No. _____

In The
Supreme Court of the United States

JEREMY LEVIN AND DR. LUCILLE LEVIN,

Petitioners,

vs.

JPMORGAN CHASE BANK, N.A.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

CNN bureau chief, Jeremy Levin, was abducted by Iranian agents of Hezbollah in Beirut, Lebanon in the 1980s. Mr. Levin was held hostage, starved, and tortured, until his escape. Mr. Levin and his wife, Dr. Lucille Levin (the "Levins"), both octogenarians, have partially unsatisfied judgments against Iran under the Terrorism Risk Insurance Act ("TRIA") and seek to collect against Iranian assets in New York banks, including those made by electronic fund transfer ("EFT"). In 2017, the Levins sought to attach a blocked account that was the product of an Iranian EFT, processed through its correspondent bank in London. The District Court, affirmed by the Second Circuit, denied the Levins' motion to supplement their complaint with this blocked asset, holding that EFTs are exempt from TRIA if Iran does not directly transfer the fund to the account, applying only state law, namely N.Y. U.C.C. section 4-A-503, and ignoring federal law, TRIA's preemption clause, and N.Y. U.C.C. sections 4-A-402 and 4-A-501. In doing so, the Second Circuit has charted a path for terrorists to launder money using domestic and international banking systems in contravention of U.S. anti-terrorism law and in conflict with the D.C. Circuit.

The Question for the Court is:

> Are blocked EFTs, originating with Iran, transferred into the U.S. by agents of Iran, and used to benefit its financial interests, immune from recovery by victims of terrorism and holders of TRIA judgments when the agent immediately sending the EFT is not itself an Iranian owned bank entity?

PARTIES TO THE PROCEEDING

Petitioners, Plaintiffs and Appellants below, are Mr. Jeremy Levin and Dr. Lucille Levin, individuals.

Respondent, Defendant and Appellee below, is JPMorgan Chase Bank, N.A., a financial institution headquartered in New York.[1]

[1] This case is a part of consolidated proceedings that involve more financial institutions, other assets, and third parties. *See Levin v. Bank of New York*, 2011 WL 812032 (S.D.N.Y. Mar. 4, 2011). For purposes of the blocked asset at issue here, the only parties currently are Respondent JPMorgan and the Levins.

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DECISIONS BELOW

The order of the United States Court of Appeals, Second Circuit affirming the district court's denial in part of the Levins' motion for leave to file a supplemental complaint (App. 1-13) is available at 2018 WL 4901585. The United States District Court, Southern District of New York opinion and order (App. 14-23) is available at 2017 WL 4863094.

STATEMENT OF JURISDICTION

The court of appeals entered judgment October 9, 2018. App. 1-13. It denied rehearing and rehearing en banc on November 16, 2018. App. 24-25. This Court has jurisdiction under 28 U.S.C. § 1254(1). This Petition is timely as it is filed before February 14, 2019, 90 days after denial of rehearing. SUP. CT. R. 13.3.

STATUTORY PROVISIONS

Section 201, subsection (a), of the Terrorism Risk Insurance Act states:

> Notwithstanding any other provision of law, and except as provided in subsection (b) [of this note], in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008) of title

> 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

Pub. L. No. 107-297, 116 Stat. 2322 (Nov. 26, 2002) (codified as amended at 28 U.S.C. § 1610 note (2012)) [hereinafter TRIA § 201].

New York Uniform Commercial Code ("N.Y. U.C.C.") section 4-A-402(4)-(6) states, in relevant part:

> (4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in Sections 4-A-204 and 4-A-304, interest is payable on the refundable amount from the date of payment.
>
> (5) If a funds transfer is not completed as stated in subsection (3) and an intermediary bank is obliged to refund payment as stated in subsection (4) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in paragraph (a) of subsection (1) of Section 4-A-302, to route the funds transfer through that intermediary bank is entitled to receive or

> retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4).
>
> (6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) or to receive refund under subsection (4) may not be varied by agreement.

Subsection (1) of N.Y. U.C.C. section 4-A-501, states: "Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party."

N.Y. U.C.C. section 4-A-503, states:

> For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

STATEMENT OF THE CASE

A. Factual Background

Petitioners Mr. Jeremy Levin and Dr. Lucille Levin are judgment creditors of the Islamic Republic of Iran, the Iranian Ministry of Information and Security, and the Iranian Islamic Revolutionary Guard Corps (collectively "Iran").

On the morning of March 7, 1984, Jeremy Levin, American citizen and CNN bureau chief in Beirut, Lebanon, was abducted by terrorist organization Hezbollah, a militant Shiite radical group, trained and supported by Iran. For the next 343 days, Mr. Levin was kept in solitary confinement in a series of prison houses, chained, threatened, starved, and tortured by his captors, before he was able to escape. During her husband's captivity, Dr. Levin spent significant time, money, and energy campaigning for his release.

On February 14, 1985, a guard carelessly left Mr. Levin's chains partially secured and he was able to free himself, escape the prison house through a second story window, and run barefoot for over two hours through rough terrain before falling into the hands of the Syrian Army, which turned him over to William Eagleton, U.S. Ambassador to Syria and one of Dr. Levin's many contacts.

On February 6, 2008, the District Court for the District of Columbia entered judgment on behalf of the

Levins against Iran as a state sponsor of terrorism.[2] The Levins' judgment against Iran has not yet been fully satisfied.[3]

B. Procedural Background of New York Case

The Levins' judgment against Iran from the District of Columbia ("D.C.") was given full faith and credit by the Southern District of New York on April 20, 2009. The Levins' original complaint seeking collection of blocked assets of Iran in this action was filed in the District Court for the Southern District of New York on June 26, 2009. Petitioners sought enforcement of their judgment through turnover of assets in which Iran has an interest, including all blocked assets of Iran held in the Southern District by Respondent JPMorgan Chase Bank, N.A. ("JPMorgan").[4] The judgment against Iran has been partially, but not completely, satisfied.

