONGER, JR, RICK HARRISON, ANDREW LOPEZ, KESHA STIDHAM, ROBERT MCTUREOUS. (Attachments: # 1 Civil Cover Sheet)(rdj) (Entered: 10/05/2010)
10/04/2010	2	NOTICE OF RELATED CASE by All Plaintiffs. Case related to Cases in the Fourth Circuit Court

DATE	NO.	DOCKET TEXT
		of Appeals. (rdj) (Entered: 10/05/2010)
10/06/2010	3	NOTICE *OFFER TO ARBITRATE* by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, MARTIN SONGER, JR., SHELLY SONGER, KESHA STIDHAM (Jones, Nelson) (Entered: 10/06/2010)
10/08/2010		Summons (1) Issued as to REPUBLIC OF SUDAN. (dr) (Entered: 10/08/2010)
		* * *
10/11/2010	5	NOTICE *OF SUIT* by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, MARTIN SONGER, JR., SHELLY SONGER, KESHA STIDHAM re 2 Notice of Related Case, 4 MOTION to Amend/Correct 1 Complaint, *AMENDED COMPLAINT*, 3 Notice (Other), 1 Complaint, (Jones, Nelson) (Entered: 10/11/2010)

DATE	NO.	DOCKET TEXT
10/11/2010	6	NOTICE *AMENDED OFFER TO ARBITRATE* by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, MARTIN SONGER, JR, SHELLY SONGER, KESHA STIDHAM re 4 MOTION to Amend/Correct 1 Complaint, AMENDED COMPLAINT, 5 Notice (Other), Notice (Other), 1 Complaint, (Jones, Nelson) (Entered: 10/11/2010)
		* * *
10/11/2010	8	AMENDED COMPLAINT against REPUBLIC OF SUDAN filed by GINA MORRIS, JOHN BUCKLEY, RICK HARRISON, DAVID MORALES, MARGARET LOPEZ, SHELLY SONGER, MARTIN SONGER, JR, ANDREW LOPEZ, KESHA STIDHAM, ROBERT MCTUREOUS, EDWARD LOVE, CARL WINGATE, RUBIN SMITH, JEREMY STEWART, LISA LORENSEN, ERIC WILLIAMS, KEITH LORENSEN, AARON TONEY.(znmw,) Modified on 11/5/2010 to edit date filed (dr).

DATE	NO.	DOCKET TEXT
		(Entered: 10/12/2010)
		* * *
10/13/2010		Summons (1) Reissued as to REPUBLIC OF SUDAN. (dr) (Entered: 10/12/2010)
		* * *
11/05/2010	9	AFFIDAVIT REQUESTING FOREIGN MAILING by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, REPUBLIC OF SUDAN, RUBIN SMITH, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE. (Jones, Nelson) (Entered: 11/05/2010)
11/17/2010	10	CERTIFICATE OF CLERK of mailing one copy of the summons, complaint, and notice of suit, together with a translation of each into the official language of the foreign state on 11/17/2010, by certified mail, return receipt

DATE	NO.	DOCKET TEXT
		requested, to the head of the ministry of foreign affairs, pursuant to 28 U.S.C. 1608(a)(3). (dr) Modified on 11/18/2010 to edit text (dr). (Entered: 11/17/2010)
11/23/2010	11	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to REPUBLIC OF SUDAN served on 11/18/2010, answer due 1/17/2011. (dr) (Entered: 11/29/2010)
01/18/2011	12	AFFIDAVIT FOR DEFAULT by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE (Attachments: # 1 Exhibit Exhibit A-Clerk's Certificate of Mailing, # 2 Exhibit Exhibit B-U.S. Postal Service Return Receipt, # 3 Text of Proposed Order Form of Clerk's

DATE	NO.	DOCKET TEXT
		Entry of Default)(Jones, Nelson) Modified on 1/20/2011 to edit event used (dr). (Entered: 01/18/2011)
01/19/2011	13	Clerk's ENTRY OF DEFAULT as to REPUBLIC OF SUDAN (znmw,) (Entered: 01/19/2011)
02/09/2011	14	MOTION for Default Judgment by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE (Jones, Nelson) Modified event title on 2/10/2011 (znmw,). (Entered: 02/09/2011)
08/04/2011	15	ORDER setting hearing on plaintiffs' motion for default judgment for September 21, 2011 at 10:00 a.m. in Courtroom 27A. Signed by Judge Henry H. Kennedy, Jr. on August 4, 2011. (lchhk2) (Entered: 08/04/2011)
08/15/2011		Reset Hearings: Motion Hearing

DATE	NO.	DOCKET TEXT
		set for 9/21/2011 @ 10:00 AM in Courtroom 27A before Judge Henry H. Kennedy. (tj) (Entered: 08/15/2011)
		* * *
09/20/2011	26	MOTION to Take Judicial Notice by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE (Jones, Nelson) (Entered: 09/20/2011)
		* * *
09/21/2011		Minute Entry for proceedings held before Judge Henry H. Kennedy: Motion Hearing held on 9/21/2011. 24 MOTION to Sever Damages Claim of Plaintiff Rubin Smith is hereby GRANTED for reasons stated on the record. Proposed Findings of Fact and Conclusions of Law are due by 10/7/2011.

DATE	NO.	DOCKET TEXT
		(Court Reporter: Annie Shaw.) (tj) (Entered: 09/21/2011)
11/04/2011	28	Case reassigned to Chief Judge Royce C. Lamberth. Judge Henry H. Kennedy no longer assigned to the case. (ds) (Entered: 11/04/2011)
		* * *
02/07/2012	33	Proposed Findings of Fact by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE. (Jones, Nelson) (Entered: 02/07/2012)
		* * *
03/30/2012	40	ORDER AND JUDGMENT granting [#14] plaintiffs' motion for default judgment. Signed by Chief Judge Royce C. Lamberth on March 30, 2012. (lchhk2) Modified on 3/30/2012 (rje,). (Entered: 03/30/2012)

DATE	NO.	DOCKET TEXT
03/30/2012	41	MEMORANDUM OPINION granting 14 plaintiffs' motion for a default judgment signed by Chief Judge Royce C. Lamberth on March 30, 2012.(lchhk2) (Entered: 03/30/2012)
04/19/2012	42	AFFIDAVIT REQUESTING FOREIGN MAILING by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, TRACE SMITH, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE. (Jones, Nelson) (Entered: 04/19/2012)
04/19/2012	43	NOTICE *of Default Final Judgment* by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, TRACE SMITH,

DATE	NO.	DOCKET TEXT
		MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE re 42 Affidavit Requesting Foreign Mailing, (Attachments: # 1 Exhibit A, # 2 Exhibit A (Arabic Translation), # 3 Exhibit B, # 4 Exhibit B (Arabic Translation), # 5 Exhibit Copy of Foreign Sovereign Immunities Act, # 6 Exhibit Arabic Translation of Notice of Default Final Judgment)(Jones, Nelson) (Entered: 04/19/2012)
04/20/2012	44	REQUEST from ALL PLAINTIFFS for the Clerk to effect service of one copy of the 43 NOTICE of Default Final Judgment, 41 MEMORANDUM OPINION, and 40 ORDER AND JUDGMENT, together with a translation of each into the official language of the foreign state, by certified mail, return receipt requested, to the head of the ministry of foreign affairs, pursuant to 28 U.S.C. 1608(a)(3). (See docket entry 42 to view document)(rdj) (Entered: 04/20/2012)

DATE	NO.	DOCKET TEXT
04/20/2012	45	CERTIFICATE OF CLERK of mailing one copy of the 43 NOTICE of Default Final Judgment, 41 MEMORANDUM OPINION, and 40 ORDER AND JUDGMENT, together with a translation of each into the official language of the foreign state on 4/20/2012, by certified mail, return receipt requested, to the head of the ministry of foreign affairs, pursuant to 28 U.S.C. 1608(a)(3). (Attachments: # 1 Exhibit) (rdj) (Entered: 04/20/2012)
08/13/2012	46	Unopposed MOTION for Protective Order authorizing disclosure in response to Rule 45 subpoena by U.S. DEPARTMENT OF THE TREASURY OFFICE OF FOREIGN ASSETS CONTROL (Attachments: # 1 Exhibit A - Subpoena, # 2 Text of Proposed Order)(jf,) (Entered: 08/14/2012)
08/15/2012	47	ORDER granting 46 Motion for Protective Order. Signed by Chief Judge Royce C. Lamberth on 8/15/12. (rje) (Entered: 08/15/2012)
05/29/2013	48	MOTION Order Finding Sufficient Time Has Passed To Seek Attachment re 40 Memorandum &

DATE	NO.	DOCKET TEXT
		Opinion by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, TRACE SMITH, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE (Attachments: # 1 Exhibit Order and Judgment, # 2 Exhibit Memorandum Opinion, # 3 Exhibit Civil Docket, # 4 Exhibit USPS Confirmation, # 5 Text of Proposed Order)(Jones, Nelson) (Entered: 05/29/2013)
06/28/2013	49	ORDER granting 48 Motion for an Order pursuant to 28 U.S.C. 1610(c). Signed by Chief Judge Royce C. Lamberth on June 28, 2013. (lcrcl5) (Entered: 06/28/2013)
05/07/2015	50	TRANSCRIPT OF PROCEEDINGS before Judge Henry H. Kennedy held on 9-21-11; Page Numbers: 1-35. Date of Issuance:5-7-15. Court Reporter/Transcriber Barbara J. DeVico, Telephone number

DATE	NO.	DOCKET TEXT
		2023543118, Court Reporter Email Address : Barbara_DeVico @dcd.uscourts.gov.<P></P>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed or PDF) may be purchased from the court reporter. <P>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.<P></P> Redaction Request due 5/28/2015. Redacted Transcript Deadline set for 6/7/2015. Release of Transcript Restriction set for 8/5/2015.(DeVico, Barbara)

DATE	NO.	DOCKET TEXT
		(Entered: 05/07/2015)
05/12/2015	51	TRANSCRIPT OF PROCEEDINGS before Judge Henry H. Kennedy held on 9-21-11; Page Numbers: 1-35. Date of Issuance:5-12-15. Court Reporter/Transcriber Barbara DeVico, Telephone number (202)354-3118, Court Reporter Email Address : Barbara_DeVico@dcd.uscourts.gov. For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed or PDF) may be purchased from the court reporter. **NOTICE RE REDACTION OF TRANSCRIPTS**: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available

DATE	NO.	DOCKET TEXT
		to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 6/2/2015. Redacted Transcript Deadline set for 6/12/2015. Release of Transcript Restriction set for 8/10/2015.(DeVico, Barbara) (Entered: 05/12/2015)
06/14/2015	52	NOTICE of Appearance by Christopher M. Curran on behalf of REPUBLIC OF SUDAN (Curran, Christopher) (Entered: 06/14/2015)
06/14/2015	53	NOTICE of Appearance by Nicole Erb on behalf of REPUBLIC OF SUDAN (Erb, Nicole) (Entered: 06/14/2015)
06/14/2015	54	NOTICE of Appearance by Claire Angela Delelle on behalf of REPUBLIC OF SUDAN (Delelle, Claire) (Entered: 06/14/2015)
06/14/2015	55	MOTION to Vacate 40 Memorandum & Opinion by REPUBLIC OF SUDAN (Attachments: # 1 Memorandum in

DATE	NO.	DOCKET TEXT
		Support, # 2 Declaration of Maowia O. Khalid in Support of Motion, # 3 Text of Proposed Order)(Curran, Christopher) (Entered: 06/14/2015)
06/26/2015	56	Unopposed MOTION for Extension of Time to File Response/Reply *to Defendant's Motion to Vacate Default Judgment Pursuant to Rule 60(b)* by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, TRACE SMITH, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE (Attachments: # 1 Text of Proposed Order)(Jones, Nelson) (Entered: 06/26/2015)
07/13/2015	57	Memorandum in opposition to re 55 MOTION to Vacate 40 Memorandum & Opinion filed by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH

DATE	NO.	DOCKET TEXT
		LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, TRACE SMITH, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE. (Jones, Nelson) (Entered: 07/13/2015)
07/17/2015	58	ORDER granting 56 Motion for Extension of Time to File Response/Reply re 55 MOTION to Vacate 40 Memorandum & Opinion ; Set/Reset Deadlines: Responses due by 7/13/2015 Replies due by 7/31/2015. Signed by Judge Royce C. Lamberth on July 17, 2015. (lcrcl1) (Entered: 07/17/2015)
07/31/2015	59	REPLY to opposition to motion re 55 MOTION to Vacate 40 Memorandum & Opinion filed by REPUBLIC OF SUDAN. (Curran, Christopher) (Entered: 07/31/2015)
08/28/2015	60	MOTION to Strike 55 MOTION to Vacate 40 Memorandum & Opinion *as to Declaration of Ambassador Maowia O. Khalid*

DATE	NO.	DOCKET TEXT
		[55-2] in support thereof by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, TRACE SMITH, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE (Attachments: # 1 Declaration of Roarke Maxwell, Esq., # 2 Memorandum in Support, # 3 Text of Proposed Order)(Jones, Nelson) (Entered: 08/28/2015)
09/14/2015	61	Memorandum in opposition to re 60 MOTION to Strike 55 MOTION to Vacate 40 Memorandum & Opinion *as to Declaration of Ambassador Maowia O. Khalid [55-2] in support thereof* filed by REPUBLIC OF SUDAN. (Attachments: # 1 Declaration of Claire A. DeLelle, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Text of Proposed Order)(Curran, Christopher)

DATE	NO.	DOCKET TEXT
		(Entered: 09/14/2015)
10/12/2015	62	NOTICE OF SUPPLEMENTAL AUTHORITY by JOHN BUCKLEY, RICK HARRISON, ANDREW LOPEZ, MARGARET LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, TRACE SMITH, MARTIN SONGER, JR, SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE (Attachments: # 1 Exhibit A)(Jones, Nelson) (Entered: 10/12/2015)
11/06/2015	63	NOTICE OF SUPPLEMENTAL AUTHORITY by REPUBLIC OF SUDAN (Attachments: # 1 Supplemental Authority)(Curran, Christopher) (Entered: 11/06/2015)
12/22/2015	64	NOTICE OF SUPPLEMENTAL AUTHORITY by REPUBLIC OF SUDAN (Attachments: # 1 Exhibit Supplemental Authority 1, # 2 Exhibit Supplemental Authority 2)(Curran, Christopher) (Entered: 12/22/2015)
02/22/2016	65	NOTICE OF SUPPLEMENTAL

DATE	NO.	DOCKET TEXT
		AUTHORITY by REPUBLIC OF SUDAN (Attachments: # 1 Exhibit A)(Curran, Christopher) (Entered: 02/22/2016)
09/26/2016	66	NOTICE OF SUPPLEMENTAL AUTHORITY by REPUBLIC OF SUDAN (Attachments: # 1 Exhibit A)(Curran, Christopher) (Entered: 09/26/2016)
08/23/2017	67	NOTICE OF SUPPLEMENTAL AUTHORITY by REPUBLIC OF SUDAN (Attachments: # 1 Exhibit A)(Curran, Christopher) (Entered: 08/23/2017)
11/16/2017	68	NOTICE OF SUPPLEMENTAL AUTHORITY by REPUBLIC OF SUDAN (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J)(Curran, Christopher) (Entered: 11/16/2017)

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(FOLEY SQUARE)

1:13-cv-03127-PKC

RICK HARRISON *et al.,*
v.
THE REPUBLIC OF SUDAN *et al.,*

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
05/09/2013	1	NOTICE of Pending Action-Lis Pendens. Document filed by John Buckley III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Shelly Songer, Martin Songer, Jr., Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, Carl Wingate. (join) Modified on 5/13/2013 (join). (jd). (Entered: 05/13/2013)

DATE	NO.	DOCKET TEXT
05/09/2013		SUMMONS ISSUED as to The Republic of Sudan. (jom) (Entered: 05/13/2013)
		* * *
05/31/2013	3	MOTION for Attachment *Motion for Entry of Order Finding Sufficient Time Has Passed to Seek Attachment and Execution of Defendant/Judgment Debtor's Assets*. Document filed by John Buckley III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Shelly Songer, Martin Songer, Jr., Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, Carl Wingate. (Attachemnts: # 1 Test of Proposed Order, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D)(Rosenthal, Edward) (Entered: 5/31/2013)
		* * *
09/20/2013	5	ORDER GRANTING MOTION FOR ENTRY OF ORDER FINDING SUFFICIENT TIME HAS PASSED TO SEEK

DATE	NO.	DOCKET TEXT
		ATTACHMENT AND EXECUTION AND AUTHORIZING ATTACHMENT OF DEFENDANTS/JUDGMENT-DEBTORS' ASSETS WITHIN THIS JURISDICTION PURSUANT TO 28 U.S.C. . § 1610(c): granting 3 Motion to Attach. The Motion is GRANTED. The Court hereby concludes that, under 28 U.S.C. 1610(c), all conditions precedent to the Plaintiffs' request to attach and execute against blocked assets of the Defendant/Judgment Debtor, Republic of Sudan, have been met, including providing proper notification of the default judgment to the Defendant/Judgment Debtor, pursuant to 28 U.S.C. § 1608(e), and that, for the purposes of attachment and execution, a reasonable period of time has elapsed following the entry of judgment and the giving of notice to the Defendant/Judgment Debtor. The Plaintiffs are hereby authorized to seek attachment of

DATE	NO.	DOCKET TEXT
		frozen assets located within this jurisdiction using post judgment enforcement procedures. (Signed by Judge Analisa Torres on 9/20/2013) (ama) (Entered: 09/20/2013)
10/21/2013	6	NOTICE of Petition; Petition for Turnover Order Against National Bank of Egypt Pursuant to 28 U.S.C. Sect. 1610(g), CPLR Sect. 5225(b) and Federal Rule of Civil Procedure Rule 69(a). Document filed by John Buckley III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Shelly Songer, Martin Songer, Jr., Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, Carl Wingate. (Attachments: # 1 Exhibit A (redacted), # 2 Exhibit B (redacted), # 3 Exhibit C (redacted), # 4 Exhibit D (redacted), # 5 Exhibit E (redacted), # 6 Text of Proposed Order (redacted))(Rosenthal, Edward) (Entered: 10/21/2013)

DATE	NO.	DOCKET TEXT
		* * *
10/23/2013	8	TURNOVER ORDER: AND NOW, this 23rd day of October, 2013, upon Plaintiffs' Petition for Turnover Order Against National Bank of Egypt Pursuant to 28 U.S.C. § 1610(g), CPLR § 5225(b) and Federal Rule of Civil Procedure 69(a), the Motion is GRANTED. The Court hereby finds and orders as follows: Plaintiffs obtained a judgment in the District Court for the District of Columbia in the amount of $314,705,896, plus interest (the "Judgment"), and the entire principal amount of the Judgment remains unsatisfied. Funds held at the National Bank of Egypt, New York Branch, are subject to execution and attachment under the Foreign Sovereign Immunities Act because the owner of the funds, is an agency and instrumentality of the Republic of Sudan. National Bank of Egypt owned by totaling plus accrued interest, is subject to execution to satisfy the Plaintiffs' outstanding judgment.

DATE	NO.	DOCKET TEXT
		The Court hereby directs National Bank of Egypt to turn over the proceeds of totaling together with any accrued interest, to the Plaintiffs within ten (10) days from the date of this Order. An OFAC license is not necessary to disburse these funds and no notice is necessary to. See Heiser v. Bank of Tokyo Mitsubishi UFJ, New York Branch, 919 F. Supp. 2d 411, 422 (S.D.N.Y. 2013); Heiser v. Islamic Republic of Iran, 807 F. Supp. 2d 9, 23 (D.D.C. 2011); Weininger v. Castro, 432 F. Supp. 2d 457 (S.D.N.Y. 2006). This Order enforces a duly registered District Court judgment from the District of Columbia, recognized by a New York Federal Court and given full faith and credit by this Court. (Signed by Judge Analisa Torres on 10/23/2013) (rsh) (Entered: 10/23/2013)
10/28/2013	9	NOTICE of Petition; Petition for Turnover Order Against BNP Paribas Pursuant to 28 U.S.C. Sect. 1610(g), CPLR Sect. 5225(b) and Federal Rule of Civil

DATE	NO.	DOCKET TEXT
		Procedure Rule 69(a). Document filed by John Buckley III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Shelly Songer, Martin Songer, Jr., Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, Carl Wingate. (Attachments: # 1 Exhibit A (redacted), # 2 Exhibit B (redacted), # 3 Exhibit C (redacted), # 4 Exhibit D (redacted), # 5 Exhibit E (redacted), # 6 Exhibit F (redacted), # 7 Exhibit G (redacted), # 8 Exhibit H (redacted), # 9 Exhibit I (redacted), # 10 Exhibit J (redacted), # 11 Exhibit K (redacted), # 12 Text of Proposed Order (redacted))(Rosenthal, Edward) (Entered: 10/28/2013)
		* * *
11/04/2013	11	TURNOVER ORDER AGAINST BNP PARIBAS: AND NOW, this 4th day of November, 2013, upon Plaintiffs' Petition for Turnover Order Against BNP Paribas

DATE	NO.	DOCKET TEXT
		Pursuant to 28 U.S.C. 1610(g), CPLR 5225(b) and Federal Rule of Civil Procedure 69(a), the Motion is GRANTED. The Court hereby finds and orders as follows: Plaintiffs obtained a judgment in the District Court for the District of Columbia in the amount of $314,705,896, plus interest (the "Judgment"), and the entire principal amount of the Judgment remains unsatisfied. Funds held at BNP Paribas are subject to execution and attachment under the Foreign Sovereign Immunities Act because the owners of the funds are agencies and instrumentalities of the Republic of Sudan. Also known as, is an agency and instrumentality of the Sudanese government. The following accounts, totaling plus accrued interest, are subject to execution to satisfy the Plaintiffs' outstanding judgment. The Court hereby directs BNP Paribas to turn over the proceeds of foregoing accounts, totaling, together with any accrued interest, to the Plaintiffs within ten (10) days from the

DATE	NO.	DOCKET TEXT
		date of this Order. An OFAC license is not necessary to disburse these funds and no notice is necessary to the Sudanese agencies and instrumentalities. See Heiser v. Bank of Tokyo Mitsubishi UFJ, New York Branch, 919 F. Supp. 2d 411, 422 (S.D.N.Y. 2013); Heiser v. Islamic Republic of Iran, 807 F. Supp. 2d 9, 23 (D.D.C. 2011); Weininger v. Castro, 432 F. Supp. 2d 457 (S.D.N.Y. 2006). This Order enforces a duly registered District Court judgment from the District of Columbia, recognized by a New York Federal Court and given full faith and credit by this Court. (Signed by Judge Analisa Torres on 11/4/2013) (rsh) (Entered: 11/04/2013)
11/04/2013	12	CONSENT MOTION to Stay re: 8 Order ,,,,,, *Uncontested Motion for Order Providing a Limited Stay of Enforcement of Turnover Order and Providing Notice to Third Parties of Turnover Order*. Document filed by John Buckley III, Rick Harrison, Andy Lopez,

DATE	NO.	DOCKET TEXT
		Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Shelly Songer, Martin Songer, Jr., Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, Carl Wingate. (Attachments: # 1 Text of Proposed Order)(Levitt, Brandon) (Entered: 11/04/2013)
11/12/2013	13	MOTION to Amend/Correct 11 Order,,,,,, *Unopposed Motion for Order Amending Turnover Order Against BNP Paribas (redacted)*. Document filed by John Buckley III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Shelly Songer, Martin Songer, Jr., Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, Carl Wingate. (Attachments: # 1 Exhibit A (redacted))(Rosenthal, Edward) (Entered: 11/12/2013)

* * *

DATE	NO.	DOCKET TEXT
11/13/2013	15	ORDER PROVIDING A LIMITED STAY OF ENFORCEMENT OF TURNOVER ORDER AND PROVIDING NOTICE TO THIRD PARTIES OF TURNOVER ORDER granting 12 Motion to Stay. NOW, THEREFORE, it is hereby ORDERED as follows: The Garnishee, at its sole expense, shall serve the Third Parties with the Turnover Petition and Turnover Order in the manner specified in subsequent provisions of this Order, except that any exhibits to the Turnover Petition that have been filed under seal shall be omitted and replaced by a list of the Blocked Assets pertinent to the Third Party to be served as further set forth within this order. (Signed by Judge Analisa Torres on 11/12/2013) (rsh) (Entered: 11/14/2013)
		* * *
12/11/2013	18	NOTICE of Petition; Petition for Mashreqbank Pursuant to 28 U.S.C. Sect. 1610(g), CPLR Sect. 5225(b) and F.R.C.P. 69(a).

DATE	NO.	DOCKET TEXT
		Document filed by John Buckley III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Shelly Songer, Martin Songer, Jr., Jeremy Stewart, Kesha Stidham, EricWilliams, Carl Wingate. (Attachments: # 1 Exhibit A (redacted), # 2 Exhibit B (redacted), # 3 Exhibit C (redacted), # 4 Exhibit D (redacted), # 5 Exhibit E (redacted), # 6 Exhibit F (redacted), # 7 Exhibit G (redacted), # 8 Exhibit H (redacted), # 9 Exhibit I (redacted), # 10 Text of Proposed Order (redacted))(Goldman, Beth) (Entered: 12/11/2013)
		* * *
12/12/2013	20	TURNOVER ORDER AGAINST MASHREQBANK: AND NOW, this 12th day of December, 2013, upon Plaintiffs' Petition for Turnover Order Against Mashreqbank pursuant to 28 U.S.C. § 1610(g), CPLR § 5225(b) and Federal Rule of Civil

DATE	NO.	DOCKET TEXT
		Procedure 69(a), the Motion is GRANTED. The Court hereby finds and orders as follows: Plaintiffs obtained a judgment in the District Court for the District of Columbia in the amount of $314,705,896, plus interest (the "Judgment"), and the entire principal amount of the Judgment remains unsatisfied. Funds held at Mashreqbank are subject to execution and attachment under the Foreign Sovereign Immunities Act because the owners of the funds are agencies and instrumentalities of the Republic of Sudan. Also known as an agency and instrumentality of the Sudanese government. The following account, totaling plus accrued interest, is subject to execution to satisfy the Plaintiffs' outstanding judgment. The Court hereby directs Mashreqbank to tum over the proceeds of the foregoing accounts, totaling (the "Turnover Assets"), together with any accrued interest, to the Plaintiffs within ten (10) days from the

DATE	NO.	DOCKET TEXT
		date of this Order. An OF AC license is not necessary to disburse these funds and no notice is necessary to the Sudanese agencies and instrumentalities. See Heiser v. Bank of Tokyo Mitsubishi UFJ, New York Branch, 919 F. Supp. 2d 411, 422 (S.D.N.Y. 2013); Heiser v. Islamic Republic of Iran, 807 F. Supp. 2d 9, 23 (D.D.C. 2011); Weininger v. Castro, 432 F. Supp. 2d 457 (S.D.N.Y. 2006). Upon turnover by Mashreqbank of the Turnover Assets to the Plaintiffs, plus all accrued interest thereon to date, Mashreqbank shall be fully discharged pursuant to CPLR § § 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure, as applicable, and released from any and all liability and obligations or other liabilities, including all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind, whether served on, or delivered to Mashreqbank, to the extent that they apply, purport to apply or attach to the

DATE	NO.	DOCKET TEXT
		Turnover Assets, to defendant Sudan, and to any agency and instrumentality of Sudan, or to any other party otherwise entitled to claim the Turnover Assets (in whole or in part), including without limitation, the plaintiffs in Owens, et al. v. Republic of Sudan, et al., 1:01-cv-02244-JDB (D.D.C.), and any other persons or entities, to the full extent of such amounts so held and deposited in compliance with this partial judgment. Mashreqbank shall provide a copy of this order to counsel for Owens within 5 days of the date of this order. Upon payment and turnover by Mashreqbank of the Turnover Assets to the Plaintiffs, plus all accrued interest thereon to date, all other persons and entities shall be permanently restrained and enjoined from instituting or prosecuting any claim, or pursuing any action against Mashreqbank in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the funds turned over in compliance with

DATE	NO.	DOCKET TEXT
		paragraph 7 of this Order. This Order enforces a duly registered District Court judgment from the District of Columbia, recognized by a New York Federal Court and given full faith and credit by this Court. (Signed by Judge Analisa Torres on 12/12/2013) (rsh) (Entered: 12/12/2013)
12/13/2013	21	AMENDED TURNOVER ORDER AGAINST BNP PARIBAS REDACTED PURSUANT TO PROTECTIVE ORDER granting 13 Motion to Amend/Correct. AND NOW, this 13th day of December, 2013, upon Plaintiffs' Petition for Turnover Order Against BNP Paribas pursuant to 28 U.S.C. § 1610(g), CPLR § 5225(b) and Federal Rule of Civil Procedure 69(a), and Plaintiffs' Unopposed Motion for Order Amending Turnover Order Against BNP Paribas, the Motion is GRANTED. The Court hereby finds and orders as follows: Plaintiffs obtained a judgment in the District Court for the District of Columbia in the

DATE	NO.	DOCKET TEXT
		amount of $314,705,896, plus interest (the "Judgment"), and the entire principal amount of the Judgment remains unsatisfied. Funds held at BNP Paribas New York Branch are subject to execution and attachment under the Foreign Sovereign Immunities Act because the owners of the funds are agencies and instrumentalities of the Republic of Sudan. Also known as is an agency and instrumentality of the Sudanese government. The following accounts, totaling plus accrued interest, are subject to execution to satisfy the Plaintiffs' outstanding judgment. Sudan is an agency and instrumentality of the Sudanese government. The Court hereby directs BNP Paribas to turn over the proceeds of the foregoing accounts, totaling (the "Turnover Assets"), together with any accrued interest, to the Plaintiffs within ten (10) days from the date of this Order. An OFAC license is not necessary to disburse these funds and no notice is necessary to the

DATE	NO.	DOCKET TEXT
		Sudanese agencies and instrumentalities. See Heiser v. Bank of Tokyo Mitsubishi UFJ, New York Branch, 919 F. Supp. 2d 411,422 (S.D.N.Y. 2013); Heiser v. Islamic Republic of Iran, 807 F. Supp. 2d 9, 23 (D.D.C. 2011); Weininger v. Castro, 432 F. Supp. 2d 457 (S.D.N.Y. 2006). Upon turnover by BNP Paribas of the Turnover Assets to the Plaintiffs, plus all accrued interest thereon to date, BNP Paribas shall be fully discharged pursuant to CPLR § § 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure, as applicable, and released from any and all liability and obligations or other liabilities, including all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind, whether served on, or delivered to BNP Paribas, to the extent that they apply, purport to apply or attach to the Turnover Assets, to defendant Sudan, and to any agency and instrumentality of Sudan, or to any other party otherwise

DATE	NO.	DOCKET TEXT
		entitled to claim the Turnover Assets (in whole or in part), including without limitation, the plaintiffs in Owens, et al. v. Republic of Sudan, et al., 1:01-cv-02244-JDB (D.D.C.), and any other persons or entities, to the full extent of such amounts so held and deposited in compliance with this partial judgment. BNP Paribas shall provide a copy of this order to counsel for Owens within 5 days of the date of this order. Upon payment and turnover by BNP Paribas of the Turnover Assets to the Plaintiffs, plus all accrued interest thereon to date, all other persons and entities shall be permanently restrained and enjoined from instituting or prosecuting any claim, or pursuing any action against BNP Paribas in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the funds turned over in compliance with paragraph 9 of this Order. This Order enforces a duly registered District Court judgment from the District of Columbia,

