

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

RAYMOND ANTHONY SMITH, as  
Administrator of the Estate of George Eric  
Smith, deceased

CASE NO. 01-cv-10132-LAK

Plaintiff,

v.

THE ISLAMIC EMIRATE OF  
AFGHANISTAN, et al.

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF THE SMITH/SOULAS  
CREDITORS' MOTION FOR TURNOVER OF ASSETS FROM GARNISHEE  
FEDERAL RESERVE BANK OF NEW YORK**

**TABLE OF CONTENTS**

Table of Authorities ..... ii

I. Introduction ..... 1

II. Background..... 4

III. Facts ..... 4

A. The Smith/Soulas Creditors Obtain the First 9/11 Judgment Against The Taliban and Others ..... 4

B. Afghanistan’s Central Bank, Da Afghanistan Bank, is under the control of the Taliban; that is the precise reason that the Biden Administration froze these assets ..... 4

IV. The Law ..... 6

A. The TRIA Provides Primary Guidance For Plaintiffs To Execute On DAB Assets Held at the FRBNY..... 6

B. The Taliban, Per the TRIA, and the Executive Orders, is a Terrorist Entity ..... 9

C. The Smith/Soulas Decedents were Killed in the World Trade Center Terrorist Attacks of 11 September 2001; their Judgments against the Taliban are a Result of these Terrorist Attacks..... 10

D. The DAB Assets Identified by E.O. 14,064 Meet the TRIA’s Definition of “Blocked Assets.” ..... 10

E. As an Agency or Instrumentality of The Taliban, the DAB assets held by the FRBNY are those of The Taliban via its Alter Ego, the DAB ..... 11

1. The DAB Holds The Taliban assets held in the DAB..... 11

2. Per the TRIA, DAB is an Agency or Instrumentality of The Taliban ..... 12

3. The Smith/Soulas Creditors Have Established Entitlement to Satisfy Their Judgment, and Interest, From the DAB Assets ..... 15

4. The Priority Nature of the Smith/Soulas Creditors’ Writ ..... 16

IV. Conclusion..... 16

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>Caballero v. FARC</i> , No. 20-CV-1939, 2021 WL 6339256 (D. Conn. Jan. 14, 2021) .....	14
<i>Caballero v. FARC</i> , No. 18-CV-25337, 2021 WL 3927826 (S.D. Fla. Aug. 24, 2021) .....	14
<i>CSX Transp., Inc. v. Island Rail Terminal, Inc.</i> , 879 F.3d 462 (2d Cir. 2018) .....	16
<i>Estates of Ungar ex rel. Strachman v. Palestinian Auth.</i> , 304 F. Supp. 2d 232, 241 (D.R.I. 2004) .....	15
<i>Harrison v. Republic of Sudan</i> , 802 F.3d 399 (2d Cir. 2015), <i>rev'd. on other grounds</i> , 139 S. Ct. 1048 (2019) .....	15
<i>Hausler v. JP Morgan Chase Bank, N.A.</i> , 127 F. Supp. 3d 17 (S.D.N.Y. 2015) .....	12, 16
<i>Hill v. Republic of Iraq</i> , No. 99-CV-3346, 2003 WL 21057173 (D.D.C. Mar. 11, 2003) ..	16
<i>Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (“Pertamina”)</i> , 313 F.3d 70, 86 (2d Cir. 2002) .....	12
<i>Kirschenbaum v. 650 Fifth Ave. &amp; Related Props.</i> , 830 F.3d 107 (2d Cir. 2016) 7-9, 11-12	
<i>Miller v. City of Ithaca</i> , No. 10-CV-597, 2019 WL 2502712 (N.D.N.Y. June 17, 2019) ...	12
<i>Weininger v. Castro</i> , 462 F. Supp. 2d 457 (S.D.N.Y. 2006) .....	8, 9, 12, 15, 16
<i>Weinstein v. Islamic Republic of Iran</i> , 609 F.3d 43 (2d Cir. 2010) .....	11, 12
<b>STATUTES AND RULES</b>	
8 U.S.C. § 1182(a)(3)(B)(iii) .....	8, 10
Fed. R. Civ. P. 69(a) .....	2, 6
Foreign Sovereign Immunities Act of 1976, Pub L. No. 94-583, 90 Stat. 2891 (codified at 28 U.S.C. § 1602 <i>et seq.</i> ) .....	7
Terrorism Risk Insurance Act of 2002 § 201, Pub. L. No. 107-297, 116 Stat. 2322 (codified at 28 U.S.C. § 1610 note) .....	<i>passim</i>
N.Y. C.P.L.R. § 5225 .....	2, 6, 15