On January 12, 2017, JPMorgan identified an Iranian blocked asset not previously disclosed to the Levins (the "Saderat Asset" or "Iranian Blocked Asset"),

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[2] Iran has been designated by the United States government as a state sponsor of terrorism since 1984 and continues to hold such designation, in part for its ongoing support for Hezbollah. U.S. DEPT. STATE BUREAU OF COUNTERTERRORISM, COUNTRY REPORTS ON TERRORISM 2017: STATE SPONSORS OF TERRORISM 218 (2018), https://www.state.gov/documents/organization/283100.pdf.

[3] App. 3. The Levins were parties to *Bank Markazi v. Peterson*, 136 S. Ct. 1310 (2016), in which this Court heard and resolved in favor of victims of Iran-sponsored terrorism on April 20, 2016.

[4] App. 16-17.

which was transferred to JPMorgan by EFT from Lloyds Bank Plc ("Lloyds").[5] Based on the JPMorgan disclosures and other factual investigation, it is undisputed that the origin of the Iranian Blocked Asset was Bank Saderat ("Saderat"). Bank Saderat is one of the largest Iranian-owned national banks.[6] Saderat is itself listed on the Office of Foreign Assets Control ("OFAC") specially designated nationals list as a sanctioned entity.[7] Saderat has a regular London correspondent bank where it keeps funds on deposit for various commercial purposes, Lloyds, and which bank is Saderat's agent.[8] Lloyds describes itself as agent for

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[5] App. 16.

[6] Iranian Transactions Regulations, 71 Fed. Reg. 53,569 (Sept. 12, 2006) (to be codified at 31 C.F.R. Part 560), *available at* https://www.treasury.gov/resource-center/sanctions/Documents/fr71_53569.pdf. "Bank Saderat has been a significant facilitator of Hizballah's financial activities and has served as a conduit between the Government of Iran and Hizballah, Hamas, the Popular Front for the Liberation of the Palestine-General Command, and Palestinian Islamic Jihad." *Id.*

[7] U.S. DEPT. TREAS. OFFICE OF FOREIGN ASSETS CONTROL, SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST 238-39, https://www.treasury.gov/ofac/downloads/sdnlist.pdf (last updated Jan. 8, 2019). " 'Bank Saderat facilitates Iran's transfer of hundreds of millions of dollars to Hizballah and other terrorist organizations each year. We will no longer allow a bank like Saderat to do business in the American financial system, even indirectly,' said Stuart Levey, Under Secretary for Terrorism and Financial Intelligence (TFI)." Press Release, U.S. Dept. Treas., Treasury Cuts Iran's Bank Saderat Off From U.S. Financial System (Sept. 8, 2006), https://www.treasury.gov/press-center/press-releases/Pages/hp87.aspx.

[8] "A Correspondent Bank is effectively acting as its Correspondent's agent or conduit, executing and/or processing payments or other transactions for the Correspondent's customers.

other commercial banks that set up an ongoing correspondent banking relationship with it.[9] Saderat instructed its agent, Lloyds, to send an electronic funds transfer ("EFT") of its funds to Respondent JPMorgan, which was ultimately to be received by Banque Intercontinentale Arab in Paris, France, to pay an unidentified debt of Iran. It is well known in the international banking community that correspondent banking relationships are regularly used for money laundering, especially by Iran.[10]

These customers may be individuals, legal entities or even other financial institutions. A correspondent relationship is characterized by its on-going, repetitive nature and does not generally exist in the context of one-off transactions." WOLFSBERG GROUP, WOLFSBERG ANTI-MONEY LAUNDERING PRINCIPLES FOR CORRESPONDENT BANKING 1-2 (2014), *available at* https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/wolfsberg-standards/8.%20Wolfsberg-Correspondent-Banking-Principles-2014.pdf (Respondent is a member of the Wolfsberg Group of International Financial Institutions).

[9] Lloyds is an English bank and, under English banking law, the correspondent bank is an agent of the originator's bank. E.P. ELLINGER ET AL., ELLINGER'S MODERN BANKING LAW 617 (5th ed. Oxford Univ. Press 2011) ("A correspondent or intermediary bank that is appointed by the payer's bank acts as that bank's agent. . . ."); *see also* 4 PHILLIP R. WOOD, SET-OFF AND NETTING, DERIVATIVES, CLEARING SYSTEMS 16-016 to 16-017 (2d ed. 2007) ("Banks making credit transfers are generally treated as agents of their customers. . . . under English law. . . . The originator's bank is agent of the originator. . . . [and] the originator's bank as agent for its customer is vicariously liable to its customer for the negligence of its intermediary bank as agent.").

[10] *See*, *e.g.*, Carolina A. Fornos & Katherine A. Lemire, *Correspondent Banking: A Gateway to Money Laundering Requires Heightened Scrutiny*, 256 N.Y. L.J. 1, 4 (2016), *available at* https://www.pillsburylaw.com/images/content/1/0/v2/104626/NYLJ-Fornos-Sept262016.pdf ("[C]orrespondent banking continues to be a risk

The Levins obtained a court-ordered writ of execution for the Saderat Asset, which was served on JPMorgan by the U.S. Marshal for the Southern District of New York on June 13, 2017.

