

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 black ink, appearing to read "Mary E. McLeod". The signature is fluid and cursive, with the first name "Mary" and last name "McLeod" clearly distinguishable.

Mary E. McLeod
Principal Deputy Legal Adviser

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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 secured creditors in this case would be 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 in this dispute, as well as
the United States' position that an American judgment for secured creditors would not be an
enormous legal foundation.

Sincerely,



Matthew J. Meland
Principal Deputy Legal Advisor