

17-3854

IN THE
United States District Court of Appeals
FOR THE SECOND CIRCUIT

JEREMY LEVIN AND DR. LUCILLE LEVIN,
*Plaintiffs - Third-Party Defendants - Cross-Defendants - Counter Claimants -
Counter-Defendants - Appellants,*

v.

JPMORGAN CHASE BANK, N.A.,
*Defendant - Third-Party Plaintiff - Third-Party Defendant - Counter Defendant -
Cross Defendant - Counter Claimant - Appellee,*

(For Continuation of Caption See Inside Cover)

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

**PLAINTIFFS-APPELLANTS JEREMY LEVIN
AND DR. LUCILLE LEVIN'S PETITION FOR
PANEL REHEARING OR REHEARING *EN BANC***

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JPMorgan Chase & Co,

Defendant - Third-Party Plaintiff - Counter Defendant - Appellee JP Morgan Chase, Defendant - Cross Defendant - Counter Defendant,

JP Morgan Chase,

Defendant - Cross Defendant - Counter Defendant,

BNP Paribas, Commerzbank AG, Angela Yoak, John Becker, The Estate of Anthony Brown, John R. Cuddeback, Louise Gaddo, Kathy Hodges,

Defendants - Third-Party Defendants - Cross Defendants - Counter Defendants,

Société Générale,

Defendant - Third-Party Plaintiff - Cross Defendant - Counter Defendant,

Bank of New York, Citibank,

Defendants - Cross Defendants - Counter Defendants,

Elizabeth Adams,

Third-Party Defendant,

Jenny Rubin,

Defendant - Third-Party Defendant - Consolidated Third-Party Defendant - Cross Defendant - Counter Defendant,

Ellen Marie Bomer, Ahme Buyuk, Theodore Allman, (Estate of), (Estate of) Paul Gordon, Richard H. Menkins, (Father) Robert Schnorf,

Defendants - Cross Defendants,

(Brother) Richard Schnorf,

Defendant - Third-Party Defendant - Cross Defendant,

The Bank of New York Mellon, Citibank, N.A.,

Third-Party Defendants - Third-Party Plaintiffs - Cross Defendants - Counter Defendants,

Sealed Third-Party Defendant, Gaddo Blatter, The Estate of William R. Gaines, Jr., Ellaine Allen, John Gibson, Maurice Gibson, Edmond Wendy, The International Bank of Azerbaijan-Moscow LLC, Third Party Defendant, Daniel Miller, Lisa DiGiovanni, Robert DiGiovanni, Juanita R. Goldfarb, Mary V. Hernandez, Robert Muffler, Jr., Jutta Yarber, Ronald L. Tishmack, Celia Walker, Dorothy C. Wint, Leonora Pontillo, Barbara Goff, Gary Robert Owens, James Owens, Berk F. Pressley, David A. Pressley, Michael F. Pressley, Thomas C. Pressley, Yasemin B. Pressley, Frank B. Pressley, Jr., Montine Brown, Serpil Buyuk, Sundus Buyuk, Tulay Buyuk, Bahar Buyuk, Frank Pressley, Sr., Jon B. Pressley, Marc Y. Pressley, Dorothy Willard, Cheryl L. Blood, Donald Bomer, Tabitha Carter, Alexandra Rain Cormier, Andrew John William Cormier, Michael James Cormier, Patricia K. Fast, Patricia Feore, Lorie Gulick, Alice M. Hirn, Clyde M. Hirn, Inez P. Hirn, Julita A. Qualico, Bret W. Reed, Joyce Reed, Worley Lee Reed, Howard Sparks, Howard Sparks, Jr., Leslie Lydia Sparks, Michael Ray Sparks, Victoria Q. Spiers, Victoria J. Spiers, Flossie Varney, Linda Jane Whiteside, Ruth Ann Whiteside, Pat Williams, Renay Frym, Abraham Mendelson, Elena Rozenman, Noam Rozenman, Tzvi Rozenman, Bennie Harris, Donald P. Pontillo, Floyd Martin Carpenter, Estate of Binyamin Kahane, Estate of Irma Franklin, Estate of Meir Kahane, Ethel J. Griffin, Debora Donti Mwaipape, Elisha Donti Mwaipape, Nko Donti Mwaipape, Victoria Donti Mwaipape, Monica Akili, Estate of Abud Yusuph Shamte Dnange, Estate of Abdul Shabani Mtuyula, Estate of Juma Yusuph Shamte Dnange, Estate of Mtendeje Rajabu, Estate of Mwajabu Yusuph Shamte Dnange, Estate of Rogath Saidi Saidi, Estate of Yusuf Shamte Ndange, Angelina Mathew Felix, Abella

Valentine Katunda, Desidery Valentine Mathe Katunda, Diana Valentine Katunda, Edwine Valentine Mathe Katunda, Veidiana Valentine Katunda, Venant Valentine Mathew Katunda, Cecilia Samuel Marcus, Coronella Samuel Marcus, Samuel Thomas Marcus, Angelina Mathew-Ferix, Shabani Saidi Mtulya, Akili Musupape, Alli Kindamba NG'Ombe, Adabeth Said Nang'Okoko, Hanuni Ramadhani Ndange, Mohamed Alli Ng'Ombe, Kindamba Alli Ng'Ombe, Edward Mathew Ruareshelwa, Elisabeth Mathew Rutaheshelwa, Enoc Mathew Rutaheshelwa, Eric Mathew Rutaheshelwa, Happiness Mathew Rutaheshelwa, Eileen Prindeville Ahlquist, Miralda Judith Maitlan Alarcon, Marvin Albright, Jamaal Muata Ali, Anne Allman, DiAnne Margaret Allman, "Maggie", John Robert Allman, Margaret E. Alvarez, Kimberly F. Angus, Milagros Arroyo, Pablo Arroyo, Anthony Banks, Donnie Bates, Estate of Aisha Mawazo, Estate of Daniel Rogath Saidi, Estate of Dotio Rmadhani, Estate of Idifonce Rogath Saidi, Estate of John Rogath Saidi, Estate of Majaliwa Ramadhani, Estate of Renema Ramadhani, Estate of Selina Rogath Saidi, Estate of Upemdo Ramadhani, Estate of Veronica Alois Saidi, Estate of Wengo Ramadhani, Kulwa Ramadhani, Deborah Rubin, Johnny Bates, Laura Bates, Margie Bates, Monty Bates, Ronny Kent Bates, Thomas C. Bates, Sr., Thomas Bates, Jr., Mary E. Baumgartner, Anthony Baynard, Barry Baynard, Emerson Baynard, James Baynard, Philip Baynard, Stephen Baynard, Thomasine Baynard, Timothy Baynard, Wayne Baynard, Jess W. Beamon, Anna Beard, Alue Belrner, Alvin Burton Belrner, Annette Belrner, Clarence Belrner, Colby Keith Belrner, Denise Belrner, Donna Belrner, Faye Belrner, Kenneth Belrner, Luddie Belrner, Shawn Biellow, Mary Francis Black, Donald Blankenship, Jr., Donald Blankenship, Sr., Estate of Mary Blankenship, Richard D. Blankenship, Alice Blocker, Douglas Blocker, John R. Blocker, John W. Blocker, Robert Blocker, James Boccia, Joseph Boccia, Joseph Boccia, Sr., Raymond Boccia, John Jr., Richard Boccia, Ronnie Boccia (Veronica), Leticia Boddie, Angela Bohannon, Anthony Bohannon, Carrie Bohannon, David Bohannon, Edna Bohannon, Leon Bohannon, Sr., Ricki Bohannon, Leon Bohannon, Billie Jean Bolinger, John Bonk, Jr., Jeffrey Joseph Boulos, Lydia Boulos, Rebecca Bowler, John Norman Boyett, Lavon Boyett, Estate of Norman E. Boyett, Jr., (Estate Of) Norman E. Boyett, Jr., William A. Boyett, Susan Schnorf Breeden, Damion Briscoe, Christine Brown, Rosanne Brunette, Mary Lynn Buckner, Estate of Claude Burley, Myra Burley, William Burley, William Douglas Burley, Kathleen Calabro, Rachel Caldera, Michael Callahan, Paul Callahan, Patricia Calloway (Patsy Ann), Elisa ock Camara, Candace Campbell, Bradley Campus, Clare Campus, Elaine Capobianco, Olympia Carletta, Kimberly Carpenter, Florene Martin Carter, Phyllis A. Cash, Theresa Catano, Bruce Ceasar, Franklin Ceasar, Fredrick Ceasar, Johnnie Ceasar, Robbie Nell Ceasar, Sybil Ceasar, Christine Devlin Cecca, Tammy Chapman, James Cherry, Sonia Cherry, Adele H. Chios,