On June 20, 2017, the Levins made a motion for leave to file a supplemental complaint seeking turnover of the Saderat Asset.[11] On October 27, 2017, the district court issued an opinion and order ("Opinion") denying the Levins' motion. The court, relying primarily on the Second Circuit's opinions in *Hausler v. JP Morgan Chase Bank, N.A.*, 770 F.3d 207 (2d Cir. 2014)

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area for banks. Without proper controls, banks may unwittingly allow money laundering, terrorist financing, and other illicit schemes to be funded, as well as provide persons subject to U.S. sanctions with indirect access to the U.S. financial system."); IMF, RECENT TRENDS IN CORRESPONDENT BANKING RELATIONSHIPS – FURTHER CONSIDERATIONS (2017) (discussing issues with correspondent banking, including money laundering and terrorism financing), *available at* https://www.imf.org/~/media/Files/Publications/PP/031617.ashx; Client Advisory, Hughes Hubbard, FinCEN Warns of New Iranian Efforts to Launder Money Through Banks and Virtual Currencies (Oct. 15, 2018), https://www.hugheshubbard.com/news/fincen-releases-advisory-warning-of-iranian-attempts-to-launder-money-through-financial-institutions-and-virtual-currencies-to-evade-sanctions ("In large part because of U.S. sanctions, Iran has sought access to the worldwide financial system through covert means. The Iranian Government has also often used money laundering techniques to fund the Islamic Revolutionary Guard Corps, the IRGC's Qods Force, Hizballah, Hamas, and other groups adverse to U.S. interests. As the country faces renewed sanctions pressure, FinCEN warns that Iran could return to many of these practices, including: . . . us[ing] regional financial institutions . . . as intermediaries to conceal their role in a transaction.").

[11] App. 16-17.

and *Calderon-Cardona v. Bank of New York Mellon*, 770 F.3d 993 (2d Cir. 2014), found that "supplementation [of the underlying complaint] would be futile because the Saderat Account does not qualify as a 'blocked asset' under TRIA, as it is not the property of a terrorist party."[12] The district court's decision was based on the fact that the Saderat Asset was transferred to JPMorgan as an EFT by Lloyds in its capacity as Saderat's agent and correspondent bank.[13] As plaintiffs alleged in their supplemental complaint, the commercial agreement between Lloyds and Saderat provides that all Saderat funds controlled or transacted by Lloyds remain at all times the property of Saderat.[14]

Although Saderat is undisputedly an agency and instrumentality of Iran, was the originator bank of the EFT, and was at all times the owner of the Saderat Asset by contract with its correspondent bank, Lloyds,

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[12] App. 20.

[13] App. 21-22. *See also* LLOYDS BANK, TERMS AND CONDITIONS, http://international.lloydsbank.com/help/Terms-and-Conditions/Corporate/ (last visited Jan. 22, 2019) ("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.") (cited and quoted in the Levins' Opening Brief in the Second Circuit); *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 his principal.") (quoting *Lalor v. Duff*, 281 N.Y.S.2d 614, 617 (1967)) (quotation marks omitted); *Baker v. New York Nat'l Exch. Bank*, 100 N.Y. 31 (1885) (noting the well-established principle that title of goods in possession of an agent remains with the principal).

[14] App. 21-22.

the district court applied the Second Circuit's recent holding that "the only entity with a property interest in the stopped EFT is the entity that passed the EFT on to the bank where it presently rests."[15] In short, despite factual allegations to the contrary, the Court found that all EFTs are solely owned by the bank which makes a transfer into a U.S. bank. The court then found that, under *Calderon-Cardona* and *Hausler*, applying N.Y. U.C.C. section 4-A-503, ownership of the Saderat Asset was transferred from Saderat to Lloyds at the moment that Lloyds transferred the Saderat Asset to Respondent JPMorgan by EFT.[16] Since the court held that Lloyds, not Saderat, owned the funds when they arrived at JPMorgan, there was no property of Saderat in the blocked account, and the Levins' supplemental complaint was "futile."[17] On February 12, 2018, the district court's Opinion regarding the Saderat Asset was certified as a final judgment, and the Levins timely appealed.[18]

On October 9, 2018, the Second Circuit Court of Appeals entered a summary order ("Order") affirming the district court's Opinion.[19] The Second Circuit framed the issue on appeal as "the issue of ownership of [the Saderat] funds," and affirmed the reasoning and holding of the District Court, under *Calderon-Cardona* and *Hausler*, that as a matter of New York state law,

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[15] App. 20 (quoting *Hausler*, 770 F.3d at 212).

[16] App. 20-22.

[17] App. 22.

[18] App. 3.

[19] App. 1-13.

notwithstanding any contractual variations to the contract or other provisions of the U.C.C., the blocking of an EFT midstream dispossesses the originator of ownership and creates ownership solely in the transferring bank, resulting in the blocked account's immunity from judgment collection under TRIA.[20]

> 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[-A] of the New York

[20] App. 7-13. The Second Circuit also referenced *Doe v. JPMorgan Chase Bank, N.A.*, 899 F.3d 152 (2d Cir. 2018), a case where a Specially Designated Global Terrorist used an intermediary to send an EFT into New York, but where there was no allegation of a contractual agreement that the ownership of the fund would remain with the originating bank. Judge Denny Chin wrote a strong dissent based on the policies of TRIA and the correct interpretation of Article 4-A's ownership principles. *Doe*, 899 F.3d at 160-61 ("Here, because [agents of the terrorist entity] retained an interest in the funds as the originators of the EFTs [under the U.C.C.] . . . I would conclude that the blocked funds are 'blocked assets' subject to attachment under § 201(a) of the TRIA. Under the majority's opinion, the funds remain frozen indefinitely in a blocked account at JPMorgan, which does nothing to further the purpose of the TRIA.").

> 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)).[21]

Relying on its prior caselaw interpretation of section 4-A-503, the Second Circuit found that the Saderat Asset was not owned by Saderat, and could therefore not be attached by the Levins:

> 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

[21] App. 8-9 (emphasis added).

> 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."
>
> . . .
>
> [T]he Saderat Account funds were transmitted directly to JPMCB by Lloyds Bank. . . . Because the EFT was not transferred directly to JPMCB by [Iran or Saderat], it was not "property of" [Iran or Saderat], and thus not attachable under FSIA or TRIA.[22]

The appellate court made this finding as a matter of law and rejected the Levins' argument 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."[23] The Second Circuit ignored the money laundering implications and the undermining of United States' policy against terrorist financing and compensation of victims of terrorism under TRIA, as well as the statute's preemption provision.

The court further found that the terms of the contractual relationship and ownership of funds between

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[22] App. 9-10.