N.Y. C.P.L.R. § 5227..... 2

N.Y. C.P.L.R. § 5234 ..... 16

**LEGISLATIVE MATERIALS**

H. DOC. NO. 106-268 (2000) ..... 14

**ADMINISTRATIVE AND EXECUTIVE MATERIALS**

31 C.F.R. § 594.310..... 9

31 C.F.R. § 594.311 ..... 9

Background Press Call by Senior Admin. Officials on U.S. Support for the People of Afghanistan, White House (Feb. 11, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/11/background-press-call-on-u-ssupport-for-the-people-of-afghanistan> ..... 2

Exec. Order No. 13,129, 44 Fed. Reg. 36,759 (July 7, 1999) ..... 9

Exec. Order No. 13,268, 67 Fed. Reg. 44,751 (July 2, 2002) ..... 9

Exec. Order No. 14,064, 87 Fed. Reg 8391 (Feb. 11, 2022) ..... *passim*

**OTHER AUTHORITIES**

Brief of the United States in Response to Plaintiffs’ Motion to Compel, *Smith v. Islamic Emirate of Afghanistan*, No. 03-MC-2169 (D.D.C. Feb. 2, 2005), 2005 WL 3518010, ECF No. 4..... 15

Clayton Thomas, Cong. Rsch. Serv., R46879, *U.S. Military Withdrawal and Taliban Takeover in Afghanistan: Frequently Asked Questions* (2021), <https://crsreports.congress.gov/product/pdf/R/R46879>..... 3

Clayton Thomas, Cong. Rsch. Serv., R46955, *Taliban Government in Afghanistan: Background and Issues for Congress* (2021), <https://crsreports.congress.gov/product/pdf/R/R46955>..... 3

Clayton Thomas, Cong. Rsch. Serv., IF10604, *Terrorist Groups in Afghanistan* (April 19, 2022), <https://sgp.fas.org/crs/row/IF10604.pdf> ..... 8-9

## I. INTRODUCTION

This Motion for Asset Turnover of funds held by the Federal Reserve Bank of New York (FRBNY or Garnishee), as it relates to a Judgment obtained against debtors whose assets are held by the Garnishee, is brought by Plaintiffs and Judgment Creditors Raymond Anthony Smith, Administrator of the Estate of George Smith, and Katherine Soulas, individually, on behalf of her children, and as Executrix of the Estate of Timothy Soulas (Judgment Creditors). The Judgment Creditors' counsel respectfully submits this Memorandum of Law in support of their Motion for Asset Turnover held by the FRBNY/Garnishee.

## II. BACKGROUND

This is the first lawsuit, filed 14 November 2001, involving the 11 September 2001 Terrorist Attacks which has obtained a judgment against, *inter alia*, the Taliban and the Islamic Emirate of Afghanistan (The Taliban). This Judgment followed an Inquest before the Honorable (dec.) Harold Baer in February and March, 2003, resulting in an Opinion and Order dated 7 May 2003 finding in favor of the Plaintiffs and against all defendants, including the Taliban (ECF 25). This Opinion and Order was reduced to a final judgment on 14 July 2003 (ECF 28), and a Writ of Execution was filed and served on Garnishee FRBNY on 14 March 2022 (ECF 41). This Writ has been indefinitely extended (ECF 48).

Judge Baer's 7 May 2003 Opinion and Order provides a most detailed analysis of the Court's calculation of damages sought via the 22 February 2022 Writ of Execution; it fully complies with the requirements of the Terrorism Risk Insurance Act of 2002 ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322 in terms of describing the methods of compensatory damages calculations as to the Taliban defendants. Accordingly, and

pursuant to Judge Baer’s findings, a Writ of Execution as to assets owned and controlled by the Taliban held by the FRBNY/Garnishee was filed 22 February 2022 and served on the Garnishee on 14 March 2022, specifically Da Afghanistan Bank (DAB). These assets were identified, pursuant to President Biden’s 11 February 2022 Executive Order (Exec. Order No. 14,064, 87 Fed. Reg 8391) to be, in part, available to those who have obtained judgments against the terrorist entities that perpetrated the 11 September 2001 terrorist attacks. The Executive Order, associated Fact Sheet, and Background Press Call by Senior Administration Officials on U.S. Support for the People of Afghanistan, attached collectively as Exhibit “A.” A relevant portion follows:

Many U.S. victims of terrorism, including relatives of victims who died in the September 11, 2001 terrorist attacks, have brought claims against the Taliban and are pursuing DAB assets in federal court. Because some of these plaintiffs currently have writs of execution against the DAB assets, the court will need to issue a further decision regarding the scope of those writs. Even if funds are transferred for the benefit of the Afghan people, *more than \$3.5 billion in DAB assets would remain in the United States and are subject to ongoing litigation by U.S. victims of terrorism. Plaintiffs will have a full opportunity to have their claims heard in court.* (emphasis added).

