No. 23-

IN THE

Supreme Court of the United States

WINFRED WAIRIMU WAMAI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ADAM TITUS WAMAI, *et al.*,

Petitioners,

v.

INDUSTRIAL BANK OF KOREA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are:

1. Whether the choice of a U.S. forum by U.S.-resident plaintiffs is entitled to "less deference" under the doctrine of *forum non conveniens*, rather than the strong deference ordinarily provided to a U.S. resident's choice of forum, when the U.S. plaintiffs are joined by foreign co-plaintiffs and all plaintiffs as judgment creditors seek to enforce their U.S. judgments obtained pursuant to the Foreign Sovereign Immunities Act.

2. Whether the Constitution's separation of powers principle requires a federal court, in applying the doctrine of *forum non conveniens*, to follow a strong presumption in favor of the choice of forum by plaintiffs who seek to enforce and satisfy their U.S. judgments pursuant to a statutory remedy expressly provided them by Congress in furtherance of its foreign affairs determinations and authorities.

PARTIES TO THE PROCEEDING

Petitioners in this proceeding are current and former U.S. Government employees and contractors injured and killed in the August 7, 1998 bombings of the U.S. Embassies in Kenya and Tanzania, and their family members and estate representatives. Petitioners total 323 persons, 54 are U.S. citizens and residents and 269 are foreign nationals who reside in Kenya, Tanzania, Australia, Canada, and the United Kingdom. Due to its length, the list of parties is set forth in full in the appendix to this petition at App. 111a.

Respondent Industrial Bank of Korea was the defendant-appellee below. Respondent is a financial institution majority-owned by the government of the Republic of Korea (South Korea).

RULE 29.6 STATEMENT

None of the petitioners is a nongovernmental corporation. None of the petitioners has a parent corporation or shares held by a publicly traded company.

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

Wamai, et al. v. Industrial Bank of Korea, No. 21-cv-0325 (July 30, 2021)

United States Court of Appeals (2d Cir.):

Wamai, et al. v. Industrial Bank of Korea, No. 21-1956-cv (February 16, 2023)

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PETITION FOR A WRIT OF CERTIORARI

Winfred Wairimu Wamai (for the Estate of Adam Titus Wamai and individually), et al., respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (App. 1a) is not published in the Federal Reporter but is available at 2023 WL 2395675.

The opinion (App. 25a) and order (App. 22a) of the United States District Court for the Southern District of New York granting Respondent's motion to dismiss are not published in the Federal Supplement but the opinion is available at 2021 WL 3038402.

The District Court's opinion "incorporates by reference" its prior opinion in *Owens v. Turkiye HalkBankasi A.S.*, No. 20-cv-2648, 2021 WL 638975 (S.D.N.Y. 2021) (hereinafter "*Owens v. Halkbank*"), "which addressed a case that involved similar facts and identical legal theories." App. 26a. Based on the District Court's incorporation, the *Owens v. Halkbank* opinion is included in the appendix at App. 72a.

JURISDICTION

The Court of Appeals entered judgment on February 16, 2023 and denied rehearing *en banc* on April 12, 2023. App. 45a. On June 1, 2023, Justice Sotomayor extended the time within which to file a petition for writ of certiorari

to and including September 8, 2023. 28 U.S.C. § 1254(1) confers jurisdiction in this matter.

RELEVANT STATUTORY PROVISIONS

Relevant statutory provisions are reproduced in the appendix. App. 47a-71a.

INTRODUCTION

After more than a decade of motions practice, intervening legislative amendments, and trial, the Petitioners filed this lawsuit to satisfy their final and enforceable U.S. judgments against the Islamic Republic of Iran through the rescission and turnover of unlawful, fraudulent transactions involving Iranian funds in New York undertaken by Respondent Industrial Bank of Korea ("IBK") on behalf of Iran. Respondent admitted conducting more than $1 billion in unlawful and concealed transactions in the United States in its 2020 resolution of federal and state criminal and civil investigations in New York. Yet the District Court and Second Circuit found that consideration of this judgment enforcement action seeking funds unlawfully laundered in New York to satisfy a U.S. judgment obtained by former and current employees of the U.S. Government was more conveniently and appropriately conducted in Korea than in a U.S. Courthouse.

The decision by the Second Circuit conflicts with this Court's opinion in *Piper Aircraft v. Reyno*, 454 U.S. 235 (1981), and the D.C., Ninth, and Eleventh Circuits concerning the level of deference to be provided to the choice of forum by U.S. citizens and residents.

Furthermore, this judgment enforcement action relies directly on federal law, which codified the foreign policy determinations of the political branches. Congress has determined that federal civil lawsuits against designated state sponsors of terrorism and collections on resulting judgments by certain victims of terrorism serve the foreign policy and national security interests of the United States by depriving terror states of financial resources and deterring commercial entities from participating in those foreign states' money laundering schemes in violation of U.S. law.

The District Court and Second Circuit below, however, reached a different determination about the public and private interests pertaining to this judgment enforcement action and the level of deference to be given the choice of forum by Petitioners, who are U.S. Government employees injured and the estates of those killed in the service of our nation. In granting Respondent's motion to dismiss based on the common law doctrine of *forum non conveniens* and sending this judgment enforcement action to Korea, the District Court applied Second Circuit precedent and found that the Petitioners' choice of forum merited "minimal deference" and there was "no local interest" in New York served by this civil action to enforce Petitioners' U.S. judgments registered in the Southern District of New York. App. 34a, 42a. The Second Circuit affirmed those determinations and found that the choice of forum by 54 U.S. citizen and resident Plaintiffs warranted minimal deference, rather than strong deference, because the U.S. resident Plaintiffs were "significantly outnumbered" by non-resident Plaintiffs. App. 12a, 21a.

Finally, the Second Circuit's refusal to impose a strong presumption in favor of the Petitioners' choice of

forum and the resulting dismissal of this action arrogated and interfered with legislative power, thereby violating the Constitution's separation of legislative and judicial power. Congress has exercised its legislative power to mandate explicitly and specifically that certain property of designated state sponsors of terrorism "shall be subject to execution" to satisfy U.S. judgments obtained under the terrorism exception of the Foreign Sovereign Immunities Act, 28 U.S.C. §1605A, "in every case" and "notwithstanding any other provision of law." Terrorism Risk Insurance Act of 2002, §201(a), 28 U.S.C. §1610 *note* ("TRIA").

This Court's intercession is required to ensure uniformity among the Circuits in making the important determination whether a U.S. forum is available to U.S. judgment creditors and to safeguard the Constitution's separation of legislative and judicial power.

STATEMENT OF THE CASE

1. Petitioners and their U.S. Judgments

Petitioners are U.S. Government employees and contractors killed and injured in the August 7, 1998 bombings of the United States Embassies in Kenya and Tanzania and their immediate family members. In those terrorist attacks, Al-Qaeda, with knowing, material support provided by the Islamic Republic of Iran and the Republic of the Sudan, engaged in the premeditated murder and injury of more than 150 U.S. Government employees and more than 4,000 persons in total. *See Owens v. Republic of Sudan*, 826 F.Supp.2d 128 (D.D.C. 2011).

The Petitioners are 54 U.S. citizens and residents, including 3 New York residents, and 269 non-U.S. residents. App. 27a. The non-U.S. residents either were employed by the U.S. government at the time of the August 1998 bombing or are family members of U.S. Government employees or contractors. The non-U.S.-resident Petitioners reside in Kenya, Tanzania, Australia, Canada, and the United Kingdom. None of the Petitioners is known to be or ever to have been a resident of South Korea.

The Petitioners filed three separate lawsuits in U.S. District Court for the District of Columbia in 2008 seeking compensatory and punitive damages from Iran, the Iranian Ministry of Information and Security, and the Iranian–Islamic Revolutionary Guards Corps (collectively "Iran") for their provision of material support for the August 1998 attacks.[1] The Honorable John D. Bates of the U.S. District Court for the District of Columbia presided over a three-day bench trial resulting in a detailed written opinion concluding that "[s]upport from Iran and Hezbollah was critical to al Qaeda's execution of the 1998 embassy bombings." *Owens*, 826 F.Supp.2d at 139.

Judge Bates reviewed and made individualized assessments of damages based on extensive proceedings and issued multiple opinions and judgments in favor of

1. In 2008, Congress expanded the scope of the "terrorism exception" in the FSIA, 28 U.S.C. §1605A(a), to allow foreign national U.S. Government employees injured and killed in the service of the United States by terrorist acts caused by a designated state sponsor of terrorism to bring suit and recover damages. Iran has been a designated terror state since 1984.

the Petitioners of approximately $5.5 billion.[2] After entry of the final judgments, the Petitioners registered their judgments in the Southern District of New York,[3] thereby making them the judgments of the S.D.N.Y. 28 U.S.C. §1963. Iran has made no payment on the judgments, which remain unsatisfied today.

2. Respondent IBK and Fraudulent Conveyances Conducted in the United States

Respondent IBK is an international financial institution majority-owned by the Republic of Korea with headquarters in Seoul, South Korea. App. 28c. IBK operates worldwide with more than 10,000 employees and branches, representative offices, and subsidiaries located in South Korea, New York, Tokyo, Hong Kong, London, other major cities, and throughout China and Indonesia. In January 2021, the Petitioners brought this action against Respondent in the Southern District of New York, which had jurisdiction under 28 U.S.C. §§1331, 1332(d)(11). Compl. ¶12 (D.Ct. Doc.#1).

Petitioners alleged in their complaint that IBK fraudulently conveyed in 2011 approximately $1 billion in Iranian government assets maintained in Korea through IBK's correspondent accounts in the United States, thereby violating U.S. sanctions against Iran and

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2. *E.g., Wamai v. Republic of Sudan*, 60 F.Supp.3d 84 (D.D.C. 2014).

3. *Wamai v. Republic of Sudan*, No. 14-misc-0232 (S.D.N.Y. July 29, 2014); *Amduso v. Republic of Sudan*, No. 14-misc-0233 (S.D.N.Y. July 29, 2014); *Onsongo v. Republic of Sudan*, No. 14-misc-0230 (S.D.N.Y. July 29, 2014);

impeding Petitioners' efforts to recover those funds and ultimately to satisfy their judgments. App. 28a-29a. Iran used Kenneth Zong, a U.S. citizen, to facilitate the scheme and to use bribery and kickback payments to obtain the cooperation of IBK officials in carrying out the scheme to launder $1 billion of Iranian assets in the United States. App. 29a-30a.

From 2014 until 2020, multiple law enforcement and regulatory offices of the U.S. and New York State governments undertook investigations arising from the money laundering scheme to use IBK's correspondent accounts in the United States on behalf of Iran. Those investigations resulted in a half dozen criminal, civil forfeiture, and administrative actions in New York, Alaska, and Washington, D.C. against IBK, its New York branch, and individuals.[4] In April 2020, federal prosecutors in New York filed a criminal information against IBK in *United States v. Industrial Bank of Korea*, No. 20-cr-257 (S.D.N.Y.). In connection with an agreed upon Statement of Facts, IBK admitted that "IBK . . . routed . . . $990 million of sanctions-violating Zong Transactions through . . . U.S. correspondent accounts" at U.S.-located banks other than IBK's New York Branch.[5]

4. *E.g., United States v. Kenneth Zong*, No. 16-cr-142 (D.Alaska) (indictment charging conspiracies to violate U.S. sanctions and to launder $1 billion in Iranian assets).

5. *United States v. IBK*, No. 20-cr-257, Dkt. 5, Exh.C, Statement of Facts at ¶ 30 (S.D.N.Y.).

3. Petitioners' Judgment Enforcement Action and the Terrorism Risk Insurance Act

Petitioners' judgment enforcement action seeks rescission of the unlawful U.S. transactions and turnover in satisfaction of their judgments pursuant to the Terrorism Risk Insurance Act of 2002 ("TRIA").[6] Congress enacted TRIA in 2002 because judgment execution efforts by terrorism victims holding judgments obtained against state sponsors of terrorism faced numerous obstacles making judgment satisfaction "all but impossible."[7] Congress enacted Section 201 of TRIA with a narrow Presidential national security waiver provision following two prior legislative enactments in 1998 and 2000 to assist judgment enforcement were stymied by the President's invocation of broad national security waiver provisions.[8]

In TRIA, Congress directed that the "blocked assets" of a "terrorist party" "shall be subject to execution" to satisfy a judgment "in every case" a person has obtained a judgment under the "terrorism exception" of the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §1605A. App. 64a-67a. TRIA defines a terrorist party to include designated state sponsors of terrorism, such as Iran. Petitioners hold judgments against Iran pursuant

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6. Pub.L. No. 107-297, § 201, 116 Stat. 2322, 2337 (28 U.S.C. 1610 *note*). App. 64a.

7. Brief for the United States, *Bank Melli Iran N.Y.Rep.Office v. Weinstein*, S.Ct. No. 10-947, 2012 WL 1883085, *4-5 (May 24, 2012) (citations omitted).

8. *See generally* J.K. Elsea, Cong. Research Service, RL31258, *Suits Against Terrorist States by Victims of Terrorism* at 10-18 (August 8, 2008).

to §1605A. Congress has included all §1605A judgment creditors within TRIA, specifically making TRIA applicable "in every case." Under TRIA, Petitioners are entitled to execute their judgments against Iranian assets held by IBK.

Pursuant to Federal Rule 69(a), Petitioners also rely upon New York law to enforce their judgments. For instance, Petitioners rely on N.Y. Civil Practice Law and Rules §5225(b) which directs that a court "shall require" a "person in possession or custody of money . . . in which the judgment debtor has an interest or . . . a person who is a transferee of money . . . from the judgment debtor . . . to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor." App. 70a-71a. Finally, Petitioners seek relief under New York fraudulent conveyance statutes. App. 68a-69a. Through those federal and state laws, Petitioners seek rescission and turnover of the fraudulently conveyed Iranian assets in satisfaction of their final and unappealable judgments against Iran.

4. The District Court's Dismissal of Petitioners' Judgment Execution Action

Shortly after the District Court's February 16, 2021 dismissal in the similar but separate case of *Owens v. Halkbank* on *forum non conveniens* grounds (App. 72a), Respondent IBK moved to stay this case pending an appeal in *Owens v. Halkbank* or, alternatively, to proceed with its own *forum non conveniens* motion to dismiss. The District Court directed the latter approach. App. 31a.

IBK's motion to dismiss on *forum non conveniens* grounds argued that South Korea was the appropriate

venue to adjudicate Petitioners' claims to enforce their U.S. court judgments under TRIA and New York law. App. 26a. The District Court granted the motion and dismissed this case, "[a]s in *Owens*," on the condition that IBK submit to jurisdiction in Korea "to ensure" that Petitioners' claims may be heard on the merits. App. 43a-44. The District Court incorporated by reference into its opinion the prior February 2021 opinion in *Owens v. Halkbank*. App. 26a.

The District Court applied a "three-part" test in reviewing the motion to dismiss. App. 32a. The first step is to "determine[e] the degree of deference properly accorded the plaintiff's choice of forum." *Id.* (citations omitted). The Second Circuit's precedent *Iragorri v. United Techs. Corp.* 274 F.3d 65, 71 (2d Cir. 2001)(*en banc*), directed that the degree of deference operated on a "sliding scale" depending on several factors, including the number and proportion of foreign plaintiffs which join with U.S. plaintiffs. App. 33a-34a. Applying an outcome determinative sliding scale approach, the District Court found that "[i]n this case, as in *Owens*," the Petitioners' "choice of forum is entitled to minimal deference." App. 34a. In so concluding, the District Court emphasized that "[t]he vast majority of the plaintiffs here are not resident in the United States, and of the handful of plaintiffs who are U.S. residents," 54 in number, "only a small fraction live in New York." *Id.* Finally, the District Court rejected Petitioners' argument as "a red herring" that Congress' legislation to (a) to establish the FSIA's terrorism exception for both foreign national U.S. Government employees as well as U.S. nationals and (b) to provide specific statutory avenues for judgment enforcement raised serious separation of powers concerns if Petitioners' choice of forum were not accorded strong deference. App. 36a, n.5.

In the second part of the test, the District Court concluded that South Korea was an adequate alternative forum to hear Petitioners' claims based on their U.S. judgments. App. 37a-40a.

In the third part, the District Court found that both the private and public interests weighed in favor of adjudication in South Korea. App. 40a-43a. The District Court found that "New York has no local interest in deciding this case because this case has almost no connection to New York" or the United States. App. 42. The District Court failed to address several public and private interests served by adjudicating Petitioners' claims in New York, including congressional policy and U.S. national interests expressed in TRIA to assist the enforcement §1605A judgments; and the interests served in compensating injury inflicted by the Al-Qaeda conspiracy to kill Americans beginning with or before the August 1998 Embassy Bombings and continuing through the September 11, 2001 attack upon New York. The District Court also disregarded the interests served by adjudication of the fraudulent conveyances which injured Petitioners in New York. Finally, the District Court disregarded the facts and (a) that none of the Petitioners reside in South Korea and (b) that nearly all relevant U.S. banks and their employees—who IBK deceived in using its U.S. correspondent accounts to launder Iranian assets—are in or near the Southern District.

5. The Court of Appeals' Decision

The Second Circuit affirmed, App. 21a, finding that the District Court was "well within" its discretion to give "minimal deference" to the Petitioners' choice of forum.

App. 14a. The Second Circuit applied its view that the degree of deference "moves on a sliding scale" based upon multiple considerations. App. 11a (quoting *Iragorri*, 274 F.3d at 71).

The Second Circuit found no error where the District Court granted "minimal deference" to the choice of forum by the 54 U.S.-resident Petitioners where they "are significantly outnumbered by overseas plaintiffs." App. 12a. The Court of Appeals observed that it had "repeatedly affirmed district courts' application of less deference to the plaintiffs' choice of forum" where the U.S. resident plaintiffs "are outnumbered by non-resident plaintiffs." App. 12a, n.1. In doing so, the Second Circuit cited three of its recent opinions which relied on its nose-counting approach. *Id.*

Regarding the issue of deference granted plaintiffs in the *forum non conveniens* context, the Second Circuit mischaracterized Petitioners' argument concerning the role of congressional policy and legislation as suggesting that non-resident Petitioners "are entitled to great deference . . . because they are U.S. government employees or family members of such employees," App. 12a-13a, n.1. In response to Petitioners' actual argument—that is, Petitioners' choice of forum was entitled to maximum deference because Congress created jurisdiction for these specific foreign nationals and granted to them the same extraordinary statutory means of judgment enforcement provided to U.S. nationals who also had obtained judgments under §1605A—the Second Circuit stated: "[w]e disagree with any suggestion that the nature of this lawsuit requires a departure from our legal framework for a *forum non conveniens* analysis."

App. 20a; *see also* App. 20a-21a (rejecting argument that Congress' legislative actions demonstrate that private/public interests weigh against dismissal).

The Second Circuit agreed with the District Court that South Korea was an adequate alternative forum, while recognizing that—according to IBK's own expert witnesses—the Petitioners would be required to litigate the issue of sovereign immunity to the Korean Supreme Court "to resolve [the] split among the lower [Korean] courts." App. 16a.

REASONS FOR GRANTING THE PETITION

I. The Second Circuit's departure from this Court's rulings, *see Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), on the common law doctrine of *forum non conveniens* brings the Second Circuit into clear conflict with the D.C., Ninth, and Eleventh Circuits, which correctly follow this Court's rulings. Petitioners include more than 50 U.S. resident plaintiffs whose choice of a U.S. forum deserves strong deference under the decisions of this Court, regardless of the presence of foreign national co-plaintiffs. There is no dispute that the U.S. resident plaintiffs here are not makeweight jurisdictional plaintiffs.

The Second Circuit is alone among the Circuits in rejecting *Piper* on the issue of the strong presumption due to the choice of forum in these circumstances. The Second Circuit's approach skews the *forum non conveniens* analysis by alleviating any burden to challenge the choice of forum by a U.S. plaintiff. The Second Circuit's approach leads to illogical results and the encouragement of piecemeal litigation undertaken in multiple jurisdictions.

This Court's intervention is required to resolve the conflict and prevent further misinterpretation of its precedent, thereby ensuring the appropriate application of the *forum non conveniens* doctrine.

II. The Second Circuit's error in rejecting a strong presumption in favor of the Petitioners' choice of forum also violated the Constitution's separation of powers principle. This Petition presents an opportunity for the Court to clarify the substantial risks of violating the Constitution's separation of legislative and judicial power when a federal court declines to exercise jurisdiction granted by Congress in furtherance of Congress' foreign policy and national security determinations. Just as it is incumbent on the Judiciary not to find "implied causes of action" where Congress is silent in legislation, it is equally incumbent on the Judiciary not to decline jurisdiction granted by Congress where Congress legislates and enacts statutory remedies specifically to enforce U.S. judgments.

I. The Ruling Below Continues A Circuit Conflict On The Deference Owed To U.S. and Foreign Co-Plaintiffs' Choice of Forum

A. Three Circuits follow this Court's *Piper* rule and apply a strong presumption in favor of U.S. and foreign co-plaintiffs' choice of forum

The Second Circuit's ruling further solidified a split among the Circuits concerning the legal standard governing the dismissal on *forum non conveniens* grounds of lawsuits brought by U.S. resident plaintiffs who join with a greater number of non-resident co-plaintiffs.

In applying the doctrine of *forum non conveniens*, the D.C., Ninth, and Eleventh Circuits correctly follow this Court's ruling in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). Those three Circuits have concluded that the "strong presumption" owed to U.S. resident plaintiffs' choice of a U.S. forum, *Piper*, 454 U.S. at 255, remains in place where the U.S. plaintiffs bring their lawsuit with a greater number of non-resident, foreign co-plaintiffs. Standing alone, the Second Circuit grants less deference to U.S. plaintiffs' choice of forum.

The Ninth Circuit in *Carijano v. Occidental Petroleum Corp.*, rejected the proposition that the "strong presumption" and deference owed to a U.S. plaintiff's choice of forum was "somehow lessened" because the U.S. plaintiff was greatly outnumbered by foreign co-plaintiffs. 643 F.3d 1216, 1228 (9th Cir. 2011), *cert. denied*, 569 U.S. 946 (2013). In *Carijano*, one U.S. plaintiff joined with 25 residents of Peru as co-plaintiffs in filing a lawsuit arising from environmental pollution in Peru. The Ninth Circuit found that a lesser standard of deference or "only some deference" to a U.S. plaintiff's choice of forum would be "directly contrary to the *Piper* Court's clear instruction that when a domestic plaintiff chooses its home forum, 'it is reasonable to assume that this choice is convenient.'" *Id.* at 1228 (quoting *Piper*, 454 U.S. at 255-256). The Ninth Circuit observed that "*Piper* does not in any way stand for the proposition that when both domestic and foreign plaintiffs are present, the strong presumption in favor of the domestic plaintiff's choice of forum is somehow lessened." *Id.*

The D.C. Circuit in *Simon v. Republic of Hungary* followed the same rule as the Ninth Circuit. 911 F.3d 1172

(D.C. Cir. 2018), *vacated and remanded on other grounds*, 141 S.Ct. 691 (2021). In *Simon*, the D.C. Circuit found that the district court committed legal error when it afforded only "minimal deference" rather than strong deference to the plaintiffs' choice of a U.S. forum where four of the 14 plaintiffs were U.S. citizens. The D.C. Circuit relied on *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), to observe that "[t]he starting point is that the [plaintiffs'] choice of forum controls, and 'unless the balance is *strongly* in favor of the defendant, the plaintiff's choice of forum should *rarely* be disturbed.'" *Simon*, 911 F.3d at 1183 (emphases in original)(quoting *Gulf Oil*, 330 U.S. at 508). The D.C. Circuit held that, where U.S. plaintiffs were not included "only as jurisdictional makeweights seeking to manipulate the forum choice," the U.S. plaintiffs' "preference for their home forum continues to carry important weight in the *forum non conveniens* analysis." *Id.*[9]

More recently, the Eleventh Circuit in *Otto Candies, LLC v. Citigroup, Inc.*, reviewed *Carijano* and *Simon* and found no "practical or doctrinal basis to reduce deference to domestic plaintiffs who sue alongside foreign plaintiffs." 963 F.3d 1331, 1344 (11th Cir. 2020). In *Otto Candies*, two U.S. plaintiffs joined with 37 foreign plaintiffs. *Id.*

9. The D.C. Circuit's holding in *Simon* on *forum non conveniens* remains binding precedent in the D.C. Circuit, although this Court vacated *Simon* concerning foreign sovereign immunity, in *Republic of Hungary v. Simon*, 141 S.Ct. 691 (2021); *see Simon v. Republic of Hungary*, 579 F.Supp.3d 91, 138 (D.D.C. 2021) (observing that the *forum non conveniens* portions of the vacated *Simon* opinion "remain the law of the Circuit" pursuant to the Circuit's "rule regarding the continuing precedential effect of vacated opinions"), *aff'd in part and vacated in part on other grounds*, ___ F.4th ___, 2023 WL 5023437 (D.C. Cir. 2023).

at 1335. The Eleventh Circuit noted that "the purpose of *forum non conveniens* is to prevent the defendant from facing harassing and vexatious litigation out of all proportion to the plaintiffs' convenience." *Id.* at 1344. Whether 95% of the plaintiffs were foreign plaintiffs or a smaller percentage, the Eleventh Circuit concluded "that the presence of foreign plaintiffs would not necessarily lead to unwarranted burdens or additional travel" for the defendant and found "no evidence of improper forum shopping" for which "reduced deference may be appropriate for all the plaintiffs." *Id.* at 1344-45.