[23] App. 10-11. Furthermore, the Levins never got to investigate the position of Lloyds as to ownership because they were not allowed to supplement their pleading. *Id.*

Lloyds and Saderat were irrelevant to the question of ownership of an EFT: "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*."[24] The court did not address N.Y. U.C.C. section 4-A-501 and the fact that the U.C.C. allows variation by agreement between the commercial parties to an EFT. The court also did not address the section 4-A-402 subrogation provision, which puts ownership in the originator of the funds when there is an interrupted EFT.[25] The Order of the Second Circuit affirmed the district court's denial of the Levins' motion to file a supplemental complaint for turnover of the Saderat Asset.[26]

The Levins timely petitioned the Second Circuit for rehearing and rehearing en banc. On November 16, 2018, the Second Circuit denied both petitions.[27]

[24] App. 11-12.

[25] *See Heiser v. Islamic Republic of Iran*, 735 F.3d 934, 940-41 (D.C. Cir. 2013).

[26] App. 13.

[27] App. 25.

REASONS FOR GRANTING THE WRIT

New York City, the financial capital of the world, is a global hub for business and commerce and one of the preeminent centers of international banking.[28] As a result, federal courts in New York represent the epicenter for the collection efforts of thousands of military widows, orphans, and other direct victims of foreign state, including Iranian, sponsored murder, kidnapping, and torture.[29] The Congressionally-stated purpose of TRIA "is to deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties. It is the intent of the Conferees that Section 201 establish that such judgments are to be

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[28] Prableen Bajpai, *The World's Leading Financial Cities*, Investopedia, https://www.investopedia.com/articles/investing/091114/worlds-top-financial-cities.asp (last updated Oct. 18, 2018); David Brennan, *New York Beats London As World's Financial Capital – Because of Brexit* (Sept. 12, 2018), https://www.newsweek.com/new-york-beats-london-worlds-financial-capital-because-brexit-1118138.

[29] *See*, *e.g.*, *Peterson v. Islamic Republic of Iran*, 2013 WL 1155576 (S.D.N.Y. Mar. 13, 2013), *aff'd*, 758 F.3d 185 (2d Cir. 2014), *aff'd sub nom. Bank Markazi v. Peterson*, 136 S. Ct. 1310 (2016); *Estate of Heiser v. Bank of Tokyo Mitsubishi UFJ, New York Branch*, 919 F. Supp. 2d 411 (S.D.N.Y. 2013); *In re 650 Fifth Ave.*, 2013 WL 2451067 (S.D.N.Y. June 6, 2013); *Harrison v. Republic of Sudan*, 802 F.3d 399 (2d Cir. 2015); *Levin v. Bank of New York*, 2011 WL 812032 (S.D.N.Y. Mar. 4, 2011); *Weininger v. Castro*, 462 F. Supp. 2d 457 (S.D.N.Y. 2006); *Weinstein v. Islamic Republic of Iran*, 609 F.3d 43 (2d Cir. 2010); *Daliberti v. J.P. Morgan Chase & Co.*, 2003 WL 340734 (S.D.N.Y. Feb. 5, 2003).

enforced."[30] The purpose of the FSIA, as amended in 2008, is to "expand the ability of claimants to seek recourse against the property of that foreign state, . . . by permitting any property in which the foreign state has a beneficial ownership to be subject to execution of that judgment."[31]

The Second Circuit's rejection of the Levins' supplemental complaint as futile, based on its incorrectly decided or wrongly expanded 2014 holdings in *Calderon-Cardona* and *Hausler*, dictating that state property law, not federal law, determines the meaning of property of a terrorist party, interpreting N.Y. U.C.C. Article 4-A, section 4-A-503, raises an issue of monumental proportions for thousands of similarly situated victims of terrorism and for the United States' resistance to acts of state sponsored terrorism.[32] The Second Circuit stated:

> 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

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[30] H.R. Rep. No. 107-779, at 27 (2002) (Conf. Rep.).

[31] H.R. Rep. No. 110-477 (2007).

[32] This issue is of such importance that it has come before this Court at least twice already on petition for writ of certiorari. *Calderon-Cardona v. Bank of New York Mellon*, 136 S. Ct. 893 (2016), *denying cert. to Calderon-Cardona v. Bank of New York Mellon*, 770 F.3d 993 (2d Cir. 2014); *Hausler v. JPMorgan Chase Bank, N.A.*, 136 S. Ct. 893 (2016), *denying cert. to Hausler v. JP Morgan Chase Bank, N.A.*, 770 F.3d 207 (2d Cir. 2014).

> immediately preceding the bank 'holding' the EFT in the transaction chain."[33]

The Second Circuit rule, without permitting further factual analysis, that "ownership of an EFT blocked by a New York bank depends entirely on the identity of the immediate transferor to that bank," is against public policy, contrary to federal anti-terrorism law, contrary to other provisions of the N.Y. U.C.C., and benefits no one other than banks serving the interests of terrorism related banking clients.[34] It also conflicts with the holding of the D.C. Circuit Court of Appeals in *Heiser v. Islamic Republic of Iran*, stating "that claims on an interrupted funds transfer [under federal law, adopting the reasoning of the U.C.C.] ultimately belong to the *originator*, not the beneficiary or its bank." 735 F.3d 934, 941 (D.C. Cir. 2013) (emphasis added).

Although the court acknowledged that Saderat, the originator of the EFT, "qualifies as an 'agency or instrumentality' of Iran," it found that "[b]ecause the blocked EFT in question was transmitted to [Respondent JPMorgan] directly by Lloyds, rather than Saderat, the EFT constituted property of Lloyds and could not be attached under the TRIA or the FSIA."[35] This finding conflicts with (1) federal law, which preempts state law in the ownership and attachment of terrorist

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[33] App. 9.

[34] App. 10-11; *see also Calderon-Cardona*, 770 F.3d 993; *Hausler*, 770 F.3d 207.

