THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	3:04-CR-240-P
	§	
	§	
HOLY LAND FOUNDATION FOR	§	
RELIEF AND DEVELOPMENT, et al.	§	

PETITION OF THE *RUBIN* JUDGMENT CREDITORS
TO ADJUDICATE INTEREST IN PROPERTY PURSUANT TO 21 U.S.C. § 853(n)

Introduction

This is a petition pursuant to 21 U.S.C. § 853(n) to adjudicate the validity of Petitioners' interest in funds belonging to the Holy Land Foundation for Relief and Development ("HLF") which are subject to the Preliminary Order of Forfeiture issued by this Court on February 5, 2009.

The Petitioners are nine American citizens who were severely harmed by a triple suicide bombing carried out by the terrorist group Hamas on September 4, 1997, at an outdoor pedestrian mall in Jerusalem, Israel.

In May 2002, petitioners brought suit against Hamas under the civil provisions of the Antiterrorism Act, 18 U.S.C. § 2333, in the U.S. District Court for the District of Columbia. *Rubin et al. v. Hamas – Islamic Resistance Movement,* Civ No. 02-0975 (RMU) (D.D.C.). In September 2004, that court entered final judgment for the petitioners against Hamas in the amount of $ 214,500,000. *Rubin v. Hamas*, 2004 WL 2216489 (D.D.C. 2004).

Petitioners' judgment remains entirely unsatisfied, despite collection attempts in numerous U.S. jurisdictions and overseas.

Petitioners registered their judgment in the federal courts of New York, New Jersey, South Carolina, Illinois, and Washington State, *inter alia*, and commenced post-judgment proceedings against HLF funds in several jurisdictions pursuant to the Terrorism Risk Insurance Act ("TRIA"). The federal courts in Washington State and New York issued writs of execution on petitioners' judgment against HLF funds in those districts.

In the meanwhile, the government filed an indictment against HLF in this Court, which demanded forfeiture of $12,400,000 that HLF had illegally transferred abroad to Hamas.

On September 24, 2004, the government filed an *ex parte* application in this Court for a restraining order pursuant to 21 U.S.C. §853(e)(1)(A), on the explicit and primary ground that such an order was needed in order to block enforcement proceedings of terrorism victim judgment creditors of Hamas. Dkt. # 84.

This Court issued the requested restraining order *ex parte* the same day. Dkt. # 85. The restraining order was intended to remain in force indefinitely, and no notice or hearing regarding the order, was provided at any time.

The orphans and family of Yaron Ungar (the "Ungars"), a U.S. citizen killed in a terrorist attack near Jerusalem by Palestinian terrorists, who had obtained a judgment against Hamas in the U.S. District Court for Rhode Island, appealed the restraining order on both merits and procedural grounds, and on April 4, 2006 the Court of Appeals for the Fifth Circuit vacated the restraining order on the ground that it was entered without providing the Ungars adequate notice and a fair opportunity to be heard, as required by Rule 65 of the Federal Rule of Civil Procedure. *U.S. v. Holy Land Foundation for Relief and Development*, 445 F.3d 771 (5th Cir. 2006).

After the Fifth Circuit issued its ruling vacating the restraining order, the financial institution in Washington State holding the HLF's funds filed an interpleader action and placed the funds in the registry of the U.S. District Court for the Western District of Washington. *Amana Mutual Funds Trust et al v. the Holy Land Foundation*, 06-518 (W.D.Wa.), dkt. # 1.

The government then sought and obtained a rehearing *en banc* of the *Ungar* appeal. Upon *en banc* reconsideration, the Court of Appeals ruled that the Ungars were not entitled to challenge the restraining order at that time, but could assert their merits claims to the HLF funds at the conclusion of trial, in a proceeding under § 853(n). *See U.S. v. Holy Land Foundation for Relief and Development*, 493 F.3d 469 (5th Cir. 2007).

On February 5, 2009, this Court entered a Preliminary Order of Forfeiture, directing that "subject to the provisions of 21 U.S.C. § 853(n)" the HLF's bank accounts listed in Attachment A to the Preliminary Order shall be "forfeited to the Government as specific property involved in or traceable to property involved in the commission of the offenses described in Count 22 of the Superseding Indictment." Dkt. # 1264 at 3.

On March 16, 2009, the Petitioners received faxed notice of the Preliminary Order of Forfeiture from the office of the U.S. Attorney, advising that the petitioners are required to file a §853(n) petition within thirty days. Exhibit A. Accordingly, they are filing the instant petition.

As shown below, the Petitioners are entitled to enforce their judgment against HLF's bank accounts, notwithstanding the government's forfeiture proceedings.

BACKGROUND

I. The Underlying Judgment

The Petitioners (Jenny Rubin, Deborah Rubin, Daniel Miller, Abraham Mendelson, Stuart Hersh, Renay Frym, Noam Rozenman, Elena Rozenman and Tzvi Rozenman) are

American citizens harmed by a triple suicide bombing carried out in downtown Jerusalem on September 4, 1997.

Petitioners Stuart Hersh (a U.S. Navy veteran), Jenny Rubin and Noam Rozenman (then high school students), and Daniel Miller and Abraham Mendelson (then college-aged students studying in Jerusalem) were present at the scene of the bombing and suffered severe injuries as a result thereof. Petitioner Deborah Rubin (the mother of Jenny Rubin) and Petitioners Elena Rozenman and Tzvi Rozenman (the parents of Noam Rozenman) suffered severe harm as a result of the injuries sustained by their minor children.

In July 2001, the Petitioners filed suit against the Islamic Republic of Iran and other Iranian government defendants in the U.S. District Court for the District of Columbia, under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605.

In May 2002, the Petitioners filed a second suit in the U.S. District Court for the District of Columbia, naming Hamas as a defendant. The suit against Hamas was filed under the Antiterrorism Act ("ATA") 18 U.S.C. § 2333. Section 2333(a) of the ATA creates a cause of action for a U.S. national, or his estate, survivors and heirs, injured by reason of an act of "international terrorism" as defined in § 2331.