DATE	NO.	DOCKET TEXT
		recognized by a New York Federal Court and given full faith and credit by this Court. This Order supersedes any prior order relating to the Turnover Assets described in this Order. (Signed by Judge Analisa Torres on 12/13/2013) (rsh). (Entered: 12/13/2013)
12/16/2013	22	THIRD PARTY RESPONSE *by Defendant to Third-Party Notice and Withdrawal of Lien*. Document filed by Rick Harrison. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B-Part1, # 3 Exhibit Exhibit B-Part2, # 4 Exhibit Exhibit B-Part3, # 5 Exhibit Exhibit C, # 6 Exhibit Exhibit D)(Kaplan, Annie) (Entered: 12/16/2013)
12/18/2013	23	NOTICE of Petition; Petition for Turnover Order Against Credit Agricole Pursuant to 28 U.S.C. Sect. 1610(g), CPLR Sect. 5225(b) and Federal Rule of Civil Procedure Rule 69(a). Document filed by John Buckley III, Rick Harrison, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert

DATE	NO.	DOCKET TEXT
		McTureous, David Morales, Gina Morris, Tracey Smith, Shelly Songer, Martin Songer, Jr., Jeremy Stewart, Kesha Stidham, Eric Williams, Carl Wingate. (Attachments: # 1 Exhibit A (redacted), # 2 Exhibit B (redacted), # 3 Exhibit C (redacted), # 4 Exhibit D (redacted), # 5 Exhibit E (redacted), # 6 Exhibit F (redacted), # 7 Exhibit G (redacted), # 8 Exhibit H (redacted), # 9 Text of Proposed Order (redacted))(Rosenthal, Edward) (Entered: 12/18/2013)
		* * *
12/19/2013	27	RESPONSE re: 23 Notice (Other), Notice (Other), Notice (Other) / *[REDACTED] Responses and Objections of Credit Agricole Corporate and Investment Bank to Plaintiffs' Petition for Turnover Order, dated December 19, 2013*. Document filed by Credit Agricole Corporate and Investment Bank. (Boccuzzi, Carmine) (Entered: 12/19/2013)
		* * *

DATE	NO.	DOCKET TEXT
01/02/2014	29	REPLY re: 23 Notice (Other), Notice (Other), Notice (Other). Document filed by John Buckley III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Shelly Songer, Martin Songer, Jr., Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, Carl Wingate. (Attachments: # 1 Exhibit A (redacted))(Rosenthal, Edward) (Entered: 01/02/2014)
		* * *
01/06/2014	31	TURNOVER ORDER: that the Petition is GRANTED. The Court finds that the Turnover Assets are subject to turnover pursuant to § 201 of the Terrorism Risk Insurance Act of 2002 and are subject to execution and attachment under the Foreign Sovereign Immunities Act because the owners of the funds are agencies and instrumentalities of the Republic of Sudan. Upon turnover by CA-CIB of the funds

DATE	NO.	DOCKET TEXT
		identified herein to the Plaintiffs, plus all accrued interest thereon to date, Credit Agricole shall be fully discharged pursuant to CPLR §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure, as applicable, and released from any and all liability and obligations or other liabilities in connection with the turnover of those funds, including all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind, whether served on, or delivered to CA-CIB, to the extent that they apply, purport to apply or attach to the Turnover Assets, to defendant The Republic of Sudan, and to any agency and instrumentality of The Republic of Sudan, or to any other party otherwise entitled to claim the Turnover Assets (in whole or in part), and any other persons or entities, to the full extent of such amounts so held and deposited in compliance with this Judgment, and as further set forth in this Order. Notwithstanding

DATE	NO.	DOCKET TEXT
		anything in this Order to the contrary, Plaintiffs reserve all rights to seek turnover of other amounts blocked by CA-CIB pursuant to regulations promulgated by OFAC, which CA-CIB will continue to restrain, as further set forth in this Order. Plaintiffs and CA-CIB shall meet and confer as to these amounts following the issuance by the Second Circuit of its rulings in Calderon-Cardona v. JP Morgan Chase Bank, N.A., No. 12-75 (2d Cir), and Hausler v. JPMorgan Chase, N.A., Nos. 12-1264 & 12-1272 (2d Cir.). This Order enforces a duly registered District Court judgment from the District of Columbia, recognized by a New York Federal Court and given full faith and credit by this Court. (Signed by Judge Analisa Torres on 1/6/2014) (tn) (Entered: 01/06/2014)
01/13/2014	32	NOTICE OF APPEARANCE by Robert J. Boyle on behalf of Republic of Sudan. (Boyle, Robert) (Entered: 01/13/2014)
		* * *

DATE	NO.	DOCKET TEXT
01/14/2014	36	FIRST NOTICE OF APPEAL from Order, Set Deadlines, 20 Order,,,,,,,,,,,,, 11 Order,,,,,, 21 Order on Motion to Amend/Correct,,,,,,,,,,,,,, 8 Order,,,,,, 31 Order,,,,,,,,. Document filed by Republic of Sudan. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Boyle, Robert) (Entered: 01/14/2014)
01/14/2014		Appeal Fee Paid electronically via Pay.gov: for 36 Notice of Appeal. Filing fee $ 505.00. Pay.gov receipt number 0208-9254314, paid on 1/13/2014. (tp) (Entered: 01/14/2014)
01/14/2014		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 36 Notice of Appeal. (tp) (Entered: 01/14/2014)
01/14/2014		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files *(ONLY)* for 36 Notice of Appeal, filed by Republic of Sudan were transmitted to the U.S. Court of

DATE	NO.	DOCKET TEXT
		Appeals. (tp) (Entered: 01/14/2014)
		* * *
12/22/2016	504	MANDATE of USCA (Certified Copy) as to 36 Notice of Appeal, filed by Republic of Sudan. USCA Case Number 14-121. Ordered, Adjudged and Decreed that the judgment of the District Court is AFFIRMED. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 12/22/2016. (nd) (Entered: 12/22/2016)
		* * *

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 14-121

RICK HARRISON *et al.,*
v.
REPUBLIC OF SUDAN *et al.,*

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
01/23/2014	1	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Republic of Sudan, FILED. [1142481] [14-121] [Entered: 01/27/2014 02:55 PM]
01/23/2014	2	DISTRICT COURT ORDER, dated 10/23/2013, RECEIVED.[1142536] [14-121] [Entered: 01/27/2014 03:17 PM]
01/23/2014	3	DISTRICT COURT ORDER, dated 11/04/2013, RECEIVED.[1142542] [14-121] [Entered: 01/27/2014 03:18 PM]
01/23/2014	4	DISTRICT COURT ORDER,

DATE	NO.	DOCKET TEXT
		dated 12/12/2013, RECEIVED.[1142545] [14-121] [Entered: 01/27/2014 03:20 PM]
01/23/2014	5	DISTRICT COURT ORDER, dated 12/13/2013, RECEIVED.[1142549] [14-121] [Entered: 01/27/2014 03:20 PM]
01/23/2014	6	DISTRICT COURT ORDER, dated 01/06/2014, RECEIVED.[1142556] [14-121] [Entered: 01/27/2014 03:22 PM]
01/23/2014	7	ELECTRONIC INDEX, in lieu of record, FILED.[1142558] [14-121] [Entered: 01/27/2014 03:22 PM]
		* * *
01/29/2014	11	ORDER, dated 01/29/2014, dismissing appeal by 02/12/2014, unless Appellant Republic of Sudan submits Forms C and D, FILED.[1144836] [14-121] [Entered: 01/29/2014 01:06 PM]
02/12/2014	12	FORM C, on behalf of Appellant Republic of Sudan, FILED. Service date 02/12/2014 by CM/ECF. [1155873] [14-121] [Entered: 02/12/2014 06:53 PM]
02/12/2014	13	FORM D, on behalf of Appellant Republic of Sudan, FILED.

DATE	NO.	DOCKET TEXT
		Service date 02/12/2014 by CM/ECF. [1155875] [14-121] [Entered: 02/12/2014 06:57 PM]
		* * *
02/13/2014	15	ORDER, dated 02/13/2014, dismissing appeal by 02/27/2014, unless Appellant Republic of Sudan submits acknowledgment and notice of appearance, FILED.[1155961] [14-121] [Entered: 02/13/2014 10:08 AM]
02/26/2014	16	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellant Republic of Sudan, FILED. Service date 02/26/2014 by CM/ECF.[1166258] [14-121] [Entered: 02/26/2014 10:21 PM]
		* * *
02/28/2014	21	NOTICE, to Appellees John Buckley, III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric

DATE	NO.	DOCKET TEXT
		Williams and Carl Wingate, for failure to file an appearance, SENT.[1167306] [14-121] [Entered: 02/28/2014 08:35 AM]
		* * *
02/28/2014	23	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee John Buckley, III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams and Carl Wingate, FILED. Service date 02/28/2014 by CM/ECF. [1167604] [14-121] [Entered: 02/28/2014 11:36 AM]
		* * *
02/28/2014	25	LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellant Republic of Sudan, informing Court of proposed due date 05/14/2014, RECEIVED. Service date 02/28/2014 by CM/ECF.[1167643] [14-121] [Entered: 02/28/2014 11:57 AM]

DATE	NO.	DOCKET TEXT
		* * *
02/28/2014	28	SO-ORDERED SCHEDULING NOTIFICATION, setting Appellant Republic of Sudan Brief due date as 05/14/2014; Joint Appendix due date as 05/14/2014, FILED.[1167927] [14-121] [Entered: 02/28/2014 02:47 PM]
02/28/2014	29	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee John Buckley, III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams and Carl Wingate, FILED. Service date 02/28/2014 by CM/ECF. [1168271] [14-121] [Entered: 02/28/2014 06:09 PM]
		* * *
05/14/2014	31	BRIEF, on behalf of Appellant Republic of Sudan, FILED. Service date 05/14/2014 by CM/ECF.[1224927] [14-121]

DATE	NO.	DOCKET TEXT
		[Entered: 05/14/2014 05:04 PM]
05/14/2014	32	JOINT APPENDIX, volume 1 of 1, (pp. 1-109), on behalf of Appellant Republic of Sudan, FILED. Service date 05/14/2014 by CM/ECF.[1224956] [14-121] [Entered: 05/14/2014 05:41 PM]
		* * *
05/28/2014	39	LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellee John Buckley, III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams and Carl Wingate, informing Court of proposed due date 06/30/2014, RECEIVED. Service date 05/28/2014 by CM/ECF.[1235215] [14-121] [Entered: 05/28/2014 04:29 PM]
		* * *
05/29/2014	42	SO-ORDERED SCHEDULING NOTIFICATION, setting Appellee John Buckley, III, Rick

DATE	NO.	DOCKET TEXT
		Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams and Carl Wingate Brief due date as 06/30/2014, FILED.[1235446] [14-121] [Entered: 05/29/2014 09:20 AM]
		* * *
07/01/2014	48	BRIEF, on behalf of Appellee John Buckley, III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams and Carl Wingate, FILED. Service date 07/01/2014 by CM/ECF. [1262099] [14-121] [Entered: 07/01/2014 04:31 PM]
07/01/2014	49	SUPPLEMENTAL APPENDIX, on behalf of Appellee John Buckley, III, Rick Harrison,

DATE	NO.	DOCKET TEXT
		Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams and Carl Wingate, FILED. Service date 07/01/2014 by CM/ECF. [1262108] [14-121] [Entered: 07/01/2014 04:33 PM]
		* * *
07/11/2014	53	ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Attorney Brandon Levitt, Esq. for Appellee Eric Williams, Tracey Smith, Rick Harrison, John Buckley, III, Margaret Lopez, Andy Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney and Carl Wingate, FILED. Service date 07/11/2014 by CM/ECF. [1268668] [14-121]

DATE	NO.	DOCKET TEXT
		[Entered: 07/11/2014 10:09 AM]
		* * *
07/15/2014	57	ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Attorney Asim Ghafoor, Esq. for Appellant Republic of Sudan, FILED. Service date 07/15/2014 by CM/ECF. [1271092] [14-121] [Entered: 07/15/2014 10:45 AM]
		* * *
10/27/2014	61	CASE CALENDARING, for argument on 01/05/2015, SET.[1354795] [14-121] [Entered: 10/27/2014 02:00 PM]
		* * *
12/04/2014	65	NOTICE OF HEARING DATE ACKNOWLEDGMENT, on behalf of Appellee Rick Harrison, FILED. Service date 12/04/2014 by email, CM/ECF. [1384951] [14-121] [Entered: 12/04/2014 01:44 PM]
01/01/2015	66	NOTICE OF HEARING DATE ACKNOWLEDGMENT, on behalf of Appellant Republic of Sudan, FILED. Service date 01/01/2015 by CM/ECF. [1406361] [14-121] [Entered:

DATE	NO.	DOCKET TEXT
		01/01/2015 09:58 AM]
01/05/2015	67	CASE, before GEL, DC, C.JJ., KORMAN, D.J., HEARD.[1407051] [14-121] [Entered: 01/05/2015 12:09 PM]
		* * *
07/02/2015	73	ATTORNEY, Christopher M. Curran, [70], in place of attorney Asim Ghafoor, SUBSTITUTED.[1545273] [14-121] [Entered: 07/02/2015 09:38 AM]
07/02/2015	74	ATTORNEY, Nicole E. Erb for Republic of Sudan, in case 14-121 , [71], ADDED.[1545282] [14-121] [Entered: 07/02/2015 09:41 AM]
07/02/2015	75	ATTORNEY, Claire DeLelle for Republic of Sudan, in case 14-121 , [72], ADDED.[1545296] [14-121] [Entered: 07/02/2015 09:44 AM]
07/02/2015	76	MOTION, to hold appeal in abeyance, on behalf of Appellant Republic of Sudan, FILED. Service date 07/02/2015 by 3rd party, CM/ECF. [1545339] [14-121] [Entered: 07/02/2015 10:00 AM]

DATE	NO.	DOCKET TEXT
		* * *
09/23/2015	80	OPINION, the district court judgment is affirmed, by GEL, DC, E. KORMAN, FILED.[1604856] [14-121] [Entered: 09/23/2015 09:24 AM]
		* * *
09/23/2015	82	MOTION ORDER, denying motion to hold appeal in abeyance [76] filed by Appellant Republic of Sudan, by GEL, DC, E. KORMAN, FILED. [1604866][82] [14-121] [Entered: 09/23/2015 09:30 AM]
		* * *
09/23/2015	88	JUDGMENT, FILED.[1605278] [14-121] [Entered: 09/23/2015 03:12 PM]
10/07/2015	89	PETITION FOR REHEARING/REHEARING EN BANC, on behalf of Appellant Republic of Sudan, FILED. Service date 10/07/2015 by CM/ECF.[1615180] [14-121] [Entered: 10/07/2015 07:38 PM]
		* * *
10/08/2015	91	MOTION TO FILE AMICUS CURIAE BRIEF, on behalf of

DATE	NO.	DOCKET TEXT
		Movant United States of America, FILED. Service date10/08/2015 by CM/ECF.[1616083] [14-121] [Entered: 10/08/2015 06:05 PM]
		* * *
10/09/2015	94	NOTICE OF APPEARANCE AS AMICUS COUNSEL, on behalf of Movant United States of America, FILED. Service date 10/09/2015 by CM/ECF. [1616396] [14-121] [Entered: 10/09/2015 11:25 AM]
		* * *
10/09/2015	97	MOTION ORDER, granting motion to file amicus curiae brief and an extension of time until 11/06/2015 to file such brief [91], by GEL, FILED. [1616674][97] [14-121] [Entered: 10/09/2015 01:25 PM]
		* * *
11/05/2015	99	NOTICE OF APPEARANCE AS ADDITIONAL COUNSEL, on behalf of Amicus Curiae United States of America, FILED. Service date 11/05/2015 by CM/ECF. [1635488] [14-121] [Entered: 11/05/2015 09:37 AM]

DATE	NO.	DOCKET TEXT
		* * *
11/06/2015	101	AMICUS BRIEF, on behalf of Amicus Curiae United States of America, FILED. Service date 11/06/2015 by CM/ECF.[1636951] [14-121] [Entered: 11/06/2015 02:05 PM]
		* * *
11/10/2015	103	ORDER, dated 11/10/2015, Upon consideration of the Defendant-Appellant's petition for panel rehearing or rehearing en banc, and the brief of the United States amicus curiae supporting that petition, it is hereby Ordered that Plaintiffs-Appellees shall respond to that petition, with particular attention to the arguments raised by the United States, by filing a brief not to exceed 15 pages, on or before December 2, 2015, FILED.[1639331] [14-121] [Entered: 11/10/2015 04:54 PM]
12/02/2015	104	OPPOSITION TO PETITION FOR REHEARING/ REHEARING EN BANC, for rehearing en banc [89], on behalf of Appellee John Buckley, III, Rick Harrison,

DATE	NO.	DOCKET TEXT
		Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams and Carl Wingate, FILED. Service date 12/02/2015 by CM/ECF. [1655414] [14-121] [Entered: 12/02/2015 11:18 PM]
		* * *
12/04/2015	106	MOTION, for leave to file a reply, on behalf of Appellant Republic of Sudan, FILED. Service date 12/04/2015 by CM/ECF. [1657223] [14-121] [Entered: 12/04/2015 08:20 PM]
		* * *
12/22/2015	110	MOTION ORDER, granting motion to file a reply in support of its petition for rehearing or rehearing en banc [106] filed by Appellant Republic of Sudan, by GEL, FILED. [1669969][110] [14-121] [Entered: 12/22/2015 12:39 PM]
		* * *

DATE	NO.	DOCKET TEXT
01/05/2016	112	REPLY TO OPPOSITION [104], on behalf of Appellant Republic of Sudan, FILED. Service date 01/05/2016 by CM/ECF.[1676727][112] [14-121] [Entered: 01/05/2016 04:13 PM]
		* * *
02/19/2016	115	ORDER, dated 02/19/2016, Upon consideration of the Appellant's motion for rehearing, it is hereby Ordered that oral argument on the motion is scheduled for 10:00 a.m. on Friday, March 11, in courtroom 1505. Amicus curiae the United States of America is invited to participate in the oral argument. by GEL, DC, E. KORMAN, FILED.[1708876] [14-121] [Entered: 02/19/2016 03:35 PM]
		* * *
02/23/2016	118	ARGUMENT/SUBMITTED NOTICE, to attorneys/parties, TRANSMITTED.[1711466] [14-121] [Entered: 02/23/2016 04:22 PM]
03/08/2016	119	MOTION, for leave to respond, on behalf of Appellee Rick Harrison, John Buckley, III,

DATE	NO.	DOCKET TEXT
		Andy Lopez, Margaret Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams and Carl Wingate, FILED. Service date 03/08/2016 by CM/ECF. [1721893] [14-121] [Entered: 03/08/2016 12:59 PM]
		* * *
03/10/2016	122	OPPOSITION TO , for leave to respond [119], on behalf of Appellant Republic of Sudan, FILED. Service date 03/10/2016 by CM/ECF. [1724424] [14-121] [Entered: 03/10/2016 05:05 PM]
		* * *
09/22/2016	134	OPINION, PETITION FOR REHEARING DENIED, by GEL, DC, E. KORMAN, FILED.[1868465] [14-121] [Entered: 09/22/2016 09:45 AM]
		* * *
10/04/2016	137	MOTION, to file supplemental documents, on behalf of Appellant Republic of Sudan,

DATE	NO.	DOCKET TEXT
		FILED. Service date 10/04/2016 by CM/ECF. [1877014] [14-121] [Entered: 10/04/2016 02:57 PM]
		* * *
11/29/2016	140	OPPOSITION TO MOTION, to file supplemental documents [137], on behalf of Appellee John Buckley, III, Rick Harrison, Andy Lopez, Margaret Lopez, Keith Lorensen, Edward Love, Lisa Lorensen, Robert McTureous, David Morales, Gina Morris, Tracey Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams and Carl Wingate, FILED. Service date 11/29/2016 by CM/ECF. [1916213] [14-121] [Entered: 11/29/2016 09:32 PM]
		* * *
12/01/2016	143	REPLY TO OPPOSITION [140], on behalf of Appellant Republic of Sudan, FILED. Service date 12/01/2016 by CM/ECF. [1917884][143][14-121] [Entered: 12/01/2016 12:18 PM]
12/06/2016	145	MOTION ORDER, denying motion to file supplemental

DATE	NO.	DOCKET TEXT
		petition for rehearing en banc [137] filed by Appellant Republic of Sudan, by GEL, DC, E. KORMAN, FILED. [1921396] [145] [14-121] [Entered: 12/06/2016 03:19 PM]
12/09/2016	146	ORDER, petition for rehearing en banc denied, FILED.[1924074] [14-121] [Entered: 12/09/2016 12:27 PM]
12/22/2016	147	JUDGMENT MANDATE, ISSUED.[1934057] [14-121] [Entered: 12/22/2016 12:28 PM]
03/10/2017	148	U.S. SUPREME COURT NOTICE of writ of certiorari filing, dated 03/10/2017, U.S. Supreme Court docket # 16-1094, RECEIVED.[1988831] [14-121] [Entered: 03/15/2017 10:06 AM]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 10/11/2010]

Civil Action No.: 1:10-cv-01689-HHK

RICK HARRISON, JOHN BUCKLEY, MARGARET LOPEZ, ANDY LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, MARTIN SONGER, JR., SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, AND CARL WINGATE

Plaintiff,

vs.

REPUBLIC OF SUDAN,

Defendant.

NOTICE OF SUIT

Plaintiffs, Rick Harrison, et al., pursuant to 28 U.S.C. § 1608(a) and 22 C.F.R. § 93.2, file this amended notice of suit in the above referenced matter, and state as follows:

1. The title of this legal proceeding is Rick Harrison, John Buckley, Margaret Lopez, Andy Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Rubin Smith, Martin Songer, Jr., Shelly Songer,

Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, and Carl Wingate, Plaintiffs, verses the Republic of Sudan, Defendant. The Court in which the suit has been filed is the United States District Court for the District of Columbia. The case number is 1:10-cv-01689-HHK.

2. The name of the foreign state involved is the Republic of Sudan.

3. The other parties are: Rick Harrison, John Buckley, Margaret Lopez, Andy Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Rubin Smith, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, and Carl Wingate.

4. The nature of the documents served are a Summons, Complaint, Notice of Suit and Offer to Arbitrate.

5. The nature and purpose of the proceedings are: The reason for the suit is that on October 12, 2000, conspirators belonging to a terrorist organization commonly referred to as Al Qaeda caused an explosive device to damage the naval vessel USS Cole. The explosion caused seventeen sailors to be killed, forty-two sailors to be injured, and their family members to suffer severe emotional distress. The organization Al Qaeda had from 1991 occupied various locations within the Republic of Sudan and was given support and resources to facilitate their terrorist operation, which included the bombing of the USS Cole. The Plaintiffs are sailors that were severely injured in the attack and their spouses. The

relief sought is money damages for all plaintiffs named herein above.

6. Date of Default Judgment: none.

7. A response to a "Summons" and "Complaint" is required to be submitted to the court, not later than 60 days after these documents are received. The response may present jurisdictional defenses (including defenses relating to state immunity).

8. The Defendant, Republic of Sudan, may accept the Offer to Arbitrate within sixty (60) days of receipt of the offer by filing with the Clerk of this Court an acceptance in lieu of filing an answer or response to the herein captioned lawsuit.

9. The failure to submit a timely response with the court can result in a Default Judgment and a request for execution to satisfy the judgment. If a default judgment has been entered, a procedure may be available to vacate or open that judgment.

10. Questions relating to state immunities and to the jurisdiction of United States courts over foreign states are governed by the Foreign Sovereign Immunities Act of 1976, which appears in sections 1330, 1391(f), 1441(d), and 1602 through 1611, of Title 28, United States Code (Pub.L. 94-583; 90 Stat. 2891) (Authority: Sec. 1608(a), Foreign Sovereign Immunities Act of 1976, Pub.L. 94-583 (28 U.S.C. 1608(a)); sec. 4, 63 Stat. 111, as amended (22 U.S.C. 2658)).

Respectfully submitted,

By: /s/.
NELSON M. JONES III
D.C. Bar # 320266

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CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail on this 11th day of October 2010, to: Republic of Sudan, Deng Alor Koul, Minister of Foreign Affairs, Embassy of the Republic of Sudan, 2210 Massachusetts Avenue NW, Washington, DC 20008.

/s/Nelson M. Jones, III .
Nelson M. Jones, III

UNITED STATES DISTRICT
AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA

[Filed: 11/05/10]

Civil Action No.: 10-01689-HHK

RICK HARRISON, et al.,

Plaintiff(s)

vs.

REPUBLIC OF SUDAN,

Defendant(s)

AFFIDAVIT REQUESTING FOREIGN MAILING

I, the undersigned, counsel of record for plaintiff(s), hereby request that the Clerk mail a copy of the summons and complaint (and notice of suit, where applicable) to (list name(s) and address(es) of defendants):

Republic of Sudan
Deng Alor Koul
Minister of Foreign Affairs
Embassy of the Republic of Sudan
2210 Massachusetts Avenue NW
Washington, DC 2008

by: (check one)

- ☒ registered mail, return receipt requested
- ☐ DHL

pursuant to the provisions of: (check one)

- ☐ FRCP 4(f)(2)(C)(ii)
- ☒ 28 U.S.C. § 1608(a)(3)
- ☐ 28 U.S.C. § 1608(b)(3)(B)

I certify that this method of service is authorized by the domestic law of (name of country): United States of America, and that I obtained this information by contacting the Overseas Citizens Services, U.S. Department of State.

/s/ Nelson M. Jones III
(Signature)

Nelson M. Jones, III
D.C. BAR # 320266
440 Louisiana St., Suite 1575
Houston, Texas 77002
(Name and Address)

UNITED STATES DISTRICT
AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA

[Filed: 11/17/10]

Civil Action No.: 1:10-01689-HHK

RICK HARRISON

Plaintiff(s)

vs.

REPUBLIC OF SUDAN

Defendant(s)

CERTIFICATE OF MAILING

I hereby certify under penalty of perjury, that on the 17th day of November, 2010, I mailed:

1. ☐ One copy of the summons and complaint by registered mail, return receipt requested, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)(2)(C)(ii).

2. ☒ One copy of the summons, complaint and notice of suit, together with a translation of each into the official language of the foreign state, by registered mail, return receipt requested, to the head of the ministry of

foreign affairs, pursuant to the provisions of 28 U.S.C. § 1608(a)(3).

3. ☐ Two copies of the summons, complaint and notice of suit, together with a translation of each into the official language of the foreign state, by certified mail, return receipt requested, to the U.S. Department of State, Office of Policy Review and Interagency Liaison, Overseas Citizens Services, 2100 Pennsylvania Avenue, NW, Fourth Floor, Washington, DC 20520, ATTN: Director of Overseas Citizens Services, pursuant to the provisions of 28 U.S.C. § 1608(a)(4).

4. ☐ One copy of the summons and complaint, together with a translation of each into the official language of the foreign state, by registered mail, return receipt requested, to the agency or instrumentality of the foreign state, pursuant to 28 U.S.C. § 1608(b)(3)(B).

ANGELA D. CAESAR, CLERK
By: Daniel J. Reidy .
Deputy Clerk

7002 0860 0000 7773 2744

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

WASHINGTON DC 20008

Postage	$5.00
Certified Fee	$2.80
Return Receipt Fee (Endorsement Required)	$2.30
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$10.10

0102
10
2010
11/17/2010

Sent To
Republic of Sudan
Deng Alor Koul
Minister of Foreign Affairs
Embassy of the Republic of Sudan
Street, Apt. No.; or PO Box No. 2210 Massachusetts Avenue NW,
City, State, ZIP+4 Washington, DC 2008

PS Form 3800, April 2002 See Reverse for Instructions

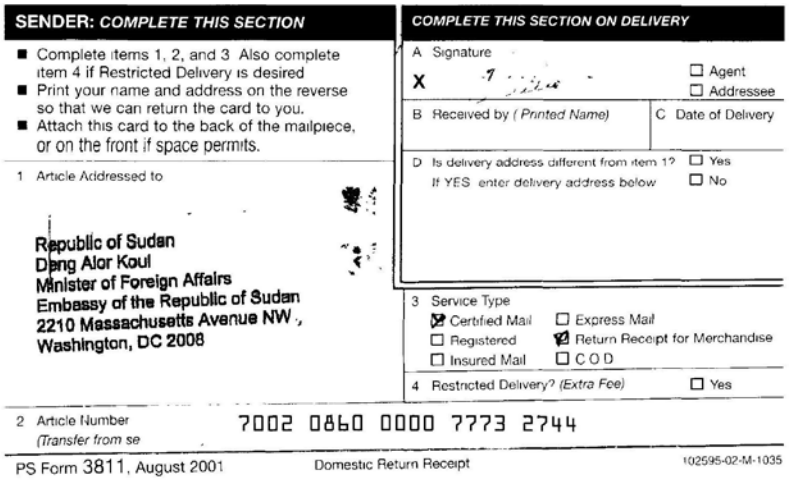
RECEIVED MAIL ROOM

NOV 23 2010

Angela D. Caesar, Clerk of Court

US District Court, District of Columbia

10-CV-1689 (HHK)



SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1 Article Addressed to

Republic of Sudan
Dieng Alor Koul
Minister of Foreign Affairs
Embassy of the Republic of Sudan
2210 Massachusetts Avenue NW ,
Washington, DC 2008

COMPLETE THIS SECTION ON DELIVERY

A Signature

X ☐ Agent ☐ Addressee

B Received by *(Printed Name)* C Date of Delivery

D Is delivery address different from item 1? ☐ Yes
If YES enter delivery address below ☐ No

3 Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C O D

4 Restricted Delivery? *(Extra Fee)* ☐ Yes

2 Article Number *(Transfer from se* 7002 0860 0000 7773 2744

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

UNITED STATES POSTAL SERVICE®

Track & Confirm

Search Results

Label/Receipt Number: **7002 0860 0000 7773 2744**
Expected Delivery Date: **November 18, 2010**
Class: **Priority Mail®**
Service(s): **Certified Mail™**
Return Receipt
Status: **Delivered**

Your item was delivered at 3:02 pm on November 18, 2010 in CHARLOTTE HALL, MD 20622.

Detailed Results.

- **Delivered, November 18, 2010, 3:02 pm, CHARLOTTE HALL, MD 20622**
- **Notice Left, November 18, 2010, 1:10 pm, WASHINGTON, DC 20008**
- **Arrival at Unit, November 18, 2010, 8:36 am, WASHINGTON, DC 20008**
- **Acceptance, November 17, 2010, 2:14 pm, WASHINGTON, DC 20002**

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email Go >

Track & Confirm

Enter Label/Receipt Number.

Go >

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 01/18/2011]

Civil Action No. 1:10-cv-01689-HHK

RICK HARRISON, JOHN BUCKLEY, MARGARET LOPEZ, ANDY LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, RUBIN SMITH, MARTIN SONGER, JR., SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, AND CARL WINGATE

Plaintiff,

v.

REPUBLIC OF SUDAN,

Defendant.

MOTION FOR ENTRY OF CLERK'S DEFAULT

Plaintiffs, Rick Harrison, et al., pursuant to Rule 55(a), Federal Rules of Civil Procedure, move for the entry of a Clerk's default against the Defendant, Republic of Sudan, and state:

1. Pursuant to the service procedure described in 28 U.S.C. § 1608(a)(3), the Defendant, Republic of Sudan, was served via certified U.S. mail (return receipt requested) with the Summons, Complaint, and Notice of Suit in this matter and with Arabic

translations of said documents, by the Clerk of this Court, on November 17, 2010.[1][2]

2. The U.S. Postal Service confirmed that the Defendant's received the service documents mailed by the Clerk, on November 18, 2010. (See U.S. Postal Service Return Receipt and Track & Confirm search results, attached as Exhibit "B").