[35] App. 6 n.4, 7.

assets; (2) the decision of the D.C. Circuit in *Heiser*, 735 F.3d 934, regarding ownership of EFTs under TRIA and federal property law; and (3) even federal jurists in New York, interpreting federal law and the U.C.C., under which the originator maintains an interest in a midstream blocked EFT,[36] and under which parties may contractually vary the default rules of ownership.[37]

The Second Circuit's Order and the related decisions of *Calderon-Cardona* and *Hausler* 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 by terrorist states, using foreign agents, correspondent banks, and EFTs.[38] This Court should grant certiorari to clarify the rules of ownership of property where the means of transmittal of blocked funds of a sanctioned party and originator of funds is by EFT, under TRIA, the FSIA, and federal common law, eliminate the circuit split, and enable the anti-terrorism statutes to fulfill their Congressionally intended purpose.

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[36] *See*, *e.g.*, N.Y. U.C.C. Law § 4-A-402(4)-(6); *Doe v. JPMorgan Chase Bank, N.A.*, 899 F.3d 152, 158-61 (2d Cir. 2018) (Chin, J., dissenting); *Vera v. Republic of Cuba*, 2014 WL 10988729 (S.D.N.Y. Sept. 24, 2014).

[37] *See* N.Y. U.C.C. Law § 4-A-501.

[38] *See Doe*, 899 F.3d at 161-62.

I. TRIA and the FSIA Preempt Any Other Law Which Would Prohibit the Satisfaction of a Judgment from Blocked Assets, and There Is No Exception for EFTs Originated by Iran

Ignoring the purpose of TRIA and the FSIA, the Second Circuit held that "[a]bsent a federal definition of 'property' in either FSIA or TRIA, . . . [the Court] must look to state law to define the rights the [judgment debtor] has in the property the [creditor] seeks to reach," and that the "relevant state law governing EFTs blocked by New York banks is Article 4[-A] of the New York Uniform Commercial Code ('N.Y. UCC')."[39] The court did not, however, address how its findings could be reconciled with the express preemption language of TRIA or the legislative intent of both federal statutes.[40]

The Levins hold a judgment against Iran under TRIA.[41] TRIA was enacted in 2002 in an effort to aid victims of terrorism in satisfaction of their judgment through attachment of blocked assets of terrorist parties, and, by its own terms, applies "[n]otwithstanding any other provision of law."[42] *See Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) ("As we have noted previously in construing statutes, the use of such a 'notwithstanding' clause clearly signals the drafter's

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[39] App. 8-9 (internal quotation marks omitted).

[40] *See generally* App. 1-13.

[41] *Levin v. Islamic Republic of Iran*, 529 F. Supp. 2d 1 (D.D.C. 2007).

[42] TRIA § 201; H.R. Rep. No. 107-779, at 27 (2002) (Conf. Rep.).

intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section. *See Shomberg v. United States*, 348 U.S. 540, 547-548 . . . (1955). Likewise, the Courts of Appeals generally have interpreted similar 'notwithstanding' language . . . to supersede all other laws, stating that [a] clearer statement is difficult to imagine.") (internal quotation marks omitted).

A number of district courts, a dissent in a recent Second Circuit case, and the D.C. Circuit have recognized that federal law as enacted in TRIA preempts any other federal law to the contrary and state law. For example, the D.C. Circuit in a TRIA case stated that the originator of a fund transfer, not the intermediary bank is the owner of blocked funds:

> Article 4A does not apply of its own force. . . . Federal law, specifically § 201 and 1610(g), is controlling. The question is the content of this *federal law.*
>
> . . .
>
> Article 4A's subrogation provisions . . . [provide i]f the intermediary bank is prohibited from completing a transfer, then the originator is subrogated to its bank's right to a refund. U.C.C. § 4A-402(d)-(e). . . . [T]his provision means that claims on an interrupted funds transfer ultimately belong to the *originator*, not the beneficiary or its bank.

Heiser v. Islamic Republic of Iran, 735 F.3d 934, 940-41 (D.C. Cir. 2013) (emphases added).

As Judge Robert Patterson found in a pre-*Hausler* case involving the Levins, under federal law, all blocked assets of a terrorist state are available for collection of a TRIA judgment:

> [T]he language of TRIA § 201(a) must be interpreted in light of the "nature and wording of the statute." *See Exp.-Imp. Bank of U.S. v. Asia Pulp & Paper Co., Ltd.*, 609 F.3d 111, 116 (2d Cir.2010) ("Whether or not midstream EFTs may be attached or seized depends upon the nature and wording of the statute pursuant to which attachment or seizure is sought."). . . .
>
> The phrase "of that terrorist party," found in TRIA § 201(a) should therefore be interpreted within the context of the OFAC regulations and in a manner consistent with the remedial purpose of the statute. First, *TRIA § 201 refers to OFAC regulations . . . showing Congress' intent that the statutes be considered together*. . . . The OFAC blocking regulations implemented pursuant to the TWEA and IEEPA broadly define the interest in property that a terrorist party must have in certain assets before they may be blocked. . . . Legislating against the backdrop of broadly worded OFAC regulations, Congress worded TRIA broadly, thus subjecting all assets blocked under OFAC regulations to attachment by terror victims holding valid judgments.
>
> That Congress intended to render blocked assets attachable rather than leaving them blocked or frozen is in line with the remedial

> purpose of TRIA, and such an intent is evident in the legislative history. Senator Tom Harkin, a sponsor of the Act, stated, "Making the state sponsors [of terrorism] actually lose billions of dollars will more effectively deter future acts of terrorism than keeping their assets blocked or frozen in perpetuity." . . . *Permitting assets to be blocked under OFAC regulations but not attached by victims of terror holding valid judgments would frustrate Congress' purpose* of "deal[ing] comprehensively with the problem of enforcement of judgments issued to victims of terrorism."

Levin v. Bank of New York Mellon, 2013 WL 5312502, at *6 (S.D.N.Y. Sept. 23, 2013) (emphases added).