As this Smith/Soulas judgment against the Taliban stems from the Taliban’s terrorist activities on 11 September 2001, and the Plaintiffs’ decedents were killed by these terrorist attacks, attachment of these Taliban DAB assets held by the Garnishee/FRBNY per the Writ of Execution is appropriate, necessary, and proper under the TRIA, Fed. R. Civ. P. 69(a), and N.Y. C.P.L.R. §§ 5225(b)/5227. The TRIA § 201(a) subjects the DAB assets to Execution when “a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism.” The Smith/Soulas plaintiffs/creditors are precisely the persons for whom the TRIA acts to provide satisfaction of a judgment against an entity such as the Taliban.

This Motion seeks access to the Taliban's DAB assets held by the FRBNY, also earmarked to satisfy judgments such as that obtained by the Smith/Soulas plaintiffs.

The United States Congress, via its Congressional Research Service (<https://crsreports.congress.gov>), has extensive analysis on the Taliban Government in Afghanistan as it exists after the August, 2021 collapse of the recognized government. These CRS reports describe the Taliban's control in all aspects of the Afghan Government, and the numerous Taliban personnel appointed to all aspects of the Afghan Government. See Exhibit B, Clayton Thomas, Cong. Rsch. Serv., R46879, *U.S. Military Withdrawal and Taliban Takeover in Afghanistan: Frequently Asked Questions* 10, 12–13 (September 17, 2021), <https://crsreports.congress.gov/product/pdf/R/R46879> and Exhibit C, Clayton Thomas, Cong. Rsch. Serv., R46955, *Taliban Government in Afghanistan: Background and Issues for Congress*, (November 2, 2021), <https://crsreports.congress.gov/product/pdf/R/R46955>.

These, and other documents in this Motion, make plain that the Taliban's absolute control of the Afghanistan government has rendered, for purposes of this Turnover Motion, the DAB as an agency and instrumentality of the Taliban. This makes the frozen funds available, per TRIA, and the Executive Order, to satisfy the Plaintiffs' Judgment. See also declaration of Jonathan Cristol, Ph.D. (Exhibit "D").

The Smith/Soulas judgment creditors seek an order compelling the FRBNY to turn over those blocked assets of DAB in its possession (the "DAB Assets") sufficient to satisfy the outstanding amount of their judgment for compensatory damages against the Taliban, amounting to \$59,262,189.57, plus further post-judgment interest that has been accruing pursuant to 28 U.S.C. § 1961. Decl. of James E. Beasley, Jr., Exhibit "E." ("Beasley Decl.").

The Biden Administration’s freezing of these DAB assets and earmarking them for plaintiffs such as the Smith/Soulas families is because the Taliban, a terrorist entity, is in control of the DAB. Therefore, the DAB is an “agency or instrumentality” of the Taliban, as the Taliban controls the DAB and its assets, including those held by the FRBNY. Per the TRIA, these DAB assets held by the Garnishee/FRBNY and earmarked for 9/11 plaintiffs by the Biden Administration are subject to execution.

### III. FACTS

#### A. **The Smith/Soulas Creditors Obtain the First 9/11 Judgment Against The Taliban and Others**

On 14 July 2003, this Honorable Court entered judgment on Judge Baer’s 7 May 2003 Opinion and Order finding that, *inter alia*, the Taliban and the Islamic Emirate of Afghanistan (The Taliban) were liable to the Smith and Soulas plaintiffs for the deaths of their loved ones during the September 11, 2001 terrorist attacks. On 22 February 2022, the Clerk issued a Writ of Execution that totals \$59,262,189.57<sup>1</sup> as to compensatory damage claims against The Taliban. This Writ, served on the FRBNY via the US Marshall on 14 March 2003, has been indefinitely extended. ECF 41; ECF 48; Beasley Decl.

