

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>AGUDAS CHASIDEI CHABAD</b>	)	
<b>OF UNITED STATES,</b>	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:05-cv-01548-RCL
	)	
<b>RUSSIAN FEDERATION, <i>et al.</i>,</b>	)	
	)	
Defendants.	)	
	)	

**STATEMENT OF INTEREST OF THE UNITED STATES**

Pursuant to 28 U.S.C. § 517,<sup>1</sup> the United States submits this Statement of Interest to provide the Court with the United States’ views regarding Plaintiff’s Motion for Interim Judgment of Accrued Sanctions, ECF No. 127. The United States greatly appreciates the Court’s consideration of its views in this matter.

The United States has consistently maintained that the collection of books, manuscripts, and other cultural artifacts at issue in this litigation (the “Collection”) should be transferred to Plaintiff Agudas Chasidei Chabad of the United States (“Chabad”), for the reasons discussed in the United States’ previous Statement of Interest. *See* Statement of Interest of the United States, ECF No. 111, at 1-2. To this end, the United States has been engaged in extensive diplomatic efforts to resolve this dispute, and intends to continue to pursue those efforts.

It is the United States’ view that the recent actions taken by Chabad in this

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<sup>1</sup> Section 517 provides that “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

litigation are antithetical to the goal of resolving this dispute. As a legal matter, moreover, it is the United States' position that the relief sought by Chabad's Motion for an Interim Judgment of Accrued Sanctions is not consistent with the Foreign Sovereign Immunities Act and is unwarranted as a matter of the proper exercise of this Court's equitable powers and remedial authority. Chabad's motion should therefore be denied. The United States wishes to apprise the Court that, should Chabad take the additional enforcement steps it has outlined in its motion, such actions would cause significant harm to the foreign policy interests of the United States, and the United States would consider taking appropriate action to seek to prevent or mitigate that harm. For this reason, should the Court grant Chabad's motion, the United States requests that the Court direct Chabad to provide advance notice of any such steps.

### **BACKGROUND**

This case concerns Chabad's efforts to obtain the Collection from the defendants, the Russian Federation, the Russian Ministry of Culture and Mass Communication, the Russian State Library, and the Russian State Military Archive (collectively "Russia"). The Collection consists of two sets of materials: (1) a set of books and manuscripts seized at the time of the Bolshevik Revolution and now held by the Russian State Library; and (2) a set of manuscripts of religious teachings seized by Nazi Germany during the 1941 invasion of Poland, which was subsequently taken by the Soviet Red Army, and is now held at the Russian State Military Archive.

After an initial appearance to contest the Court's jurisdiction, Russia withdrew from further participating in this litigation. *See* ECF No. 72. The Court then entered a default judgment against Russia and directed it to transfer the Collection to Chabad (the

“specific performance order”), ECF No. 80. In an effort to compel Russia’s compliance, Chabad asked the Court to find Russia in contempt and impose monetary contempt sanctions against it in the form of a weekly “fine payable to the Plaintiff” until the Collection is transferred to Chabad. ECF No. 92-2 at 2. At the Court’s invitation, the United States submitted a Statement of Interest opposing the entry of a sanctions order against Russia. ECF No. 111. The United States noted that the Foreign Sovereign Immunities Act (“FSIA”) does not authorize the Court to seek to compel Russia’s compliance with an order directing the transfer of property it holds within its own territory through an award of sanctions. *Id.* at 4-10. The United States further informed the Court of its view that civil contempt sanctions would “risk damage to significant foreign policy interests” while at the same time undermining the possibility of an amicable diplomatic resolution to the dispute. *Id.* at 10-13.

On January 16, 2013, the Court entered an order for civil contempt sanctions, fining Russia \$50,000 per day until it complied with the Court’s order to transfer the Collection to Chabad (the “sanctions order”). ECF No. 116. Plaintiff now moves for an interim monetary judgment in the amount of sanctions accrued. ECF No. 127 at 6-7. Chabad asserts that “[e]ntry of an interim monetary judgment would allow Chabad to take additional steps in support of the Court’s order, including registration of the monetary judgment in other jurisdictions, discovery regarding Russian Federation property, and ultimately, attachment and liquidation of that property.” *Id.* at 7. Chabad further contends that, in addition to serving as a basis for enforcing the Court’s sanctions order, an interim judgment in the amount of the accrued fines “will put Russia on further notice of the seriousness of this matter.” *Id.*