Congressional intent to permit victims of Iranian state-sponsored terrorism to collect on a broad category of assets "owned" by Iran was further made clear when the Legislature enacted section 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (hereinafter "Iran Threat Reduction Act"), codified at 22 U.S.C. § 8772, the constitutionality of which this Court upheld in *Bank Markazi v. Peterson*, 136 S. Ct. 1310 (2016), to which the Levins were a party. Section 502 allows attachment of, and thus provides a federal definition of ownership for purposes of TRIA as, "any asset . . . Iran holds equitable title to, or the beneficial interest in . . . and that no other person possesses a constitutionally protected interest in. . . ."[43] Although section 502 does not govern here, as it was directed to

[43] Iran Threat Reduction Act § 502(a)(2).

a specific interpleader action, the express definition of "ownership" as any asset that Iran "holds equitable title to, or the beneficial interest in" for purposes of collection by victims is instructive as to Congressional intent regarding the definition of property under TRIA.[44]

As the Southern District of New York Court stated in *Hausler*:

> TRIA represents Congress's recognition that federal law must provide the substantive rules governing the recovery of terrorism-related judgments. . . .
>
> . . .
>
> If the TRIA does not preempt state law, the application of state law in proceedings to enforce judgments obtained pursuant to the TRIA *could lead to divergent outcomes depending on the fortuity of which state happened to be the physical site of the blocking* of electronic transfers. . . . Such results are inconsistent with the creation of this otherwise wholly-federal scheme designed to advance a foreign policy goal.

Hausler v. JPMorgan Chase Bank, N.A., 845 F. Supp. 2d 553, 563-64 (S.D.N.Y. 2012), *rev'd and remanded sub nom. Hausler v. JP Morgan Chase Bank, N.A.*, 770 F.3d 207 (2d Cir. 2014) (emphasis added).

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[44] *Id.*

As the *Hausler* district court also correctly noted, the application of state law would only cause the blocked funds to be returned to the designated, sanctioned party: here, Iran.

> [T]he application of state property law here would lead to the Blocked Funds remaining as such until unforeseen future events might allow the return of the funds to Cuba, its agencies, instrumentalities or business creditors. . . . Such an outcome cannot be mandated by the TRIA because it would frustrate its core objective, to satisfy judgments held by victims of Cuban terrorism, and would stymie Congress's broader purpose in permitting suits against state sponsors of terrorism by diminishing the costs of doing business with known terrorist states or their agents and instrumentalities.

Id. at 564.

The Second Circuit rule, applied in *Levin*, is contrary to the very purpose of the U.S. Department of the Treasury and OFAC in creating a sanctions list, providing for blocking of assets and trade restrictions with regard to sanctioned entities, such as Saderat and Iran, and enacting regulations prohibiting U.S. persons from transacting with those sanctioned entities.[45]

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[45] *See* U.S. DEPT. TREAS., IRAN SANCTIONS, https://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx (last visited Jan. 23, 2019); U.S. DEPT. TREAS., OFAC FAQS: GENERAL QUESTIONS, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic (last visited Jan.

As a result of the Second Circuit's recent line of decisions regarding EFTs and terrorist originators of funds, sanctioned entities can now move assets into the U.S. through intermediary and correspondent banks.[46] If the EFT is not identified and blocked, the assets can be routed through the U.S. market for money laundering.[47] If the Iranian origin is identified and blocked, the assets are frozen to be refunded to the originator's bank at a later time, in dollars, and money laundering has been accomplished.[48]

In the Levins' case, the blocked asset will eventually be unfrozen and returned by Respondent JPMorgan to Lloyds, which does not own that money, and

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23, 2019) (defining "U.S. persons" as: "including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches. In the cases of certain programs, foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S.-origin goods to comply.").

[46] *See*, *e.g.*, Carolina A. Fornos & Katherine A. Lemire, *Correspondent Banking: A Gateway to Money Laundering Requires Heightened Scrutiny*, 256 N.Y. L.J. 1, 4 (2016), *available at* https://www.pillsburylaw.com/images/content/1/0/v2/104626/NYLJ-Fornos-Sept262016.pdf.

[47] *Id.*

[48] *See Heiser*, 735 F.3d at 940-41; *Doe v. JPMorgan Chase Bank, N.A.*, 899 F.3d 152, 162 (2d Cir. 2018) (Chin, J., dissenting) ("If we are to adhere to the majority's reasoning [that Article 4-A of the N.Y. U.C.C. 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.").

which will return the funds to Saderat.[49] The Second Circuit's findings thwart the basic deterrent purpose of the OFAC sanctions program by creating a massive loophole for terrorist funds to move into the United States without penalty.[50]

It is clear that there is confusion and controversy among the D.C. Circuit and Second Circuit, and among judges in the Second Circuit at the appellate and trial court levels, as to the proper definition under TRIA of property transmitted by EFT and whether TRIA preempts the U.C.C. as enacted in any state. This issue impacts thousands of victims of terrorism, the efficacy of the United States war on terrorism, and the mechanics of the U.S. banking system. The Court should grant certiorari pursuant to Supreme Court Rule 10(c) because the issue of ownership of EFTs blocked pursuant to federal anti-terrorism sanctions is "an important question of federal law that has not been, but should be, settled by this Court. . . ."

II. D.C. Circuit and the District Court of Illinois Authority Conflict with the Second Circuit's *Levin* Decision, As Well As Its 2014 *Calderon-Cardona* and *Hausler* Decisions on the Issue of the Proper Meaning of U.C.C. Article 4A

The Second Circuit interprets the U.C.C.'s definition of property interest in an EFT blocked pursuant

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[49] N.Y. U.C.C. Law § 4-A-402(4)-(6); U.C.C. § 4A-402(d)-(e).

[50] *See Doe*, 899 F.3d at 158 (Chin, J., dissenting).

to OFAC regulations as being vested only in the entity that directly transferred the asset to the location in which it was blocked: "ownership of an EFT blocked by a New York bank depends entirely on the identity of the immediate transferor to that bank."[51] This is inconsistent with the decision of other federal courts, including the D.C. Circuit Court and Northern District of Illinois,[52] which do not hold that the intermediary bank in an EFT transaction has ownership over a blocked asset.