#### B. **Afghanistan’s Central Bank, Da Afghanistan Bank, is under the control of the Taliban; that is the precise reason that the Biden Administration froze these assets.**

As more fully described in the Expert Declaration of Dr. Cristol (Exhibit “D”) and its referenced attachments, the Taliban has assumed effective control of the entirety of the Afghan Government since the establishment of the recognized government. *See, e.g.*, Cristol Decl., §II A, B; §III A-C. On 7 September 2021, the Taliban appointed 53 cabinet

---

<sup>1</sup> Interest continues to accrue.



officials, and announced the establishment of a “caretaker government.” Less than one month later, the Taliban appointed an additional 38 high-ranking officials; all the appointments are either Taliban members, or those sympathetic to the Taliban. This includes the Taliban having appointed high-level Taliban members/sympathizers to control the DAB, including Taliban First Deputy Prime Minister Mullah Ghani Baradar Akhund to oversee the DAB. *See generally* Cristol Decl., Section III B. *The Taliban control DAB.* DAB control is particularly important for the Taliban’s control of Afghanistan, as controlling the Central Bank is a significant statement to the world of the Taliban’s control of the Afghan Government. *See, e.g.,* CRS Reports (Exhibits “B” and “C”) and Cristol Decl. (Ex. “D.”) at § III, A-C, which describe, *inter alia*, the Taliban’s use of the DAB as an agency and instrumentality of the Taliban, and the United States government’s recognition that the Taliban control DAB.

As documented in this Motion and attachments, the Taliban and DAB themselves provide evidence to support this claim. The Taliban and DAB provide multiple statements, images, and claims via its Twitter account, including images of Taliban members in the DAB with Taliban flags prominently displayed. Since the Taliban’s takeover of the Afghan Government in 2021, it has appointed multiple different governors of the DAB; first, it was Mohammed Idris as the DAB’s Acting Governor until 8 October 2021, who was the Taliban’s finance minister and chief money launderer. He was replaced by another Taliban appointee, Shakir Jalali was appointed Governor of DAB; Idris’ title changed to “Acting General Manager” and he continues to chair meetings and represent the DAB in official settings. (Cristol decl. ¶¶ 40, 41). Similarly loyal Taliban members are involved in the operation and management of every aspect of the DAB; many

have been specifically targeted by the United States for their illegal financial activities. For example, the DAB's First Deputy Governor, Noor Ahmad Agha, has a known history within the Taliban for ensuring funding for Taliban weapons and explosives (*Id.*). Dr. Cristol outlines other individuals who have been placed into authority positions at DAB, including Lutful Haq Noor Pasarli, a senior economic advisor to the Taliban. (*Id.*, 43). In other words, the Taliban, between 1996 and December, 2001, and since the September, 2021 announcement of the new government, has had DAB as its financial agency and instrumentality to further its goals.

This is important for purposes of this Turnover Motion, as the reason that the Biden Administration froze the DAB assets held in the FRBNY was to ensure they would not be used for the Taliban's terroristic purposes, instead to be used and distributed per the terms of the 11 February 2022 Executive Order. Indeed, the same day that the Taliban overtook the Afghanistan Government, the FRBNY was directed to prohibit DAB asset withdrawal or transfer by or to the Taliban.

#### IV. THE LAW

##### A. The TRIA Provides Primary Guidance For Plaintiffs To Execute On The DAB Assets Held at the FRBNY.

As this matter seeks satisfaction of the plaintiffs' judgment from blocked Taliban assets as a function of their involvement in the 11 September 2001 World Trade Center terrorist attacks, then one must first look<sup>2</sup> to Title II, *Treatment of Terrorist Assets*, of

---

<sup>2</sup> The "[N]otwithstanding any other provision of law" language in TRIA requires one to only evaluate it in this Motion for the plaintiffs to perfect their Writ of Execution. However, application of Fed. R. Civ. P. 69(a)(1) would provide the same remedy: New York Civil Practice Law and Rules Section 5225(b) provides the relevant procedure for enforcement of a judgment against a third party in possession or custody of money or other personal property in which the judgment debtor has an interest. Its requirements are similarly met based upon the content of this Motion.

the TRIA. §201(a) reads as follows:

**SEC. 201. SATISFACTION OF JUDGMENTS FROM BLOCKED ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM.**

(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.

The Taliban assets of DAB in the FRBNY via the 11 February 2022 Executive Order 14,064 and its Fact Sheet are identified as available to those with judgments arising from terrorist activities of the Taliban:

Many U.S. victims of terrorism, including relatives of victims who died in the September 11, 2001 terrorist attacks, have brought claims against the Taliban and are pursuing DAB assets in federal court. Because some of these plaintiffs currently have writs of execution against the DAB assets, the court will need to issue a further decision regarding the scope of those writs. Even if funds are transferred for the benefit of the Afghan people, more than \$3.5 billion in DAB assets would remain in the United States and are subject to ongoing litigation by U.S. victims of terrorism.