3. On November 29, 2010, the Clerk of the Court confirmed the Court's receipt of the signed return receipt of the service packet. (See Clerk's Docket Entry No. 11).

4. Pursuant to 28 U.S.C. § 1608(c)(2), service on the Defendant is deemed to have been made as of November 18, 2010, the date of its receipt of the service packet.

5. Pursuant to 28 U.S.C. § 1608(d), the Defendant was required to file a response to the Plaintiffs' Complaint within sixty (60) days after service had been made. As such, the Defendant was required to file its response to the Plaintiffs' Complaint by January 17, 2011.

6. The Defendant has failed to plead, answer or otherwise defend in this cause as required by law.

7. The Plaintiffs are entitled to the entry of a Clerk's default in this matter in light of the

---

[1] Before proceeding under the method of service described under 28 U.S.C. § 1608(a)(3), the Plaintiffs confirmed that service could not be accomplished pursuant to 28 U.S.C. § 1608(a)(1) or (2).

[2] On October 4, 2010, the Plaintiff's served an Offer to Arbitrate on the Defendant. (See Docket Entry No. 3). The Defendant did not respond to the Plaintiff's Offer to Arbitrate.

Defendant's failure to plead, answer or otherwise defend in this cause as required by law. Fed. R. Civ. P. 55(a). A form of Clerk's Entry of Default is attached hereto for the Clerk's convenience.

WHEREFORE, Plaintiffs respectfully request that a Clerk's default be entered against the Defendant, Republic of Sudan.

Respectfully submitted,

By: Neslon M. Jones, III
NELSON M. JONES, III
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Fax: (305) 374-5033
Email:
andyhall@hlhlawfirm.com

JAMES COOPER-HILL
Texas Bar # 04789300
320 Olympic Drive
Rockport, Texas 78382
Tel: (361) 729-3923
Fax: (361) 727-0447
Email:
corpuslaw@aol.com

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail on this 18th day of November 2011, to: Republic of Sudan, Deng Alor Koul, Minister of Foreign Affairs, Embassy of the Republic of Sudan, 2210 Massachusetts Avenue NW, Washington, DC 20008.

/s/ Nelson M. Jones III
Nelson M. Jones III

Default – Rule 55A (CO 40 Revised-2/2010)

UNITED STATES DISTRICT
AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA

[Filed: 01/19/2011]

Civil Action No.: 1:10-01689-HHK

RICK HARRISON, et al

Plaintiff(s)

vs.

REPUBLIC OF SUDAN

Defendant(s)

RE: REPUBLIC OF SUDAN

DEFAULT

It appearing that the above-named defendant(s) failed to plead or otherwise defend this action though duly served with summons and copy of the complaint on November 18, 2010, and an affidavit on behalf of the plaintiff having been filed, it is this 19th day of January, 2011 declared that defendant(s) is/are in default.

ANGELA D. CAESAR, CLERK
By: /s/ N. Wilkens .
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 03/30/2012]

Civil Action No. 10-1689 (RCL)

RICK HARRISON, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN,

Defendant.

ORDER AND JUDGMENT

In accordance with the Memorandum Opinion issued this day, it is hereby

ORDERED that final judgment is entered in favor of plaintiffs and against defendant;

ORDERED that plaintiffs are awarded $78,676,474 in compensatory damages and $236,029,422 in punitive damages, for a total award of $314,705,896 to be distributed as follows:

	Economic	Pain and Suffering	Solatium	Punitive	Total
Aaron Toney	196,040	1,500,000	0	5,088,120	6,784,160
Carl Wingate	198,365	5,000,000	0	15,595,095	20,793,460
David Morales	248,108	2,000,000	0	6,744,324	8,992,432
Edward Love	279,613	2,000,000	0	6,838,839	9,118,452
Eric Williams	553,253	3,000,000	0	10,659,759	14,213,012
Gina Morris	562,577	1,500,000	0	6,187,731	8,250,308
Jeremy Stewart	515,627	7,500,000	0	24,046,881	32,062,508
Kesha Stidham	873,104	5,000,000	0	17,619,312	23,492,416
Margaret Lopez	52,594	7,500,000	0	22,657,782	30,210,376
Martin Songer	509,174	2,000,000	0	7,527,522	10,036,696
Rick Harrison	286,083	5,000,000	0	15,858,249	21,144,332
Robert McTureous	901,936	5,000,000	0	17,705,808	23,607,744
John Buckley III	0	7,500,000	0	22,500,000	30,000,000
Keith Lorenson	0	5,000,000	0	15,000,000	20,000,000
Rubin Smith	0	5,000,000	0	15,000,000	20,000,000
Shelly Songer	0	0	1,000,000	3,000,000	4,000,000
Lisa Lorenson	0	0	4,000,000	12,000,000	16,000,000
Andy Lopez	0	0	4,000,000	12,000,000	16,000,000

and it is further

ORDERED that plaintiffs shall, at their own cost and consistent with the requirements of 28 U.S.C. § 1608(e), send a copy of this Order and Judgment, and the Memorandum Opinion issued this date, to defendants.

SO ORDERED.

/s/ Royce C. Lamberth
ROYCE C. LAMBERTH,
United States District Chief Judge

Dated: March 30, 2012

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 03/30/2012]

Civil Action No. 10-1689 (RCL)

RICK HARRISON, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN,

Defendant.

MEMORANDUM OPINION

This case arises out of the bombing of the U.S.S. Cole ("the Cole") on October 12, 2000. The attack ripped a thirty-two-by-thirty-six-foot hole in the side of the vessel when it was berthed in Yemen's Aden Harbor. Seventeen servicemen and women were killed, and forty-two suffered injuries. The eighteen plaintiffs before this Court are fifteen former sailors who were injured while on the Cole and three of their spouses, who, although not on the Cole during the attack, allegedly suffered emotional distress upon learning of the incident.[1] Plaintiffs bring this action

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[1] Since the filing of this lawsuit, one plaintiff, Rubin Smith, has died. After his claim was severed, his spouse, as

under the "state-sponsored terrorism" exception to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1602 *et seq.*[2] Plaintiffs allege that defendant Republic of Sudan ("Sudan") is liable for their injuries by virtue of its support of Al Qaeda, which perpetrated the Cole bombing. Before the Court is [Dkt # 14] plaintiffs' motion for a default judgment against Sudan. After making pertinent findings of fact, the Court concludes that plaintiffs have provided sufficient evidence to establish a cause of action against Sudan under FSIA's state-sponsored terrorism exception, that Sudan is liable to the plaintiffs for the alleged harms, and that plaintiffs are entitled to both compensatory and punitive damages. In accordance with these findings and conclusions, the Court awards damages to plaintiffs.

I. BACKGROUND

A. Prior and Current USS Cole Litigation

Two cases involving the Cole attack relate to the case at bar and speak to the question of Sudan's liability for the Cole attack. In *Rux v. Republic of Sudan* fifty-seven survivors of the seventeen sailors who died in the Cole attack sued Sudan for damages. *Rux v. Republic of Sudan*, 2005 WL 2086202 (Aug. 26, 2005). After defaulting, Sudan moved to dismiss plaintiffs' claims on jurisdictional and immunity

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administrator of his estate and upon motion, rejoined the case [Dkt. #34].

[2] This provision which was enacted as part of the 2008 National Defense Authorization Act ("NDAA"). Pub. L. No. 110-181, § 1083, codified at 28 U.S.C. § 1605A. It creates a "federal right of action against foreign state." *Simon v. Republic of Iran*, 529 F. 3d 1187, 1190 (D.C. Cir. 2008).

grounds. The district court denied Sudan's motion, concluding that plaintiffs had alleged sufficient jurisdictional facts to bring their case within the FSIA state-sponsored terrorism exception. *Id.* Sudan appealed. The United States Court of Appeals for the Fourth Circuit affirmed the district court, finding that plaintiffs' allegations met FSIA's jurisdictional pleading requirements "by describing how Sudan provided Al-Qaeda a base of operations to plan and prepare for the bombing, and provided operational support for the attack." *Rux v. Republic of Sudan*, 461 F.3d 461, 473-74 (4th Cir. 2006). The district court then proceeded to the merits of plaintiffs' claims and concluded that, even though Sudan was liable for plaintiff's injuries, plaintiffs were only entitled to damages under the Death on the High Seas Act (DOHSA), 46 U.S.C. § 30302. The Court held that "[w]hile the FSIA vests jurisdiction in federal courts to hear cases against foreign states, it does not afford plaintiffs with a substantive cause of action." 495 F. Supp. 2d 541, 555 (E.D. Va 2007). Accordingly, the district court dismissed plaintiffs' maritime and state law claims and awarded eligible plaintiffs $ 7,956,344 under DOHSA. *Id.* at 567-69. Plaintiffs appealed the district court's judgment. While this appeal was pending, Congress passed the 2008 NDAA amendment to the FSIA which, in addition to creating a federal private right of action, added punitive damages and solatium as recoverable damages in a new section of the FSIA, § 1605A. *See* 28 U.S.C. § 1605A(c). Under this provision, the same fifty-seven *Rux* plaintiffs filed a second lawsuit in August 2010, joining with two new plaintiffs to the case. *Kumar v. Republic of Sudan*, 2011 WL 4369122

(E.D. Va. Sept. 19, 2011). The same district court that heard *Rux* considered and rejected the claims of the plaintiffs to whom it had awarded judgments in the previous litigation, reasoning that both *res judicata* and the prohibition on legislative reopening of final judgments barred them. *Id.* at *10-11 (citing *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 241 (1995)). The court therefore awarded damages only to the new plaintiffs who had not been party to the previous *Rux* litigation. *Id.* at *11.[3] Plaintiffs in the case at bar were not plaintiffs in *Rux* or *Kumar*.

The Court underscores an important matter before proceeding: because plaintiffs in this case bring their action under the new § 1605A, they are entitled to types of damages — i.e. for pain and suffering and solatium — and punitive damages that the *Rux* plaintiffs, who initiated their action before § 1605A was enacted, did not obtain. As the Court will explain below, these new damages can amount to substantially larger sums than the *Rux* court awarded those plaintiffs. The Court regrets this disparity and emphasizes that the difference primarily reflects a change in the governing statute rather than this Court's assessment of the relative

[3] The Court respectfully disagrees with the *Kumar* court's application of *res judicata* to bar plaintiffs' claims. For purposes of that doctrine, this Court is not persuaded that there is a meaningful distinction between the procedural posture of the *Kumar* plaintiffs and that of the plaintiffs in *In re Islamic Republic Iran Terrorism Litigation* where this Court concluded that *res judicata* did not preclude claims filed under § 1605A even though they had been litigated under § 1605(a)(7). *In re Islamic Republic of Iran Terrorism Litigation*, 659 F. Supp. 2d 31, 84-85 (D.D.C. 2009).

hardship endured by the *Rux* plaintiffs and the plaintiffs currently before the Court.

B. Plaintiffs' Claims Before This Court

Plaintiffs effected service of the complaint, summons, and notice of suit on Sudan by mail. *See* 28 U.S.C. § 1608(a)(3). Sudan accepted service on November 17, 2010. Return of Service/Affidavit, Nov. 23, 2010 [Dkt. # 11]. Under § 1608(d) of the FSIA, this service obligated Sudan to serve and answer or other responsive pleading within 60 days after service. 28 U.S.C. § 1608(d). It failed to do so. On January 19, 2011 plaintiffs obtained entry of default from this court. Clerk's Entry of Default, Jan. 19, 2011 [Dkt. # 13]. Plaintiffs now move for a default judgment [Dkt. # 14]. To date, Sudan has not served an answer or any other responsive pleading.

II. LEGAL STANDARDS

A. Default Judgment

The FSIA states that a court shall not enter a default judgment against a foreign state "unless the claimant establishes his claim or right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e); *Roeder v. Islamic Republic of Iran*, 333 F. 3d 228, 232 (D.C. Cir. 2003). This standard mirrors that applied to entry of default judgment against the United States in Federal Rule of Civil Procedure 55(d).[4] *See Hill v. Republic of Iraq*, 328 F. 3d 680, 684 (D.C. Cir. 2003). FED. R. CIV. PROC. 55(d).

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[4] Rule 55(d) provides: "no default [judgment] shall be entered against the United States . . . unless the claimant establishes his claim or right to relief by evidence satisfactory to the court." FED. R. CIV. P. 55 (d).

In considering motions for default judgment, a court may accept as true the plaintiffs' "uncontroverted evidence," *Wachsman v. Islamic Republic of Iran*, 603 F. Supp. 2d 148, 155 (D.D.C. 2009) including proof by affidavit. *See Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 83-85 (D.D.C. 2010). On September 21, 2011 an evidentiary hearing was held before the Honorable Henry H. Kennedy, Jr.[5] During that hearing, the Court accepted evidence in form of depositions, affidavits, expert testimony, and original documentary evidence. Reviewing these submissions, this Court will determine whether or not the evidence is sufficiently "satisfactory" to prove Sudan's liability and the damages that plaintiffs seek. 28 U.S.C. § 1608(e).[6]

B. Jurisdiction and Immunity

To state a viable claim, plaintiffs must first demonstrate that this Court has jurisdiction to hear the claims they assert and that Sudan is not entitled to immunity from suit. The FSIA is the "sole basis of jurisdiction over foreign states in our courts." *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 39 (D.D.C. 2009). While foreign sovereigns enjoy general immunity from suit in U.S. courts, FSIA § 1605A establishes a waiver provision that is conditioned on a number of factors.

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[5] Courts are not required to hold an evidentiary hearing, *see Bodoff v. Islamic Republic of Iran*, 424 F. Supp. 2d 74, 78 (D.D.C. 2006), but typically do so as a matter of custom and acknowledgment of the defendants' sovereign status.

[6] This case was reassigned to the undersigned judge on November 4, 2011 after Judge Kennedy's retirement. I have carefully reviewed all of the evidence presented to Judge Kennedy.

Specifically, a foreign state is not immune from suits in which the following factors are met: (1) money damages are sought (2) against that state for (3) personal injury or death that (4) was "caused by" (5) an act of torture, extrajudicial killing . . . or the provision of material support of resources for such an act if such act or provision of material support or resources is engaged in by an official, employee or agent of such foreign state while acting within the scope of his or her office, employment or agency." 28 U.S.C. § 1605(A)(a)(1); *accord Owens v. Republic of Sudan*, 2011 WL 5966900, at *17 (D.D.C. Nov. 11, 2011).[7] Because plaintiffs in this case do not allege torture or extrajudicial killing, only the "material support" provision is relevant to the case at bar. With regard to § 1605A's causation requirement, in this Circuit there must be "some reasonable connection between the act or omission of the defendant and the damages which the plaintiff has suffered." *Valore*, 700 F. Supp. 2d 52, 66 (internal quotations omitted).

Furthermore, the FSIA provides that courts "shall hear a claim" under § 1605A of the FISA if (1) the foreign state was designated as a state sponsor of terrorism at the time the act occurred; (2) the claimant was a United States national, a member of

[7] "[T]he defendant bears the burden of proving that the plaintiff's allegations do not bring its case within a statutory exception to immunity." *Phoenix Consulting, Inc. v. Republic of Angola*, 216 F.3d 36, 40 (D.C. Cir. 2000) (citing *Transamerican S.S. Corp. v. Somali Democratic Republic*, 767 F.2d 998, 1002 (D.C. Cir. 1985) and *Princz v. Federal Republic of Germany*, 26 F.3d 1166, 1171 (D.C. Cir. 1994)); *Owens v. Republic of Sudan*, 412 F. Supp. 2d 99, 94 (D.D.C. 2006) (citing *Phoenix* and stating "sovereign immunity is in the nature of an affirmative defense.").

the armed forces, or otherwise an employee or contractor of the Government of the United States, acting within the scope of her employment and (3) the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim, provided that the act occurred in the foreign state against which the claim is brought. 28 U.S.C. § 1605(A)(a)(2). Combined, these § 1605A(a)(1) and (a)(2) factors determine the Court's jurisdiction over the present case and whether Sudan has effectively waived its immunity from suit. To resolve these threshold questions, the Court first makes relevant findings of fact, as discussed below.

C. Cause of Action and Theory of Liability

After establishing jurisdiction, plaintiffs must also advance a theory of recovery that is supported by the evidence presented to the court. When a state is subject to suit under an exception to immunity, "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." *Id.* § 1606.

Section 1605A(c) of the FSIA creates an explicit "private right of action," which, when read in concert with §1605A(a)(1), establishes the requirements for a viable claim. *Id.* §1605A(a)(1). Courts have interpreted the FSIA-created cause of action to require plaintiffs to prove a theory of liability under which defendants cause the alleged injury or death. *Valore*, 700 F. Supp. 2d at 73; *see also Rimkus v. Islamic Republic of Iran*, 750 F. Supp. 2d 163, 176 (D.D.C. 2010). Plaintiffs must supply the elements of each specific claim — in this case, assault, battery, and intentional infliction of emotional distress

("IIED"). Because the statute is silent as to these elemental requirements, courts in this district apply principles of law found in the Restatement of Torts and other leading treatises. *See, e.g.*, *Valore*, 700 F. Supp. 2d at 76; *In re Islamic Republic of Iran Terrorism Litigation*, 659 F. Supp. 2d at 60 n.19; *Heiser v. Islamic Republic of Iran (Heiser II),* 659 F. Supp. 2d 20, 24 (D.D.C. 2009); *see also Bettis v. Islamic Republic of Iran* 315 F.3d 325, 333 (D.C. Cir. 2003) ("[F]ederal courts in FSIA . . . cases have accepted § 46 of the Restatement (Second) of Torts as a proxy for state common law of intentional infliction of emotional distress"). Having established the applicable law and evidentiary requirements, the Court now reviews the evidence and makes findings of fact.

III.FINDINGS OF FACT

A. Judicial Notice of Facts Found in Other Courts

As a preliminary matter, the Court must determine whether or not it will take judicial notice of findings made in *Rux*, as plaintiffs request [Dkt. #26]. As discussed above, both the district court and the Fourth Circuit concluded in that litigation that plaintiffs had alleged sufficient facts as to Sudan's material support of Al Qaeda and the Cole attack and that the country was therefore not immune from suit. *Rux*, 495 F. Supp. 2d at 554 (citing and reaffirming *Rux v. Sudan*, 461 F.3d at 467-75 (E.D. Va 2006); *Rux*, 461 F.3d at 473-74.[8] The district court then

[8] Sudan appeared in these earlier proceedings. It filed a motion to dismiss, which was denied on August 26, 2005. *Rux*, 495 F. Supp. 2d at 543. On appeal, the United States Court of Appeals for the Fourth Circuit affirmed the Eastern District of

proceeded to find that, as a matter of fact, Sudan had provided such support and was liable for plaintiffs' harm. *Rux,* 495 F. Supp. 2d at 556.

Courts in this district have taken judicial notice of related FSIA proceedings and findings of fact made therein. *See, e.g.*, *Estate of Doe v Islamic Republic or Iran*, 808 F. Supp. 2d 1 (D.D.C. 2011) (taking judicial notice of facts found in *Dammarell v. Islamic Republic of Iran*, 2006 WL 2583043 (D.D.C. Sept. 7, 2006) which found Iran had provided material support to Hizbollah for the attack on the U.S. Embassy in Beirut); *Brewer v. Islamic Republic of Iran*, 664 F. Supp. 2d 43 (D.D.C. 2009) (taking notice of the same for *Wagner v. Islamic Republic of Iran*, 172 F. Supp. 2d 128, 132 (D.D.C. 2001)); *Taylor v. Islamic Republic of Iran*, 811 F. Supp. 2d 1, 6-7 (D.D.C. 2011) (taking notice of facts found in *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46 (D.D.C. 2003), which found Iran provided material support for the 1984 bombing of the U.S. Marine barracks)). Indeed, "[t]he statutory obligation found in § 1608(e) was not designed to impose the onerous burden of re-litigating key facts in related cases arising out of the same terrorist attack," *Rimkus v. Republic of Iran*, 750 F. Supp. 2d 163, 172 (D.D.C. 2010). Thus, when a court has found facts relevant to

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Virginia's ruling. Subsequently, counsel for Sudan notified the Eastern District that they would not defend nor participate in the proceeding on the merits. A clerk default was entered, and the matter proceeded to trial. *Id.* Counsel for Sudan attended trial but did not participate other than to make a brief closing statement regarding damages. *Id.* Based upon the evidence submitted at trial, judgment was entered against Sudan on July 25, 2007. *Id.* at 566-69.

a FSIA case involving material support to terrorist groups, courts in subsequent, related cases may "rely upon the evidence presented in earlier litigation . . . without necessitating the formality of having that evidence reproduced." *Taylor*, 811 F. Supp. 2d at 7.

At the same time, taking *notice* of another court's finding of fact does not necessarily denote *adoption* or *finding* of that fact. Indeed, just as "findings of fact made during this type of one-sided hearing should not be given a preclusive effect," *Weinstein v. Islamic Republic of Iran*, 175 F. Supp. 2d 13, 20 (D.D.C. 2001), they also "should not be assumed true beyond reasonable dispute." *Murphy v. Islamic Republic of Iran*, 740 F. Supp. 2d 51, 58-59 (D.D.C. 2010). Moreover, because "default judgments under the FSIA require additional findings than in the case of ordinary default judgments," *Weinstein*, 175 F. Supp. 2d at 19-20, the Court "should endeavor to make such additional findings in each case." *Murphy*, 740 F. Supp. 2d at 59. Therefore, taking judicial notice of the facts established by the *Rux* court, does not conclusively establish the facts found in *Rux* for, or the liability of the defendants in, this case. Based on this judicial notice of evidence presented in earlier, similar cases "courts may reach their own independent findings of fact." *Anderson v. Islamic Republic of Iran*, 753 F. Supp. 2d 68, 75 (D.D.C. 2010). As a result, employing this FSIA-specific approach to judicial notice-taking of prior proceedings, the Court grants plaintiffs' motion to take judicial notice of the findings of fact in *Rux* [Dkt. # 26], reviews the relevant evidence, and makes its own findings of fact and conclusions of law. Turning

to the facts presented and noticed, the Court finds the following:

1. The USS Cole Bombing[9]

At approximately 8:30 a.m. on October 12, 2000, the Cole entered the Port of Aden, Yemen, to temporarily stop for refueling. The ship began refueling at approximately 10:31 a.m. At approximately 11:10 a.m., a small boat manned by two drivers pulled up parallel to the ship. Seconds later, the boat exploded.

The explosion occurred between approximately 11:15 and 11:18 a.m., just as some of the crew was sitting down for lunch. The blast ripped a large hole in the port side of the ship, and the main engine room, auxiliary machine room, and a storeroom were flooded. Smoke, dust, and fuel vapors filled the air. Several chambers were structurally destroyed. As discussed above, the blast and its after-effects killed seventeen navy sailors, and forty-two others were injured.

2. Sudan's Support of the USS Cole Bombing[10]

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[9] This section is based on a Navy report cited in *Rux*: Investigation to Inquire Into the Actions of USS Cole (DDG 67) In Preparing For And Undertaking a Brief Stop For Fuel at Bandar at Tawahi (Aden Harbor) Aden, Yemen, On Or About 12 October 2000. *See Rux,* 495 F. Supp. 2d at 544 n.12 (citing report). The report describes the attack and its aftermath, and the Court summarizes relevant portions here.

[10] In determining whether Sudan provided material support and assistance to Al Qaeda in perpetrating the attack on the Cole, the Court accepts the deposition testimony from three experts including: Lorenzo Vidino, a Research Program Manager at the Jebsen Center for Counter-Terrorism Studies at The Fletcher School of Tufts University, Ex. 78; James Woolsey, the director of the Central Intelligence Agency from 1993 to 1995, Ex. 79; and Steve Emerson, Executive Director of The Investigative Project on Terrorism and an expert on Islamic

a. Sudan and Al Qaeda

Since 1993, the United States has designated Sudan as a state sponsor of terrorism. 58 Fed. Reg. 52523-01 (Oct. 8, 1993); U.S. Department of State, State Sponsors of Terrorism, available at http://www.state.gov/j/ct/c14151.htm (last visited March 22, 2012). During the 1990s, Hassan Abdallah Turabi, head of the Sudanese political party and leader of the Muslim Brotherhood and the National Islamic Front ("NIF"), transformed Sudan into a centralized, Islamic state that supported movements and organizations with militant Islamic ideologies. Exs. 80 at 12 & 81 at 18-19.

As is well-known today, Al Qaeda is a worldwide terrorist network. Ex. 81 at 29:4-7. Founded by Osama Bin Laden in approximately 1990, Ex. 22, it has organized, executed or inspired acts of terrorism around the world that killed or injured thousands of innocent people, including the September 11, 2001 attacks on the United States. Exs. 28 & 74 at 70.

According to the U.S. State Department, Bin Laden relocated to Sudan from Afghanistan in 1991, where he was welcomed by Turabi. Ex. 17. Turabi and Bin Laden shared a common extremist ideological and religious outlook. Bin Laden agreed to help Turabi in the regime's ongoing war against African Christian separatists in southern Sudan, and also to invest his wealth in the poor country's infrastructure. Exs. 81 at

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extremist networks. Ex. 77. The Court accepts each as an expert witness on terrorism, the relationship between Al Qaeda and Sudan, and the material support Sudan provided to Al Qaeda for the Cole bombing.

21-23 & 74 at 57. In exchange, Sudan provided Bin Laden's fledgling terrorist group with a sanctuary within which it could freely meet, organize, and train militants for operations. Ex. 80 at 13:3-14:7. In 1996, he was expelled from the country under international pressure and returned to Afghanistan. Exs. 23 & 74 at 57, 109. Both before and after this departure, the effects of Sudan's support of Al Qaeda were substantial.

b. Joint Business Ventures

Bin Laden established several joint business ventures with the Sudanese regime that began to flourish upon his arrival in the Sudanese capital of Khartoum in 1991. Ex. 17. Bin Laden formed symbiotic business relationships with wealthy NIF members by undertaking civil infrastructure development projects on the regime's behalf. *Id.* These included Al-Hijrah for Construction and Development, Ltd., which built the Tahaddi road between Khartoum and Port Sudan on the Red Sea coast, as well as a modern international airport near Port Sudan; Wadi al-Aqiq Company, Ltd., which, dealt in gum, corn, sunflower, and sesame products; and Al-Themar al-Mubarak-ah Agriculture Company, Ltd., which acquired large tracts of land near Khartoum and in eastern Sudan. Exs. 17 & 32 at 239, 241. These businesses provided income to Al Qaeda, as well as cover for the procurement of explosives, weapons, and technical equipment, and for the travel of Al Qaeda operatives. Exs. 24 & 74 at 57-58. Bin Laden continued to maintain his substantial business interests and facilities in Sudan even after his departure to Afghanistan in 1996. Exs. 23 & 82 at 26-27.

c. Banking Support

Sudan allowed its banking institutions to be used by Al Qaeda to launder money. Ex. 81 at 25. Indeed, Bin Laden and wealthy members of the NIF capitalized Al-Shamal Islamic Bank in Khartoum; Bin Laden personally invested $50 million in the bank. Exs. 17 & 32 at 332. In the late 1980s, Sudan adopted an Islamic banking system that forbids interest and lacks the rigorous accounting standards used by Western banking systems. Ex. 81 at 36. The lack of scrutiny associated with this system was ideal for Al Qaeda because it allowed the group to move large sums of money in support of its operations without detection. Exs. 81 at 52 & 80 at 15. Douglas Farah, former reporter for the Washington Post in West Africa and author of the book "Blood From Stones: The Secret Financial Network of Terror," Ex. 76, asserted in a written deposition, that Sudan "provided [Al Qaeda] fundamentally with a banking structure, Islamic structure that's out of the norm of the banking rules that we're acquainted with in the west, and allowed them channels to move money through that would be virtually undiscoverable to the outside world." Ex. 80 at 14-15, 26. He further stated that Al Qaeda "couldn't have operated with that degree of freedom and openness if they had not been sanctioned by the central government to do so." *Id.*

d. Training and Direct Finance of Terrorist Groups

Starting in the early 1990s, Turabi and the Sudanese regime convened annual conferences in Sudan under the label Popular Arab and Islamic Conference. Ex. 80 at 26:13-27:15; Ex. 82 at 19:16-

20:22. At these conferences, Bin Laden and other top leaders and operatives from the most violent Islamic terrorist organizations congregated to exchange information and plan terrorist activities. Exs. 74 at 61 & 81 at 26. Although the conference was closed down in approximately 2000, Sudan continued to be used as a safe haven by Al Qaeda and other terrorist groups. Ex. 35.

In addition, as reported by the U.S. Department of State in its annual "Patterns of Global Terrorism" reports, the Sudanese military cooperated with Bin Laden and Al Qaeda to finance at least three terrorist training camps in northern Sudan. Ex. 17. As well, each year from 1997 through 2000, Sudan served as a meeting place, safe haven, and training hub for Al Qaeda and other terrorist groups including Lebanese Hizballah, Palestinian Islamic Jihad, Abu Nidal Organization, and Hamas. *See* Exs. 22; 25; 28; 35. Most of the groups maintained offices and other forms of representation in the capital, using Sudan primarily as a secure base for organizing terrorist operations and assisting compatriots elsewhere." Exs. 25 & 28. Moreover, Ayman Al-Zawahiri, a top-ranking member of Al Qaeda, reached an agreement in 1998 with Sudan's national Islamic groups to establish budgets to finance terror operations. Ex. 81 at 43:9-44:4. Bin Laden's construction company worked directly with Sudanese military officials to transport and provision the camps, where terrorists of Egyptian, Algerian, Tunisian, and Palestinian origin received training. *Id.*

Sudan's support of Al Qaeda continued after Bin Laden's 1996 departure until at least the Cole bombing. Ex. 80 at 12:11-23. As of 1999, this

assistance consisted of "paramilitary training, money, religious indoctrination, travel, documents, safe passage, and refuge." As of 2000 support "included the provision of travel documentation, safe passage, and refuge." Ex. 28.

e. Diplomatic Cover

As early as 1998, Sudan provided Al Qaeda members with Sudanese diplomatic passports, diplomatic pouches, and regular Sudanese travel documentation that facilitated the movement of Al Qaeda operatives in and out of the country. Exs. 22, 25, 35, 53, 81 at 31; 83 at 28. Diplomatic passports allow the holder to pass through airport security in airports and ports around the world without her bags being checked and without the same level of scrutiny or searches normally given to regular passport holders. Exs. 80 at 17; 81 at 32. A diplomatic passport typically lasts between five and ten years. Ex. 81 at 33. Thus, the passports issued in 1998 would not have expired prior to 2003. *See id.* Diplomatic pouches enjoy diplomatic immunity from search or seizure. Al Qaeda agents with these passports and pouches were therefore able to enter and leave Sudan and cross borders in other countries carrying materials to prepare for attacks without arousing suspicion. Exs. 82 at 19; 81 at 33; 83 at 31; 80 at 14. Indeed, it was critical to Al Qaeda's method of training its operatives in one country and then dispatching them with their materials to other countries to carry out operations or await instructions. Ex. 83 at 25:5-26:5; Ex. 83 at 31:9-32:1. By providing such cover to Al Qaeda, Sudan enabled the terrorist organization to transport weapons and munitions outside the country and into other

countries undetected by customs agents. Exs. 82 at 25; 80 at 18.

f. Sudan's Connection to the Cole Attack

While receiving support from Sudan, Al Qaeda prepared the strike against the Cole. The attack was part of a decade-long plan conceived and executed by Bin Laden and Al Qaeda to confront U.S. interests in the Middle East. Ex. 72 at 29. Bin Laden supervised the Cole plot directly. Ex. 74 at 190. As stated in the 9/11 Commission Report, Bin Laden "chose the target and location of the attack, selected the suicide operatives, and provided the money needed to purchase explosives and equipment." *Id.* Mr. Emerson and Mr. Vidino both testified that the attack's "mastermind" was Qaed Salim Sinan al-Harethi, also known as Ali Qaed Sinan Harthi, who was one of Bin Laden's bodyguards. Exs. 81 at 45-46; 83 at 33. They further assert that Al-Harethi was trained by Al Qaeda in Sudan in the 1990s before being dispatched to Yemen where, according to Mr. Vidino, he became "the chief of operation[s] of Al Qaeda in Yemen." Ex. 81 at 46.

