

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

**AGUDAS CHASIDEI CHABAD)
OF THE UNITED STATES,)**

Plaintiff,)

v.)

Civil Action No. 1:05-01548 (RCL)

**RUSSIAN FEDERATION; RUSSIAN)
MINISTRY OF CULTURE AND MASS)
COMMUNICATION; RUSSIAN)
STATE LIBRARY; and RUSSIAN)
STATE MILITARY ARCHIVE,)**

Defendants.)

_____)

STATEMENT OF INTEREST OF THE UNITED STATES

Pursuant to 28 U.S.C. § 517,¹ the United States submits this Statement of Interest to address the relevance of the Immunity from Seizure Act, 22 U.S.C. § 2459, in particular, and U.S. law governing the immunity from execution of a foreign state’s property, in general, to the Motion filed by Plaintiff Agudas Chasidei Chabad of the United States for Attachment and Execution on the Default Judgment (ECF No. 91).

Plaintiff filed this suit in November 2004 seeking the return of a collection of invaluable religious books and manuscripts (“Collection”). In July 2010, after Defendants withdrew from this litigation, the Court granted Plaintiff’s Motion for Entry of Default Judgment Against All Defendants and ordered Defendants to surrender the Collection to the U.S. Embassy in Moscow

¹ 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.”

or to Plaintiff's duly appointed representative. (Order, July 30, 2010, ECF No. 80). On April 4, 2011, Plaintiff filed a Motion for Entry of an Order Pursuant to 28 U.S.C. § 1610(c) to Permit Attachment and Execution on the Default Judgment. (ECF No. 91). The proposed order accompanying that Motion states, among other things, that Plaintiff may enforce the default judgment "through attachment and execution." (ECF No. 91-1).

More recently, Plaintiff has filed two documents that address the Immunity from Seizure Act, 22 U.S.C. § 2459, as it relates to its Motion for Attachment and Execution. The first document, filed on May 13, 2011, is a Statement in which Plaintiff formally commits "that it will not seek to enforce this Court's default judgment by attaching or executing against any art or object of cultural significance which has been loaned by the Russian Federation to American museums and is immune from seizure under 22 U.S.C. § 2459." (Statement of Pl. Agudas Chasidei Chabad of the United States 1-2, ECF No. 94). The second document, filed on May 18, 2011, is a Stipulation to the fact that particular Russian cultural objects on temporary loan in the United States are immune from attachment or any other judicial process under the terms of § 2459. (Stipulation Prohibiting Attach. of Certain Cultural Objects Temporarily Imported into the United States, ECF No. 96).

The United States has an interest in the Court's consideration of the immunity provided by § 2459 as it acts on Plaintiff's Motion. The United States, therefore, files this Statement of Interest to address the operation of the statute and its relevance to this dispute.

DISCUSSION

A. The United States Has an Interest in the Application of § 2459

Congress passed § 2459 in 1965 to "provide a process to render immune from seizure

under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and to provide machinery to achieve this objective.” H.R. Rep.

No. 89-1070, at 3577 (1965). The statute states, in relevant part:

Whenever any work of art or other object of cultural significance is imported into the United States from any foreign country, pursuant to an agreement entered into between the foreign owner or custodian thereof and the United States or one or more cultural or educational institutions within the United States providing for the temporary exhibition or display thereof within the United States at any cultural exhibition, assembly, activity, or festival administered, operated, or sponsored, without profit, by any such cultural or educational institution, no court of the United States, any State, the District of Columbia, or any territory or possession of the United States may issue or enforce any judicial process, or enter any judgment, decree, or order, for the purpose or having the effect of depriving such institution, or any carrier engaged in transporting such work or object within the United States, of custody or control of such object if before the importation of such object the President or his designee has determined that such object is of cultural significance and that the temporary exhibition or display thereof within the United States is in the national interest, and a notice to that effect has been published in the Federal Register.

22 U.S.C. § 2459(a).

To obtain immunity for imported cultural objects under § 2459, the United States borrowing institution must first submit an application to the Department of State.² That application must include, among other components, a list of the imported objects to be covered, a copy of the agreement with the foreign owner or custodian, a list of expected places and dates of exhibition in the United States, and a statement explaining the cultural significance of the imported objects. *See Check List for Applicants*, U.S. DEPT. OF STATE,

² The Department of State administered § 2459 until 1978, when those responsibilities were transferred to the International Communication Agency, which was subsequently redesignated as the United States Information Agency (“USIA”). In 1999, the Department of State resumed responsibility for administering § 2459 when USIA and the Department of State were consolidated pursuant to the Foreign Affairs Reform and Restructuring Act of 1998. *See* 22 U.S.C. § 6501 *et. seq.*

<http://www.state.gov/s/l/3196.htm> (last visited June 9, 2011). The Department of State must then make determinations as to whether the objects are of cultural significance and whether their temporary exhibition in the United States is in the national interest. If the Department of State makes favorable determinations regarding those questions and publishes a notice to that effect in the Federal Register prior to importation, those cultural objects are immune from any judicial process that would interfere with the borrower's custody or control. 22 U.S.C. § 2459(a).