The D.C., Ninth, and Eleventh Circuits each follow *Piper*'s "strong" presumption and deference for the choice of a U.S. forum by U.S. plaintiffs where they bring a suit with a greater number of foreign plaintiffs. *Simon*, 911 F.3d at 1182; *Carijano*, 643 F.3d at 1228; *Otto Candies*, 963 F.3d at 1346. If the Petitioners had filed this action in the District of Alaska where the U.S. Government chose to indict and forfeit the criminal proceeds of U.S. citizen Kenneth Zong, who allegedly was the principal intermediary between Iran and IBK and who bribed IBK officials to launder Iranian funds in New York, then the Petitioners' choice of a U.S. forum would have received the customary "strong" presumption and deference.[10]

10. *See United States v. Kenneth Zong*, No. 16-cr-0142 (D.Alaska); *United States v. Real Property Located at 11621 Alderwood Loop, Anchorage, Alaska*, No. 14-cv-0065 (D.Alaska).

B. The Second Circuit provides only "minimal" deference to the choice of forum by U.S. plaintiffs

The Second Circuit has rejected repeatedly the approach followed by the D.C., Ninth, and Eleventh Circuits and the "strong presumption" of *Piper* in considering motions to dismiss based on *forum non conveniens*. App. 12a n.1. The Second Circuit stands alone and entrenched in providing only "minimal deference" to U.S. plaintiffs' choice of forum when foreign co-plaintiffs outnumber the U.S. plaintiffs. App. 14a (affirming the District Court's giving "minimal deference" to plaintiffs' choice of a U.S. forum to enforce their U.S. judgments).

The Second Circuit's *en banc* decision in *Iragorri v. United Technologies Corporation* mandated application of an amorphous "sliding scale" of deference for a plaintiff's choice of forum. 274 F.3d 65, 71 (2d Cir. 2001). *Iragorri* held that "the degree of deference to be given to a plaintiff's choice of forum moves on a sliding scale depending on several relevant considerations" and defined the sliding scale in the following manner: "The more it appears that a domestic or foreign plaintiff's choice of forum has been dictated by reasons that the law recognizes as valid, the greater the deference that will be given to the plaintiff's forum choice." *Id.* at 71-72. To assess the level of deference given to plaintiffs' choice of a U.S. forum, *Iragorri* considered several private and public interest factors for assessing a *forum non conveniens* motion, thereby combining the first and third steps of the analysis and effectively making the initial determination of deference a singularly controlling determination. *See* i*d.* at 72.

In this case, the Second Circuit rejected Petitioners' choice of a U.S. forum despite the presence of more than 50 U.S. citizens and residents among the judgment creditors, and Congress' enactment of TRIA and other federal statutes to empower Petitioners' right to satisfy their U.S. judgments in U.S. courts. The Second Circuit below explained: "We have repeatedly affirmed district courts' application of less deference to the plaintiffs' choice of forum in the *forum non conveniens* analysis where the U.S. resident plaintiffs' lawsuit [sic] are outnumbered by non-resident plaintiffs." App.12a n.1. In support, the Second Circuit cited its precedent from the past 15 years: *Bahgat v. Arab Republic of Egypt*, 631 F.App'x 69 (2d Cir. 2016) (plaintiffs' selection of forum given "diminished deference" where three of five plaintiffs "currently reside" outside the U.S.); *Wilson v. Eckhaus*, 349 F.App'x 649 (2d Cir. 2009) (finding that the district court appropriately "reduc[ed] the overall deference accorded on the ground that less than half of the plaintiffs are United States residents," where six of fifteen plaintiffs were U.S. citizens or residents); and *Overseas Media, Inc. v. Skvortsov*, 277 F.App'x 92 (2d Cir. 2008) (finding that "although the chosen forum was one plaintiff's home forum, because the other two plaintiffs were foreign, the plaintiffs' choice of forum overall deserved less deference").

To that list can be added the Second Circuit's opinion in *Owens v. Turkiye Halk Bankasi A.S.*, 2023 W.L. 3184617 (2d Cir. 2023).[11] In *Owens*, the Second Circuit rejected the argument that a strong presumption was owed to the choice of forum by a group of 200 U.S. plaintiffs, joined

11. The *Owens* plaintiffs recently filed a petition for a writ of certiorari with this Court in Case No. 23-197.

with a larger group of foreign co-plaintiffs to enforce their final judgments obtained under 28 U.S.C. §1605A against Iran by simply noting: "we find that argument unpersuasive." *Id.* at *2 n.1. The Second Circuit plainly considers the issue settled.[12]

II. The Second Circuit Erred

A. Under this Court's precedents, a strong presumption attaches to U.S. plaintiffs' choice of forum

In assessing a motion to dismiss based on *forum non conveniens*, this Court has recognized a strong presumption in favor of U.S.-resident plaintiffs' choice of forum. In *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981), the Court made clear that "there is ordinarily a strong presumption in favor of the plaintiff's choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum." *Piper* relied on *Koster v. Lumbermens Mut. Cas. Co.*, 330 U.S. 518 (1947), in finding "that a plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum" because "[w]hen the home forum has been chosen, it is reasonable to assume that this choice is convenient." 454 U.S. at 255-256 (citing *Koster*, 330 U.S. at 524). Although the presumption remains in favor of the plaintiffs' choice of forum, "the presumption applies with less force when the plaintiff or real parties in interest are foreign." 454 U.S. at 255.

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12. The oral arguments in *Owens v. Turkiye Halk Bankasi A.S.* and this matter were held jointly by the same panel of the Second Circuit.

Where a U.S. plaintiff chooses to bring her lawsuit in U.S. district court, a defendant relying upon *forum non conveniens* for dismissal of the lawsuit "bears a heavy burden in opposing the plaintiff's chosen forum." *Sinochem International Co. Ltd. v. Malaysia International Shipping Corp.*, 549 U.S. 422, 430 (2007). As explained by this Court in *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, that heavy burden is in place "because of the harsh result" of the *forum non conveniens* doctrine which, unlike a change of venue motion under 28 U.S.C. § 1404(a), "requires dismissal of the case" and may lead to the plaintiffs "los[ing] out completely." 571 U.S. 49, 66, n.8 (2013) (citations omitted).

The approach taken by the D.C., Ninth, and Eleventh Circuits more fully serves the objectives of the *forum non conveniens* doctrine than the Second Circuit and follows this Court's precedent. Neither the reasoning nor language of *Piper* supports the argument that the addition of foreign plaintiffs somehow "render[s] for naught the weighty interest of Americans seeking justice in their own courts." *Simon*, 911 F.3d at 1183. Although a "jurisdictional makeweight" U.S. plaintiff added "to manipulate the forum choice" would merit far less deference, *id.*, such an exception to the strong presumption in favor of the choice of U.S.-resident plaintiffs only proves and illuminates the rule.

In *Piper*, for instance, the named plaintiff was a makeweight U.S. plaintiff, an administratrix appointed in California to engineer jurisdiction in order to use advantageous U.S. tort law on behalf of the estates of five Scottish passengers killed in a Scottish domestic air flight. 454 U.S. at 238-240. Under those circumstances

of forum shopping, this Court found that the ordinarily "strong presumption" in favor of the plaintiff's choice of forum "applies with less force when the plaintiff or real parties in interest are foreign." *Id.* at 255. Yet the Court's analysis confirms the general rule, that is, ordinarily a strong presumption in favor of a U.S. plaintiff's choice of forum controls.

Here, there is no allegation that Petitioners forum shopped or added "a domestic plaintiff . . . to strengthen the other plaintiffs' connections to the United States." *Otto Candies*, 963 F.3d at 1345. More than 50 of the Petitioners are U.S. residents and all—domestic and foreign—have litigated in U.S. courts for 15 years to obtain and defend their final and now unappealable U.S. judgments. Furthermore, Congress has enacted an extensive judgment enforcement statutory scheme within the FSIA, including TRIA, specifically to assist these judgment creditor-plaintiffs. TRIA applies "in every case" involving a plaintiff—foreign or domestic—who seeks "to satisfy" her 28 U.S.C. §1605A or §1605(a)(7) judgment against Iranian property through an enforcement action in U.S. courts. These Petitioners, whether a U.S. or foreign judgment creditor-plaintiff, chose a U.S. judicial forum because Congress created subject matter jurisdiction for their lawsuits and judicial remedies to assist them in the exercise of its foreign affairs authorities.

B. The Second Circuit's approach disregards the strong presumption owed a U.S. plaintiff's choice of forum

The Second Circuit's approach degrades the strong presumption owed U.S. plaintiffs' choice of forum to

"minimal deference" (App. 14a), thus approximating or falling below the "less deference" standard noted by this Court in *Piper* for foreign and jurisdictional-makeweight U.S. plaintiffs. 454 U.S. at 255-56. That approach contravenes *Piper* by improperly expanding the "narrow circumstances" and "rare" instances in which this Court has recognized that federal courts may decline jurisdiction established by Congress and dismiss lawsuits via *forum non conveniens*;[13] and conflicts with the D.C., Ninth, and Eleventh Circuits. The Second Circuit failed to identify any persuasive rationale for its rule or to counter any of the arguments against it.

The Second Circuit nose-counting approach is illogical and arbitrary, *Otto Candies*, 963 F.3d at 1345 (observing that the proportion of U.S. to foreign co-plaintiffs "does not necessarily have a bearing on [defendants'] convenience"), as well as "vague and indeterminate, *Carijano*, 643 F.3d at 1228. Line drawing problems are inherent in such an approach. For instance, what ratio of foreign to U.S. plaintiffs is required to avoid "less deference"? What is the ratio to avoid "minimal deference"? May a small percentage of U.S. plaintiffs to foreign plaintiffs carry significance where the absolute number of U.S. plaintiffs is relatively large, such as 25 U.S. plaintiffs? If the deference provided to U.S.-resident plaintiffs is reduced, by how much should it to be reduced? Should deference be reduced if the plaintiffs who suffered the principal injuries are U.S.-resident plaintiffs while they are substantially outnumbered by less injured foreign co-plaintiffs?

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13. *Quakenbush v. Allstate Ins. Co.*, 517 U.S. 706, 721 (*forum non conveniens* dismissals "should be 'rare,'" relying upon *Gulf Oil Corp.*, 330 U.S. at 509).

The Second Circuit's approach to the important first step of the *forum non conveniens* analysis increases the frequency of inconsistent results, increases the likelihood of improper dismissals, and operates in tension with "the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014)(quotations omitted). As noted by the Eleventh Circuit in considering the appropriate presumption to be given a plaintiff's choice, "[t]he initial presumption is an important mooring for an otherwise flexible doctrine." *Otto Candies, LLC*, 963 F.3d at 1339 n.2. That is so because "[w]ithout knowing the level of deference to accord the plaintiff's choice of forum, it is not clear how one would assess whether the *Gulf Oil* factors outweigh the plaintiff's choice." 14D Wright, Miller, Cooper, & Freer, Federal Practice and Procedure § 3828 (4th ed. 2013).

Furthermore, application of the Second Circuit approach to this case may result in costly piecemeal and multiple lawsuits. U.S. resident plaintiffs may seek relief in the U.S. alone or in groups restricted to U.S. residents while the foreign plaintiffs may seek to enforce their judgments elsewhere. This result increases costs, risks disparate outcomes, encourages forum shopping, and would not avoid forcing Respondent to defend against suit in New York. In short, the Second Circuit's approach places at risk the utility of the *forum non conveniens* doctrine as well as its foundational principles.

Changing the starting presumption of deference tilts the outcome of a *forum non conveniens* analysis by altering the weight within the subsequent balancing. Where the

plaintiff's choice of forum is entitled to less deference or "minimal deference," a balancing assessment of factors looking to convenience readily leads to dismissal, and makes application of *forum non conveniens* no longer a "rare" and "exceptional" dismissal. Where a U.S. plaintiff has chosen the forum, however, it is "incumbent upon the defendant to prove vexation and oppressiveness that are out of all proportion to the plaintiff's convenience. A defendant invoking *forum non conveniens* with respect to a domestic plaintiff therefore 'bears a heavy burden in opposing the plaintiff's chosen forum.'" *Otto Candies*, 963 F.3d at 1338-39 (quoting *Sinochem Int'l Co. Ltd.*, 549 U.S. at 430). The Second Circuit's approach casts that heavy burden aside.

C. The Second Circuit's approach results in unjustifiable dismissals

The Second Circuit's approach to determine the standard of deference owed U.S. plaintiffs skews the outcome in *forum non conveniens* cases and leads to the unwarranted dismissal of cases which quite properly belong in U.S. court as this case does. Here, the Second Circuit's approach "set[s] the scales wrong from the outset," *Simon*, 911 F.3d at 1183, by affording the choice of a U.S. forum by U.S. plaintiffs only "minimal deference" where 54 plaintiffs reside in the United States (App. 27a). The statutory and factual context of this judgment enforcement action illustrates how the Second Circuit's approach promotes untenable outcomes.

Over the past 25-plus years, Congress repeatedly has legislated in support of its policy to permit certain victims to bring and enforce claims against state sponsors

of terrorism. Congress in 1996 enacted the "terrorism exception" to the FSIA's rule of sovereign immunity. "[T]he terrorism exception eliminates sovereign immunity for state sponsors of terrorism but only for certain human rights claims, brought by certain victims, against certain defendants. §§1605A(a), (h)." *Fed. Republic of Germany v. Philipp*, 141 S.Ct. 703, 714 (2021).

Since 1996, Congress and the President have returned repeatedly to the terrorism exception (a) to create an accompanying cause of action, (b) to expand the classes of eligible plaintiffs to include foreign national employees of the U.S. government, and (c) to allow for the recovery of punitive damages, among other legislative actions. *See* Brief of the United States, *Bank Markazi v. Peterson*, S.Ct. No. 14-770, 2015 WL 4940828, at 2-5 (August 19, 2015). In expanding §1605A to cover foreign national employees of our embassies around the globe who are targeted for terrorist attacks, Congress "fixe[d]" an "inequity." 154 Cong.Rec. S55 (January 22, 2008)(remarks by Senator Lautenberg).

After proving their cases and "gaining a judgment, however, plaintiffs proceeding under the terrorism exception 'have often faced practical and legal difficulties' at the enforcement stage." *Bank Markazi v. Peterson*, 578 U.S. 212, 216-217 (2016)(quoting U.S. Brief). In response to those judgment enforcement difficulties, Congress has provided "[t]hroughout the FSIA, special avenues of relief to victims of terrorism." *Rubin v. Islamic Republic of Iran*, 138 S.Ct. 816, 825 (2018); *see also* 28 U.S.C. §§1605A(g)(1), 1610(a)(7), (b)(3), (f)(1)(A), (f)(2)(A), (g)(1), 1610 *note* (codifying TRIA).

Most relevant here, Congress established at Section 201(a) of TRIA a mandatory rule of execution "in every

case" involving "a person" holding a final judgment under the terrorism exception at FSIA §1605A.[14] In summary, Congress directed that "blocked assets" of a terror state "shall be subject to execution" by a §1605A judgment creditor "in every case," "[n]otwithstanding any other provision of law." Every case means "without exception," *see* Webster's Ninth New Collegiate Dictionary (1985), whether that judgment creditor is a U.S. or foreign resident.

While the District Court labeled the issue of Congress' legislation supporting judgment enforcement efforts a "red herring" (App. 36a, n.5), TRIA and repeated congressional enactments weigh against the Second Circuit's rejection of a "strong" presumption for Petitioners' choice of forum. Plaintiffs brought this action in New York to enforce their judgments in reliance on TRIA just as numerous prior plaintiffs relying upon terrorism exception judgments have done to recover against Iranian property. *See, e.g., Peterson*, 578 U.S. at 225 n.16 (judgment creditor-plaintiffs arguing that "§201(a) of TRIA independently authorizes execution against" Iranian assets). IBK concealed and transferred approximately $1 billion in Iranian assets unlawfully through banks in the United States to evade U.S. sanctions. Petitioners have alleged that those assets are subject to execution in federal court through TRIA, Fed.R.Civ.P. 69(a), and New York law. App. 30-31a; Compl. ¶¶9-11, 34-38.

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14. After the 2008 transfer of the terrorism exception to 28 U.S.C. §1605A, Congress amended §201(a) of TRIA to insert reference to the revised and renumbered terrorism exception, §1605A. Pub.L. 112-158, Title V, 502(e)(2), 126 Stat. 1260 (Aug. 10, 2012).

By eliminating the strong deference owed to Petitioners' choice of forum under *Piper*, the Second Circuit disregarded overwhelming U.S. connections, Congress' statutory direction in TRIA and FSIA §1610, and the foreign affairs determinations made by the politically accountable branches. Where Congress has legislated specifically to create jurisdiction, to pursue claims, and to recover on resulting U.S. judgments, as here, any dismissal on *forum non conveniens* grounds must come only after application of a strong presumption for the judgment creditor-plaintiffs' choice of a forum. To do otherwise, a federal court contravenes the Constitution's separation of powers principle. As this Court recently reminded, "the same judicial humility that requires us to refrain from adding to statutes requires us to refrain from diminishing them." *Bostock v. Clayton Cty.*, 140 S.Ct. 1731, 1753 (2020).

III. The Decision Below Violated the Constitution's Separation of Legislative and Judicial Power

Since 1996, Congress has legislated extensively to establish, expand, and empower the terrorism exception of the FSIA. Most relevant here, Congress has enacted "special avenues of relief" throughout the FSIA, particularly at §201(a) of TRIA, to assist §1605A judgment creditors enforce and satisfy their judgments in U.S. courts. *See Rubin,* 138 S.Ct. at 825. Petitioners are §1605A judgment creditors who have litigated for 15 years in multiple federal courts to secure their judgments, to maintain and strengthen their judgments on appeal (including before this Court),[15] and, finally, to enforce and

15. *Opati v. Republic of Sudan*, 140 S.Ct. 1601 (2020).

satisfy those judgments through "special avenues of relief" in the Southern District of New York.

Yet the Second Circuit and District Court found that the Petitioners' selection of a federal forum in New York—where IBK and Iran undertook the concealed financial transactions in violation of U.S. law and injured the Petitioners' right to satisfy their judgments—was unworthy of a strong presumption under the *forum non conveniens* doctrine. By legislation, however, Congress has determined otherwise.

The Constitution's separation of powers prohibits one branch from "arrogating" or assuming another branch's power or "interfer[ing] impermissibly with another branch's performance of its constitutionally assigned function." *Hernandez v.* Mesa, 140 S.Ct. 735, 741 (2020); *I.N.S. v. Chadha*, 462 U.S. 919, 963 (1983)(Powell, J., concurring). In rejecting a strong presumption in favor of the Petitioners' choice of forum, the Second Circuit's decision arrogated and impermissibly interfered with the legislative power of Congress.

A. The decision below interferes with Congress' performance of its legislative duties and assumes legislative power

The Constitution makes clear that "Congress, and not the Judiciary, defines the scope of federal jurisdiction within the constitutionally permissible bounds." *New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 359 (1989). Flowing from the Constitution's separation of legislative and judicial power, this Court's "cases have long supported the proposition that federal courts lack the authority to abstain from the

exercise of jurisdiction that has been conferred." *Id.* at 358. Chief Justice Marshall described that constitutional directive as follows: "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). As expressed more recently by this Court, "a federal court's obligation to hear and decide a case is virtually unflagging." *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013)(quotation omitted).

By declining jurisdiction to hear and decide this case, the Second Circuit's nose-counting approach to *forum non conveniens* supplanted and interfered with Congress' determination to grant these specific judgment-creditor plaintiffs a forum in the United States to pursue satisfaction of their U.S. judgments. This Court has found that judicial action to create a remedy and open the courthouse door in the face of congressional silence risks violation of the separation of legislative and judicial power. If that is so, then even more when a federal court acts to close the courthouse door in the face of express congressional authorization to provide a judicial remedy.

This Court has observed that over time it has come "to appreciate more fully the tension between" finding implied causes of action and "the Constitution's separation of legislative and judicial power." *Hernandez,* 140 S.Ct. at 741. The Court in *Hernandez* reasoned that the "Constitution grants legislative power to Congress" while the federal judiciary, "by contrast, ha[s] only 'judicial Power.' Art. III, §1." *Id.* Legislative power or lawmaking "involves balancing interests and often demands compromise." *Id.* at 742. As *Hernandez* explained, "finding that a damages remedy is implied by a provision that makes no reference

to that remedy may upset the careful balance of interests struck by the lawmakers." *Id.* Thus, in finding "an implied claim for damages," a federal court "risks arrogating legislative power" and thereby violating the Constitution's separation of legislative and judicial power. *Id.* at 741.

Over the past 20 years, this Court repeatedly has warned the federal judiciary that finding implied causes of action where Congress or the Constitution is silent risks violation of the separation of legislative and judicial power. *See, e.g., Jesner v. Arab Bank, PLC*, 138 S.Ct. 1386, 1402-1403 (2018); *Ziglar v. Abbasi*, 137 S.Ct. 1843, 1856-1857 (2017). The same risk of constitutional violation arises where the federal judiciary disregards Congress' express provision of a judicial remedy.

Here, Congress repeatedly has enacted special means of judgment enforcement relief—particularly at TRIA §201(a)—to secure Petitioners' ability to enforce and satisfy their judgments against the property of designated state sponsors of terrorism in U.S. courts. This Court has recognized that Congress carefully defined §1605A to eliminate sovereign immunity for designated terror states "but only for certain human rights claims, **brought by certain victims**." *Fed. Republic of Germany*, 141 S.Ct. at 714 (emphasis added). The Petitioners are those "certain victims."

Congress has directed in TRIA that—"notwithstanding any other provision of law"—the blocked assets of a designated terrorist state "shall be subject to execution . . . in order to satisfy" the §1605A judgments held by "a person." The Petitioners, regardless of residence, fall within that singular category of judgment creditors. Throughout the FSIA, Congress has made U.S.

courts the home judicial forum for these Petitioners to enforce their §1605A judgments through special means of judgment protection and enforcement. *See, e.g.,* 28 U.S.C. §§1605A(g)(1), (g)(3); 1610(a)(7), (b)(3), (f)(1)(A), (f)(2)(A), (f)(2)(B), (g)(1); 1610 *note* (TRIA). Furthermore, for judgment enforcement through TRIA §201(a), Congress has directed that the federal judiciary—"in every case" involving a §1605A judgment creditor—"shall . . . subject to execution" the blocked assets of a terror state. Again, Congress has directed that all §1605A judgment creditors be treated as a single category by the federal judiciary.