In addition to training, Sudan was "more likely than not" the source of the explosives used in the Cole bombing, according to CIA Director Woolsey. Ex. 82 at 46. Mr. Emerson testified, "I have no doubt the source [of the explosives used on the Cole] came from Al Qaeda and was transported to Yemen from Al Qaeda or by the Sudanese government through most probably the diplomatic pouch." Ex. 80 at 18-19. Mr. Farah testified that his "best guess" as to the source of the explosives used in the Cole, based on his "studied opinion and having discussed this case with

intelligence officials," is Sudan, "which was the closest place to Yemen in which they had the safe quarter in which to be able to move this type of goods across the border." Ex. 80 at 18-19. As well, according to Mr. Emerson, the explosives used in the Cole attack were sent by Al Qaeda operatives in Sudan. Ex. 83 at 25:20-26:5. In criminal proceedings arising out of the 1998 embassy bombings, one of Bin Laden's lieutenants in Sudan, Jamal Al-Fadl, corroborated this fact when he testified against Bin Laden. Ex. 32, *U.S. v. Bin Laden*, 397 F. Supp. 2d 465 (S.D.N.Y 2005), Case No. 98-cr-1023, Trial Tr. Feb. 6, 2001. Specifically, Mr. Al-Fadl stated under oath that he worked under Bin Laden in Sudan; that he stored four crates of weapons and explosives at a farm in Sudan owned by Bin Laden; and that he shipped the four crates in an Al Qaeda-owned boat from a facility owned by the Sudanese military in Port Sudan to Yemen, where they were to be used to "fight the Communists." Ex. 32 at 262, 336-40.

In sum, the evidence suggests that Sudan provided Al Qaeda with the support, guidance, and resources that allowed it to transform into a sophisticated, terrorist network, and that such support was critical to Al Qaeda developing the expertise, networks, military training, munitions, and financial resources necessary to plan and carry out the Cole attack. Ex. 83 at 25:5-28:14. As Mr. Woolsey testified, "[t]he proximity of Sudan to Yemen, the need for a protected logistics infrastructure, the confused situation in the Government of Yemen at the time . . ., the amount of explosives that needed to be put in the boat that attacked the Cole, all that suggests to me that the logistical support and base of operations

that could have been available in Sudan could have been of substantial assistance to an attack in Yemen, such as the one that occurred." Ex. 82 at 29. He summarized: the Cole attack "might have been possible, but it would not have been as easy" without Sudan's support. *Id.* In addition, Mr. Vidino stated that the bombing would have been "close to impossible" without Sudan's assistance because "simply all they needed, starting from the training to the explosives, to all what a terrorist cell needs, even the ideological aspect of it, came from Sudan. It was clearly necessary to have all these things in place to carry out an operation such as the attack on the Cole." Ex. 81 at 47-48. In addition, Mr. Emerson asserted that the Cole attack would not have occurred without Sudan. Ex. 157 at 34. According to Emerson, by removing Sudan's support, "[y]ou would have deprived them of the oxygen needed to operate." *Id.* Moreover, Mr. Farah testified that he did not think the bombing of the Cole could have happened "without the active support of the Government of Sudan . . . from 1992 through the Cole bombing, Sudan provided an incredibly necessary and vital infrastructure for Al-Qaeda to be able to prepare and move the explosives and carry out the attacks on the Cole. And it was not clandestine or hidden presence, but rather fairly overt and knowing presence by senior members of the NIF government in Sudan." Ex. 80 at 14, 27-30.

In light of the submitted reports, testimony, and other uncontroverted evidence, the Court finds that Sudan provided material support to Al Qaeda such that the terrorist organization could attack the Cole. The conforms to the findings of the *Rux* court,

discussed above. With this fact established, the Court now turns to the uncontested evidence plaintiffs have submitted on the nature and extent of their injuries.

B. Plaintiff's Injuries

1. Plaintiffs on the Cole During the Attack

Plaintiffs who were on the Cole during the attack, each allege assault, battery and IIED. They claim injuries in the form of post-traumatic stress, lost physical abilities, and anguish, and they seek compensatory and punitive damages. Each individual's claim is explained in more detail below.

Rick Harrison

Rick Harrison was born on January 30, 1962, in Cut Bank, Montana. Ex. 92 at 6:24-7:6. On January 19, 1982, Mr. Harrison enlisted in the Navy. Ex. 92 at 7:15-17. He intended to remain in the Navy as a career. Ex. 92 at 7:23-8:17. In July 1999, he was assigned to serve on the Cole as a fire marshal. Ex. 92 at 8:20-24.

At the time of the bombing, Mr. Harrison was on the starboard side of the ship walking past the medical station. Ex. 92 at 15:10-17. He was located approximately 47 feet from the blast. Ex. 92 at 16:13-24. The blast threw him toward the overhead, causing him to strike his head and suffer a concussion. Ex. 92 at 17:14-18:1. Mr. Harrison landed directly on his knees causing severe injuries to his knees, back. The blast also damaged the membranes in his ears. Ex. 92 at 17:14-18:1, 18:22-20:1. Mr. Harrison inhaled toxic smoke in a room where wiring was burning. Ex. 92 at 22:21-23:10. He later developed a lung condition as a result of breathing

the toxic smoke. *Id.* Mr. Harrison did not cease his rescue activities for 96 hours. Ex. 92 at 20:15-18, 23:17-24:10.

Upon returning to Naval Station in Norfolk, Virginia, Mr. Harrison's permanent injuries were discovered when he was unable to pass a physical readiness test. Ex. 92 at 24:17-25:15. Mr. Harrison was subsequently diagnosed with the compression of ten lower vertebrae, flattened arches in his feet, damage to the tympanic membrane in his right ear, a separated shoulder and damage to his rotary cuff, and a severe concussion. Ex. 92 at 19:9-20:1, 25:2-15, 28:13-24.

Aside from the physical injuries, he also had recurring nightmares, mood swings, and severe headaches. Ex. 92 at 25:16-25. Ultimately, as a result of his physical and emotional condition, he was medically discharged from the Navy. Ex. 92 at 26:19-27:4. Currently, Mr. Harrison endures constant physical pain in his knees, shoulders, lower back, and feet. Ex. 92 at 28:8-29:7. Mr. Harrison testified that the emotional impact of these injuries is still present today. Ex. 92 at 29:8-31:16. His symptoms include anxiety, anger, flashbacks, and nightmares. Ex. 92 at 31:17-32:23.

Dr. Hernandez-Cardenache an expert clinical psychologist, further provided his expert opinion that Mr. Harrison's symptoms are consistent with chronic post-traumatic stress disorder. Ex. 106 at 36:14-39:4.

Keith Lorensen

Keith Lorensen was born on September 28, 1967, in St. Paul, Minnesota. Ex. 90 at 5:13-16. On October 7,

1985, Mr. Lorensen enlisted in the Navy. Ex. 90 at 6:8-25. He intended to remain in the Navy as his career. Ex. 90 at 12:12-18. In 1998, Mr. Lorensen was assigned to the Cole. Ex. 90 at 14:12-17.

At the time of the attack, Mr. Lorensen was in the chief petty officer's mess, midship on the port side very near to the point of impact, conversing with another crew member. Ex. 90 at 14:24-16:6. The blast flung him 30 feet through the air and caused him to black out. Ex. 90 at 16:7-18:8. When he regained consciousness, he found himself lying across the mess underneath debris from the galley equipment. *Id.* His right femur was broken four inches above the knee and had been completely folded behind his back so that his foot was now located near his head. Ex. 90 at 19:6-20:14. Mr. Lorensen also sustained multiple contusions on each of his legs, a lip laceration, and a broken wrist in the blast. Ex. 90 at 18:15-20:25, 30:13-31:9. After noticing bleeding from his right leg, he used his belt as a tourniquet to stop the bleeding from his femoral artery, and continued applying the pressure until, after approximately 40 minutes, he was removed from the space by other sailors. Ex. 90 at 18:9-20:14.

After being removed from the mess hall, Mr. Lorensen was given morphine and taken to the top of the ship with other injured sailors. Ex. 90 at 22:18-23:4. While waiting for additional medical treatment, Mr. Lorensen witnessed a fellow sailor being declared dead. Ex. 90 at 23:5-15. He was then taken to a hospital in Yemen for further treatment. Ex. 90 at 27:11-18. He blacked out again in the hospital and only regained consciousness after surgery had been performed on his broken leg. Ex. 90 at 29:1-6. When

he awoke, his leg was in traction, with makeshift metal components affixed to open wounds in his leg held in place by a piece of concrete attached via twine as a counterweight. Ex. 90 at 30:13-31:16. The laceration in his lip was subsequently stitched without any anesthesia. *Id.*

The next day he was flown to Germany where he received further medical treatment before ultimately returning to Virginia. Ex. 90 at 32:13-21. After returning to the United States, seven months passed before he could put any weight on his right leg. Ex. 90 at 40:10-41:16. He can no longer squat down and has lost range of motion in his right leg. Ex. 90 at 43: 21-44:7. In addition to physical injuries, Mr. Lorensen also sustained psychological damage as a direct result of the incident. Ex. 90 at 46:1-4. Specifically, he experienced increased irritability and could not sleep through the night for a number of years. Ex. 90 at 46:5-48:17. Mr. Lorensen also experienced flashbacks and emotional outbursts. *Id.* He was subsequently diagnosed with post traumatic stress disorder. Ex. 90 at 46:1-17. The Department of Veterans Affairs has assigned him a 40% disability rating. Ex. 90 at 60:16-61:1.

Dr. Rene Hernandez-Cardenache provided his expert opinion that Mr. Lorensen's symptoms are consistent with chronic post-traumatic stress disorder. Ex. 106 at 74:6-79:21.

John Buckley III

John Buckley III was born on August 10, 1979. Ex. 99 at 4:18-21. He enlisted in the Navy on May 28, 1997, Ex. 99 at 5:7-8, intending to remain in the service for the duration of his career. Ex. 99 at 5:15-

21. Prior to the terrorist attack, he had been serving on the Cole for approximately three years. Ex. 99 at 6:18-21.

At the time of the bombing, Mr. Buckley was in a passageway approximately ten feet from the point of impact. Ex. 99 at 12:25-13:3. The explosion flung him through the air to the other end of the passageway, where he had a concussion and lost consciousness. Ex. 99 at 13:4-18. After coming to, Mr. Buckley moved toward the area of the blast in an effort to assist injured sailors. Ex. 99 at 13:22-14:17. Mr. Buckley assisted in the medical care and evacuation of other injured sailors for several hours, until he collapsed due to his own injuries. *Id.*

As a result of the blast, Mr. Buckley suffered fractures to both knees, hearing loss, and severe lower back trauma. Ex. 99 at 8:25-10:13. Mr. Buckley continues to suffer from his physical injuries. Ex. 99 at 9:25-10:3. He cannot lift over 100 pounds, has undergone two back surgeries, and continues to receive treatment for his knee injuries. *Id.*; Ex. 99 at 17:16-18:7. Mr. Buckley has also been diagnosed with post-traumatic stress disorder. Ex. 99 at 8:25-10:13. He continues to experience nightmares and headaches, is prone to aggressive behavior, and hears voices. Ex. 99 at 19:3-12. On May 29, 2001, Mr. Buckley was honorably discharged from the Navy. Ex. 99 at 7:13-25. Mr. Buckley was assigned a 100% disability rating by the VA. Ex. 99 at 8:14-21.

According to Dr. Hernandez-Cardenache, Mr. Buckley's symptoms are consistent with post-traumatic stress disorder. Ex. 106 at 21:17-25:5.

Margaret Lopez

Margaret Lopez was born on December 26, 1970. Ex. 96 at 6:14-16. She enlisted in the Navy. Ex. 96 at 7:6-7. It was Mrs. Lopez's intention to remain in the Navy as a career. Ex. 96 at 7:10-16. In July 1998, Mrs. Lopez was assigned to the Cole as a gas turbine systems mechanic. Ex. 96 at 10:23-11:8.

At the time of the bombing, Mrs. Lopez was supervising work being performed in the oil lab. Ex. 96 at 14:12-22. The bomb blast impacted the ship approximately 20 feet from her location and immediately killed one of the sailors working with her in the oil lab at that time. Ex. 96 at 15:21-16:13. As a direct result of the blast, Mrs. Lopez sustained burns to her face, neck, legs, and arms; her ear drums were ruptured; and several discs in her spine were ruptured. Ex. 96 at 19:25-20:13. After the blast, the oil lab began to fill with smoke and water. Ex. 96 at 16:25-17:14, 18:8-18. In order to escape the area, she freed herself from debris and jumped into the sea through the hole created by the blast. Ex. 96 at 18:20-25. She remained in the water for over an hour before being pulled to safety. Ex. 96 at 21:8-19.

Mrs. Lopez was transferred to a hospital in Yemen before being sent to Germany for further treatment. Ex. 96 at 23:15-24:7. She remained in Germany for two weeks under the care of a burn specialist. Ex. 96 at 24:11-18. While waiting to get a skin graft, Mrs. Lopez developed pneumonia. Ex. 96 at 24:19-25:1. It took approximately two years for her burns to fully heal. Ex. 96 at 25:25-26:15. Mrs. Lopez also underwent an eardrum replacement surgery. *Id.*

Since the bombing, Mrs. Lopez has experienced insomnia, mood swings and nightmares, and has been diagnosed with post-traumatic stress disorder. Ex. 96 at 34:5-20; 29:9-30:7.

As a result of her medical condition, Mrs. Lopez retired from the Navy on November 4, 2004. Ex. 96 at 27:3-28:1. At the time, she was prescribed antidepressants and pain medication for her injuries. Ex. 96 at 29:9-30:7. Based upon her injuries, she has been assigned a 100% disability rating by the Department of Veterans Affairs. Ex. 96 at 30:25-31:15.

Dr. Rene Hernandez-Cardenache testified that Mrs. Lopez's symptoms are consistent with chronic post-traumatic stress disorder. Ex. 106 at 59:6-61:25.

Edward Love

Edward Love was born on October 4, 1979. Ex. 94 at 5:16-19. He enlisted in the Navy on March 30, 2000, Ex. 94 at 6:4-5, intending to spend his career in the Navy. Ex. 94 at 17:22-25. His first assignment was onboard the Cole, which began in approximately August 2000. Ex. 94 at 6:8-10.

When the attack occurred, Mr. Love was midship on the port side. Ex. 94 at 8:12-14. As a result of the blast, he was thrown to the ground and suffered a ruptured eardrum. Ex. 94 at 8:22-9:8. Mr. Love immediately began to assist the injured crew and to repair damage to the ship to prevent further flooding. Ex. 94 at 9:17-10:25. In doing so, he witnessed many sailors who were severely injured or had died because of the attack. *Id.*

After three or four hours, Mr. Love left the ship and was transferred to the hospital in Yemen. Ex. 94 at 10-21. The next day, Mr. Love was moved to Germany where he received further treatment. Ex. 94 at 14:2-12. Since that day, Mr. Love has not been able to pass a hearing test for his right ear. Ex. 94 at 14:13-19. The VA has assigned a 10% disability rating for this injury. Ex. 94 at 14:20-24. After returning to the United States, Mr. Love was stationed at a naval base in Norfolk, Virginia. Ex. 94 at 16:16-25.

While stationed in Norfolk, Mr. Love was diagnosed with post traumatic stress disorder. Ex. 94 at 17:2-9. The lasting effects from the bombing have caused Mr. Love's personality to change, with symptoms including problems with anxiety, mood swings, lack of appetite, and trouble sleeping. Ex. 94 at 18:18-23. As a result of these continuing issues, on March 3, 2003, he was discharged from the Navy. Ex. 94 at 17:10-21. Mr. Love continues to receive treatment for his symptoms to this day. Ex. 94 at 19:14-20:25.

According to Dr. Hernandez-Cardenache, Mr. Love's symptoms are consistent with chronic post-traumatic stress disorder and co-morbid mood disorder. Ex. 106 at 62:1-65:4.

Robert McTureous

Robert McTureous, born on May 25, 1972, Ex. 89 at 5:13-16, enlisted in the Navy. Ex. 89 at 5:23-24. It was his intention to have a career in the Navy. Ex. 89 at 5:25-6:5. In August 2000, Mr. McTureous joined the crew of the Cole. Ex. 89 at 9:11-24.

On the day of the attack, Mr. McTureous was in the oil lab, with Margaret Lopez, preparing to relieve other sailors who were involved in the refueling process. Ex. 89 at 13:2-14. The blast occurred in close proximity to the oil lab, and the room began to fill with water. Ex. 89 at 13:20-15:8. Because the exit door of the oil lab had been damaged by the blast, Mr. McTureous escaped by climbing through the wreckage and jumping through the hole in the ship that had been caused by the explosion. *Id.*; Ex. 89 at 16:3-16.

After being rescued from the water by his shipmates, Mr. McTureous was taken to a hospital in Yemen where he remained overnight until being transferred to Germany and then Portsmouth Naval Hospital for further treatment. Ex. 89 at 18:5-19:13. After the bombing, Mr. McTureous was discharged from the Navy because he could not face "the reality of going back to sea." Ex. 89 at 23:18-24:4.

As a result of the blast, Mr. McTureous sustained severe, permanent, painful, life long injuries including two ruptured eardrums, second degree burns on his face, a fractured finger and shrapnel in his arms. Ex. 89 at 15:5-8, 20:4-13, 24:5-25:11. Currently, Mr. McTureous has significant hearing loss in both ears. Ex. 89 at 25:8-11. Due to his physical injuries, the Department of Veterans Affairs has assigned him a 70% disability rating. Ex. 89 at 25:12-15, 39:14-40:6.

In addition to severe physical injuries, Mr. McTureous was diagnosed with post-traumatic stress disorder in 2002. Ex. 89 at 26:21-29:5. The psychological effect of the blast has caused Mr.

McTureous to suffer from flashbacks, nightmares, and a fear of crowds. *Id.*; Ex. 89 at 30:8-37:15. Prior to the bombing, Mr. McTureous was outgoing, but now describes himself as reserved, scared, on edge, and shy. Ex. 89 at 27:16-22.

Dr. Rene Hernandez-Cardenache testified that Mr. McTureous' symptoms are consistent with chronic post-traumatic stress disorder and reduced cognitive functioning as a result of the attack. Ex. 106 at 25:6-28:1.

David Morales

David Morales was born on February 19, 1978 and enlisted in the Navy in July 1999. Ex. 93 at 6:8-12. It was his intention to remain in the Navy for his career. Ex. 93 at 6:20-25. After graduating from basic training, Mr. Morales was assigned to the Cole as a boatswain's mate. Ex. 93 at 6:16-25.

On the day of the bombing, Mr. Morales had just finished his morning duties and had gone to his room to rest. Ex. 93 at 14:17-15:1. He was lying in his rack approximately 30 feet from the point of impact when he felt the explosion rock the ship. Ex. 93 at 15:10-25. The force of the blast caused him to impact the ceiling above his rack and then fall to the floor. *Id.* He immediately went to the top of the ship to assist his injured shipmates, encountering many severely injured and dead sailors on his way. Ex. 93 at 16:3-25:21. In the rescue efforts, Mr. Morales attempted to perform CPR on a fellow sailor who ultimately died. *Id.* Mr. Morales was later commanded to stand security on the deck, which he did for the next three days. *Id.*

As a result of the blast, Mr. Morales suffered whiplash in his neck. Ex. 93 at 26:8-27:4. Three weeks after the incident he was diagnosed with post-traumatic stress disorder, and continues be treated for this condition to this day. Ex. 93 at 28:6-29:18, 33:5-8. Mr. Morales' symptoms include irritability, nervousness and anxiety, and flashbacks. Ex. 93 at 36:8-39:5. His condition caused Mr. Morales to be discharged from the Navy in 2002. Ex. 93 at 10:19-22, 11:18-24.

Dr. Rene Hernandez-Cardenache provided his expert opinion that Mr. Morales's symptoms are consistent with post-traumatic stress disorder. Ex. 106 at 33:14-36:13.

Gina Morris

Gina Morris was born on October 15, 1980. Ex. 88 at 3:22-25. She enlisted in the Navy in 1998. Ex. 88 at 4:13-18. She intended to remain in the Navy for her career. Ex. 88 at 4:24-5:1. The Cole was her first assignment. Ex. 88 at 5:15-17.

At the time of the attack, Ms. Morris was on the inside of the ship moving towards the oil lab. Ex. 88 at 7:22-8:2. Immediately upon hearing the explosion, she went toward the oil lab to help her shipmates who had been injured in the blast. Ex. 88 at 7:22-10:9. For over five hours, Ms. Morris assisted in the medical treatment of sailors injured in the blast. *Id.* Ms. Morris then left the ship to escort injured sailors to a hospital in Yemen. *Id.*

Although she did not sustain any physical injuries, Ms. Morris has suffered severe emotional distress as a direct result of the attack. Ex. 88 at 10:10-19:22.

Upon going to the aid of her shipmates, Ms. Morris witnessed the horrific aftermath of the bombing. Ex. 88 at 8:24-10:9. Ms. Morris left the Navy, in August 2001, as a direct result of the attack. Ex. 88 at 23:1-11. She is currently undergoing treatment for her ongoing symptoms including anger, sleep issues, high anxiety, flashbacks and guilt. Ex. 88 at 10:10-19:22.

Dr. Hernandez-Cardenache testified that Ms. Morris' symptoms are consistent with post-traumatic stress disorder. Ex. 106 at 65:5-67:24.

Rubin Smith

Rubin Smith was born on July 26, 1979, in Albemarle, North Carolina. Deposition of Tracey Smith, ("D.E. 36"), Supplemental Proposed Findings of Fact ("Supp. Ex. 1") at 6:21-7:3. In 1997, Mr. Smith enlisted in the Navy. D.E. 36, Supp. Ex. 1 at 7:16-18. Mr. Smith loved his experience in the Navy and only left the Navy because of the trauma he experienced in the bombing of the U.S.S. Cole. Supp. Ex.1 at 14:2-22.

In October 2000, Mr. Smith was serving onboard the U.S.S. Cole as an operations specialist. D.E. 36, Supp. Ex. 1 at 8:1-13. At the time of the bombing, Mr. Smith was assigned to work in the ship's galley, which was near the epicenter of the blast. D.E. 36, Supp. Ex. 1 at 10:1-16. However, a shipmate, who was a close friend, volunteered to take his shift. *Id.* Mr. Smith's friend was in the galley as Mr. Smith's replacement at the time of the explosion and was killed. *Id.* Mr. Smith was in his quarters at the time and was thrown from his bunk to the deck by the force of the blast. The fall caused him to dislocate his ankle and suffer a torn tendon and nerve damage in his lower leg. D.E. 36, Supp. Ex. 1 at 11:20-25. As a

result of his injuries, Mr. Smith was evacuated from the ship to a military treatment facility. D.E. 36, Supp. Ex. 1 at 11:3-8. Mr. Smith suffered scarring as a result of his injuries and received treatment for ongoing pain up until the time of his death. D.E. 36, Supp. Ex. 1 at 11:9-10 and 22; 13:19-23.

As a result of the blast, Mr. Smith suffered severe emotional distress, which caused him to develop post-traumatic stress disorder. D.E. 36, Supp. Ex. 1 at 12:1-13. For the rest of his life, Mr. Smith was plagued by feelings of guilt over the death of the shipmate who had volunteered to take his shift in the galley and other friends who were also lost onboard. D.E. 36, Supp. Ex. 1 at 10:10-16. His symptoms, which included depression and anger, resulted in problems with maintaining personal relationships. D.E. 36, Supp. Ex. 1 at 14:9-15; 16:10-18. In 2003, Mr. Smith, who believed that he was no longer emotionally capable of serving, was discharged from the Navy. D.E. 36, Supp. Ex. 1 at 14:9-15; 7:19-21.

Mr. Smith was diagnosed with post-traumatic stress disorder and was receiving psychological treatment at the time of his death. D.E. 36, Supp. Ex. 1 at 14:9-15; 16:10-18. As a result of his physical and mental injuries, Mr. Smith was assigned a 50% disability rating by the Department of Veterans Affairs. D.E. 36, Supplemental Ex. 2 at 2.

Martin Songer, Jr.

Martin Songer was born on August 3, 1970. Ex. 102 at 4:24-5:4. On June 11, 1991, Mr. Songer enlisted in the Navy. Ex. 102 at 6:19-22. In 1998, Mr. Songer was assigned to the Cole as a Second Class Boatswain Mate. Ex. 102 at 10:7-24. At the time of

the bombing, Mr. Songer was in the boatswain workshop in the aft part of the ship on the port side, approximately 150 feet away from the area of direct impact. Ex. 102 at 17:8-23. The blast threw Mr. Songer against a bulkhead. Falling equipment bruised and lacerated him. Ex. 102 at 19:11-19. Mr. Songer witnessed many dead and severely injured shipmates. Ex. 102 at 23:16-24:3, 25:20-27:9.

These events impacted Mr. Songer emotionally. Ex. 102 at 23:16-24:3, 25:20-27:9. As a direct result of the bombing, he now suffers from anxiety and temper control issues. Ex. 102 at 34:7-12. A few months after the terrorist attack, Mr. Songer decided to leave the Navy. Ex. 102 at 34:20-35:5.

Dr. Hernandez-Cardenache further provided his expert opinion that Mr. Songer's symptoms are consistent with moderate to severe emotional distress. Ex. 106 at 71:10-73:22.

Jeremy Stewart

Jeremy Stewart was born on March 5, 1981. Ex. 95 at 5:7-10. He enlisted in the Navy on February 9, 2000. Ex. 95 at 7:21-23. It was Mr. Stewart's intention to remain in the Navy for the full duration of his career. Ex. 95 at 5:25-6:4. Two weeks after he completed basic training, Mr. Stewart was assigned to the Cole as a Hull Maintenance Technician Fireman. Ex. 95 at 7:4-20.

When the bomb exploded, Mr. Stewart was thrown to the ground and suffered a concussion, losing consciousness for five to fifteen minutes. Ex. 95 at 9:12-10:18. He was removed from the debris by other sailors, taken to the flight deck on the top of the ship,

and evacuated to a hospital in Yemen. Ex. 95 at 10:25-11:2. He again lost consciousness and did not come to until approximately one week later, after having been transported to Germany. Ex. 95 at 11:3-7.

As a result of the blast, Mr. Stewart suffered multiple fractures and shattered bones in his arms and legs, a gastric rupture, internal bleeding, and shrapnel wounds. Ex. 95 at 10:19-24. His injuries caused permanent scarring on his forearms, knees, legs, and stomach. Ex. 95 at 11:8-14. He is no longer able to run and has lost range of motion in his right shoulder, and endures constant pain on a daily basis. Ex. 95 at 11:15-20, 13:5-11. As a result of the attack, Mr. Stewart also exhibits a variety of emotional symptoms, including sadness, flashbacks, nightmares, irritability, and high anxiety. Ex. 95 at 15:13-16:12, 17:21-23:8. In December 2003, the Navy discharged Mr. Stewart was discharged due to his injuries. Ex. 95 at 13:14-14:4. The Department of Veterans Affairs assigned Mr. Stewart a 60% disability rating. Ex. 95 at 11:21-24.

According to Dr. Hernandez-Cardenache, Mr. Stewart's symptoms are consistent with post-traumatic stress disorder and a traumatic brain injury. Ex. 106 at 39:7-41:25.

Kesha Stidham

Kesha Stidham was born on June 12, 1981. Ex. 100 at 4:2-5. She enlisted in the Navy in July 1999, Ex. 100 at 4:18-21, and intended to remain in the Navy for her career. Ex. 100 at 6:22-24. Ms. Stidham was assigned to the Cole on October 30, 1999. Ex. 100 at 5:20-22.

The center of the explosion was approximately 50 or 60 feet away from her location. Ex. 100 at 8:23-9:5. Several sailors standing within only a few feet of her were killed by the blast. Id. The explosion caused Ms. Stidham to be thrown back ten feet through the air. Ex. 100 at 9:6-10:3. She suffered large thigh and leg bruises, fractured ribs, burns to her neck, and deep lacerations to her cheek, jawline, chin, and right ear. *Id.* She was initially treated for her injuries on the vessel. Ex. 100 at 11:24-12:19. She saw other sailors injured and lying on the deck, some covered in soot, and others screaming in pain. *Id.*

After being transported off the Cole, Ms. Stidham was taken to a hospital in Yemen. Ex. 100 at 15:8-18. Ms. Stidham received 15 stitches in her face without anesthesia. Ex. 100 at 15:19-16:24. She described the pain of the stitching as tremendous. Ex. 100 at 16:4-10. Ms. Stidham had to undergo re-stitching of the wounds on her face in Germany. Ex. 100 at 17:12-15, 18:6-19:1.

Upon returning to the U.S., Ms. Stidham was placed on leave for 30 days, then returned to service on the U.S.S. Whitney. Ex. 100 at 23:9-12, 25:23-26:5. While onboard, she suffered an anxiety attack. Ex. 100 at 26:17-27:23. She was ultimately removed from the ship, placed on limited duty and discharged from the Navy. Ex. 100 at 31:6-12, 32:24-33:24. The Department of Veterans Affairs has given her a 40% disability rating due to her injuries. Ex. 100 at 54:18-22.

Ms. Stidham received psychological treatment for her emotional distress caused by the attack and was diagnosed with post-traumatic stress disorder. Ex.

100 at 28:4-22. Her symptoms, such as anger and anxiety, have resulted in problems with maintaining personal relationships and employment. Ex. 100 at 33:20-35:1, 37:5-38:2. Ms. Stidham still experiences panic attacks on a daily basis. Ex. 100 at 42:23-43:9.

Dr. Rene Hernandez-Cardenache provided his expert opinion that Stidham's symptoms are consistent with chronic post-traumatic stress disorder and panic disorder as a result of the attack. Ex. 106 at 28:2-33:13.

Aaron Toney

Aaron Toney was born on March 21, 1979 and enlisted in the Navy on December 23, 1997. Ex. 105 at 7:8-10. It was Mr. Toney's intention to remain in the Navy as his career. Ex. 105 at 7:17-22. In April 1998, Mr. Toney was assigned to the Cole as a fireman recruit. Ex. 105 at 9:1-13.