It is apparent that this section of the TRIA authorizes the instant Motion for Asset Turnover. As these defendants are not foreign sovereigns (*See generally* Cristol Decl.) the Foreign Sovereign Immunity Act, 28 USC §1602 et seq. (FSIA) is inapplicable; TRIA controls the process for executing on judgments to reach assets of a terrorist entity held by a third party. The Second Circuit, via *Kirschenbaum v. 650 Fifth Ave. & Related Props.*, 830 F.3d 107 (2d Cir. 2016), has described the process by which the TRIA is used to execute on these assets: “[T]hus, to attach Defendants' properties under the TRIA,

Plaintiffs must show (1) that the Defendants are a “terrorist party” or an “agency or instrumentality of that terrorist party,” and (2) that the Defendants’ properties are “blocked assets.” *Kirschenbaum*, 830 F.3d at 132. *See also Weininger v. Castro*, 462 F. Supp. 2d. 457, 479 (SDNY, 2006):

Thus, TRIA allows for execution on the blocked assets of a terrorist party, or its agency or instrumentality, to satisfy a judgment against the terrorist party, provided that the following requirements are met:

- (1) a person has obtained a judgment against a terrorist party;
- (2) the judgment is either
  - (a) for a claim based on an act of terrorism, or
  - (b) for a claim for which a terrorist party is not immune under § 1605(a)(7);
- (3) the assets are "blocked assets" within the meaning of TRIA; and
- (4) execution is sought only to the extent of any compensatory damages.

In addition, as indicated, and important to this case, by its terms § 201 provides that the blocked assets that may be executed upon are those of either the "terrorist party" or "any agency or instrumentality of that terrorist party," even though the judgment itself need be only against the terrorist party.

The *Kirschenbaum* and *Weininger* courts provide clear guidance that the Smith/Soulas plaintiffs may, via the TRIA<sup>3</sup>, enforce their judgments as to the blocked assets held pursuant to the Executive Order at the FRBNY. Their judgments do not include punitive damages, the judgment is against a terrorist entity (the Taliban) for its involvement in the World Trade Center attacks on 11 September 2001, and the DAB is an “... agency or instrumentality” of the Taliban.

The TRIA also defines “Terrorist party” at section 201(d)(4):

(4) Terrorist party.--The term “terrorist party” means a terrorist, a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))), or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

---

<sup>3</sup> Federal and state law requirements, secondary to the TRIA, are discussed below.

As demonstrated below, there is irrefutable evidence that the Taliban fall within the definition of “terrorist party” per TRIA §201(d)(4). Those proofs, and the connection between the Taliban and the DAB assets for each of the TRIA requirements identified in *Kirschenbaum* and *Weininger* now follows.

**B. The Taliban, Per the United States Government, the TRIA, and the Executive Orders, is a Terrorist Entity.**

This lawsuit’s past briefings, such as the United States’ filings in it, identify the Taliban as a recognized terrorist entity. When these plaintiffs served a subpoena on the Office of Foreign Asset Control (OFAC) in 2005, the United States filed a brief related to that OFAC subpoena. In that filing, the United States identified the Taliban as a Specially Designated Global Terrorist. *See Smith v. Islamic Emirate of Afghanistan*, No. 03-MC-2169, 2005 WL 3518010 (D.D.C. Feb. 2, 2005), at fn 9:

9 The assets of the Taliban previously had been blocked pursuant to Executive Order 13,129, 64 Fed. Reg. 36,739 (July 4, 1999). In July 2002, as a result of the success of the military campaign in Afghanistan, the President revoked Executive Order 13,129 and terminated the national emergency declared in that order with respect to the Taliban. *See* Executive Order, No. 13,268, 67 Fed. Reg. 44,751 (July 2, 2002). At the same time, the President designated the Taliban as one of the entities subject to the President’s 2001 blocking order. *See id.* **Accordingly, the Taliban – like Al Qaida/Islamic Army and Usama bin Laden – remain Specially Designated Global Terrorists.** *See supra* note 4 (explaining that the Islamic Emirate of Afghanistan is the former Taliban government of Afghanistan). (emphasis added).