To be clear, Petitioners' argument is not that the FSIA invalidates the traditional common law doctrine of *forum non conveniens*. This Court observed 40 years ago that the FSIA, as enacted in 1976, "does not appear to affect the traditional doctrine of *forum non conveniens*." *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 490 n.15 (1983). That said, Congress has amended the FSIA dramatically over the past 25-plus years in relation to the terrorism exception and the enforcement of resulting judgments. In this regard, it is important to recall this Court's observation that a "*forum non conveniens* dismissal denies audience to a case on the merits; it is a determination that the merits should be adjudicated elsewhere." *Sinochem International Co. Ltd. v. Malaysia International Shipping Corp.*, 549 U.S. 422, 432 (2007) (citations omitted).

Through TRIA and other judgment enforcement provisions of §1610, Congress' aim is plainly that §1605A judgment creditors be heard in the courts of the United States to advance U.S. foreign policy and national security interests by seeking recovery from state sponsors of terrorism and by satisfying their judgments against the property of those state sponsors of terrorism. Congress

certainly did not intend to permit an entity which unlawfully schemed with a state sponsor of terrorism to select a foreign judicial forum when a judgment creditor seeks to rescind a voidable fraudulent transaction conducted unlawfully in the United States. If federal courts use *forum non conveniens* to frustrate congressional statute and policy and §1605A judgment creditors are forced across the globe to satisfy their judgments, then one may reasonably expect complications and controversies in foreign relations are more likely to arise, not less.[16]

B. Congress' statutory direction in matters of foreign policy and national security carry special power and force

The duty upon the federal judiciary to hew closely to the statutory direction of Congress—either to close the courthouse door or open the courthouse door as required by statutory language—is particularly strong in the arena of foreign relations. This Court has emphasized that certain "litigation implicates serious separation-of-powers and foreign-relations concerns" which "must be 'subject to vigilant doorkeeping,'" *Jesner*, 138 S.Ct. at 1398 (2018) (quoting *Sosa v. Alvarez-Machain,* 542 U.S. 692, 729 (2004)). The converse is likewise true; the federal judiciary must be vigilant to keep the courthouse door open when the political branches have decided to employ the civil justice system to further the foreign policy and national security interests of the United States as determined by the political branches.

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16. Kwai & Sang-Hun, *South Korea Will Send Delegation to Iran Over Seized Ship*, N.Y. Times (January 5, 2021), https://www.nytimes.com/2021/01/05/world/middleeast/south-korea-ship-iran.html?smid=nytcore-ios-share&referringSource=articleShare

Where the political branches, as here, have determined that U.S. and certain foreign nationals shall be permitted access to the jurisdiction of U.S. courts to obtain and enforce judgments arising from certain acts of terrorism, then—and particularly then—the separation of powers principle demands the judiciary to exercise its jurisdiction. In *Jesner*, Justice Kennedy observed that if Congress and the Executive were to determine that certain parties "should be liable for violations of international law," then "that decision would have **special power and force** because it would be made by the branches most immediately responsive to, and accountable to, the electorate." *Jesner*, 138 S.Ct. at 1407 (Kennedy, J., opinion)(emphasis added).

Section 201(a) of TRIA represents such a legislative decision by Congress carrying "special power and force." The politically accountable branches have directed that the courts of the United States be open to judgment enforcement by §1605A judgment creditors. Just as the federal judiciary must honor Congress' silence by not finding implied causes of action, so too the judiciary must honor the "special power and force" of Congress' express language by hearing and deciding the Petitioners' claim to satisfy their judgments through TRIA §201(a). *See Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 50 (2d Cir. 2010)(finding "it clear beyond cavil that Section 201(a) of the TRIA provides courts with subject matter jurisdiction over post-judgment execution and attachment proceedings"), *cert. denied*, 567 U.S. 934 (2012). At a minimum, a strong presumption in favor of the choice of a U.S. forum should begin any *forum non conveniens* analysis involving §1605A judgment creditors.[17]

17. Congress' narrowly defined elements for §1605A jurisdiction and the resulting strong U.S. connections held by §1605A judgment

C. The separation of legislative and judicial power compels a strong presumption in favor of the Petitioners' choice of a U.S. forum

This Court's supervision of the separation of powers "is a subject of delicate and difficult inquiry."[18] To assist in resolving and minimizing the risk of such difficult inquiries, the Court has employed presumptions, such as the presumption that statutes do not apply extraterritorially, to ensure that the federal judiciary "does not erroneously adopt an interpretation of U.S. law" which impermissibly interferes with the legislative or executive power. *Hernandez*, 140 S.Ct. at 747.[19]

Here, where Congress expressly has provided special avenues of relief to obtain and enforce judgments, the application of a "strong presumption" in favor of plaintiffs' choice of forum noted by the Court in *Piper* serves well as a "high wall[] and clear distinction."[20] In so respecting Congress' enactments of "special avenues of relief" in

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creditors make inapplicable to this case concerns expressed by the Second Circuit regarding the risk of federal courts becoming small international courts of claims (*Aenergy, S.A. v. Republic of Angola*, 31 F.4th 119, 127 (2d Cir. 2022), *cert. denied*, 143 S.Ct. 576 (2023)). *See Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 490 (1983) (noting Congress' protection against the concern).

18. *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 46 (1825).

19. *See also First National City Bank v. Banco Para El Comercio Exterior de Cuba (Bancec)*, 462 U.S. 611, 626-628 (1983) (adopting a "presumption of independent status" for governmental instrumentalities informed partially by the FSIA); 28 U.S.C. §1610(g)(1) (abrogating that presumption but only for §1605A judgments).

20. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 239 (1995).

TRIA and throughout the FSIA, a strong presumption in favor of the Petitioners' choice of forum would set a clear and unambiguous rule to "preserve a system of separation of powers" which is a "central feature of the Constitution." *Granfinanciera v. Nordberg*, 492 U.S. 33, 70 (1989) (Scalia, J., concurring).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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September 8, 2023

APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED MARCH 8, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

21-1956-cv

WINIFRED WAIRIMU WAMAI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ADAM TITUS WAMAI, TITUS WAMAI, DIANA WILLIAMS, LLOYD WAMAI, ANGELA WAMAI, VELMA BONYO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF WYCLIFFE OCHIENG BONYO, DORINE BONYO, ELIJAH BONYO OCHIENG, ANGELA BONYO, WINNIE BONYO, BONIFACE CHEGE, CAROLINE WANJIRU GICHURU, LUCY GITAU, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF LAWRENCE AMBROSE GITAU, CATHERINE WAITHERA GITAU, ERNEST GITAU, FELISTER GITAU, CATHERINE GITUMBU KAMAU, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JOEL GITUMBU KAMAU, DAVID KAMAU, PETER KAMAU, PHILLIP KAMAU, HENRY BATHAZAR KESSY, FREDERICK KIBODYA, FLAVIA KIYANGA, LUCY KIONGO, INDIVIDUALLY AND ON BEHALF OF THE ESTATES OF JOSEPH KAMAU KIONGO AND TERESIA WAIRIMU KAMAU, ALICE KIONGO, JANE KAMAU, NEWTON KAMAU, PETER KAMAU KIONGO, PAULINE KAMAU, HANNAH WAMBUI, PAULINE KAMAU KIONGO, MERCY

Appendix A

WAIRUMU KAMAU, DANIEL KIONGO KAMAU, RAPHAEL KIVINDYO, MILKA WANGARI MACHARIA, SAMUEL PUSSY, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF RACHAEL MUNGASIA PUSSY, DOREEN PUSSY, ELSIE PUSSY, ANDREW PUSSY, MICHAEL NGIGI MWORIA, JOHN NDUATI, AARON MAKAU NDIVO, JOYCE MUTHEU, PRISCILA OKATCH, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MAURICE OKATCH OGALLA, JACKLINE ACHIENG, ROSEMARY ANYANGO OKATCH, SAMSON OGOLLA OKATCH, DENNIS OKATCH, PAULINE ABDALLAH, BELINDA AKINYI ADIKANYO, FAITH KIHATO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF TONY KIHATO IRUNGU, JACQUELINE KIHATO, STEVE KIHATO, ANNAH WANGECHI, BETTY KAGAI, ELSIE KAGIMBI, JOSINDA KATUMBA KAMAU, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF VINCENT KAMAU NYOIKE, CAROLINE WANJURI KAMAU, FAITH WANZA KAMAU, DAVID KIARIE KIBURU, GRACE KIMATA, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF FRANCIS WATORO MAINA, VICTOR WATORO, LYDIA MURIKI MAYAKA, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF RACHEL WAMBUI WATORO, NYANGORO MAYAKA, DOREEN MAYAKA, DICK OBWORO MAYAKA, DIANA NYANGARA, DEBRA MAYAKA, GEORGE MAGAK MIMBA, TIBRUSS MINJA, EDWARD MWAE MUTHAMA, NICHOLAS MUTISO, SARAH

Appendix A

TIKOLO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF GEOFFREY MOSES NAMAI, NIGEEL NAMAI, CHARLES MWANGI NDIBUI, JULIUS NZIVO, ROSEMARY OLEWE, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF FRANCIS OLEWE OCHILO, JULIET OLEWE, WENDY OLEWE, PATRICK OKECH, MORDECHAI THOMAS ONONO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF LUCY GRACE ONONO, JOHN MURIUKI, EVITTA FRANCIS KWIMBERE, MARY OFISI, JOYCE ONYANGO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ERIC ABUR ONYANGO, TILDA ABUR, BARNABAS ONYANGO, KELESENDHIA APONDI ONYANGO, PAUL ONYANGO, KAKA ABUBAKAR IDDI, CHARLES MWAKA MULWA, VICTOR MPOTO, JULIUS OGORO, MARY NDAMBUKI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF KIMEU NZIOKA NGANGA, WELLINGTON OLUOMA, JACINTA WAHOME, STELLA MBUGUA, SAJJAD GULAMAJI, MARY GITONGA, FRANCIS MAINA NDIBUI, KIRUMBA W'MBURU MUKURIA, CHRISTANT HIZA, MARINI KARIMA, ZEPHANIA MBOGE, EMILY MINAYO, JOASH OKINDO, RUKIA WANJIRU ALI, BERNARD MUTUNGA KASWII, HOSIANA MBAGA, MARGARET WAITHIRA NDUNGO, SAMUEL ODHIAMBO ORIARO, GAUDENS THOMAS KUNAMBI, LIVINGSTONE BUSERA MADAHANA, MENELIK KWAMIA MAKONNEN, TOBIAS OYANDA OTIENO, CHARLES MWIRIGI NKANATHA, JUSTINA MDOBILU, GIDEON

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MARITIM, BELINDA CHAKA, CLIFFORD TARIMO, JAMES NDEDA, MILLY MIKALI AMDUSO, MOSES KINYUA, VALERIE NAIR, AISHA KAMBENGA, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF BAKARI NYUMBU, JANE KATHUKA, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF GEOFFREY KALIO, BERNICE NDETI, DAWN MULU, TABITHA KALIO, AQUILAS KALIO, CATHERINE KALIO, LILIAN KALIO, HUSSEIN RAMADHANI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF RAMADHANI MAHUNDI, CHARLES MUNGOMA OLAMBO, CAROLINE OKECH, ENOS NZALWA, ALI HUSSEIN ALI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF HINDU OMARI IDI, OMAR IDI, HAMIDA IDI, MAHAMUD OMARI IDI, RASHID OMAR IDI, FATUMA OMAR, KAMALI MUSYOKA KITHUVA, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DOMINIC MUSYOKA KITHUVA, BEATRICE MARTHA KITHUVA, TITUS KYALO MUSYOKA, BENSON MALUSI MUSYOKA, CAROLINE KASUNGO MGALI, MONICA WANGARI MUNYORI, NURI HAMISI SULTANI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MOHAMED ABDALLAH MNYOLYA, NAFISA MALIK, GRACE MAKASI PAUL, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ELIYA ELISHA PAUL, BLASIO KUBAI, ELIZABETH MALOBA, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF FREDERICK MALOBA, MARGARET MALOBA, LEWIS MALOBA, MARLON MALOBA,

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SHARON MALOBA, KENNETH MALOBA, EDWINA OWUOR, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JOSIAH OWUOR, VINCENT OWUOR, WARREN OWUOR, GRACE GICHO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF PETER MACHARIA, DIANA MACHARIA, NGUGI MACHARIA, MARGARET NJOKI NGUGI, JOHN NGUGI, ANN RUGURU, DAVID NGUGI, PAUL NGUGI, STANLEY NGUGI, LUCY CHEGE, MARGARET GITAU, SUSAN GITAU, PERIS GITUMBU, STACY WAITHERE, MONICAH KAMAU, JOAN KAMAU, MARGARET NZOMO, BARBARA MULI, STEPHEN MULI, LYDIA NDIVO MAKAU, SARAH MBOGO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF FRANCIS MBOGO NJUNG'E, MISHECK MBOGO, ISAAC KARIUKI MBOGO, REUBEN NYAGA MBOGO, NANCY MBOGO, EPHANTUS NJAGI MBOGO, STEPHEN NJUKI MBOGO, ANN MBOGO, NEPHAT KIMATHI MBOGO, DANIEL OWITI OLOO, MAGDALINE OWITI, BENSON BWAKU, BEATRICE BWAKU, JOTHAM GODIA, GRACE GODIA, HANNAH NGENDA KAMAU, DUNCAN NYOIKE KAMAU, CHRISTINE MIKALI KAMAU, RUTH NDUTA KAMAU, MERCY WANJIRU, STANLEY NYOIKE, JENNIFER NJERI, ANTHONY NJOROGE, SIMON NGUGI, MICHAEL IKONYE KIARIE, JANE IKONYE KIARIE, SAMMY NDUNGU KIARIE, ELIZABETH KIATO, CHARITY KIATO, JUDY KIARIE, NANCY MIMBA MAGAK, RAPHAEL PETER MUNGUTI, MARY MUNGUTI, ANGELA

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MWONGELI MUTISO, BENSON NDEGWA, PHOEBA NDEGWA, MARGARET MWANGI NDIBUI, CAROLINE NGUGI KAMAU, CHARLES OLEWE, PHELISTER OKECH, ESTATE OF PHAEDRA VRONTAMITIS, LEONIDAS VRONTAMITIS, ALEXANDER VRONTAMITIS, PAUL VRONTAMITIS, ANASTASIA GIANPOULOS, JOHN OFISI, KATHERINE MWAKA, EUCABETH GWARO, TRUSHA PATEL, PANKAJ PATEL, MARY MUDECHE, MICHAEL WARE, SAMMY MWANGI, LUCY MWANGI, JOSEPH WAHOME, SOLOMON MBUGUA, JAPETH GODIA, MERAB GODIA, WINFRED MAINA, JOMO MATIKO BOKE, SELINA BOKE, HUMPHREY KIBURU, JENNIFER WAMBAI, HARRISON KIMANI, GRACE KIMANI, ELIZABETH MULI-KIBUE, HUDSON CHORE, LYDIA NYABOKA OTAO OKINDO, STANLEY KINYUA MACHARIA, NANCY MACHARIA, BETTY ORIARO, RACHEL OYANDA OTIENO, HILARIO AMBROSE FERNANDES, CATHERINE MWANGI, DOREEN OPORT, PHILEMON OPORT, GERALD BOCHART, YVONNE BOCHART, LEILANI BOWER, MURABA CHAKA, ROSELYN NDEDA, JAMES MUKABI, FLORENCE OMORI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF EDWIN OMORI, BRYAN OMORI, JERRY OMORI, JANATHAN OKECH, MARY MUTHONI NDUNGU, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF FRANCIS NDUNGU MBUGUA, SAMUEL MBUGUA NDUNGU, JAMLECK GITAU NDUNGU, JOHN MUIRU NDUNGU, EDITH NJERI, ANNASTACIAH

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LUCY BOULDEN, AGNES WANJIKU NDUNGU, FAITH MALOBA, DERRICK MALOBA, STEVEN MALOBA, CHARLES OCHOLA, RAEL OCHOLA, JULIANA ONYANGO, MARITA ONYANGO, MARY ONSONGO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF EVANS ONSONGO, ENOCH ONSONGO, PERIS ONSONGO, VENICE ONSONGO, SALOME ONSONGO, BERNARD ONSONGO, GEORGE ONSONGO, EDWIN ONSONGO, GLADYS ONSONGO, PININA ONSONGO, IRENE KUNG'U, BELINDA MALOBA,

Plaintiffs-Appellants,

v.

INDUSTRIAL BANK OF KOREA,

Defendant-Appellee.

February 16, 2023, Decided

Appeal from the judgment of the United States District Court for the Southern District of New York (Cote, J.).

PRESENT: PIERRE N. LEVAL, DENNY CHIN, JOSEPH F. BIANCO, *Circuit Judges.*

Appendix A

AMENDED SUMMARY ORDER

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiffs-appellants appeal from the district court's judgment, entered on July 30, 2021, conditionally dismissing their complaint for *forum non conveniens*. The 323 plaintiffs in this lawsuit are victims, or the representatives of the estates of victims, of the simultaneous terrorist attacks, on August 7, 1998, against the United States embassies in Kenya and Tanzania by al Qaeda. Plaintiffs sued the Islamic Republic of Iran ("Iran") for providing material support to al Qaeda in the terrorist attacks and obtained default judgments against Iran in the United States District Court for the District of Columbia, totaling $5.5 billion in compensatory and punitive damages. Iran has not satisfied these judgments. Plaintiffs, as judgment creditors, filed this lawsuit against defendant-appellee Industrial Bank of Korea ("IBK"), a bank that is headquartered in the Republic of Korea ("Korea") and is majority-owned by the Korean government. In their complaint, plaintiffs principally alleged that IBK fraudulently funneled funds for Iran through financial institutions in the Southern District of New York, including IBK's New York branch, and, in doing so, violated United States sanctions against Iran and deprived plaintiffs of their ability to collect against their judgments. Specifically, plaintiffs sought the following: (1) rescission and turnover of fraudulent conveyances made in violation of N.Y. D.C.L. § 273-a; (2) rescission and

turnover of fraudulent conveyances made in violation of N.Y. D.C.L. § 276; (3) turnover of Iranian assets still held at IBK pursuant to C.P.L.R. § 5225; and (4) turnover of Iranian assets held by IBK pursuant to the Terrorism Risk Insurance Act, 28 U.S.C. § 1610.

On July 14, 2021, the district court conditionally granted IBK's motion to dismiss the complaint on the ground of *forum non conveniens*. The district court determined that "plaintiffs' choice of forum is entitled to minimal deference, IBK has shown that Korea is an adequate alternative forum where this litigation may proceed, and relevant private and public interest factors support dismissal." Special App'x at 22. The district court made the dismissal conditional "in order to protect the rights of the plaintiffs and to ensure that their claims may be heard on the merits in Korea." *Id.* at 23. Moreover, pursuant to the district court's instruction, the parties filed an agreement to litigate in Korea, which included a commitment by IBK to accept service in Korea and waive any jurisdictional or statute of limitations defense. Following the filing of that agreement, the district court entered judgment for IBK, and plaintiffs appealed. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal, to which we refer only as necessary to explain our decision to affirm.

DISCUSSION

"A district court's decision to dismiss by reason of *forum non conveniens* is confided to the sound discretion

of the district court, to which substantial deference is given." *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 70 (2d Cir. 2003) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981)). "Such a decision may be overturned only when we believe that the trial court has clearly abused its discretion." *Id.* "Discretion is abused in the context of *forum non conveniens* when a decision (1) rests either on an error of law or on a clearly erroneous finding of fact, or (2) cannot be located within the range of permissible decisions, or (3) fails to consider all the relevant factors or unreasonably balances those factors." *Id.* (internal citation omitted). We review statements of foreign law *de novo*. *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 138 S. Ct. 1865, 1873, 201 L. Ed. 2d 225 (2018).

On appeal, plaintiffs argue that the district court misapplied the three-step *forum non conveniens* test established in *Iragorri v. United Technologies Corp.*, 274 F.3d 65 (2d Cir. 2001) (en banc). In exercising its discretion under that test, the district court: (1) "determines the degree of deference properly accorded the plaintiff's choice of forum"; (2) "considers whether the alternative forum proposed by the defendant[] is adequate to adjudicate the parties' dispute"; and (3) "balances the private and public interests implicated in the choice of forum." *Norex Petrol. Ltd. v. Access Indus., Inc.*, 416 F.3d 146, 153 (2d Cir. 2005) (citing *Iragorri*, 274 F.3d at 73-74). As set forth below, we conclude that the district court properly applied the requisite three-part test in its thorough and well-reasoned opinion and acted within its discretion in concluding that the lawsuit should be conditionally dismissed on the ground of *forum non conveniens*.

Appendix A

I. Plaintiffs' Choice of Forum

Plaintiffs first argue that the district court's decision to give "some, albeit minimal, deference" to their choice of forum was an abuse of discretion. Special App'x at 15.

Generally, a plaintiff's choice of forum "is entitled to substantial deference." *Pollux Holding*, 329 F.3d at 70. This is particularly true when plaintiffs choose their "home forum," which is entitled to "the greatest deference." *Norex*, 416 F.3d at 154. As we have explained, the "reason we give deference to a plaintiff's choice of her home forum is because it is presumed to be convenient." *Iragorri*, 274 F.3d at 71 (citing *Piper*, 454 U.S. at 255-56). However, "the plaintiff's forum choice should not be given automatic dispositive weight in determining a forum non conveniens motion." *Overseas Nat'l Airways, Inc. v. Cargolux Airlines Int'l., S.A.*, 712 F.2d 11, 14 (2d Cir. 1983). Instead, "the degree of deference to be given to a plaintiff's choice of forum moves on a sliding scale depending on several relevant considerations." *Iragorri*, 274 F.3d at 71. We have recognized that "[t]he more it appears that a domestic or foreign plaintiff's choice of forum has been dictated by reasons that the law recognizes as valid, the greater the deference that will be given to the plaintiff's forum choice." *Id.* at 71-72. Factors weighing in favor of deference "include the convenience of the plaintiff's residence in relation to the chosen forum, the availability of witnesses or evidence [in] the forum district, the defendant's amenability to suit in the forum district, the availability of appropriate legal assistance, and other reasons relating to convenience or expense." *Id.* at 72.

In this case, the district court did not abuse its discretion in determining that plaintiffs' choice of forum was "entitled to minimal deference." Special App'x at 12. In conducting its analysis, the district court first observed that the U.S. resident plaintiffs are significantly outnumbered by overseas plaintiffs (namely, 83% of the plaintiffs reside outside the United States) and then concluded that because the vast majority of the plaintiffs are not resident in the United States, "plaintiffs' residence is therefore not convenient to the chosen forum."[1] *Id.* The

1. To the extent plaintiffs suggest that the presence of *any* U.S. residents among the plaintiffs precludes a district court from giving less deference to the choice of forum even when the overwhelming majority of the plaintiffs reside abroad, we find that argument unpersuasive. We have repeatedly affirmed district courts' application of less deference to the plaintiffs' choice of forum in the *forum non conveniens* analysis where the U.S. resident plaintiffs' lawsuit are outnumbered by non-resident plaintiffs. *See, e.g., Bahgat v. Arab Republic of Egypt*, 631 F. App'x 69, 70 (2d Cir. 2016) (summary order) ("Three of the [four] plaintiffs currently reside in Egypt, and the selection of a U.S. forum by such plaintiffs is entitled to less deference."); *Wilson v. Eckhaus*, 349 F. App'x 649, 651 (2d Cir. 2009) (summary order) ("The district court appropriately considered each plaintiff's connection to the New York forum, reducing the overall deference accorded on the ground that less than half of the plaintiffs are United States residents."); *Overseas Media, Inc. v. Skvortsov*, 277 F. App'x 92, 96-97 (2d Cir. 2008) (summary order) (holding no abuse of discretion in the district court's determination that plaintiffs' choice of forum was entitled to less deference because two of three plaintiffs were residing abroad). We also find unavailing plaintiffs' related argument that the overseas plaintiffs are entitled to great deference notwithstanding their non-U.S. residence because they are U.S. government employees or family members of such employees, and more than 50 are U.S.

district court also weighed other convenience factors in determining that Korea was a more convenient forum, such as the locus of events underlying the lawsuit, the location of evidence, as well as jurisdictional considerations. With respect to events, it observed that plaintiffs' primary allegations that IBK employees conspired to violate U.S. laws and fraudulently convey Iranian funds arose out of conduct that allegedly occurred in Korea. As to the evidence, the district noted that virtually all of the relevant documentary evidence and witnesses are in Korea.[2]

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citizens or permanent residents. If a plaintiff resides in a foreign country, the fact that the plaintiff is a U.S. citizen and/or a U.S. government employee does not automatically entitle the choice of forum in the United States to great deference because, given the plaintiff's residency abroad, it "would be less reasonable to assume the choice of forum is based on convenience." *Iragorri*, 274 F.3d at 73 n.5; *see also U.S.O. Corp. v. Mizuho Holding Co.*, 547 F.3d 749, 752 (7th Cir. 2008) ("Convenience . . . is not a euphemism for nationalism . . . ."). In any event, as discussed *infra*, the residency factor was only one of many discretionary factors in this case that the district court relied upon in attaching minimal deference to plaintiffs' choice of forum.