In January 2003, *Rubin v. Islamic Republic of Iran* was tried over four days. At the trial the Petitioners offered expert testimony concerning the details of the triple suicide bombing and the methods used by the terrorists. Expert psychological and psychiatric evidence was presented, and an international expert on post-traumatic stress disorder and other medical experts testified to the severe post-traumatic stress and physical, emotional and psychological damages the victims suffered. With the exception of Noam Rozenman, who was psychologically unfit to appear in court, each of the victims and their family members testified.

On September 10, 2003, the D.C. federal court issued a decision and entered judgment for the instant Petitioners against Iran for compensatory damages totaling $71.5 million. *Campuzano v Iran*, 281 F.Supp.2d 258 (D.D.C. 2003).

On September 27, 2004, the D.C. federal court entered judgment in favor of the Petitioners against Hamas. *Rubin v. Hamas*, 2004 WL 2216489 (D.D.C. 2004).

Before entering judgment, the D.C. court required the Petitioners to demonstrate that it had *in personam* jurisdiction over Hamas, and found that the Petitioners had done so:

> In the instant case, the plaintiff presents detailed testimony from a Middle East terrorism expert and a Federal Bureau of Investigation agent describing the defendant's fundraising, operational planning, recruitment, propaganda, public relations, money laundering and investment activities in the United States … the court concludes that the plaintiffs have met their burden in showing that the defendant has minimum contacts with the United States.

Id. at 3.

After addressing issues of jurisdiction, the D.C. court adopted the damages findings it had made in the earlier case against Iran:

> The court … has already heard extensive evidence and made detailed findings of fact regarding the plaintiffs' damages in a related case arising out of the same facts at issue here. *Campuzano v. Islamic Republic of Iran*, 281 F.Supp.2d 258, 274-79 (D.D.C. 2003) ... [Therefore the Court will not] needlessly force the plaintiffs to relive and reiterate the emotionally excruciating testimony previously given by them.

Id.

Accordingly, pursuant to the trebling provision of § 2333 of the ATA, the D.C. court directed that judgment enter as follows:

Jenny Rubin	$7,000,000 trebled to $21,000,000
Daniel Miller	$12,000,000 trebled to $36,000,000
Abraham Mendelson	$12,000,000 trebled to $36,000,000
Stuart Hersh	$12,000,000 trebled to $36,000,000

Noam Rozenman	$15,000,000 trebled to $45,000,000
Deborah Rubin	$2,500,000 trebled to $7,500,000
Renay Frym	$6,000,000 trebled to $18,000,000
Elena Rozenman	$2,500,000 trebled to $7,500,000
Tzvi Rozenman	$2,500,000 trebled to $7,500,000

Id.

Thus, the instant Petitioners received a judgment against Hamas several years after filing suit, and only after investing very considerable financial and emotional resources and reliving through testimony the excruciating details of the triple suicide terrorist attack its aftermath.

II. The Blocking of Assets Belonging to Hamas and Hamas' Agencies and Instrumentalities in the United States

The International Emergency Economic Powers Act, 50 U.S.C. §1701 *et seq*. ("IEEPA") authorizes the President, upon declaration of a national emergency, to block any property subject to the jurisdiction of the United States. 50 U.S.C. §1702.

On January 23, 1995, the President issued Executive Order 12947 (60 Fed. Reg. 5079) pursuant to IEEPA. Executive Order 12947 designated Hamas as a "Specially Designated Terrorist" or SDT, and blocked its assets. Executive Order 12947 also provides for other persons or organizations to be designated as SDTs and thereby have their assets blocked, if found to be "***owned or controlled by, or to act for or on behalf of***" Hamas. *Id*.

On September 23, 2001, the President issued Executive Order 13224 pursuant to IEEPA. (66 Fed. Reg. 49079). Executive Order 13224 designated Hamas as a "Specially Designated Global Terrorist," or SDGT, and blocked its assets under this designation as well. Executive Order 13224 also provides for other persons or organizations to be designated as SDGTs and thereby have their assets blocked, if found to "***act for or on behalf of***" Hamas or to be "***owned or controlled by***" Hamas. *Id*.

On December 4, 2001, the Secretary of the Treasury determined that the HLF "***acts for or on behalf of***" Hamas, and designated the HLF as an SDT under Executive Order 12947 and as an SDGT under Executive Order 13224. *See Holy Land Foundation v. Ashcroft,* 219 F. Supp.2d 57, 64 (D.D.C. 2002). Specifically, the Treasury found strong evidence that HLF functions as the fund-raising arm of Hamas in the United States. *Id*. at 69-74. Pursuant to these designations, the Office of Foreign Assets Control ("OFAC") in the Treasury issued a "Blocking Notice" freezing all of HLF's funds, accounts and other property. *Id.* at 64. *See also* Blocking Notice, Exhibit B.

The District Court and Court of Appeals for the District of Columbia upheld the designation of the HLF as an SDT and SDGT on the basis of its activities for and on behalf of Hamas. *Holy Land Foundation v. Ashcroft,* 219 F. Supp.2d 57 (D.D.C. 2002), 333 F.3d 156 (D.C. Cir. 2003) cert. denied 124 S. Ct. 1506 (2004). Indeed, that Court of Appeals held that "HLF's role in the funding of Hamas and of its terrorist activities is incontrovertible." *Id*. at 165.

III. Effect of Blocking Under IEEPA

Executive Orders 12947 and 13224 both prohibit "any transaction or dealing by United States persons or within the United States in property or interests in property" of SDTs and SDGTs without legal authorization from OFAC. Executive Order 12947 §1(b); Executive Order 13224 §2(a) (emphasis added). This sweeping language is echoed in the Blocking Notice as well. Exhibit B, at 1 ("Blocked property may not be transferred . . . or otherwise dealt in without prior authorization from OFAC.").

Likewise, the OFAC regulations implementing the blocking orders provide that all property of SDTs and SDGTs are blocked and may not be "transferred, paid, exported, withdrawn or otherwise dealt in." 31 CFR §§594.201 and 595.201.

OFAC regulations define a "transfer" as including every imaginable disposition or modification of rights or interests in the property, and any type of encumbrance. 31 CFR §§594.312 and 595.313. Moreover, the regulations also provide that any putative unlicensed "transfer" made in respect to blocked property "is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property." 31 CFR §§ 594.202 and 595.202.

