

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

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|---|---|------------------------------------|
| <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.

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Respectfully submitted,

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