Jana M. Christian, Sharon Rose Christian, Susan Ciupaska, Leshune Stokes Clark, Rosemary Clark, Mary Ann Cobble, Karen Shipp Collard, Jennifer Collier, Deborah M. Coltrane, Christopher Comes, Frank Comes, Sr., Frank Comes, Jr., Joan Comes, Patrick Comes, James N. Conley, Jr., Robert Allen Conley, Roberta Li Conley, Charles F. Cook, Charles Dennis Cook, Elizabeth A. Cook, Mary A. Cook, Estate of Alan Tracey Copeland, Betty Copeland, Donald Copeland, Johnny Len Copeland, Blanche Corry, David Cosner, Harold Cosner, Jeffrey Cosner, Leanna Cosner, Marva Lynn Cosner, Bryan Thomas Coulman, Christopher J. Coulman, Dennis P. Coulman, Kevin Coulman, Lorraine M. Coulman, Robert D. Coulman, Robert Louis Coulman, Charlita Martin Covington, Deborah Crawford, Amanda Crouch, Marie Crudale, Rick Crudale, Eugene Cyzick, Russell Cyzick, Lynn Dallachie, Barbara Davis, Anne Deal, Lynn Smith Derbyshire, Theresa Desjardins, Christine Devlin, Daniel Devlin, Gabrielle Devlin, Michael Devlin, Richard Devlin, Sean Devlin, Glenn Dolphin, Rosalie Donahue Milano, Ashley Doray, Nathaniel Dorsey, Rebecca Doss, Claudine Dunnigan, Elizabeth Ann Dunnigan, Michael Dunnigan, William Dunnigan, Chester Dunningan, Timothy Dunningan, Bryan Earle, Frederick Daniel Eaves, Janice Thorstad Edquist, Mary Ruth Ervin, Barbara Estes, Charles Estes, Danny R. Estes, Frank Estes, Lori Fansler, Angela Dawn Farthing, Arlington Ferguson, Hilton Ferguson, Linda Sandback Fish, Richard Andrew Fluegel, Nancy Brocksbank Fox, Tia Fox, Alice Warren Franklin, Tammy Freshour, Charles Frye, Michael D. Fulcher, Ruby Fulcher, Barbara Gallagher, Brian Gallagher, James Gallagher, Estate of James Gallagher, Jr., Kevin Gallagher, Michael Gallagher, Sean Gallagher, Dimitri Gangur, George Gangur, Mary Gangur, Jess Garcia, Randall Garcia, Ronald Garcia, Russell Garcia, Violet Garcia, Truman Dale Garner, Suzanne Perron Garza, Jeanne Gatlegno, Larry Gerlach, Megan Gerlach, Patricia Gerlach, Travis Gerlach, Arlene Ghumm, Ashley Ghumm, Bill Ghumm, Edward Ghumm, Harold Ghumm, Hildegard Ghumm, Jedaiah Ghumm, Estate of Jesse Ghumm, Leroy Ghumm, Moronica Ghumm, Donald Giblin, Jeanne Giblin, Michael Giblin, Tiffany Giblin, Timothy Giblin, Valerie Giblin, William Giblin, Thad GilfordSmith, Rebecca Gintonio, Dawn Goff, Christina Gorchinski, Judy Gorchinski, Kevin Gorchinski, Michael Gorchinski, Valerie Gorchinski, Alice Gordon, Joseph Gordon, Linda Gordon, Norris Gordon, Richard Gordon, Andrea Grant, Deborah Graves, Davin M. Green, Deborah Green, Liberty Quirante Gregg, Alex Griffin, Catherine E. Grimsley, Megan Gummer, Lyda Woollett Guz, Darlene Hairston, Thomas Hairston, Tara Hanrahan, Mary Clyde Hart, Jeffrey Haskell, Michael Haskell, Brenda Haskill, Kathleen S. Hedge, Christopher Todd Helms, Mark Anthony Helms, Marvin R. Helms, Arminda Hernandez, Doris Hester, Stanley G. Hester, Clifton Hildreth, Donald Wayne Hildreth, Julia Hildreth, Mary Ann Hildreth, Michael Wayne Hildreth, Sharon A. Hilton, John Hlywiak, Margaret

Hlywiak, Joseph Hlywiak, Paul Hlywiak, Peter Hlywiak , Jr., Peter Hlywiak , Sr., Donald Holberton, Patricia Lee Holberton, Thomas Holberton, Tangie Hollifield, Debra Homer, Elizabeth House, Joyce A. Houston, Tammy Camara Howell, John Hudson, Dr. Lisa H. Hudson, Lorenzo Hudson, Lucy Hudson, Ruth Hudson, Samuel Hudson, Estate of William J. Hudson, Susan Thorstad Hugis, Estate of Maurice Edward Hukill, Cynthia Lou Hunt, Orval Hunt, Nancy Tingley Hurlburt, Cynthia Perron Hurston, Edward Iacovino, Jr., Edward Iacovino, Sr., Estate of Elizabeth Iacovino, Rosa Ibarro, Deborah Innocenzi, Kristin Innocenzi, Mark Innocenzi, Mark Innocenzi, Paul Innocenzi, IV, James Jackowski, John Jackowski, Jr., John Jackowski, Sr., Andrew Scott Jacobs, Daniel Joseph Jacobs, Danita Jacobs, Joseph P. Jacobs, Victoria Jacobus, Elaine James, Jeffrey Wilbur James, Nathalie C. Jenkins, Nathaniel Walter Jenkins, Stephen Jenkins, Rebecca Jewett, Jay Johnson, Linda Martin Johnson, Rennitta Stokes Johnson, Sherry Johnson, Charles Johnston, Edward Anthony Johnston, Edwin Johnston, Mary Ann Johnston, Alicia Jones, Corene Martin Jones, Kia Briscoe Jones, Mark Jones, Ollie Jones, Sandra D. Jones, Steven Jones, Synovure Jones, Estate of Robin Copeland Jordan, Susan Scott Jordan, Joyce Julian, Karl Julian, Thomas Adrian Julian, Nada Jurist, Adam Keown, Bobby Keown, Jr., Bobby Keown, Sr., Darren Keown, Thomas Keown, William Keown, Mary Joe Kirker, Brian Kirkpatrick, Kathleen Kirkpatrick, Daniel Kluck, Kelly Kluck, Michael Kluck, James C. Knipple, John R. Knipple, John D. Knipple, Zandra Lariviere, Estate of John R. Knipple, Pauline Knipple, Estate of Shirley L. Knox, Doreen Kreischer, Freas H. Kreischer, III, Freas H. Kreischer, Jr., Eugene LaRiviere, Janet LaRiviere, John M. LaRiviere, Lesley LaRiviere, Michael LaRiviere, Michael Scott LaRiviere, Keith Laise, Cynthia D. Lake, Wendy L. Lange, James Ill Langon, James Langon, IV, Nancy LaRiviere, Richard LaRiviere, Estate of Robert LaRiviere, Steven LaRiviere, William LaRiviere, Richard G. Lariviere, Cathy L. Lawton, Heidi Crudale LeGault, Clarence Lemnah, Estate of Etta Lemnah, Fay Lemnah, Harold Lemnah, Marlys Lemnah, Richard Lemnah, Robert Lemnah, Ronald Lemnah, Grace Lewis, Annette R. Livingston, Joseph R. Livingston, III, "Joel", Joseph R. Livingston, IV, Joseph R. Livingston, Jr., Robin M. Lynch, Earl Lyon, Francisco Lyon, June Lyon, Maria Lyon, Paul D. Lyon, Jr., Paul D. Lyon, Sr., Valerie Lyon, Heather Macroglou, John Macroglou, Lisa Magnotti, Kathleen Devlin Mahoney, Kenty Maitland, Leysnal Maitland, Samuel Maitland, Jr., Samuel Maitland, Sr., Shirla Maitland, Virginia Boccia Marshall, Charlie Robert Martin, John Martin, Pacita Martin, Renerio Martin, Ruby Martin, Shirley Martin, Mary Mason, Cristina Massa, David Massa, Edmund Massa, Joao Massa, "John", Jose Massa, "Joe", Manuel Massa, Jr., Ramiro Massa, Burnham Matthews, John McCall, Valerie McCall, Gail McDermott, James E. McDonough, Julia A. McFarlin, George McMahan, Michael McMahan, Timothy R. McMahan, Patty McPhee, Darren