Section 2459 was enacted in large part to address certain foreign policy objectives. Chief among those objectives was the goal to facilitate cultural exchanges as a means to foster international cooperation. *See* H.R. Rep. No. 89-1070, at 3578 (1965). Standing in the way of such exchanges at the time of § 2459's enactment was the threat that foreign cultural objects would be seized while on loan to the United States. Indeed, when the legislation was under consideration, an exchange was pending between a Soviet museum and the University of Richmond, and the Government of the Soviet Union insisted on statutory immunity from seizure as a condition for the loan. *See* Rodney M. Zerbe, *Immunity from Seizure for Artworks on Loan to United States Museums*, 6 NW. J. INT'L L. & BUS. 1121, 1124 n.21 (1985). Since then, as indicated by a search of the Westlaw Federal Register Database, well over one thousand § 2459 immunity notices have been published, many of which cover foreign state-owned cultural objects. Implementation of the § 2459 program, thus, has played an important role in conducting public diplomacy and facilitating exchanges of cultural objects with foreign lenders, including foreign states and their political subdivisions.

The United States is concerned that a broad, unqualified attachment order in this or any other proceeding could be used in an attempt to seize immune property, including cultural

objects protected by § 2459.³ If issued, Plaintiff’s proposed order would fail to alert other courts or enforcement authorities to the potential immunities applicable to Defendants’ property. The United States has an interest in the courts’ determining the immunities of particular property—whether pursuant to § 2459 or to other relevant statutes, such as the enforcement provisions of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1609—that has been targeted by Plaintiff before issuing a writ of attachment or execution.

More specifically, this dispute has raised the precise concerns that § 2459 was designed to alleviate. As stated in Plaintiff’s Motion for Civil Contempt Sanctions (ECF No. 92) and its May 13 Statement (ECF No. 94), after the Court’s July 2010 entry of judgment on the default, the Russian Federation imposed a moratorium on all loans of Russian cultural treasures to exhibitors in the United States. This moratorium also included a recall of art already on temporary display in the United States that had received immunity protection under § 2459. *See, e.g., Culturally Significant Objects Imported for Exhibition Determinations: “Treasures of Moscow: Icons From the Andrey Rublev Museum,”* 75 Fed. Reg. 53012-03 (Aug. 30, 2010).

Section 2459 was passed in an effort to avoid this kind of international friction. The drafters recognized that cultural exchange promotes mutual understanding and strengthens ties between peoples, and that without assurances against seizure, many of those exchanges would not take place. *See* H.R. Rep. No. 89-1070, at 3578-79 (1965). It is, therefore, in the interest of the United States that any order authorizing attachment and execution makes clear that it cannot

³ As noted above, the proposed order that accompanies the pending motion does not specify any particular property that would be subject to attachment and execution. A writ of attachment or execution against a foreign sovereign, however, should identify specific property to which it relates. *See Rubin v. Islamic Republic of Iran*, 637 F.3d 783, 796 (7th Cir. 2011).

be used in an attempt to seize Russian cultural objects protected by § 2459.

Since becoming aware of the United States' concerns regarding the integrity of § 2459, Plaintiff has filed two documents in an effort to allay those concerns. As explained above, both documents disclaim any intention to attach or execute upon Russian cultural objects that are immune from judicial process under § 2459. The United States appreciates Plaintiff's efforts to make its intentions clear, and understands its filings to acknowledge that imported cultural objects on temporary loan to U.S. institutions are immune from judicial seizure when the Department of State has published in the Federal Register its determinations of cultural significance and national interest.⁴

B. The United States Supports the Transfer of the Collection to Chabad

The United States wishes to make clear that this Statement of Interest is only intended to advise the Court of the United States' interest in the efficacy and integrity of § 2459, and is in no way intended to signal any change in its consistent position that the Collection should be transferred to Chabad. Since the early 1990s, the Executive Branch has made extensive diplomatic efforts to help Chabad gain possession of those materials. *See The Schneerson Collection and Historical Justice: Hearing Before the Commission on Security and Cooperation in Europe*, 109th Cong., 1st Sess. 6 (2005). The United States has raised the issue at the Presidential level under administrations of both major U.S. parties, and in cabinet,

⁴ *See especially* Stipulation Prohibiting Attach. of Certain Cultural Objects Temporarily Imported into the United States 3, ECF No. 96 (“WHEREAS, pursuant to 22 U.S.C. § 2459, the objects covered by the Public Notice . . . are therefore immune from attachment or any other judicial process . . .”).

Ambassadorial, and working-level diplomatic discussions. *Id.* In addition, there have been several congressional letters written to the President of the Russian Federation on Chabad's behalf, strongly urging that the Collection be surrendered to Chabad. *Id.* at 13. The United States has not deviated from this position and continues to support Chabad's efforts to recover the Collection.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court consider its interests where appropriate in evaluating Plaintiff's Motion for Attachment and Execution.

Dated: June 15, 2011

Respectfully Submitted,

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