At the time of the bombing, Mr. Toney had just been relieved from his post in the engine room when he heard a loud explosion. Ex. 105 at 13:2-10. Mr. Toney immediately changed into his firefighting ensemble. Ex. 105 at 13:11-14:15. As he moved around the ship, he witnessed severely injured and dead sailors. *Id.* For 72 hours, Mr. Toney was involved in the medical care of his fellow shipmates. Ex. 105 at 17:22-20:8. Mr. Toney also assisted in repairing the damage to the ship for three weeks after the incident, and was among the last of the crewmembers to leave the vessel. Ex. 105 at 20:20-21:9.

Although Mr. Toney was not physically injured in the bombing, he has been diagnosed with post-traumatic stress disorder. Ex. 105 at 23:18-24:23. His

symptoms include difficulty sleeping, nightmares, memory problems, anxiety, and feelings of emptiness and distrust. Ex. 105 at 30:4-22, 36:16-37:21, 40:2-41:21, 44:11-48:17, 49:21-58:25. These symptoms ultimately caused him to leave the Navy. Ex. 105 at 28:18-29:14. He has been assigned a 30% disability rating by the Department of Veterans Affairs. Ex. 105 at 61:19-62:12.

Eric Williams

Eric Williams was born on November 12, 1980. Ex. 98 at 4:13-15. On June 16, 1999, he enlisted in the Navy. Ex. 98 at 5:3-6. It was Mr. Williams' intention to remain in the Navy as his career. Ex. 98 at 7:14-22. In 2000, Mr. Williams was assigned to the Cole as a Tomahawk technician. Ex. 98 at 8:13-9:13. His duties included maintenance and operation of the Tomahawk missile system. *Id.*

At the time of the bombing, Mr. Williams was eating in the mess hall, in the center of the ship. Ex. 98 at 9:25-11:13. The explosion occurred directly adjacent to his location. *Id.* Shrapnel from the explosion lacerated the top of his head, which caused him to suffer a concussion and drift in and out of consciousness. *Id.* After the explosion, he witnessed sailors die from their injuries and others who had been severely injured. Ex. 98 at 18:3-23. Mr. Williams was able to move to the top of the ship, and assisted in the treatment and evacuation of other injured sailors until he again fell unconscious. Ex. 98 at 21:7-22:6. Mr. Williams was then removed to a hospital in Yemen where he received stitches for the wound to his head. Ex. 98 at 23:3-12. In the U.S., he was diagnosed with a severe concussion. Ex. 98 at 29:20-

24, 33:4-9. To this day, Mr. Williams has trouble remembering events from his childhood. Ex. 98 at 33:10-23. The bombing continues to have a profound effect on Mr. Williams. Mr. Williams has been diagnosed with severe post-traumatic stress disorder and has experienced nightmares, extreme anger, and issues maintaining relationships, symptoms which he did not experience prior to the bombing. Ex. 98 at 69:13-75:21. For several years, he struggled with alcohol abuse. Ex. 98 at 35:13-36:13, 40:15-44:4, 46:2-48:2, 50:1-51:16, 54:13-56:19, 67:1-24.

Dr. Hernandez-Cardenache provided expert opinion that Mr. Williams' symptoms are consistent with chronic post-traumatic stress disorder and anxiety disorder. Ex. 106 at 42:5-50:7.

Carl Wingate

Carl Wingate was born on April 15, 1979. He enlisted in the Navy in August 31, 1998, Ex. 101 at 7:7-9, 8:20-24, intending to stay in the Navy for the remainder of his career. Ex. 101 at 7:10-17.

At the time of the bombing, Mr. Wingate was in his rack. Ex. 101 at 10:16-23. The impact of the blast caused him to be thrown from his rack and land on his head and shoulder. *Id.* Shortly thereafter, he made his way to the top of the ship and began assisting in the medical treatment of sailors injured in the blast and the transport of injured sailors from the ship to mainland. Ex. 101 at 10:24-12:13. Mr. Wingate provided medical attention to eleven injured sailors, two of which died. *Id.* One of the sailors who died was his bunkmate. *Id.*

As a result of the bombing, Mr. Wingate suffered impingement of both shoulders, herniated discs in his back, hearing loss, memory loss, and post-traumatic stress disorder. Ex. 101 at 13:8-21. Since the bombing, the physical effects of Mr. Wingate's injuries have become progressively more severe. Ex. 101 at 14:1-16:16. He continues to experience significant pain in his shoulders, neck, and back, and his range of motion is limited. *Id.* Post-traumatic stress disorder symptoms include irritability, anxiety, flashbacks, and nightmares. Ex. 101 at 30:11-33:1, 33:19-37:6. The emotional damage from the bombing has caused his personal relationships to suffer and led to a divorce from his wife. Ex. 101 at 21:7-22:3. In 2007, Mr. Wingate was discharged from the Navy as a result of the injuries he sustained from the bombing. Ex. 101 at 19:16-25, 20:21-21:6. The Department of Veterans Affairs assigned him a 60% disability rating. Ex. 101 at 19:2-5.

According to Dr. Hernandez-Cardenache, Mr. Wingate's symptoms are consistent with post-traumatic stress disorder. Ex. 106 at 50:8-55:5.

2. Plaintiffs Who are Spouses of Plaintiffs on the Cole During the Attack

Spouses of the injured sailors allege IIED and injury in the form of mental anguish and loss of consortium. They seek punitive and compensatory damages, including loss of solatium. Their claims include the following individualized injuries.

Andy Lopez

Andy Lopez is the spouse of Margaret Lopez, Ex. 97 at 5:2-6, and a former Navy master chief. Ex. 97 at

5:7-11. He married Margaret Lopez on November 8, 1996. Ex. 97 at 6:19-20. Mr. and Mrs. Lopez have two children together. Ex. 97 at 7:9-14.

On the day of the bombing, Mr. Lopez learned of the attack on the Cole from the morning news. Ex. 97 at 8:6-15. At noon that day, the Navy officially informed him of the incident and asked him to proceed to a local naval base for further information. Ex. 97 at 8:16-18. Mr. Lopez did not learn that his wife survived the blast until the next day when he spoke with her on the telephone. Ex. 97 at 9:3-19. Mr. Lopez immediately flew to meet her in Germany, where she was being treated under the care of a burn specialist. Ex. 97 at 9:23-10:4. When he arrived, Mrs. Lopez was in a medically-induced coma. He stayed there with her until her return to the United States. Ex. 97 at 10:13-11:8, 12:4-21.

The bombing and resultant injuries to his wife have affected Mr. Lopez psychologically. Ex. 97 at 17:14-18:22. Indeed, he has been diagnosed with post-traumatic stress disorder and has entered into counseling. Ex. 97 at 18:23-19:19. Dr. Hernandez-Cardenache, testifies that Mr. Lopez's symptoms are consistent with chronic post-traumatic stress disorder. Ex. 106 at 55:15-59:5.

Lisa Lorensen

Lisa Lorensen is the spouse of Keith Lorensen, a sailor who was injured during the bombing of the Cole. Ex. 91 at 6:12-13. She was married to Mr. Lorensen on October 23, 1993. Ex. 91 at 6:14-15. The Lorensens have two children together. Ex. 91 at 6:16-20. Although Mrs. Lorensen was not enlisted in the Navy, she served as the Ombudsman of the Cole,

serving as a liaison between the families and the commanding officer of a ship. Ex. 91 at 6:21-23.

On the day of the bombing, Mrs. Lorensen received a phone call advising her that something significant had occurred on the ship. Ex. 91 at 11:3-12:11. However, no specific details were provided. *Id.* She was advised to proceed to a naval facility in order to obtain more information. *Id.* While on her way to the location, Ms. Lorensen received a phone call from her mother advising her that the Cole had been attacked. *Id.* While waiting at the facility, Ms. Lorensen witnessed the Naval officers present at the location advising sailors' family members of the death or injuries suffered by their relatives. *Id.* After approximately twelve hours, she was advised that Keith Lorensen was alive, but injured. Ex. 91 at 13:19-14:15:5.

Approximately 24 hours later, Mrs. Lorensen had the opportunity to speak with her husband. Ex. 91 at 15:6-21. Mr. Lorensen told her that he did not know whether he would be able to walk again, but would be coming home. Ex. 91 at 15:19-16:4. Mrs. Lorensen then flew to Germany to see her husband. Ex. 91 at 16:5-14. When they returned to Virginia, Mrs. Lorensen had tremendous feelings of guilt and sadness as a result of her husband's injuries and the death and injury of the other sailors on the vessel. *Id.* The emotional impact of the events caused a strain in their marriage. Ex. 91 at 20:9-21:15.

Dr. Rene Hernandez-Cardenache, an expert clinical psychologist, further provided his expert opinion that Mrs. Lorensen suffered from acute emotional distress

as a direct result of the bombing. Ex. 106 at 79:22-82:3.

Shelly Songer

Shelly Songer is the spouse of plaintiff Martin Songer, who was injured during the bombing of the Cole. Ex. 103 at 5:7-9. Mrs. Songer learned of the bombing through a telephone call from her mother-in-law. Ex. 103 at 8:23-9:2. Twelve hours later, she learned that her husband survived the bombing. Ex. 103 at 9:6-15. Upon returning home, the continuing emotional effect of the terrorist attack on Mr. Songer has adversely affected their marriage. Ex. 103 at 13:4-15:16.

Dr. Hernandez-Cardenache testifies that Ms. Songer's symptoms are consistent with severe emotional distress. Ex. 106 at 67:25-71:9.

IV. CONCLUSIONS OF LAW

A. Jurisdiction is Proper and Sudan Is Not Immune from Suit

The Court finds that the plaintiffs have met FSIA's multi-factor test for jurisdiction and waiver of immunity discussed above, as set forth above. *See* 28 U.S.C. § 1605(A)(a)(1); *Owens*, 2011 WL 5966900, at *17. First, the sole remedy plaintiffs seeks is "money damages." 28 U.S.C. § 1605(A)(a)(1). Second, Sudan is a foreign state. *Id.* Third, the evidence presented to the Court establishes that plaintiffs suffered physical injury form the attack. *Id.* Fourth, the evidence presented shows that Sudan aided Al Qaeda in executing the bombing, and this harm was a direct result of Sudan's of provision of material support. *Id.* On the evidence presented, there is "some reasonable

connection between the act or omission of the defendant and the damages which the plaintiff has suffered." *Valore*, 700 F. Supp. 2d at 66 (internal quotations omitted).

As well, FSIA section 1605A(a)(2) requirements have been met. Sudan has been designated a state sponsor of terrorism since 1993, and claimants are all U.S. nationals, both statutory requirements. 28 U.S.C. § 1605A(a)(2).[11] Thus, for purposes of this action, FSIA does not protect Sudan with immunity from suit, and this Court has jurisdiction over plaintiffs' claims.

B. Plaintiffs Have Established a Cause of Action and Theory of Liability

The same facts as to material support and causation support plaintiffs' cause of action and theory of liability. Plaintiffs have shown that Sudan's support of Al Qaeda has a "reasonable connection" to the damages they suffered. *Id.* As described in detail below, they also demonstrate the other elements of the torts they allege. *See Murphy*, 740 F. Supp. 2d at 72. In keeping with the prevailing approach in this Circuit, *see id.*; *Bettis*, 315 F.3d at 333, the Court apply the generally accepted principles of tort law. The Court addresses first the claims of the sailors

[11] As for the § 1605A(a)(2)(A)(iii) arbitration requirement, plaintiffs were not required to extend an offer to arbitrate because the FSIA only requires as much when the alleged terrorist act occurred in the foreign state against which the claim is brought. *Id.* Even though the attack did not take place in Sudan, the plaintiffs sent Sudan an offer, to which it did not respond. *See* Notice of Amended Offer to Arbitrate, Oct. 11, 2010 [Dkt. # 6].

who were on the Cole at the time of the attack and then the claims of their spouses who were not present during the attack.

1. Harm to Plaintiffs Injured on the Cole

a. Assault

Sudan is liable to plaintiffs for the assault they allege if, when it provided material support to Al Qaeda, (1) it acted "intending to cause a harmful contact with . . . , or an imminent apprehension of such a contact" by, those attacked and (2) those attacked were "thereby put in such imminent apprehension." RESTATEMENT (SECOND) OF TORTS § 21(1); *accord Murphy*, 740 F. Supp. 2d at 73 (citing *Valore,* 700 F. Supp. 2d at 76). Here, the record shows that Sudan acted with intent to cause harmful contact and the immediate apprehension thereof: acts of terrorism are, by their very nature, intended to harm and to terrify by instilling fear of further harm. Accepting these plaintiffs' uncontroverted assertions that they did, in fact, fear such harm because of the attack, the Court concludes that Sudan is liable for assault.

b. Battery

Likewise, Sudan is liable for battery. It acted "intending to cause a harmful or offensive contact with . . . , or an imminent apprehension of such a contact" by, those attacked and (2) "a harmful contact with" those attacked "directly or indirectly result[ed]." RESTATEMENT (SECOND) OF TORTS § 13; *accord Murphy*, 740 F. Supp. 2d at 74 (citing *Valore*, 700 F. Supp. 2d at 76). Harmful contact is that which results in "any physical impairment of the condition of another's body, or physical pain or illness."

RESTATEMENT (SECOND) OF TORTS § 15. Accepting plaintiffs' uncontroverted assertions that they did, in fact, suffer physical injury from the attack on the Cole, the Court concludes Sudan is liable to certain plaintiffs for battery.

c. Intentional Infliction of Emotional Distress

Sudan is liable for IIED if it (1) "by extreme and outrageous conduct" (2) "intentionally or recklessly" (3) "causes severe emotional distress to another." RESTATEMENT (SECOND) OF TORTS § 46(1). Further, "if bodily harm to the other results from it, for such bodily harm." *Id.* Here, plaintiff-sailors have proven each element. In the FSIA-terrorism context, courts have held that "[a]cts of terrorism are by their very definition extreme and outrageous and intended to cause the highest degree of emotional distress." *Belkin v. Islamic Republic of Iran,* 667 F. Supp. 2d 8, 22 (D.D.C. 2009) (citing *Stethem v. Islamic Republic of Iran,* 201 F. Supp. 2d 78, 89 (D.D.C. 2002)). Based on the evidence presented, the Court concludes that Sudan's support of the Cole bombing was both intentional and reckless and caused plaintiffs emotional distress. It is therefore liable to plaintiffs for IIED.

2. Harm to Spouses of Sailors

Spouses of injured sailors have brought IIED claims, alleging that extreme and outrageous conduct directed at their spouses caused these plaintiffs severe emotional distress. According to the second Restatement of Torts, Sudan is liable in these cases under such claims if it (1) engaged in extreme and outrageous conduct (2) which was directed at persons other than plaintiffs (3) which intentionally or

recklessly caused severe emotional distress, but not necessarily bodily harm, (4) to such persons' immediate family members — the immediate-family requirement — who were present at the time such conduct occurred-the presence requirement. *Valore*, 700 F. Supp. 2d at 78 (citing RESTATEMENT (SECOND) OF TORTS § 46(1)-(2)(a)). As the record shows, plaintiff-spouses have proven the first three elements. Although the fourth element appears to prohibit recovery for emotional injury by those not present at the time such conduct occurs, the drafters of the Restatement include a caveat that this Court has interpreted liberally: "'[i]f the defendants' conduct is sufficiently outrageous and intended to inflict severe emotional harm upon a person which is not present, no essential reason of logic or policy prevents liability.'" *Heiser II*, 659 F. Supp. 2d at 27 (quoting DAN B. DOBBS, THE LAW OF TORTS § 307, at 834 (2000)). As the Court noted in *Heisler II*, "[t]errorism, unique among the types of tortious activities in both its extreme methods and aims, passes this test easily." *Id.*; *accord Brewer*, 664 F. Supp. 2d at 47. Therefore, plaintiff-spouses need not have been present at the time of a terrorist attack to recover for severe emotional injuries suffered as a result. Here, accepting the uncontroverted evidence that the plaintiffs named above suffered severe emotional and physical injury as a result of the injuries suffered by their spouses, the Court concludes that Sudan is liable to them for IIED.[12]

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[12] Plaintiffs' also alleged "loss of solatium." Such a claim under the FSIA-terrorism exception is indistinguishable from an IIED claim. *Valore*, 700 F. Supp. 2d at 85 (citing *Heiser II,* 659 F. Supp. 2d at 27 n. 4); *Beer v. Islamic Republic of Iran*, 574 F.

D. Damages

Plaintiffs have stated claims and seek recovery for assault, battery, IIED, and loss of solatium. Section 1605A(c)(4) of the FSIA provides that damages available under the FSIA-created cause of action may "include economic damages, solatium, pain and suffering, and punitive damages." Accordingly, those who survived the Cole attack can recover damages for their pain and suffering, as well as any other economic losses caused by their injuries; family members can recover solatium damages for their emotional injury; and all plaintiffs can recover punitive damages.

"To obtain damages against defendants in an FSIA action, the plaintiff must prove that the consequences of the defendants' conduct were 'reasonably certain (i.e., more likely than not) to occur, and must prove the amount of the damages by a reasonable estimate consistent with this [Circuit's] application of the American rule on damages.'" *Valore*, 700 F. Supp. 2d at 84 (citing, *Salazar*, 370 F. Supp. 2d at 115-16); *accord Hill v. Republic of Iraq*, 328 F.3d 680, 681 (D.C. Cir 2003). As discussed above, plaintiffs have demonstrated that Sudan's provision of material support to Al Qaeda was reasonably certain to — and indeed intended to — cause injury to plaintiffs. The Court now estimates the differing amounts of damages sought under the FSIA-created cause of action, based in part on the expert report that

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Supp. 2d. 1, 13 (D.D.C. 2008). Therefore the Court only considers the IIED claim and awards appropriate damages (also known at "solatium damages") below.

plaintiffs submitted as well the framework established by this Court in similar FSIA terrorism cases.

1. Economic Damages

The plaintiffs presented evidence of their lost earning capacity through the testimony and expert reports of Dana Kaufman, JD, CPA, CFE, a forensic accounting expert accepted by the Court. *See* Ex. 107. Mr. Kaufman's reports provide calculations for the lost earnings of each of the plaintiff-sailors injured in the terrorist attack on the Cole. *Id.* Mr. Kaufman's methodology assumed that each sailor would complete a twenty-year career in the Navy and then retire. Ex. 107 at 29:25-30:22. He did not add any additional lost wages that may have occurred after retirement from the Navy. Ex. 107 at 19:11-20:13. After calculating what each sailor would have earned in the Navy, he subtracted their prospective retirement benefits to reach his conclusion. *Id.* The Court finds that this conservative approach is acceptable. Based upon his calculations, two of the sailors injured in the bombing, Keith Lorensen and John Buckley III, did not suffer any lost earning capacity. Ex. 107 at 26:21-27:11, 25:5-16. Having reviewed Dr. Kaufmans' testimony and reports, the Court finds that the plaintiffs are entitled to receive compensatory damages for the total economic damages. The precise amounts are set forth in the judgment accompanying this opinion.

2. Sailor-Plaintiff's Pain and Suffering

In addition to economic damages, plaintiffs may be entitled to compensation for the pain and suffering they experienced as a direct result of the Cole

bombing. "Damages for surviving victims [of a terrorist attack] are determined based upon an assessment of such factors as 'the severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life.'" *Valore*, 700 F. Supp. 2d at 83-84 (citing *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 51 (D.D.C. 2007)). "'In awarding pain and suffering damages, the Court must take pains to ensure that individuals with similar injuries receive similar awards.'" *Id.* "Thus in *Peterson,* the Court granted a baseline award of $5 million to individuals suffering such physical injuries as compound fractures, severe flesh wounds, and wounds and scars from shrapnel, as well as 'lasting and severe psychological pain.'" *Id.* "The Court was willing to depart upward from this baseline to $7.5-$12 million in more severe instances of physical and psychological pain, such as where victims suffered relatively more numerous and severe injuries, were rendered quadriplegic, partially lost vision and hearing, or were mistaken for dead, as was one soldier who 'was placed in a body bag [and] buried alive in a morgue for four days until someone heard him moaning in pain.'" *Id; see also Estate of Bland v. Islamic Republic of Iran*, 2011 WL 6396527 (D.D.C. Dec. 21, 2011). Conversely, the Court will depart downward from the $5 million baseline, by an amount of $2-3 million, where victims suffered "minor shrapnel injuries or minor injury from small-arms fire," *Valore*, 700 F. Supp. 2d at 84. As well, when a serviceman suffers severe emotional injury without physical injury, this Court has typically

awarded the victim $1.5 million. *See Valore*, 700 F. Supp. 2d at 85; *Bland*, 2011 WL 6396527 at *3. This Court finds that the baseline set forth in *Valore* is appropriate in this case and applies the upward and downward departures below.

Based upon the severity of certain injuries described above, the Court awards the baseline amount of $5 million to the following plaintiffs for their pain and suffering: Rick Harrison, Carl Wingate, Keith Lorenson, Robert McTureous, David Morales, and Rubin Smith. Following the rule on upward departure, the Court awards the following plaintiffs an upward departure to $7.5 million in damages: John Buckley, Margaret Lopez, and Jeremy Stewart. Finally, the Court departs downward for plaintiffs whose physical injuries were not as severe. Accordingly, Eric Williams is awarded $3 million, and Edward Love and Martin Songer, whose physical injuries were relatively minor, are each awarded $2 million. *See Peterson*, 515 F. Supp. 2d at 54 (departing downward to $2 million where victim "was minimally injured" but "suffered lasting and severe psychological problems.").

Although the remaining plaintiffs, Martin Songer and Gina Morris, did not suffer direct physical injuries as a result of the bombing, they have suffered psychological harm. A downward departure from the baseline of $5 million is also appropriate for these plaintiffs. In accordance with this Court's awards in other cases where plaintiffs on the scene of the attack did not suffer physical harm, Ms. Morris and Mr. Toney are awarded $1.5 million each.

3. Intentional Infliction of Emotional Distress/ Solatium to Spouses

In similar actions, this Court held that spouses of surviving service members may be entitled to $4 million in solatium damages (or harm from IIED). *Valore*, 700 F. Supp. 2d at 85 (citing *Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229, 269 (D.D.C. 2006) and referring to the amounts it establishes for solatium damages as a "framework"); *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 52; *cf. Acosta v. Islamic Republic of Iran*, 574 F. Supp. 2d 15, 29 (D.D.C. 2008) ("In determining the appropriate award of damages for solatium, the Court may look to prior decisions awarding damages for intentional infliction of emotional distress as well as to decisions regarding solatium."). This amount is "not set in stone," however, *see Valore*, 700 F. Supp. 2d at 86, and the Court may adjust it as it sees fit. In *Bland,* for example, this Court held that it is inappropriate for the solatium awards of family members to exceed the pain and suffering awards of the surviving servicemen. *Bland*, 2011 WL 6396527 at *5 ("[T]he Court does not think it appropriate for the . . . spouse to recover more than the victim"). In light of these holdings, the Court applies the baseline amount to the claims of Lisa Lorenson and Andy Lopez (whose spouses are awarded $5 and 7.5 million, respecitvely, for their pain and suffering) and awards them $4 million for the harm they suffered upon learning of the Cole attack and the injuries of their spouses and for the psychological harm they continue to experience as a result of the incident. The Court further finds that downward adjustment is warranted for the solatium damages of Shelly Songer

because her spouse, Martin Songer, was awarded $2 million for his pain and suffering. Following *Bland*, the Court awards Mrs. Songer $1 million.

4. Punitive Damages

Having established the compensatory damage awards, the Court now determines whether, and to what extent, it should levy punitive damages against Sudan. Under 28 U.S.C. § 1605A, foreign state sponsors of terrorism may be liable for such damages. *See* 28 U.S.C. § 1605A(c). According to the Second Restatement of Torts, punitive damages are designed to both "punish [a defendant] for his outrageous conduct and to deter him and others like him from similar conduct in the future." RESTATEMENT (SECOND) OF TORTS § 908(1) (1977). Further, they "may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." *Id.* Here, the Court finds Sudan's acts sufficiently outrageous to justify punitive damages. While Sudan's support of Al Qaeda does not rise to level of direct involvement in the attacks, it was nonetheless intentional, material and, as a result, reprehensible. *See Baker*, 775 F. Supp. 2d at 85 (finding that the character of defendant's actions in providing material support and sponsorship to terrorist organization merited award of punitive damages).

In determining the proper punitive award, courts typically consider four factors: "(1) the character of the defendants' act, (2) the nature and extent of harm to the plaintiffs that the defendants caused or intended to cause, (3) the need for deterrence, and (4) the wealth of the defendants." *Flatow*, 999 F. Supp.

at 32 (citing RESTATEMENT (SECOND) OF TORTS § 908(1)-(2) (1965)). Synthesizing these factors, courts in similar cases have generated two numbers that, together, determine the punitive damages award: (1) the multiplicand and (2) the multiplier (the factor by which the multiplicand should be multiplied to yield the desired deterrent effect). Depending on the evidence available, the multiplicand is either the magnitude of defendant's annual expenditures on terrorist activities, *see Valore*, 700 F. Supp. 2d at 87-88, or the amount of compensatory damages already awarded, *see Bland*, 2011 WL 6396527, at *6 (using compensatory damages as the multiplicand and 3.44 as the multiplier, based on a ratio set forth in earlier cases). Here, plaintiffs have not presented evidence relating to Sudan's actual expenditures on terrorist activities.[13] The Court will thus use the compensatory damages value as the multiplicand.

The multiplier has ranged between three and, in exceptional cases, five. *See Haim v. Islamic Republic of Iran*, 784 F. Supp. 2d 1, 13 (D.D.C. 2011); *Valore*, 700 F. Supp. 2d at 88-89. The Court finds no exceptional circumstances here. Contrary to plaintiffs' assertion, Sudan's brief and cursory participation in the *Rux* litigation does not suggest

[13] Citing various publicly availably courses, plaintiffs argue that Sudan benefitted from Bin Laden and Al Qaeda's capital and infrastructure investments, submitting figures on Sudan's gross domestic product, the growth thereof, and annual revenue from oil. After reviewing these figures, the Court concludes that these figures do not indicate what level of punitive damages that would that would punish or deter Sudan from providing future support to terrorist entities. The Court therefore does not consider them in its damages calculation.

that, at this point in time, its government is more amenable to a deterrent signal from this Court. Therefore, the Court awards plaintiffs three times the compensatory damages in punitive damages, to be distributed in proportion to each plaintiff's share of the compensatory award.

5. Prejudgment Interest

Plaintiffs also request pre-judgment interest. Whether to award such interest is a question that rests within this Court's discretion, subject to equitable considerations. *See Pugh v. Socialist People's Libyan Arab Jamahiriya*, 530 F. Supp. 2d 216, 263 (D.D.C. 2008). "Courts in this Circuit have awarded prejudgment interest in cases where plaintiffs were delayed in recovering compensation for their injuries — including, specifically, where such injuries were the result of targeted attacks perpetrated by foreign defendants." *Baker v. Socialist People's Libyan Arab Jamahirya*, 775 F. Supp. 2d 48, 86 (D.D.C. 2011). The Court finds no delay here. Plaintiffs filed their claim in October 2010. As well, Sudan, having never even appeared in this case, has not prolonged the litigation. Thus, the Court does not find any equitable grounds for awarding pre-judgment interest. Moreover, because the Court has applied the framework in *Heiser*, to its calculation of solatium damages (as explicitly proposed by plaintiffs), prejudgment interest is not appropriate for these awards. *See Oveissi v. Islamic Republic of Iran*, 768 F. Supp. 2d 16, 30 n.12 (D.D.C. 2011) (concluding that pre-judgment interest was not warranted for solatium damages because the values set by the *Heiser* scale "represent the appropriate

level of compensation, regardless of the timing of the attack.").

V. CONCLUSION

For the foregoing reasons, this Court finds Sudan liable for the injuries that plaintiffs suffered and awards damages accordingly. A separate Order and Judgment consistent with these findings shall issue this date.

/s/ ROYCE C. LAMBERTH
United States District Chief Judge

Dated: March 30, 2012

UNITED STATES DISTRICT
AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA

[Filed: 04/19/12]

Civil Action No.: 10-01689-RCL

RICK HARRISON, et al.,

Plaintiff(s)

vs.

REPUBLIC OF SUDAN,

Defendant(s)

AFFIDAVIT REQUESTING FOREIGN MAILING

I, the undersigned, counsel of record for plaintiff(s), hereby request that the Clerk mail a copy of the ~~summons and complaint~~ Notice of Default Judgment (and notice of suit, where applicable) to (list name(s) and address(es) of defendants):

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by: (check one)

- ☒ registered mail, return receipt requested
- ☐ DHL

pursuant to the provisions of: (check one)

- ☐ FRCP 4(f)(2)(C)(ii)
- ☒ 28 U.S.C. § 1608(a)(3)
- ☐ 28 U.S.C. § 1608(b)(3)(B)

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/s/ Nelson M. Jones III
(Signature)

Nelson M. Jones, III
D.C. BAR # 320266
440 Louisiana St., Suite 1575
Houston, Texas 77002
(Name and Address)

UNITED STATES DISTRICT
AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA

[Filed: 04/20/12]

Civil Action No.: 10cv1689-RCL

RICK HARRISON et al

Plaintiff(s)

vs.

REPUBLIC OF SUDAN

Defendant(s)

CERTIFICATE OF MAILING

I hereby certify under penalty of perjury, that on the 20th day of April, 2012, I mailed:

1. ☐ One copy of the default by registered mail, return receipt requested, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)(2)(C)(ii).

2. ☒ One copy of the default, together with a translation of each into the official language of the foreign state, by registered mail, return receipt requested, to the head of the ministry of foreign affairs, pursuant to the provisions of 28 U.S.C. § 1608(a)(3).

3. ☐ Two copies of the summons, complaint and notice of suit, together with a translation of each into the official language of the foreign state, by certified mail, return receipt requested, to the U.S. Department of State, Office of Policy Review and Interagency Liaison, Overseas Citizens Services, 2100 Pennsylvania Avenue, NW, Fourth Floor, Washington, DC 20520, ATTN: Director of Overseas Citizens Services, pursuant to the provisions of 28 U.S.C. § 1608(a)(4).

4. ☐ One copy of the summons and complaint, together with a translation of each into the official language of the foreign state, by registered mail, return receipt requested, to the agency or instrumentality of the foreign state, pursuant to 28 U.S.C. § 1608(b)(3)(B).