Menkins, Gregory Menkins, Margaret Menkins, Richard Menkins, III, Jay T. Meurer, John Meurer, Michael Meurer, Ronald Meurer, John Thomas Meurer, Mary Lou Meurer, Penny Meyer, Angela Milano, Joseph Peter Milano, Peter Milano, Jr., Earline Miller, Henry Miller, Timothy Mitchell, Wendy Mitchell, Helen Montgomery, Alie Mae Moore, Betty Moore, Harry Moore, James Otis Moore, Estate of Johnney S. Moore, Estate of Joseph Moore, Kimberly Moore, Lovelle Darrell Moore, "Darrell", Marvin S. Moore, Mary Moore, Melissa Lea Moore, Michael Moore, Estate of Jonnie Mae Moore Jones, Elizabeth Phillips Moy, Debra Myers, Geneva Myers, Harry A. Myers, Harry Douglas Myers, Billie Ann Nairn, Campbell J. Nairn, Jr., Campbell J. Nairn, III, David Nairn, William P. Nairn, Alex W. Nashton, Estate of Jeffrey Nashton, Richard Norfleet, Deborah O'Connor, Pearl Olaniji, Ashley E. Oliver, John Oliver, Kayley Oliver, Michael John Oliver, Patrick S. Oliver, Paul Oliver, Riley Oliver, Bertha Olson, Estate of John Arne Olson, Roger S. Olson, Ronald L. Olson, Sigurd Olson, Estate of David Owens, Deanna Owens, Frances Owens, James Owens, Joseph Albert Owens, Steven Owens, Connie Mack Page, Connie Ray Page, Judith K. Page, Lisa Menkins Palmer, Geraldine Paolozzi, Maureen Pare, Henry James Parker, Sharon Parker, Ulysses Gregory Parker, Helen M. Pearson, John L. Pearson, John L. Pearson, Jr., Sonia Pearson, Brett Perron, Deborah Jean Perron, Michelle Perron, Ronald R. Perron, Thomas S. Perron, Muriel Persky, Deborah D. Peterson, Sandra Petrick, Sharon Conley Petry, Donna Vallone Phelps, Harold Phillips, John Arthur Phillips, Jr., John Arthur Phillips, Sr., Donna Tingley Plickys, Margaret Aileen Pollard, Stacey Yvonne Pollard, William Roy Pollard, Lee Hollan Prevatt, Victor Mark Prevatt, Victor Thornton Prevatt, James Price, John Price, Joseph Price, Barbara D. Prindeville, Estate of Kathleen Tara Prindeville, Michael Prindeville, Patrick Kerry Prindeville, Paul Prindeville, Sean Prindeville, Belinda J. Quirante, Diomedes J. Quirante, Edgar Quirante, Godofredo Quirante, Estate of Milton Quirante, Marie McMahan Russell, Sabrina Quirante, Susan Ray, Laura M. Reininger, Alan Richardson, Beatrice Richardson, Clarence Richardson, Eric Richardson, Lynette Richardson, Vanessa Richardson, Warren Richardson, Philiece Richardson Mills, Melrose Ricks, Belina Quirante Riva, Paul Rivers, Barbara Rockwell, Linda Rooney, Louis J. Rotondo, Tammi Ruark, Juliana Rudkowski, Jason Russell, Stephen Russell, Tanya Russell, Wanda Russell, Alicia Lynn Sanchez, Andrew Sauls, Henry Caleb Sauls, Michael Caleb Sauls, Riley A. Sauls, Tara Smith Rose, Charles Jeffrey Schnorf, Margaret Medler Schnorf, Richard Schnorf, Beverly Schultz, Dennis James Schultz, Dennis Ray Schultz, Scott Lee Schultz, Frank Scialabba, Jacqueline Scialabba, Peter Scialabba, Samuel Scott Scialabba, Gary Randall Scott, John Christopher Scott, Kevin James Scott, Lany L. Scott, Estate of Mary Ann Scott, Sheria Scott, Stephen Allen Scott, Jacklyn Segueria, Clydia Shaver, Bryan Richard Shipp, James David Shipp, Janice

Shipp, Maurice Shipp, Pauline Shipp, Raymond Dennis Shipp, Russell Shipp, Thomas Alan Shipp, Jerryl Shropshire, Larry H. Simpson, Jr., Susan J. Sinsioco, Angela Josephine Smith, Estate of Bobbie Ann Smith, Cynthia Smith, Donna Marie Smith, Erma Smith, Holly Smith, Ian Smith, Janet Smith, Joseph K. Smith, III, Joseph K. Smith, Jr., Keith Smith, Kelly B. Smith, Kirk Hall Smith, Shirley L. Smith, Tadgh Smith, Terrence Smith, Thomas Gerald Smith, Timothy B. Smith, Vincent Smith, Ann SmithWard, Jocelyn J. Sommerhof, John Sommerhof, William J. Sommerhof, Dana Spaulding, Scott Spaulding, Douglas Spencer, Stephen Eugene Spencer, Cecilia Stanley, Christy Williford Stelpflug, Joseph Stelpflug, Kathy Nathan Stelpflug, Laura Barfield Stelpflug, Peggy Stelpflug, William Stelpflug, Horace Renardo Stephens, Jr., "Ricky", Horace Stephens, Sr., Joyce Stephens, Keith Stephens, Mary Stilpen, Craig Stockton, Dona Stockton, Donald Stockton, Estate of Richard Stockton, Irene Stokes, Jeffrey Stokes, Nelson Stokes, Jr., Nelson Stokes, Sr., Robert Stokes, Gwenn Stokes Graham, Eric D. Sturghill, Marcus D. Sturghill, Marcus L. Sturghill, Jr., NaKeisha Lynn Sturghill, Devon Sundar, Doreen Sundar, Kelly Swank, Craig Joseph Swinson, Dawn Swinson, Ingrid M. Swinson, Estate of Kenneth L. Swinson, Estate of Teresa Swinson, William Swinson, Margaret Tella, Susan L. Terlson, Mary Ellen Thompson, Adam Thorstad, Barbara Thorstad, James Thorstad, Sr., James Thorstad, Jr., John Thorstad, Thomas Paul Thorstad, Betty Ann Thurman, Barbara Tingley, Richard L. Tingley, Russell Tingley, Stephen Tingley, Keysha Tolliver, Michael Toma, Mary Ann Turek, Karen Valenti, Anthony Vallone, Donald H. Vallone, Donald H. Vallone, Jr., Kathryn Thorstad Wallace, Timothy Vallone, Leona Mae Vargas, Denise Voyles, Lia Wallace, Lia Wallace, Richard J. Wallace, Bronzell Warren, Barbara Thorstad Warwick, Eric Glenn Washington, Linda Washington, Vancine Washington, Jessica Watson, Kenneth Watson, Audrey Webb, Andrew Wheeler, Benjamin Wheeler, Brenda June Wheeler, Danny Wheeler, Jonathan Wheeler, Kerry Wheeler, Marlis Wheeler, "Molly", Estate of Diane Whitener, Darrin A. Wigglesworth, Daryl Wigglesworth, Dwayne Wigglesworth, Henry Wigglesworth, Mark Wigglesworth, Robyn Wigglesworth, Sandra Wigglesworth, Shawn Wigglesworth, Dianne Stokes Williams, Gussie Martin Williams, Janet Williams, Johnny Williams, Rhonda Williams, Rodney J. Williams, Ronald Williams, Ruth Williams, Scipio J. Williams, Scipio Williams, Jr., Wesley Williams, Delma WilliamsEdwards, Jewelene Williamson, Johnny Adam Williamson, Tony Williamson, Michael Winter, William Ellis Winter, Barbara Wiseman, Jill Wold, Phyllis Woodford, Joyce Woodle, Beverly Woollett, Donald Elberan Woollett, Paul Woollett, Melvina Stokes Wright, Patricia Wright, Craig Wyche, Iranian Islamic Revolutionary Guard Corps., Iranian Ministry of Information and Security, Islamic Republic of Iran, Glenn Wyche, John Wyche, James Young, Jeffrey D. Young, John F. Young, John W. Young, Judith Carol

Young, Nora Young, Estate of Robert Young, Estate of Sandra Rhodes Young, Thomas D. Young, Joanne Zimmerman, Stephen Thomas Zone, Patricia Thorstad Zosso, United Overseas Bank Limited, Redacted Third-Party Defendant, Redacted Third-Party Defendant, Redacted Third-Party Defendant, Redacted Third-Party Defendant, Redacted Third-Party Defendant, Clyde & Co US LLP 405 Lexington Avenue 16th Floor New York, NY 10174 212-710-3900, Redacted Third-Party Defendant, Redacted Third-Party Defendant, Redacted Third-Party Defendant, Redacted Third-Party Defendant, Redacted Third-Party Defendant, Redacted Third-Party Defendant, Deutsche Bank Trust Company Americas, HSBC Bank USA, N.A., CIMB Bank Berhad, Redacted Third Party Defendant, Redacted Third Party Defendant, Central Bank of Nigeria, Kathy Dianne Bailey, Attorney for Third Party Defendant Turkiye Is Bankasi A.S., Turkiye Is Bankasi A.S., Engareh (M) SDN. BDH., Redacted Third Party Defendant, Redacted Third Party Defendant, Estate of Terrence Rich, Bryan Harris, John E. L'Heureux, Elizabeth Murphy, Individually and as Administratrix of the Estate of Terrence Rich, Armando J. Ybarra, Linda Bennett, Individually and as Co-Administrator of the Estate of Marla Ann Bennett, Lisa Bennett, Michael Bennett, Individually and as Co-Administrator of the Estate of Marla Ann Bennett, Estate of Marla Ann Bennett, Kerry M. L'Heureux, Mary E. Wells, Redacted Third-Party Defendant, Bryan Harris, Jane L'Heureux, John E. L'Heureux, Kerrie L'Heureux, Estelle Carrol, Estate of Martin Kirschenbaum, David Kirschenbaum, Isabelle Kirschenbaum, Jason Kirschenbaum, Joshua Kirschenbaum, Phyllis Maisel, Danielle Teitlebaum, Estate of Terrance Rich,