This designation of the Taliban as a terrorist entity is still applicable. December, 2001 was when Hamid Karzai was selected as head of an interim national government, “...marking the beginning of post-Taliban governance.” Exhibit “B” at 3. This was the event that created the new government, replacing the Taliban government. The Taliban were subject to sanctions at the time they participated in the 11 September 2001 attacks

on the United States. The Taliban, since 7 July 1999, have been the subject of E.O. 13,129, which declared a national emergency as to the Taliban and its support of terror, and the Taliban have been designated as a Specially Designated Global Terrorist. *See* E.O. No. 13,268<sup>4</sup> § 1; *see also* 31 C.F.R. §§ 594.310, 594.311. As written above, the recent 11 February 2022 Executive Order 14,064 continues to define the Taliban as a terrorist entity. Additional governmental support for that claim comes from a recent CRS document, Clayton Thomas, Cong. Rsch. Serv., IF10604, Terrorist Groups in Afghanistan (April 19, 2022), <https://sgp.fas.org/crs/row/IF10604.pdf>. This recent document, prepared for Congress, further and specifically defines the Taliban as not only a terrorist entity, but one that works with other terrorist entities:

This product outlines major terrorist groups present in Afghanistan that are affiliated and allied with Al Qaeda (AQ) and the Islamic State (IS, also known as ISIS, ISIL, or by the Arabic acronym Da'esh), and relations between these groups and other actors, most notably the Taliban. These dynamics may inform assessments of U.S. policy in Afghanistan in light of the Taliban's renewed control of the country.

*Id.* at 1.

Dr. Cristol provides further evidence, support, and expert opinions for this designation. *See generally* Cristol Decl., Section II D; Section III C.

**C. The Smith/Soulas Decedents were Killed in the World Trade Center Terrorist Attacks of 11 September 2001; their Judgments against the Taliban are a Result of these Terrorist Attacks.**

Although obvious, the 11 September 2001 attacks on the World Trade Center (and other locations) were due to an “act of terrorism.” As discussed above, section 201(d)(1) of the TRIA defines an “act of terrorism” to include “(A) any act or event certified under

---

<sup>4</sup>E.O. 13,268 ended the national emergency as to the Taliban created by President Clinton in E.O. 13,129.

section 102(1)”; or “(B) to the extent not covered by subparagraph (A), any terrorist activity” as defined in 8 U.S.C. § 1182(a)(3)(B)(iii). The 9/11 attacks meet these criteria, and the United States has confirmed that. *Id.*

**D. The DAB Assets Identified in E.O. 14,064 Meet the TRIA’s Definition of “Blocked Assets.”**

As referenced herein, President Biden’s E.O. 14,064, § 1(a), ordered:

[a]ll property and interests in property of DAB that are held, as of the date of this order, in the United States by any United States financial institution, including the Federal Reserve Bank of New York, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in[.]

President Biden authorized this E.O. knowing that lawsuits such as this had been outstanding for many years. *See* 87 Fed. Reg. at 8391 (“I also understand that various parties, including representatives of victims of terrorism, have asserted legal claims against certain property of DAB or indicated in public court filings an intent to make such claims. This property is blocked under this order.”). The DAB Assets are therefore blocked property under TRIA, and available to the Smith/Soulas Creditors to satisfy their Judgment and associated Writ of Execution.

**E. As an Agency Or Instrumentality Of The Taliban, the DAB assets held by the FRBNY are those of The Taliban via its Alter Ego, the DAB.**

The Smith/Soulas Creditors can execute against the DAB Assets if the Court finds that (1) they are “held in the hands of” DAB, and (2) DAB is an agency or instrumentality of the Taliban. *Kirschenbaum*, 830 F.3d at 132 (quoting *Weinstein*, 609 F.3d at 49). This Motion confirms that all of these criteria have been met.

**1. The DAB Holds The Taliban assets held in the FRBNY**

As already reviewed, President Biden’s Executive Order 14,064 blocked DAB assets

in the FRBNY because the Taliban claimed those funds to be theirs, to use as they intend. These funds held in the DAB accounts, as described below, therefore are presumed to be those of the Taliban, and therefore, pursuant to the plain language of the E.O., the TRIA, Federal and State law, they are available to the Smith/Soulas Creditors.

All evidence supports the fact that the DAB Assets are “held in the hands” of DAB. It undisputed that these funds are in DAB’s account at the FRBNY, resulting in a presumption of a property interest. Holding funds in ones’ bank account establishes a property interest, possession, and a presumption of ownership. *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (“Pertamina”)*, 313 F.3d 70, 86 (2d Cir. 2002); *Hausler v. JP Morgan*, 127 F. Supp. 3d 17 (S.D.N.Y. 2015) and *Miller v. City of Ithaca*, No. 10-cv- 597, 2019 WL 2502712 (N.D.N.Y. June 17, 2019).