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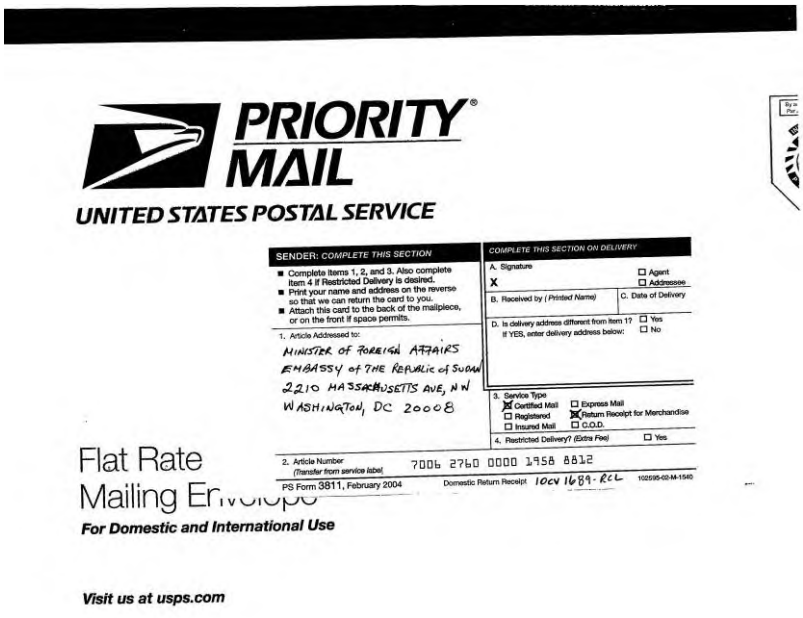
Deputy Clerk



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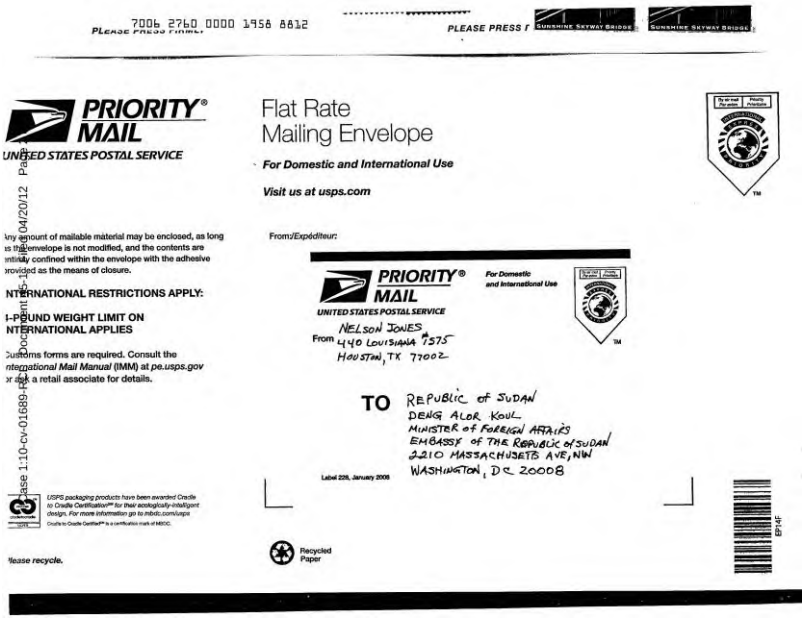

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Filed: 09/20/2013]

Case No. 13 Civ. 3127 (AT)

RICK HARRISON, JOHN BUCKLEY III, MARGARET LOPEZ, ANDY LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, MARTIN SONGER, JR., SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE, AND TRACEY SMITH, as Personal Representative of the Estate of Rubin Smith,

Plaintiffs/Judgment Creditors,

v.

THE REPUBLIC OF SUDAN,

Defendant/Judgment Debtor.

ORDER GRANTING MOTION FOR ENTRY OF ORDER FINDING SUFFICIENT TIME HAS PASSED TO SEEK ATTACHMENT AND EXECUTION AND AUTHORIZING ATTACHMENT OF DEFENDANTS/JUDGMENT-DEBTORS' ASSETS WITHIN THIS JURISDICTION PURSUANT TO 28 U.S.C. § 1610(c)

AND NOW, this 20th day of September 2013, upon Plaintiffs' Motion for Entry of Order Finding Sufficient Time has Passed to Seek Attachment and Execution and Authorizing Attachment of Defendants/Judgment-Debtors' Assets Within This Jurisdiction Pursuant to 28 U.S.C. § 1610(c) (the "Motion"), the Motion is GRANTED. The Court hereby concludes that, under 28 U.S.C. § 1610(c), all conditions precedent to the Plaintiffs' request to attach and execute against blocked assets of the Defendant/Judgment Debtor, Republic of Sudan, have been met, including providing proper notification of the default judgment to the Defendant/Judgment Debtor, pursuant to 28 U.S.C. § 1608(e), and that, for the purposes of attachment and execution, a reasonable period of time has elapsed following the entry of judgment and the giving of notice to the Defendant/Judgment Debtor. The Plaintiffs are hereby authorized to seek attachment of frozen assets located within this jurisdiction using post-judgment enforcement procedures.

BY THE COURT:

/s/ Analisa Torres
ANALISA TORRES
United States District Judge

Dated: September 20, 2013
New York, New York

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Filed: 12/12/2013]

Case No. 1:13-cv-03127 (AT)

RICK HARRISON, JOHN BUCKLEY III, MARGARET LOPEZ, ANDY LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARDS LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, MARTIN SONGER, JR., SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE, TRACEY SMITH, as Personal Representative of the Estate of Rubin Smith,

Plaintiffs,

vs.

THE REPUBLIC OF SUDAN,

Defendant,

vs.

MASHREQBANK PSC,

Respondent.

TURNOVER ORDER AGAINST MASHREQBANK

AND NOW, this 12th day of December, 2013, upon Plaintiffs' Petition for Turnover Order Against

Mashreqbank pursuant to 28 U.S.C. § 1610(g), CPLR § 5225(b) and Federal Rule of Civil Procedure 69(a), the Motion is GRANTED. The Court hereby finds and orders as follows:

1. Plaintiffs obtained a judgment in the District Court for the District of Columbia in the amount of $314,705,896, plus interest (the "Judgment"), and the entire principal amount of the Judgment remains unsatisfied.

2. Funds held at Mashreqbank are subject to execution and attachment under the Foreign Sovereign Immunities Act because the owners of the funds are agencies and instrumentalities of the Republic of Sudan.

3. [redacted], also known as [redacted], is an agency and instrumentality of the Sudanese government. The following account, totaling [redacted], plus accrued interest, is subject to execution to satisfy the Plaintiffs' outstanding judgment.

Respondent Bank	Account Owner	Description	Value
[redacted]	[redacted]	[redacted]	[redacted]

4. [redacted] is an agency and instrumentality of the Sudanese government. The following account, totaling [redacted] plus accrued interest, are subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Account Owner	Description	Value
[redacted]	[redacted]	[redacted]	[redacted]

5. [redacted] is an agency and instrumentality of the Sudanese government. The following account, totaling [redacted] plus accrued interest, are subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Account Owner	Description	Value
[redacted]	[redacted]	[redacted]	[redacted]

6. [redacted], also known as [redacted], is an agency and instrumentality of Sudan. The following account, totaling [redacted], plus accrued interest, is subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Account Owner	Description	Value
[redacted]	[redacted]	[redacted]	[redacted]

7. The Court hereby directs Mashreqbank to turn over the proceeds of the foregoing accounts, totaling [redacted] (the "Turnover Assets"), together with any accrued interest, to the Plaintiffs within ten (10) days from the date of this Order.

8. An OFAC license is not necessary to disburse these funds and no notice is necessary to the Sudanese agencies and instrumentalities. *See Heiser v. Bank of Tokyo Mitsubishi UFJ, New York Branch*, 919 F. Supp. 2d 411, 422 (S.D.N.Y. 2013); *Heiser v. Islamic Republic of Iran*, 807 F. Supp. 2d 9, 23 (D.D.C. 2011); *Weininger v. Castro*, 432 F. Supp. 2d 457 (S.D.N.Y. 2006).

9. Upon turnover by Mashreqbank of the Turnover Assets to the Plaintiffs, plus all accrued interest thereon to date, Mashreqbank shall be fully

discharged pursuant to CPLR §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure, as applicable, and released from any and all liability and obligations or other liabilities, including all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind, whether served on, or delivered to Mashreqbank, to the extent that they apply, purport to apply or attach to the Turnover Assets, to defendant Sudan, and to any agency and instrumentality of Sudan, or to any other party otherwise entitled to claim the Turnover Assets (in whole or in part), including without limitation, the plaintiffs in *Owens, et al. v. Republic of Sudan, et al.*, l:01-cv-02244-JDB (D.D.C.), and any other persons or entities, to the full extent of such amounts so held and deposited in compliance with this partial judgment. Mashreqbank shall provide a copy of this order to counsel for Owens within 5 days of the date of this order.

10. Upon payment and turnover by Mashreqbank of the Turnover Assets to the Plaintiffs, plus all accrued interest thereon to date, all other persons and entities shall be permanently restrained and enjoined from instituting or prosecuting any claim, or pursuing any action against Mashreqbank in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the funds turned over in compliance with paragraph 7 of this Order.

11. This Order enforces a duly registered District Court judgment from the District of Columbia, recognized by a New York Federal Court and given full faith and credit by this Court.

So ordered,

/s/ Analisa Torres
ANALISA TORRES
United States District Judge

Dated: December 12, 2013

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Filed: 12/13/2013]

Case No. 1:13-cv-03127 (AT)

RICK HARRISON, JOHN BUCKLEY III, MARGARET LOPEZ, ANDY LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARDS LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, MARTIN SONGER, JR., SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE, AND TRACY SMITH, as Personal Representative of the Estate of Rubin Smith,

Plaintiffs,

vs.

THE REPUBLIC OF SUDAN,

Defendant,

vs.

BNP PARIBAS,

Respondent.

AMENDED TURNOVER ORDER AGAINST BNP PARIBAS

REDACTED PURSUANT TO PROTECTIVE ORDER

AND NOW, this 13th day of December, 2013, upon Plaintiffs' Petition for Turnover Order Against BNP Paribas pursuant to 28 U.S.C. § 1610(g), CPLR § 5225(b) and Federal Rule of Civil Procedure 69(a), and Plaintiffs' Unopposed Motion for Order Amending Turnover Order Against BNP Paribas, the Motion is GRANTED. The Court hereby finds and orders as follows:

1. Plaintiffs obtained a judgment in the District Court for the District of Columbia in the amount of $314,705,896, plus interest (the "Judgment"), and the entire principal amount of the Judgment remains unsatisfied.

2. Funds held at BNP Paribas New York Branch are subject to execution and attachment under the Foreign Sovereign Immunities Act because the owners of the funds are agencies and instrumentalities of the Republic of Sudan.

3. [redacted], also known as [redacted], is an agency and instrumentality of the Sudanese government. The following accounts, totaling [redacted], plus accrued interest, are subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Account Beneficiary	Blocking Date	Value (as of June 30, 2012)
BNP Paribas	[redacted]	[redacted]	[redacted]
BNP Paribas	[redacted]	[redacted]	[redacted]
BNP Paribas	[redacted]	[redacted]	[redacted]
BNP Paribas	[redacted]	[redacted]	[redacted]
BNP Paribas	[redacted]	[redacted]	[redacted]

4. [redacted], Sudan is an agency and instrumentality of the Sudanese government. The following accounts, totaling [redacted] plus accrued interest, are subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Account Beneficiary	Blocking Date	Value (as of June 30, 2012)
BNP Paribas	[redacted]	[redacted]	[redacted]
BNP Paribas	[redacted]	[redacted]	[redacted]
BNP Paribas	[redacted]	[redacted]	[redacted]
BNP Paribas	[redacted]	[redacted]	[redacted]

5. [redacted] is an agency and instrumentality of the Sudanese government. The following accounts, totaling [redacted], plus accrued interest, are subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Account Beneficiary	Blocking Date	Value (as of June 30, 2012)
BNP Paribas	[redacted]	[redacted]	[redacted]
BNP Paribas	[redacted]	[redacted]	[redacted]

6. [redacted], formerly known as [redacted], is an agency and instrumentality of Sudan. The following account, totaling [redacted], plus accrued interest, is subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Account Beneficiary	Blocking Date	Value (as of June 30, 2012)
BNP Paribas	[redacted]	[redacted]	[redacted]

7. [redacted] is an agency and instrumentality of Sudan. The following account, totaling [redacted], plus accrued interest, is subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Account Beneficiary	Blocking Date	Value (as of June 30, 2012)
BNP Paribas	[redacted]	[redacted]	[redacted]

8. [redacted] is an agency and instrumentality of Sudan. The following accounts, totaling [redacted], plus accrued interest, are subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Account Beneficiary	Blocking Date	Value (as of June 30, 2012)
BNP Paribas	[redacted]	[redacted]	[redacted]
BNP Paribas	[redacted]	[redacted]	[redacted]
BNP Paribas	[redacted]	[redacted]	[redacted]

9. The Court hereby directs BNP Paribas to turn over the proceeds of the foregoing accounts, totaling [redacted] (the "Turnover Assets"), together with any accrued interest, to the Plaintiffs within ten (10) days from the date of this Order.

10. An OFAC license is not necessary to disburse these funds and no notice is necessary to the Sudanese agencies and instrumentalities. *See Heiser v. Bank of Tokyo Mitsubishi UFJ, New York Branch,* 919 F. Supp. 2d 411, 422 (S.D.N.Y. 2013); *Heiser v. Islamic Republic of Iran*, 807 F. Supp. 2d 9, 23

(D.D.C. 2011); *Weininger v. Castro*, 432 F. Supp. 2d 457 (S.D.N.Y. 2006).

11. Upon turnover by BNP Paribas of the Turnover Assets to the Plaintiffs, plus all accrued interest thereon to date, BNP Paribas shall be fully discharged pursuant to CPLR §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure, as applicable, and released from any and all liability and obligations or other liabilities, including all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind, whether served on, or delivered to BNP Paribas, to the extent that they apply, purport to apply or attach to the Turnover Assets, to defendant Sudan, and to any agency and instrumentality of Sudan, or to any other party otherwise entitled to claim the Turnover Assets (in whole or in part), including without limitation, the plaintiffs in *Owens, et al. v. Republic of Sudan, et al.*, l:01-cv-02244-JDB (D.D.C.), and any other persons or entities, to the full extent of such amounts so held and deposited in compliance with this partial judgment. BNP Paribas shall provide a copy of this order to counsel for Owens within 5 days of the date of this order.

12. Upon payment and turnover by BNP Paribas of the Turnover Assets to the Plaintiffs, plus all accrued interest thereon to date, all other persons and entities shall be permanently restrained and enjoined from instituting or prosecuting any claim, or pursuing any action against BNP Paribas in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the funds turned over in compliance with paragraph 9 of this Order.

13. This Order enforces a duly registered District Court judgment from the District of Columbia, recognized by a New York Federal Court and given full faith and credit by this Court.

14. This Order supersedes any prior order relating to the Turnover Assets described in this Order.

So ordered,

/s/ Analisa Torres
ANALISA TORRES
United States District Judge

Dated: December 13, 2013

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Filed: 01/06/2014]

Case No. 1:13-cv-03127 (AT)

RICK HARRISON, JOHN BUCKLEY III, MARGARET LOPEZ, ANDY LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARDS LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, MARTIN SONGER, JR., SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE, AND TRACEY SMITH, as Personal Representative of the Estate of Rubin Smith,

Plaintiffs,

vs.

THE REPUBLIC OF SUDAN,

Defendant,

vs.

CREDIT AGRICOLE CORPORATE & INVESTMENT BANK,

Respondent.

TURNOVER ORDER

WHEREAS on December 18, 2013, Plaintiffs, Rick Harrison, John Buckley III, Margaret Lopez, Andy

Lopez, Keith Lorensen, Lisa Lorensen, Edwards Love, Robert McTureous, David Morales, Gina Morris, Martin Songer, Jr., Shelly Songer, Jeremy Steward, Kesha Stidham, Aaron Toney, Eric Williams, Carl Wingate, and Tracy Smith, as Personal Representative of the Estate of Rubin Smith ("Plaintiffs"), filed their Petition for Turnover Order Against Credit Agricole Corporate and Investment Bank ("CA-CIB") pursuant to 28 U.S.C. § 1610(g), CPLR § 5225(b) and Federal Rule of Civil Procedure 69(a) ("Petition"), which is currently before the Court;

WHEREAS, Plaintiffs have provided notice to the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") of this Petition and OFAC having not appeared or otherwise objected to the relief sought in the Petition;

WHEREAS, Plaintiffs obtained a judgment in the District Court for the District of Columbia in the amount of $314,705,896, plus interest (the "Judgment"), and the entire principal amount of the Judgment remains unsatisfied; and

WHEREAS, Plaintiffs' Petition established that the funds described in the Petition, totaling [redacted] (as of June 29, 2012), plus accrued interest (the "Turnover Assets"), are subject to turnover pursuant to C.P.L.R. § 5225, 28 U.S.C. § 1610(g) and the Terrorism Risk Insurance Act of 2002, Pub. No. 107-297, 116 Stat 2322 (2002), codified at 28 U.S.C. § 1610, in partial satisfaction of Plaintiffs' Judgment.

AND NOW, this 6th day of January, 2014 upon Plaintiffs' Petition, it is **ORDERED**, **ADJUDGED AND DECREED THAT**:

1. The Petition is GRANTED.

2. The Court finds that the Turnover Assets are subject to turnover pursuant to § 201 of the Terrorism Risk Insurance Act of 2002 and are subject to execution and attachment under the Foreign Sovereign Immunities Act because the owners of the funds are agencies and instrumentalities of the Republic of Sudan.

3. [redacted] is an agency and instrumentality of the Sudanese government. The following accounts, totaling [redacted], and [redacted] (as of June 29, 2012), plus accrued interest, are subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Originating Entity / Originating Bank	Blocking Date	Value ($) (as of June 29, 2012)
CA-CIB	[redacted]	[redacted]	[redacted]
CA-CIB	[redacted]	[redacted]	[redacted]

4. [redacted] is an agency and instrumentality of the Sudanese government. The following account, totaling [redacted] (as of June 29, 2012), plus accrued interest, is subject to execution to satisfy the Plaintiffs' outstanding judgment:

Respondent Bank	Originating Entity / Originating Bank	Blocking Date	Value ($) (as of June 29,2012)
CA-CIB	[redacted]	[redacted]	[redacted]

5. The Court hereby directs CA-CIB to turn over the Turnover Assets totaling [redacted] (as of June 29, 2012), together with accrued interest, by wire transfer to Plaintiffs' counsel, Hall, Lamb and Hall, P.A., pursuant to wire instructions to be furnished to CA-CIB by Plaintiffs, in partial satisfaction of

Plaintiffs' Judgment, within fifteen (15) days from the date of this Order.

6. Upon turnover by CA-CIB of the funds identified herein to the Plaintiffs, plus all accrued interest thereon to date, Credit Agricole shall be fully discharged pursuant to CPLR §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure, as applicable, and released from any and all liability and obligations or other liabilities in connection with the turnover of those funds, including all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind, whether served on, or delivered to CA-CIB, to the extent that they apply, purport to apply or attach to the Turnover Assets, to defendant The Republic of Sudan, and to any agency and instrumentality of The Republic of Sudan, or to any other party otherwise entitled to claim the Turnover Assets (in whole or in part), and any other persons or entities, to the full extent of such amounts so held and deposited in compliance with this Judgment.

7. Upon payment and turnover by CA-CIB of the Turnover Assets to Plaintiffs, plus all accrued interest thereon to date, all other persons and entities shall be permanently restrained and enjoined from instituting or prosecuting any claim, or pursuing any actions against CA-CIB in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the funds turned over in compliance with paragraph 3 of this Order.

8. Plaintiffs' Information Subpoena, Interrogatories, and Restraining Notice to CA-CIB shall be vacated except with respect to the three accounts identified in paragraph 10, below.

9. An OFAC license is not necessary to disburse these funds and no notice is necessary to the Sudanese agencies and instrumentalities. *See Heiser v. Bank of Tokyo Mitsubishi UFJ, New York Branch,* 919 F. Supp. 2d 411, 422 (S.D.N.Y. 2013); *Heiser v. Islamic Republic of Iran*, 807 F. Supp. 2d 9, 23 (D.D.C. 2011); *Weininger v. Castro*, 432 F. Supp. 2d 457 (S.D.N.Y. 2006).

10. Notwithstanding anything in this Order to the contrary, Plaintiffs reserve all rights to seek turnover of the following other amounts blocked by CA-CIB pursuant to regulations promulgated by OFAC, which CA-CIB will continue to restrain:

Respondent Bank	Account Beneficiary /Beneficiary Bank	Blocking Date	Value ($) (as of June 29,2012)
CA-CIB	[redacted]	[redacted]	[redacted]
CA-CIB	[redacted]	[redacted]	[redacted]
CA-CIB	[redacted]	[redacted]	[redacted]

Plaintiffs and CA-CIB shall meet and confer as to these amounts following the issuance by the Second Circuit of its rulings in *Calderon-Cardona v. JPMorgan Chase Bank, N.A.,* No. 12-75 (2d Cir), and *Hausler v. JPMorgan Chase, N.A.,* Nos. 12-1264 & 12-1272 (2d Cir.)

11. This Order enforces a duly registered District Court judgment from the District of Columbia, recognized by a New York Federal Court and given full faith and credit by this Court.

So ordered,

/s/ Analisa Torres
ANALISA TORRES
United States District Judge

Dated: January 6, 2014

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Filed: 01/14/2014]

Case No. 1:13-cv-03127-AT

RICK HARRISON, et al.

Plaintiff,

v.

REPUBLIC OF SUDAN

Defendant.

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendant Republic of Sudan appeals to the United States Court of Appeals for the Second Circuit from the Turnover Orders [ECF Documents 20, 21 and 31] in this case of this Court (the Honorable Annalisa Torres) dated December 12, 2013, December 13, 2013 and January 6, 2014, ordering financial institutions MashreqBank, BNP Paribas and Credit Agricole Corporate & Investment Bank, respectively, to turn over funds in specified accounts to Plaintiffs in the above-styled case.

Dated: January 13, 2014

By: /s/.
Asim AR Ghafoor

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Defendant Republic of Sudan

and By: /s/
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TO: Clerk of the Court

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Argued: 01/05/2015

Decided: 09/23/2015]

August Term 2014

Docket No: 14-121-cv

RICK HARRISON, JOHN BUCKLEY, III, MARGARET LOPEZ, ANDY LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, MARTIN SONGER, JR., SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE, TRACEY SMITH, as personal representative of the Estate of Rubin Smith,

Plaintiffs-Appellees,

v.

REPUBLIC OF SUDAN,

Defendant-Appellant,

ADVANCED CHEMICAL WORKS, AKA Advanced Commercial and Chemical Works Company Limited, AKA Advanced Training and Chemical Works Company Limited, Accounts & Electronics Equipments, AKA Accounts and Electronics Equipments, et al.,

Defendants,

NATIONAL BANK OF EGYPT, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,

Respondents.[*]

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Before:

LYNCH and CHIN, *Circuit Judges,*
and KORMAN, *District Judge.*[**]

Appeal from three orders of the United States District Court for the Southern District of New York (Torres, *J.*), requiring respondent banks holding assets of defendant-appellant Republic of Sudan to turn over funds to satisfy an underlying default judgment obtained by plaintiffs-appellees against the Republic of Sudan in the United States District Court for the District of Columbia. The Republic of Sudan contends that (1) service of process did not comply with the Foreign Sovereign Immunities Act, and (2) the District Court erred by attaching assets of a foreign state to satisfy a judgment under the Terrorism Risk Insurance Act without authorization

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[*] The Clerk of Court is respectfully requested to amend the caption as set forth above.

[**] The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

from the Office of Foreign Assets Control or a Statement of Interest from the Department of Justice.

AFFIRMED.

ANDREW C. HALL (Brandon Levitt, *on the brief*), Hall, Lamb and Hall, P.A., Miami, Florida, *for Plaintiffs-Appellees*.
ASIM GHAFOOR, Law Office of Asim Ghafoor, Washington, D.C., *for Defendant-Appellant*.

CHIN, *Circuit Judge*:

On October 12, 2000, an explosive-laden skiff pulled up alongside the U.S.S. Cole, which was docked for refueling at the port of Aden, Yemen, and detonated. Seventeen U.S. Navy sailors were killed in the attack, and forty-two wounded. Fifteen of the injured sailors and three of their spouses brought suit in 2010 in the United States District Court for the District of Columbia (the "D.C. District Court") under the Foreign Sovereign Immunities Act (the "FSIA"), 28 U.S.C. §§ 1330, 1602 *et seq.,* alleging that al Qaeda was responsible for the attack and that the Republic of Sudan ("Sudan") had provided material support to al Qaeda. In 2012, the D.C. District Court entered a default judgment against Sudan in the amount of $314,705,896.

Plaintiffs registered the default judgment in the United States District Court for the Southern District of New York, and then sought to enforce it against funds held by New York banks. The District Court below (Torres, *J.*) issued the three turnover orders before us.

We hold that (1) service of process on the Sudanese Minister of Foreign Affairs via the Sudanese Embassy in Washington, D.C., complied with the FSIA's requirement that service be sent to the head of the ministry of foreign affairs, and (2) the District Court did not err in issuing the turnover orders without first obtaining either a license from the Treasury Department's Office of Foreign Assets Control ("OFAC") or a Statement of Interest from the Department of Justice ("DOJ").

We affirm.

STATEMENT OF THE CASE

Plaintiffs-appellants are sailors and spouses of sailors injured in the bombing of the U.S.S. Cole, who brought suit against Sudan in the D.C. District Court on October 4, 2010, under 28 U.S.C. § 1605A, the terrorism exception to the FSIA, alleging that Sudan provided material support to al Qaeda, whose operatives perpetrated the attack on the vessel.[1]

Pursuant to 28 U.S.C. § 1608(a)(3), plaintiffs filed an Affidavit Requesting Foreign Mailing on November 5, 2010, asking that the Clerk of Court

[1] One of the sailors died after the suit was brought. His spouse, as representative of his estate, was substituted into the action.

mail the summons and complaint via registered mail, return receipt requested, to:

> Republic of Sudan
> Deng Alor Koul
> Minister of Foreign Affairs
> Embassy of the Republic of Sudan
> 2210 Massachusetts Avenue NW
> Washington, DC 2008

S. App. at 66. As represented by plaintiffs, Deng Alor Koul was the Minister of Foreign Affairs of Sudan at the time.

On November 17, 2010, the Clerk of Court entered a Certificate of Mailing certifying that the summons and complaint were sent via domestic certified mail to the "head of the ministry of foreign affairs," at the Sudanese Embassy in Washington, D.C., *id.* at 67, and that the return receipt was returned to the Clerk of Court and received on November 23, 2010. No attempt was made to serve Sudan at the Ministry of Foreign Affairs in Khartoum, the capital. Sudan failed to serve an answer or other responsive pleading within sixty days after plaintiffs' service, *see* 28 U.S.C. § 1608(d), and the Clerk of Court thus entered a default against Sudan.

On March 30, 2012, after a hearing, the D.C. District Court (Lamberth, *J.*) entered a default judgment against Sudan in the amount of $314,705,896, *Harrison v. Republic of Sudan,* 882 F. Supp. 2d 23, 51 (D.D.C. 2012), and found, *inter alia*, that service on Sudan had been proper, *id.* at 28.[2]

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[2] After oral argument in the instant appeal, Sudan made a Rule 60(b) motion in the D.C. District Court to set aside the

Following entry of the default judgment, plaintiffs filed a second Affidavit Requesting Foreign Mailing, requesting the Clerk to mail notice, this time of the Order and Judgment and the Memorandum Opinion entered by the D.C. District Court, by registered mail, return receipt requested. The Clerk certified in April 2012 that the documents had been mailed to Sudan's Minister of Foreign Affairs via the Sudanese Embassy in Washington, D.C. Sudan again failed to appear or contest the judgment.

On October 2, 2012, plaintiffs registered the judgment in the Southern District of New York, seeking to execute against respondent banks holding Sudanese assets frozen pursuant to the Sudan Sanctions Regulations, *see* 31 C.F.R. Part 538, and on May 9, 2013, plaintiffs filed a Notice of Pending Action.

On June 28, 2013, following a motion by plaintiffs, the D.C. District Court entered an order finding that post-judgment service had been effectuated, and that sufficient time had elapsed following the entry of judgment and the giving of notice of such judgment to seek attachment and execution, pursuant to 28 U.S.C. § 1610(c).[3] On September 20, 2013, the district

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default judgment. *Harrison v. Republic of Sudan,* No. 10-CV-1689 (D.D.C. June 14, 2015) (Docket No. 55). Sudan moved to hold this appeal in abeyance pending resolution of the motion for vacatur. We deny the motion.

[3] Section 1610(c) provides that "[n]o attachment or execution... 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."

court below entered a similar order, finding both that sufficient time had passed since entry of the default judgment, and that service of the default judgment had been properly effectuated. Sudan failed to challenge these orders.

Plaintiffs then filed a series of petitions in the Southern District seeking turnover of Sudanese assets, including against Mashreqbank, BNP Paribas, and Credit Agricole Corporate and Investment Bank. The District Court granted the petitions, issuing turnover orders on December 12, 2013, December 13, 2013, and January 6, 2014, respectively. Plaintiffs served all three petitions, as well as their § 1610(c) motion, by U.S. mail addressed to Sudan's Minister of Foreign Affairs -- at that point Ali Ahmed Karti, who had replaced Deng Alor Koul as represented by plaintiffs -- via the Embassy of Sudan in Washington.

Sudan filed its notice of appearance on January 13, 2014, only after all three turnover orders were entered by the District Court below. The same day, Sudan timely appealed.[4]

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[4] As a threshold matter, plaintiffs contend that this Court lacks jurisdiction over the December 12, 2013 and December 13, 2013 orders, and that the appeal is timely only with respect to the January 6, 2014 order**,** because the notice of appeal was not filed until January 14, 2014. Sudan was required to file a notice of appeal "with the district court clerk within 30 days after entry of the judgment or order appealed from," Fed. R. App. P. 4(a)(1)(A), and "the timely filing of a notice of appeal in a civil case is a jurisdictional requirement," *Bowles v. Russell,* 551 U.S. 205, 214 (2007). Sudan did in fact file a notice of appeal on January 13, 2014, the last day for timely filing of an appeal from the earliest order. Though Sudan neglected to manually select

DISCUSSION

Two issues are presented: (a) whether service of process on the Sudanese Minister of Foreign Affairs via the Sudanese Embassy in Washington complied with the requirement of 28 U.S.C. § 1608(a)(3) that service be sent to the head of the ministry of foreign affairs, and (b) whether the District Court erred in issuing turnover orders without first obtaining either an OFAC license or a DOJ Statement of Interest explaining why no OFAC license was required.

A. Service of Process on the Minister of Foreign Affairs

The FSIA provides the sole means for effecting service of process on a foreign state. *See* 28 U.S.C. § 1608(a); H.R. Rep. No. 94-1487, at 23 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 6604, 6622 ("Section

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the orders it was appealing on ECF, triggering a "filing error" in the docket entry, Docket No. 34, the notice of appeal was accessible on the docket, the notice itself stated in plain language the three orders at issue, and Sudan corrected the electronic error the next day, by filing an otherwise identical order on January 14, 2014. Because there was no ambiguity in Sudan's January 13, 2014 notice of appeal, the appeal is timely as to all three turnover orders. *See Becker v. Montgomery*, 532 U.S. 757, 767 (2001) ("[I]mperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court."); *see also Contino v. United States*, 535 F.3d 124, 127 (2d Cir. 2008) ("[T]he failure to sign [a notice of appeal] may be remedied after the time period for filing the notice has expired."); *New Phone Co. v. City of New York*, 498 F.3d 127, 131 (2d Cir. 2007) ("Our jurisdiction . . . depends on whether the intent to appeal from that decision is clear on the face of, or can be inferred from, the notices of appeal.").

1608 sets forth the exclusive procedures with respect to service on . . . a foreign state . . . ."). Four methods of service are prescribed, in descending order of preference. 28 U.S.C. § 1608(a)(1)-(4). Plaintiffs must attempt service by the first method, or determine that it is unavailable, before attempting subsequent methods in the order in which they are laid out.

The first method is service "in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision." *Id.* § 1608(a)(1). In the absence of such a special arrangement, the statute next permits service "in accordance with an applicable international convention on service of judicial documents." *Id.* § 1608(a)(2). If neither of these first two methods is available, plaintiffs may proceed according to the third method, which permits service "by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court *to the head of the ministry of foreign affairs of the foreign state concerned.*" *Id.* § 1608(a)(3) (emphasis added). Finally, the statute provides that if service cannot be made under the first three paragraphs, service is permitted as a last resort "by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services -- and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state." *Id.* § 1608(a)(4).