Third-Party Defendants - Cross Defendants,

The Estate of James Silvia and Lynne Michol Spencer, Joseph A. Barile, Angela E. Barile, Michael Barile, Andrea Ciarla, Vara Brown, John Brown, Sulba Brown, Rowel Brown, Marvine McBride, LaJuana Smith, Rodney E. Burns, Jeannie Scaggs, Eugene Burns, David Burns, Daniel Cuddeback, Jr., Daniel Cuddeback, Sr., Barbara Cuddeback, Robert Dean, Michael Episcopo, Randy Gaddo, Peter Gaddo, Timothy Gaddo, Michael A. Gaines, Carolyn Spears, William R. Gaines, Sr., Evelyn Sue Spears Elliot, Carol Weaver, The Estate of Virgel Hamilton, Gloria Hamilton, Bruce Hastings, Mary Jean Hodges, Maynard Hodges, Lorreta Brown, Cindy Holmes, Shana Saul, Daniel Joy, Sean Kirkpatrick, Daniel Kremer, Joseph T. Kremer, Jacqueline Stahrr, The Estate of Christine Kremer, The Estate of Thomas Kremer, The Estate of David A. Lewis, Betty Lewis, Jerry L. Lewis, Scott M. Lewis, Paul Martinez, Sr., Teresa Gunterh, Esther Martinez Parks, Alphonso

Martinez, Daniel Martinez, Michael Martinez, Paul Martinez, Jr., Tomasita L. Martinez, Susanne Yeoman, John Opatovsky, The Estate of Michael Lee Page, Albert Page, Janet Page, Joyce Clifford, David Penosky, Joseph Penosky, Christian R. Rauch, Leonard Paul Tice, The Estate of Burton Wherland, Sarah Wherland, Gregory Wherland, Kimmy Wherland, Charles F. West, Charles H. West, Sharon Davis, Alan C. Anderson, Michael Anderson, Thelma Anderson, Stephen Boyd Bland, Estate of Frank Bland, Ruth Ann Bland, James Bland, Estate of Laura Virginia Copeland, Sidney Decker, Ida Decker, Dudley Decker, Johnnie Decker, Carolyn Mudd, Ronald Duplarity, Estate of Sean F. Ester, Louis Estler, Jr., Mary Ellen Estler, Estate of Benjamin E. Fuller, Ernest C. Fuller, Maurice Gibson, Estate of Michael Hastings, Joyce Hastings, Estate of Paul Hein, Christopher Hein, Jo Ann Hein, Karen Hein-Sullivan, Victor J. Hein, Jacqueline M. Kunysz, Estate of John Hendrickson, John Hendrickson, Tyson Hendrickson, Deborah Ryan, Melinda Hollingshead, Renard Manley, Estate of Michael Robert Massman, Nicole Gomez, Angela Massman, Kristopher Massman, Lydia Massman, Patricia Lou Smith, Estate of Louis Melendez, Zaida Melendez, Douglas Jason Melendez, Johnny Melendez, Johnny Jr. Melendez, Estate of Michael Mercer, Sarah Mercer, Robin Nicely, Estate of Juan C. Rodriguez, Louisa Punonet, Robert Rucker, Estate of Billy San Pedro, Cesar San Pedro, Sila V. San Pedro, Guillermo San Pedro, Javier San Pedro, Thurnell Shields, Emanuel Simmons, Estate of James Surch, Patty Barnett, Will Surch, Bradley Ulick, Jeanette Doughtry, Marilyn Peterson, Estate of Eric Walker, Tena Walker-Jones, Ronald E. Walker, Galen Weber, Estate of Obrian Weekes, Anson Edmond, Arnold Edmond, Hazel Edmond, Keith Weekes, Faith Weekes, Ianthe Weekes, Estate of Dennis Lloyd West, Kathy West, Estate of John Weyl, Robin Brock, Sharon J. Rowan, Nelson Weyl, Deborah D. Peterson, personal representative of the Estate of James C. Knipple, et al, Carlos Acosta, Maria Acosta, Tova Ettinger, Irving Franklin, Baruch Kahane, Libby Kahane, Ciporah Kaplan, Steven M. Greenbaum, Alan D. Hayman, Shirlee Hayman, Redacted Third Party Defendant, Catherine Bonk, Terrance Valore, Catherine Bonk Hunt, John Bonk, Sr., Kevin Bonk, Thomas Bonk, Marion DiGiovanni, Sherry Lynn Fiedler, Robert Fluegel, Thomas A. Fluegel, Marilou Fluegel, Evans Hairston, Felicia Hairston, Julia Bell Hairston, Henry Hukill, Mark Andrew Hukill, Matthew Scott Hukill, Melissa Hukill, Meredith Ann Hukill, Mitchell Charles Hukill, Monte Hukill, Virginia Ellen Hukill, Storm Jones, Penni Joyce, Carl Kirkwood, Sr., Jeff Kirkwood, Shirley Kirkwood, Carl A. Kirkwood, Jr., Patricia Kronenbitter, Kris Laise, Betty Laise, James Macgroglou, Lorraine Macgroglou, Bill Macgroglou, Kathy McDonald, Edward W. McDonough, Sean McDonough, Edward J. McDonough, Estate of Rose Rotondo, Estate of Luis Rotondo, Estate of Phyllis Santoserra, Deborah Rhosto, Robert Simpson, Renee Eileen Simpson, Larry Simpson, Sr., Anna Marie Simpson, Sally Jo Wirick, Estate

of David A. Battle, Estate of Matilde Hernandez, Estate of John Muffler, Estate of James Yarber, Estate of John Jay Tishmack, Pedro Alvarado, Jr., Andres Alvarado Tull, Angel Alvarado, Geraldo Alvarado, Grisselle Alvarado, Luis Alvarado, Luisa Alvarado, Maria Alvarado, Marta Alvarado, Minerva Alvarado, Yolanda Alvarado, Zoraida Alvarado, Dennis Jack Anderson, Floyd Carpenter, Michael Harris, Rose Harris, Donald R. Pontillo, Deborah True, Douglas Pontillo, John E. Selbe, Belinda Skarka, Don Selbe, James Selbe, Willy G. Thompson, Allison Thompson, Ifaline Thompson, Johnny Thompson, Orlando Michael Valore, Sr., Orlando M. Valore, Jr., Janice Valore, Timothy Brooks, Patricia A. Brooks, Estate of Michael Heiser, Fran Heiser, individually and as personal representative of the Estate of Michael Heiser, Gary Heiser, individually and as personal representative of the Estate of Michael Heiser, Estate of Brent Marthaler, Katie Lee Marthaler, individually and as personal representative of the Estate of Brent Marthaler, Herman Marthaler, Sharon Marthaler, Matthew Marthaler, Kirk Marthaler, Richard Wood, Kathleen Wood, Shawn Wood, Anthony Cartrette, Lewis Cartrette, Estate of Patrick Fennig, Thaddeus C. Fennig, individually and as personal representative of the Estate of Patrick Fennig, Catherine Fennig, individually and as personal representative of the Estate of Patrick Fennig, Paul Fennig, Estate of Christopher Adams, Catherine Adams, individually and as personal representative of the Estate of Christopher Adams, Mary Young, Elizabeth Wolf, Patrick Adams, John Adams, William Adams, Michael Adams, Estate of Thanh “Gus” Nguyen, Christopher Nguyen, individually and as personal representative of the Estate of Thanh “Gus” Nguyen, Sandra M. Wetmore, Bridget Brooks, James Rimkus, Anne Rimkus, Estate of Kendall Kitson, Jr., Kendall Kitson, Sr., individually and as personal representative of the Estate of Kendall Kitson, Jr., Nancy R. Kitson, individually and as personal representative of the Estate of Kendall Kitson, Jr., Steve K. Kitson, Nancy A. Kitson, Lawrence Taylor, Vickie Taylor, Starlina Taylor, Estate of Joshua E. Woody, Dawn Woody, individually and as personal representative of the Estate of Joshua Woody, Bernadine Beekman, Tracy Smith, Jonica Woody, Timothy Woody, Estate of Leland Timothy Haun, Ibis S. Haun, individually and as personal representative of the Estate of Leland “Tim” Haun, Senator Haun, Milly Perez-Dallis, Estate of Christopher Lester, Cecil Lester, Sr., individually and as personal representative of the Estate of Christopher Lester, Judy Lester, individually and as personal representative of the Estate of Christopher Lester, Cecil Lester, Jr., Jessica Lester, Estate of Kevin Johnson, Sr., Shyrl Johnson, individually and as personal representative of the Estate of Kevin Johnson, Sr., Kevin Johnson, Jr., Nicholas Johnson, Estate of Peter J. Morgera, Michael Morgera, individually and as personal representative of the Estate of Peter Morgera, Thomas Morgera, Estate of Millard “Dee” Campbell, Marie Campbell, individually and as personal representative of the Estate of Millard “Dee”

Campbell, Bessie Campbell, Estate of Justin R. Wood, Estate of Earl Cartrette, Jr., Estate of Brian McVeigh, Estate of Joseph E. Rimkus, Estate of Jeremy Taylor, James Wetmore, George M. Beekman, Che G. Colson, Laura Johnson, Bruce Johnson, Norman Kahane, Sonia Kahane, Holly Gibson, Ronald Walker, Jr., James S. Spears, Mark Spears, Estate of Moses Arnold, Jr., Lolita M. Arnold, Estate of David L. Battle, Lisa Ann Beck, Betty J. Bolen, Keith Edwin Bolen, Neale Scott Bolen, Sheldon H. Bolen, Estate of Leonard Warren Walker, Estate of Walter Emerson Wint, Jr., Estate of Judith Greenbaum, Jean Givens Owen, Steven G. Owen, Estate of Jeffrey Bruce Owen, Rick West, Francis Heiser, Milagritos Perez-Dalis, Estate of Kevin J. Johnson, Kevin Johnson, a minor, Nicholas A. Johnson, a minor, Tracey M. Smith, Donte Akili Mwaipape, Donti Akili Mwaipape, Cecil H. Lester, Vicki L Taylor,

Third-Party Defendants - Cross Defendants - Counter Claimants.