IV. The Terrorism Risk Insurance Act of 2002 Subjects the Blocked Assets of the HLF to Execution in Satisfaction of Plaintiffs' Judgment Against Hamas

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Public Law 107-297; 116 Stat. 2322) ("TRIA"). Section 201 of Title II of the TRIA provides in relevant part that:

> Notwithstanding any other provision of law . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to, execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a).

The remedial legislative purpose of the TRIA was described in a decision of the U.S. District Court for the District of Columbia:

> The TRIA was . . . specifically intended "to deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties." 148 Cong. Rec. H8728 (Nov. 13, 2002).

Hill v. Republic of Iraq, 2003 WL 21057173 (D.D.C. 2003), at 2. Another federal court described TRIA's purpose similarly:

> TRIA § 201 was passed in order to "deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties. It is the intent of the Conferees that Section 201 establish that such judgments are to be enforced." H.R. Conf. Rep. 107-779, at 27 (2002), reprinted in 2002 U.S.C.C.A.N. 1430, at 1434-35; *see Hill v. Republic of Iraq*, No. 99 Civ. 03346, 2003 WL 21057173, at *2 (D.D.C. Mar. 11, 2003) (discussing enactment of TRIA). As noted by the Second Circuit, the plain meaning of the phrase that blocked assets "shall be subject to execution or attachment in aid of execution" "is to give terrorist victims who actually receive favorable judgments a right to execute against assets that would otherwise be blocked." *Smith ex rel. Estate of Smith v. Fed. Reserve Bank of New York*, 346 F.3d 264, 271 (2d Cir. 2003).

Weininger v. Castro, 462 F.Supp.2d 457, 483 (S.D.N.Y. 2006).

A "*terrorist party*" as defined by TRIA includes both terrorist organizations and designated foreign state sponsors of terrorism. TRIA §201(d)(4).

True to its remedial purpose, TRIA is revolutionary in two respects:

(i) Section 201 permits attachment and execution proceedings against terrorist parties "*Notwithstanding any other provision of law,*" and thereby expressly overrides any and all legal obstacles to enforcement. *See e.g. Hill*, *supra*, 2003 WL 21057173 at 2 (holding that TRIA's "notwithstanding" language overrides the IEEPA blocking regime, the Foreign Sovereign Immunities Act, and the Vienna Convention on Diplomatic Relations).

(ii) Section 201 also functions as a statutory veil-piercing provision, by allowing American victims of terrorism holding a judgment against a "terrorist party" to also enforce that judgment against the assets of "*any agency or instrumentality of that terrorist party.*" § 201. *See e.g. Weininger*, 462 F.Supp.2d at 485 ("TRIA … explicitly provides that where a judgment

against a terrorist party exists, not only its blocked assets, but the assets of its agencies and instrumentalities can be used to satisfy the judgment. The language of TRIA itself thus indicates that Congress intended to make the agencies or instrumentalities of statutorily defined terrorist parties liable for qualifying judgments rendered against the terrorist party in question.")

The triple suicide bombing in which the Petitioners were injured was an "act of terrorism" as defined by TRIA[1] and Hamas clearly meets the definition of a "terrorist party" under TRIA.[2] Therefore, §201(a) renders all "blocked assets" of Hamas, as well as all "blocked assets" of any agency or instrumentality of Hamas subject to execution and attachment in aid of execution, in order to satisfy the Petitioners' judgment against Hamas. The assets of the HLF were blocked pursuant to Executive Orders 12947 and 13224 specifically because the HLF "***acts for or on behalf of***" Hamas, and thus these assets are "blocked assets" of an agency and instrumentality of Hamas subject to execution by plaintiffs under TRIA.[3]

Accordingly, in the *Ungar v. Hamas* action, the U.S. District Court for the District of Rhode Island expressly found that the blocked assets of the HLF are subject to execution in satisfaction of judgments against Hamas:

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[1] Section 201(d)(1) of TRIA provides that the term "act of terrorism" includes 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))). The latter provision defines terrorist activity as "any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following . . . The use of any . . . explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property [or] A threat, attempt, or conspiracy to do any of the foregoing."

[2] Section 201(d)(4) of TRIA provides that the term "terrorist party" includes 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). The latter provision defines a terrorist organization as including "an organization . . . that is a group of two or more individuals, whether organized or not, which engages in" terrorist activity."

[3] Section 201(d)(2) of TRIA provides that the term "blocked asset" includes any asset blocked pursuant to IEEPA. As noted, the Executive Orders blocking HLF's assets were issued pursuant to IEEPA.

> On December 4, 2001, the Office of Foreign Asset Control, a division of the Treasury Department, determined that the HLF acts "for or on behalf of" Hamas and was thus a Specially Designated Terrorist under Executive Order 12947 and a Specially Designated Global Terrorist under Executive Order 13224. *Holy Land Found. for Relief and Dev. v. Ashcroft*, 219 F. Supp.2d 57, 64 (D.D.C. 2002). These designations allowed the Treasury Department to block all of the HLF's funds, accounts, and real property. Id.
>
> The Terrorism Risk Insurance Act of 2002, ("TRIA") subjects the blocked assets of a terrorist party, and any agency or instrumentality of that terrorist party, to execution or attachment in order to satisfy a judgment against them on any claim based on an act of terrorism. Pub. L. No. 107-297, 116 §201(a), Stat. 2322 (2002). The HLF is an agency and instrumentality of Hamas because it acts "for or on behalf of" Hamas as Hamas' fund-raising agent in the United States. **Therefore, the HLF's blocked assets are also subject to attachment and execution under the TRIA in order to satisfy the present judgment against Hamas**.

Ungar v. The Palestinian Authority, 304 F. Supp.2d 232, 241 (D.R.I. 2004) (emphasis added). [4]

Thus, the blocked assets of the HLF are subject to execution in satisfaction of the Petitoners' judgment, pursuant to §201 of TRIA.