Here, it is undisputed that service in conformity with the first two methods was unavailable, because plaintiffs have no "special arrangement" for service with Sudan, and because Sudan is not a party to an "international convention on service of judicial documents." *Id.* § 1608(a)(1)-(2). Thus, § 1608(a)(3) was the preferred method of service, and plaintiffs effectuated service in accordance with this paragraph. In the underlying litigation in the D.C. District Court, the Clerk of Court sent process by U.S. mail, return receipt requested, to the Minister of Foreign Affairs, Deng Alor Koul, via the Embassy of Sudan in Washington, D.C.

As an initial matter, plaintiffs complied with the first three clauses of 28 U.S.C. § 1608(a)(3). First, service could not be made under paragraphs (1) or (2) of § 1608(a). Second, plaintiffs directed the Clerk of Court to include in the service package a copy of the summons and complaint, and notice of suit, and the Clerk confirmed that a translation of each was included. And third, plaintiffs directed the clerk of court to serve Sudan by a "form of mail requiring a signed receipt," *id.* § 1608(a)(3), and, after the clerk mailed the service package on November 17, 2010, a return receipt was in fact received on November 23, 2010.[5]

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[5] At oral argument, counsel for Sudan represented that the Minister of Foreign Affairs did not have actual notice of the underlying suit because at the time of the mailing to the Embassy, Sudan was in the final months of a coalition government with the Sudan People's Liberation Movement, before South Sudan became independent. According to counsel, due to the structure of the power-sharing agreement the Minister of Foreign Affairs would not have received notice from

On appeal, Sudan argues that service on Sudan's Minister of Foreign Affairs via the Sudanese Embassy in Washington does not comply with the requirement of the final clause of 28 U.S.C. § 1608(a)(3), that service be sent "to the head of the ministry of foreign affairs." Sudan contends that service should have been sent to Sudan's Minister of Foreign Affairs at the Ministry of Foreign Affairs in Khartoum, and because service was ineffective under § 1608(a), the D.C. District Court lacked personal jurisdiction over Sudan.

In answering this issue, one of first impression in our Circuit, we look to the statutory language, cases that have interpreted this statute, and the legislative history. *See United States v. Allen,* 788 F.3d 61, 66 (2d Cir. 2015).

On its face, the statute requires that process be mailed "to the head of the ministry of foreign affairs of the foreign state." 28 U.S.C. § 1608(a)(3). It is silent as to a specific location where the mailing is to be addressed. If Congress had wanted to require that the mailing be sent to the head of the ministry of foreign affairs in the foreign county, it could have said so. In § 1608(a)(4), for example, Congress specified that the papers be mailed "to the Secretary of State *in Washington, District of Columbia,* to the attention of the Director of Special Consular Services," for transmittal to the foreign state "through diplomatic channels." *Id.* § 1608(a)(4)

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the opposition-controlled Embassy. But on the record before us we can look only at the service as it was mailed and received by the Embassy, and whether that service satisfied the statute.

(emphasis added). Nothing in § 1608(a)(3) requires that the papers be mailed to a location in the foreign state, and the method chosen by plaintiffs -- a mailing addressed to the minister of foreign affairs at the embassy -- was consistent with the language of the statute and could reasonably be expected to result in delivery to the intended person.

What little case law there is on this question accords with our reading of § 1608(a)(3), that service on a minister of foreign affairs via an embassy address constitutes literal compliance with the statute. This is not the first time that Sudan has made the argument for a more restrictive reading of § 1608(a)(3). In *Rux v. Republic of Sudan,* the Eastern District of Virginia rejected Sudan's contention that service had to be mailed directly to the Minister of Foreign Affairs at the Ministry of Foreign Affairs in Khartoum, rather than to the Minister of Foreign Affairs via the Sudanese Embassy. No. 04-CV-428, 2005 WL 2086202, at *16 (E.D. Va. Aug. 26, 2005), *aff'd on other grounds,* 461 F.3d 461 (4th Cir. 2006). The district court found that "[t]he text of § 1608(a)(3) does not prohibit service on the Minister of Foreign Affairs at an embassy address. Indeed, the statute does not prescribe the place of service, only the person to whom process must be served." *Id.*

In another case, *Wye Oak Technology, Inc. v. Republic of Iraq,* the Eastern District of Virginia similarly held that service via an embassy is sufficient to satisfy the FSIA as long as the service is directed to the Minister of Foreign Affairs. No. 09-CV-793, 2010 WL 2613323, at *5-6 (E.D. Va. June 29, 2010), *aff'd on other grounds,* 666 F.3d 2015 (4th Cir.

2011). In *Wye Oak,* a summons was issued by the clerk of the court to the "Head of the Ministry of Foreign Affairs of Iraq, care of the Embassy of the Republic of Iraq in Washington, DC." *Id.* at *4 (internal quotation marks omitted). The district court found that:

> Section (a)(3) does not impose a requirement that an otherwise proper service package must be delivered to a particular destination. No doubt, the address to which the service package is directed must bear some objectively reasonable relationship to the head of the Ministry of Foreign Affairs and the chosen method of delivery must have some reasonable expectation of success. However, there is nothing on the face of Section (a)(3) that prohibits [plaintiff]'s chosen method of delivery to the head of the Ministry of Foreign Affairs . . . .

Id. at *5. We agree.

Cases where § 1608(a)(3) service was held to be ineffective involved suits where service was sent "to a *person* other than the Minister of Foreign Affairs, not to a *place* other than the Ministry of Foreign Affairs." *Rux,* 2005 WL 2086202, at *16 (emphasis in original); *see Magness v. Russian Fed'n,* 247 F.3d 609, 613 (5th Cir. 2001) (finding service improper where complaint sent to Texas Secretary of State for forwarding to Boris Yeltsin, and also sent directly to Russian Deputy Minister of Culture); *Transaero, Inc. v. La Fuerza Aerea Boliviana,* 30 F.3d 148, 153-54 (D.C. Cir. 1994) (finding service improper when made on "the Bolivian Ambassador and Consul General in

Washington, and the Bolivian First Minister and the Bolivian Air Force in La Paz[,] but never [on] the Ministry of Foreign Affairs or the Secretary of State"); *Alberti v. Empresa Nicaraguense De La Carne,* 705 F.2d 250, 253 (7th Cir. 1983) (holding that the Ambassador of Nicaragua cannot be construed as the head of the ministry of foreign affairs).

The legislative record on § 1608(a)(3) is sparse, and sheds little light on the question. The 1976 House Judiciary Committee Report seemed to contemplate -- and reject -- service on an embassy in its discussion of proposed methods of service under the FSIA:

> A second means [of service], of questionable validity, involves the mailing of a copy of the summons and complaint to a diplomatic mission of the foreign state. Section 1608 precludes this method so as to avoid questions of inconsistency with section 1 of article 22 of the Vienna Convention on Diplomatic Relations, 23 UST 3227, TIAS 7502 (1972), which entered into force in the United States on December 13, 1972. Service on an embassy by mail would be precluded under this bill. *See* 71 Dept. of State Bull. 458-59 (1974).

H.R. Rep. No. 94-1487, at 26 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 6604, 6625. This report, though, fails to make the distinction at issue in the instant case, between "[s]ervice *on* an embassy by mail," *id.* (emphasis added), and service on a minister of foreign affairs *via* or *care of* an embassy. The House Report suggests that § 1608 precludes service on an embassy to prevent any inconsistency with the Vienna Convention on Diplomatic Relations, Apr. 18, 1961,

23 U.S.T. 3227 (entered into force in United States Dec. 13, 1972) [hereinafter Vienna Convention]. The relevant sections of the Vienna Convention say only that "[t]he premises of the mission shall be inviolable," and that "[a] diplomatic agent shall . . . . enjoy immunity from [the host state's] civil and administrative jurisdiction." *Id.* arts. 22, 31. In a case where the suit is not against the embassy or diplomatic agent, but against the foreign state with service on the foreign minister *via* the embassy address, we do not see how principles of mission inviolability and diplomatic immunity are implicated. Moreover, Sudan has not sought to rely on this legislative history.

In this case, service was directed to the right individual, using the Sudanese Embassy address for transmittal. Process was not served on the foreign mission; rather, process was served on the Minister of Foreign Affairs via the foreign mission. The requirement advanced by Sudan, that service be mailed directly to a ministry of foreign affairs in the foreign country, makes little sense from a reliability perspective and as a matter of policy. While direct mailing relies on the capacity of the foreign postal service or a commercial carrier, mail addressed to an embassy -- as an extension of the foreign state -- can be forwarded to the minister by diplomatic pouch. *See Rux,* 2005 WL 2086202, at *16 (addressing the "inherent reliability and security associated with diplomatic pouches," which, "unlike the United States Postal Service, DHL, or any other commercial carrier, is accorded heightened protection under international law to ensure safe and uncompromised delivery of

documents between countries." (citing Vienna Convention, art. 27)).

We conclude that plaintiffs complied with the plain language of the FSIA's service of process requirements at 28 U.S.C. § 1608(a)(3).

Finally, though not well developed in its brief, we construe Sudan as also raising a question as to whether service was proper in the turnover proceedings. Because we have found that service of the default judgment in the underlying D.C. District Court case was proper, Sudan's argument fails. *See* 28 U.S.C. § 1608(e) ("A copy of [the] default judgment shall be sent to the foreign state . . . in the manner prescribed for service in this section."); *Peterson v. Islamic Republic of Iran,* 627 F.3d 1117, 1130 (9th Cir. 2010) ("The FSIA is quite clear what a plaintiff must serve on a foreign state before a court may enforce a default judgment against that state: the default judgment. Service of post-judgment motions is not required."); *Autotech Techs. LP v. Integral Research & Dev. Corp.,* 499 F.3d 737, 747-49 (7th Cir. 2007) (holding that the federal rules for service applied because the FSIA's service provisions do not cover post-judgment motions).

Here, plaintiffs served all three turnover petitions at issue, as well as their Motion for Entry of Order Finding Sufficient Time Has Passed to Seek Attachment and Execution of Defendant / Judgment Debtor's Assets, by U.S. mail addressed to Sudan's new Minister of Foreign Affairs, Ali Ahmed Karti, via the Embassy of Sudan in Washington. Service of these post-judgment motions was not governed by the heightened standards of § 1608(a), and was required

to adhere only to the notice provisions of the federal rules, with which plaintiffs complied. *See* Fed. R. Civ. P. 5(a)(2) ("No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4."); Fed. R. Civ. P. 5(b)(2)(C) ("A paper is served" by "mailing it to the person's last known address -- in which event service is complete upon mailing.").

B. Attachment of Assets Without an OFAC License or Case-Specific DOJ Statement of Interest

Sudan contends that the District Court erred in ordering the turnover of sanctions-controlled assets without first procuring either an OFAC license or a case-specific DOJ Statement of Interest stating that no OFAC license was necessary. We disagree. The government has made its position known through previous Statements of Interest that judgment holders under the Terrorism Risk Insurance Act of 2002 (the "TRIA"), 28 U.S.C. § 1610 note, are exempt from the normal OFAC licensure requirement, and the government's position is not limited to the cases in which it filed the Statements.

Section 1605 of the FSIA creates exceptions to the general blanket immunity of foreign states from the jurisdiction of U.S. courts, including the "terrorism exception," 28 U.S.C. § 1605A, which Congress added to the FSIA in 1996 to "give American Citizens an important economic and financial weapon against . . . outlaw states" that sponsor terrorism. H.R. Rep. No. 104-383, at 62 (1995). This exception allows courts to hear claims against foreign states designated by the

State Department as "state sponsor[s] of terrorism." *See Calderon-Cardona v. Bank of N.Y. Mellon,* 770 F.3d 993, 996 (2d Cir. 2014).[6]

In an effort to further aid victims of terrorism in satisfying judgments against foreign sponsors of terrorism, Congress enacted the TRIA, the purpose of which is to "deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties." *Weininger v. Castro,* 462 F. Supp. 2d 457, 483 (S.D.N.Y. 2006) (quoting H.R. Rep. No. 107-779, at 27 (2002)). Section 201(a) of the TRIA, which governs post-judgment attachment in some terrorism cases, provides, in relevant part:

> 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 section 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008) 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

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[6] The State Department currently designates Iran, Sudan, and Syria as state sponsors of terrorism. Sudan has been designated as such since August 12, 1993. U.S. Dep't of State, *State Sponsors of Terrorism,* http://www.state.gov/j/ct/list/c14151.htm (last visited Sept. 22, 2015).

> satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a) (codified at 28 U.S.C. § 1610 note).

Sudanese assets in the United States are subject to just such a block, pursuant to sanctions that began with Executive Order 13067 in 1997 and are now administered by OFAC and codified at 31 C.F.R. Part 538. Ordinarily, unless a plaintiff obtains a license from OFAC, he is barred from attaching assets that are frozen under such sanctions regimes. *See Estate of Heiser v. Bank of Tokyo Mitsubishi UFJ, N.Y. Branch*, 919 F. Supp. 2d 411, 422 (S.D.N.Y. 2013).[7] Nonetheless, barring any contrary authority, a court will accept that no OFAC license is required on the authority of a DOJ Statement of Interest filed pursuant to 28 U.S.C. § 517. *Id.* at 423.

The question, then, is whether § 201(a) of the TRIA and § 1610(g) of the FSIA, which authorize the execution of § 1605A judgments against state sponsors of terrorism, permit a § 1605A judgment holder to attach blocked Sudanese assets without a license from OFAC. The government, in previous

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[7] In the case of Sudan, there are two relevant provisions that forbid the attachment of blocked assets. *See* 31 C.F.R. § 538.201(a) ("Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, no property or interests in property of the Government of Sudan, that are in the United States . . . may be transferred . . . ."); 31 C.F.R. § 538.313 ("The term *transfer* means . . . the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment . . . ." (emphasis added)).

Statements of Interest, has answered this question in the affirmative.

In *Weininger,* plaintiffs obtained a default judgment against Cuba and sought turnover of funds blocked pursuant to the Cuban Assets Control Regulations, held by a garnishee bank. 462 F. Supp. 2d at 499. The bank petitioned for interpleader relief. In a Statement of Interest filed with the district court, the DOJ indicated that "[i]n the event the Court determines that the funds are subject to TRIA, the funds may be distributed without a license from the Office of Foreign Assets Control." *Id.* (alteration in original) (quoting DOJ Ltr., Jan. 6, 2006).

Several years later, in the D.C. District Court, the DOJ filed a Statement of Interest that, while primarily addressing a different question, took the position that "when a blocked asset comes within TRIA's scope, TRIA generally overrides OFAC's regulations requiring that a license be obtained before the asset is attached." *Estate of Heiser v. Islamic Republic of Iran,* No. 00-CV-2329, 807 F. Supp. 2d 9 (D.D.C. 2011) (Docket No. 230).

Finally, in a related case, *Bank of Tokyo,* the government yet again reiterated its position in a Statement of Interest filed with the district court. 919 F. Supp. 2d at 422-23. In *Bank of Tokyo,* petitioners were family members and the estates of seventeen Air Force servicemembers killed in the 1996 Khobar Towers bombing in Saudi Arabia, and sought to satisfy the D.C. District Court judgment against the Islamic Republic of Iran by compelling respondent banks in New York to relinquish sanctions-blocked funds. The district court held that petitioners were

entitled to attachment of Iran's assets, relying in part on the letter from the U.S. Attorney's Office. The Statement of Interest explicitly noted that the DOJ had previously addressed this issue in another public filing, in *Weininger,* 462 F. Supp. 2d 457. The district court noted that it "is aware of no contrary authority that would require an OFAC license in this instance. It accepts the Statement of Interest's assertion that no OFAC license is required." *Bank of Tokyo,* 919 F. Supp. 2d at 423.

Sudan contends that unlike in *Bank of Tokyo,* the District Court in the instant case did not seek a Statement of Interest before issuing the turnover order. While it is true that the District Court did not explicitly seek a new case-specific Statement from DOJ, it relied on the persuasive authority of the previous Statements on the issue. In the December 12, 2013, December 13, 2013, and January 6, 2014 turnover orders, the District Court wrote that "[a]n OFAC license is not necessary to disburse these funds and no notice is necessary to the Sudanese agencies and instrumentalities." J. App. at 67, 73, 78 (citing *Bank of Tokyo,* 919 F.Supp. 2d at 422; *Heiser v. Islamic Republic of Iran,* 807 F.Supp. 2d at 23; *Weininger,* 462 F.Supp. 2d 457).

Sudan points to no authority that requires a court to seek a new Statement of Interest in every case in which this issue arises. Unless or until the United States changes its position, the *Weininger* and *Heiser* Statements of Interests represent the government's clear intent to exempt TRIA judgment holders from sanctions regime OFAC licensure requirements. Because we find that the District Court properly relied on the *Weininger* and *Heiser* letters, we need

not reach appellees' alternative argument for affirmance, that as a matter of law, even without recourse to a Statement of Interest, an OFAC license is unnecessary to distribute blocked assets to a TRIA judgment holder. *See, e.g., Rubin v. Islamic Republic of Iran,* 709 F.3d 49, 54 (1st Cir. 2013) ("TRIA thereby allows a person to circumvent the normal process for attaching assets that are blocked under a sanctions program, which entails obtaining a license from OFAC.").

Once a district court determines that blocked assets are subject to the TRIA, those funds may be distributed without a license from OFAC. Plaintiffs in this case obtained an underlying § 1605A terrorism judgment from the D.C. District Court and properly domesticated that judgment in the Southern District of New York, asserting a right to execute against Sudan's assets pursuant to the TRIA and 28 U.S.C. § 1610(g). The turnover orders then properly issued.

CONCLUSION

For the foregoing reasons, the orders of the district court are **AFFIRMED**.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Filed: 09/23/2015]

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of September, two thousand and fifteen.

Before:

Gerard E. Lynch, Denny Chin, *Circuit Judges*,
Edward R. Korman, *District Judge.*[*]

Rick Harrison, John Buckley, III, Margaret Lopez, Andy Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toneym, Eric Williams, Carl Wingate, Tracey Smith, as personal representative of the Estate of Rubin Smith,

Plaintiffs-Appellees,

v.

Republic of Sudan,

Defendant-Appellant,

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[*] The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

Advanced Chemical Works, AKA Advanced Commercial and Chemical Works Company Limited, AKA Advanced Training and Chemical Works Company Limited, Accounts & Electronics Equipments, AKA Accounts and Electronics Equipments, et al.,

Defendants,

National Bank of Egypt, Credit Agricole Corporate and Investment Bank,

Respondents.

ORDER
Docket No. 14-121

The appeal in the above captioned case from three orders of the United States District Court for the Southern District of New York was argued on the district court's record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the orders of the district court are AFFIRMED.

For The Court:

/s/ Catherine O'Hagan Wolfe
Catherine O'Hagan Wolfe,
Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Filed: 11/06/2015]

Docket No. 14-121

RICK HARRISON, JOHN BUCKLEY, III, MARGARET LOPEZ, ANDY LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA,

(Caption continued on inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF THE REPUBLIC OF SUDAN'S PETITION FOR PANEL REHEARING OR REHEARING IN BANC

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Plaintiffs-Appellees,

v.

REPUBLIC OF SUDAN,

Defendant-Appellant,

ADVANCED CHEMICAL WORKS, aka ADVANCED COMMERCIAL AND CHEMICAL WORKS COMPANY LIMITED, aka ADVANCED TRAINING AND CHEMICAL WORKS COMPANY LIMITED, ACCOUNTS & ELECTRONICS EQUIPMENTS, aka ACCOUNTS AND ELECTRONIC EQUIPMENTS, *et al.,*

Defendants,

NATIONAL BANK OF EGYPT, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, *et al.,*

Respondents.

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Interest of the United States

The panel construed the Foreign Sovereign Immunities Act ("FSIA") to allow service on a foreign sovereign via its embassy in the United States if the papers are addressed to the foreign minister. That holding runs contrary to the FSIA's text and history, and is inconsistent with the United States' international treaty obligations and international practice. The United States has a substantial interest in ensuring that foreign states are served properly before they are required to appear in U.S. courts, and preserving the inviolability of diplomatic missions under the Vienna Convention on Diplomatic Relations ("VCDR"). Moreover, the government routinely objects to attempts by foreign courts and litigants to serve the U.S. government by direct delivery to an American embassy, and thus has a significant reciprocity interest in the treatment of U.S. missions abroad. The United States deeply sympathizes with the extraordinary injuries to the U.S. military personnel and their spouses who brought this suit, and condemns the terrorist acts that caused those injuries. Nevertheless, because of the government's interest in the proper application of rules regarding service of process on foreign states, as well as significant reciprocity concerns, the United States submits this brief as *amicus curiae* pursuant to Federal Rule of Appellate Procedure 29(a) in support of rehearing.

ARGUMENT

Point I – The Panel Incorrectly Permitted Service Through a Foreign State's Embassy

The panel incorrectly construed § 1608(a)(3) of the FSIA to permit service upon foreign states by allowing U.S. courts to enlist foreign diplomatic facilities in the U.S. as agents for delivery to those sovereigns' foreign ministers. That method of service contradicts the FSIA's text and history, and is inconsistent with the United States' international obligations.

The FSIA sets out the exclusive procedures for service of a summons and complaint on a foreign state and provides that, if service cannot be made by other methods, the papers may be served "by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. § 1608(a)(3). The most natural understanding of that text is that the mail will be sent to the head of the ministry of foreign affairs at his or her regular place of work—i.e., at the ministry of foreign affairs in the state's seat of government—not to some other location for forwarding. *See, e.g., Barot v. Embassy of Republic of Zambia*, 785 F.3d 26, 30 (D.C. Cir. 2015) (directing

service to be sent to foreign minister in state's capital city).[1]

The panel observed that § 1608(a)(3) does not expressly specify a place of delivery for service on a foreign minister, and assumed that mailing to the embassy "could reasonably be expected to result in delivery to the intended person." (Slip op. 13). But the FSIA's service provisions "can only be satisfied by strict compliance." *Magness v. Russian Fed'n,* 247 F.3d 609, 615 (5th Cir. 2001); *accord Transaero, Inc. v. La Fuerza Aerea Boliviana,* 30 F.3d 148, 154 (D.C. Cir. 1994). It is inconsistent with a rule of strict compliance to permit papers to be mailed to the foreign minister at a place other than the foreign ministry, even if the mailing is nominally addressed to that person, based on the assumption it will be forwarded.

The Court supported its conclusion by contrasting § 1608(a)(3)'s silence regarding the specific address for mailing with § 1608(a)(4)'s provision that papers be mailed to the U.S. Secretary of State "in Washington, [D.C.]," and inferring that Congress therefore did not intend to require mailing the foreign minister at any particular location. (Slip op. 12). But a separate contrast in the statute undermines that conclusion. For service on a foreign state agency or

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[1] Thus, a witness in congressional hearings described § 1608(a)(3) as requiring service by "mail to the foreign minister at the foreign state's seat of government." Hearings on H.R. 11315 Before Subcomm. on Admin. Law and Gov'tl Rels. of House Comm. on Judiciary (June 4, 1976) (testimony of M. Cohen).

instrumentality, Congress expressly provided for service by delivery to an "officer, a managing or general agent, or to any other [authorized] agent." § 1608(b)(2). In contrast, for service on the foreign state itself, Congress omitted any reference to an officer or agent. *Id.* § 1608(a). That difference strongly suggests that Congress did not intend to allow service on a foreign state via delivery to any entity that could, by analogy, be considered the foreign state's officer or agent, including the state's embassy, even if only for purposes of forwarding papers to the foreign ministry.

The FSIA's legislative history makes clear that Congress did not intend for service to be made via direct delivery to an embassy, and spells out significant legal and policy concerns with such an approach. The panel acknowledged that the relevant House report explicitly stated that "'[s]ervice on an embassy by mail would be precluded under this bill.'" (Slip op. 15-16 (quoting H.R. Rep. No. 94-1487, at 26 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604, 6625)). The panel was persuaded that this language did not reflect Congress's intent to preclude service by delivery to a foreign minister "*via* or *care of* an embassy," as opposed to precluding service "on" the embassy if, for example, the suit is against the embassy. But suits against diplomatic missions are also suits against foreign states for purposes of the FSIA, *see Gray v. Permanent Mission of People's Republic of Congo,* 443 F. Supp. 816 (S.D.N.Y. 1978), *aff'd*, 580 F.2d 1044 (2d Cir. 1978), and there is no rationale for prohibiting service of papers at an

embassy only in cases where the embassy is the named defendant.

Additional legislative history confirms that Congress was concerned about allowing foreign states to be served at their embassies. Early drafts of the FSIA provided for mailing papers to foreign ambassadors in the United States as the primary means of service on a foreign state. *See* S. 566, 93rd Cong. (1973); H.R. 3493, 93rd Cong. (1973). But, at the urging of the State Department, Congress removed any reference to ambassadors from the final service provisions, to "minimize potential irritants to relations with foreign states," particularly in light of concerns about the inviolability of embassy premises under the VCDR. H.R. Rep. No. 94-1487, at 11, 26.

Indeed, the panel's decision is contrary to the principle of mission inviolability and the United States' treaty obligations. The VCDR provides that "the premises of the mission shall be inviolable." 23 U.S.T. 3227, 500 U.N.T.S. 95, art. 22. As this Court has correctly concluded in an analogous context, this principle must be construed broadly, and is violated by service of process—whether on the inviolable diplomat or mission for itself or "as agent of a foreign government." *Tachiona v. United States*, 386 F.3d 205, 222, 224 (2d Cir. 2004); *accord Autotech Tech. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 748 (7th Cir. 2007) ("service *through* an embassy is expressly banned" by VCDR and "not authorized" by FSIA (emphasis added)); *see 767 Third Ave. Assocs. v. Permanent Mission of Zaire*, 988 F.2d 295, 301 (2d Cir. 1993) (approvingly noting commentator's view that "process servers may not even serve papers

without entering at the door of a mission because that would 'constitute an infringement of the respect due to the mission' "); Brownlie, *Principles of Public Int'l Law* 403 (8th ed. 2008) ("writs may not be served, even by post, within the premises of a mission but only through the local Ministry for Foreign Affairs."). The intrusion on a foreign embassy is present whether it is the ultimate recipient or merely the conduit of a summons and complaint.

The panel's contrary conclusion also improperly allows U.S. courts to treat the foreign embassy as a forwarding agent, diverting its resources to determine the significance of the transmission from the U.S. court, and to assess whether or how to respond. The panel assumed that the papers would be forwarded on to the foreign minister via diplomatic pouch, which is provided with certain protections under the VCDR to ensure the safe delivery of "diplomatic documents and articles intended for official use." VCDR, art 27. But one sovereign cannot dictate the internal procedures of the embassy of another sovereign, and a foreign government may well object to a U.S. court instructing it to use its pouch to deliver items to its officials on behalf of a third party.

Finally, the United States has strong reciprocity interests at stake. The United States has long maintained that it may only be served through diplomatic channels or in accordance with an applicable international convention or other agreed-upon method. Thus, the United States consistently rejects attempted service via direct delivery to a U.S. embassy abroad. When a foreign court or litigant

purports to serve the United States through an embassy, the embassy sends a diplomatic note to the foreign government indicating that the United States does not consider itself to have been served properly and thus will not appear in the case or honor any judgment that may be entered. That position is consistent with international practice. *See* U.N. Convention on Jurisdictional Immunities of States and Their Property, UN Doc. A/ 59/508 (2004), art. 22 (requiring service through international convention, diplomatic channels, or agreed-upon method); European Convention on State Immunity, 1495 U.N.T.S. 181 (1972), art. 16 (service exclusively through diplomatic channels); U.K. State Immunity Act, 1978 c.33 (same). If the FSIA were interpreted to permit U.S. courts to serve papers through an embassy, it could make the United States vulnerable to similar treatment in foreign courts, contrary to the government's consistently asserted view of the law. *See, e.g., Medellin v. Texas*, 552 U.S. 491, 524 (2008) (U.S. interests including "ensuring the reciprocal observance of the Vienna Convention [on Consular Relations]" are "plainly compelling"); *Aquamar, S.A. v. Del Monte Fresh Produce N.A., Inc.*, 179 F.3d 1279, 1295 (11th Cir. 1995) (FSIA's purposes include "according foreign sovereigns treatment in U.S. courts that is similar to the treatment the United States would prefer to receive in foreign courts").

Point II—The FSIA Does Not Override the Requirement of an OFAC License

Although Sudan's petition for rehearing does not rely on this issue, the panel also erred in suggesting

plaintiffs need not obtain an OFAC license before executing upon blocked assets under the FSIA.

As the panel noted (slip op. 22-23), the United States has repeatedly taken the position that section 201(a) of the Terrorism Risk Insurance Act ("TRIA") permits a person holding a judgment under 28 U.S.C. § 1605A to attach assets that have been blocked pursuant to certain economic sanctions laws, without obtaining an OFAC license. That position rests on the terms of TRIA, which permits attachment of blocked assets in specified circumstances "[n]otwithstanding any other provision of law." TRIA § 201(a).

But the panel erroneously applied the same construction to § 1610(g) of the FSIA. (Slip op. 22 (addressing "whether § 201(a) of the TRIA *and § 1610(g) of the FSIA*" permit § 1605A judgment holder to attach blocked assets without OFAC license) (emphasis added), 25 (turnover proper because execution sought "pursuant to the TRIA and 28 U.S.C. § 1610(g)")). As the United States has previously stated, where "funds at issue fall outside TRIA but somehow are attachable by operation of the FSIA alone . . . an OFAC license would be required before the funds could be transferred to plaintiffs." Statement of Interest of United States, *Wyatt v. Syrian Arab Republic,* No. 08 Civ. 502 (D.D.C. Jan. 23, 2015), at 18. While § 1610(g)(2) provides that certain property of a foreign state "shall not be immune from attachment," that language, consistent with the paragraph's title ("United States sovereign immunity inapplicable"), merely removes a defense of sovereign immunity. Section 1610(g) lacks TRIA's broad "notwithstanding any other provision"

language, and does not override other applicable rules such as the need for an OFAC license. *See* 31 C.F.R. §§ 538.201(a), 538.313.

Dated: New York, New York
November 6, 2015

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Argued: 03/11/2016

Decided: 09/22/2016]

August Term 2015

Docket No: 14-121-cv

RICK HARRISON, JOHN BUCKLEY, III, MARGARET LOPEZ, ANDY LOPEZ, KEITH LORENSEN, LISA LORENSEN, EDWARD LOVE, ROBERT MCTUREOUS, DAVID MORALES, GINA MORRIS, MARTIN SONGER, JR., SHELLY SONGER, JEREMY STEWART, KESHA STIDHAM, AARON TONEY, ERIC WILLIAMS, CARL WINGATE, TRACEY SMITH, as personal representative of the Estate of Rubin Smith,

Plaintiffs-Appellees,

v.

REPUBLIC OF SUDAN,

Defendant-Appellant,

ADVANCED CHEMICAL WORKS, AKA Advanced Commercial and Chemical Works Company Limited, AKA Advanced Training and Chemical Works Company Limited, Accounts & Electronics Equipments, AKA Accounts and Electronics Equipments, et al.,

Defendants,

NATIONAL BANK OF EGYPT, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,

Respondents.

