

Jurisdiction was predicated upon the state-sponsored terrorism exception of the Foreign Sovereign Immunities Act ("FSIA). 28 U.S.C. § 1605(a)(7).² Iraq failed to appear. On December 5, 2001, following an evidentiary hearing at which eleven of the plaintiffs testified in support of their claims, this Court issued a Decision and Order in this case in which it made factual findings pursuant to Fed. R. Civ. P. 52(a). *Hill v Republic of Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001). In accordance with 28 U.S.C. § 1608(e), the Court found that all of the plaintiffs who testified had established their right to relief by satisfactory evidence and entered default judgments against Iraq in their favor. *Id.* Subsequently, the Court found that each of the other 168 plaintiffs had established their right to relief by satisfactory evidence as well and entered default judgment in their favor. The total amount of compensatory damages awarded on behalf of all of the plaintiffs exceeds \$94,000,000.

Plaintiffs contend that they are entitled to enforce their judgments against the Iraqi Accounts under section 201 of the TRIA, which provides, in pertinent part, that:

(a) IN GENERAL – Notwithstanding any other provision of law, and except as provided in subsection (b), 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 1605(a)(7) 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.

(b) PRESIDENTIAL WAIVER –

(1) IN GENERAL – Subject to subsection (a), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President

² Section 1605(a)(7) provides, in pertinent part, that a foreign state shall not be entitled to immunity in any case in which "money damages are sought against a foreign state for personal injury or death that was caused by an act of . . . hostage taking . . . if such act . . . is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment or agency." 28 U.S.C. § 1605(a)(7).

may waive the requirements of subsection (a) in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

P.L. 107-297, Title II, § 201. The TRIA was signed into law on November 26, 2002 and was specifically intended “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.” 148 Cong. Rec. H8728 (Nov. 13, 2002). As the statements of each of the original Senate and House sponsors of the provision make clear, the purpose of section 201 was to provide justice to terrorist victims, to hold terrorist states accountable for their crimes and to deter them from perpetrating acts of terrorism against American citizens in the future. *See* 148 Cong. Rec. S11527 (Nov. 19, 2002) (remarks of Senator Harkin); 148 Cong. Rec. S5510 (June 13, 2002) (remarks of Senate Allen); 148 Cong. Rec. H6134 (Sept. 10, 2002) (remarks of Congressman Fosella and Congressman Cannon).

The judgments for compensatory damages that plaintiffs seek to enforce were “obtained against a terrorist party on a claim . . . for which a terrorist party is not immune under section 1605(a)(7)” of the FSIA.³ Accordingly, there is no question that each of those judgments meets the requirements for obtaining execution against blocked assets of Iraq under section 201(a) of the TRIA.

There is also no doubt that the funds in the Iraqi Accounts are subject to execution or attachment in aid of execution for purposes of enforcing plaintiffs’ judgments. Both of those

³ In its decision of December 5, 2001, this Court found that “Iraq has been officially declared to be a state sponsor of terrorism as of September 1, 1990.” 175 F. Supp. 2d at 46, n.6. The judgments were, therefore, entered against a “terrorist party” within the meaning of the TRIA. P.L. 107-297, Title II, § 201(d)(4).

accounts are held in the name of the Embassy of Iraq Commercial Office and, to the extent those accounts may have been used “for purposes of the diplomatic mission,” it is conceivable that they might be entitled to immunity from execution under the provisions of the Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, or the FSIA, 28 U.S.C. §§ 1609-10, were plaintiffs not proceeding under the TRIA. *Liberian Eastern Timber Corp. v. Government of Republic of Liberia*, 659 F. Supp. 606, 608 (D.D.C. 1987).⁴ However, this Court need not reach that issue because the question whether and under what circumstances plaintiffs are entitled to execute against the Iraqi accounts is governed not by the provisions of the Vienna Convention or the FSIA, but by the TRIA.