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[51] App. 10-11; *Calderon-Cardona*, 770 F.3d at 1001-02; *Hausler*, 770 F.3d 207. However, even in *Calderon-Cardona*, the Second Circuit did not hold that there can be no factual question beyond which entity transferred the blocked EFT into the U.S. The court there ruled there was a factual question which precluded summary judgment. 770 F.3d at 1002; *see also Doe*, 899 F.3d at 160 (Chin, J., dissenting).

[52] The Seventh Circuit Court of Appeals has not yet ruled on the issue. Further, courts within the Ninth Circuit have applied California state ownership law to blocked assets and found that "a party's 100% beneficial interest in an asset, or a vested right to receive a sum certain that has been reduced to cash," constitutes ownership of that asset. *Bennett v. Islamic Republic of Iran*, 927 F. Supp. 2d 833, 843 n.12 (N.D. Cal. 2013), *aff'd*, 799 F.3d 1281 (9th Cir. 2015), *withdrawn and superseded on other grounds*, 817 F.3d 1131 (9th Cir. 2016), *amended and superseded on denial of reh'g*, 825 F.3d 949 (9th Cir. 2016) (concluding still that "California law governs the ownership question; the blocked assets are property of Bank Melli under principles of California law and, thus, are subject to attachment and execution under TRIA § 201(a) and FSIA § 1610(g). The same result would obtain even if federal law governed."), *cert. denied sub nom. Bank Melli v. Bennett*, 138 S. Ct. 1260 (2018), *and abrogated on other grounds by Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816 (2018).

The Second Circuit's finding below is based on two prior Second Circuit decisions, *Calderon-Cardona* and *Hausler*, decided within four days of one another by the same panel of three judges. *Hausler* cites no statutory authority for the proposition that EFTs belong only to the immediate intermediary bank but relies entirely on the *Calderon-Cardona* opinion, which in turn relies on two prior Second Circuit cases, *Shipping Corp. of India v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir. 2009) and *Exp.-Imp. Bank of U.S. v. Asia Pulp & Paper Co.*, 609 F.3d 111 (2d Cir. 2010). The *Jaldhi* court based its decision entirely on "an authoritative comment accompanying the New York Commercial Code," comment 4 to section 4-A-502 of the N.Y. U.C.C., along with the following language of N.Y. U.C.C. section 4-A-503: "A court may not otherwise restrain a person . . . with respect to a funds transfer," to find that "EFTs are neither the property of the originator nor the beneficiary while briefly in the possession of an intermediary bank." 585 F.3d at 70-71. The actual, codified text of section 4-A-502 is silent on the ownership of EFTs and was not cited by *Jaldhi*, *Asia Pulp*, *Calderon-Cardona*, or *Hausler* for their findings on EFT ownership.

In *Asia Pulp*, the court stated that "Article 4-A does not directly or explicitly address whether an originator or intended beneficiary has an 'interest' in an midstream EFT. . . ." 609 F.3d at 121. However, U.C.C. section 4A-402 clearly states that the originator of a blocked EFT has an interest in the midstream asset due to its entitlement to a refund where a funds transfer is not completed. *See* U.C.C. § 4A-402(d)-(e)

(codified in New York as N.Y. U.C.C. Law § 4-A-402(4)-(5)); *see also Mills Music, Inc. v. Snyder*, 469 U.S. 153, 164 (1985) ("In construing a federal statute it is appropriate to assume that the ordinary meaning of the language that Congress employed 'accurately expresses the legislative purpose.'").

In contrast, the D.C. Circuit Court of Appeals determined in *Heiser v. Islamic Republic of Iran*, 735 F.3d 934 (D.C. Cir. 2013) that ownership of an EFT for purposes of TRIA and the FSIA is governed by a "rule [of decision that], though federal, may sometimes 'follow state law.'" *Id.* at 940. Looking to Article 4A of the U.C.C., the D.C. Circuit held that Iran was not the owner of a blocked EFT because it was the beneficiary, not the originator, of the funds transfer, and affirmed the district court's finding "that claims on an interrupted funds transfer *ultimately belong to the originator*, not the beneficiary or its bank." *Id.* at 941 (emphasis added). Thus, had the Levins' blocked asset, originating with Saderat, been in a D.C. bank rather than New York, the Levins would have been entitled to collect it to satisfy their TRIA judgment. *See id.*; *see also Estate of Heiser v. Islamic Republic of Iran*, 885 F. Supp. 2d 429, 448 (D.D.C. 2012), *aff'd sub nom. Heiser v. Islamic Republic of Iran*, 735 F.3d 934 (D.C. Cir. 2013) ("In other words, [under U.C.C. Article 4A-402(e),] the originator and the originator's banks have claims to an interrupted EFT and *not* the beneficiary or the beneficiary's banks.") (emphasis in original).

The *Heiser* rule of decision makes logical sense, because the effect of U.C.C. section 4A-402 is that a

blocked asset will eventually be refunded to the originator and is therefore owned by the originator, not the beneficiary or its bank. *Heiser*, 735 F.3d at 941 ("Article 4A's subrogation provisions further support this view. If the intermediary bank is prohibited from completing a transfer, then the originator is subrogated to its bank's right to a refund. U.C.C. § 4A-402(d)-(e)."). Although the Levins maintain that the OFAC blocking regulations provide for a federal rule of ownership under TRIA and the FSIA, even if U.C.C. Article 4A were to apply, as in *Heiser*, Saderat is the owner of the Saderat Asset as the originator of the EFT and holder of a right to a refund. *Id.*

Although the Seventh Circuit itself has not yet ruled on the issue, in *Gates v. Syrian Arab Republic*, 2014 WL 5784859 (N.D. Ill. Nov. 6, 2014), the District Court for the Northern District of Illinois held, in conflict with the Second Circuit, that a blocked EFT held by JPMorgan was the property of Banque Centrale de Syrie ("BCS"), an agency and instrumentality of Syria, "because BCS was both originator and beneficiary of the EFT," and further because "all intermediary banks had disclaimed ownership." *Id.* at *2. The court declined to follow the Second Circuit's decisions in *Calderon-Cardona* and *Hausler*, correctly recognizing, like the D.C. Circuit, that the Second Circuit rule would lead to a return of the funds to the originator bank, a terrorist entity. *Id.* ("[T]he transferring entity had a claim to the funds and the originator had a right of refund from that transferring bank. *See* U.C.C. §4A-402(d)."). Because, in the case of BCS, it was "clear that

neither the originator nor the beneficiary of the EFTs is entirely innocent," the Northern District of Illinois found that "the EFTs are attachable." *Id.* at *3. Here, Lloyds has no ownership interest in the EFT, pursuant to its contract with Saderat, as was alleged by the Levins, and the originating bank of the transfer is Saderat. Thus, under the *Gates* rule of decision, the Levins would again be entitled to file their action for turnover of the Saderat Asset.

Even the Second Circuit has acknowledged that the law is unclear on the issue of "the type of property interests that may be subject to attachment under FSIA" and that district courts in the various circuits have taken differing approaches:

> This lack of definition is apparent in the myriad approaches taken by district courts tasked with interpreting TRIA's and FSIA § 1610(g)'s provisions allowing execution upon the assets "of" a terrorist state. *See*, *e.g.*, *Estate of Heiser v. Islamic Republic of Iran*, 885 F. Supp. 2d 429, 443 (D.D.C. 2012) (holding that both TRIA § 201 and FSIA § 1610(g) "require plaintiffs to prove some terrorist state ownership in order to attach and execute on property" and finding that ownership interest through federal interstitial rule making); *see also*, *e.g.*, *Bennett v. Islamic Republic of Iran*, 927 F. Supp. 2d 833, 845-46 (N.D. Cal. 2013) (applying California law defining property subject to enforcement of a money judgment, and allowing attachment of blocked assets

> where instrumentality of Iran held at least a beneficial interest in those assets.).

Calderon-Cardona, 770 F.3d at 1001 n.2.

Thus, pursuant to Supreme Court Rule 10(a), the Court should grant certiorari to resolve the confusion and inconsistency regarding the proper application of TRIA to blocked assets created by EFTs.

III. Even if U.C.C. Article 4A Applied, the Second Circuit Has Misinterpreted and Misapplied the U.C.C. to Reach an Erroneous Result, in Conflict with New York State Law and Federal Common Law

The Second Circuit has interpreted Article 4-A of the N.Y. U.C.C. as providing that "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."[53] This holding is based on N.Y. U.C.C. section 4-A-503 and comment 4 to section 4-A-502, and disregards the rest of Article 4-A, which also governs EFTs and ownership thereof. *See Calderon-Cardona*, 770 F.3d at 1001-02; *Jaldhi*, 585 F.3d at 70-71. Ignoring established principles of statutory interpretation, the Second Circuit's decisions on the issue of EFT ownership ignore express statutory language in favor of a purportedly "authoritative comment" to the statute, which opines that EFTs do not belong to the originator or beneficiary. *Jaldhi*, 585 F.3d

[53] App. 9.

at 70-71; *see also Shannon v. United States*, 512 U.S. 573, 583-84 (1994) ("We are not aware of any case . . . in which we have given authoritative weight to a single passage of legislative history that is in no way anchored in the text of the statute. . . . To give effect to this snippet of legislative history, we would have to abandon altogether the text of the statute as a guide in the interpretative process. . . . 'courts have no authority to enforce [a] principl[e] gleaned solely from legislative history that has no statutory reference point.' ").

Pursuant to N.Y. U.C.C. section 4-A-402, Saderat will eventually be entitled to refund payment from Lloyds after the Saderat Asset is unfrozen and Lloyds is credited for a refund of the EFT from Respondent JPMorgan. *See Heiser*, 735 F.3d at 941; *Gates*, 2014 WL 5784859, at *2. Thus, any finding that Saderat, the originator, does not have ownership of the Saderat Asset, even though it will be refunded the amount of that asset upon unblocking, is clearly wrong as a matter of fact. To hold otherwise is to perpetuate a pernicious legal fiction which lacks any basis in reality.

Further, pursuant to N.Y. U.C.C. section 4-A-501, which the Second Circuit failed to address in its opinion, "the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party." This provision expressly provides that the rules of ownership of EFTs can be varied by contracts among

the commercial entities,[54] and the Levins have alleged that this is the case between Saderat and Lloyds. As the Levins' complaint alleges, Lloyds and Saderat contracted around any contrary default rules of Article 4-A and agreed that Lloyds would operate as Saderat's agent in transferring the Saderat Asset to Respondent JPMorgan. They further agreed, per the complaint,

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[54] This right to override the default rules of the U.C.C. has been widely acknowledged both in caselaw and in legal commentary on the subject. *See McClain v. 1st Sec. Bank of Washington*, 192 Wash. App. 1063, at *3 (2016) ("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.' "); U.C.C. § 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, at *4 (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 WILLIAM D. HAWKLAND ET AL., HAWKLAND'S UNIFORM COMMERCIAL CODE SERIES § 4A-501:1 (Supp. 2018) ("[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 LARY LAWRENCE, LAWRENCE'S ANDERSON ON THE UNIFORM COMMERCIAL CODE § 4A-501:3 (3d ed. Supp. 2018) ("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.").

that the funds comprising the Saderat Asset would remain the property of Saderat at all times. Accordingly, the blocked Saderat Asset at issue was owned by Saderat, and the Levins had standing based on the allegations of its supplemental complaint to seek turnover of that asset under TRIA. The Levins' motion for leave to file a supplemental complaint therefore should have been granted, and the Second Circuits' line of decisions on EFT ownership should be overruled.

This Court should grant certiorari to correct the Second District Court of Appeals' erroneous interpretation of significant federal law, affecting thousands of claimants and cases. SUP. CT. R. 10(c).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

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