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I. INTRODUCTION

This case involves federal laws and rules to prohibit money laundering in the United States by terrorists, including Bank Saderat here.¹ It also addresses federal laws designed to compensate American citizens who are victims of state sponsored terrorism. The Summary Opinion issued by the Panel sets forth a rule that improperly thwarts victims of torture in their efforts to collect terrorist judgments against Iran and its agents, and also expands a troubling policy in the Second Circuit which facilitates, intentionally or not, Iranian money laundering.²

¹ Bank Saderat is an agent of the Islamic Republic of Iran. *See, e.g., Shoham v. Islamic Republic of Iran*, No. 12-cv-508 (RCL), 2017 WL 2399454, at *10-*11 (D.D.C. June 1, 2017); *see also* Opinion at 4, n. 4 (“Both parties agree, for the purposes of this appeal, that Saderat qualifies as an ‘agency or instrumentality’ of Iran”). Bank Saderat is itself on the OFAC’s list of Specially Designated Nationals as a Specially Designated Global Terrorist. *See* AA 53, 57, 60, 72, 155-157; <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

² For example, in this case, the result of the blocking of the Bank Saderat Iranian Asset by the Office of Foreign Control, is that eventually the money in dollars will be returned by JPMorgan Chase to Lloyds Bank of London, the Bank that sent the wire to New York. UCC § 4-A-402. Lloyds does not own that money. *Sidwell & Co. v. Kamchatimpex*, 632 N.Y.S.2d 455, 457 (Sup. Ct. 1995); *see also Heine v. Colton, Hartnick, Yamin & Sheresky*, 786 F.Supp. 360, 375 (S.D.N.Y.1992). Bank Saderat owns the money. Therefore, it will be returned to Bank Saderat and the money laundering which is forbidden by federal law will be accomplished. 18 U.S.C. §§ 1956-1957. Also, the Levins will be denied collection of their judgment under TRIA § 201(a). This result is so directly against express public policy that it shocks the conscience. *See Doe v. JPMorgan Chase Bank, N.A.*, 899 F.3d 152, 161-62 (2d Cir. 2018) (Chin, J., dissenting) (“If we are to adhere to the majority’s reasoning [that Article 4 of the UCC applies to fund transfers originating from terrorist organizations], a significantly high-risk area of terror financing would, in effect, be read entirely out of reach of the sanctions.”).

Lucille and Jeremy Levin (“Appellants” or “the Levins”) have a judgment against the Islamic Republic of Iran (“Iran”) under 28 U.S.C. § 1605(a)(7), the Foreign Sovereign Immunities Act (“FSIA”) and § 201 of the Terrorism Risk Insurance Act of 2002 (“TRIA”).

On June 20, 2017, the Levins brought a motion for leave to file a supplemental complaint seeking turnover of Bank Saderat’s Blocked Funds for collection and partial satisfaction of their judgment against Iran, pursuant to FRCP 15(d). *See* AA 3, AA 5, AA 10. JPMorgan Chase Bank opposed the Levins’ motion claiming that under the New York Uniform Commercial Code (“UCC”) as interpreted by the Second Circuit in *Calderon-Cardona v. Bank of New York Mellon*, 770 F.3d 993 (2d Cir. 2014) and *Hausler v. JP Morgan Chase Bank, N.A.*, 770 F.3d 207 (2d Cir. 2014), a terrorist gives ownership of its funds to any bank which transmits an electronic wire transfer on its behalf in order to pay its debt to another in dollars. The idea is that the UCC in all cases transmutes ownership from the terrorist entity to its foreign correspondent bank, as a matter of state law, and thus, the transferred funds are no longer property of the terrorist, collectible under TRIA. AA 55. This is a complete legal fiction at odds with reality. The funds being transmitted by EFT are in all cases being used to pay the debt of the originating terrorist entity, and the EFT is a commercial transaction used by Bank Saderat and Lloyds to convert Iranian money into dollars for the benefit of Iran.

Here, Lloyds is paid for this service, but under its contract with Saderat, it never owns the funds, as expressly permitted by the UCC. If Lloyds does not pay the debt owed by Bank Saderat, Bank Saderat can proceed against Lloyds for the funds. Lloyds can never lawfully claim it owns these Blocked funds. UCC § 4-A-305. Further, if JPMorgan Chase claimed a true ownership as an intermediary bank (not just the fictitious one developed by the UCC to make legal banking transactions easier) in the EFT for itself, Lloyds would have an action against it, for the benefit of its principal, Bank Saderat, the terrorist entity and owner of the funds. *Id.* Here, unlike *Calderon* and *Hausler*, Bank Saderat has a contract with Lloyds whereby ownership of Bank Saderat's funds never transfer to Lloyds, as permitted by the UCC. Lloyds moves the funds of Bank Saderat to JPMorgan Chase in order to convert the money to dollars, which Iran is prohibited from doing under federal law. 18 U.S.C. §§ 1956-1957. This is the reality of the ownership of the Blocked Assets which the Levins seek to plead and prove. AA 157-159.

On October 27, 2017, Judge J. Paul Oetken denied in part the Levins' Motion for leave to file a supplemental complaint, holding that supplementation as to the Bank Saderat Blocked Assets, would be futile because he believed the Saderat Blocked Assets are not eligible for turnover and satisfaction of the Levins' TRIA judgment under *Calderon* and *Hausler*. See AA 186-188. The District Court adopted the argument of JPMorgan Chase that UCC Article 4-A mandates

that the funds transmitted by electronic wire become the actual property of the transmitting bank and not of the client which initiated the transfer. AA 185-187. Under this logic, Lloyds took complete ownership of the foreign money of Bank Saderat when it sent the funds to JPMorgan Chase in New York, and it was not significant that Lloyds and Bank Saderat have an agreement modifying the default UCC rule that Bank Saderat's funds are never the property of its agent Lloyds. AA 186-187. The District Court interpreted *Hausler* and *Calderon* to require that the Levins' amended complaint would be futile under the UCC, and under no set of facts was there a theory that Bank Saderat owned the funds when they were transmitted to New York. AA 186-188.

The Levins appealed, and on October 9, 2018, this Court entered its summary opinion affirming the decision of the District Court below (the "Opinion"). Appellants, pursuant to Federal Rules of Appellate Procedure 35(b) and 40(a), Local Rules 35.1 and 40.1, and Internal Operating Procedure 35.1, hereby request panel rehearing and rehearing *en banc* in order to correct misapprehensions of controlling legal authority and facts of consequence.³ In the

³ Panel rehearing is appropriate where the court has "overlooked or misapprehended" points of law or fact that were determinative in reaching the decision. FRAP 40(a); *see also RCA Glob. Commc'ns, Inc. v. F.C.C.*, 563 F.2d 1, 2-3 (2d Cir. 1977) (rehearing granted to correct court's error "in understanding the determinative facts and applicable law"); *United States v. Dharni*, 757 F.3d 1002, 1003-04 (9th Cir. 2014) (granting rehearing because "a factual premise important

event that the panel does not reverse itself, the matter merits rehearing *en banc* because the proceeding involves questions of exceptional importance which implicate money laundering in the United States by terrorist agencies and inhibit thousands of victims of terrorism from collection of judgments against state sponsors of terrorism and their Blocked Assets.

The UCC does not compel, as a matter of law, that the ownership of terrorist funds transferred by EFT from a foreign intermediary or correspondent bank to a New York bank is always converted to ownership in the transferring bank. The UCC allows ownership to remain in the originator, where the parties so provide by contract, even using another bank-initiated EFT. UCC § 4-A-501. This is true for all lawful transactions. *Id.* There is no legitimate reason to create a contrary rule for terrorists, the result of which is to facilitate money laundering and to deny victims compensation for violent crimes. Indeed, there is every reason to hold to the contrary under the law and to promote justice.

II. POINTS OF LAW OVERLOOKED OR MISAPPREHENDED IN THE OPINION

In affirming the trial court's ruling, the Court here misapprehended significant points of law which, if corrected, would result in a different outcome

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to our original holding may not be accurate, and [] we should find out whether it is.”). Rehearing *en banc* is appropriate where “the proceeding involves a question of exceptional importance.” FRAP 35(a).

for Appellants.⁴

A. The Court Misapplied Article 4

The Opinion states that questions of ownership of EFTs are governed by Article 4 of the UCC:

Absent a federal definition of “property” in either FSIA or TRIA, we apply the “general rule in this Circuit that when Congress has not created any new property rights, but ‘merely attaches consequences, federally defined, to rights created under state law,’ we must look to state law to define the ‘rights the [judgment debtor] has in the property the [creditor] seeks to reach.’”