V. The Petitioners' Enforcement Proceedings Under TRIA Against the Blocked HLF Assets

After obtaining their judgment in September 2004, the Petitioners registered their judgment in the Southern District of New York, the Western District of Washington, the District of New Jersey, the District of South Carolina, and the Northern District of Illinois, and retained local counsel in those districts.

[4] This finding supported the ruling by the Rhode Island district court that final judgment should enter against Hamas pursuant to FRCP 54(b) despite the pendency of the action against other defendants. The court found that HLF's assets "are steadily depleting because the Treasury Department has allowed the HLF to use the assets to pay its attorneys to challenge the blocking order and defend the HLF against a civil action arising from its collection of funds for Hamas," and that this depletion of the limited pool of assets available to satisfy plaintiffs' judgment constituted sufficient grounds for immediate entry of final judgment under Rule 54(b). *Id*. at 241-242.

The Petitioners requested that the U.S. District Court for the Western District of Washington issue a Writ of Garnishment against Saturna Capital which was holding Holy Land Foundation funds. On March 23, 2005, Judge Robert S. Lasnik issued the writ against the Hamas and the Holy Land Foundation:

> (pursuant to §201(a) of The Terrorism Risk Insurance Act of 2002 (Public Law 107-297; 116 Stat. 2322)) the defendant's agency and instrumentality The Holy Land Foundation for Relief and Development (collectively hereinafter "judgment debtors" are indebted to plaintiffs and that the amount to be help to satisfy the indebtedness is $214,450,000.00…

Exhibit C.

The Petitioners filed with the U.S. District Court for the Southern District of New York an application with supporting declaration for issuance of a writ of execution against Hamas. On April 13, 2005, U.S. District Chief Judge Michael Mukasey issued an execution against the Hamas. Exhibit D.

The Petitioners *did not* require an OFAC license for their execution proceedings because §201 of TRIA, which permits execution against blocked assets "*Notwithstanding any other provision of law,*" overrides the IEEPA blocking regime.

Accordingly, "*No license by the Office of Foreign Assets Control of the U.S. Treasury Department is required as a precondition*" to an execution under TRIA. *Daliberti v. J.P Morgan Chase & Co.*, 2003 WL 340734 at 2 (S.D.N.Y. 2003). The federal courts have without exception authorized executions under TRIA without any OFAC license. *See e.g. Hill v. Republic of Iraq*, 2003 U.S. Dist. LEXIS 3725 (D.D.C. March 11, 2003); *Weinstein v. Islamic Republic of Iran*, 274 F. Supp.2d 53 (D.D.C. 2003).

Indeed, the Justice Department agrees that assets subject to TRIA do not require an OFAC license. Exhibit E (Letter from the Department of Justice, January 6, 2006, attached as

Exhibit O to Declaration of James W. Perkins submitted in *Weininger v. Castro*, Civ. No. 05-7214 (S.D.N.Y.), dkt. #131).

VI. The Government's Criminal and Forfeiture Proceedings Against HLF

Following the HLF's designation as a terrorist group and the blocking of its assets, the government pursued a criminal investigation of HLF.

In early April, 2002, this Court issued four search warrants permitting federal agents to examine documents and moveable property of the HLF seized by OFAC from HLF's offices and held in storage facilities in Dallas, San Diego, Newark and Mundelein, Illinois. *See* Docket nos. 1-5 in *USA v. 11025 Switzer Ave, et al.*, 3:02-MJ-119; Docket no. 94 in *USA v. Holy Land Foundation*, 04-cr-00240.

However, because the HLF's property is blocked under IEEPA, the warrants issued by the Dallas federal court were ineffective to permit the FBI to conduct the searches. The Justice Department was therefore required to seek a license from OFAC, permitting execution of the search warrants issued by the federal court. Accordingly, on April 9, 2002, OFAC issued a "Directive License" permitting the FBI (which OFAC defines therein as a "licensee") to access, examine, copy and remove HLF's property "in furtherance of a criminal search warrant." Directive License, No. SDGT-53, Exhibit F.

On July 26, 2004, the United States filed a forty-two count indictment against the HLF and its principals in this Court. *USA v. Holy Land Foundation*, 04-cr-00240.

The indictment included a demand for forfeiture of $12,400,000 in tainted assets transferred abroad, as well as a demand for forfeiture of substitute assets.

However, the filing of the indictment and forfeiture demand could not purport to, and did not, have any legal effect on the blocked HLF funds, because (as noted) the executive blocking

orders and regulations prohibit and nullify *ab initio* any and all unlicensed dispositions in blocked property. 31 CFR §§594.202 and 595.202.

Accordingly, on September 23, 2004, OFAC issued a License authorizing the Department of Justice "to pursue criminal forfeiture of the assets of the Holy Land Foundation for Relief and Development ("HLF") blocked pursuant to" Executive Orders 12947 and 13224. License No. SDGT-382, Exhibit G ("Forfeiture License").

Thus, the first date on which the forfeiture demand contained in the indictment could possibly have become legally effective in respect to the blocked HLF assets was September 23, 2004, when OFAC authorized the forfeiture proceedings.

The Forfeiture License further provided that, "This authorization includes the pursuit of restraining orders necessary to preserve the status of the Blocked Assets prior to their forfeiture or other final disposition." *Id*.

And indeed, the next day, September 24, 2004, the government filed in this Court an "*Ex Parte* Application For Post-Indictment Restraining Order" accompanied by a proposed order. Dkt. # 84. That application sought a restraining order, pursuant to 21 U.S.C. §853(e)(1)(A), "to preserve the availability of certain property that is subject to forfeiture" in the criminal action and identifies the "certain property" whose restraint is sought as blocked HLF funds held by "various financial institutions" listed in a document labeled "Attachment A" and appended to the *Ex Parte* Application. Id. at pages 1-2.

Significantly, the *Ex Parte* Application dedicates a full page to the Ungars' enforcement proceedings under TRIA, and specifically argues that a restraining order is necessary to prevent the Ungars from reaching the blocked HLF funds. *Id*. at p. 3.

Indeed, the Ungars' enforcement proceedings are cited by the government as the first and main ground for granting its Application, and halting the Ungars' proceedings is presented as the very raison d'être of the requested restraining order.