The TRIA and interpreting caselaw (namely *Kirschenbaum* and *Weininger, supra*) provide further authority for this Honorable Court to authorize release of these funds pursuant to the Writ of Execution. *Kirschenbaum* is particularly appropriate in an analogous situation wherein Creditors were seeking funds of an agency/instrumentality of a terrorist defendant:

*Section 201(a) of the TRIA confers an independent basis for subject matter jurisdiction over post-judgment execution and attachment proceedings against property held in the hands of an agency or instrumentality of the terrorist party, even if the agency or instrumentality is not itself named in the judgment. Weinstein, 609 F.3d at 50. As this Court has previously explained, this basis for subject matter jurisdiction derives from the plain language of TRIA § 201(a), which “clearly differentiates between the party that is the subject of the underlying judgment itself, which can be any terrorist party (here, Iran), and parties whose blocked assets are subject to execution or attachment, which can include not only the terrorist party but also ‘any agency or instrumentality of that terrorist party.’” Id. at 49. Thus, the fact that Plaintiffs obtained their underlying judgments against Iran, not specifically against Alavi or 650 Fifth Ave. Co., does not prevent*



Plaintiffs from attaching Defendants' properties under the TRIA.

*Kirschenbaum* at 132 (emphasis added).

**2. Per the TRIA, DAB is an Agency or Instrumentality of The Taliban**

There are multiple, independent ways that the DAB can be defined as an “agency or instrumentality” of a terrorist party. Again, the Second Circuit’s *Kirschenbaum* opinion, at 135, provides useful instruction. So long as the Smith/Soulas Creditors can show one of the three, then their burden as to the DAB assets held via E.O. 14,064 are met.

1) Was DAB “a means through which a material function of the Taliban is accomplished[.]”?

*or*

2) Did DAB provide “material services to, on behalf of, or in support of the Taliban?”

*or*

3) Is DAB “owned, controlled, or directed by the terrorist party”?

Although providing evidence supporting only one of these tests is required, as described below, it is respectfully submitted that facts identified in this Motion, and the attachments including Dr. Cristol’s declaration, prove that the Smith/Soulas Creditors meet each test. For example, and in sum:

1) At every occasion when the Taliban has been in control of Afghanistan, such as during the 9/11 terrorist attacks, when this suit was filed, and after the August, 2021 collapse of the recognized Afghanistan Government, the Taliban has owned, controlled, and operated the DAB. As demonstrated above and as more fully detailed in Dr. Cristol’s analysis and associated documents, the Taliban’s assuming control of the Afghan Government also resulted in its assuming control of DAB by installing its own personnel

to operate it, providing management and operations to benefit the Taliban. The E.O. 14,064 acknowledges as much. The Taliban's and DAB's marketing and social media reveal countless images, statements, and claims that all reveal active and full control of the DAB. Indeed, the DAB and the Taliban have acknowledged litigation such as this, calling for the release of DAB assets held via the E.O. 14,064. *See generally* Cristol decl.

2) The Taliban's control of DAB causes it to provide support to the Taliban. Now that the Taliban have its personnel in all levels of DAB control, the Taliban can supervise Afghanistan's entire banking system, and use it as it sees fit to further its goals. The Taliban's official spokesperson, Suhail Shaheen, on 24 September 2021 has specifically written about the blocked Central Bank (DAB) assets and demanded their release. Cristol decl. ¶ 47.

That the Taliban's official spokesperson, speaking on behalf of the Afghan Central Bank (DAB), demanding release of the funds, is another example of Taliban control and interest in DAB. In sum, all of the evidence in this Motion and attachments reveal that the Taliban exert control over DAB just as it did when it previously controlled Afghanistan:

2. The Department of the Treasury's Office of Foreign Assets Control ("OFAC"), in consultation with the Departments of State and Justice, has added three entities to the list of those whose assets are blocked pursuant to Executive Order 13129. On August 18, 1999, OFAC added Ariana Afghan Airlines (f.k.a. Bakhtar Afghan Airlines). On October 22, 1999, OFAC added Banke Millie Afghan (a.k.a. Afghan National Bank; a.k.a. Bank E. Millie Afghan), and *Da Afghanistan Bank (a.k.a. Bank of Afghanistan; a.k.a. Central Bank of Afghanistan; a.k.a. The Afghan State Bank)*. These entities have been found to be controlled by the Taliban, and to be entities in which the Taliban has an interest.