Section 201 of the TRIA states that “[n]otwithstanding any other provision of law,” the blocked assets of a terrorist party “shall be subject to execution or attachment in aid of execution.” As this Court has frequently recognized, “the phrase ‘notwithstanding any other provision of law,’ or a variation thereof, means exactly that; it is unambiguous and effectively supersedes all previous laws.” *Energy Transp. Group, Inc. v. Skinner*, 752 F. Supp. 1, 10 (D.D.C. 1990); *see also Crowley Caribbean Transp., Inc. v. United States*, 865 F.2d 1281, 1283 (D.C. Cir. 1989) (“[a] clearer statement [than ‘notwithstanding any other provision of law’] is difficult to imagine”). Accordingly, by its plain terms, the TRIA overrides any immunity from

⁴ *But see Birch Shipping Corp. v. Embassy of the United Republic of Tanzania*, 507 F. Supp. 311, 313 (D.D.C. 1980) (holding that “mixed accounts” used for both diplomatic and commercial purposes are not immune from execution under the FSIA). It is far from clear that the Iraqi Accounts would be entitled to any immunity from execution under the provisions of the Vienna Convention or the FSIA, if those provisions were applicable. According to Riggs Bank’s interrogatory answers, one of the Iraqi Accounts, which is held in the name of the “Embassy of Iraq Commercial Office,” served as “cash collateral for a number of Commercial Letters of Credit” issued by Riggs. Similarly, the other account, which Riggs describes as a “Safekeeping Account,” is held in the name of the “Embassy of Iraq Commercial Office.” (*Id.*) Accordingly, it would appear that the funds in the Iraqi Accounts were used primarily (if not exclusively) for commercial, rather than diplomatic, purposes.

execution that blocked Iraqi property might otherwise enjoy under the Vienna Convention or the FSIA. Indeed, any contrary construction of the TRIA would frustrate the statutory objective of ensuring that judgments rendered against terrorist states based upon terrorist acts “are to be enforced.” 148 Cong. Rec. H8728 (Nov. 13, 2002) (conference report); *see also* 148 Cong. Rec. S11525 (Nov. 19, 2002) (remarks of Sen. Harkin) (“Title II operates to strip a terrorist state of its immunity from execution or attachment in aid of execution.”).

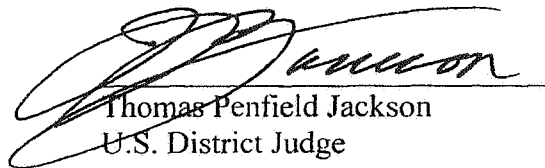
The only circumstance under which blocked Iraqi property might be exempt from execution to satisfy plaintiff’s judgments is that delineated in section 201(b) of the TRIA. That section gives the President the authority, “upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest,” to waive “the requirements of subsection (a) in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations.” P.L. 107-297, Title II, § 201(b). Inasmuch as the property in the Iraqi Accounts might potentially be “subject to the Vienna Convention” within the meaning of the TRIA,⁵ the President must be afforded an opportunity to exercise his waiver authority under section 201(b) “prior to the enforcement” of this Court’s order directing execution against the Iraqi Accounts.

⁵ The TRIA defines the phrase “property subject to the Vienna Convention on Diplomatic Relations” to mean any property “the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations.” P.L. 107-297, Title II, § 201(d)(3).

For the foregoing reasons, it is this 14th day of March, 2003,

ORDERED that plaintiffs' motion for issuance of an order directing execution against the Iraqi Accounts is GRANTED; and it is further

ORDERED that the garnishee, Riggs Bank NA, shall turnover all funds in its "Eurodollar Safekeeping Account in the name of Iraq Commercial Office," all funds in its nine "Trust Accounts in the name of LOC Trust Embassy of Iraq Commercial Office." and funds in any other accounts it may hold on behalf of Iraq to plaintiffs through the U.S. Marshall ^{Thirty (30)} ~~ten~~ days after this Order has been served on the United States unless the President makes a determination waiving the requirements of § 201(a) of the TRIA prior to the expiration of that period. ~~A~~ ^{JP}
~~proposed "decision and order" is attached hereto.~~ ^{JP}


Thomas Penfield Jackson
U.S. District Judge