That day, September 24, 2004, this Court granted the *Ex Parte* Application and issued a Post-Indictment Restraining Order in the form proposed and submitted by the U.S. attorney.

ARGUMENT

I. Section 201 of TRIA Permits Execution Against the Blocked HLF Funds Notwithstanding the Government's Forfeiture Proceedings

As noted, §201 of TRIA permits attachments and executions "Notwithstanding any other provision of law," and its clear remedial purpose is to assist American victims of terrorism to enforce judgments against terrorist parties:

> TRIA § 201 was passed in order to "deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties. It is the intent of the Conferees that Section 201 establish that such judgments are to be enforced." H.R. Conf. Rep. 107-779, at 27 (2002), reprinted in 2002 U.S.C.C.A.N. 1430, at 1434-35; *see Hill v. Republic of Iraq*, No. 99 Civ. 03346, 2003 WL 21057173, at *2 (D.D.C. Mar. 11, 2003) (discussing enactment of TRIA). As noted by the Second Circuit, the plain meaning of the phrase that blocked assets "shall be subject to execution or attachment in aid of execution" "is to give terrorist victims who actually receive favorable judgments a right to execute against assets that would otherwise be blocked." *Smith ex rel. Estate of Smith v. Fed. Reserve Bank of New York*, 346 F.3d 264, 271 (2d Cir. 2003).

Weininger v. Castro, 462 F.Supp.2d at 483.

The case law applying and interpreting §201 of TRIA clearly establishes that the "notwithstanding" provision of §201 operates to *override all statutory limitations* on attachment and execution:

> This matter concerns the efforts of plaintiffs, 180 individuals in whose favor default judgments have been entered against the Republic of Iraq ("Iraq"), to satisfy those judgments [against] accounts . . . that are held by garnishee Riggs Bank NA in the name of the Embassy of Iraq Commercial Office (the "Iraqi Accounts"). **Both of these accounts have been blocked since August 2, 1992 pursuant to Executive Order No. 12722 and the International Emergency Economic Powers Act. 50 U.S.C. §§1701-02**. Plaintiffs have moved this Court for issuance of an order directing execution against those accounts. The Court finds that each of these accounts is subject to execution under the Terrorism Risk Insurance Act ("TRIA") . . .
>
> Section 201 of the TRIA states that "[n]otwithstanding any other provision of law," the blocked assets of a terrorist party "shall be subject to execution or attachment in aid of execution." **As this Court has frequently recognized, "the phrase 'notwithstanding any other provision of law,' or a variation thereof, means exactly that; it is unambiguous and effectively supersedes all previous laws**." *Energy Transp. Group, Inc v. Skinner,* 752 F.Supp. 1, 10 (D.D.C. 1990); *see also Crowley Caribbean Transp., Inc. v. United States,* 865 F.2d 1281, 1283 (D.C.Cir. 1989) ("[a] clearer statement [than 'notwithstanding any other provision of law'] is difficult to imagine"). **Accordingly, by its plain terms, the TRIA overrides any immunity from execution that blocked Iraqi property might otherwise enjoy under the Vienna Convention [on Diplomatic Relations] or the FSIA**.

Hill, 2003 WL 21057173 1-2 (emphasis added).

Similarly, in *Hegna v. Islamic Republic of Iran*, 376 F.3d 485 (5th Cir. 2004), the Fifth Circuit rule that (subject to a narrow exception not relevant here)[5] TRIA overrides the immunity provisions of the Vienna Convention and permits execution against diplomatic property subject to the Convention.

Thus, TRIA's "notwithstanding" language overrides (1) executive blocking orders issued pursuant to IEEPA (2) the FSIA and (3) the Vienna Conventions. This fact is extremely

[5] I.e. that the property is being used exclusively for diplomatic or consular purposes. *Hegna*, 376 F.3d at 494.

significant, because the federal courts have consistently held that IEEPA, the FSIA, and the Vienna Convention are themselves all legal regimes of superior and overriding normative force.

For example, in *Charles T. Main Intern., Inc. v. Khuzestan Water & Power Authority*, 651 F.2d 800 (1st Cir. 1981), the First Circuit held that, "**The language of IEEPA is sweeping and unqualified**," and that the IEEPA blocking regime empowers the President to override judicial remedies, such as attachments and injunctions, and to extinguish "interests" in foreign assets held by United States citizens. *Id*. at 807.

In *Dames & Moore v. Regan*, 101 S.Ct. 2972 (1981), the Supreme Court explained the legislative purpose behind the IEEPA blocking regime:

> This Court has previously recognized that the congressional purpose in authorizing blocking orders is "to put control of foreign assets in the hands of the President . . ." *Propper v. Clark*, 337 U.S. 472, 493, 69 S.Ct. 1333, 1345, 93 L.Ed. 1480 (1949). Such orders permit the President to maintain the foreign assets at his disposal for use in negotiating the resolution of a declared national emergency.

Dames, 101 S.Ct. at 2983.

Quoting with approval the holding in *Charles T. Main* that IEEPA's provisions are "sweeping and unqualified" (*Id*. at 2982), the Supreme Court upheld the validity of orders issued by the President under IEEPA which extinguished third-party rights in Iranian property:

> Because the President's action in nullifying the attachments and ordering the transfer of the assets was taken pursuant to specific congressional authorization, it is supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.

Dames, 101 S.Ct. at 2984 (internal quotes omitted).

The overwhelming normative force of IEEPA and blocking orders issued pursuant thereto has been recognized by a long series of cases, including the Fifth Circuit:

> The **IEEPA grants the President sweeping powers** to prohibit "any person['s]" participation in any transaction involving or the exercise of any right, power, or privilege with respect to any "property in which any foreign country . . . has any interest." See 50 U.S.C. §1702(a)(1)(B). Pursuant to this broad authority, President Reagan authorized a freeze on all property and interests in property of the GOL and its agencies, controlled entities and instrumentalities that are in the United States or hereafter come into the possession or control of U.S. persons . . . **In matters like this, which involve foreign policy and national security, we are particularly obliged to defer to the discretion of executive agencies interpreting their governing law and regulations**.

Paradissiotis v. Rubin, 171 F.3d 983, 988 (5th Cir. 1999).

Thus, § 201 of TRIA is truly revolutionary. Until the enactment of TRIA, the normative force of IEEPA reigned supreme over all other legal norms, and permitted the President to utilize his "sweeping powers" to exercise total dominion over foreign assets and override the rights of all third-parties vis-à-vis such assets. Indeed, as noted above, even the FBI and the U.S. Attorney were unable to execute a search warrant issued by this Court against blocked assets, or to seek judicial forfeiture or restraint of such assets, without first obtaining licenses from OFAC.

No longer: since the enactment of § 201, the Petitioners and other victims of terrorism are entitled to override IEEPA blocking orders, and to attach and execute freely against assets blocked pursuant to IEEPA, without any OFAC license.

Since TRIA's "Notwithstanding any other provision of law" proviso overrides even the "sweeping" national security provisions of IEEPA which are "supported by the strongest of presumptions and the widest latitude of judicial interpretation" (*Dames* at 2984) that "notwithstanding" proviso must ***a fortiori*** trump any and every garden-variety "provision of law" governing forfeitures.

Or, stated somewhat differently, as a transitive principle of logic: since TRIA is normatively superior to IEEPA (no OFAC license required for execution), and IEEPA is

normatively superior to the provisions governing forfeitures (OFAC license required for forfeiture) then TRIA is *perforce* normatively superior to the forfeiture provisions and permits attachment and execution "notwithstanding" those forfeiture provisions.

This interpretation is not only mandated by the peremptory "notwithstanding" language of §201, it is also demanded by TRIA's legislative purpose. Congress did not arm victims of terrorism such as the instant Petitioners with a statute that overrides even the overwhelming – and heretofore insuperable – national security powers of the President under IEEPA, only to leave them vulnerable to common forfeiture proceedings. Indeed, in virtually every imaginable case, the blocked U.S.-based assets of terrorist organizations subject to execution under § 201 would also be potentially subject to some type of forfeiture. Thus, an interpretation that reads into TRIA's "notwithstanding" language an unwritten exception for forfeiture provisions would effectively permit the government to thwart virtually all TRIA enforcements by the simple expedient of initiating forfeiture proceedings.

Such a result would utterly contradict and defeat Congress' express intent in enacting TRIA.

This analysis is also strongly supported by the fact that TRIA overrides the FSIA and the Vienna Conventions:

The FSIA "sets forth the sole and exclusive standards to be used in resolving questions of sovereign immunity raised by foreign states before Federal and State courts in the United States." H.R.Rep. No. 94-1487, 94th Cong., 2d Sess. (1976), reprinted in 1976 U.S.C.C.A.N. 6604, 6610.

Moreover, exceptions to immunity are construed narrowly. *See e.g. Sampson v. Federal Republic of Germany*, 250 F.3d 1145, 1156 (7th Cir. 2001); *Mendenhall v. Saudi Aramco*, 991 F.Supp. 856, 858 (S.D.Tex. 1998) (citing cases).

Section 1609 of the FSIA provides: "Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter." 28 U.S.C. § 1609.

Yet, as noted, "the TRIA overrides any immunity from execution that blocked [foreign state] property might otherwise enjoy under . . . the FSIA." *Hill* at 2.

Thus, the "notwithstanding" language of § 201 overrides even the provisions of §§ 1610-11 of the FSIA which were – until the enactment of TRIA – "the sole and exclusive standards" governing the immunity of the property of foreign states.

Likewise:

> There is . . . a firm and obviously sound canon of construction against finding implicit repeal of a treaty in ambiguous congressional action. A treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed.

Trans World Airlines v. Franklin Mint Corp., 104 S.Ct. 1776, 1782 (1984) (internal quotation marks omitted).

Therefore, only a "clearly expressed" enactment by Congress can overcome the immunity granted to diplomatic property under the Vienna Conventions.

As noted, the Fifth Circuit (in *Hegna*) and the *Hill* court both found that § 201 of TRIA overrides the Vienna Conventions.

Thus, here too: since TRIA's "notwithstanding" language is effective to override even the presumptions against any derogation from the broadly construed norms contained in the FSIA and the Vienna Conventions, it is perforce effective to defeat any run-of-the-mill provisions of law governing criminal forfeitures.

Therefore, § 201 of TRIA overrides any provision of law permitting forfeitures, and the forfeiture proceedings brought by the government against the HLF in this case are ineffective to defeat the instant Petitioners' right to attach and execute under TRIA.

Notably, in its *en banc* decision, the Fifth Circuit termed the Ungars' TRIA argument "an interesting legal question" which should be resolved in the context of a § 853(n) petition. *See U.S. v. Holy Land Foundation*, 493 F.3d at 479.

II. Some of the HLF Funds Are in the Custody of Other Federal Courts and This Court Therefore Lacks Jurisdiction to Forfeit Those Funds

Even assuming, *arguendo*, that TRIA did not trump the criminal forfeiture provisions, it is long settled that:

> [W]here a court of competent jurisdiction has, through its officers, taken property into its possession, the property is thereby withdrawn from the jurisdiction of other courts. Having possession, the court may not only issue all writs necessary to protect its possession from physical interference, but is entitled to determine all questions respecting the same.

Ex parte Baldwin, 54 S.Ct. 551, 553 (1934).

The Fifth Circuit has repeatedly reiterated this rule. *See e.g. Wong Shing v. M/V Mardina Trader*, 564 F.2d 1183, 1188 (5th Cir. 1978) ("When a court of competent jurisdiction takes possession of property through its officers, that property is withdrawn from the jurisdiction of all other courts."); *In re Rehkopf Mattress Sales, Inc*., 479 F.2d 67, 70 (5th Cir. 1973) (noting the "general rule that when a court of competent jurisdiction takes possession of property through its

officers, that property is withdrawn from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession.").

This rule is commonly known as the *in custodia legis* doctrine. *See e.g. Ciel y Cia S.A. v. Nereide Societa di Navigazione per Azioni*, 28 B.R. 378, 381 (E.D.Va. 1983) (holding that after property "has been seized by the Marshal under *in rem* process" in one court, the *in custodia legis* doctrine trumps even bankruptcy proceedings, and exclusive jurisdiction over the property lies with the first court rather than the bankruptcy court).