Opinion at 6, quoting *Calderon*, 770 F.3d at 1001. “Article 4 of the New York Uniform Commercial Code ... governs EFTs held in New York banks.” *Id.* at 1001.⁵

In applying *Calderon* to this case, the Court misapprehended the ownership rules applicable under Article 4-A. Under *Calderon*, the ownership of the EFT at issue here is governed by the UCC, but the Court ignored a crucial applicable provision. UCC Article 4-A expressly provides that rules of ownership of EFTs can be varied by contracts among the commercial entities: “[T]he rights and

⁴ The Opinion affirms the ruling of the District Court, which stated that all allegations of plaintiff must be taken as true. AA 183 at n. 1.

⁵ There is no support for the proposition that the drafters of the UCC intended for its provisions to be applied blindly to illegal transactions, such as drug lord and terrorist state money laundering, as well as lawful transfers. To the extent that *Calderon* and *Hausler* hold that lawful and illegal commercial transaction should be treated the same, TRIA and public policy are contrary.

obligations of a party to a funds transfer may be varied by agreement of the affected party.” UCC § 4-A-501(1). This right to override the default rules of the UCC has been widely acknowledged both in caselaw and legal commentary on the subject:

The UCC expressly provides that “the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party...” It also provides that “a funds-transfer system rule governing rights and obligations between the participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule.”

McClain v. 1st Sec. Bank of Washington, 192 Wash. App. 1063 (2016). See also UCC § 1-302(a) (“[T]he effect of provisions of this act may be varied by agreement.”); *Regatos v. North Fork Bank*, 257 F.Supp.2d 632, 640 (S.D.N.Y. 2003) (“Unless the statute designates a provision as one that may not be varied by agreement, the agreement of the parties will trump the provisions of the UCC.”); *Elite Investigations v. Bank of New York*, 831 N.Y.S.2d 353 (Sup. Ct. 2006) (rules between banks regarding the electronic transfer of funds “may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule.”); 6A Hawklund U.C.C. Series § 4A-501:1 (“[E]xcept for certain rights and obligations that are fundamental to the operation of the design scheme of U.C.C. Article 4A (and the U.C.C., see U.C.C. § 1-302 [Rev]), parties are free to contractually customize their relationships, to

allocate risks of loss, delay, or insolvency, and to negotiate the cost of their respective services.”); 7 Anderson U.C.C. § 4A-501:3 (3d. ed.) (“Except as otherwise provided in Article 4A, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.”). Thus, as a matter of law, to the extent that Bank Saderat and Lloyds Bank contractually varied the rules of UCC regarding ownership of EFTs, as the Levins’ allege, the terms of that contract govern, not the off the rack rule of the UCC. *Id.*⁶

The ability of Bank Saderat and Lloyds Bank to contract around the default rules set forth in the UCC is of critical importance to the outcome of the Levins’ appeal. Lloyds, as Bank Saderat’s correspondent bank and by its contract with Bank Saderat, was operating as Bank Saderat’s agent in transferring the Saderat Blocked Funds to JPMorgan Chase. AA 159. The contract provided that Bank Saderat’s money is always its money, not Lloyds’. *Id.*; *Sidwell & Co.*, 632 N.Y.S.2d at 457; *see also Heine v. Colton, Hartnick, Yamin & Sheresky*, 786 F.Supp. 360, 375 (S.D.N.Y.1992) (“It is presumed that title to a principal’s property in the possession of his agent remains in the principal.”); *Baker v. New York Nat’l Exch. Bank*, 100 N.Y. 31 (1885). Accordingly, the blocked funds at issue here were owned by Bank Saderat at the time of the transfer to JPMorgan

⁶ The allegations in the Complaint must be taken as true. *Quaratino v. Tiffany & Co.*, 71 F.3d 58, 66 (2d Cir. 1995); *Walker v. City of New York*, 974 F.2d 293, 298 (2d. Cir. 1992).

Chase, and thus are properly attached under TRIA and FSIA to satisfy the Levins' judgment:

Whether the Levins may attach the Saderat Account to satisfy their judgment against Iran turns on the issue of ownership of those funds. ... "Whether attachment of [] EFTs under §1610(g) is possible turns . . . on whether the blocked EFTs at issue are 'property of' [a foreign state or its agency or instrumentality]."

Opinion at 5, quoting *Calderon*, 770 F.3d at 1000.

Reading both applicable provisions of the UCC, if Bank Saderat never gave ownership of its funds to Lloyds, then the money Lloyds transferred by EFT did not change ownership under the UCC off-the-rack rule but remained property of Bank Saderat. UCC § 4-A-501; *Regatos v. North Fork Bank*, 257 F.Supp.2d 632, 640 (S.D.N.Y. 2003). And if, as the Levins' allege, Lloyds transferred Bank Saderat's money, not its own to JPMorgan Chase, then the Saderat Blocked Funds are "property of a foreign state or its agent or instrumentality," and the amended complaint should have been allowed. The Court made a mistake of law in ignoring Article 4-A-501, and made a mistake of fact in ignoring the allegations that Bank Saderat and Lloyds varied the UCC off-the-rack ownership rule by agreement. The Levins' amended complaint is thus not futile under the UCC and New York property ownership law. AA 144-179.

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B. The Opinion Misapprehended the Scope of *Doe v. JPMorgan Chase Bank, N.A.*

In reaching its decision to affirm the District Court's ruling, the Court relied on the recent ruling in *Doe v. JPMorgan Chase Bank, N.A.*:

Finally, we note that our circuit's recent opinion in *Doe v. JPMorgan Chase Bank, N.A.*, 899 F.3d 152 (2d Cir. 2018), further bolsters our conclusion that the funds blocked by [JPMorgan Chase] are not attachable. ... *Doe* applied *Calderon-Cardona* and *Hausler* in upholding the district court's ruling that the funds were not attachable. ... We do the same.

Opinion at 9. *Doe* does not govern this situation and did not deal with Article 4-A-501, which allows contractual variation of the fictional ownership rules of UCC Article 4-A.⁷ In *Doe*, the Court, with a strong dissent, held that the transfer of funds by EFT, under the UCC, transfers ownership of the asset from the originator to the transferring Bank. *Doe*, 899 F.3d at 157. The *Doe* Court did not hold that the UCC transfers ownership even if there is a contract between the commercial entities that changes the default rules set forth under UCC Article 4-A.

III. POINTS OF FACT OVERLOOKED OR MISAPPREHENDED IN THE OPINION

In ruling on the appeal, this Court misapprehended that the blocked EFT in

⁷ JPMorgan Chase denies any interest in the Blocked Funds, even though it is an intermediate bank in the EFT process. AA 54, 60. Indeed, no rational person would use an EFT if their money was gone in the blink of an eye. UCC § 1-103. At the end of the day, if the law-abiding originator's debt is not paid to the beneficiary, the originator will demand its money back from the bank it dealt with, which will deal with the next bank in line and so on. UCC § 4-A-305.

question was owned by Lloyds Bank and not Bank Saderat. As the Court incorrectly stated:

[O]wnership of an EFT blocked by a New York bank depends entirely on the identity of the immediate transferor to that bank. ... In this case, the identity of the immediate transferor—Lloyds Bank—is undisputed.

Opinion at 7-8. As a matter of law and of fact, the determination of ownership here does not depend “entirely on the identity of the immediate transferor,” rather, it depends on whether the immediate transferor or the terrorist entity had reached a different agreement as to the ownership of the property which was transferred. *Calderon*, 770 F.3d at 1002. This question is properly answered by looking at UCC § 4-A-501 and determining whether the facts allege a contract which varied the default rules and instead result in the originator, Bank Saderat, retaining ownership in funds transferred to JPMorgan Chase through a correspondent bank, Lloyds, which expressly never takes ownership of Bank Saderat’s funds.

Here, Appellants have alleged a contractual relationship between Lloyds and Bank Saderat which is such that Bank Saderat maintains ownership of its funds deposited at or transferred through Lloyds: “[T]he funds which Lloyds holds for its correspondent banks are owned by the principal, i.e., Bank Saderat.” Appellants’ Opening Brief at 40; *see also* AA 159 at ¶47.

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The Opinion also incorrectly states that “[t]he Levins nowhere assert that Lloyds constitutes an ‘agency or instrumentality’ of Iran” for purposes of TRIA or the FSIA.⁸ Opinion at 7. The Levins expressly alleged that Lloyds was acting as the agent of Iran:

Lloyds, as Bank Saderat’s correspondent bank in this transaction, is Bank Saderat’s agent via a contractual relationship, express, implied in fact, custom, practice, and course of business.

AA 159.⁹ The Levins further alleged that:

“Lloyds’ actions in regard to the Saderat Blocked Account are the legal equivalent to the actions of its principal, Bank Saderat The EFT of Bank Saderat’s funds by Lloyds was a direct transfer of property belonging to Bank Saderat....”

AA 159.

Whatever the bank is called, the important fact is whether or not ownership actually was transferred to Lloyds or whether Lloyds and Bank Saderat agreed that

⁸ “Agent” and “agency” are used interchangeably for purposes of TRIA. *See, e.g., Doe*, 899 F.3d at 159 (“As Doe is a victim of terrorism and holds a judgment against a terrorist party, and the EFTs were blocked pursuant to OFAC regulations as [property] of that terrorist party’s agents or instrumentalities, this case seems precisely to fall within the situation contemplated by the TRIA.”); *Kirschenbaum v. 650 Fifth Ave.*, 257 F. Supp. 3d 463, 517 (S.D.N.Y. 2017) (“an ‘instrumentality’ is ‘something that serves as an intermediary or agent through which one or more functions of a controlling force are carried out.’”).