## DISCUSSION

### A. Entry of an Interim Judgment Accruing Sanctions Would Be Improper Under the FSIA

As the United States discussed in its previous Statement of Interest, the FSIA does not authorize the imposition of contempt sanctions as a means of enforcing the Court's order directing Russia to surrender tangible property that is within Russia's possession and located within Russia's borders. *See* ECF No. 111 at 4-10. The FSIA provides the sole and exclusive framework for obtaining and enforcing judgments against a foreign state in United States courts. *See Arg. Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434-435 (1989). The FSIA, furthermore, "explicitly contemplates that a court may have jurisdiction over an action against a foreign state and yet be unable to enforce its judgment unless the foreign state holds certain kinds of property subject to execution." *FG Hemispheres Assocs., LLC v. Democratic Republic of Congo*, 637 F.3d 373, 377 (D.C. Cir. 2011). As the United States has explained, rather than following the carefully crafted enforcement scheme set forth in the FSIA, Chabad has been pursuing an alternative enforcement framework for its judgment in which the Court would first issue a specific performance order for property overseas and then seek to enforce that order through contempt proceedings. Just as the question of whether sanctions can be enforced against a foreign state implicates the FSIA's enforcement provisions, *see* Mem. Op. on Contempt Sanctions, ECF No. 116, at 6, so too do Chabad's request for sanctions and its most recent request for an interim judgment. *See* 28 U.S.C. § 1610(a); H.R. Rep. No. 94-1487, at 28 ("The term 'attachment in aid of execution' is intended to include attachments, garnishments, and supplemental proceedings available under applicable Federal or State law to obtain satisfaction of a judgment.").

The FSIA is clear that any exception from execution immunity applies only where a foreign state possesses “property in the United States,” and even that property is subject to execution in an extremely limited number of circumstances. 28 U.S.C. § 1610(a); *see also Autotech Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 750 (7th Cir. 2007) (observing that “the FSIA did not purport to authorize execution against a foreign sovereign’s property, or that of its instrumentality, wherever that property is located around the world. We would need some hint from Congress before we felt justified in adopting such a breathtaking assertion of extraterritorial jurisdiction.”). These careful limitations on enforcing judgments on a foreign state’s property—including an absolute prohibition on enforcing on a foreign state’s property located outside of the United States—stem from the fact that, “at the time the FSIA was passed, the international community viewed execution against a foreign state’s property as a *greater* affront to its sovereignty than merely permitting jurisdiction over the merits of an action.” *Conn. Bank of Commerce v. Republic of Congo*, 309 F.3d 240, 255-56 (5th Cir. 2002) (emphasis added).

Imposition of sanctions against Russia in an effort to compel it to surrender property it holds within its own borders violates this basic principle of execution immunity under the FSIA. Although neither the Court’s specific performance order nor its order for contempt sanctions was denominated as an order of attachment or execution on property, the substance of the order, not its form, controls. *See S & S Machinery Co. v. Masinexportimport*, 706 F.2d 411, 418 (2d Cir. 1983) (noting that “[t]he FSIA would become meaningless” if the denomination of an order controlled over its substance); *see also Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1130 (9th Cir. 2010) (holding

that a foreign sovereign's assets held abroad were immune from execution, despite creditor's argument that *in personam* jurisdiction over the sovereign provided the court authority to order the sovereign to assign its assets abroad to the creditor). As explained in the United States' prior filing, the FSIA does not authorize enforcement of the Court's specific performance order regarding property in Russia through an order sanctioning Russia for its non-compliance with that order. *See* ECF No. 111 at 6-7.

Entry of an interim judgment accruing sanctions in these particular circumstances presents the same concerns because such a judgment would be designed to force Russia to comply with the specific performance order not authorized by the FSIA. Indeed, Chabad admits that the purpose of its motion for an interim judgment is "to provide an incentive for Russia to comply with the Court's ruling," and to speed the timing of [the Collection's] return." Pl.'s Mot. for Interim J. of Accrued Sanctions ("Pl.'s Mot."), ECF No. 127, at 6. The FSIA, however, does not authorize a court to direct the disposition of property possessed by a foreign state within its own borders by any means. Entry of the requested interim judgment accruing sanctions for non-compliance with such an order is simply not consistent with the carefully defined, and limited, system of remedies authorized under the FSIA. Chabad's motion therefore should be denied.

**B. Even If the Proposed Interim Judgment Were Consistent with the FSIA, the Court Should Exercise Its Discretion Not to Issue Such an Order, Which Implicates Significant Foreign Policy Interests of the United States**

Should the Court conclude that it has authority to enter the interim judgment Chabad seeks, the Court should nevertheless deny the motion in the proper exercise of its equitable and remedial authority and discretion. Chabad's request for another order seeking to compel the disposition of property possessed by a foreign state within its own

borders implicates significant foreign policy interests of the United States. Although Chabad's motion indicates that it is seeking the interim judgment in order to "speed the timing of [the Collection's] return," the United States' view is that the Court's sanctions order has instead created another obstacle in the ongoing diplomatic efforts to resolve the dispute, and it is the United States' position that an interim judgment of sanctions will not facilitate the return of the Collection. *See* Exhibit A, Letter dated February 20, 2014, from Mary E. McLeod, Principal Deputy Legal Adviser, United States Department of State, to Stuart Delery, Assistant Attorney General, United States Department of Justice ("We continue to believe that an out-of-court dialogue presents the best means towards an ultimate resolution, and we have emphasized to Chabad the Department's belief that further steps in the litigation will not be productive.").

Moreover, it is clear from Chabad's motion that it sees the entry of an interim judgment as a step that will allow it to seek enforcement of that judgment through steps that include discovery into and actual attachment of Russian government property. ECF 127 at 6 (referring to "registration of the monetary judgment in other jurisdictions, discovery regarding Russian Federation property, and ultimately, attachment and liquidation of that property"). The Court should be aware that these further enforcement actions would cause even greater harm to the United States' foreign policy interests, including the United States' interest in promoting a resolution of the dispute between Chabad and Russia over the Collection.

It is widely recognized that efforts to enforce judgments or orders against a foreign state's property can cause significant harm to the foreign policy interests of the United States, and that this harm may be materially more grave than the adverse

consequences that follow from the issuance of a judgment or order against a foreign state. As the Court recognized in its Memorandum Opinion accompanying the sanctions order, actions to enforce a sanctions award issued against a foreign state are “carefully restricted by the FSIA.” Mem. Op. on Contempt Sanctions, ECF No. 116, at 6. These restrictions were deliberately put in place by Congress, based on its understanding that “enforcement [of] judgments against foreign state property remains a somewhat controversial subject in international law.” H.R. Rep. No. 94-1487, at 27. Indeed, Congress was made aware that, prior to passage of the FSIA, many plaintiffs had sought to establish jurisdiction over a foreign state by obtaining a pre-judgment attachment on the sovereign’s property, a practice that gave rise to “serious friction in the United States’ foreign relations.” *Id.* at 26-27; *see also* Immunities of Foreign States, Hearing Before the Subcomm. on Claims and Governmental Relations of the H. Comm. on the Judiciary, 93rd Cong. 14, 22 (1973) (statement of Acting Legal Adviser Charles N. Brower) (testifying that attachments of foreign sovereign property “have most particularly caused [the United States] specially serious problems in our foreign relations”). The Supreme Court likewise has taken note of the serious foreign policy consequences that may flow from attachment of foreign state property, observing that “[t]he judicial seizure” of the property of a foreign sovereign may well “be regarded as an affront to its dignity and may affect our relations with it.” *Republic of Philippines v. Pimentel*, 553 U.S. 851, 866 (2008) (internal quotation and ellipses omitted; brackets in original). As a basic principle, “[t]he FSIA’s purpose was to promote harmonious international relations,” *Pere v. Nuovo Pignone, Inc.*, 150 F.3d 477, 480 (5th Cir. 1998), and permitting a plaintiff to enforce a judgment or sanctions order such as those at issue here, whether through attachment or by other means, poses a

serious threat to those relations.

With respect to this matter in particular, the Department of State has concluded that, if Chabad were to take the further enforcement steps it has outlined in its recent motion, such actions would cause significant harm to the foreign policy interests of the United States, including “considerable damage to any prospects for securing the transfer of the Collection.” *See* Exhibit A.

**C. If the Court Grants Chabad’s Motion, It Should Direct Chabad to Provide Advance Notice of Any Future Enforcement Actions**

As noted above, in its motion, Chabad states that an interim judgment “would allow Chabad to take additional steps in support of the Court’s order, including registration of the monetary judgment in other jurisdictions, discovery regarding Russian Federation property, and ultimately, attachment and liquidation of that property.” Pl.’s Mot. at 6. In light of (1) this Court’s recognition that efforts to enforce a sanctions award are “carefully restricted by the FSIA,” Mem. Op. on Contempt Sanctions, ECF No. 116, at 6; (2) the significant harms to the United States’ foreign policy interests that would be caused should Chabad take additional enforcement steps that would seek to interfere with Russian government property, and (3) the possibility that Chabad could attempt to take such additional steps without further notice to this Court or the United States, the United States respectfully submits that, should the Court grant Chabad’s motion, the Court should direct Chabad to provide the Court and the United States with advance notice of any efforts to take any additional steps to enforce the Court’s interim judgment or specific performance order, in the manner described in Chabad’s motion or otherwise. Such notice would permit the United States to make a timely, considered determination as to what steps it might need to take to protect its interests.

**CONCLUSION**

For the foregoing reasons, the Court should deny Chabad's Motion for Interim Judgment of Accrued Sanctions. Should the Court grant the motion, the Court should direct Chabad to provide the Court and the United States with advance notice of any efforts to enforce either the interim judgment or the Court's specific performance order.

Dated: February 21, 2014

Respectfully submitted,

STUART F. DELERY  
Assistant Attorney General

ANTHONY J. COPPOLINO  
Deputy Branch Director  
Federal Programs Branch

s/ Nathan M. Swinton  
NATHAN M. SWINTON (NY Bar)  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, N.W.  
Washington, D.C. 20530  
Telephone: (202) 305-7667  
Fax: (202) 616-8470  
Email: Nathan.M.Swinton@usdoj.gov

*Counsel for the United States*

# **EXHIBIT A**



United States Department of State

Washington, D.C. 20520

February 20, 2014

The Honorable Stuart Delery  
Assistant Attorney General  
U.S. Department of Justice, Civil Division  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Re: *Agudas Chasidei Chabad of the United States v. Russian Federation et al.*, No. 1:05-CV-01548-RCL (D.D.C.)

Dear Mr. Delery:

I am writing to recommend that you authorize the filing of a Statement of Interest opposing the recent motion filed by Chabad, the plaintiff in the above-referenced case. Chabad's motion requests that the court enter an interim judgment of accrued sanctions in the amount of \$14.75 million against the Russian government defendants.

The Russian Federation and its Ministry of Culture and Mass Communication, State Library, and State Military Archive have not complied with the default judgment issued by the court in July 2010, which ordered the defendants to transfer a collection of religious books and other documents located in Russia (the Schneersohn Collection) to Chabad.

In April 2011, Chabad moved for civil contempt sanctions against the defendants. In response to an invitation from the court, the United States submitted a Statement of Interest in August 2012, which urged the court not to impose sanctions against the defendants, explaining that (1) the Foreign Sovereign Immunities Act (FSIA) does not authorize the court to issue contempt sanctions for a foreign state's failure to comply with an order to surrender tangible property that the foreign state holds in its own territory; and (2) even if the court had the authority to issue such an order, it should exercise its discretion to refrain from doing so in order to avoid damage to the foreign policy interests of the United States. Despite the United States' position, the court issued an order on January 16, 2013, finding the defendants to be in civil contempt; imposing a fine against the defendants in the amount of \$50,000 per day, payable to the plaintiff, until such time as the defendants comply with the court's specific performance order directing the defendants to transfer the Schneersohn Collection to Chabad; and scheduling a status conference to consider "whether further and/or other sanctions might lead to compliance with the Court's order." The court noted in its accompanying opinion its conclusion that sanctions would be likely to coerce the defendants to comply with the court's specific performance order.