The *in custodia legis* doctrine controls the instant case because many of the blocked HLF funds are in the custody of the United States District Courts for the Southern District of New York and the Western District of Washington, and so not subject to forfeiture by this Court.

New York

On September 2, 2004, the U.S. Marshal for the Southern District of New York levied the Ungars' writ of execution issued by the district court on the entities holding the HLF's funds in New York (Chase Bank of Texas/JP Morgan Chase & Co., Republic Bank of New York/HSBC and Morgan Stanley). Exhibit H.

Under New York law, the levying of a writ of execution places the subject assets within the legal custody of the court. *See e.g. Ruvolo v. Long Island R. Co.*, 45 Misc.2d 136, 144, 256 N.Y.S.2d 279, 287 (1965) ("Actual possession by the Sheriff or removal from the premises of the debtor was in no way required. 'Once levied upon the property is deemed to be *in custodia legis*.' (quoting *Matter of Livingston*, 30 Misc.2d 71, 74, 211 N.Y.S.2d 897, 900, *aff'd*. on other grounds 14 AD2d 264, 220 N.Y.S. 434 (1961)); *Sheridan Farms, Inc. v. Federico*, 48 Misc.2d 599, 265 N.Y.S.2d 922 (App.Term 1st Dep't, 1965) ("The property was inventoried by the marshal and the debtor put on notice that it was being levied upon pursuant to the execution

lodged with the marshal, who left with the debtor copies of the execution, inventory and notice of sale and posted a notice of levy. The marshal thereby exercised dominion and took custody of the property pursuant to the levy and it passed from the debtor's custody and was placed in custodia legis.").

Crucially, the April 4, 2006 decision of the Fifth Circuit **agreed with this argument in principle**, and found that the Ungars had indeed perfected a valid execution lien under New York law against the HLF assets in New York, but held that that lien had expired because the Ungars did not file a turnover proceeding under §§ 5225-5227 of New York's C.P.L.R. within 90 days of service of the execution. *U.S. v. Holy Land Foundation*, 445 F.3d at 783-4.

Because the government itself did not raise this argument about expiry of the lien the Ungars did not address it, and the Fifth Circuit reached its conclusion that no extension of the lien had been obtained without any briefing by the parties, on the basis of a *sua sponte* review of the Pacer docket of the U.S. District Court for the Southern District of New York.

In fact, however, unbeknownst to the Court of Appeals, the Ungars ***did indeed*** extend their levy until April 11, 2005, at which time they filed their turnover petition. *See* Order issued in *Ungar v. Hamas*, Exhibit I. Extension of an execution lien in this manner is fully effective under New York law. *See e.g. Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne de Navigation*, 605 F.2d 648 (2nd Cir. 1979); *Matter of Kitson & Kitson v. City of Yonkers*, 10 A.D.3d 21, 778 N.Y.S.2d 503 (2004).

The Fifth Circuit did not locate the Order extending the levy on the SDNY Pacer docket simply because that Order was issued under a "Miscellaneous" docket number, and in the SDNY "Miscellaneous" proceedings do not appear on Pacer.

Thus, the HLF assets located in New York are in the exclusive legal custody of the S.D.N.Y. by virtue of the Ungars' writ of execution, and this Court does not have jurisdiction to order the forfeiture of those assets.

Washington

The HLF funds located in Washington State are in the custody of the U.S. District Court for the Western District of Washington, and so not subject to forfeiture by this Court, for two reasons:

First, the instant Petitioners served a writ of garnishment pursuant to Washington law issued by the U.S. District Court for the Western District of Washington on Saturna Capital, the entity which held the HLF assets. *See* Exhibit C.

Notably, the Fifth Circuit expressly held that the service of such a writ of garnishment would be effective, under Washington law, to place the assets *in custodia legis* and so remove them from the jurisdiction of this Court. *See U.S. v. Holy Land*, 445 F.3d at 784-785.

Accordingly, the HLF assets located in Washington were placed in the legal custody of the U.S. District Court for the Western District of Washington by the instant Petitioners' writ of garnishment, and this Court does not have jurisdiction to order the forfeiture of those assets.

Second, following the April 4, 2006 decision of the Fifth Circuit vacating this Court's restraining order, Saturna Capital and Amana Mutual Funds which were holding HLF assets, deposited those assets into the Registry of the U.S. District Court for the Western District of Washington upon filing an interpleader, where they remain to this day. *See Amana Mutual Funds Trust et al v. the Holy Land Foundation*, 06-518, Dkt. # 1; *see also* Exhibit J (order denying government request for release of funds in registry).

Thus, those HLF funds are in the custody of the U.S. District Court for the Western District of Washington, and so are not subject to forfeiture by this Court.

***

In sum, therefore, the HLF assets in the Southern District of New York and the Western District of Washington are in the custody of the respective federal courts in those districts, and those funds are thereby "**withdrawn from the jurisdiction of all other courts**." *Wong Shing*, 564 F.2d at 1188.

This Court therefore lacks jurisdiction to issue an order forfeiting those funds.

III. The "Relation-Back" Doctrine Is Inapplicable

The government will likely argue that the Petitioners' arguments are unavailing, because under the "relation-back" doctrine codified at 21 U.S.C. § 853(c), ownership of the HLF assets is deemed to have vested in the government at the time the crimes were committed.

While the Petitioners could of course have waited to respond to such an argument until after it is raised by the government, Petitioners believe that it would be most efficacious to address this issue (preliminarily, and without waiving the right to respond in further detail as necessary in the future) up front, as part of the instant Petition.

The Court should reject any "relation-back" argument raised by the government, for two reasons.

First, as discussed above, the Petitioners' rights under § 201 TRIA are effective "Notwithstanding" the forfeiture laws. Clearly, the "relation-back" doctrine contained in § 853(c) has no greater force than any other provision of the forfeiture statutes (or of IEEPA, the FSIA or the Vienna Convention), and it, too, is therefore trumped by TRIA.