2. Plaintiffs contend that the relevant documentary evidence is already possessed in the United States by federal and New York State authorities because of IBK's consent decree with the New York Department of Financial Services, a non-prosecution agreement with the New York State Attorney General's Office, and a deferred prosecution agreement with the U.S. Attorney's Office for the Southern District of New York. Thus, plaintiffs argue that the district court erred in concluding that the documents possessed by these government entities were "not readily available to the parties in this litigation." Special App'x at 13. However, we discern no error in that finding given that plaintiffs have neither sufficiently articulated how the parties would be able to obtain access to that evidence, nor demonstrated that such evidence

Moreover, although the district court acknowledged that certain potential witnesses may have been employed by IBK's branch in New York at the time the alleged events took place, it nonetheless found that, on balance, if "this case proceeds in New York, then, discovery and trial would likely involve an arduous process of securing the appearance of witnesses without the benefit of this Court's subpoena power and transporting witnesses and evidence to the United States." *Id.* at 13. In addition, the district court properly considered that it was "unclear whether IBK is amenable to jurisdiction in New York in this case," *id.*, and that the potential litigation concerning personal and subject matter jurisdiction "in and of itself weighs against deferring to the plaintiffs' choice of forum." *Id.* at 13-14.

Accordingly, on this record, we conclude that the district court acted well within its broad discretion in ascribing minimal deference to plaintiffs' choice in forum after carefully weighing the relevant factors.

II. Adequacy of Alternative Forum

Plaintiffs also contend that the district court erred in finding that Korea is an adequate alternative forum.

"An alternative forum is adequate if the defendants are amenable to service of process there, and if it permits litigation of the subject matter of the dispute." *Pollux*, 329

(if it were obtained) would be co-extensive with the voluminous discovery that likely would be required in this case given the broad nature of the allegations and claims.

F.3d at 75 (citing *Piper*, 454 U.S. at 254 n. 22). IBK bears the burden of establishing that an adequate alternative forum exists. *See Wiwa v. Royal Dutch Petrol. Co.*, 226 F.3d 88, 100 (2d Cir. 2000). The law of an alternative forum need not be as favorable to a plaintiff as the plaintiff's chosen forum in order for the forum to be adequate. *Piper*, 454 U.S. at 250-52. A district court should find a forum inadequate due to a difference in law only when the remedy available in the alternative forum is "so clearly inadequate or unsatisfactory that it is no remedy at all." *Id.* at 254. In making foreign law determinations, district courts may "consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence." Fed. R. Civ. P. 44.1.

Here, the district court conditioned its dismissal on IBK's agreement to accept service in Korea, to submit to the jurisdiction of the Korean courts, and to waive any statute of limitations defenses that may have arisen since the filing of these actions. Shortly following dismissal of the action, the district court endorsed a stipulation entered into by the parties pursuant to which IBK agreed to litigate overseas in accordance with the conditions outlined by the district court. Notwithstanding that stipulation between the parties, plaintiffs contend that the district court erred in concluding that Korea "permits litigation of the subject matter of the dispute." *Norex*, 416 F.3d at 157 (internal quotation marks and citation omitted). Plaintiffs principally argue that IBK has not established that the Korean courts would recognize plaintiffs' underlying judgments against Iran because Korean law does not recognize a terrorism exception to sovereign immunity,

and, thus, Iran would be entitled to sovereign immunity.[3] Plaintiffs assert that any conclusion reached by IBK's experts on whether such exception has been established is only speculative in light of a split among the lower Korean courts on this issue.

The district court made no error of law in assessing Korea's treatment of sovereign immunity. The district court correctly evaluated the competing expert declarations and found that, on balance, IBK's experts convincingly demonstrated that Korean courts, like U.S. courts, are likely to recognize an exception to sovereign immunity for acts of terrorism committed in violation of international law. Indeed, the declarations of Professor Kwang Hyun Suk, IBK's foreign law expert, thoroughly addressed the split among Korean courts—in the context of distinct actions brought against Japan by Korean victims of crimes against humanity committed by the Japanese Empire during the Second World War—regarding whether exceptions to sovereign immunity exist. Although acknowledging that the Korean Supreme Court will have to make a final determination to resolve this split among the lower courts, Professor Suk nonetheless forcefully argued that the high courts have taken a more

3. Plaintiffs also argued that IBK had failed to establish that a Korean court would find that the United States had "international jurisdiction" over the underlying judgments, such that they could be enforced in a Korean court. We disagree. IBK's experts showed that a high court would likely recognize international jurisdiction either based on a theory of "substantial connection" or because of "the need to provide a remedy to Plaintiffs who suffered harm from a special type of tort which involved terrorist attacks targeting the embassies." Joint App'x at 1002-05.

progressive stance to limit sovereign immunity in cases, like this one, that involve crimes against humanity. Joint App'x at 997-1001. Thus, we agree with the district court that "IBK's [expert] analysis of whether Korean courts would recognize the plaintiffs' U.S. judgments is more convincing than that presented by the plaintiffs and their experts." Special App'x at 17.[4]

In short, we conclude that the district court did not abuse its discretion in determining that Korea is an adequate alternative forum for plaintiffs to pursue their claims.

III. Private and Public Interests

Finally, the district court did not abuse its discretion in finding that the private and public interest factors favored dismissal. With respect to the private interest factors, courts "assess 'the relative ease of access to sources of proof; the availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; the possibility of view of

4. In addition, the district court noted that "IBK's experts have also pointed out that the conduct alleged by the plaintiffs can potentially subject IBK to liability under several different Korean legal frameworks that may not require recognition of the plaintiffs' judgments in Korea," including "Korean tort law and the Korean law of a creditor's right of revocation." Special App'x at 17 n.7. However, the district court did not assess the expert evidence regarding the availability of these additional remedies against IBK because it determined that "IBK has demonstrated that Korean courts are likely to recognize the plaintiffs' U.S. judgments as valid." *Id.*

premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.'" *Aenergy, S.A. v. Republic of Angola*, 31 F.4th 119, 132-33 (2d Cir. 2022), *cert. denied*, No. 22-463, 143 S. Ct. 576, 214 L. Ed. 2d 341, 2023 WL 124091 (U.S. Jan. 9, 2023), (alteration adopted) (quoting *Iragorri*, 274 F.3d at 73-74). As to the public interest factors, courts consider the "administrative difficulties associated with court congestion; the unfairness of imposing jury duty on a community with no relation to the litigation; the interest in having localized controversies decided at home; and avoiding difficult problems in conflict of laws and the application of foreign law." *Id.* at 133 (quoting *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 480 (2d Cir. 2002)).

In determining that private interest factors weigh in favor of litigating in Korea, the district court reasonably concluded that "the majority of both the documentary evidence and percipient witnesses in this case is thousands of miles away in Korea," and litigating "in New York under such circumstances would be far from 'easy, expeditious and inexpensive.'" Special App'x at 20 (quoting *Iragorri*, 274 F.3d at 73-74). Similarly, in reasonably determining that the public interest factors also favored dismissal, the district court explained:

> For one, New York has no local interest in deciding this case because this case has almost no connection to New York. The underlying facts giving rise to the plaintiffs' litigation against Iran stem from overseas terrorist

> attacks, and their U.S. judgments were entered in the District of Columbia. As alleged in the plaintiffs' complaint, most of IBK's conduct exposing it to liability occurred in Korea and other foreign countries. Indeed, the primary connection between the facts of this case and New York seems to be the allegation that IBK passed Iranian funds through correspondent bank accounts in New York. But the coincidental involvement of bank accounts in New York, a global financial hub, is not enough to make this a New York controversy. . . .
>
> Given the minimal connection between New York and the issues in this case, New York has almost no interest in seeing it decided here, and it makes little sense to burden a New York court and jury with it. Korea, by contrast, has a strong interest in hearing this case, because it involves alleged misconduct by a government-sponsored Korean bank that in large part occurred in Korea.

Id. at 20-22 (internal quotation marks and citation omitted). In addition, although "the need to apply foreign law is not alone sufficient to dismiss under the doctrine of forum non conveniens," *R. Maganlal & Co. v. M.G. Chem. Co.*, 942 F.2d 164, 169 (2d Cir. 1991), the district court was entitled to consider the possibility that it would be required to apply Korean substantive law to plaintiffs' claims as an additional factor that weighed in favor of dismissal. *See Piper*, 454 U.S. at 251.

Finally, in support of their position, plaintiffs point to the strong U.S. policy interest in, among other things, "regulating the interaction between the U.S. and any Iranian assets and for encouraging victims of terrorism to bring claims against state sponsors of terrorism and to collect on judgments if they prevail" and, in essence, plaintiffs suggest that such policy interests mandate that the district court allow their claims be litigated in the United States. Appellants' Br. at 50. We disagree with any suggestion that the nature of this lawsuit requires a departure from our legal framework for a *forum non conveniens* analysis. Moreover, we emphasize that this lawsuit does not involve claims against a state sponsor of terrorism nor are plaintiffs enforcing U.S. sanctions laws. Although plaintiffs hold judgments against Iran for its support of the 1998 terrorist attacks on the U.S. embassies in Kenya and Tanzania, Iran is not a party to this lawsuit. Instead, plaintiffs, as judgment creditors, are suing a bank, which is majority-owned by the Korean government and headquartered in Korea—for allegedly conspiring to fraudulently convey assets out of the Central Bank of Iran's account in Korea, through transactions initiated in Korea—seeking the turnover of funds that continue to be located in Korea. We nevertheless recognize that, in their capacity as judgment creditors, victims of terrorism and their families have a legitimate and compelling interest in pursuing claims against IBK for its allegedly wrongful conduct that hindered their ability to recover Iranian assets. However, their preference to litigate those claims in a U.S. court is not the only consideration. Where an adequate alternative forum exists, our current *forum non conveniens* framework is fully capable of balancing the interests articulated by plaintiffs with the other important

private and public considerations at issue. Here, under the deferential abuse of discretion standard, we find no basis to disturb the district court's determination, under the particular facts of this case, that the private and public interests supported requiring plaintiffs to litigate their claims in the Korean courts.

* * *

In sum, we conclude that the district court did not abuse its discretion in conditionally granting the motion to dismiss on the ground of *forum non conveniens*.[5]

We have considered plaintiffs' remaining arguments and conclude that they are without merit. For the foregoing reasons, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

/s/

5. With respect to the conditional dismissal, plaintiffs argue that the district court erred in not imposing an eighteen-month expiration date, such that plaintiffs could re-file the case in the Southern District of New York if plaintiffs' U.S. judgments against Iran were not recognized as valid and enforceable in Korea within eighteen months of filing the lawsuit in Korea. We again conclude that the district court did not err in rejecting that request because, among other things, it could lead to litigation gamesmanship in the Korean forum and IBK "could be forced to litigate in an inconvenient foreign forum based entirely on factors outside of its control." Special App'x at 25.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, DATED JULY 29, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

21cv325 (DLC)

ORDER

WINFRED WAIRIMU WAMAI, *et al.*,

Plaintiffs,

v.

INDUSTRIAL BANK OF KOREA,

Defendant.

DENISE COTE, District Judge:

In an Opinion of July 14, 2021 (the "July 14 Opinion"), this case was conditionally dismissed on the basis of *forum non conveniens*. The July 14 Opinion required the parties to submit by July 28 a stipulation to litigate in the Republic of Korea ("Korea"), including a commitment by the defendant to accept service in Korea and waive any jurisdictional or statute of limitations defense. It further provided that, upon entry of that stipulation, judgment would be entered for defendant Industrial Bank of Korea ("IBK").

Appendix B

On July 28, the parties informed the Court that they were unable to reach an agreement on one term in the stipulation. Specifically, the plaintiffs seek to include a term (the "Disputed Provision") providing that

> If Plaintiffs' judgment against Iran is not recognized as valid and enforceable by a final determination in Korean courts within eighteen months of Plaintiffs filing an action in Korea to recognize the judgment, Plaintiffs may refile this case in the Southern District of New York. In such case, IBK will not raise a statute of limitation defense that it could not have raised in the present action.

IBK has objected to the inclusion of this provision. Except for this provision, the parties are otherwise in agreement on the terms of the stipulation to litigate in Korea, and a proposed stipulation that excludes the Disputed Provision was filed on July 28.

The defendant's objections to the Disputed Provision are sustained and the July 28 stipulation is approved without the Disputed Provision. Among other infirmities, the eighteen-month period contemplated by the Disputed Provision is far too compressed to complete litigation. Moreover, the provision invites gamesmanship and does not promote good faith litigation of the merits of the plaintiffs' claims in Korea. Further, the Disputed Provision may unfairly prejudice IBK: it could be forced to litigate in an inconvenient foreign forum based entirely on factors outside of its control. The Disputed

Provision also permits the refiling of the entire action in the United States even though the triggering event in the Disputed Provision -- the failure to recognize the plaintiffs' U.S. judgment against Iran within eighteen months -- may apply to only some of the plaintiffs' claims. Finally, the Disputed Provision exceeds the scope of the conditional dismissal contemplated by the July 14 Opinion. Accordingly, it is hereby

ORDERED that the plaintiffs' request to include the Disputed Provision in the parties' stipulation to litigate in Korea is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment for IBK and close this case.

Dated: New York, New York
July 29, 2021

/s/DENISE COTE
DENISE COTE
United States District Judge

APPENDIX C — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JULY 14, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

21cv325 (DLC)

WINFRED WAIRIMU WAMAI, *et al.*,

Plaintiffs,

-v-

INDUSTRIAL BANK OF KOREA,

Defendant.

July 14, 2021, Decided
July 14, 2021, Filed

DENISE COTE, United States District Judge.

OPINION AND ORDER

DENISE COTE, District Judge:

Three hundred and twenty-three judgment creditors of Iran have brought this lawsuit against defendant Industrial Bank of Korea ("IBK"), a bank that is based in the Republic of Korea ("Korea") and operates in the United States. They contend that IBK illegally transacted

with Iran to circumvent both U.S. sanctions on Iran and the execution of their judgments on Iranian assets. The complaint seeks a turnover of funds related to those illegal transactions pursuant to the New York fraudulent conveyance statute and related provisions of New York and federal law. IBK has moved to dismiss. It argues that the doctrine of *forum non conveniens* warrants dismissal in favor of litigation in the courts of Korea. For the following reasons, the motion to dismiss is conditionally granted.

BACKGROUND

The following facts are derived from the complaint and other documents properly considered on a motion to dismiss.[1] This Opinion also incorporates by reference this Court's prior Opinion in *Owens v. Turkiye Halk Bankasi A.S.*, No. 20cv2648 (DLC), 2021 U.S. Dist. LEXIS 29035, 2021 WL 638975 (S.D.N.Y. Feb. 16, 2021), which addressed a case that involved similar facts and identical legal theories.

I. The Plaintiffs' Litigation Against Iran and the Iranian Sanctions Regime

The backdrop to this litigation is a series of lawsuits against the government of Iran and the United States sanctions regime that restricts Iran's access to the

1. Since the sole issue presented by IBK's motion to dismiss is *forum non conveniens*, a court may consider both the complaint and other documents submitted by the parties in conjunction with the motion to dismiss. *See Martinez v. Bloomberg LP*, 740 F.3d 211, 216 (2d Cir. 2014).

American financial system. This relevant background is described in detail in this Court's Opinion in *Owens*, and this Opinion discusses it only briefly.

The 323 plaintiffs in this action are victims, or the representatives of the estates of victims, of terrorist attacks committed against United States embassies in Kenya and Tanzania by groups linked to the government of Iran.[2] An overwhelming majority of the plaintiffs do not live in New York: of the 323 plaintiffs, 269 reside overseas, and of the 54 plaintiffs who reside in the United States, only three live in New York. As a result of litigation against Iran in United States courts, in which Iran defaulted, the plaintiffs are judgment creditors of Iran and are collectively owed over $5 billion by Iran. But the plaintiffs have been unable to collect any portion of these judgments.

As described in *Owens*, the United States has imposed an extensive web of sanctions on Iran, which, among other things, largely prohibits Iran and its instrumentalities from accessing the American financial system. This sanctions regime is central to this case for two reasons. First, it has limited the plaintiffs' ability to execute on Iranian assets to satisfy their judgments. This is because there are few Iranian assets in the United States and Iran has obscured its ownership of assets in the United States in order to circumvent American sanctions and its creditors. Second, the sanctions regime prohibits banks operating in the United States from, in most circumstances, doing business with Iran and its instrumentalities.

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2. All plaintiffs in this case were also plaintiffs in *Owens*.

II. IBK and its Alleged Sanctions Violations

IBK is a financial institution headquartered in and organized under the laws of Korea. The Korean government owns a majority of IBK's stock, and IBK's management is ultimately accountable to the President of Korea and Korean regulatory agencies. IBK's operations are overwhelmingly focused on Korea, but it has a small physical presence in New York, which is its only physical location in the United States. It maintains a single branch in New York (as compared to 635 branches in Korea) and of its 13,930 worldwide employees, only 29 are based in New York. IBK's New York operations primarily involve the provision of financial services to Korean and Korean-American businesses.

Korean law permits Korean entities to do business with Iran and Iranian entities in certain circumstances. To facilitate transactions between Korea and Iran, the Central Bank of Iran opened accounts (the "CBI Accounts") at IBK in 2010. The Korean government imposed certain restrictions on the use of these accounts to ensure that the accounts were not used to violate Korean law or the U.S. sanctions regime. These restrictions included a review process for transactions involving the CBI Accounts, in which the Korean government and IBK were required to examine certain business documentation associated with proposed transactions involving the CBI Accounts to ensure that the transactions reflected authentic trade relationships that comported with Korean law.

Appendix C

The plaintiffs allege that in 2011, the IBK accounts were used to facilitate over a billion dollars in transactions that violated U.S. sanctions. The ringleader of these illegal transactions was an American businessman named Kenneth Zong, who set up a series of shell companies in Korea, Iran, and elsewhere. These shell companies undertook what purported to be a series of legal transactions between Korean and Iranian companies via the CBI Accounts. In fact, these transactions were a sham, and the money flowing through the CBI Accounts was in fact money belonging to the Iranian government. Zong and his coconspirators presented falsified documents to IBK and the Korean government in order to circumvent regulatory requirements and mask the nature of the transactions. Through the use of shell companies and the CBI Accounts, Zong and his coconspirators were able to convert Iranian government funds into U.S. dollars for use in transactions involving U.S. institutions that would otherwise violate U.S. law. As a result of these transactions, over $1 billion in Iranian funds passed through IBK's correspondent bank accounts at New York banks, in violation of U.S. sanctions law.

To circumvent the restrictions imposed on the CBI Accounts by the Korean government, Zong and his coconspirators bribed several senior officials at IBK. As a result of these bribes, IBK officials failed to properly scrutinize the underlying documents associated with Zong's transactions, in violation of the aforementioned Korean regulations. Some of the transactions passed through IBK's branch in New York, which failed to identify potential sanctions violations due to substandard

compliance protocols. If IBK had complied with its obligation to review the underlying transaction documents associated with use of the CBI Accounts, it would have identified the transactions as a sham. IBK profited from the scheme through fees associated with the transactions.

In 2013, Zong was indicted in Korea for his role in the scheme. He is currently serving a prison sentence in Korea. Both Zong and one of his family members who participated in his scheme are also facing federal criminal charges in the United States. Federal and state prosecutors and financial regulators in New York also investigated IBK's role in the scheme. IBK eventually entered into a deferred prosecution agreement in this Court, in which it agreed to pay a penalty of $51 million for its facilitation of Zong's scheme to evade U.S. sanctions on Iran. IBK also entered into a deferred prosecution agreement with the New York Attorney General and agreed to a consent decree with the New York Department of Financial Services that involved a penalty of $35 million and the imposition of certain oversight requirements on the bank.

III. Procedural History

The plaintiffs commenced this action on January 14, 2021. Their Complaint alleges four causes of action. The first cause of action seeks rescission and turnover of fraudulent conveyances under N.Y. Debt. & Cred. Law § 273-a.[3] Second, they bring a claim for rescission and

3. In 2020, New York revised its fraudulent conveyance statute, and the revisions took effect on April 4, 2020. Uniform

turnover of fraudulent conveyances made with intent to evade a judgment, pursuant to N.Y. Debt. & Cred. Law § 276. The third cause of action seeks turnover under N.Y. C.P.L.R. § 5225. Finally, the complaint seeks turnover pursuant to the Terrorism Risk Insurance Act, § 201(A), 28 U.S.C. § 1610(f)(1)(A).

On February 16, this Court issued its Opinion conditionally dismissing *Owens* on *forum non conveniens* grounds. In the wake of the *Owens* decision, IBK moved on March 2 to stay this case pending the resolution of any appeal of *Owens*. In the alternative, IBK sought a bifurcated briefing schedule for its intended motion to dismiss, under which it would first move to dismiss on the *forum non conveniens* issue addressed in *Owens* and then, if that motion to dismiss were to be denied, it would be given the opportunity to move to dismiss on other grounds. The Court found that the proposed bifurcation of the motion to dismiss briefing would facilitate "just, speedy, and inexpensive determination of [this] action," Fed. R. Civ. P. 1, and adopted IBK's proposal to limit motion to dismiss briefing to the *forum non conveniens* issue. IBK moved to dismiss on the grounds of *forum non conveniens* on April 13. The motion to dismiss became fully submitted on June 3.

Voidable Transactions Act, 2019 Sess. Law News of N.Y. Ch. 580 (A. 5622)(McKinney's). The revisions do "not apply to . . . transfer[s] made" before April 4, 2020. *Id.* at § 7. Since all of IBK's actionable conduct alleged in the Complaint occurred before April 4, 2020, references to the New York fraudulent conveyance statute in this Opinion are to the version that was in effect prior to April 4, 2020.

Appendix C

DISCUSSION

"The doctrine of *forum non conveniens* allows a district court to refuse to entertain jurisdiction of a case" in favor of a foreign country's courts "when doing so would best serve the convenience of the parties and the ends of justice." *Gross v. Brit. Broad. Corp.*, 386 F.3d 224, 229 (2d Cir. 2004) (quoting *Koster v. (American) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 527, 67 S. Ct. 828, 91 L. Ed. 1067 (1947)). A district court maintains "broad discretion" in determining whether to dismiss a case on the basis of *forum non conveniens*. *Bigio v. Coca-Cola Co.*, 448 F.3d 176, 180 (2d Cir. 2006). The Second Circuit has, however, set out "a three-step process to guide the exercise of that discretion." *Norex Petroleum Ltd. v. Access Indus., Inc.*, 416 F.3d 146, 153 (2d Cir. 2005). "At step one, a court determines the degree of deference properly accorded the plaintiff's choice of forum." *Id.* At the second phase of the analysis, the district court "considers whether the alternative forum proposed by the defendants is adequate to adjudicate the parties' dispute." *Id.* "Finally, at step three, a court balances the private and public interests implicated in the choice of forum." *Id.* Each element is addressed in turn.