H. DOC. NO. 106-268, at 4 (emphasis added).

The TRIA and its interpretive caselaw reveal that entities have been defined as

agencies or instrumentalities of terrorist organizations with fewer connections than are demonstrated in this Motion. *See, e.g., Caballero v. FARC*, No. 18-CV-25337, 2021 WL 3927826, at \*3 (S.D. Fla. Aug. 24, 2021) (individual who operated currency exchange program on behalf of terrorist party was an “agency or instrumentality” of that party under TRIA); *Caballero v. FARC*, No. 20-CV-1939, 2021 WL 6339256, at \*2 (D. Conn. Jan. 14, 2021) (unaffiliated corporation was “agenc[y] or instrumentality” of terrorist party which “use[d]” it “to launder money”); *Estates of Ungar Ex Rel. Strachman v. Palestinian*, 153 F. Supp. 2d 76 (D.R.I. 2001).

**3. The Smith/Soulas Creditors Have Established Entitlement to Satisfy Their Judgment, and Interest, From DAB Assets**

NY C.P.L.R. § 5225, *Payment or delivery of property of judgment debtor*, subpart

(b), reads as follows:

(b) Property not in the possession of judgment debtor. Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Costs of the proceeding shall not be awarded against a person who did not dispute the judgment debtor's interest or right to possession. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239.

Given the facts and law as presented in this Motion, §5225(b) affirms that the

Smith/Soulas Creditors are entitled to “... possession of [the] property” held by the FRBNY. The property (blocked assets) is that of DAB. It is held via E.O. 14,014. The TRIA allows blocked property such as this to be provided to the Smith/Soulas Judgment Creditors. *Weininger*, 462 F. Supp. 2d at 499; *see also Harrison*, 802 F.3d at 409 (funds subject to TRIA “may be distributed without a license from OFAC”). When blocked assets are subject to the TRIA, they are available to access by Judgment Creditors such as Smith/Soulas. *Hausler*, 127 F. Supp. 3d at 48; *Weininger*, 462 F. Supp. 2d at 499. Therefore, once the TRIA’s requirements are met, as they are here, there are no limitations to access of these funds. *Hill v. Republic of Iraq*, No. 99-CV-3346, 2003 WL 21057173, at \*2 (D.D.C. Mar. 11, 2003) (the “notwithstanding provision” is “unambiguous and effectively supersedes all previous laws”).

#### **4. The Priority Nature of the Smith/Soulas Creditors’ Writ**

The Smith/Soulas Creditors were the first obtain a judgment against the Taliban, hold the only valid judgment as to these plaintiffs, and filed their Writ of Execution on 22 February 2022, after two other Creditors filed their Writs of Execution. Beasley Decl. ¶ 5. When the Smith/Soulas Judgment Creditors filed and served their Writ of Execution, there was a significant excess of funds available to judgment creditors who follow their Writ. *See* Beasley Decl. ¶ 8. This history supports the claim that this Writ of Execution is timely and filed well before other Judgment creditors who would otherwise exhaust the available DAB assets held at the FRBNY. *See* N.Y. C.P.L.R. § 5234 (executions “shall be satisfied . . . in the order in which they were delivered”). *See also CSX Transp., Inc. v. Island Rail Terminal, Inc.*, 879 F.3d 462, 472 (2d Cir. 2018).

**V. CONCLUSION**

The facts, law, US government materials, briefings, and expert opinion in this Motion make it plain that the Smith/Soulas plaintiffs/judgment creditors have satisfied their requirements to access the DAB funds held in the FRBNY. As first judgment holders and the third Writ of Execution holders behind two other Creditors' Writs that seek less than the total amount of DAB funds held at the FRBNY, and as the only case with valid judgments and Writs of Executions for and by these Smith/Soulas plaintiffs specifically, the priority of the Smith/Soulas judgment creditors is established and available funds are available to satisfy the 14 July 2003 Judgment, plus interest. It is respectfully submitted that it is appropriate and necessary for this Honorable Court to grant the relief sought in this Motion for Asset Turnover. A proposed Order is attached.

Respectfully submitted,

*12 May 2012*

**THE BEASLEY FIRM, LLC**

By:

*[Signature]*  
\_\_\_\_\_  
**JAMES E. BEASLEY, JR. (pro hac vice)**

**DION G. RASSIAS**

The Beasley Building  
1125 Walnut Street  
Philadelphia, PA 19107  
215.592.1000  
215.592.1523 (telefax)  
Attorneys for Plaintiffs