Moreover, at bottom, the "relation-back" doctrine is only a "legal fiction," *U.S. v. Bailey*, 419 F.3d 1208, 1214 (11th Cir. 2005), the boundaries of which are flexible and have been carefully limited by the courts in appropriate circumstances. *See id*. at 1217-1218 (holding that the "relation-back" doctrine could not satisfy state law requirement for "immediate right of possession" enjoyed by actual, as opposed to fictitious, property owners). *See also e.g. U.S. v. Figueroa*, 645 F.Supp. 453 (W.D.Pa. 1986) (relation-back doctrine is trumped by attorney's rights to fees); *U.S. v. Rogers*, 602 F.Supp. 1332, 1348 (D.Col. 1985) (same); *United States v. Badalmenti*, 614 F.Supp. 194 (S.D.N.Y. 1985) (same); *U.S v. Ianniello*, 644 F.Supp. 452 (S.D.N.Y. 1985) (same).

All the more so here, where Congress has expressly mandated that the instant Petitioners are entitled to exercise their rights under TRIA "Notwithstanding any other provision of law."

Second, the "relation-back" doctrine is completely inapplicable here, because the assets at issue are not "tainted assets" but merely "substitute assets."

It is well established that the "relation-back" rule contained in § 853(c) applies only to tainted assets and not to "substitute assets." *See e.g. U.S. v. Jarvis*, 499 F.3d 1196, 1204 (10th Cir. 2007) ("Both the relation-back and the protective order provisions of § 853 are silent as to § 853(p) substitute property. *See* § 853(c), (e). Unlike the pre-conviction interest the government may claim in tainted § 853(a) property, § 853(c) thus does not explicitly authorize the United States to claim any pre-conviction right, title, or interest in § 853(p) substitute property."); *U.S. v. Kramer*, 2006 WL 3545026 at * 7-8 (E.D.N.Y. 2006) ("[T]his Court cannot ... escape the conclusion that the relation back provision does not apply to substitute assets. This conclusion is also consistent with the common law 'taint theory,' which only applies the relation back principle to tainted property and not to other assets of the defendant ... this Court holds that the

Government has no colorable property interest in substitute assets of a defendant at least until the time of conviction.")**;** *U.S. v. Jewell*, 556 F.Supp.2d 962 (E.D.Ark. 2008) (same).

It is true that the Court's Preliminary Order of Forfeiture found that the HLF's bank accounts are tainted property. *See* dkt. # 1264 at 2 (finding that the bank accounts "are specific property involved in or traceable to property involved in the commission of the offenses described in Count 22 of the Superseding Indictment, for which defendant **Holy Land Foundation** has been convicted …").

However, the Petitioners respectfully dispute, and request that the Court reverse, this finding. Petitioners' right to challenge the underlying order of forfeiture is well established. *See e.g. U.S. v. Reckmeyer*, 836 F.2d 200, 206 (4th Cir. 1987) ("Serious due process questions would be raised … if third parties asserting an interest in forfeited assets were barred from challenging the validity of the forfeiture. The determination made at the defendant's criminal trial that the property was subject to forfeiture cannot be considered binding on persons who were not only not parties to the criminal action but were specifically barred from intervening."); *U.S. v. McHan*, 345 F.3d 262, 270 (4th Cir. 2003) (reading § 853(n) to allow challenges to the validity of the forfeiture); *U.S. v. $20,193.39 U.S. Currency*, 16 F.3d 344, 347 (9th Cir. 1994) ("The legislative history of § 853(n) … reveals that Congress intended to provide a means by which third parties challenging the validity of a forfeiture order could have their claims adjudicated.").

The Court's finding that these specific bank accounts are tainted property appears to rest entirely on the affidavit of Special Agent Alan Hampton of the Internal Revenue Service.[6] But

[6] While the Court's order also references "the evidence presented at trial, the defendants' convictions [and] the jury's verdict Special Verdict" Petitioners are unaware of any support or evidence for the conclusion that **these specific accounts** contain tainted assets that was presented at trial, or constituted part of the defendants' convictions or the jury's verdict Special Verdict.

Special Agent Hampton's affidavit is entirely vague and conclusory, and fails to explain how and why Special Agent Hampton believes that **the specific funds at issue** are tainted.

Indeed, obviously, none of the funds at issue were ever transferred overseas to Hamas or anyone else. Moreover, it is undisputed that HLF did raise funds for entities other than Hamas, and that HLF had its own reserves of funds for its operational needs (some of which operations did not involve illegal activity).

Special Agent Hampton skips over all these glaring difficulties, and baldly concludes that ***all*** the funds in ***all*** the accounts are tainted. With all due respect, there is no factual basis whatsoever for such a conclusion.

In sum, the Petitioners allege that all or some of the funds held in the HLF's bank accounts were not "involved in or traceable to property involved in the commission of the offenses described in Count 22 of the Superseding Indictment" or otherwise tainted. Accordingly, the relation-back doctrine does not apply to those funds.

Rule 32.2(c) of the Federal Rules of Criminal Procedure provides that in an ancillary proceeding pursuant to § 853(n) "the court may permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure if the court determines that discovery is necessary or desirable to resolve factual issues."

Clearly, to the extent that the government seeks to rely on the relation-back doctrine to defeat Petitioners' claims, the question of whether the assets at issue are tainted will be a crucial factual issue, and the Petitioners will seek discovery to resolve that issue.[7]

[7] Because Petitioners hold a final judgment, they are independently entitled to obtain discovery pursuant to Fed.R.Civ.P. 69, and Petitioners' reference herein to Fed.R.Crim.P. 32.2(c) should not be construed as a waiver of their rights to pursue discovery independently under Fed.R.Civ.P. 69.

WHEREFORE, the Preliminary Order of Forfeiture should be vacated, or modified to state that any forfeiture is subject to the Petitioners' priority rights to enforce their judgment against the HLF's asset pursuant to §201 of TRIA.

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April 13, 2009

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The undersigned hereby state under penalty of perjury that the foregoing petition is true and accurate:

Jenny Rubin

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Jenny Rubin

Deborah Rubin

The undersigned hereby state under penalty of perjury that the foregoing petition is true and accurate:

DANIEL MILLER

The undersigned hereby state under penalty of perjury that the foregoing petition is true and accurate:

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