I. Deference to the Plaintiffs' Choice of Forum

"Any review of a *forum non conveniens* motion starts with a strong presumption in favor of the plaintiff's choice of forum." *Norex*, 416 F.3d at 154 (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981). But that strong presumption does not

amount to absolute deference to the plaintiff's choice. Instead, "the degree of deference given to a plaintiff's forum choice varies with the circumstances," *Iragorri v. United Techs. Corp.*, 274 F.3d 65, 71 (2d Cir. 2001), and "moves on a sliding scale depending on the degree of convenience reflected by the choice in a given case," *Norex*, 416 F.3d at 154.

Generally, when "the plaintiff[] or the lawsuit[]" has a substantial "bona fide connection to the United States" and "considerations of convenience favor the conduct of the lawsuit in the United States," it will be "difficult . . . for the defendant to gain dismissal for *forum non conveniens*." *Iragorri*, 274 F.3d at 72. In order to assess whether "considerations of convenience" favor litigating in an American forum, courts are instructed to look to

> the convenience of the plaintiff's residence in relation to the chosen forum, the availability of witnesses or evidence to the forum district, the defendant's amenability to suit in the forum district, the availability of appropriate legal assistance, and other reasons relating to convenience or expense.

Id. By contrast, when "it appears that the plaintiff's choice of a U.S. forum" was motivated by "attempts to win a tactical advantage," it becomes "easier . . . for the defendant to succeed on a *forum non conveniens* motion." *Id.*

Appendix C

Several principles apply specifically to the scenario presented in this case, where a group of foreign plaintiffs and American plaintiffs bring suit together. Generally, "when a foreign plaintiff chooses a foreign forum, it is much less reasonable to presume that the choice was made for convenience." *Iragorri*, 274 F.3d at 71 (quoting *Reyno*, 454 U.S. at 256). There is therefore "little reason to assume" that a U.S. forum "is convenient for a foreign plaintiff." *Id.* A foreign plaintiff's choice of a U.S. forum is nevertheless "entitled to some weight," even if it is entitled to less weight than an American plaintiff's choice of an American forum. *Bigio*, 448 F.3d at 179. Further, as this Court noted in *Owens*, "the plaintiffs' choice of forum in cases" like this one "where the U.S. resident plaintiffs are significantly outnumbered by foreign plaintiffs" is entitled to less deference than an individual American plaintiff's choice of an American forum. 2021 U.S. Dist. LEXIS 29035, 2021 WL 638975, at *4.

In this case, as in *Owens*, these considerations indicate that the plaintiffs' choice of forum is entitled to minimal deference. The vast majority of the plaintiffs here are not resident in the United States, and of the handful of plaintiffs who are U.S. residents, only a small fraction live in New York. The plaintiffs' residence is therefore not convenient to the chosen forum.

Moreover, this case primarily involves allegations that Korea-based employees of a Korean bank conspired to violate U.S. law and fraudulently convey Iranian funds. Much of the potential proof, then, is in Korea. The plaintiffs argue that some portion of the relevant

evidence may be available in the U.S. because of the state and federal investigations into IBK's conduct, but that evidence would be in the hands of state and federal prosecutors and not readily available to the parties in this litigation. Further, while the plaintiffs point to potential witnesses in the United States -- such as former employees of IBK's New York branch and state and federal regulators who investigated issues involving IBK -- that may have some knowledge of issues related to IBK's business practices, the plaintiffs provide no reason to believe that those witnesses have knowledge of "the precise issues that are likely to be actually tried." *Iragorri*, 274 F.3d at 74. If this case proceeds in New York, then, discovery and trial would likely involve an arduous process of securing the appearance of witnesses without the benefit of this Court's subpoena power and transporting witnesses and evidence to the United States. *Iragorri* instructs that the unavailability of witnesses and evidence in the plaintiffs' chosen forum weighs against deference.

Additionally, it is unclear whether IBK is amenable to jurisdiction in New York in this case. In its motion to dismiss based on *forum non conveniens*, IBK indicated its intent to move to dismiss for lack of personal jurisdiction and lack of subject matter jurisdiction due to its immunity under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605 *et seq.* The plaintiffs dispute these potential jurisdictional arguments, arguing that IBK waived them by agreeing to a deferred prosecution agreement and that this Court would have jurisdiction under New York state law even without the effect of the deferred prosecution agreement. Given these disputes, this Court would be

required to address complex threshold issues of state and federal law before proceeding to the merits of this litigation.[4] This jurisdictional dispute in and of itself weighs against deferring to the plaintiffs' choice of forum.[5]

Finally, the plaintiffs note that they have retained qualified U.S. counsel not capable of representing them if this litigation continues in Korea. While they express

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4. Given that a denial of sovereign immunity is immediately appealable under the collateral-order doctrine, *Funk v. Belneftekhim*, 861 F.3d 354, 363 (2d Cir. 2017), the Second Circuit could also be burdened with addressing threshold jurisdictional issues presented by this litigation.

5. In arguing for deference to their choice of forum, the plaintiffs note that Congress has abrogated foreign sovereign immunity in certain cases that seek money damages for a foreign sovereign's role in international terrorism. 28 U.S.C. § 1605A; 1610. It is unlikely that this exception would apply to IBK's immunity because the exception applies to "foreign state[s] . . . designated as a state sponsor of terrorism," 28 U.S.C. § 1605A(a)(2), IBK's sovereign immunity is derivative of Korea's, and Korea is not designated as a state sponsor of terrorism. *Vera v. Banco Bilbao Vizcaya Argentaria, S.A.*, 946 F.3d 120, 135 (2d Cir. 2019) ("The FSIA's terrorism exception does not apply to instrumentalities of a non-designated state.") (citation omitted).

Moreover, this issue is a red herring. Even if credited, the plaintiffs' argument only allows for subject matter jurisdiction when this Court otherwise would not have it. *See* 28 U.S.C. § 1604. But subject matter jurisdiction is not the issue presented by a *forum non conveniens* motion; the central premise of the *forum non conveniens* doctrine is that a "district court [may] refuse to exercise jurisdiction of a case *even where jurisdiction is authorized*." *Gross*, 386 F.3d at 229 (emphasis supplied).

concern that they would be unable to retain Korean counsel if this case were to proceed in Korea, they provide no basis for that assertion. In sum, the factors set forth by the Second Circuit in *Iragorri* suggest that some, albeit minimal, deference should be awarded to the plaintiffs' choice of a New York forum.

II. Adequacy of Korea as an Alternative Forum

The second step of the *forum non conveniens* analysis requires consideration of whether the defendant's proposed alternative forum is available and adequate. "The defendant bears the burden of establishing that a presently available and adequate alternative forum exists." *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 189 (2d Cir. 2009).

IBK proposes Korea as an adequate alternative forum. "An alternate forum is adequate if the defendants are amenable to service of process there, and if it permits litigation of the subject matter of the dispute." *Figueiredo Ferraz E Engenharia de Projeto Ltda. v. Republic of Peru*, 665 F.3d 384, 390 (2d Cir. 2011) (citation omitted). For an alternative forum to be adequate, it need not offer either "the identical cause of action" that the plaintiffs intend to pursue in the U.S. forum, or "identical remedies." *Norex*, 416 F.3d at 158 (citation omitted). But where the proposed alternative forum "does not permit the reasonably prompt adjudication of a dispute," the proposed alternative "forum is not presently available," or "provides a remedy so clearly unsatisfactory or inadequate that it is tantamount to no remedy at all," a court may conclude that

the proposed alternative forum is inadequate. *Abdullahi*, 562 F.3d at 189.

Korea is an adequate alternative forum for litigation of this matter. IBK is amenable to service of process there: indeed, IBK's Chief Compliance Officer has averred that it will accept service of process in Korea and will not contest personal jurisdiction in Korea. Further, as will be discussed later in this Opinion, the Court will condition dismissal of this action on a stipulation to accept service in Korea. "An agreement by the defendant to submit to the jurisdiction of the foreign forum can generally satisfy the [amenability to process] requirement." *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 477 (2d Cir. 2002) (citation omitted).

Korea also permits litigation of the subject matter of this dispute. The parties do not dispute that Korean law includes analogues of the fraudulent conveyance and turnover claims alleged in the plaintiffs' complaint. The plaintiffs primarily argue, based on expert declarations submitted with their brief in opposition to the defendants' motion to dismiss,[6] that they would be unable to pursue their claims in Korea because, under Korean law, a precondition to doing so is a Korean court's recognition of their U.S. default judgments against Iran as valid. Their experts contend that a Korean court is unlikely to do so for various reasons. IBK's experts dispute this contention and suggest that a Korean court would be likely to recognize the plaintiffs' U.S. judgments.

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6. These expert declarations, and those submitted by IBK, are properly considered on a motion to dismiss for *forum non conveniens*. *Owens*, 2021 U.S. Dist. LEXIS 29035, 2021 WL 638975, at *4 n. 3.

Appendix C

IBK's analysis of whether Korean courts would recognize the plaintiffs' U.S. judgments is more convincing than that presented by the plaintiffs and their experts.[7] For instance, the plaintiffs argue that Korean courts would be unlikely to recognize the plaintiffs' judgments because Korean courts must conclude that a foreign court had "international jurisdiction" to enter a judgment before recognizing that foreign judgment. But IBK's experts have convincingly demonstrated, through citations to applicable precedent of the Supreme Court of Korea, that a Korean court is likely to conclude that the U.S. court that entered the plaintiffs' default judgments had "international jurisdiction" under Korean law. The plaintiffs' experts have also suggested that a Korean court may decline to recognize the plaintiffs' U.S. judgments against Iran because, under Korean law, Iran was entitled to sovereign immunity. But IBK's experts have demonstrated that Korean courts, like American courts, are likely to recognize an exception to sovereign immunity for acts of terrorism committed against international law.

IBK's experts have also pointed out that the plaintiffs' experts made significant errors in their interpretation of

7. IBK's experts have also pointed out that the conduct alleged by the plaintiffs can potentially subject IBK to liability under several different Korean legal frameworks that may not require recognition of the plaintiffs' judgments in Korea. These frameworks include Korean tort law and the Korean law of a creditor's right of revocation. In any event, it is unnecessary to assess whether the availability of a remedy under these theories is dependent on the recognition of the plaintiffs' judgments in Korea, because IBK has demonstrated that Korean courts are likely to recognize the plaintiffs' U.S. judgments as valid.

applicable provisions of Korean law. For instance, while the plaintiffs' experts argue that the plaintiffs' judgments are unlikely to be fully recognized by a Korean court because they include a substantial award of punitive damages, the purported provision of Korean law upon which the plaintiffs' experts rely in forming that conclusion is actually a proposed bill that was not adopted by the Korean legislature.[8] In sum, the analysis set forth by the parties' respective experts indicates that the plaintiffs would likely be able to enforce their U.S. judgments in Korea. Korea is therefore an adequate alternative forum.

Additionally, the plaintiffs argue that Korea is not an alternative forum because their claims against IBK may be time barred under Korean law. IBK, however, has represented to the Court that it will waive all statute of limitations defenses it could assert in Korea, and the Court will condition dismissal on such a waiver. The potential for a statute of limitations defense is thus no basis for concluding that Korea is an inadequate forum.

III. Private and Public Interests

At the final stage of the *forum non conveniens* analysis, the Court must consider whether the applicable private and public interest factors support dismissal. Private interest factors are those that involve the "convenience of the litigants" and include

8. Moreover, even if the plaintiffs' potential recovery in Korea is less than the full value of their U.S. judgments because Korean law does not recognize punitive damages, "the fact that a plaintiff might recover less in an alternate forum does not render that forum inadequate." *Figueiredo*, 665 F.3d at 391.

> the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses . . . and all other practical problems that make trial of a case easy, expeditious and inexpensive.

Iragorri, 274 F.3d at 73-74 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S. Ct. 839, 91 L. Ed. 1055 (1947)).

The relevant public interest factors include

> the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

Gross, 386 F.3d at 233 (quoting *Reyno*, 454 U.S. at 241 n.6).

These private interest factors weigh in favor of litigating in Korea. As described above, the majority of both the documentary evidence and percipient witnesses in this case is thousands of miles away in Korea. Litigating in New York under such circumstances would be far from "easy, expeditious and inexpensive." *Iragorri*, 274 F.3d at 73-74.

The public interest factors also weigh against permitting this case to proceed in New York. For one, New York has no local interest in deciding this case because this case has almost no connection to New York. The underlying facts giving rise to the plaintiffs' litigation against Iran stem from overseas terrorist attacks, and their U.S. judgments were entered in the District of Columbia. As alleged in the plaintiffs' complaint, most of IBK's conduct exposing it to liability occurred in Korea and other foreign countries. Indeed, the primary connection between the facts of this case and New York seems to be the allegation that IBK passed Iranian funds through correspondent bank accounts in New York. But the coincidental involvement of bank accounts in New York, a global financial hub, is not enough to make this a New York controversy. As the New York Court of Appeals has noted, New York's "interest in the integrity of its banks . . . is not significantly threatened every time one foreign national, effecting what is alleged to be a fraudulent transaction, moves dollars through a bank in New York," and the tangential involvement of the New York banking system "is not a trump to be played whenever a party . . . seeks to use [New York] courts for a lawsuit with little or no apparent contact with New York." *Mashreqbank PSC v. Ahmed Hamad Al Gosaibi & Bros. Co.*, 23 N.Y.3d 129, 989 N.Y.S.2d 458, 12 N.E.3d 456, 460 (N.Y. 2014) (citation omitted).

Given the minimal connection between New York and the issues in this case, New York has almost no interest in seeing it decided here, and it makes little sense to burden a New York court and jury with it. Korea, by contrast, has

a strong interest in hearing this case, because it involves alleged misconduct by a government-sponsored Korean bank that in large part occurred in Korea.

Additionally, there is a possibility that even if this action were to proceed in New York, this Court would be required to apply Korean law to the plaintiffs' claims. New York's choice of law rules would be used to determine the applicable substantive law in this case. *Kinsey v. New York Times Company*, 991 F.3d 171, 176 (2d Cir. 2021). IBK argues that an application of New York choice of law rules dictates the application of Korean substantive law in this case, while the plaintiffs contend that New York substantive law will apply. This dispute in and of itself weighs in favor of dismissal, since "the public interest factors point towards dismissal where the court would be required to untangle problems in conflict of laws, and in law foreign to itself." *Reyno*, 454 U.S. at 251 (citation omitted).

IV. Conditional Dismissal

This action is appropriately dismissed on the grounds of *forum non conveniens*. The plaintiffs' choice of forum is entitled to minimal deference, IBK has shown that Korea is an adequate alternative forum where this litigation may proceed, and relevant private and public interest factors support dismissal. As in *Owens*, however, this Court will require conditional dismissal in order to protect the rights of the plaintiffs and to ensure that their claims may be heard on the merits in Korea. 2021 U.S. Dist. LEXIS 29035, 2021 WL 638975, at *6 (quoting *Blanco v. Banco*

Indus. de Venezuela, S.A., 997 F.2d 974, 984 (2d Cir. 1993)). The parties shall submit an agreement to litigate in Korea, which shall include a commitment by IBK to accept service in Korea and waive any jurisdictional or statute of limitations defense.

CONCLUSION

IBK's April 13 motion to dismiss on the grounds of *forum non conveniens* is conditionally granted. The parties shall file an agreement to litigate in Korea, containing the aforementioned terms, by July 28, 2021. Upon filing of that agreement, judgment will be entered for IBK and this case will be closed.

Dated: New York, New York
July 14, 2021

/s/ Denise Cote
DENISE COTE
United States District Judge

APPENDIX D — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED APRIL 12, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No: 21-1956

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 12th day of April, two thousand twenty-three.

WINIFRED WAIRIMU WAMAI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ADAM TITUS WAMAI, *et al.*,

Plaintiffs-Appellants,

v.

INDUSTRIAL BANK OF KOREA,

Defendant-Appellee.

ORDER

Appellants 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*.

Appendix D

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

/s/

APPENDIX E — RELEVANT STATUTORY PROVISIONS

28 U.S.C. § 1602—Findings and Declaration of Purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

APPENDIX F — RELEVANT STATUTORY PROVISIONS

28 U.S.C. § 1605A—Terrorism Exception to the Jurisdictional Immunity of a Sovereign State

(a)In General.—

(1)No immunity.—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or 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.

(2) Claim heard.—The court shall hear a claim under this section if—

(A)

(i)

(I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is

filed under this section or was so designated within the 6-month period before the claim is filed under this section; or

(II) in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act, the foreign state was designated as a state sponsor of terrorism when the original action or the related action under section 1605(a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104–208) was filed;

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's

employment; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

(B) the act described in paragraph (1) is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia.

(b)Limitations.—An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104–208) not later than the latter of—

(1) 10 years after April 24, 1996; or

(2) 10 years after the date on which the cause of action arose.

(c)Private Right of Action.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3), for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

(d)Additional Damages.— After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

(e)Special Masters.—

(1)In general.—The courts of the United States may appoint special masters to hear damage claims brought

under this section.

(2)Transfer of funds.—The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c),[1] to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(f)Appeal.— In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

(g)Property Disposition.—

(1)In general.—In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property that is—

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

(2)Notice.— A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

(3)Enforceability.— Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

(h)Definitions.—For purposes of this section—

(1) the term "aircraft sabotage" has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(2) the term "hostage taking" has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages;

(3) the term "material support or resources" has the meaning given that term in section 2339A of title 18;

(4) the term "armed forces" has the meaning given that term in section 101 of title 10;

(5) the term "national of the United States" has the

meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(6) the term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)),1 section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

(7) the terms "torture" and "extrajudicial killing" have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

(Added Pub. L. 110–181, div. A, title X, § 1083(a)(1), Jan. 28, 2008, 122 Stat. 338.)

APPENDIX G — RELEVANT STATUTORY PROVISIONS

28 U.S.C. §1605(a)(2)—General Exceptions to the Jurisdictional Immunity of a Foreign State

(a)A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

. . . .

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

APPENDIX H — RELEVANT STATUTORY PROVISIONS

28 U.S.C. § 1606—Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

(Added Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2894; amended Pub. L. 105–277, div. A, §101(h) [title I, §117(b)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–491; Pub. L. 106–386, div. C, §2002(g)(2), formerly §2002(f)(2), Oct. 28, 2000, 114 Stat. 1543, re- numbered §2002(g)(2), Pub. L. 107–297, title II, § 201(c)(3), Nov. 26, 2002, 116 Stat. 2337.)

APPENDIX I — RELEVANT STATUTORY PROVISIONS

28 U.S.C. § 1610. Exceptions to the immunity from attachment or execution

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

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

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harm- less the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order con- firming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

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

this Act, if—

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

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

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

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

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment

prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in sub- section (c) of this section, if—

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

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

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

(f)

(1)

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

5(b)),1 section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)

(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such

state.

(B) In providing such assistance, the Secretaries—

(i) may provide such information to the court under seal; and

(ii) should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Mars

(3) WAIVER.—The President may waive any provision of paragraph (1) in the interest of national security.

(g) PROPERTY IN CERTAIN ACTIONS.—

(1) IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or other- wise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

(2) UNITED STATES SOVEREIGN IMMUNITY INAP- PLICABLE.—Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the Inter- national Emergency Economic Powers Act.

(3) THIRD-PARTY JOINT PROPERTY HOLDERS.— Nothing in this subsection shall be construed to supersede the authority of a court to pre- vent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

APPENDIX J — RELEVANT STATUTORY PROVISIONS

28 U.S.C. § 1610 note

Terrorism Risk Insurance Act of 2002

Satisfaction of Judgments From Blocked Assets of Terrorists, Terrorist Organizations, and State Sponsors of Terrorism

Pub. L. 107–297, title II, §201(a), (b), (d), Nov. 26, 2002, 116 Stat. 2337, 2339, as amended by Pub. L. 112–158, title V, §502(e)(2), Aug. 10, 2012, 126 Stat. 1260, provided that:

(a) In General.—Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 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 instru- mentality 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.

(b) Presidential Waiver.—

> **(1) In general.**—Subject to paragraph (2), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the

President may waive the requirements of subsection (a) in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(2) Exception.—A waiver under this subsection shall not apply to—

(A) property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that has been used by the United States for any nondiplomatic purpose (including use as rental property), or the proceeds of such use; or

(B) the proceeds of any sale or transfer for value to a third party of any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

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

(1) Act of terrorism.—The term 'act of terrorism' means—

(A) any act or event certified under section 102(1) [Pub. L. 107–297, set out in a note under section 6701 of Title 15, Commerce and Trade]; or

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

(2) Blocked asset.—The term 'blocked asset' means—

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

(B) does not include property that—

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of such license has been specifically required by statute other than the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or

(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

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

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

APPENDIX K — RELEVANT STATUTORY PROVISIONS

New York Debtor and Creditor Law §273-A (2019)— Conveyances by defendants.

Every conveyance made without fair consideration when the person making it is a defendant in an action for money damages or a judgment in such an action has been docketed against him, is fraudulent as to the plaintiff in that action without regard to the actual intent of the defendant if, after final judgment for the plaintiff, the defendant fails to satisfy the judgment.

Repealed by L.2019, c. 580, § 2, eff. April 4, 2020.

APPENDIX L — RELEVANT STATUTORY PROVISIONS

New York Debtor and Creditor Law §276— Remedies of Creditor

(a) In an action for relief against a transfer or obligation under this article, a creditor subject to the limitations in section two hundred seventy-seven of this article, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

APPENDIX M — RELEVANT STATUTORY PROVISIONS

C.P.L.R. § 5225. Payment or delivery of property of judgment debtor

(a) Property in the possession of judgment debtor. Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested.

(b) Property not in the possession of judgment debtor. Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the

judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Costs of the proceeding shall not be awarded against a person who did not dispute the judgment debtor's interest or right to possession. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239.

(c) Documents to effect payment or delivery. The court may order any person to execute and deliver any document necessary to effect payment or delivery.