ON PETITION FOR REHEARING

Before:

LYNCH and CHIN, *Circuit Judges*,
and KORMAN, *District Judge.*[1]

The Republic of Sudan petitions for panel rehearing or rehearing *en banc* of this Court's decision holding that service of process on the Minister of Foreign Affairs via the Sudanese Embassy in Washington, D.C., was sufficient to meet the requirements of the Foreign Sovereign Immunities Act (the "FSIA"). The United States, as *amicus curiae,* supports the Republic of Sudan and seeks clarification on the issue of whether § 1610(g) of the FSIA overrides the requirement of a license from the Treasury Department's Office of Foreign Assets Control. The petition is DENIED to the extent it seeks panel rehearing.

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[1] The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

ANDREW C. HALL (Roarke Maxwell, *on the brief*), Hall, Lamb and Hall, P.A., Miami, Florida, *for Plaintiffs-Appellees*.

CHRISTOPHER M. CURRAN, (Nicole Erb, Claire A. DeLelle, *on the brief*), White & Case LLP, Washington, D.C. *for Defendant-Appellant*.

DAVID S. JONES, Assistant United States Attorney (Benjamin H. Torrance, Assistant United States Attorney, *on the brief*), *for* Preet Bharara, United States Attorney for the Southern District of New York, New York, New York, *for the United States of America as* Amicus Curiae.

CHIN, *Circuit Judge*:

On September 23, 2015, we affirmed three orders of the United States District Court for the Southern District of New York (Torres, *J.*) directing certain banks to turnover assets of defendant-appellant Republic of Sudan ("Sudan") to satisfy a judgment entered in favor of plaintiffs against Sudan in the United States District Court for the District of Columbia (the "D.C. District Court"), in the amount of $314,705,896. Sudan petitions for panel rehearing or rehearing *en banc,* supported by the United States of America, as *amicus curiae*.

After further briefing and argument, upon due consideration, we adhere to our decision to affirm. The petition is DENIED to the extent it seeks panel rehearing.

BACKGROUND

The facts and procedural history are set forth in our September 23, 2015 opinion, familiarity with which is assumed. *See Harrison v. Republic of Sudan*, 802 F.3d 399 (2d Cir. 2015) (the "Panel Opinion"). We summarize the background as follows:

This case arises from the bombing of the U.S.S. Cole in the port of Aden, Yemen, in 2000. Sailors and spouses of sailors injured in the explosion brought suit against Sudan in the D.C. District Court under the FSIA, 28 U.S.C. §§ 1130, 1602 *et seq.,* alleging that al Qaeda was responsible for the attack and that Sudan had provided material support to al Qaeda.

The action was commenced in October 2010, and, at plaintiffs' request, the Clerk of the D.C. District Court served the summons and complaint on Sudan in November 2010 by mailing the papers to the Minister of Foreign Affairs of Sudan via the Sudanese Embassy in Washington, D.C. The papers were sent via registered mail, return receipt requested to:

Republic of Sudan
Deng Alor Koul
Minister of Foreign Affairs
Embassy of the Republic of Sudan
2210 Massachusetts Avenue NW
Washington, DC 2008

As represented by plaintiffs, Deng Alor Koul was the Minister of Foreign Affairs of Sudan at the time.

On November 17, 2010, the Clerk of Court entered a Certificate of Mailing certifying that the summons and complaint were sent via domestic certified mail to the "head of the ministry of foreign affairs," via the

Sudanese Embassy in Washington, D.C., and that the return receipt was returned to the Clerk of Court and received on November 23, 2010. No attempt was made to serve Sudan by mail to the address of the Ministry of Foreign Affairs in Khartoum, the capital. Sudan failed to serve an answer or other responsive pleading within sixty days after plaintiffs' service, *see* 28 U.S.C. § 1608(d), and the Clerk of Court thus entered a default against Sudan.

On March 30, 2012, after a hearing, the D.C. District Court (Lamberth, *J.*) entered a default judgment against Sudan in the amount of $314,705,896, *Harrison v. Republic of Sudan*, 882 F. Supp. 2d 23, 51 (D.D.C. 2012), and found, *inter alia,* that service on Sudan had been proper, *id.* at 28. At the request of plaintiffs, on April 20, 2012, the Clerk of the Court mailed a copy of the default judgment by registered mail, return receipt requested, to Sudan's Minister of Foreign Affairs, via the Sudanese Embassy in Washington, D.C. While it does not appear that the receipt was returned, plaintiffs submitted proof that the mailing was delivered.

The judgment was thereafter registered in the Southern District of New York. In December 2013 and January 2014, the Southern District issued three turnover orders, directing certain banks to turnover assets of Sudan to plaintiffs. It was only after the last of these three turnover orders was entered that Sudan finally filed a notice of appearance, on January 13, 2014. The same day, Sudan appealed the turnover orders to this Court.[1]

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[1] Nearly a year and a half later, after this appeal had been argued and while the appeal was pending, Sudan made a Rule

In affirming the turnover orders, we held that service of process on the Minister of Foreign Affairs via the Sudanese Embassy in Washington, D.C., was sufficient to meet the requirements of the FSIA. *Harrison,* 802 F.3d at 406. We also held that the District Court did not err in issuing the turnover orders without first obtaining a license from the Treasury Department's Office of Foreign Assets Control ("OFAC") or a Statement of Interest from the Department of Justice. *Id.* at 407.

On October 7, 2015, Sudan filed this petition for panel rehearing or rehearing *en banc.* Although it had not appeared in the earlier proceedings, the United States filed an *amicus* brief in support of the petition on November 6, 2015. After further briefing, we heard argument on March 11, 2016. We now deny the petition to the extent it seeks panel rehearing.

DISCUSSION

Sudan and the United States argue that the Panel Opinion misinterprets § 1608(a)(3) of the FSIA and puts the United States in violation of its obligations under the Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227 (entered into force in United States Dec. 13, 1972) [hereinafter "Vienna Convention"]. In its reply brief, Sudan also makes the factual argument that the summons and complaint were not actually delivered to the embassy. Finally, as to the issue of the requirement of an

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60(b) motion in the D.C. District Court to set aside the default judgment. Motion to Vacate Memorandum & Opinion, *Harrison v. Republic of Sudan,* No. 1:10-cv-01689-RCL (D.D.C. June 14, 2015), ECF No. 55. That court has not yet decided that motion.

OFAC license, the United States argues that the FSIA does not override the requirement of an OFAC license. We address each of these issues in turn.

I. Interpretation of § 1608(a)(3)

Sudan and the United States argue that the Panel Opinion incorrectly interprets § 1608(a)(3) of the FSIA. We acknowledge that the statutory interpretation question presents a close call, and that the language of § 1608(a)(3) is not completely clear. Nonetheless, for the reasons discussed below, we believe, as a matter of statutory construction, that the better reading of the statute favors plaintiffs' position. Accordingly, we adhere to our prior decision.

A. The Plain Language

The "starting point in statutory interpretation is the statute's plain meaning, if it has one." *United States v. Dauray,* 215 F.3d 257, 260 (2d Cir. 2000). Section 1608(a)(3) of the FSIA reads: "Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state . . . by sending a copy of the summons and complaint and a notice of suit . . . to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. § 1608(a)(3).[2]

On its face, the statute does not specify a location where the papers are to be sent; it specifies only that the papers are to be addressed and dispatched to the head of the ministry of foreign affairs. Nothing in

[2] As we discuss in the Panel Opinion, the FSIA provides for four methods of service. *Harrison,* 802 F.3d at 403. The method set forth in § 1608(a)(3) is the method at issue in this case.

§ 1608(a)(3) requires that the papers be mailed to a location in the foreign state, or indeed to any particular address, and nothing in the statute precluded the method chosen by plaintiffs. A mailing addressed to the minister of foreign affairs via Sudan's embassy in Washington, D.C., was consistent with the language of the statute and could reasonably be expected to result in delivery to the intended person.[3] Plaintiffs literally complied with the statute -- they sent a copy of the summons and complaint addressed to the head of the ministry of foreign affairs of Sudan.

The statute does not specify that the mailing be sent to the head of the ministry of foreign affairs *in* the foreign country. If Congress had wanted to

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[3] An embassy is a logical place to direct a communication intended to reach a foreign country. As explained by the United States State Department, "an embassy is the nerve center for a country's diplomatic affairs within the borders of another nation, serving as the headquarters of the chief of mission, staff and other agencies." Diplomacy 101, What Is a U.S. Embassy?, http://diplomacy.state.gov/discoverdiplomacy/diplomacy101/places/170537.htm; *see also Rux v. Republic of Sudan,* No. Civ.A. 2:04CV428, 2005 WL 2086202, at *16 (E.D. Va. Aug. 26, 2005), *aff'd on other grounds,* 461 F.3d 461 (4th Cir. 2006) (underscoring the "inherent reliability and security associated with diplomatic pouches," which, "unlike the United States Postal Service, DHL, or any other commercial carrier, is accorded heightened protection under international law to ensure safe and uncompromised delivery of documents between countries" (citing Vienna Convention, art. 27)). We do not suggest that service could be made on a minister of foreign affairs via other offices in the United States or another country maintained by the country in question, such as, *e.g.,* a consular office, the country's mission to the United Nations, or a tourism office.

require that the mailing be sent to the minister of foreign affairs at the principal office of the ministry in the foreign country, it could have said so -- but it did not. *See Burrage v. United States,* 134 S. Ct. 881, 892 (2014) ("The role of this Court is to apply the statute as it is written—even if we think some other approach might 'accor[d] with good policy.'") (quoting *Commissioner v. Lundy,* 516 U.S. 235, 252 (1996)); *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 176 (1994) (rejecting argument that aiding and abetting liability existed because Congress did not use words "aid" and "abet" in statutory text and noting that "Congress knew how to impose aiding and abetting liability when it chose to do so"). In § 1608(a)(4), for example, Congress specified that the papers be mailed "to the Secretary of State *in Washington, District of Columbia,* to the attention of the Director of Special Consular Services," for transmittal to the foreign state "through diplomatic channels." 28 U.S.C. § 1608(a)(4) (emphasis added).

The United States argues that the FSIA's service provisions require strict compliance, and that mailing the papers to "the foreign minister at a place other than the foreign ministry" is not authorized by the statute. Amicus Br. of the United States at 3. The United States argues that "[t]he most natural understanding of [the statute's] text is that the mail will be sent to the head of the ministry of foreign affairs at his or her regular place of work -- *i.e.,* at the ministry of foreign affairs in the state's seat of government." *Id.* at 2. This argument is unpersuasive, as it would require us to read the words "at his or her regular place of work" or "at the

state's seat of government" into the statute. *See Dean v. United States,* 556 U.S. 568, 572 (2009) (courts must "ordinarily resist reading words or elements into a statute that do not appear on its face") (quoting *Bates v. United States,* 522 U.S. 23, 29 (1997)).

The United States argues that our reading of § 1608(a)(3) is undermined by other provisions in the statute. It argues that because the FSIA permits the use of an authorized agent only in the context of service under § 1608(b)(2) -- the provision that deals with service on foreign state agencies and instrumentalities -- we should infer that "Congress did not intend to allow service on a foreign state via delivery to any entity that could, by analogy, be considered the foreign state's officer or agent, including the state's embassy." Amicus Br. of the United States at 3. This argument rests on the premise that the Panel Opinion requires an embassy to act as an agent of a foreign state. We did not so hold, and, to the extent there is any doubt, we now clarify.

We do not hold that an embassy is an agent for service or a proxy for service for a foreign state. There is a significant difference between *serving process* on an embassy, and mailing papers to a country's foreign ministry *via* the embassy. Here, the summons and complaint were addressed to the Sudanese Minister of Foreign Affairs, by name and title, at the Sudanese Embassy. The embassy accepted the papers, signing for them and sending back a return receipt to the Clerk of Court.[4] The embassy could have rejected the

[4] In its reply brief on its petition for rehearing, Sudan argues for the first time in this nearly six-year old litigation that in fact

mailing, but instead it accepted the papers and then explicitly acknowledged receipt. Accordingly, the papers were not served on the embassy as a proxy or agent for Sudan, but they were instead mailed to the Minister of Foreign Affairs, in the most natural way possible -- addressed to him, by name, via Sudan's embassy.

In short, while the language of the statute is not wholly unambiguous, we believe that the better reading is that it did not require service on the foreign minister at his or her regular place of work or in the state's seat of government. Hence, service on the foreign minister via the embassy was not inconsistent with the wording of the statute.

B. Legislative History

We turn to the legislative history to see whether it sheds light on the statutory interpretation question

As we noted in the Panel Opinion, while the 1976 House Judiciary Committee Report makes clear that the statute does not permit service by "the mailing of a copy of the summons and complaint to a diplomatic mission of the foreign state," see H.R. Rep. No. 94-1487, at 26 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 6604, 6625, it does not address the question of mailing the papers to the minister of foreign affairs via or care of an embassy. The Report provides,

> Special note should be made of two means which are currently in use in attempting to commence litigation against a foreign state

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the embassy did not receive the papers. We discuss this issue below.

> ...A second means, of questionable validity, involves the mailing of a copy of the summons and complaint to a diplomatic mission of the foreign state. Section 1608 precludes this method so as to avoid questions of inconsistency with section 1 of article 22 of the Vienna Convention on Diplomatic Relations, 23 UST 3227, TIAS 7502 (1972), which entered into force in the United States on December 13, 1972. Service on an embassy by mail would be precluded under this bill. See 71 Dept. of State Bull. 458-59 (1974).

H.R. Rep. 94-1487, at 26.

As we noted in the Panel Opinion, the report fails to make the distinction at issue in the instant case, between "[s]ervice *on* an embassy by mail," *id.* (emphasis added), and service on a minister or foreign affairs *via* or *care of* an embassy. The legislative history does not address, any more than does the statutory text, whether Congress intended to permit the mailing of service to a foreign minister via an embassy. What it does make clear, however, is that Congress was concerned about the interaction of this provision and Article 22 of the Vienna Convention. Accordingly, we must consider the Vienna Convention, which we discuss below.

C. Judicial Interpretation

Before turning to the Vienna Convention, we consider the case law on the statutory interpretation issue.

As we noted in the Panel Opinion, we are not alone in our reading of § 1608(a)(3). In *Wye Oak*

Technology, Inc. v. Republic of Iraq, the Eastern District of Virginia held that "Section (a)(3) does not impose a requirement that an otherwise proper service package must be delivered to a particular destination." No. 1:09cv793, 2010 WL 2613323, at *5 (E.D. Va. June 29, 2010), *aff'd on other grounds,* 666 F.3d 205 (4th Cir. 2011). There, the court held that service via an embassy is sufficient to satisfy the FSIA as long as the service is directed to the Minister of Foreign Affairs. *Id.* at *5-6. The Eastern District of Virginia also so held in *Rux v. Republic of Sudan.* 2005 WL 2086202, at *16 ("The text of § 1608(a)(3) does not prohibit service on the Minister of Foreign Affairs at an embassy address. Indeed, the statute does not prescribe the place of service, only the person to whom process must be served."). It is true, as Sudan argues, that these were district court opinions, but Sudan has not cited any case, district court or otherwise, holding that the mailing of papers addressed to the minister of foreign affairs via an embassy does *not* comply with the statute.

None of the cases relied on by Sudan or the United States undermines our reading of § 1608(a)(3). In four of the cases, the plaintiffs served the papers on the embassy or the ambassador, without addressing them to the minister of foreign affairs. *See Barot v. Embassy of the Republic of Zambia,* 785 F.3d 26, 28-29 (D.C. Cir. 2015) (service package addressed to embassy); *Autotech Techs. LP v. Integral Research & Dev. Corp.,* 499 F.3d 737, 741 (7th Cir. 2007) (no record of service but counsel submitted affidavit stating document had been served "on the embassy in Washington, D.C."); *Alberti v. Empresa Nicaraguense De La Carne,* 705 F.2d 250, 253 (7th Cir. 1983)

(service package addressed to ambassador); *Ellenbogen v. The Canadian Embassy,* No. Civ.A. 05-01553JDB, 2005 WL 3211428, at *2 (D.D.C. Nov. 9, 2005) (service package addressed to embassy). Consequently, those plaintiffs did not comply with the statute.

In another case, we interpreted a different provision of the FSIA, § 1608(b)(2), and held that persons entitled to diplomatic immunity are not proper agents for service under the FSIA. *Tachiona v. United States,* 386 F.3d 205, 222 (2d Cir. 2004) (holding that § 1608(b)(2) does not authorize service on foreign officials present in United States as agents for a private political party). *Tachiona* did not address the issue before us. In two other cases, the opinions do not say to whom the papers were addressed. *See Lucchino v. Foreign Countries of Brazil, S. Korea, Spain, Mexico, & Argentina,* 631 F. Supp. 821, 826 (E.D. Pa. 1986); *40 D 6262 Realty Corp. v. United Arab Emirates Gov't,* 447 F. Supp. 711 (S.D.N.Y. 1978).

Section 1608(a)(3) explicitly provides that service on a foreign sovereign must be "*addressed* and dispatched by the clerk of the court *to* the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. § 1608(a)(3) (emphasis added). Cases involving mailings not so addressed are not controlling. We adhere to our conclusion that the plain language of § 1608(a)(3) does not foreclose the plaintiffs' method of service.

II. The Vienna Convention

Sudan and the United States contend that the Panel Opinion places the United States in violation of

the Vienna Convention. They contend that the Panel Opinion will complicate international relations by subjecting the United States (and other countries) to service of process via any of its diplomatic missions throughout the world, despite its long-standing policy to refuse such service. As a preliminary matter, we note that these arguments were not properly raised in Sudan's initial briefs. Nonetheless, we exercise our discretion to consider the arguments, and we reject them.

The FSIA is the sole basis for obtaining jurisdiction over a foreign state in the courts of the United States. *Argentine Republic v. Amerada Hess Shipping Corp.,* 488 U.S. 428, 434 (1989). As noted above, the "legislative history of the FSIA demonstrates unequivocally that the Act was not intended to affect the immunity of 'diplomatic or consular representatives,'" that was established under the Vienna Convention and customary international law. *Tachiona,* 386 F.3d at 222-23 (quoting H.R. Rep. 94-1487, at 21). "Under the terms of [the Vienna Convention], the United States, in its role as a receiving state of foreign missions, is obligated to protect and respect the premises of any foreign mission located within its sovereign territory." *Bennett v. Islamic Republic of Iran,* 604 F. Supp. 2d 152, 159 (D.D.C. 2009), *aff'd,* 618 F.3d 19 (D.C. Cir. 2010).

The Panel Opinion does not conflict with the Vienna Convention. The Vienna Convention provides that "[t]he premises of the mission shall be inviolable," and that "[a] diplomatic agent shall . . . enjoy immunity from [the host state's] civil and administrative jurisdiction." Vienna Convention, arts.

22, 31; *see also* H.R. Rep. 94-1487, at 26 ("Service on an embassy by mail would be precluded under this bill."). We acknowledge that these provisions preclude service of process on an embassy or diplomat as an agent of a foreign government, as there would be a breach of diplomatic immunity if an envoy were subjected to compulsory process. *See Tachiona,* 386 F.3d at 222 (noting that "the inviolability principle precludes service of process on a diplomat as agent of a foreign government"); *40 D 6262 Realty Corp.,* 447 F. Supp. at 712 (holding that the FSIA's legislative history makes clear that service by mail on an embassy is precluded under the Act). Accordingly, service on an embassy or consular official would be improper. But that is not what happened here. Rather, process was served on the Minister of Foreign Affairs at the foreign mission and not on the foreign mission itself or the ambassador. The papers were specifically addressed to the Minister of Foreign Affairs via the embassy, and the embassy sent back a return receipt acknowledging receipt of the papers.

The United States explains that it "consistently rejects attempted service via direct delivery to a U.S. embassy abroad. When a foreign court or litigant purports to serve the United States through an embassy, the embassy sends a diplomatic note to the foreign government indicating that the United States does not consider itself to have been served properly." Amicus Br. of the United States at 6. Our holding does not affect this policy. We do not preclude the United States (or any other country) from enforcing a policy of refusing to accept service via its embassies. We have previously recognized that "[w]ere the United States to adopt exceptions to the inviolability

of foreign missions here, it would be stripped of its most powerful defense, that is, that international law precludes the nonconsensual entry of its missions abroad." *767 Third Ave. Assocs. v. Permanent Mission of Republic of Zaire to United Nations,* 988 F.2d 295, 300-01 (2d Cir. 1993). The United States may continue to instruct its embassies to follow this protocol, and so may any other country with a foreign diplomatic embassy. Nothing about our decision affects the ability of any state to refuse to accept service via its embassies.

Here, Sudan did not elect to follow any such policy. It did not reject the service papers, as it could have done easily, but accepted them. In these circumstances, where plaintiffs mailed the documents addressed to the Sudanese Minister of Foreign Affairs via the embassy, and the embassy explicitly acknowledged receipt of the documents, the requirements of the statute were met.

Significantly, the Vienna Convention provides that a mission may "consent" to entry onto its premises. Section 1 of Article 22 of the Convention provides that: "The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the *consent* of the head of the mission." Vienna Convention, art. 22 (emphasis added). Here, the Sudanese Embassy's acceptance of the service package surely constituted "consent." Instead of rejecting the service papers, Sudan accepted them and then, instead of returning them, it explicitly acknowledged receiving them. These actions, we conclude, constitute consent.

The Vienna Convention "recognized the independence and sovereignty of mission premises that existed under customary international law." *767 Third Ave. Assocs.,* 988 F.2d at 300. An important reason for the inviolability of the embassy premises is that the embassy is, to some degree, an extension of the sovereignty of the sending state. *See United States v. Gatlin,* 216 F.3d 207, 214 n.9 (2d Cir. 2000). To send officers into the embassy to serve papers would thus be akin to sending officers into the sovereign territory of the sending state itself. There is nothing offensive, however, about mailing a letter into the sovereign territory of a foreign state. Indeed, that is the very procedure that Sudan and the State Department urge is the preferred and required practice. We therefore find it difficult to understand how mailing a letter to the Foreign Minister of a country in care of that country's embassy in Washington -- particularly given that the embassy remains free to refuse delivery if it so chooses -- can be considered a grave insult to the "independence and sovereignty" of the embassy's premises.

Indeed, the embassy is extended somewhat less sovereignty than the actual territory of the sending state. *See McKeel v. Islamic Republic of Iran,* 722 F.2d 582, 588 (9th Cir. 1983) ("A United States embassy, however, remains the territory of the receiving state, and does not constitute territory of the United States."); *see also* Jordan J. Paust, *Non-Extraterritoriality of 'Special Territorial Jurisdiction' of the United States: Forgotten History and the Errors of Erdos,* 24 YALE J. INT'L L. 305, 312 (1999) ("[A] U.S. embassy in foreign state territory is not U.S. territory and is not within the territorial

jurisdiction of the United States, any more than a foreign embassy within the United States is foreign territory or within the territorial jurisdiction of a foreign state."). While the precise degree to which the sovereignty of the embassy is less than a state's control over its own territory is subject to debate, it is evident that an embassy is not *more* sovereign than the territory of the sending state itself.

It is with some reluctance that we diverge from the Executive Branch's interpretation of the Vienna Convention, and of the potential effect of the Convention on the interpretation of the FSIA. It is appropriate to give the government's interpretation of the Vienna Convention "great weight" -- and we do -- but the State Department's views are "not conclusive." *Sumitomo Shoji Am., Inc. v. Avagliano,* 457 U.S. 176, 185 (1982). For the reasons stated above, we do not find those views persuasive.

III. The Factual Argument

In its reply in support of its petition for rehearing, Sudan argues that the evidence does not support a finding that the mailing was accepted by Sudan or delivered to the Sudanese Minister of Foreign Affairs. It argues that the signatures on the return receipt are illegible and it makes a factual argument that the package never reached the embassy.

Sudan's factual challenge to the service of process comes too late, for three independent reasons. First, Sudan raises the factual arguments for the first time on appeal. "[I]t is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal." *In re Nortel Networks Corp. Sec. Litig.,* 539 F.3d 129, 132 (2d Cir. 2008)

(quoting *Bogle-Assegai v. Connecticut,* 470 F.3d 498, 504 (2d Cir. 2006)).

Second, the factual challenge to service requires factfinding. "[F]actfinding is the basic responsibility of district courts, rather than appellate courts, and... the Court of Appeals should not . . . resolve[ ] in the first instance [a] factual dispute which ha[s] not been considered by the District Court." *DeMarco v. United States,* 415 U.S. 449, 450 n.* (1974). The factual challenge should have been raised during the five years that the case was pending in the district courts.

Third, even on appeal, Sudan did not raise the factual challenge until its reply brief in support of its petition for rehearing. It did not raise the issue in its briefing of the main appeal or in its initial submission on this petition for rehearing. *See Knipe v. Skinner,* 999 F.2d 708, 711 (2d Cir. 1993) ("Arguments may not be made for the first time in a reply brief.").

Accordingly, the factual challenge is not properly before us.

IV. The Requirement of an OFAC License

The United States also seeks to clarify the Panel Opinion with respect to when a license from OFAC is required. In the Panel Opinion, we held that the District Court did not err in issuing turnover orders without first obtaining either an OFAC license or a Statement of Interest from the Department of Justice. *See Harrison,* 802 F.3d at 406-07. This holding was based on the United States' position in previous Statements of Interest that § 201(a) of the Terrorism Risk Insurance Act ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322, 2337 (codified at 28 U.S.C.

§ 1610 note), permits a 28 U.S.C. § 1605A judgment holder to attach assets that have been blocked pursuant to certain economic sanctions laws without obtaining an OFAC license. The Panel Opinion included language, however, that may have suggested that § 1610(g) of the FSIA might permit a person holding a judgment under § 1605A to attach blocked assets without an OFAC license. *Harrison,* 802 F.3d at 407-08. This is not the case and thus we now clarify our ruling.

Section 1605 of the FSIA creates exceptions to the general blanket immunity of foreign states from the jurisdiction of U.S. courts, including the "terrorism exception," 28 U.S.C. § 1605A, which Congress added to the FSIA in 1996 to "give American Citizens an important economic and financial weapon against . . . outlaw states" that sponsor terrorism. H.R. Rep. No. 104-383, at 62 (1995). This exception allows courts to hear claims against foreign states designated by the State Department as "state sponsor[s] of terrorism." *See Calderon-Cardona v. Bank of N.Y. Mellon,* 770 F.3d 993, 996 (2d Cir. 2014).

The TRIA was enacted to aid victims of terrorism in satisfying judgments against foreign sponsors of terrorism. Section 201(a) of the TRIA, which governs post-judgment attachment in some terrorism cases, provides, in relevant part:

> *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 section 1605A or 1605(a)(7) (as such

> section was in effect on January 27, 2008) 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.

TRIA § 201(a) (codified at 28 U.S.C. § 1610 note) (emphasis added).

Sudanese assets in the United States are subject to such a block, pursuant to sanctions that began with Executive Order 13067 in 1997 and are now administered by OFAC and codified at 31 C.F.R. Part 538. Ordinarily, unless a plaintiff obtains a license from OFAC, he is barred from attaching assets that are frozen under such sanctions regimes. The Panel Opinion held that, based on previous statements of interest made by the United States, blocked assets that are subject to the TRIA may be distributed without a license from OFAC. *Harrison,* 802 F.3d 408-09.

The Panel Opinion framed the issue, however, as "whether § 201(a) of the TRIA and *§ 1610(g) of the FSIA,* which authorize the execution of § 1605A judgments against state sponsors of terrorism, permit a § 1605A judgment holder to attach blocked Sudanese assets without a license from OFAC." *Id.* at 407-08.

The Panel Opinion should not have included the reference to § 1610(g) of the FSIA. Section 1610(g)(2)

of the FSIA, while providing that certain property "shall not be immune from attachment," does not contain the TRIA's same broad "notwithstanding any other provision of law" language. Therefore, it does not override other applicable requirements, such as the requirement of an OFAC license before the funds may be transferred. To be clear, when the TRIA does not apply and the funds at issue are attachable by operation of the FSIA alone, an OFAC license is still required.

In this case, plaintiffs obtained a terrorism judgment from the D.C. District Court pursuant to § 1605A of the FSIA. The Southern District of New York then issued three turnover orders. The first two orders specified that they were issued pursuant to 28 U.S.C. § 1610(g) but did not mention the TRIA. Only the third order specified that assets were "subject to turnover pursuant to § 201 of the Terrorism Risk Insurance Act of 2002." Joint App. at 76. While the district court did not explicitly discuss whether the funds at issue in the December 12 and 13, 2013 orders were subject to turnover pursuant to the TRIA, based on our review of the record, which includes the complaint and judgment in the D.C. District Court proceedings, and the turnover petition and orders in the proceedings below, we conclude that the funds were subject to turnover pursuant to the TRIA. Plaintiffs have "obtained a judgment against a terrorist party on a claim based upon an act of terrorism," the blocked assets are the assets of that terrorist party, and, accordingly, those assets "shall be subject to execution or attachment in aid of execution in order to satisfy [plaintiffs'] judgment to the extent of any compensatory damages for which

such terrorist party has been adjudged liable." *See* TRIA § 201(a) (codified at 28 U.S.C. § 1610 note). Because the funds at issue in all three turnover orders were subject to turnover pursuant to the TRIA, plaintiffs were not required to obtain an OFAC license before seeking distribution.

CONCLUSION

For the foregoing reasons, the petition, to the extent it seeks panel rehearing, is **DENIED**.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Filed: 12/09/2016]

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of December, two thousand sixteen.

Rick Harrison, John Buckley, III, Margaret Lopez, Andy Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, Carl Wingate, Tracey Smith, as personal representative of the Estate of Rubin Smith,

Plaintiffs-Appellees,

v.

Republic of Sudan,

Defendant-Appellant,

Advanced Chemical Works, AKA Advanced Commercial and Chemical Works Company Limited, AKA Advanced Training and Chemical Works Company Limited, Accounts & Electronics Equipments, AKA Accounts and Electronics Equipments, et al.,

Defendants,

National Bank of Egypt, Credit Agricole Corporate and Investment Bank,

Respondents.

ORDER
Docket No.: 14-121

Appellants Republic of Sudan, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc.* The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc.*

IT IS HEREBY ORDERED that the petition is denied.

For The Court:

/s/ Catherine O'Hagan Wolfe
Catherine O'Hagan Wolfe,
Clerk of Court

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Filed: 09/23/2015]

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of September, two thousand and fifteen.

Before:

Gerard E. Lynch, Denny Chin, *Circuit Judges,*

Edward R. Korman, *District Judge.*[*]

Rick Harrison, John Buckley, III, Margaret Lopez, Andy Lopez, Keith Lorensen, Lisa Lorensen, Edward Love, Robert McTureous, David Morales, Gina Morris, Martin Songer, Jr., Shelly Songer, Jeremy Stewart, Kesha Stidham, Aaron Toney, Eric Williams, Carl Wingate, Tracey Smith, as personal representative of the Estate of Rubin Smith,

Plaintiffs-Appellees,

v.

Republic of Sudan,

Defendant-Appellant,

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[*] The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

MANDATE ISSUED ON 12/22/2016

Advanced Chemical Works, AKA Advanced Commercial and Chemical Works Company Limited, AKA Advanced Training and Chemical Works Company Limited, Accounts & Electronics Equipments, AKA Accounts and Electronics Equipments, et al.,

Defendants,

National Bank of Egypt, Credit Agricole Corporate and Investment Bank,

Respondents.

ORDER

Docket No. 14-121

The appeal in the above captioned case from three orders of the United States District Court for the Southern District of New York was argued on the district court's record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the orders of the district court are AFFIRMED.

For The Court:

/s/ Catherine O'Hagan Wolfe
Catherine O'Hagan Wolfe,
Clerk of Court