Since then, the Russian defendants have not complied with the specific performance order, but the Department has continued its long-standing diplomatic efforts to assist in resolving this dispute, in particular by proposing a partial resolution through a state-to-state archival exchange agreement. To facilitate those efforts, Chabad agreed to postpone the status conference several times and to stay the accumulation of sanctions for a certain period of time. However, Russia's serious concerns about the potential for actual attachment of Russian property by Chabad have detracted from the discussions. In addition, the Russian Ministry of Culture and the Russian State Library filed a civil lawsuit in Moscow which names the United States and the Library of Congress as respondents, and which requests that the court issue an order compelling the United States and the Library of Congress to return to Russia seven Schneersohn Library books that were lent to the Library of Congress and transferred to Chabad in 1994. Nevertheless, the Department is committed to finding a way forward, and, as recently as three weeks ago, Department officials met with Russian officials in Moscow to discuss possible options for making progress. The Department understands that Chabad is frustrated with the pace of discussions, but diplomatic discussions relating to complex international disputes where both sides have strongly held views necessarily take time. We continue to believe that an out-of-court dialogue presents the best means towards an ultimate resolution, and we have emphasized to Chabad the Department's belief that further steps in the litigation will not be productive.

On January 28, 2014, Chabad filed a motion asking the court to reduce the accumulated sanctions to an interim judgment for \$14.75 million. Chabad's motion expresses the view that entry of a money judgment "may help to speed the timing of [the Collection's] return," and asserts that the judgment "would allow Chabad to take additional steps in support of the Court's order, including registration of the monetary judgment in other jurisdictions, discovery regarding Russian Federation property, and ultimately, attachment and liquidation of that property." (ECF 127 at 6). Thus, it is evident that Chabad sees the entry of a money judgment as a step that will allow it to seek enforcement of that judgment through steps that include actual attachment of Russian government property.

The Department has significant concerns about Chabad's pursuit of this litigation strategy from both the legal and policy perspectives. If Chabad pursues the additional steps it has outlined in its recent motion, those measures will cause significant harm to the foreign policy interests of the United States. As the United States Supreme Court has long recognized, "[t]he judicial seizure" of a foreign state's property "may be regarded as an affront to its dignity and may ... affect our relations with it." *Republic of Philippines v. Pimentel*, 553 U.S. 851, 866 (2008). Chabad's motion indicates that if it obtains the relief it is seeking in the current motion it may at that point attempt to take steps that could interfere with Russian government property, possibly without further judicial review or notice to the United States. While the Department shares Chabad's ultimate objective of securing transfer of the Collection, we firmly believe that further pursuit of judicial enforcement will cause considerable damage to any prospects of securing the transfer of the Collection. With respect to Chabad's specific request for an interim money judgment in the amount of accrued sanctions, the Department does not believe such a judgment will facilitate the return of the Collection. In addition, for the reasons the United States outlined in its August 2012 Statement of Interest, such a judgment would be inconsistent with the FSIA. We believe the court lacked the authority under the FSIA to impose the sanctions in the

first place, and we continue to take the position that courts should consider whether a sanctions order can be enforced against a foreign state before entering such an order. As a general matter, a foreign state's property is immune from attachment or execution under the FSIA unless one of the limited exceptions to immunity applies. Finally, we believe that entry of a money judgment for accrued sanctions in this case would set another troubling precedent for foreign governments, which could threaten the United States' own position in litigation in foreign courts.

In sum, we request that the Department of Justice file a Statement of Interest informing the court of the foreign policy interests the United States has at stake in this dispute, as well as the United States' position that an interim judgment for accrued sanctions would rest on an erroneous legal foundation.

Sincerely,

A handwritten signature in cursive script that reads "Mary E. McLeod". The signature is written in black ink and is positioned above the typed name.

Mary E. McLeod  
Principal Deputy Legal Adviser

first place; and we continue to take the position that courts should consider whether a question  
order can be enforced against a foreign state before entering such an order. As a general matter,  
a foreign state's property is immune from attachment or execution under the FISA unless one of  
the limited exceptions to immunity applies. Finally, we believe that entry of a money judgment  
for several millions in this case would set another troubling precedent for foreign governments  
which could threaten the United States' own position in foreign courts.

In sum, we request that the Department of Justice file a statement of interest informing  
the court of the foreign policy interests the United States has at stake in this dispute, as well as  
the United States' position that an adverse judgment for several millions would set an  
unwelcome legal precedent.

Sincerely,



Mary H. McLeod  
Principal Deputy Legal Advisor