APPENDIX N — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED FEBRUARY 16, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20cv02648 (DLC)

JAMES OWENS; VICTORIA J. SPIERS; GARY ROBERT OWENS; BETTY OWENS; BARBARA GOFF; FRANK B. PRESSLEY, JR.; YASEMIN B. PRESSLEY; DAVID A. PRESSLEY; THOMAS C. PRESSLEY; MICHAEL F. PRESSLEY; BERK F. PRESSLEY; JON B. PRESSLEY; MARC. Y. PRESSLEY; SUNDUS BUYUK; MONTINE BOWEN; FRANK PRESSLEY, SR.; BAHAR BUYUK; SERPIL BUYUK; TULAY BUYUK; AHMET BUYUK; DOROTHY WILLARD; ELLEN MARIE BOMER; DONALD BOMER; MICHAEL JAMES CORMIER; ANDREW JOHN WILLIAM CORMIER; ALEXANDRA RAIN CORMIER; GEORGE KARAS; NICHOLAS KARAS; PAUL HIRN; ELOISE HUBBEL; MARGARET BAKER; LINDA O'DONNELL; ESTATE OF LEROY MOOREFIELD; LORETTA PAXTON; LORA MURPHY; LINDA SHOUGH; LAURA HARRIS; ESTATE OF ROGER MOOREFIELD; ESTATE OF RODNEY MOOREFIELD; RICHARD PATRICK; ESTATE OF EULOGIO QUILACIO; EDILBERTO QUILACIO; ROLANDO QUILACIO; SUSAN NICHOLAS; CANDELARIA FRANCELISO; WILLIAM MWILA; EDWINA MWILA; HAPPINESS MWILA;

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PATRICIA FEORE; CLYDE M. HIRN; ALICE M. HIRN; PATRICIA K. FAST; INEZ P. HIRN; JOYCE REED; WORKLEY LEE REED; CHERYL L. BLOOD; BRET W. REED; RUTH ANN WHITESIDE; LORIE GULICK; PAM WILLIAMS; FLOSSIE VARNEY; LYDIA SPARKS; HOWARD SPARKS; TABITHA CARTER; HOWARD SPARKS, JR.; MICHAEL RAY SPARKS; GARY O. SPIERS; VICTORIA Q. SPIERS; JULITA A. QUALICIO; JUDITH ABASI MWILA; DONTE AKILI MWAIPAPE; DONTI AKILI MWAIPAPE; VICTORIA DONTI MWAIPAPE; ELISHA DONTI MWAIPAPE; JOSEPH DONTI MWAIPAPE; DEBORA DONTI MWAIPAPE; NKO DONTI MWAIPAPE; MONICA AKILI; AKILI MUSUPAPE; VALENTINE MATHEW KATUNDA; ABELLA VALENTINE KATUNDA; VENANT VALENTINE MATHEW KATUNDA; DESIDERY VALENTINE MATHEW KATUNDA; VEIDIANA VALENTINE KATUNDA; DIANA VALENTINE KATUNDA; EDWINE VALENTINE MATHEW KATUNDA; ANGELINA MATHEW FELIX; EDWARD MATHEW RUTAHESHELWA; ELIZABETH MATHEW RUTAHESHELWA; ANGELINA MATHEW RUTAHESHELWA; HAPPINESS MATHEW RUTAHESHELWA; ERIC MATHEW RUTAHESHELWA; ENOC MATHEW RUTAHESHELWA; ANGELINA MATHEW-FERIX; MATHEW-FERIX; MATHEW RTAHESHELWA; TIRISA THOMAS; SAMUEL THOMAS MARCUS; CECILIA SAMUEL MARCUS; CORONELLA SAMUEL MARCUS; KULWA RAMADHANI;

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RIZWAN KHALIQ; JENNY CHRISTIANA LOVBLOM; IMRAN KHALIQ; TEHSIN KHALIQ; KAMRAN KHALIQ; IMTIAZ BEDUM; IRFAN KHALIQ; YASIR AZIZ; NAURIN KHALIQ; KENNETH SPENCER, JR.; SAMUEL P. RICE; STEVEN JOSEPH DIAZ; ESTATE OF DAVID BROWN; ESTATE OF JESSE JAMES ELLISON; ROBERT SWORD; STEVEN SIBILLE; DONALD HOWELL; FRANCES SPENCER; ESTATE OF KENNETH SPENCER, SR.; AMY MORROW; KAREN BROWN; KRIS BOERGER; SAMUEL O. RICE; BELINDA RICE; AMY COGSWELL; DAVID RICE; TODD RICE; VALERIE TRAIL; DANIEL RICE; LISA SCHULTZ; STEVEN JAMES DIAZ; JANE ASTRID DIAZ; ROBERT DIAZ; TERESA DIAZ; MAGDALENA MARY DIAZ; RAUL DIAZ; EDWARD DIAZ; ESTATE OF DANIEL P. DIAZ; CARMELLA WOOD; PATSY MCENTIRE; LEWIS BROWN; LISA MAYBIN; RONNY BROWN; CYNTHIA BURT; ESTATE OF THERISA EDWARDS; ESTATE OF ANDRES ALVARADO MIRBAL; ESTATE OF NERIDA TULL BAEZ; ESTATE OF MARGARET O'BRIEN; MITCHELL ANDERSON; ESTATE OF VIRGINIA ELLISON; ESTATE OF KENNETH ELLISON; KIMBERLY CARLSON; GARY CARLSON; DANIEL CARLSON; WILLIAM CARLSON; PENNY NELSON; BEULAH SWORD; WILLIAM SWORD; JOHN SWORD; JERRY SWORD; CAROLINE BROADWINE; ESTATE OF VERIAN SIBILLE; ESTATE OF VICTOR SIBILLE, JR.; VICTOR SIBILLE IV; VICTOR WATORO; KEVIN SIBILLE; VALERIE UNKEL; PAMELA

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SCHULTZ; STEPHANIE HARDY; MARY JANE HOWELL; RONALD HOWELL; DONNA BLACK; MARIO H. VASQUEZ; DENNY WEST; THE ESTATE OF JOHN CHIPURA; EILEEN CHIPURA; NANCY CHIPURA; GERARD CHIPURA; SUSAN COHEN; ESTATE OF ROSCOE HAMILTON; FREDA SUE GAYHEART; RAMONA GREEN; ROBERT HAMILTON; JAMES EDWARDS; RAY EDWARDS; BETTY SUE ROWE; GARY EDWARDS; RALPH EDWARDS; ESTATE OF LARRY EDWARDS; ESTATE OF DAVID WORLEY; NANCY WORLEY; DAVID WORLEY; BRYAN WORLEY; ESTATE OF JOHN BUCKMASTER; ESTHER BUCKMASTER; GREGG BUCKMASTER; VICKIE BUCKMASTER; ARLEY BUCKMASTER; ESTATE OF MALKA ROTH; FRIMET ROTH; PESIA ROTH; RIVKA ROTH RAPPAPORT; ZVI ROTH; SHAYA ROTH; PINCHAS ROTH; ESTATE OF JACOB FRITZ; NOALA FRITZ; ESTATE OF LYLE FRITZ; ETHAN FRITZ; DANIEL FRITZ; ESTATE OF BRYAN CHISM; ELIZABETH CHISM; DANNY CHISM; VANESSA CHISM; JULIE CHISM; ESTATE OF SHAWN FALTER; LINDA FALTER; MARJORIE FALTER; ESTATE OF RUSSELL J. FALTER; RUSSELL C. FALTER; ANDREW LUCAS; DAVID LUCAS; TIMOTHY LUCAS; MARSHA NOVAK; JASON SACKETT; JOHN SACKETT; ESTATE OF AHMED AL-TAIE; HATHAL K. TAIE; KOUSAY AL-TAIE; NAWAL AL-TAIE; MONICAH OKOBA OPATI, IN HER OWN RIGHT, AS EXECUTRIX OF THE ESTATE OF CAROLINE SETLA OPTI; SELIFAH ONGECHA OPATI; RAEL

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ANGARA OPATI; SALOME RATEMO, IN HIS OWN RIGHT, AS EXECUTOR OF THE ESTATE OF SALLY CECILIA MAMBOLEO; KEVIN RATEMO; FREDRICK RATEMO; LUIS RATEMO; STACY WAITHERA; MICHAEL DANIEL WERE; JUDITH NANDI BUSERA; ROSELYNE KARSORANI; GEORGE MWANGI; BERNARD MACHARI; GAD GIDEON ACHOLA; MARY NJOKI MUIRIRI; JONATHAN KARANIA NDUTI; ANNE NGANGA MWANGI; ESTER NGANGA MWANGI; GITIONGA MWANIKI; ROSE NYETTE; ELIZABETH NZAKU; PATRICK NYETTE; CORNELIUS KEBUNGO; PHOEBE KEBUNGO; JOAN ADUNDO; BENARD ADUNDO; NANCY NJOKI MACHARIA; STANLEY KINYUA MACHARIA; SALLY OMONDI; JAEL NYOSIEKO OYOO; EDWIN OYOO; MIRIAM MUTHONI; PRISCAH OWINO; GREG OWINO; MICHAEL KAMAU MWANGI; CHRISTINE MIKALI KAMAU; JOSEPH GATHUNGA; JOSHUA O. MAYUNZU; ZACKARIA MUSALIA ATING'A; JULIUS M. NYAMWENO; POLYCHEP ODHIAMBO; DAVID JAIRUS AURA; CHARLES OLOKA OPONDO; ANN KANYAHA SALAMBA; ANN SALAMBA; ERASTUS MIJUKA NDEDA; CECILIA NDEDA; TECHONIA OLOO OWITI; JOSEPH INGOSI; WILLIAM W. MAINA; PETER NGIGI MUGO; SIMON MWANHI NGURE; JOSEPH K. GATHUNGU; DIXON OLUBINZO INDIYA; PETER NJENGA KUNGU; CHARLES GT. KABUI; JOHN KISWILI; FRANCISO KYALO; ROSE NYETTE; PATRICK NYETTE; CHARITY KITAO; LEILANI BOWER; WINNIE NDIODA KIMEU;; MICHAEL

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NGANGA KIMEU; AUDREY MAINI NASIEKU PUSSY; KENNEDY OKELO; HELLEN OKELO NYAIEGO; RONALD OKELO; ELIZABETH M. AKINYI OKELO; LESLIE ONONO; LAURA ONONO; STEPHEN ONONO; ANDREW ONONO; LESLEY HELLEN ACHIENG; RISPAH JESSICA AUMA; STEPHEN JONATHAN OMANDI; ANDREW THOMAS OBONGO; LAURA MARGARET ATIENO; WALLACE NJOREGE STANLEY NYOIKE; PETER KINYANJUI; LUKAS NDILE KIMEU; JACKSON KTHUVA MUSKOYA; GLADYS MUNANIE MUSYOKA; TITUS MUSYOKA; ARCY MUSYOKA KITHUVA; JANE MUTUA; MARY NZISIVA SAMUEL; SYUINDO MUSYOKA; KILEI MUSYOKA; KEELIY MUSYOKA; MANZI MUSYOKA; CONCEPTOR ORENDE; GRACE BOSIBERI ONSONGO; NEPHAT KIMATHI; LEONARD SHINENGAH; CAROLINE WANGU KARIGI; STEVE MARUNGI KARIGI; MARTIN KARIGI; WYCLIFFE OKELLO KHABUCHI; IRENE KHABUCHI; MARY SALIKU BULIMU; HESBON BULIMU; JACKSON BULIMU; GODFREY BULIMU; MILLICENT BULIMU; LYDIA BULIMU; RODGERS BULIMU; FRIDA BULIMU; EMMILY BULIMU; MERCY BULIMU; HESBON LIHANDA; WINIFRED MAINA; BETTY KAGAI; KATIMBA MOHAMED; FRIDA YOHAN MTITU; GEOFFREY L. TUPPER; OMAR ZUBERI OMAR; ASHA R. MAHUNDI; EMMA R. MAHUNDI; MWAJUMA R. MAHUNDI; SHABAN R. MAHUNDI; JUMA R. MAHUNDI; AMIRI R. MAHUNDI; YUSUPH R. MAHUNDI; MWAJABU R. MAHUNDI; ALLY R.

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MAHUNDI; SAID R. MAHUNDI; MWAJUMBA MAHUNDI; ASHA SHABANI KILUWA; LEVIS MADAHANA BUSERA; EMMANUEL MUSAMBAYI BUSERA; CHRISTINE KAVAI BUSERA; AGNES TUPPER; AGNES WANJIKU NDUNGU; SHADRACK TUPPER; DONNIE GAUDENS; SELINA GAUDENS; MARY ESTHER KIUSA; LEONARD RAJAB WAITHIRA; JOSEPH NDUNGU WAITHIRA; GRACE WANJIRU WAITHIRA; BADAWY ITATI ALI; FRIDAH MAKENA ALIJAH; RUTH GATWIRI MWIRIGI; JOAN KENDI NKANATHA; FRANCIS JOSEPH KWINBERE; IRENE FRANCIS KWIMBERE; FREDRICK FRANCIS KWIMBERE; SANI BENJAMIN FRANCIS KWIMBERE; BARBARA WOTHAYA OLAO; ALLAN COLLINS OLAO; LEVINA VALERIAN R. MINJA; VIOLET TIBRUSS MINJA; EMMANUEL TIBRUSS MINJA; NICKSON TIBRESS MINJA; REHANA MALIK; ELIZABETH CLIFFORD TARIMO; MARAGET CLIFFORD TARIMO; MERCY NYOKABI NDIRITU; CHRISTOPHER NDIRITU; EDWIN KAARA MAGOTHE; SEDRICK JEROME KEITH NAIR; TANYA NAIR; SEDRICK NAIR; VALENTINA HIZA; CHRISTOPHER HIZA; CHRISTANTSON HIZA; CHRISTEMARY HIZA; SALIMA ISUMAIL; JOSEPH FARAHAT ABDALLAH; MAJDOLINE SARAH ABDALLAH; RISPAH AYSHA ABDALLA; CHRISTINE BWAKU; EPHRAIM BWAKU; FLAVIA HIYANGA; DIANA FREDERICK KIBODYA; MARGARET NJERU MURIGI; BELONCE WAIRIMU MURIGI; FAITH NJERI MURIGI;

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MISCHECK NDUATI MURIGI; ERIC WAMBUA MWAKA; PETER MULWA MWAKA; FELIX MATHEKA MWAKA; CIVILIER WAYUA MWAKA; AGNES AKIWAL KUBAI; COLLINS KUBAI; CELESTINE KUBAI; SALINE KUBAI; HELLEN JEPKORIR MARITIM; ALICE JEROP MARITIM; RUTH CHERONO MARITIM; ANNE CHEPKEMOI MARITIM; SHARONE MARITIM; EDGAR MARITIM; SHEILA CHEBET MARITIM; GIDEON MARITIM; EDGAR KIPLINO MARTIN; RAMMY KIPYEGO ROTICH; WAMBUI E. KUNGU; LORNA N. KUNGU; EDWARD G. KUNGU; ONEAL EZEKIEL MDOBILU; ONAEL DAVID MDOBILU; PETER LOUS MDOBILU; JOHN GEORGE MDOBILU; KATHERINE ANNE MDOBILI; KATHERINE MWAKA; IMMANUEL SETVEN MDOBILU; ANIPHA SOLLY MPOTO; JOSHUA DANIEL MDOBILU; INOSENSIA MPOTO; VICTOR MPOTO; DENIS MATERN MPOTO; ANTHONY MUNGAI; BARBARA MUTHONI; EDDIE KIARIE KIBURU; ANTHONY KIARIE; BARBARA KIARIE; JOANNE NATALIE AWUOR OPORT; YVONNE NATASHA AKINYI OPORT; SALLY RISSY AUMA OPORT; MILICENT MALESI; CHARITY KIATO; JUDY KIARIE; GODFREY JADEVERA; LYDIA ANDEMO; RODGERS AKIDIVA; FRIDA MWANURU; EMMILY MMBONE; JACKSON MADEGWA; MERCY MAKUNGU; LYDIA OSEBE GWARO; DEBORA MOIGE GWARO; EMMANUEL OGORO GWARO; JAMES OGWERI GWARO; EUCABETH GWARO; JOHN NDIBUI MWANGI; GIDEON WABWOBA OFISI; ANDREW NHULI

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MAKAU; FRANCIS WABUTI OFISI; GEOFFREY MBUURI MBUGUA; ALEX JOHN MJUGUNA MBUGUA; ANNE WAMBUI NG'ANG'A; ESTHER NJERI NG'ANG'A; CATHERINE NJERI MWANGI; JACKSON NDUNGU; JOHN NGURE; LUCY KAMBO; JACKLINE WAMBUI; JEFF RABAR ORIARO; BETTY ORIARO; FELIX MUNGUTI; PETRONILA KATHEO MUNGUTI; ALEX KITHEU MUNGUTI; ZAKAYO MATIKO; JACOB GATI; VALENTINE JEMO; MAUREEN KADI; BEVERLYNE KADI; BEVERLYNE NDEDA; CECILIA DAYO; DICKSON ULLETA LIHANDA; RUTH KAVERERI; BERYL SHIUMBE; IRENE KHASANDE; MICHAEL TSUMA; LESLIE SAMBULI; PETER KUNIGO; HARRIET CHORE; JAMES JANDY MURABU; STANLEY CHAKA MURABU; STACY CHAKA; JAMES CHAKA; STACEY NZALAMBI MURABU; IFURAIM ONYANGO OKUKU; CHRISTINE NABWIRE OKUKU; JOSPEH KAMBO; VALLEN ANDEYO; PETER MUYALE KUYA; PENINAH AKWALE MUCII; DANIEL AMBOKO KUYA; LOISE KUYA; NORMAN KAGAI; TABITHA KAGAI; CHARLES KAGAI; WENDY KAGAI; PAULINE AKOTH ADUNDO; SAMUEL ODHIAMBO; THERESA ACHIENG ADUNDO; ISIDORE OPONDO ADUNDO; ANNE WASONGA ADUNDO; THOMAS ADUNDO; JANE KHABUCHI; HENRY ALIVIZA SHITIAVAI; JUDY ALIVIZA SHITIAVAI; HUMPHREY ALIVIZA; COLLINS MUDAIDA ALIVIZA; JACQUELINE ALIVIZA; JARUHA YASHIEENA MUSALIA; FLORENCE MUSALIA; ELLY

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MUGOVE MUSALIA; VALLEN ANDEYO; JURUHA MUSALIA; GLADIS LIHANDA; RUTH LIHANDA; HESBON LIHANDA; JANE ISIAHO SHAMWAMA; BEATRICE HOKA; BEATRICE AMDUSO; JOAB ANDAYI MISANGO; JUSTIN AMDUSO; IREEN SEMO; JOHNSTONE MUKABI; ANN WAIRIMU; MARYANN NJOKIE; DANIEL KIONGO; SAMMY NDUNGU KIARIE; FAITH MUTINDI; JOYCE MUTHEU; BEATRICE ATINGA; SAMMY OKERE; PURITY MUHONJA; VICTOR ADEKA, BRIAN KUBAI; JOHN ZEPHANIA MBOGE; JOYCE THADEI LOKOA; MERESIANA (MARY) PAUL; GRACE PAUL; RASHID SELEMANI KATIMBA; SAID SELEMANI KATIMBA; ASHA OMARI ABDULLAH; AUGUST MAFFRY; CAROLINE S. MAFFRY; ALISON D. MAFFRY; ALICEMARY TALBOT; ENNA JOHN OMOLO; LYNETTE OYANDA; LINDA OYANDA; FELOGENE OYANDA; VERA JEAN OYANDA; CLAIRE OWINO, KENNETH OWINO; LEAH OWINO; GERALD OWINO; ORA COHEN; MEIRAV COHEN; SHIRA COHEN; DANIEL COHEN; ELCHANAN COHEN; ORLY COHEN; ORLY MOHABER; SHALOM COHEN; SHOKAT SADIAN; RONIT MOHABER; NERIA MOHABER; JOSEPH MOHABER; NETHANIEL CHAIM BLUTH; SHOSHANA ROSALYN BLUTH; EPHRAIM BLUTH; TSIPORA BATYA BLUTH REICHER; ISAAC MENAHEM BLUTH; YIGAL AMIHAI BLUTH; ARIEH YAHUDA BLUTH; CHANINA SAMUEL BLUTH; ABRAHAM BLUTH; JOSEPH BLUTH; WINIFRED WAIRIUMU WAMAI, IN HER OWN RIGHT, AS PERSONAL

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REPRESENTATIVE OF THE ESTATE OF ADAMS TITUS WAMAI; DIANA WILLIAMS; TITUS WAMAI; ANGELA WAMAI; LLOYD WAMAI; JOHN MURIUKI GIRANDI; SARAH ANYISO TIKOLO, INDIVIDUALLY AND FOR THE ESTATE OF MOSES GEOFREY NANIAI; NEGEEL ANDIKA; GRACE NJERI KIMATA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF FRANCIS WATORO MAINA; GITAU CATHERINE WAITHIRA; EARNEST GICHIRI GITAU; FELISTER WANJIRU GITAU; GRACE NJERI GICHO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF PETER KABAU MACHARIA; DIANA NJOKI MACHARIA; NGUGI MACHARIA; LUCY KAMAU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATES OF JOSEPH KAMAU KIONGO AND TERESIA WAIRIMU; JANE KAMAU; ALICE MUHONI KAMAU; NEWTON KAMAU; PAULINE KAMAU; PETER KAMAU; MERCY KAMAU WAIRIMU; ANN WAMBUI KAMAU; DANIEL KIOMHO KAMAU; NYANGORO WILFRED MAYAKA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF MAYAKA LYDIA MUKIRI; DOREEN MAYAKA; DICK OBWORO; DIANA NYANGARA; DEBORAH KERUBO; DEBRA MAYAKA; JACOB AWALA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATES OF JOSIAH OWUOR AND EDWINA OWUOR; WARREN AWALA; VINCENT OWOUR; MORDECHAI THOMAS ONONO, INDIVIDUALLY

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AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF LUCY GRACE ONONO; PRISCILLA OKATCH, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF MAURICE OKATCH OGOLA; DENNIS OKATCH; ROSEMARY ANYANGO OKATCH; SAMSON OKATCH; JENIPHER OKATCH; JOSINDA KATUMBA KAMAU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF VINCENT KAMAU NYOIKE; CAROLINE WANJIRU KAMAU; FAITH WANZA KAMAU; ELIZABETH VUTAGE MALOBA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF FREDERICK YAFES MALOBA; KENNETH MALOBA; MARGARET MALOBA; ADHIAMBO SHARON; OKILE MARLON; LEWIS MAFWAVO; MARLONG OKILE; MARY MUTHEU NDAMBUKI, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF KIMEU NZIOKA NGANA; GRACE NJERI GICHO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF PETER KABAU MARCHARIA; STANLEY NJAR NGUGI; MARGARET NJOKI NGUGI; ANN RUGURU; NAGUGI MACHARIA; DAVID KARIUKI NGUGI; PAUL MWANGI NGUGI; JOHN MUNGAI NGUGI; PETER NGUGI; GRACE NJERI KIMATA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF FRANCIS WATORO MAINA; MAINA VICTOR; WAMBUI RACHEL; OLE PUSSY SAMUEL

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KASHOO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF RACHEL MUNGASIA PUSSY; ANDREW PUSSY; SAMUEL PUSSY; DOREEN NASIEKU; ELSY PUSSY; ROSEMARY ANYANGO OLELE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF FRANCIS OLEWE OCHILO; WENDY ACHIENG; JULIET AWUOR; JANE KATHUKA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF GEOFFREY MULU KALIO; BERNICE MUTHEU NDETI; DAEN NTHAMBI MULU; TABITHA NTHAMBI KALIO; AQUILAS MUTUKU KALIO; CATHERINE MBATHA; LILIAN MBELU KALIO; CATHERINE GITUMBO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF JOEL GITUMBO KAMAU; EUNICE MUTHOUI; ELIZABETH WANJIKU; DAVID KAMAU; PETER KIBUE KAMAU; PHILIP KARIUKI GITUMBO; KAMALI MUSYOKA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF DOMINIC MUSYOKA; BEATRICE MARTHA KITHUVA; BENSON MALUSI MUSYOKA; WASON MUSYOKA; CAROLINE KASUNGO MGALI; TITUS KYAW MUSYOKA; VELMA BONYO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF KLYELIFF C. BONYO; DORINE BONYO; ELIJAH BONYO; ANJELA BONYO; WINNIE BONYO; JOYCE ABUR, INDIVIDUALLY AND AS

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PERSONAL REPRESENTATIVE FOR THE ESTATE OF ERIC ONYANGO; TILDA A. ABUR; KELESENDHIA APONDI; BARNABAS ONYANGO; PAUL JABODA ONYANGO; FAITH KIHAFIO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF TONY KIHATO IRUNGU; JACQUILINE WANGECI; STEVE MBUKU; ANNAH WANGECI IRUNGU; ALI HUSSEIN ALI, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF HINDU OMAR IDDI; FATHMA IDDI; OMAR IDDI; HAMIDA IDDI; RASHIHID IDDI; MAHMOUD IDDI; SUSAN HIRSH, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF ABDULRAHMAN M. ABDALLA; SELINA SAIDI, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF SAIDI ROGATH; ESTATE OF VERONICA ALOIS SAIDI; JOHN SAIDI; DANIEL SAIDI; IDIFONCE SAIDI; ESTATE OF AISHA MAWAZO; ADABETH NANG'OKO; HANUNI NDANGE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF YUSUF NDANGE; MAUA MDANGE; HALIMA NDANGE; JUMA NDANGE; MWHAJABU NDANGE; ABDUL NDANGE; RAMAHDANI NDANGE; JUDITH MWILA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF WILLIAM ABBAS MWILA; MOHAMED Y. MNYOLYA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF ABDALLAH M. MNYOLYA; NURU H.