⁹ Lloyds admits that it is an agent of Bank Saderat on its website, where it describes the nature of its relationship as a correspondent bank as an agency relationship: “Correspondent Bank is a bank in one country that acts as an agent for a bank in another country e.g. in the transmission of funds.” *See* Lloyds Bank, TERMS AND CONDITIONS, <http://international.lloydsbank.com/help/Terms-and-Conditions/Corporate/>.

ownership would not transfer. UCC § 4-A-501; *Elite Investigations*, 831 N.Y.S.2d 353.

As discussed above in Section II.A., *supra*, if it is true that in a particular case, by agreement, Lloyds is an agency or instrumentality of Iran, or Bank Saderat is the owner of the blocked funds, then under the reasoning of *Calderon*, the Levins may attach those funds to satisfy their judgment against Iran. *Hausler*, 770 F.3d at 211-212; *Calderon*, 770 F.3d at 1001-02. The District Court here denied Appellants' motion for leave to supplement their complaint on the basis that allowing such would be futile. If the Saderat Blocked Funds are properly subject to attachment under the law of this Circuit, then Appellant's claim against those funds cannot be futile and the panel must reverse its prior opinion and reverse the District Court.

IV. QUESTIONS OF EXCEPTIONAL IMPORTANCE JUSTIFY REHEARING *EN BANC*

This case presents several questions of critical importance that justify a rehearing *en banc* in the event that this panel does not grant rehearing. First, if the Opinion is left to stand, the interpretation of TRIA, FSIA, and New York law would have the perverse result of facilitating the transfer of terrorist funds into the U.S. banking system by creating a readily available loophole for money laundering. Any terrorist organization seeking to protect its funds from attachment will simply follow the blueprint so announced, and funnel funds through a

correspondent bank such as Lloyds knowing that such a transfer will strip those funds of any tie to terrorist activities as far as New York law is concerned, and ultimately will allow the conversion here of more than three million dollars to benefit Iran.

Further, the Opinion's determination concerning ownership of EFTs contravenes the legislative purpose of the TRIA. The TRIA was enacted to "aid victims of terrorism to satisfy their judgments" by authorizing judgment holders to attach the blocked assets of liable terrorist parties. *Calderon*, 770 F.3d at 998; *see also Weininger v. Castro*, 462 F. Supp. 2d 457, 483 (S.D.N.Y. 2006). The Opinion, if left to stand, would only frustrate the efforts of other victims of terrorism attempting to satisfy judgments.

Finally, the reasoning of the Opinion would create confusion regarding the determination of property and ownership rights under New York law as codified by the UCC. As discussed above, this Court's interpretation of New York law regarding determinations of ownership would cast considerable doubt over whether parties to a commercial transaction can contract around the default rules provided by the UCC. Thus, rather than grant parties certainty in how to conduct affairs and structure commercial transactions, the Opinion will sow confusion as to property rights.

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V. CONCLUSION

Appellants respectfully request that this Court grant rehearing to correct the determinative misapprehensions of fact and law apparent in the Opinion, or, in the alternative, grant rehearing *en banc* in light of the exceptionally important questions raised by this case. If this Court does not grant panel rehearing or rehearing *en banc*, Appellants respectfully request that this Court reconsider its rulings in *Calderon* and *Hausler*, which are being interpreted against clear federal anti-terrorism policy.

Dated: October 23, 2018

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and 40(b)(1), the undersigned certifies that the foregoing Petition contains 3,812 words, excluding the parts of the Petition exempted by Fed. R. App. P. 32(f). This Petition also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced, roman typeface 14-point using Microsoft Word.

Dated: October 23, 2018

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ADDENDUM

17-3854-cv

Dr. Lucille Levin, et al. v. JPMorgan Chase Bank, N.A.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

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

Present:

RICHARD C. WESLEY,
DEBRA ANN LIVINGSTON,
Circuit Judges,
GEOFFREY W. CRAWFORD,
*District Judge.**

DOCTOR LUCILLE LEVIN and JEREMY LEVIN,

*Plaintiffs — Third-Party Defendants — Cross-Defendants — Counter-Claimants —
Counter-Defendants — Appellants,*

v.

17-3854-cv

JPMORGAN CHASE BANK, N.A.,

*Defendant — Third-Party Plaintiff — Third-Party Defendant — Counter-Defendant —
Cross-Defendant — Counter-Claimant — Appellee.†*

For Plaintiff-Appellants:

SUZELLE M. SMITH, Howarth & Smith, Los Angeles,
CA

* Chief Judge Geoffrey W. Crawford, of the United States District Court for the District of Vermont, sitting by designation.

† The Clerk of Court is respectfully instructed to amend the caption as set forth above.

For Defendant-Appellee: STEVEN B. FEIGENBAUM, Levi Lubarsky Feigenbaum
& Weiss LLP, New York, NY

Appeal from an October 27, 2017 judgment of the United States District Court for the Southern District of New York (Oetken, *J.*).

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

Lucille and Jeremy Levin (“the Levins”) appeal from an October 27, 2017 order of the United States District Court for the Southern District of New York (Oetken, *J.*), which was certified as a final judgment under Federal Rule of Civil Procedure 54(b) on February 12, 2018, denying their motion for leave to file a supplemental complaint pursuant to Federal Rule of Civil Procedure 15(d). We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

* * *

The Levins hold an unsatisfied judgment against the Islamic Republic of Iran (“Iran”) arising out of the 1984 kidnapping of Jeremy Levin in Beirut, Lebanon. On February 6, 2008, the United States District Court for the District of Columbia entered judgment in the amount of \$28,807,719 in the Levins’ lawsuit against Iran pursuant to § 1605(a)(7) of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602 et seq. (“FSIA”).¹ *See Levin v. Islamic Republic of Iran*, 529 F. Supp. 2d 1 (D.D.C. 2007). The Levins now seek to attach funds to satisfy that judgment.

¹ Section 1605(a)(7) has since been repealed and replaced. Pub. L. No. 110-181, Div. A., § 1083(b)(1)(A)(iii), 122 Stat. 341 (2008). The new provision, 28 U.S.C. § 1605A, now provides an exception to the general immunity from suit of foreign governments where “the foreign state [has been] designated as a state sponsor of terrorism” by the U.S. Department of State. § 1605A(a)(2)(A)(i)(I).

On June 26, 2009, the Levins filed their initial complaint in the instant lawsuit, alleging that JPMorgan Chase Bank, N.A. (“JPMCB”) possessed “assets blocked by the U.S. government due to the fact that Iran has an interest in them either directly or indirectly (‘Iranian Blocked Assets’).” App 183. A later round of discovery revealed the existence of two previously undisclosed Iranian Blocked Assets in JPMCB’s possession: (1) a deposit account under the name of Lebanese businessman Kassim Tajideen (the “Tajideen Account”) and (2) an account (the “Saderat Account”) holding the proceeds of a wire transfer, also known as an electronic funds transfer (the “EFT”), that was blocked by JPMCB in accordance with Iranian sanctions regulations promulgated by the Office of Foreign Assets Control (“OFAC”). On July 12, 2017, the Levins sought leave under Fed. R. Civ. P. 15(d) to file a supplemental complaint seeking turnover of the Tajideen Account and the Saderat Account pursuant to § 201(a) of the Terrorism Risk Insurance Act of 2002 (“TRIA”)² and §§ 1610(f)(1)(A) and (g)(1) of the FSIA.³

² Section 201(a) of the TRIA provides:

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 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, Pub. L. No. 107-297, 116 Stat. 2322 (2002) (reprinted following 28 U.S.C. § 1610).

³ Section 1610 of FSIA provides, in pertinent part:

(f)(1)(A) Notwithstanding any other provision of law . . . 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)), 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 of such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or

JPMCB did not oppose the Levins' motion with respect to the Tajideen Account. With respect to the Saderat Account, however, the parties differed. The Levins argued that the Saderat Account was attachable because the funds belonged to an "agency or instrumentality" of Iran—Bank Saderat, an Iranian bank based in Tehran ("Saderat").⁴ JPMCB argued that Saderat lacked title to the funds because the immediate transferor of the funds to JPMCB was not Saderat but Lloyds Bank Plc ("Lloyds"), a U.K. bank headquartered in London that transferred the funds in its capacity as Saderat's correspondent bank.

The district court granted the Levins' motion to supplement their complaint with respect to the Tajideen Account but denied the motion with respect to the Saderat Account. With respect to the Saderat Account, the court concluded that supplementation of the complaint would be futile under *Calderon-Cardona v. Bank of New York Mellon*, 770 F.3d 993 (2d Cir. 2014), and *Hausler v. JP Morgan Chase Bank, N.A.*, 770 F.3d 207 (2d Cir. 2014). The court quoted *Hausler* for the proposition that "in order for an EFT to be a blocked asset of [a terrorist state] under TRIA §201(a), either [the terrorist state] itself or an agency or instrumentality thereof (such as a state-owned financial institution) [must have] transmitted the EFT *directly* to the bank where the EFT is held pursuant to the block." *Levin v. Bank of New York Mellon*, No. 09-CV-5900 (JPO), 2017 WL 4863094, at *4 (S.D.N.Y. Oct. 27, 2017) (quoting *Hausler*, 770

section 1605A.