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SULTANI; AISHA KAMBENGA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF BAKARI NYUMBU; KULWA RAMADHANI, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF DOTTO RAMADHANI; MENGO RAMADHANI; REHENA RAMADHANI; UPENDI RAMADHANI; KASSIM RAMADHANI; MAJAHWA RAMADHANI; SAIDI MTUYLA; ABDUL MTULYA; MAGDALENA PAUL, ESTATE OF ELISHA E. PAUL; SHABANI MTULYA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF MTENDEJE RAJABU; HUSSEIN RAMADHANI, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF RAMADHANI MAHUNDI; RUKIA MUNJIRU ALI; MILKE W. MACHARIA; BEUNDA KEBOGO J. CHAKA; GEORGE M. MIMBA; MARY OFISI; MONICA MUNYORI; NICHOLAS M. MUTISO; DAVID K. KIBURU; JECINTA W. WAHOME; JOSEPH WAHOME; BELINDA AKINYI ADIKA; KIRIUMBU WMBURU MUKURIA; ELIZABETH MULI KIBUE; MARY WANJUGU GITONGA; LAYDIAH WANJIRU MWANGI; CHARLES MWAKA MULWA; BONIFACE CHEGE; LUCY CHEGE; CAROLINE W. GICHURU; LIVINGSTONE MADAHANA; WELLINGTONE OLUOMA; MARINI KARIMA; ELSIE W. KAGIMBI; SAMUEL O. ORIARO; GIDEON K. MAZITIM; MARGARET W. NDUNGU; MENELIK KWAMIA MAKONNEN; JOHN MUIRU NDUNGU; CHARLES NKANATHA; PERIS GITUMBU; STACY

WAITHERE; CAROLINE NGUI NGUGI; PATRICK OUMA OKECHI; RAPHEL N. KIVINDYO; TOBIAS O. OTIENO; AARON MAKAU; RAMDAN KIMAM JURAU; CAROLINE N. OCHIENG; OLAMBO CHARLES; EMILY K. MINAYO; FRANCIS MAINE NDIBUL; CHARLES M. NDIBUL; MOSES M. KUIYVA; MARINA KIRIMA; THOMAS OHUORO; LIMMLES I. KASUI; MICHAEL N. MWORIA; JOASH O. OKENDO; JULIUS OGORO; AGGREY N. ABUTI; RENSON M. ASHIKA; ABDULRAHMAN R. BASHIR; JENNIFER J. CHEBOL; JOSEPH T. GATHECHA; IDDI A. KAKA; JAMES KANJA; BERNARD M. KASWII; DAVID M. KIMANI; SAMUEL KIVINDYO; PETER N. KUNG'U; WAMBUI KUNG'U; RACHEL WAMBUI WATORO; LORNA KUNG'U; EDWARD KUNG'U; GITONGA MWANIKE; THOMAS G. KURIA; JAMES M. MACHARIA; MILKA WANGARI MACHARIA; TOITORO O. MASANGA; ROBERT M. MATHEKA; RICHARD N. MAWEU; MATTHEW M. MBITHI; FRANCIS N. MBURU; PAUL K. MUSAU; EDWARD M. MUTHAMA; THOMAS M. MUTUA; JAMES M. MUTUKU; PAUL G. MWINGI; LUCAS M. NDILE; ANTHONY NGINYA; ALEXANDER C. NJERU; ENOS NZALWA; JULIUS M. NZIVO; FREDERICK O. OBANGA; JUSTUS M. WAMBUA; MAKONNEN K. MENERIC; JAMES BABIRA NDEDA; PAULINE D. ABDALLAH; JOHN NDUATI; WUNNIE W. GICHURU; BLASIO SHIKAMI; BLASIO KUBAI; CYNTHIA KIMBLE; HENRY KESSY; EVITTA KWIMBERE; ELIZABETH SLATER; NAFISA MALIK; VALERIE NAIR; LAUREL MCMULLEN;

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CHRISTANT HIZA; FREDERICK KABODYA; JUSTINA MDOBILU; BENJAMIN WINFORD; CHRISTOPHER MCMULLEN; HOSIANNA MMBAGA; TIBRUSS MINJA; SAJJAD GULAMALI; ANNASTACIAH LUCY BOULDEN; CLIFFORD TARIMO; SITA MAGUA; EDDIESON KAPESA; VALENTRY KATUNDA; EDSON MAUMU; ZEPHANIA MBOGE; EDWARD RUTASHEHERWA; VICTOR MPOPO; ALLY KINDAMBA; GAUDENS THOMAS; MARY ONSONGO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF EVANS ONSONGO; ENOCH ONSONGO; PERIS ONSONGO; VENICE ONSONGO; ONSONGO MWEBERI; SALOME ONSONGO; BERNARD ONSONGO; EDWIN NYANGAU ONSONGO; GEORGE ONSONGO; VENIS ONSONGO; EUNICE ONSONGO; PENINAH ONSONGO; GLADYS ONSONGO; IRENE KUNG'U; OSBORN OLWCH AWALLA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATES OF JOSIA OWUOR AND EDWINA OWUOR; WARREN AWALA; VINCENT OWUOR; MARTHA ACHIENG ONYANGO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF ERIC ONYANGO; JULIANA ATIENO ONYANGO; MARITA ONYANGO; IRENA KUNG'U; MILLY MIKALI AMDUSO; JOYCE AUMA OMBESE ABUR, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF ERIC ABUR ONYANGO AND ON BEHALF OF HER CHILD TILDA ABUR; JOYCE ONYANGO; JAMES ANDAYI MUKABI; HAMSA

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SAFULA ASDI, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF ABALIAH MUSYDKYA MWILU AND ON BEHALF OF HER CHILDREN HAMIDA MWILU, VONZAIDRISS MWILU, AND ASHA MWILU; GERALD BOCHART; YVONNE BOCHART; JOMO MATIKO BOKE; SELINA BOKE; MONICAH KEBAYI MATIKO; VELMA AKOSA BONYO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF CHRISPINE BONYO; DOREEN BONYO; ELIJAH BONYO; ANGELA BONYO; WINNIE BONYO; BENSON OKUKU BWAKU; BEATRICE MUGEMI BWAKU; BELINDA CHAKA; MURABU CHAKA; LUCY WAIRIMU; CATHERINE LUCY NYAMBURA MWANGI; ANASTASIA GIANOPULOS, AS EXECUTRIX OF THE ESTATE OF PHAEDRA VERONTAMITIS AND ON BEHALF OF THE CHILDREN LEON VERONTAMITIS, PAUL VERONTAMITIS, AND ALEXANDER VERONTAMITIS; GRACE NJERI GICHO, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF PETER KABAU MACHARIA, AND ON BEHALF OF THE CHILD DIANA NJOKI; LUCY MUTHONI GITAU, IN HER OWN RIGHT, AS EXECUTRIX OF THE ESTATE OF LAWRENCE AMBROSE GITAU, AND ON BEHALF OF THE CHILDREN MARGARET WAMBUI GITAU, SUSAN NJERI GITAU, CATHERINE WAITHERA GITAU, FELISTER WANJIRU GITAU, AND ERNEST GIGHIRI GITAU; JAPETH MUNJAL GODIA; MERAB A. GODIA; JOTHAM ODIANGO GODIA;

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GRACE AKANYA; OMARI IDI, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF HINDU OMARI IDI, AND ON BEHALF OF THE CHILDREN MAHAMUD IDI, RASHID IDI, AND HAMIDA IDI; CAROLINE NGUHI KAMAU; KIMANI KAMAU; HANNAH NGENDA KAMAU, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF VINCENT KAMAU KYOIKE, AND ON BEHALF OF THE CHILDREN STANLEY NYOIKE, SIMON NGUGI, MERCY WANJIRU, JENNIFER NJERI, AND ANTHONY NJOROGE; JANE KAMAU, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF JOSEPH NDUTA KAMAU, AND ON BEHALF OF THE CHILDREN MONICAH WAIRIMO KAMAU, AND JOAN WANJIKO KAMAU; JOSINDA KATUMBA KAMAU, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF VINCENT KAMAU KYOIKE, AND ON BEHALF OF THE CHILDREN FAITH WANZA KAMAU, CHRISTINE M. KAMAU, CAROLYNE W. KAMAU, DUNCAN NYOIKE, AND RUTH NDUTA; JANE KAVINDU KATHUKA IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF GEOFFREY MULU KALIO; DAWN NTHAMBI MULU; IKONYE MICHAEL KIARIE; JANE MWERU KIARIE; HUMPHREY KIBIRU; JENNIFER WAMBUI; MICHAEL KIBUE KAMAU; DAVID KIBURU; HUMPHREY KIBURU; JUDY WALTHERA; FAITH WAMBUI KIHATO, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF TONY KIHATO IRUNGU, AND ON BEHALF OF THE CHILDREN

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JACQUELINE IRUNGU, AND STEVE INRUGU; HARRISON KARIUKI KIMANI; GRACE WANJIKU KIMANI; GRACE NJERI KIMATA, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF FRANCIS WATORO MANAI, AND ON BEHALF OF THE CHILDREN VICTOR MANAI AND RACHEAL WAMBUI; ALICE MUZHOMI KIONGO, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF JOSEPH KAMAU KIONGO, AND ON BEHALF OF THE CHILDREN NEWTON KAMAU, PETER IKONYA, TERESIA WAITIMER, PAULINE WANKIA KAMAU, AND THE ESTATE OF TERESIA WAIRIMU KAMAU; LUCY KAMAU KIONGO, AS EXECUTRIX OF THE ESTATE OF TERESIA WAIRIMU KAMAU; ELIZABETH VICTORIA KITAO; RAPHAEL N. KIVINDYO; MARGARET MWIKALI NZOMO; LUKA MWALIE LITWAJ; MARY VUTAGWA MWALIE; DENNIS KINYUA; MOSES KINYUA; NANCY N. MACHARI; ELIZABETH VUTAGE MALOBA, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF FREDERICK MALOBA YAFES, AND ON BEHALF OF THE CHILDREN MARLON OKILE MALOBA, LEWIS MAFWAVO MALOBA, AND SHARON ADHIAMBO MALOBA; MARGARET ONYACHI MALOBA, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF FREDERICK MALOBA YAFES, AND ON BEHALF OF THE CHILDREN KENNETH MALOBA, FAITH ACHEING, DERRICK MAOAKITWE, STEVEN ODHIAMBO, AND BELINDA ADHIAMBO; SARA MWENDIA MBOGO, IN HER OWN RIGHT AND AS

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EXECUTRIX OF THE ESTATE OF FRANCIS MBOGO NJUNGE, AND ON BEHALF OF THE CHILDREN MESHARK IRERI, ISACK KARIUKI, REUBEN NYAGA, NANCY WANJERU, EPHANUS NJAGI, STEPHE NJUKI, AND ANNE MUCHOGO; STELLA WAMBUI MBUGUA; SOLOMON MBUGUA MBUUN; SAMUEL MBUGUA NDUNGU; GEORGE MAGAK MIMBA; NANCY MAGAK; EMILY KANAIZA MINAY; HUDSON CHORE MAKIDIAH; BARBARA E. MULI; STEPHEN MULI; CHARLES MWAKA MULWA; CATHERIN NDUKI MWAKA; RAPHAEL PETER MUNGUTI; MARY MBENEKA MUNGUTI; BENSON NDEGWA MURUTHI; PHOEBA NYAGUTHI NDEGWA; ANGELA MWONGELI; SAMMY NG'ANG'A MWANGI; LUCY N. NG'ANG'A; SARA TIKOLO NANIAI, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF MOSES NAMAI, AND ON BEHALF OF THE CHILDREN NIGEEL ANDIIKA NAMAI; JAMES NDEDA; VALENTINE NDEDA; MAUREEN NDEDA; ROSELYNE KASORANI; CHARLES MWANGI NDIBUI; MARGRET MWANGI NDIBUI; FRANCIS MAINA NDIBUI; WINFRED MAINA; AARON MAKAU NDIVO; LYDIAH MDILA MAKAU; MARY MUTHONI, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF FRANCIS NDUNGU MBUGUA, AND ON BEHALF OF THE CHILDREN EDITH NJERI, SAMUEL MBUGWA, ANGES WANJIKU, JAMLECK GITAU, JOHN MWIRY, AND ANASTASIAH LUCY MUGURE; OMUCHIRWA CHARLES OCHOLA; RAEL OCHOLA; MARY MAKAU OFISI; JOHN MAKAU

OFISI; JULIUS GWARDO OGORO; ELIZABETH KERUBO GWARO; PRISCILLA NDULA OKATCH, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF MAURICE OKATUH OGOLLA, AND ON BEHALF OF THE CHILDREN JACKLINE ACHIENG, ROSEMARY ANYANGO, SAMSON OGOLLA, AND DENNIS OKOTH; CAROLINE OCHI OKECH; JOHNATHAN GILBERT OKECH; PATRICK OUMA OKECH; PHELISTER OKECH; MISCHECK MBOGO; PHAEDRA VRONTAMITIS; LEONIDAS VRONTAMITIS; ALEXANDER VRONTAMITIS; ISAAC KARIUKI MBOGO; REUBEN NYAGA MBOGO; NANCY MBOGO; EPHANTUS MBOGO; STEPHEN MBOGO; ANN MBOGO; NEPHAT MBOGO; JOASH OTAO OKINDO; LYDIA NYABOKA OTAO; ROSEMARY A. OLEWE, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF FRANCIS OLEWE OCHILO, AND ON BEHALF OF THE CHILDREN CHARLES OLEWE, JULIET OLEWE, AND WENDY OLEWE; DANIEL OWITI OLOO; MAGDALINE ANYANGO OWITI; MARY AKOTSI MUDECHE; FLORENCE PAMELA OMORI, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF EDWIN OPIYO OMORI, AND ON BEHALF OF THE CHILDREN BRYAN BOAZ OMORI, AND JERRY ORETA OMORI; DOREEN ATIENO OPORT; PHILEMON OPORT; OPORT OPORT; SAMUEL ODHIAMOB ORIARO; BETTY OBUNGA; RACHEL OYANDA; MARGARET KANINI OTOLO, IN HER OWN RIGHT AND AS EXECUTRIX OF THE ESTATE OF ROGER TOKA

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OTOLO, AND ON BEHALF OF THE CHILDREN VICTOR OTOLO, ABRAHAM OTOLO, AND RICHARD OTOLO; TRUSHA PATEL; PANKAY PATEL; HILARIO AMBROSE FERNANDES; ROSELYNE NDEDA; ANNAH WANGECHI; MICHAEL WARE; HANNAH WAMBUI; AND JACINTA W. WAHOME,

Plaintiffs,

-v-

TURKIYE HALK BANKASI A.S., A/K/A "HALKBANK,"

Defendant.

February 16, 2021, Decided
February 16, 2021, Filed

OPINION AND ORDER

DENISE COTE, District Judge:

The plaintiffs in this case, judgment creditors of Iran, bring suit against defendant Turkiye Halk Bankasi A.S. ("Halkbank"), a Turkish bank, seeking turnover of funds that allegedly belonged to Iranian state-owned enterprises and were fraudulently conveyed by Halkbank in a scheme to evade U.S. sanctions. Halkbank has moved to dismiss this action. For the reasons described in this Opinion, plaintiffs' claims are conditionally dismissed under the doctrine of *forum non conveniens*.

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Background

The following facts are taken from the Second Amended Complaint ("SAC"), documents integral to the complaint or incorporated therein, and where appropriate, the parties' submissions on Halkbank's motion to dismiss.

I. The Parties

The 876 plaintiffs in this action are judgment creditors of Iran. Each plaintiff is either a direct victim of an overseas terrorist attack committed by a group linked to Iran or a surviving family member of a deceased victim of an overseas terrorist attack committed by a group linked to Iran.[1] Most of the plaintiffs do not reside in the United States: of the 670 plaintiffs for whom residency information is known, 468 reside in a foreign country. Of the 202 plaintiffs known to reside in the United States, only nine are known to reside in New York.

Each plaintiff sued Iran in the United States District Court for the District of Columbia pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605 *et seq.*, seeking damages stemming from these attacks. In each instance, Iran defaulted, and in each instance, the district court awarded a default judgment to the plaintiffs. The awards consist of both compensatory and punitive damages. Collectively, the plaintiffs in this action are owed over $10 billion by Iran. Iran has not satisfied any of the judgments.

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1. The attacks at issue occurred in Lebanon, Tanzania, Kenya, Israel, a Jewish settlement in the Gaza Strip, and Iraq.

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Defendant Halkbank is a Turkish financial institution, organized under Turkish law and headquartered in Turkey. Halkbank operates almost entirely in Turkey: only a tiny percentage of its branches are located outside of Turkey, and Halkbank has no branches or employees in the United States. A significant majority of the shares in Halkbank -- greater than 75 percent of the outstanding shares -- are owned by the Turkey Wealth Fund, while the remaining shares are publicly traded. The Turkey Wealth Fund, in turn, is controlled by the Turkish government. Halkbank is subject to other mechanisms of control by the Turkish government: the Halkbank Board of Directors is elected by the Turkish General Assembly, and the Turkish Ministry of Treasury and Finance supervises Halkbank's operations.

II. Halkbank's Relationship to Iran

Between 2011 and 2013, the United States imposed sanctions on Iran's overseas financial transactions related to its proceeds from its trade in oil and precious metals. In 2011, Congress enacted a law that prohibited, in most instances, foreign financial institutions from facilitating petroleum transactions with Iran. National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, §§ 1245(d)(1)-(4), 125 Stat. 1298, 1647-49 (Dec. 31, 2011). Then-President Obama issued an Executive Order implementing the sanctions statute and authorizing the Secretary of the Treasury to impose restrictions on foreign financial institutions that engaged in significant financial transactions with the National Iranian Oil Company ("NIOC") or the Central Bank of Iran. Exec.

Order No. 13622, 77 Fed. Reg. 45,897, 45,899 (Aug. 2, 2012). Similar restrictions were also imposed on precious metal transactions with Iran. 22 U.S.C. § 8804(a)(1)(A). Foreign financial institutions that violated these restrictions could be prohibited from maintaining correspondent accounts in the United States. 22 U.S.C. § 8804(c).

After the sanctions were implemented, plaintiffs allege that the government of Iran conspired with Halkbank and third parties to evade U.S. sanctions. According to plaintiffs, NIOC sold oil to Turkish purchasers, and the proceeds were deposited at Halkbank. At NIOC's direction, the money would be transferred within Halkbank to Halkbank correspondent accounts belonging to an Iranian bank. The Iranian bank would then order the money transferred from the Iranian bank's Halkbank account to a Halkbank account belonging to a shell company. After the money had been transferred to the shell company, a confederate would use the shell company's funds to purchase gold in Turkey, export the gold to Dubai, sell the gold in Dubai, and deposit the proceeds in Iranian accounts at banks based in Dubai. Iran could then use the funds in the Dubai accounts to make international payments. According to the plaintiffs, over $900 million in funds were derived from these fraudulent transactions and directed through correspondent accounts at U.S. financial institutions between December 2012 and October 2013. At least some of these funds passed through accounts at banks based in New York. Even after stricter U.S. sanctions were implemented in February 2013, Iran continued to make fraudulent transactions via Halkbank, but, with Halkbank's assistance, falsely represented that

the transactions involved the purchase of food, as food purchases were not covered by U.S. sanctions. Halkbank retained hundreds of millions of dollars in payment for its role in the scheme.

In 2016, Reza Zarrab, a participant in the scheme, was arrested upon attempting to enter the United States and charged with several crimes in the United States District Court for the Southern District of New York, including conspiracy to defraud the United States, conspiracy to violate the International Emergency Economic Powers Act, conspiracy to commit bank fraud, and conspiracy to commit money laundering. *United States v. Zarrab et al.*, No. 15 Cr. 867(RMB). In 2017, Mehmet Atilla, deputy general manager of Halkbank, was arrested and charged with similar crimes. Zarrab pleaded guilty, while Atilla was convicted by a jury after trial in 2018 and was sentenced to 32 months in prison. Halkbank general manager Suleyman Aslan and another Halkbank employee, Levent Balkan, were also indicted and remain fugitives.

In 2019, Halkbank itself was indicted in the Southern District of New York. The district court has denied Halkbank's motion to dismiss the indictment on the grounds of foreign sovereign immunity. The denial of the motion to dismiss is on appeal. *United States v. Turkiye Halk Bankasi A.S.*, No. 20-3499 (2d Cir.).

III. Procedural History

On March 27, 2020, the plaintiffs filed their complaint under seal. On July 1, the plaintiffs filed an *ex parte* motion for a temporary restraining order and for an order of attachment pursuant to Rule 64, Fed. R. Civ. P. and N.Y. C.P.L.R. § 6210. This Court granted the temporary restraining order later that day, ordered the plaintiffs to post a bond of $100,000 pursuant to Rule 65, Fed R. Civ. P., and ordered the plaintiffs to serve Halkbank's criminal defense counsel and registered process agent with the relevant filings. The case was unsealed on July 16, and the plaintiffs filed an amended complaint. With permission, the plaintiffs filed the SAC on August 14.

The SAC asserts four causes of action. First, it brings a claim for rescission and turnover of fraudulent conveyances, pursuant to N.Y. Debt. & Cred. Law § 273-a.[2] Second, it brings a claim for rescission and turnover of fraudulent conveyances made with actual intent, pursuant to N.Y. Debt. & Cred. Law § 276. Third, it brings a claim for turnover under N.Y. C.P.L.R. § 5225. Finally, it seeks turnover pursuant to the Terrorism Risk Insurance Act, § 201(A), 28 U.S.C. § 1610(f)(1)(A).

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2. On April 4, 2020, after the filing of the initial complaint in this action, a new version of New York's fraudulent conveyance statute took effect. Uniform Voidable Transactions Act, 2019 Sess. Law News of N.Y. Ch. 580 (A. 5622)(McKinney's). Since the new statute "shall not apply to a transfer made" before its effective date, *id.* at § 7, references to the New York fraudulent conveyance statute in this Opinion are to the version that was in effect prior to April 4, 2020.

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On September 10, this Court denied the plaintiffs' motion for attachment and vacated the temporary restraining order it had issued in July. On September 25, Halkbank moved to dismiss the SAC. The motion became fully submitted on December 16, 2020.

Discussion

Halkbank has moved to dismiss on several grounds. Halkbank argues that it is entitled to sovereign immunity as an agency or instrumentality of Turkey under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1604, requiring dismissal for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), Fed. R. Civ. P.; that this Court lacks personal jurisdiction over Halkbank, requiring dismissal pursuant to Rule 12(b)(2), Fed. R. Civ. P.; that this Court should dismiss pursuant to the doctrine of *forum non conveniens*; and that the Court is obligated to dismiss for failure to state a claim pursuant to Rule 12(b)(6), Fed. R. Civ. P.

Three of these arguments present threshold issues of jurisdiction. "A federal court has leeway to choose among threshold grounds for denying audience to a case on the merits." *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431, 127 S. Ct. 1184, 167 L. Ed. 2d 15 (2007) (citation omitted). *Forum non conveniens* is one such threshold ground. As such, a district court "may dispose of an action by a *forum non conveniens* dismissal, bypassing questions of subject-matter and personal jurisdiction, when considerations of convenience, fairness, and judicial economy so warrant." *Id.* at 432. For

the reasons discussed below, this action is dismissed based on the doctrine of *forum non conveniens*.

Halkbank argues that this case should be litigated in Turkey. The Second Circuit has set forth a three-part test for evaluating motions to dismiss on the basis of *forum non conveniens*. The first step requires a court to "determine[] the degree of deference properly accorded the plaintiff's choice of forum." *Norex Petroleum Ltd. v. Access Indus., Inc.*, 416 F.3d 146, 153 (2d Cir. 2005). The second part of the analysis involves "consider[ing] whether the alternative forum proposed by the defendants is adequate to adjudicate the parties' dispute." *Id.* "Finally, at step three, a court balances the private and public interests implicated in the choice of forum." *Id.* District courts have "broad discretion" in evaluating and weighing these factors. *Iragorri v. United Technologies Corp.*, 274 F.3d 65, 72 (2d Cir. 2001) (en banc) (citation omitted). Here, these factors weigh in favor of dismissing the complaint on the grounds of *forum non conveniens*.

I. Deference to the Plaintiffs' Choice of Forum

"[T]here is ordinarily a strong presumption in favor of the plaintiff's choice of forum." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255-56, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981). But the strength of that presumption can "var[y] with the circumstances." *Iragorri*, 274 F.2d at 71. The Second Circuit has instructed that the strength of the presumption in favor of the plaintiff's choice of forum "moves 'on a sliding scale' depending on the degree of convenience reflected by the choice in a given case." *Norex*, 416 F.3d at 154 (quoting *Iragorri*, 274 F.3d at 71). Courts

are instructed to give greater deference to the plaintiff's choice when "it appears that . . . [the] choice of forum has been dictated by reasons that the law recognizes as valid," such as genuine considerations of convenience and "the plaintiff's or the lawsuit's bona fide connection to the United States." *Iragorri*, 274 F.3d at 71-72.

The deference analysis ultimately depends on "the totality of circumstances supporting a plaintiff's choice of forum," *Norex*, 416 F.3d 154, but the Second Circuit has set forth factors to guide a district court's determination of the appropriate level of deference. A district court should consider "the convenience of the plaintiff's residence in relation to the chosen forum, the availability of witnesses or evidence to the forum district, the defendant's amenability to suit in the forum district, the availability of appropriate legal assistance, and other reasons relating to convenience or expense." *Iragorri*, 274 F.3d at 72. By contrast, a court should give little deference when the plaintiff's choice of forum is motivated by "attempts to win a tactical advantage resulting from local laws that favor the plaintiff's case, the habitual generosity of juries in the United States or in the forum district, the plaintiff's popularity or the defendant's unpopularity in the region, or the inconvenience and expense to the defendant resulting from litigation in that forum." *Id.*

Here, the plaintiffs' choice of forum is entitled to minimal deference. Most of the plaintiffs in this action are foreign. There is "little reason to assume that [a U.S. forum] is convenient for a foreign plaintiff." *Iragorri*, 274 F.3d at 71. While some of the plaintiffs are U.S. residents, and nine reside in New York state, the plaintiffs' choice

of forum in cases where the U.S. resident plaintiffs are significantly outnumbered by foreign plaintiffs is entitled to less deference. Additionally, the underlying facts in this litigation involve terrorist attacks in foreign countries and an alleged fraudulent scheme orchestrated primarily in Turkey. The series of judgments were entered in the District of Columbia. In sum, there is little, if any, connection between this action and this forum. This lack of connection between the plaintiffs and the subject matter of the litigation on the one hand, and the forum on the other, weighs against deferring to plaintiffs' choice of forum.

Considering the remaining *Iragorri* factors, it appears that almost all of the relevant evidence is located in Turkey. Much of the relevant documentary evidence is in the custody of Halkbank, and the documents are stored in Turkey and written in Turkish. Similarly, many of the potentially relevant witnesses are Halkbank employees, and those employees are in Turkey. Those witnesses are outside the subpoena power of this Court. The difficulty of conducting discovery in this litigation if it continues in the United States weighs against deference to the plaintiffs' choice. Further, *Iragorri* instructs courts to consider the amenability of the defendant to suit in the forum district. It is unclear if Halkbank is even amenable to suit in the United States, as it has contested jurisdiction in both this case and the criminal case.

The plaintiffs stress that the Halkbank scheme permitted the funds to move through New York financial institutions without seizure either by the U.S. Government or by the plaintiffs as judgment creditors. They emphasize that Halkbank representatives repeatedly lied to U.S.

bank and government officials to effect transfers of funds through New York. Balancing all of the relevant factors, the plaintiffs' choice of forum is not entitled to substantial deference, but it is entitled to some, albeit minimal, deference.

II. Turkey as an Adequate Alternative Forum

"To secure dismissal of an action on grounds of *forum non conveniens*, a movant must demonstrate the availability of an adequate alternative forum." *Norex*, 416 F.3d 157. The parties dispute whether a Turkish court can provide an adequate alternative forum for this dispute.

"A forum in which defendants are amenable to service of process and which permits litigation of the dispute is generally adequate." *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 189 (2d Cir. 2009). The test is satisfied if there is some available means of litigating the dispute in the alternative forum. "[T]he availability of an adequate alternative forum does not depend on the existence of the identical cause of action in the other forum, nor on identical remedies." *Norex*, 416 F.3d 158 (citation omitted).

The plaintiffs do not dispute that Halkbank is amenable to service of process in Turkey. Its Chief Legal Advisor has declared that Halkbank will accept service in Turkey and will accept an appropriate Turkish court's exercise of personal jurisdiction. "An agreement by the defendant to submit to the jurisdiction of the foreign forum can generally satisfy the alternative forum requirement." *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 477 (2d Cir. 2002) (citation omitted).

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The plaintiffs primarily argue that they cannot obtain relief in Turkey because Turkish courts will not recognize their U.S. default judgments on the grounds that those judgments award punitive damages against Iran (a foreign sovereign) stemming from conduct occurring in a third country. Halkbank disputes this assertion, and the parties have offered competing expert declarations on the amenability of the Turkish courts to plaintiffs' claims.[3]

Halkbank and its experts have persuasively demonstrated several means by which the plaintiffs may recover from Halkbank under Turkish law for the conduct alleged in the complaint. These Turkish causes of action are not contingent on the recognition of the plaintiffs' U.S. judgments by Turkish courts, and in any event, Halkbank and its experts have shown that plaintiffs' U.S. judgments may be recognized in Turkey. This showing by Halkbank is sufficient to permit a finding that Turkey is an adequate alternative forum.[4]

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3. The parties' declarations regarding Turkish law are properly considered upon a motion to dismiss. The issue of whether plaintiffs can secure relief in a Turkish court presents questions of foreign law, and a district court may determine questions of foreign law by "consider[ing] any relevant material or source." Fed R. Civ. P. 44.1. In doing so, a court may weigh the relative "persuasive force of the opinions" expressed by competing experts. *Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82, 92 (2d Cir. 1998).

4. The analysis presented by the Halkbank experts was far more persuasive than that from the plaintiffs' expert. Halkbank presented the declarations of two Turkish law professors who specialize in Turkish property law and the law of foreign judgments. By contrast, the background of the plaintiffs' expert is primarily in Turkish intellectual property law. In addition to possessing more

Next, while the plaintiffs acknowledge that U.S. courts have previously found that Turkey's legal system provides an adequate forum for resolution of civil disputes, they argue that the situation in Turkey has changed.[5] Plaintiffs argue that Turkey is an inadequate forum because the high political salience of the subject matter of this litigation in Turkey --the participation of a government-connected enterprise, Halkbank, in a scheme to transfer Iran's assets under cover of darkness -- means that they are unlikely to receive a fair hearing in Turkey. This sort of argument is disfavored, as the Second Circuit has held that "it is not the business of our courts to assume the responsibility for supervising the integrity of the judicial system of another

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impressive credentials in relevant areas of Turkish law, the Halkbank experts' statements were far more detailed and supported by more extensive citations and discussion. Plaintiffs' expert declaration focused on the enforcement of plaintiffs' U.S. judgments against Iran in Turkey, while Halkbank's expert declarations addressed in detail both the enforcement of judgments and the equally relevant issue of how Halkbank's alleged conduct could give rise to liability to the plaintiffs under Turkish law.

5. Courts in this District and elsewhere have concluded that Turkey is an adequate alternative forum in the *forum non conveniens* context. *See, e.g., Can v. Goodrich Pump & Engine Control Systems, Inc.*, 711 F.Supp.2d 241, 258 (D. Conn. 2010); *Turedi v. Coca Cola Co.*, 460 F.Supp.2d 507, 523-26 (S.D.N.Y. 2006). Plaintiffs argue that political developments in Turkey since a 2016 coup attempt have undermined the adequacy of the Turkish judiciary, so these prior findings are irrelevant. But even in the wake of these political developments, U.S. courts have continued to hold that Turkey is an adequate alternative forum. *See, e.g., Roe v. Wyndham Worldwide, Inc.*, No. 18-1525-RGA, 2020 U.S. Dist. LEXIS 24342, 2020 WL 707371, at *5 (D. Del. Feb. 12, 2020).

sovereign nation." *Blanco v. Banco Indus. de Venezuela, S.A.*, 997 F.2d 974, 982 (2d Cir. 1993) (citation omitted). Plaintiffs describe efforts by Turkish officials to interfere with criminal investigations into Halkbank in both Turkey and the U.S. These allegations are serious and deserve attention. If plaintiffs were to litigate this matter in Turkey, however, the litigation would involve Turkey's civil court system rather than its criminal law enforcement agencies. Plaintiffs' allegations regarding Turkish law enforcement are therefore not sufficient to demonstrate that the Turkish civil court system is an inadequate forum for plaintiffs' claims, especially given the Second Circuit's "reluctan[ce] to find foreign courts 'corrupt' or 'biased.'" *In re Arbitration between Monegasque De Reassurances S.A.M. v. Nak Naftogaz of Ukraine*, 311 F.3d 488, 499 (2d Cir. 2002).

III. Balancing the Private and Public Interests

Since the plaintiffs' choice of forum is not entitled to significant deference and Turkey is an adequate alternative forum for this litigation, the final step of the *forum non conveniens* analysis is the weighing of the relevant private and public interest factors. The Second Circuit has described the private interest factors as including "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; . . . and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Iragorri*, 274 F.3d at 73-74 (citation omitted). Public interest factors "include administrative difficulties associated with court

congestion; the unfairness of imposing jury duty on a community with no relation to the litigation; the interest in having localized controversies decided at home; and avoiding difficult problems in conflict of laws and the application of foreign law." *Aguinda*, 303 F.3d at 480.

Here, the private interest factors weigh strongly in favor of litigating this case in Turkey. The underlying facts in this litigation involve an alleged fraudulent scheme conducted in large part by a Turkish bank and its Turkish employees in Turkey. The relevant evidence is largely in Turkey. Apart from Zarrab and Atilla, who are incarcerated in the United States for conduct related to the scheme, the potentially relevant witnesses are in Turkey or the surrounding region, as well. These potential witnesses are beyond the subpoena power of this Court. Trying this case in the United States would not be easy, expeditious, or inexpensive.

The plaintiffs take issue with very little of this assessment. They argue that U.S. prosecutors have possession of relevant documentary evidence, but that does not make such evidence accessible to civil litigants in the United States. Plaintiffs also contend that "potential" witnesses will be unable to enter Turkey. The only potential witness identified by the plaintiffs is a former Turkish law enforcement official involved in an investigation into Halkbank who was allegedly forced to flee Turkey. Plaintiffs do not explain why the testimony of this particular law enforcement official is necessary. Otherwise, the plaintiffs' submission does not contest that the witnesses to the alleged Halkbank scheme largely reside in Turkey and are beyond this Court's jurisdiction.

The public interest factors also weigh heavily in favor of litigating in Turkey. There is almost no connection between this case and New York. Plaintiffs have demanded a jury trial in this action, and it would make little sense to burden a New York court and jury with litigation of this action. By contrast, Turkey has a more significant interest in hearing this action, which involves a significant Turkish financial institution.

Additionally, this case presents a choice of law dispute, which further weighs in favor of litigating in Turkey. Halkbank argues that, even if the litigation proceeds in this Court, New York's choice of law rules require the application of Turkish law to the plaintiffs' fraudulent conveyance claims. The plaintiffs contend that New York fraudulent conveyance law applies. The presence of this choice of law dispute and the potential application of Turkish substantive law is a further basis for dismissal, since "the public interest factors point towards dismissal where the court would be required to untangle problems in conflict of laws, and in law foreign to itself." *Reyno*, 454 U.S. at 251 (citation omitted).

IV. Conditions of Dismissal

Because the plaintiffs' choice of forum commands minimal deference, Turkey is an adequate alternative forum for this action, and the private and public interest factors weigh strongly in favor of dismissal, this action is dismissed on the grounds of *forum non conveniens*. In order to ensure that this case is eventually heard on the merits in Turkey, however, conditional dismissal is

proper. *Blanco*, 997 F.2d at 984 ("[F]orum non conveniens dismissals are often appropriately conditioned to protect the party opposing dismissal.") Dismissal shall be conditioned on Halkbank's agreement to accept service in Turkey, submit to the jurisdiction of Turkish courts, and waive any statute of limitations defense that may have arisen since the filing of this action. The parties shall submit an agreement to litigate in Turkey in accordance with these conditions. A scheduling order accompanies this Opinion.

Conclusion

Halkbank's September 25, 2020 motion to dismiss is conditionally granted.

Dated: New York, New York
February 16, 2021

/s/ Denise Cote
DENISE COTE
United States District Judge

APPENDIX O — LIST OF PETITIONERS

WINFRED WAIRIMU WAMAI, individually and on behalf of the Estate of Adam Titus Wamal, TITUS WAMAI; DIANA WILLIAMS; LLOYD WAMAI; ANGELA WAMAI; VELMA BONYO, individually and on behalf of the Estate of Wycliffe Ochieng Bonyo; DORINE BONYO; ELUAH BONYO OCHIENG; ANGELA BONYO; WINNIE BONYO; BONIFACE CHEGE; CAROLINE WANJIRU GICHURU; LUCY GITAU, individually and on behalf of the Estate of Lawrence Ambrose Gitau; CATHERINE GITAU; FELISTER GITAU; ERNEST GITAU; CATHERINE GITUMBU KAMAU, individually and on behalf of the Estate of Joel Gitumbu Kamau; DAVID KAMAU; PETER KAMAU; PHILLIP KAMAU; HENRY BATHAZAR KESSY; FREDERICK KIBODYA; FLAVIA KIYANGA; LUCY KIONGO, individually and on behalf of the Estates of Joseph Kamau Kiongo and Teresia Wairimu Kamau; ALICE KIONGO; JANE KAMAU; NEWTON KAMAU; PETER KAMAU KIONGO; PAULINE KAMAU; HANNAH KAMAU; PAULINE KAMAU KIONGO; MERCY WAIRUMU KAMAU; DANIEL KIONGO KAMAU; RAPHAEL KIVINDYO; MILKA WANGARI MACHARIA; SAMUEL PUSSY, individually and on behalf of the Estate of Rachael Mungasia Pussy; DOREEN PUSSY; ELSIE PUSSY; ANDREW PUSSY; MICHAEL NGIGI MWORIA; JOHN NDUATI; AARON MAKAU NDIVO; JOYCE MUTHEU; PRISCILA OKATCH, individually and on behalf of the Estate of Maurice Okatch Ogolla; JACKLINE ACHIENG; ROSEMARY ANYANGO OKATCH; SAMSON OGOLLA OKATCH; DENNIS OKATCH; PAULINE ABDALLAH; BELINDA AKINYI ADIKANYO; FAITH KIHATO,

individually and on behalf of the Estate of Tony Kihato Irungu; JACQUELINE KIHATO; STEVE KIHATO; ANNAH WANGECHI; BETTY KAGAI; ELSIE KAGIMBI; JOSINDA KATUMBA KAMAU, individually and on behalf of the Estate of Vincent Kamau Nyoike; CAROLINE WANJURI KAMAU; FAITH WANZA KAMAU; DAVID KIARIE KIBURU; GRACE KIMATA, individually and on behalf of the Estate of Francis Watoro Maina; VICTOR WATORO; LYDIA MURIKI MAYAKA, individually and on behalf of the Estate of Rachel Wambui Watoro; NYANGORO MAYAKA; DOREEN MAYAKA; DICK OBWORO MAYAKA; DIANA NYANGARA; DEBRA MAYAKA; GEORGE MAGAK MIMBA; TIBRUSS MINJA; EDWARD MWAE MUTHAMA; NICHOLAS MUTISO; SARAH TIKOLO, individually and on behalf of the Estate of Geoffrey Moses Namai; NIGEEL NAMAI; CHARLES MWANGI NDIBUI; JULIUS NZIVO; ROSEMARY OLEWE, individually and on behalf of the Estate of Francis Olewe Ochilo; JULIET OLEWE; WENDY OLEWE; PATRICK OKECH; MORDECHAI THOMAS ONONO, individually and on behalf of the Estate of Lucy Grace Onono; JOHN MURIUKI; EVITTA FRANCIS KWIMBERE; MARY OFISI; JOYCE ONYANGO, individually and on behalf of the Estate of Eric Abur Onyango; TILDA ABUR; BARNABAS ONYANGO; KELESENDHIA APONDI ONYANGO; PAUL ONYANGO; KAKA ABUBAKAR IDDI; CHARLES MWAKA MULWA; VICTOR MPOTO; JULIUS OGORO; MARY NDAMBUKI, individually and on behalf of the Estate of Kimeu Nzioka Nganga; WELLINGTON OLUOMA; JACINTA WAHOME; STELLA MBUGUA; SAJJAD GULAMAJI; MARY

GITONGA; FRANCIS MAINA NDIBUI; KIRUMBA W'MBURU MUKURIA; CHRISTANT HIZA; MARINI KARIMA; ZEPHANIA MBOGE; EMILY MINAYO; JOASH OKINDO; RUKIA WANJIRU ALI; BERNARD MUTUNGA KASWII; HOSIANA MBAGA; MARGARET WAITHIRA NDUNGU; SAMUEL ODHIAMBO ORIARO; GAUDENS THOMAS KUNAMBI; LIVINGSTONE BUSERA MADAHANA; MENELIK KWAMIA MAKONNEN; TOBIAS OYANDA OTIENO; CHARLES MWIRIGI NKANATHA; JUSTINA MDOBILU; GIDEON MARITIM; BELINDA CHAKA; CLIFFORD TARIMO; JAMES NDEDA; MILLY MIKALI AMDUSO; MOSES KINYUA; VALERIE NAIR; AISHA KAMBENGA, individually and on behalf of the Estate of Bakari Nyumbu; JANE KATHUKA, individually and on behalf of the Estate of Geoffrey Kalio; BERNICE NDETI; DAWN MULU; TABITHA KALIO; AQUILAS KALIO; CATHERINE KALIO; LILIAN KALIO; HUSSEIN RAMADHANI, individually and on behalf of the Estate of Ramadhani Mahundi; CHARLES MUNGOMA OLAMBO; CAROLINE OKECH; ENOS NZALWA; ALI HUSSEIN ALI, individually and on behalf of the Estate of Hindu Omari Idi; OMAR IDI; HAMIDA IDI; MAHAMUD OMARI IDI; RASHID OMAR IDI; FATUMA OMAR; KAMALI MUSYOKA KITHUVA, individually and on behalf of the Estate of Dominic Musyoka Kithuva; BEATRICE MARTHA KITHUVA; TITUS KYALO MUSYOKA; BENSON MALUSI MUSYOKA; CAROLINE KASUNGO MGALI; MONICA WANGARI MUNYORI; NURI HAMISI SULTANI, individually and on behalf of the Estate of Mohamed Abdallah Mnyolya; NAFISA MALIK;

GRACE MAKASI PAUL, individually and on behalf of the Estate of Eliya Elisha Paul; BLASIO KUBAI; ELIZABETH MALOBA, individually and on behalf of the Estate ofFrederick Maloba; MARGARET MALOBA; LEWIS MALOBA; MARLON MALOBA; SHARON MALOBA; KENNETH MALOBA; EDWINA OWUOR, individually and on behalf of the Estate of Josiah Owuor; VINCENT OWUOR; WARREN OWUOR; GRACE GICHO, individually and on behalf of the Estate of Peter Macharia; DIANA MACHARIA; NGUGI MACHARIA; MARGARET NJOKI NGUGI; JOHN NGUGI ANN RUGURU; DAVID NGUGI; PAUL NGUGI; STANLEY NGUGI; LUCY CHEGE; MARGARET GITAU; SUSAN GITAU; PERIS GITUMBU; STACY WAITHERE; MONICAH KAMAU; JOAN KAMAU; MARGARET NZOMO; BARBARA MULI; STEPHEN MULl; LYDIA NDIVO MAKAU; SARAH MBOGO, individually and on behalf of the Estate of Francis Mbogo Njung'e; MISHECK MBOGO; ISAAC KARIUKI MBOGO; REUBEN NYAGA MBOGO; NANCY MBOGO; EPHANTUS NJAGI MBOGO; STEPHEN NJUKI MBOGO; ANN MBOGO; NEPHAT KIMATHI MBOGO; DANIEL OWITI OLOO; MAGDALINE OWITI; BENSON BWAKU; BEATRICE BWAKU; JOTHAM GODIA; GRACE GODIA; HANNAH NGENDA KAMAU; DUNCAN NYOIKE KAMAU; CHRISTINE MIKALI KAMAU; RUTH NDUTA KAMAU; MERCY WANJIRU; STANLEY NYOIKE; JENNIFER NJERI; ANTHONY NJOROGE; SIMON NGUGI; MICHAEL IKONYE KIARIE; JANE IKONYE KIARIE; SAMMY NDUNGU KIARIE; ELIZABETH KIATO; CHARITY KIATO; JUDY KIARIE; NANCY MIMBA MAGAK; RAPHAEL PETER MUNGUTI;

MARY MUNGUTI; ANGELA MWONGELI MUTISO; BENSON NDEGWA; PHOEBA NDEGWA; MARGARET MWANGI NDIBUI; CAROLINE NGUGI KAMAU; CHARLES OLEWE; PHELISTER OKECH; ESTATE OF PHAEDRA VRONTAMITIS; LEONIDAS VRONTAMITIS; ALEXANDER VRONTAMITIS; PAUL VRONTAMITIS; ANASTASIA GIANPOULOS; JOHN OFISI; KATHERINE MWAKA; EUCABETH GWARO; TRUSHA PATEL; PANKAJ PATEL; MARY MUDECHE; MICHAEL WARE; SAMMY MWANGI; LUCY MWANGI; JOSEPH WAHOME; SOLOMON MBUGUA; JAPETH GODIA; MERAB GODIA; WINFRED MAINA; JOMO MATIKO BOKE; SELINA BOKE; HUMPHREY KIBURU; JENNIFER WAMBAI; HARRISON KIMANI; GRACE KIMANI; ELIZABETH MULI-KIBUE; HUDSON CHORE; LYDIA NYABOKA OTAO OKINDO; STANLEY KINYUA MACHARIA; NANCY MACHARIA; BETTY ORIARO; RACHEL OYANDA OTIENO; HILARIO AMBROSE FERNANDES; CATHERINE MWANGI; DOREEN OPORT; PHILEMON OPORT; GERALD BOCHART; YVONNE BOCHART; LEILANI BOWER; MURABA CHAKA; ROSELYN NDEDA; JAMES MUKABI; FLORENCE OMORI; individually and on behalf of the Estate of Edwin Omori; BRYAN OMORI; JERRY OMORI; JANATHAN OKECH; MARY MUTHONI NDUNGU, individually and on behalf of the Estate of Francis Ndungu Mbugua; SAMUEL MBUGUA NDUNGU; JAMLECK GITAU NDUNGU; JOHN MUIRU NDUNGU; EDITH NJERI; ANNASTACIAH LUCY BOULDEN; AGNES WANJIKU NDUNGU; FAITH MALOBA; DERRICK MALOBA; STEVEN

MALOBA; BELINDA MALOBA; CHARLES OCHOLA; RAEL OCHOLA; JULIANA ONYANGO; MARITA ONYANGO; MARY ONSONGO, individually and on behalf of the Estate of Evans Onsongo; ENOCH ONSONGO; PERIS ONSONGO; VENICE ONSONGO; SALOME ONSONGO; BERNARD ONSONGO; GEORGE ONSONGO; EDWIN ONSONGO; GLADYS ONSONGO; PININA ONSONGO; and IRENE KUNG'U.