. . .

[(g)(1)] 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

28 U.S.C. § 1610.

⁴ Both parties agree, for the purposes of this appeal, that Saderat qualifies as an "agency or instrumentality" of Iran.

F.3d at 212 (emphasis and brackets in original)). Because the blocked EFT in question was transmitted to JPMCB directly by Lloyds, rather than Saderat, the EFT constituted property of Lloyds and could not be attached under TRIA or FSIA. *Id.*

* * *

We review the district court's holding *de novo*. A district court's denial of leave to amend or supplement a complaint is generally reviewed for abuse of discretion. *See, e.g., McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 200 (2d Cir. 2007). However, "[w]hen the denial of leave to amend is based on a legal interpretation, such as a determination that amendment would be futile, a reviewing court conducts a *de novo* review." *Hutchison v. Deutsche Bank Sec. Inc.*, 647 F.3d 479, 490 (2d Cir. 2011); *see also Gorman v. Consol. Edison Corp.*, 488 F.3d 586, 592 (2d Cir. 2007) (reviewing *de novo* a district court's denial of leave to amend on grounds of futility). Because the district court denied the Levins' motion to amend their complaint on grounds of futility, we review that decision *de novo*.

Whether the Levins may attach the Saderat Account to satisfy their judgment against Iran turns on the issue of ownership of those funds. *See* FSIA § 1610(g)(1) (authorizing attachment of "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" (emphasis added)); TRIA § 201(a) ("the *blocked assets of* [a] terrorist party (including the *blocked assets of* any agency or instrumentality of that terrorist party)" (emphasis added)); FSIA § 1610(f)(1)(A) ("any *property with respect to which* financial transactions are prohibited or regulated" (emphasis added)). *See also Calderon-Cardona*, 770 F.3d at 1000 ("Whether attachment of [] EFTs under §1610(g) is possible turns . . . on whether the blocked EFTs at issue are 'property of' [a foreign state or its agency or instrumentality].").

Ownership of property is generally a question of state law. In *Calderon-Cardona*, we noted that “Congress has not defined the type of property interests that may be subject to attachment under FSIA § 1610(g).” *Id.* at 1001; *see also Hausler*, 770 F.3d at 211 (observing the same with regard to TRIA § 201(a)). Absent a federal definition of “property” in either FSIA or TRIA, we apply the “general rule in this Circuit that when Congress has not created any new property rights, but ‘merely attaches consequences, federally defined, to rights created under state law,’ we must look to state law to define the ‘rights the [judgment debtor] has in the property the [creditor] seeks to reach.’” *Calderon-Cardona*, 770 F.3d at 1001 (quoting *Export-Import Bank v. Asia Pulp & Paper Co.*, 609 F.3d 111, 117 (2d Cir. 2010) (brackets in original)). The relevant state law governing EFTs blocked by New York banks is Article 4 of the New York Uniform Commercial Code (“N.Y. UCC”). *See* N.Y. UCC § 4-A; *Asia Pulp*, 609 F.3d at 118 (Article 4-A was “enacted to provide a comprehensive body of law that defines the rights and obligations that arise from wire transfers.” (internal quotation marks omitted)).

The application of N.Y. UCC Article 4 to EFTs has received extensive consideration in this Circuit. In *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir. 2009), we determined that under New York law “EFTs are neither the property of the originator nor the beneficiary while briefly in the possession of an intermediary bank.” *Id.* at 71. Subsequently, both *Calderon-Cardona* and *Hausler* addressed this issue with particular clarity. In *Calderon-Cardona*, we observed that “under the N.Y. UCC’s statutory scheme, the only entity with a property interest in an EFT while it is midstream is the entity immediately preceding the bank ‘holding’ the EFT in the transaction chain.” Therefore, *Calderon-Cardona* held:

“[A]n EFT blocked midstream is ‘property of a foreign state’ or ‘the property of an agency or instrumentality of such a state,’ subject to attachment under 28 U.S.C. § 1610(g), *only* where either the state itself or an agency or instrumentality

thereof (such as a state-owned financial institution) transmitted the EFT *directly* to the bank where the EFT is held pursuant to the block.”

Calderon-Cardona, 770 F.3d at 1002 (emphasis added). *Hausler* then further extended *Calderon-Cardona*’s holding to the TRIA context. In *Hausler*, we held that “in order for an EFT to be a ‘blocked asset of’ Cuba under TRIA § 201(a), either Cuba ‘itself or an agency or instrumentality thereof (such as a state-owned financial institution) [must have] transmitted the EFT *directly* to the bank where the EFT is held pursuant to the block.” *Hausler*, 770 F.3d at 212 (quoting *Calderon-Cardona*, 770 F.3d at 1002) (emphasis added) (brackets in original)).

The Saderat Account falls squarely within the holding of these cases. Here, as in *Hausler*, “it is undisputed that no [terrorist entity] transmitted any of the blocked EFTs in this case directly to a blocking bank.” *Id.* Instead, the Saderat Account funds were transmitted directly to JPMCB by Lloyds Bank. The Levins nowhere assert that Lloyds constitutes an “agency or instrumentality” of Iran. Because the EFT was not transferred directly to JPMCB by a foreign state or an agency or instrumentality of a foreign state, it was not “property of” a foreign state or an agency or instrumentality of such a state, and thus not attachable under FSIA or TRIA.

On appeal, the Levins principally contend that ownership of the Saderat Account at the time of blocking is a disputed question of fact and that the district court should have allowed supplementation of their complaint in order to proceed to discovery on that question. We disagree. New York’s law of property—as applied to the context of EFTs blocked pursuant to OFAC sanctions—has been established by *Calderon-Cardona* and *Hausler*. Under those cases, ownership of an EFT blocked by a New York bank depends entirely on the identity of the immediate transferor to that bank. *See Calderon-Cardona*, 770 F.3d at 1002 (permitting

attachment “*only* where either the state itself or an agency or instrumentality thereof . . . transmitted the EFT *directly* to the bank where the EFT is held pursuant to the block”) (emphasis added); *Hausler*, 770 F.3d at 212 (same). In this case, the identity of the immediate transferor—Lloyds Bank—is undisputed. Since neither party contends that Lloyds Bank is an agency or instrumentality of Iran itself, the EFT is not attachable.

Nor can we diverge from that result based on the Levins’ purported distinction between the “intermediary bank” at issue in *Calderon-Cardona* and *Hausler* and the “correspondent bank” relationship at issue here. To begin with, many authorities apparently consider these categories indistinct. *See, e.g., Sec. & Exch. Comm’n v. Homa*, 514 F.3d 661, 668 n.15 (7th Cir. 2008) (“A correspondent bank is an intermediary bank that a primary bank uses to facilitate currency transactions in the country in which the intermediary bank is located.”). More importantly, however, our precedents interpreting N.Y. UCC Article 4 render the asserted distinction irrelevant. As the district court properly held, the purported distinction between correspondent and intermediary banks “is a distinction without a difference, at least as it relates to the Second Circuit’s rule in *Hausler*.” *Levin*, 2017 WL 4863094, at *4. Regardless of the particular relationship between the immediate transferor of the funds and the entity that held title to those funds at the beginning of the transaction, the ownership of blocked EFT funds is clearly assigned by *Calderon-Cardona* and *Hausler*. “[E]ven where an EFT is transferred to a blocking bank by a ‘correspondent bank,’ the transferred asset is considered the ‘sole property’ of the correspondent bank, rather than the ‘principal’ bank (i.e., Bank Saderat).” *Id.* (citing *Doe v. Ejercito De Liberacion Nacional*, No. 15 Civ. 8652-LTS, 2017 WL 591193, at *1-3 (S.D.N.Y. Feb. 14, 2017), *aff’d*, 899 F.3d 152 (2d Cir. 2018)).

Finally, we note that our circuit’s recent opinion in *Doe v. JPMorgan Chase Bank, N.A.*, 899 F.3d 152 (2d Cir. 2018), further bolsters our conclusion that the funds blocked by JPMCB are not attachable. In *Doe*, a terrorist entity, Tajco Ltd. (“Tajco”), originated an EFT that flowed to an intermediary bank, AHLI United Bank UK PLC (“AHLI”), which then transmitted the funds to JPMCB, which then blocked the funds. *Id.* at 155. That sequence of events is highly analogous to the one at issue here, with Tajco taking the place of Iran, AHLI taking the place of Lloyds, and JPMCB playing the same role. *Doe* applied *Calderon-Cardona* and *Hausler* in upholding the district court’s ruling that the funds were not attachable. *See id.* at 157 (“[O]ur decisions in *Calderon-Cardona* and *Hausler* compel the conclusion that neither Grand Stores nor Tajco has any attachable property interest in the blocked funds at JPMorgan since they were not the entities that directly passed the EFTs to JPMorgan.”). We do the same.

* * *

We have considered the Levins’ remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk


