ORAL ARGUMENT NOT YET SCHEDULED

Nos. 14-7193 (Lead), 14-7194, 14-7195, 14-7198, 14-7202, 14-7203, 14-7204

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUSAN WEINSTEIN, *individually as Co-Administrator of the Estate of Ira William Weinstein, and as natural guardian of plaintiff David Weinstein (minor)*, et al.,

Appellants,

v.

ISLAMIC REPUBLIC OF IRAN, et al.,

Appellees,

and

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Garnishee-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (Nos. 1:00-cv-2601-RCL; 1:00-cv-2602-RCL; 1:01-cv-1655-RCL; 1:02-cv-1811-RCL; 1:08-cv-520-RCL; 1:08-cv-502-RCL; 1:14-mc-648-RCL)

BRIEF FOR GARNISHEE-APPELLEE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Garnishee-Appellee states:

(A) **Parties and Amici.** Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, counsel for Garnishee-Appellee Internet Corporation for Assigned Names and Numbers ("Appellee") certifies that Appellee has no parent corporation and that no publicly held company has a 10% or greater ownership interest in the entity. Appellee is a public-benefit nonprofit corporation organized under the laws of California.

Except for the following, all parties, intervenors, and amici appearing before the District Court and in this Court are listed in the Brief for Plaintiffs-Appellants:

Judgment-Debtor Defendants:

(1) John Doe. *Calderon-Cardona, et al. v. Democratic People's Republic of Korea*, Misc. No. 14-648-RCL.

(2) Kurdistan Workers Party, a/k/a HSK, a/k/a People's Defense Force, a/k/a Kurdistan Freedom and Democracy Congress, a/k/a Partiya Karkerian Kurdistan, a/k/a Kadak, a/k/a PKK. *Wyatt, et al. v. Syrian Arab Republic*, No. 1:08-cv-00502-RCL.

Interested and/or Intervening Parties in the District Court:

(1) In *Weinstein*, regarding issues unrelated to Appellee and unrelated to this consolidated appeal, the United States of America intervened as a nonparty to

quash certain writs of attachment against government officials. (Dkt. Nos. 40 & 64, *Weinstein, et al. v. Islamic Republic of Iran*, No. 1:00-cv-02601-RCL (Jan. 31, 2003 & Aug. 15, 2003).) The District Court granted the United States' motion to quash. (Dkt. No. 78, *Weinstein* (Feb. 26, 2004).)

(2) In *Weinstein*, regarding issues unrelated to Appellee and unrelated to this consolidated appeal, Edwena R. Hegna, individually and as Executrix of Charles Hegna, Steven A. Hegna, Craig M. Hegna, Lynn Marie Hegna Moore, and Paul B. Hegna, moved to intervene in order to collect part of the judgment Plaintiffs obtained. (Dkt. No. 57, *Weinstein, et al. v. Islamic Republic of Iran*, Case No. 1:00-cv-02601-RCL (July 30, 2003).) The District Court denied Hegna's motion to intervene as moot. (Dkt. No. 78, *Weinstein* (Feb. 26, 2004).)

(3) In *Wyatt*, regarding issues unrelated to Appellee and unrelated to this consolidated appeal, the United States Department of Treasury, Office of Foreign Assets Control twice successfully moved as an interested party for a protective order in the District Court. (Dkt. Nos. 41, 51, 57, 58, *Wyatt, et al. v. Syrian Arab Republic*, No. 1:08-cv-00502-RCL (Jan. 15, 2013; Apr. 5, 2013; Mar. 31, 2014; Apr. 4, 2014).)

(4) In *Rubin*, regarding issues unrelated to Appellee and unrelated to this consolidated appeal, the United States of America intervened as a nonparty to quash certain writs of attachment. (Dkt. No. 64, *Rubin, et al. v. Islamic Republic*

of Iran, No. 1:01-cv-01655-RCL (May 16, 2006).) The District Court granted the United States' motion to quash the writs of attachment. (Dkt. No. 81, *Rubin* (June 3, 2008).)

(5) In *Rubin*, regarding issues unrelated to Appellee and unrelated to this consolidated appeal, the President and Fellows of Harvard College, the Museum of Fine Arts, the University of Chicago, the Oriental Institute, and the Field Museum all moved to intervene. (Dkt. No. 86, *Rubin, et al. v. Islamic Republic of Iran*, No. 1:01-cv-01655-RCL (July 16, 2008).) The District Court denied these parties' motion to intervene and terminated their involvement in the case. (Dkt. No. 97, *Rubin* (Sept. 8, 2010).)

(B) **Ruling Under Review.** References to the rulings at issue appear in the Brief for Plaintiffs-Appellants.

(C) **Related Cases.** In its Scheduling Orders issued on December 23 and 24, 2014, this Court *sua sponte* consolidated, as Case No. 14-7193, Plaintiffs-Appellants' appeals in Nos. 14-7194, 14-7195, 14-7198, 14-7202, 14-7203, and 14-7204. In the court below, Plaintiffs' cases were as follows: *Weinstein, et al. v. Islamic Republic of Iran*, No. 1:00-cv-02601-RCL; *Stern, et al. v. Islamic Republic of Iran*, No. 1:00-cv-02602-RCL; *Rubin, et al. v. Islamic Republic of Iran*, No. 1:01-cv-01655-RCL; *Haim, et al. v. Islamic Republic of Iran*, No. 1:02-cv-01811-RCL; *Wyatt, et al. v. Syrian Arab Republic*, No. 1:08-cv-00502-RCL; *Haim, et al.*

v. Islamic Republic of Iran, No. 1:08-cv-00520-RCL; and *Calderon-Cardona, et al. v. Democratic People's Republic of Korea*, Misc. No. 14-00648-RCL.

Although the issues presented in this consolidated appeal have not been before this Court or any other court, the underlying cases have resulted in the following unrelated appeals to this Court:

(1) Plaintiffs-Appellants Susan Weinstein, et al., previously appealed to this Court (Dkt. No. 68, *Weinstein, et al. v. Islamic Republic of Iran*, No. 1:00-cv-02601-RCL (D.D.C. Aug. 21, 2003); Dkt. No. 1, *Weinstein, et al. v. Islamic Republic of Iran*, No. 03-05235 (D.C. Cir. Aug. 28, 2003)), the District Court's July 22, 2003, order granting the motion of Nonparty-Intervenor, the United States, to quash certain writs of attachment. (Dkt. No. 52, *Weinstein*, No. 1:00-cv-02601-RCL (D.D.C. July 22, 2003).) On January 9, 2004, this Court granted Plaintiffs-Appellants' motion for voluntary dismissal of that appeal. (Dkt. No. 5, *Weinstein*, No. 03-05235 (D.C. Cir. Jan. 9, 2004).)

(2) Related to the *Weinstein* case, Nonparty Edwena R. Hegna, et al., appealed the District Court's dismissal of her motion to intervene as moot. (Dkt. No. 1, *Weinstein v. Islamic Republic of Iran*, No. 04-05139 (D.C. Cir. Apr. 16, 2004).) This Court affirmed the District Court's order dismissing Nonparty Hegna's motion. (Dkt. No. 38, *Weinstein*, No. 04-05139 (D.C. Cir. Apr. 22, 2005); *see also* Dkt. No. 82, *Weinstein*, No. 1:00-cv-02601-RCL (D.D.C. June 27, 2005).)

(3) Nonparty Intervenor, the United States, previously appealed to this Court, (Dkt. No. 53, *Rubin, et al. v. Islamic Republic of Iran*, No. 1:01-cv-01655-RCL (D.D.C. Apr. 22, 2005); *see also* Dkt. No. 1, *Rubin, et al. v. Islamic Republic of Iran*, No. 05-05170 (D.C. Cir. May 23, 2005)), the District Court's order granting Plaintiffs' motion for a writ of execution and denying the United States' motion to quash Plaintiffs' writs of attachment. (Dkt. No. 50, *Rubin*, No. 1:01-cv-01655-RCL (D.D.C. Mar. 23, 2005).) Plaintiffs, Jenny Rubin, et al., also filed a cross-appeal from the court's March 23, 2005, order denying their motion to examine the affiant relied upon by the United States. (Dkt. No. 55, *Rubin*, (May 5, 2005).) This Court dismissed the appeal and cross-appeal as moot, in light of Plaintiffs' post-judgment, voluntary abandonment of any claim to the writs of attachment at issue. (Dkt. No. 12, *Rubin*, No. 05-05170 (D.C. Cir. Sept. 1, 2005).)

(4) In the *Wyatt* case, Judgment-Debtor Defendants, Syrian Arab Republic, appealed the District Court's December 17, 2012, order granting final default judgment against Syria and granting damages in favor of Plaintiffs Mary Nell Wyatt, et al. (Dkt. No. 1, *Wyatt, et al. v. Syrian Arab Republic*, No. 13-07007 (D.C. Cir. Jan. 16, 2013); *see also* Dkt. No. 39, *Wyatt, et al. v. Syrian Arab Republic*, No. 1:08-cv-00502-RCL (D.D.C. Jan. 15, 2013).) This Court affirmed the District Court's order. *See Wyatt, et al. v. Syrian Arab Republic*, 554 F. App'x

16 (Nos. 13-07007 & 13-07018) (D.C. Cir. Jan. 30, 2014); *see also* Dkt. No. 56, *Wyatt*, No. 1:08-cv-00502-RCL (D.D.C. Mar. 12, 2014).

(5) The *Wyatt* case's now-closed, predecessor suit, *Wyatt, et al. v. Syrian Arab Republic et al.*, No. 1:01-cv-01628-RCL (filed July 27, 2001; dismissed May 17, 2012),[1] also resulted in an appeal to this Court. There, Judgment-Debtor Defendants, Syrian Arab Republic, took an interlocutory appeal from the District Court's order granting Plaintiffs jurisdictional discovery. (*See* Dkt. No. 81, *Wyatt* (May 26, 2006); *see also* Dkt. No 1, *Wyatt, et al. v. Syrian Arab Republic*, No. 06-7094 (D.C. Cir. May 31, 2006).) This Court affirmed in an unpublished disposition. (*See* Dkt. No. 51, *Wyatt* (D.C. Cir. Jan. 25, 2008).)

Counsel for Appellee is not otherwise aware of "the case on review" previously being before this Court or any other court. Nor is counsel aware of "any other related cases currently pending in this court or in any other court." D.C. Cir. Rule 28(a)(1)(C). Although Plaintiffs-Appellants are currently pursuing

[1] The District Court dismissed that "duplicative, eleven-year-old case" without prejudice on May 17, 2012, so that Plaintiffs-Appellants could pursue a later suit that is the basis for their underlying judgment, No. 1:08-cv-00502-RCL. (*See* Dkt. No. 98 at 1–2, *Wyatt* (May 17, 2012).) As the District Court noted in its dismissal order, Plaintiffs-Appellants' subsequent suit "alleg[ed] the same set of facts as … the 2001 case [No. 1:01-cv-01628-RCL]." (*See id.* at 1.) Moreover, Plaintiffs-Appellants identified the 2001 suit, No. 1:01-cv-01628-RCL, as a case related to their later action because it "gr[ew] out of the same event or transaction." (Dkt. No. 4, *Wyatt*, No. 1:08-cv-00502-RCL (March 24, 2008).)

collection on their underlying judgments in various federal courts,[2] those matters are not "related cases" under this Court's Rules. *See id.* (defining "any other related cases" to mean "any case involving substantially the same parties and the same or similar issues"). *First*, Appellee has no involvement in Plaintiffs-Appellants' other collection proceedings, and thus those cases do not "involv[e] substantially the same parties." *Id.* *Second*, Plaintiffs-Appellants' other matters do not implicate "the same or similar issues" at stake in this Appeal. *Id.* Accordingly, Plaintiffs-Appellants' various collection efforts in other federal courts of appeals do not qualify as "currently pending" "related cases" under this Court's Rules.

[2] *See, e.g.*, *Rubin, et al v. Islamic Republic of Iran, et al.*, No. 14-01935 (7th Cir. 2014); *Wyatt, et al v. Francis Gates, et al.*, No. 14-03344 (7th Cir. 2014); *Levin et al. v. Bank of New York et al.*, No. 13-04711 (2d Cir. 2013) (involving Plaintiffs-Appellants Rubin, et al.); *Peterson, et al. v. Islamic Republic of Iran et al.*, No. 13-02952 (2d Cir. 2013) (involving Plaintiffs-Appellants Rubin, et al.), *petition for cert. filed*, No. 14-770 (U.S. Dec. 31, 2014); *Calderon-Cardona v. JPMorgan Chase Bank, N.A.*, No. 12-00075 (2d Cir. 2012).

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GLOSSARY

ccTLD	country-code Top-Level Domain
Department	U.S. Department of Commerce
FSIA	Foreign Sovereign Immunities Act
IP	Internet Protocol
JA	Joint Appendix
SA	Supplemental Appendix
TLD	Top-Level Domain

STATEMENT OF JURISDICTION

As explained in Section III of this brief, subject-matter jurisdiction does not exist because the alleged property at issue is immune from attachment pursuant to the Foreign Sovereign Immunities Act. *See* 28 U.S.C. § 1609.

STATEMENT OF THE ISSUES

I. Whether the country-code top-level domain names at issue constitute attachable property.

II. Whether Defendants own the country-code top-level domain names.

III. Whether the country-code top-level domain names are immune from attachment.

IV. Whether the District Court abused its discretion by declining to allow additional discovery.

V. Whether this Court should certify to the D.C. Court of Appeals the issue of whether country-code top-level domain names are attachable.

STATUTES AND REGULATIONS

Except for the statutes reproduced in the addendum to this brief, all applicable statutes are contained in the addendum accompanying the Brief for Plaintiffs-Appellants.

STATEMENT OF THE CASE

Plaintiffs-Appellants ("Appellants") hold money judgments against the

Governments of Iran, Syria, and North Korea ("Defendants"). Appellants seek to collect on these judgments by attaching certain two-letter alphabetic codes and their supporting Internet Protocol ("IP") addresses.

The Internet depends on a stable, secure, and interoperable "'world-wide network of networks…all sharing a common communications technology.'" *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1155 (9th Cir. 2007). The networks comprising the Internet communicate and locate one another through IP addresses, which are numerical sequences separated by periods—*e.g.*, "192.0.34.163." JA24.1, ¶3. An IP address—which must be unique, just like a street address or telephone number—is a numeric identifier of a particular source of data on the Internet, such as a website. *See id.*

Because it is difficult to remember long lists of numbers, the Internet's domain name system provides a human interface to the IP system by converting numeric IP addresses into more easily-remembered "domain names." The result is that Internet users can find this court's website via "cadc.uscourts.gov," rather than trying to remember a long numerical sequence.

Domain names essentially comprise the following: what comes before the last dot, and what comes after it. JA24.2, ¶4. Characters appearing *after* the last dot, such as "com," "gov," or "us," are top-level domains ("TLD"). *Id.* A TLD generally can be categorized as either a *generic* TLD, such as ".com," or a *country-*

code TLD ("ccTLD"), such as ".us." JA24.2, ¶¶4, 7; JA24.3, ¶¶9, 11. A ccTLD is a TLD with geographical significance. JA24.3, ¶11.

The part appearing just *before* the last dot is a second-level domain (such as "icann" in "icann.org"). JA24.2, ¶4. Individuals and entities can register second-level domain names within generic TLDs or ccTLDs, which are then generally used to identify websites and email addresses. *Id.* Each TLD has a registry, which is essentially a database that operates as a phone book containing the links between IP addresses and the unique second-level domain names that are registered within the TLD.

Garnishee-Appellee, the Internet Corporation for Assigned Names and Numbers ("Appellee"), is a public-benefit nonprofit corporation established to provide technical coordination for the Internet's domain name system. Appellee was created as part of a federal initiative to privatize the Internet so that no one group or government would have a right to, or responsibility over, the domain name system. JA24.2, ¶5. Appellee's mission is to protect the stability, integrity, and interoperability of the domain name system on behalf of the global Internet community. *Id.*

One way that Appellee fulfills its mission is by performing the "Internet Assigned Numbers Authority" functions, under a contract ("Contract") with the U.S. Department of Commerce ("Department"). JA24.3, ¶8. Under the Contract,

and in performing such functions, Appellee maintains the technical and administrative details of the domain name system's "Root Zone," which is used to compile an authoritative list of the Internet's TLDs. *Id.*, ¶9. The Root Zone enables computers and other devices to locate websites via domain names, by referring those devices to a list of servers that host the corresponding TLDs. *Id.* TLDs must be "delegated" or connected to the Root Zone for Internet users to access the websites found at the domain names registered in the TLDs.

Appellee's authority over the Root Zone is limited. While Appellee may recommend changes to the Root Zone—such as delegating a new TLD or re-delegating an existing TLD to another operator—the Contract prohibits Appellee from unilaterally delegating or re-delegating TLDs. Rather, the U.S. Government must approve all changes to the Root Zone. [1]

Appellee also fulfills it role by vetting and approving qualified entities for the responsibility of operating the Internet's TLDs. JA24.2, ¶7. Typically referred to as "registry operators" in relation to generic TLDs, among other things these entities manage the list of second-level domains registered within any of their given generic TLDs. *Id.* To ensure that these generic TLDs remain stable and

[1] JA24.8, ¶3; JA24.19; Supplemental Appendix ("SA") 26–27, 29–30. Unless otherwise noted, when citing to record items not included in an appendix, docket numbers correspond to *Weinstein* and page numbers correspond to the electronic-case-filing numbering.

interoperable, Appellees and registry operators enter into comprehensive contracts specifying the parties' obligations and establishing continuing channels of communication between them. JA24.3, ¶10.

Appellee's relationship with ccTLD operators, often called "ccTLD managers," is different. Appellee vets and makes recommendations to the Department regarding ccTLD managers. But, unlike generic TLD registry operators, ccTLD managers administer ccTLDs to serve specific geographically-defined communities. JA24.8, ¶4; JA24.13. Further, unlike the robust contracts Appellee has with generic TLD registry operators, for most ccTLDs with which Appellee has any written agreement, that agreement is either a relatively simple exchange of letters, or a memorandum of understanding that summarily documents the ccTLD managers' technical obligations. JA24.4–24.5, ¶13.

A ccTLD manager must have the "technical and administrative ability…to operate the domain competently" and to avoid "compromis[ing] the stability and security" of the domain name system. JA24.8, ¶4; JA24.9, ¶5; JA24.15–24.16; JA24.19–24.20. Each ccTLD manager is recorded in the Root Zone, along with administrative and technical contacts. A ccTLD manager must demonstrate that its operations will serve the interests of the country's Internet community and that involved parties and governments have considered and consent to the ccTLD manager's operations. JA24.9, ¶6; SA32–33. However, while government support

for a ccTLD manager is important, government approval of a particular ccTLD manager is not necessarily required. JA24.9, ¶6; SA32.

The ccTLD manager is essential to the proper functioning of the Internet, as demonstrated by the following explanation of the domain name system's operation: (1) a computer queries a domain-name server to determine whether it contains historical information about the IP address that corresponds to the domain name a user has entered (*e.g.*, "state.va.us"); (2) the domain name server queries the root name server to determine the location of ".us"; (3) the root name server sends that information back to the domain name server; (4) a query is submitted to the ccTLD registry; (5) the ccTLD registry provides the address for the authoritative domain name server corresponding to the desired IP address (which is then used to find the precise IP address being sought); and (6) the end user receives the desired IP address. If the ccTLD registry is not where it is supposed to be (and thus sends back no information) or does not contain up-to-date information about second-level domains (and thus sends back incorrect information), the end user receives either no information or inaccurate information.

Appellee does not have any agreement with the ccTLD managers for the ccTLDs at issue—".ir," ".sy," and ".kp" ("the Subject ccTLDs"). JA24.5, ¶¶13, 16. Nor does Appellee receive funding from the managers of the Subject ccTLDs. *Id.* Indeed, Appellee has not had any more than minimal, technical interaction

with these ccTLD managers. *Id.*, ¶¶13, 15–16.

In the proceedings below, Appellants issued to Appellee writs of attachment and subpoenas seeking to attach, and seeking documents regarding, the Subject ccTLDs and their supporting IP addresses. *See* SA45–46, ¶¶2–3.[2] In response, Appellee certified, under oath, that it does not hold any "'goods, chattels, or credits'" of Defendants; it is not "'indebted to' the [D]efendants"; it does not possess Defendants' property, money, or credits; and it has no contracts or agreements with the Subject ccTLD managers. SA46, ¶¶4, 7. In response to the subpoenas, Appellee produced 1,660 pages of documents and identified scores of publicly available documents. Mem. Opposing Pls.' Discovery Mot., D.E. 110 at 16 (Oct. 14, 2014) ("Discovery Opp'n"). Appellee then moved to quash the writs of attachment, providing numerous dispositive reasons why the writs are invalid.

Appellants obtained a six-week extension to respond to the motions to quash. Then, just three business days before their opposition was due, Appellants sought *additional* discovery and an *additional* six-month extension for their opposition. JA32–33. Appellants then filed a self-styled "Preliminary Response." JA59–61. As Appellants admit, this filing was "not even two full pages in length" and "offered no substantive analysis." Appellants' Br. 19.

[2] The writs likewise sought to attach the corresponding internationalized domain name versions of these ccTLDs—such as ".ایران," the Arabic script equivalent of "Iran."

The District Court granted Appellee's motions to quash. JA63–73. It found that "ccTLDs exist only as they are made operational by the ccTLD managers that administer the registries of second level domain names within them and by the parties that cause the ccTLDs to be listed on the root zone file." JA72. Given that ccTLDs "cannot be conceptualized apart from the services provided by these parties," the court held that "the country code Top Level Domain names at issue may not be attached in satisfaction of plaintiffs' judgments because they are not property subject to attachment under District of Columbia law." JA72, 73. The District Court also denied as moot Appellants' motion for an additional six-month discovery period.

SUMMARY OF ARGUMENT

Appellants are attempting to compel a third party to unilaterally modify the Root Zone and disrupt the operation of hundreds of thousands of domain names that benefit the citizens of Iran, Syria, and North Korea. Appellants' theory is that the Subject ccTLDs constitute attachable "goods," "chattels," or "credits" that are owned by foreign governments. However, this theory—which could apply equally to TLDs such as ".com" and ".gov"—is deeply flawed.

I. The Subject ccTLDs are not attachable property. Indeed, they are not property at all. TLDs (including ccTLDs) are used to help organize a particular subset of second-level domain names, much like zip codes are used to organize a

particular category of street addresses. Just as a zip code itself is not property (even though it can be used as a routing device to locate property), ccTLDs are not property.

Even if the Subject ccTLDs were property, they plainly are not *attachable* under D.C. law. D.C.'s attachment statute is expressly limited to "goods, chattels, and credits." D.C. Code § 16-544. The terms "goods" and "chattels" refer to *tangible* property—and Appellants concede that ccTLDs are *not* tangible property. Nor are ccTLDs "credits." Equally important, ccTLDs are not attachable because, as the District Court found, they are inextricably bound up with services performed by ccTLD managers. Appellants seek to seize the right and duty to provide a complex array of services necessary to operate ccTLDs in specific regions of the world—even though they lack the technical capabilities to properly do so. However, just as a party may not attach an attorney's contract to provide legal services, Appellants may not seize the right and duty to operate the Subject ccTLDs.

II. Even if the Subject ccTLDs were attachable property, Defendants do not own them—any more than a city or neighborhood owns a zip code. No Defendant purchased the Subject ccTLDs assigned to its country; there is no established procedure authorizing Defendants to sell the Subject ccTLDs; and Defendants do not possess the power to determine which entities will operate the Subject ccTLDs.

III. In any event, even if, as Appellants claim, the Subject ccTLDs were attachable property owned by Defendants—which they are not—Appellants' suit would be barred by the Foreign Sovereign Immunities Act ("FSIA"). FSIA makes clear that parties may not attach property owned by foreign sovereigns unless a specific FSIA exception applies. Here, Appellants have forfeited their argument that any specific exception applies and also have not carried their burden of proof.

IV. The District Court did not abuse its discretion in declining to permit additional discovery. The discovery that had already occurred was more than sufficient. Moreover, Appellants had ample opportunity to seek additional discovery in a timely manner, if needed. Instead, they obtained a six-week extension for responding to the motions to quash, then waited until three business days before the extended due date to request further discovery and an additional six-month delay. The District Court acted well within its discretion in rejecting this gamesmanship.

V. This Court should not certify the attachment question to the D.C. Court of Appeals. It should resolve the present appeals based on threshold federal questions. Alternatively, the D.C. Code's plain language and D.C. Court of Appeals decisions provide a discernible path to resolution of this case without referral to the D.C. Court of Appeals.

ARGUMENT

I. THE SUBJECT ccTLDs ARE NOT ATTACHABLE PROPERTY.

ccTLDs are not property, any more so than is a zip code. Furthermore, even if ccTLDs were deemed to be property, the District Court correctly held that they are not *attachable* property under D.C. law. Moreover, the District Court's factual findings are not clearly erroneous and, therefore, must be upheld by this Court. *Draim v. Virtual Geosatellite Holdings, Inc.*, 522 F.3d 452, 455 n.3 (D.C. Cir. 2008). Indeed, if ccTLDs were attachable, then so too would be generic TLDs like ".com" or ".gov." That concept, however, would wreak havoc on the Internet and violate basic principles of attachment law.

A. The Subject ccTLDs Are Not Property.

As a general rule, "three criteria must be met before the law will recognize a property right: First, there must be an interest capable of precise definition; second, it must be capable of exclusive possession or control; and third, the putative owner must have established a legitimate claim to exclusivity." *G.S. Rasmussen & Assocs., Inc. v. Kalitta Flying Serv., Inc.*, 958 F.2d 896, 902–03 (9th Cir. 1992); *see Klebanoff v. Mut. Life Ins. Co.*, 246 F. Supp. 935, 946 (D. Conn. 1965); *In re iPhone App. Litig.*, 844 F. Supp. 2d 1040, 1075 (N.D. Cal. 2012). Appellants have not established, because they cannot establish, that a ccTLD satisfies these requirements.

To begin with, a ccTLD is not an interest capable of precise definition, because it is always in flux. A ccTLD registry essentially is a database that provides routing and administrative services for second-level domain names registered by organizations and individuals within that ccTLD. *See infra* at § I.B.2. Second-level domain names are constantly leaving and joining ccTLDs, causing the recipients of the ccTLD services to shift from moment to moment. To illustrate: On any given day, some new websites will be registered under the ".us" ccTLD, just as some old ones will be deleted. Thus, the ".us" ccTLD provides routing and administrative services to one collection of second-level domain names today, but to a different collection of second-level domain names tomorrow. A ccTLD (such as ".us") is not an interest "capable of precise definition" because, at a minimum, a ccTLD does not entail the provision of services to a fixed group of recipients.

No less important, Defendants have no "legitimate claim" to exclusive authority over ccTLDs. Authoritative Internet protocol standards declare that "[c]oncerns about 'rights' and 'ownership' of domains are inappropriate"; instead, "[i]t is appropriate to be concerned about 'responsibilities' and 'service' to the community." JA24.8, ¶4; JA24.15. Additionally, numerous governments, including the U.S. Government, agree that "[n]o private intellectual or other property rights should inhere in the ccTLD itself." JA24.9, ¶13; JA24.23, § 4.2; *see also* JA 24.10, ¶14; SA41, ¶9.1.3. Consequently, Defendants do not have a

"legitimate claim" to exclusive control over the Subject ccTLDs, nor have Appellants established that Defendants have ever asserted such a claim.

Instead, ccTLDs are analogous to zip codes. Just as a zip code identifies a collection of addresses located in a particular part of the country, so too a ccTLD identifies a collection of second-level domain names located in a particular part of the Internet. Just as new homeowners may move in or out of a given zip code, so too new second-level domain names may move in or out of a given ccTLD. And just as a zip code facilitates the routing of mail, so too a ccTLD facilitates the routing of Internet traffic. Yet zip codes are not property, because they are incapable of precise definition and because nobody has a legitimate claim to exclusive control over them. *See In re iPhone App. Litig.*, 844 F. Supp. 2d at 1075 ("personal information"—*e.g.*, a user's location or zip code—is not property because it is not "an interest capable of precise definition"); *cf. In re StarNet, Inc.*, 355 F.3d 634, 637 (7th Cir. 2004) ("No one has a property interest in a phone number."). Likewise for ccTLDs. It makes no more sense to say that ".ir" is the property of Iran than it does to say that "20001" is the property of Washington, D.C.

Appellants nevertheless assert that ccTLDs "are monetizable and have indeed been monetized." Appellants' Br. 41. Their brief, however, provides no support for this contention. To the contrary, there is, in fact, no established market

within which ccTLDs are purchased and sold. As demonstrated by documents on which Appellants previously relied (but not in their opening brief), the ccTLDs to which Appellants are apparently referring were *not* sold; rather, the *entities* that served as ccTLD managers were acquired by other entities.[3] This distinction is both important and obvious: One company's acquisition of another company that serves as a ccTLD manager does not mean that the acquiring company *owns* a ccTLD any more than AT&T owns an area code or the United Parcel Service owns a zip code. The absence of an established market for ccTLDs reflects the fact that, as explained below, ccTLDs have no intrinsic value because they lack functional utility in the absence of routing and administrative services provided by ccTLD managers and members of the Internet technical community. *See infra* at § I.B.2.

B. Even if the Subject ccTLDs Constitute Property, They Are Not *Attachable* Property.

Even if the Subject ccTLDs were property (which they are not), they are not subject to attachment under D.C. law. D.C.'s attachment statute is limited to "goods, chattels, and credits." D.C. Code § 16-544. ccTLDs do not fall into any of these categories. Moreover, D.C. law and common sense make clear that property that is inextricably intertwined with the duty to provide a complex array of services is not subject to attachment.

[3] JA54, ¶6(f); SA54–56, 66.

1. ccTLDs are not attachable because they are not "goods," "chattels," or "credits."

The "'weight of authority clearly favors a strict construction of attachment statutes.'" *Heiser v. Islamic Rep. of Iran*, 735 F.3d 934, 939 (D.C. Cir. 2013) (quoting *Rieffer v. Home Indem. Co.*, 61 A.2d 26, 27 (D.C. 1948), *modified on other grounds*, 62 A.2d 371 (D.C. 1948)). Here, under D.C. law, attachment proceedings must be directed at a "judgment debtor's goods, chattels, and credits." D.C. Code § 16-544. However, ccTLDs do not fall within any of these categories.

a. ccTLDs are not "goods" or "chattels."

Section 16-544's reference to "goods" and "chattels" is limited to *tangible* personal property. The D.C. Commercial Code, for example, provides that the term "'[g]oods'" "means all things…which are *movable* at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities[,]…and things in action." D.C. Code § 28:2-105(1) (emphasis added). It further provides that the term "includes the unborn young of animals and growing crops and other identified things attached to realty." D.C. Code § 28:2-105(1). This is in accord with the ordinary understanding of that term, which is defined as "[t]angible or movable personal property other than money; esp., articles of trade or items of merchandise." Black's Law Dictionary (10th ed. 2014). It is also in accord with other states' provisions, which likewise define "'goods'" as encompassing "'movable'" (*i.e.*, tangible) property. *See, e.g.*, *Miles*

Labs., Inc. v. Doe, 556 A.2d 1107, 1123 (Md. 1989); *Gall v. Allegheny Cnty. Health Dep't*, 555 A.2d 786, 789 (Pa. 1989).

The plain meaning of the term "chattels" is similar. As demonstrated by a host of dictionary definitions—including definitions written at or shortly before the time of the statute's enactment—the term "chattel" encompasses tangible personal property that is movable or transferable, as well as interests or rights in land other than a freehold. Funk & Wagnalls, Standard College Dictionary 231 (1963) (defining "chattel" as "[a]n article of personal property," "a movable," or, in the case of a "chattel real," "[a]ny interest or right in land less than a freehold"); *see also* Black's Law Dictionary 299 (4th ed. 1957) (explaining that "[t]hings which in law are deemed personal property…are divisible into chattels real and chattels personal"; defining "[p]ersonal [c]hattels," in turn, as "[m]ovable things" and "[e]vidences of debt"); Black's Law Dictionary (10th ed. 2014) (defining "chattel" as "[m]ovable or transferable property; personal property; esp., a physical object capable of manual delivery and not the subject matter of real property"). Thus, chattels that do not involve rights in land must be "movable."[4]

[4] Appellants rely on Black's Law Dictionary (8th ed. 2004), *see* Appellants' Br. 24, which reads: "Loosely, personal property of any kind; occasionally, tangible personal property only." That definition offers Appellants little, if any, help. It states that "goods and chattels" can (as Appellee contends) mean "tangible personal property only," and it makes clear that the term refers to personal property of any kind only "[l]oosely." The "loose[]" definition of a term, however, carries

Consistent with the above definitions, numerous cases—including a D.C. Court of Appeals case decided subsequent to the D.C. Circuit decisions that Appellants cite—confirm that "goods" and "chattels" should be read together to mean "'tangible personal property.'" *See Dist. of Columbia v. Estate of Parsons*, 590 A.2d 133, 137 (D.C. 1991); *First Nat'l Bank of Richmond v. Holland*, 39 S.E. 126, 129–30 (Va. 1901) (explaining that the phrase "goods and chattels" is "always [used] in the limited sense of visible, tangible, movable personal chattels…deliverable in specie" and that the words "goods or chattels" or "goods and chattels" "in every instance, are limited in meaning to corporeal personal property"); *Steuart v. Chappell*, 57 A. 17, 20 (Md. 1904).

Here, ccTLDs plainly do not constitute tangible property. The term "tangible" refers to property that has "'or possess[es] physical form'" and is "'capable of being touched and seen.'" *Pennsylvania & W. Va. Supply Corp. v. Rose*, 368 S.E.2d 101, 104 (W. Va. 1988). ccTLDs are not "capable of being touched and seen," *id.*, and are therefore not tangible, as Appellants concede.

(continued…)

little weight. *Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870, 881 (2014). Moreover, the wide array of dictionary definitions discussed in this brief greatly outweighs Appellants' citation to one dictionary definition that was written four decades after the relevant statute's enactment.

Appellants' Br. 35; *see also id.* at 21, 23, 46, 47. Accordingly, ccTLDs are not attachable "goods" or "chattels" under Section 16-544.

b. ccTLDs are not "credits."

A "credit" is a monetary obligation that a garnishee owes a debtor. In *Hoffman Chevrolet, Inc. v. Wash. Cnty. Nat'l Sav. Bank*, 467 A.2d 758 (Md. 1983), the court held that "the proper meaning of the term credit as it is used in the attachment statute" is "a monetary obligation that the garnishee owes the debtor," which is a "'term of universal application to obligations due and to become due.'" *Id.* at 761 (citations omitted); *see also State v. Hudson*, 117 S.E. 122, 123 (W. Va. 1923). The dictionary definition of "credit" is similar: "the balance in one's favor" in an account or "[a]n amount placed by a bank at a customer's disposal, against which he may draw." Standard College Dictionary, *supra*, at 316; *see* Black's Law Dictionary (4th ed. 1957). Here, ccTLDs are plainly not credits.

c. Appellants' argument that D.C.'s attachment statute applies to intangible property is wrong.

Appellants claim that the "governing statute, D.C. Code § 16-544, has long been interpreted to permit the garnishment of intangible and incorporeal assets." Appellants' Br. 21. However, the two cases upon which Appellants rely do not support their position; in fact, they do not even address Section 16-544.

First, Appellants cite *Rowe v. Colpoys*, 137 F.2d 249 (D.C. Cir. 1943), for the proposition that "§ 16-544…has been interpreted by this Court to reach even

'intangible or incorporeal interests.'" Appellants' Br. 25. Yet *Rowe* did not interpret Section 16-544 at all, much less interpret it to extend to "'intangible or incorporeal interests.'" *Rowe*, which was decided before Section 16-544 was even enacted, concerned the execution of a judgment of the Municipal Court of the District of Columbia. 137 F.2d at 249. Apart from excluding levies on real estate, "[t]he Code section which provide[d] for executions issued on judgments of the Municipal Court *[did] not specify the subjects of levy*." *Id.* at 250 (emphasis added). *Rowe*, rather, involved a "common law [rule] which forb[ade] a levy upon licenses." *Id.* at 251. However, because the rule "was confined…to non-transferable licenses," *Rowe* concluded that transferable alcohol licenses were attachable, even though they were "intangible or incorporeal." *Id.* *Rowe* has no bearing on the case at hand. Unlike *Rowe*, the present case concerns the interpretation of a statute, not a common-law rule. Furthermore, unlike *Rowe*, the statute at issue here *does* "specify the subjects" of attachment—namely, "goods, chattels, and credits." As explained above, Section 16-544 must be strictly construed pursuant to well-established canons of construction and, as so construed, it is limited to tangible personal property.

Second, Appellants claim that *Goldberg v. Southern Builders*, 184 F.2d 345, 348 (D.C. 1950), "discuss[ed] attachment of intangible property in the form of debts." Appellants' Br. 24. Even if that were an accurate description of *Goldberg*

(which it is not), *Goldberg* would be irrelevant: ccTLDs are not "debts." Despite Appellants' claim to the contrary, the only issue at hand in *Goldberg* was whether a corporation "[could] be served with process and made amenable to the jurisdiction of [D.C.] courts." *Id.* at 345. That jurisdictional issue has no relevance here. Appellants' claim that *Goldberg* "discuss[ed]" attachment of debts presumably rests on the following passage: "[I]f there be a law of the state providing for the attachment of the debt, then, if the garnishee be found in that state, and process be personally served upon him therein,…the court thereby acquires jurisdiction over him, and can garnish the debt." *Id.* at 348. This "discuss[ion]" of what would happen "*if*" a state provides for the attachment of debts says nothing about whether D.C. *does* provide for the attachment of debts, let alone whether it provides for the attachment of *other* kinds of interests. Accordingly, *Goldberg* is irrelevant.

Finally, Appellants' argument that attachable property encompasses "any kind of personal property of the judgment debtor," Appellants' Br. 23, completely disregards the statutory text. In Appellants' view, a statute whose title is "[p]roperty subject to attachment" (D.C. Code § 16-544) includes "any kind of personal property" (Appellants' Br. 23). However, if the legislators had *that* meaning in mind, there would have been no reason to use the narrower terms "goods, chattels, and credits" within the statute. *See BedRoc Ltd. v. United States*,

541 U.S. 176, 183 (2004); *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003); *Echostar Satellite LLC v. FCC*, 704 F.3d 992, 999 (D.C. Cir. 2013). Additionally, if, as Appellants suggest, the phrase "goods and chattels" encompasses all personal property, then the term "credits" would be superfluous. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (if possible, a statute should be construed so that "'no…word shall be superfluous'").

2. The Subject ccTLDs are not attachable property because they are inextricably bound up with the provision of services.

Even if ccTLDs could somehow be considered "goods," "chattels," or "credits" (which they are not), they are still not attachable property because ccTLDs are inextricably intertwined with the provision of services. It is established law that a judgment debtor may not attach a services contract because a services contract comes with duties and obligations, and it would be inappropriate to allow a third party to step into the shoes of a contractual party. Nonetheless, Appellants are seeking to attach ccTLDs, which have no value *apart from* the duties that come with managing a ccTLD.

a. Property that is inextricably intertwined with the provision of services is not attachable.

Whether something is attachable under D.C. law depends upon whether it is (or is bound to) a services contract. "'[W]here the property is in the form of a contract right, the judgment creditor does not "step into the shoes" of the judgment

debtor and become a party to the contract….'" *Network Solutions, Inc. v. Umbro Int'l, Inc.*, 529 S.E.2d 80, 88 (Va. 2000) (quoting *United States v. Harkins Builders, Inc.*, 45 F.3d 830, 833 (4th Cir. 1995)); *Sykes v. Beal*, 392 F. Supp. 1089, 1095–96 (D. Conn. 1975) (contractual "right to performance of personal services" is not attachable); *Shpritz v. District of Columbia*, 393 A.2d 68 (D.C. 1978).

The well-established rule that services contracts are not attachable makes perfect sense: If a judgment creditor could use a writ of attachment to insert itself into a services contract, it would have a highly disruptive effect on existing contractual relationships. Imagine, for example, a wrongfully-terminated lawyer who obtains a judgment against his former law firm, and who then seeks to attach that law firm's services contract with a longstanding client. Or, to take another example, "a right to the services of a valet may not be a basis for garnishment, for the valet cannot be made to serve one with whom he has not contracted." *Sykes*, 392 F. Supp. at 1095–96. Likewise, the Virginia Supreme Court has explained that "if a satellite television customer prepaid the fee for a particular channel subscription," it would be improper to "allow garnishment of the subscription service" and permit another company to provide that service. *Umbro*, 529 S.E. 2d at 87.

Like services contracts themselves, rights that are inextricably bound to services contracts are not attachable. In such circumstances, payment is contingent

upon the performance of services by a particular party and attachment is improper. "'[T]he rule is well settled that money payable upon a contingency or condition is not subject to garnishment until the contingency has happened or the condition has been fulfilled.'" *Cummings General Tire Co. v. Volpe Constr. Co.*, 230 A.2d 712, 713 (D.C. 1967). This rule is "particularly" relevant "in contract situations where payment…is conditioned on the completion of the contract work." *Id.* In such situations, the "'existence and amount'" of any debt are "'contingent and uncertain'" and, therefore, there is no garnishable property. *Id.* (quoting *United States Fidelity & Guaranty Co. v. Wrenn*, 89 F.2d 838, 841 (1937)). Applying this rule in *Cummings*, the D.C. Court of Appeals held that money relating to a services contract was not garnishable because the defendant did not owe the garnishee any money until the contract work had been completed. *Id.*

Other decisions have further underscored the black-letter D.C. rule that services contracts (or rights relating thereto) are "not subject to garnishment," even in some circumstances where services have already been performed. In *Shpritz*, for example, the D.C. Court of Appeals held that money allegedly due under a services contract was not garnishable, even though the "services had been rendered" and the invoices had already been submitted. 393 A.2d at 69–70 (money allegedly due under services contract was not subject to levy because the recipient of the services had not "approved the services" performed); *see also, e.g.*, *Wrenn*, 89 F.2d

at 840–41 (unearned rent, which was a "contingent liability," could not be garnished); 6 Am. Jur. 2d Attachment and Garnishment §§ 98, 100.

b. ccTLDs are not attachable because they are inextricably intertwined with services.

Here, as the District Court found, ccTLDs are not attachable because they are inextricably intertwined with services provided by ccTLD managers. JA72; Appellants' Br. 20 (District Court made "an affirmative finding" that ccTLDs have value only because they are operated by ccTLD managers and are connected to computers through the Root Zone).

ccTLDs essentially are databases that are bound up with routing and administrative services for second-level domain names registered by organizations and individuals within those ccTLDs. ccTLDs exist only if ccTLD managers perform services that make them operational. In other words, when a second-level domain is created or transferred, a ccTLD manager updates the registry that functions as the address book for the ccTLD. ccTLD managers also perform routing services that aid Internet users in finding websites associated with the ccTLD. Without all of these services, the ccTLD itself would be a meaningless string of letters.

Thus, if Appellee were forced to re-delegate the Subject ccTLDs to Appellants (which Appellee does not have the authority to do), then Appellants would step into the shoes of existing ccTLD managers that are providing, among

other things, highly-technical services to second-level domain name registrants within the Subject ccTLDs. Moreover, in so doing, Appellants would directly affect other entities responsible for administering the domain name system. Specifically, entities responsible for the Root Zone also perform services that are essential for a ccTLD to have any value: Appellee maintains the technical and administrative details of the Root Zone and makes recommendations about adding, or changing information about, TLDs in the Root Zone; the Department determines whether to approve such recommendations; and yet another entity, which serves as the maintainer of the Root Zone, edits the Root Zone. Simply put, ccTLDs are inextricably bound up with the services necessary to operate the Internet's domain name system.

It is, therefore, unsurprising that this Court previously concluded that an entity serving as the "exclusive registry and exclusive registrar for the '.com,' '.org,' '.net,' and '.edu' top-level domains" was engaged in the provision of "services." *Thomas v. Network Solutions*, 176 F.3d 500, 505 (D.C. Cir. 1999). In *Thomas*, this Court analyzed the lawfulness of "the above-cost portion of the fees Network Solutions charged for its [domain name] registration and renewal services" pursuant to a federal contract. *Id.* at 510, 511. The Court then held that "the Independent Offices Appropriations Act does not cover the fees Network Solutions charged for its services." *Id.* In so doing, this Court characterized the functions

performed by a TLD operator as "services" no less than *ten* times. *See id.* at 503–511; *see also Thomas v. Nat'l Sci. Found.*, 330 F.3d 486, 488–89 (D.C. Cir. 2003).

This Court's decisions in the *Thomas* litigation comport with *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980 (9th Cir. 1999). In analyzing whether the routing of domain names within the ".com" TLD constitutes a "product" or a "service," the Ninth Circuit ruled that it falls "squarely on the 'service' side of the product/service distinction." *Id.* at 984; *id.* at 985 (a TLD manager's "routing service is just that—a service"). As the court correctly analogized, the "role" played by the manager of the ".com" TLD "differs little from that of the United States Postal Service: when an Internet user enters a domain name combination, [the manager] translates the domain name combination to the registrant's IP address and routes the information or command to the corresponding computer." *Id.* at 984–85.

In short, it is indisputable that ccTLDs are inextricably bound up with the services necessary to operate the Internet's domain name system. If, as Appellants contend, they are entitled to attach ccTLDs, then Internet users across the world will be subject to Appellants' skill and judgment (or lack thereof) in operating them. That is precisely why the rule against attaching services is intended to prevent such a scenario—the innocent recipient of services should not be forced into an ongoing relationship with an entity that may or may not be qualified to

perform them.

c. Numerous courts have concluded that second-level domain names are not attachable property.

Consistent with the principles discussed above, numerous judicial decisions have concluded that even second-level domain names are not attachable property. Thus, top-level domains cannot possibly be attachable.

In *Network Solutions, Inc. v. Umbro Int'l, Inc.*, 529 S.E.2d 80 (Va. 2000), the Virginia Supreme Court ruled that second-level domain names are not garnishable. *Id.* at 86–87. There, a judgment debtor sought to garnish twenty-nine domain names. *Id.* at 81 n.2. In rejecting this, the court explained that "a domain name registrant acquires the contractual right to use a unique domain name for a specified period of time," but that this "contractual right is inextricably bound to the domain name services that [the registrar] provides." *Id.* at 86. Those "services" include "compar[ing] applications with a database of existing domain names to prevent the registration of identical second-level domain names," as well as the "match[ing of] the domain name to the corresponding IP number for the desired Web site." *Id.* at 84. In other words, whatever contractual rights a judgment debtor may have in a domain name, "those rights do not exist separate and apart from [the registrar's] services that make the domain names operational Internet addresses." *Id.* at 86. Accordingly, the court found that a second-level domain name registration is a services contract that "is not subject to garnishment." *Id.* As

the *Umbro* court observed: "If we allow the garnishment of [Network Solutions'] services in this case because those services create a contractual right to use a domain name, we believe that practically any service would be garnishable." *Id*. at 86–87.

Likewise, in *Dorer v. Arel*, 60 F. Supp. 2d 558, 560–61 (E.D. Va. 1999), the plaintiff sought to enforce a default judgment against a second-level domain name ("writeword.com") under a writ of *fieri facias*. The court ruled, however, that "there are several reasons to doubt that domain names should be treated as personal property subject to judgment liens"—and chief among these reasons is the fact that a second-level "domain name registration is the product of a contract for services between the registrar and registrant." *Id.* at 560–61; *see also Size, Inc. v. Network Solutions, Inc.*, 255 F. Supp. 2d 568, 573 (E.D. Va. 2003).[5]

As these cases show, even second-level domain names are not attachable. It follows that TLDs cannot possibly be attachable. Whereas a second-level domain name might be analogized to a trade name, the same cannot be said of top-level domain names like ".com," ".gov," or ".us". Moreover, even if a second-level

[5] *See also, e.g.*, *Alexandria Surveys Int'l, LLC v. Alexandria Consulting Grp., LLC*, 500 B.R. 817, 821–22 (E.D. Va. 2013); *Wornow v. Register.Com, Inc.*, 778 N.Y.S.2d 25, 26 (App. Div. 2004); *Cable News Network L.P. v. CNNews.com*, 162 F. Supp. 2d 484, 492 n.22 (E.D. Va. 2001); *Wash. Speakers Bureau, Inc., v. Leading Auths., Inc.*, 49 F. Supp. 2d 496, 498 (E.D. Va. 1999); *cf. Harkins Builders*, 45 F.3d at 833, 835.

domain name could be conceptualized to be a mix of a property right and a services contract, a ccTLD cannot, since the latter is completely bound up with technical and administrative services that permit the operation of second-level domain names within that ccTLD. *See supra* at § I.B.2.b. Additionally, although an entity or individual may easily obtain a contractual right to operate a second-level domain name by contracting with a registrar, the standards and technical expertise required for operating a ccTLD are much more rigorous. Indeed, entities may or may not be able to act as a ccTLD manager depending on availability, technical abilities, and other specific criteria. Thus, the cases involving second-level domain names confirm that it cannot possibly be the case the top-level domains are attachable property.

d. The cases that Appellants cite are readily distinguishable.

Appellants rely on cases interpreting the laws of Minnesota and California, and they insist that the Virginia Supreme Court's decision in *Umbro* is materially distinguishable. For the reasons discussed below, however, Appellants' arguments miss the mark.

i. *Umbro* is squarely on point.

Appellants' efforts to distinguish *Umbro* are unpersuasive. *First*, Appellants attempt to distinguish the Virginia statutes by pointing out that "the Virginia statutes do not reach the 'credits' of the judgment debtor while § 16-544 does."

Appellants' Br. 29. This is irrelevant because there is no colorable argument that ccTLDs are "credits." *Second*, Appellants argue that Virginia has a "strict construction requirement" that "make[s] *Umbro* a poor choice for guidance as to the law of any other jurisdiction." Appellants' Br. 31. However, the same strict-construction rule applies here. Indeed, this Court recently relied on a D.C. Court of Appeals case to underscore this strict-construction rule in a case where judgment creditors sought to recover Iran's alleged "property." *Heiser*, 735 F.3d at 939 (quoting *Rieffer*, 61 A.2d at 27). *Third*, as *Umbro* noted, one statutory provision at issue there referred to "'a liability,'" and several other provisions referred to "goods and chattels." *Umbro*, 529 S.E.2d at 85. Those terms are a far closer match to the D.C. statute than the statutory terms of the California and Minnesota statutes discussed below.

ii. *Sprinkler Warehouse* is distinguishable.

Appellants rely on *Sprinkler Warehouse, Inc. v. Systematic Rain, Inc.*, 859 N.W.2d 527 (Minn. Ct. App. 2015), a Minnesota case that held that the "gplawn.com" second-level domain name and website were attachable property. This case is plainly distinguishable.[6]

First, the Minnesota statute subjects to garnishment "'*all*' nonexempt

[6] An intermediate court decided *Sprinkler Warehouse* and the Minnesota Supreme Court subsequently granted review, which suggests that the decision might be overturned.

property, *whether intangible or tangible*, of '*any* kind.'" *Id.* at 532 (emphases added) (quoting Minn. Stat. § 571.73, subd. 3). Such expansive statutory language—which expressly encompasses property that is "intangible or tangible"—is much broader than the D.C. statute's reference to "goods, chattels, and credits" (D.C. Code § 16-544) and *confirms* that the very different language used in D.C.'s statute has a significantly narrower meaning.

Second, *Sprinkler Warehouse* involved a *second-level* domain name, not a ccTLD. For the reasons discussed above, even if a second-level domain name is attachable, there are a host of reasons why TLDs are not attachable. Moreover, courts with a closer relationship to D.C. have held that second-level domain names are not attachable.

iii. The California cases Appellants cite are likewise distinguishable.

Contrary to Appellants' contention, the Ninth Circuit's applications of California law in *Kremen v. Cohen*, 337 F.3d 1024 (9th Cir. 2003), and *Office Depot, Inc. v. Zuccarini*, 596 F.3d 696 (9th Cir. 2010), are irrelevant for largely the same reasons. *First*, *Kremen* did not even address attachment issues. Instead, the court evaluated the narrow issue of whether a domain name was property subject to conversion under California law. 337 F.3d at 1029–1036. Thus, the finding in *Kremen* that some intangible property right might exist in a second-level domain name is irrelevant to the issue of whether those rights may be attached. *Second*,

the California statutes at issue in *Office Depot* are distinguishable because they authorize attachment of "'*all* property,'" whereas here, the D.C. statute specifically refers to only a subset of property constituting "goods, chattels, and credits." *See, e.g.*, *Office Depot*, 596 F.3d at 701 (emphasis added); Cal. Civ. Proc. Code §§ 695.010(a), 699.710. *Third*, these two cases involved second-level domain names, not ccTLDs. *Kremen*, 337 F.3d at 1030–33; *Office Depot*, 596 F.3d at 698. As explained above, even if a second-level domain name is attachable, TLDs are not. *Fourth*, inasmuch as *Office Depot* merely adopts *Kremen*'s conclusion without additional analysis (*Office Depot*, 596 F.3d at 701–02), it adds nothing to Appellants' argument.

3. The Subject ccTLDs cannot be attached because Appellee cannot transfer them unilaterally or even at Defendants' behest.

Two related principles of attachment law confirm that ccTLDs are not attachable. These principles are significant because "'statutes,'" such as D.C.'s attachment statute, "'should be interpreted consistently with the common law.'" *Heiser*, 735 F.3d at 938.

First, a "general test frequently applied to determine whether particular property may be attached or garnished is whether it is such property as can be lawfully assigned or sold." 6 Am. Jur. 2d Attachment and Garnishment § 69; *see Rochford v. Laser*, 91 Ill. App. 3d 769, 774–75 (Ill. Ct. App. 1980); *E-Systems, Inc.*

v. Islamic Rep. of Iran, 491 F. Supp. 1294, 1299 (N.D. Tex. 1980); *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 313 F.3d 70, 83 (2d Cir. 2002). Here, this principle is dispositive. Appellee does not possess the Subject ccTLDs such that it could transfer or assign them to Appellants (or anyone else). Appellee lacks the unilateral authority or capability to transfer or re-delegate any TLD, let alone the Subject ccTLDs. Under Appellee's contract with the Department, Appellee may recommend re-delegation of a ccTLD to a new manager only for specified technical or ministerial reasons. Under that contract, as well as published rules and procedures, the *only* way that the Subject ccTLDs could be re-delegated starts with a process by which Appellee investigates the merits and feasibility of a proposed re-delegation and the qualifications of the proposed new ccTLD manager. JA24.8, ¶3; SA26 (§ C.2.9.2.a). Appellee must then recommend the proposed re-delegation to the Department, which decides whether to approve it. SA26, SA29–30 (§§ C.2.9.2.a, C.8.1). Finally, if approved, the Department must then authorize the steps needed to implement the re-delegation. *Id.*[7] Thus, Appellee does not have the authority or technical ability to effectuate the "transfer" Appellants seek. *See GlobalSantaFe Corp. v.*

[7] Although the Department has asked Appellee to convene stakeholders to try to develop a proposal to transition this role for the Department to evaluate, the Department's role remains unchanged to date.

Globalsantafe.com, 250 F. Supp. 2d 610, 620 (E.D. Va. 2003); *Office Depot*, 596 F.3d at 699.

Second, "'a judgment creditor cannot acquire more property rights in a property than those already held by the judgment debtor.'" *Heiser*, 735 F.3d at 938; *see also Zink v. Black Star Line, Inc.*, 18 F.2d 156, 157 (D.C. Cir. 1927); *Phillips v. Sugrue*, 886 F. Supp. 63, 64 (D.D.C. 1995); *Umbro*, 529 S.E.2d at 85. Specifically, a judgment creditor cannot use a garnishment action as a way to compel a property transfer if the judgment debtor itself could not force the transfer in the absence of garnishment. This principle is (separately and independently) dispositive here. Appellants are seeking to force Appellee to make a transfer that Defendants could not force Appellee to perform. Allowing Appellants to obtain rights in alleged "property" that exceed the rights held by Defendants would violate a cardinal rule of attachment law.

C. Appellants' Position Would Wreak Havoc on the Domain Name System.

Finally, forced re-delegation of the Subject ccTLDs would be improper because it would wreak havoc on the domain name system. Handing over the Subject ccTLDs to unqualified and unprepared ccTLD managers, who might be unable or unwilling to manage a ccTLD in the public interest, would jeopardize the reliable functioning of the Subject ccTLDs. A ccTLD registry is the "phone book" for the second-level domains that fall within that ccTLD. If an untested ccTLD

manager inadequately performs functions relating to the phone book, Internet users will be unable to access websites within that particular ccTLD.

Worse yet, any holding that ccTLDs are attachable likely would also be used by others to argue that generic TLDs such as ".gov" and ".com" could be attached. The implication of Appellants' theory arguably would be that ".gov," which is administrated by the U.S. Government—or, specifically, the U.S. General Services Administration—could be attached and transferred for operation by another entity. Similarly, Appellants or others presumably could assert that ".com"—which is operated by a private entity, Verisign, pursuant to an agreement with Appellee—could be attached and transferred to another entity. Following along this theoretical line, a court order compelling the hand-over of these TLDs to judgment creditors could have drastic consequences. For example, a new administrator of ".gov" might allow non-government entities or non-U.S. entities to register their websites within the ".gov" domain, leading to confusion about whether a particular ".gov" website relates to a U.S. governmental entity. Moreover, the new administrator could undermine users' ability to access websites by interfering with the ".gov" address directory. Likewise, a court order attaching ".com" would undermine the existing arrangement between Appellee and Verisign, thereby threatening the stability of ".com" websites and the hundreds of millions of business transactions that depend on them. These possibilities are avoided by

simply recognizing, as the District Court did below, that these top-level domain names are not attachable property.

Attachment is also inappropriate where it would effectively destroy the property's economic value or upset existing contractual arrangements. *See North v. Peters*, 138 U.S. 271 (1891); *Mac Panel Co. v. Virginia Panel Corp.*, 283 F.3d 622, 626 (4th Cir. 2002); 6 Am. Jur. Attachment and Garnishment §§ 438, 486; *Granite Constr. Co. v. United States*, 962 F.2d 998, 1007 (Fed. Cir. 1992); *Fortune v. Evans*, 58 A.2d 919, 920 (D.C. 1948). Here, forced re-delegation of the Subject ccTLDs would violate this principle. As discussed above, Appellee cannot unilaterally re-delegate ccTLDs; thus, if granted, the writs of attachment would force Appellee to re-delegate in violation of its contract with the Department. Moreover, by wiping out the hundreds of thousands of domain name registrations in the Subject ccTLDs, forced re-delegation would destroy whatever value may exist in the ccTLDs.

II. DEFENDANTS DO NOT OWN THE SUBJECT ccTLDs.

"'[A] judgment creditor cannot acquire more property rights in a property than those already held by the judgment debtor.'" *Heiser*, 735 F.3d at 938; *see also id.* at 938–941; 6 Am. Jur. 2d Attachment and Garnishment § 70. Here, even if the Subject ccTLDs are property (which they are not), they certainly are not owned by Defendants or anyone else—and this is another fatal blow to Appellants'

writs of attachment.

No Defendant purchased the ccTLDs, and there is no established procedure authorizing Defendants to sell the ccTLDs. Nor do Defendants possess sole power to control which entities will operate the ccTLDs. JA24.9, ¶6; SA32. In fact, Defendants lack the power to order Appellee or any other entity to take *any* actions regarding the ccTLDs, which are "operated in trust in the public interest." JA24.10, ¶14; SA41, ¶9.1.3; *see also* JA24.9, ¶13; JA24.23, § 4.2; JA24.26, § 9.1.4.

Moreover, "[g]eneral principles of property law require that a property owner have the legal right to exclude others from use and enjoyment of that property." *Alderson v. United States*, 686 F.3d 791, 796 (9th Cir. 2012); *see Kaiser Aetna v. United States*, 444 U.S. 164, 179–180 & n.11 (1979). Countries do not have the sole authority to exclude or select ccTLD managers. Appellants cannot point to a contract, agreement, treaty, statute, or court case providing Defendants with a legal right to decide what entity manages, or in other words can use and enjoy, these ccTLDs. Nor can Appellants point to any evidence indicating that Defendants even have attempted to assert such a legal right.

Other established principles further refute the notion that a foreign state owns the ccTLD with which it is geographically associated. In 2000, an independent group of governments agreed that "[n]o private intellectual or *other property rights* should inhere in the ccTLD itself." JA24.9, ¶13; JA24.23, § 4.2.

The principles recognized by this group describe the governments' role as "represent[ing] the interests of the people of the county or territory for which the ccTLD has been delegated," JA24.24, § 5.1, maintaining "responsibility for public policy objectives" and "ultimate policy authority," *id*., § 5.2, and otherwise following "the general principle that the Internet naming system is a public resource in the sense that its functions must be administered in the public or common interest," *id*., § 5.3. Moreover, many ccTLD managers have acknowledged these principles. JA24.10, ¶15; SA43.

Finally, Appellants' glancing references to property ownership in their Statement of Facts are unavailing. Appellants assert that governments have "claim[ed]" ccTLDs as assets, and they suggest that Appellee can unilaterally re-delegate a ccTLD; however, their brief supplies citations only with respect to the ".um" ccTLD (for the U.S. Minor Outlying Islands), and the cited letter does not support Appellants' propositions. Appellants' Br. 8–9, 16. Although the letter refers to one ccTLD as an "asset," it does so only in response to a private individual's claim of control over the ccTLD. SA63–64. The letter explains that, because the private claimant had not provided "evidence to substantiate" his assertions, his interest in the particular ccTLD was comparatively inferior to that of the United States. *Id.* In any event, one letter from one governmental official about the ".um" ccTLD cannot demonstrate that Defendants

"own" the Subject ccTLDs. Additionally, the letter contradicts Appellants' suggestion that Appellee has unilateral authority to re-delegate ccTLDs; in fact, it explains that it is the *U.S. Government* with authority to re-delegate, or return "to unassigned status," the ccTLDs which are associated with its territories and which have been operated by its agents "on behalf of the United States." *Id.*

III. THE SUBJECT ccTLDs ARE IMMUNE FROM ATTACHMENT.

Appellants' argument rests on the premise that the Subject ccTLDs are Defendants' property. As explained above, Appellants have not shown that this premise is correct. However, even if Appellants were correct, their suit would be barred by the Foreign Sovereign Immunities Act ("FSIA").

"Attachment of a foreign state's property in the United States is governed by" FSIA. *Karaha*, 313 F.3d at 82; *see Argentine Rep. v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989). Under FSIA, "the property in the United States of a foreign state shall be immune from attachment[,] arrest[,] and execution[,] except as provided" in 28 U.S.C. §§ 1610–1611. 28 U.S.C. § 1609. Accordingly, to attach the Subject ccTLDs, Appellants must "bear[] the burden of producing evidence" establishing that an *exception* to FSIA's attachment immunity applies. *FG Hemisphere Assocs. v. Dem. Rep. of Congo*, 447 F.3d 835, 842 (D.C. Cir. 2006); *see also FG Hemisphere Assocs., LLC v. Republique du Congo*, 455 F.3d 575, 590–91 (5th Cir. 2006) ("[n]o court in the United States has jurisdiction to

execute against a foreign sovereign's property until" it makes the "jurisdictional" determination that the property is not immune from attachment); *Rep. of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2256 (2014).

Appellants' opening brief in this Court completely ignores the immunity issue. Appellants have, at most, made passing reference to two exceptions in the District Court and one exception in a reply regarding an appellate motion: the commercial-activity exception in 28 U.S.C. § 1610(a)(7); the state-sponsored-terrorism exception in § 1610(g); and the blocked-assets exception in § 201(a) of the Terrorism Risk Insurance Act, Pub. L. 107-297, 116 Stat. 2322 (codified as a note to § 1610).[8] However, none of these exceptions apply here. First, as explained below, Appellants have forfeited reliance on any FSIA exceptions because Appellants did not adequately raise them in the District Court or their opening brief. Second, each of the three exceptions discussed here requires proof that the ccTLDs constitute property that Defendants own. §§ 1610(a)(7), 1610(g); 116 Stat. 2322; *Heiser*, 735 F.3d at 937–940.[9] However, as discussed above, the

[8] Pls.' Reply In Supp. Of Disc. Mot. ("Discovery Reply"), D.E. 111 at 21 (Oct. 24, 2014); Reply In Supp. Of Mot. To Certify ("Certification Reply") (Doc. # 1556968) at 2, No. 14-7193 (D.C. Cir. June 11, 2015).

[9] "Federal law…is controlling" on these questions, *Heiser*, 735 F.3d at 940, but the question of whether the alleged property is attachable is governed by D.C. law, *see* Fed. R. Civ. P. 69(a)(1); *United States v. Thornton*, 672 F.2d 101, 104 (D.C. Cir. 1982). In any event, even when a federal court fashions the "'rule of decision'" as

Subject ccTLDs are not property and, regardless, are not owned by Defendants. *See supra* at §§ I.A, II. Third, Appellants have not carried their burden of proving that any FSIA exception applies.

A. Appellants Have Forfeited Reliance on Any FSIA Exceptions.

In order to preserve an argument on appeal, a party must at a minimum do two things. First, it must properly raise the argument before the district court. *Odhiambo v. Rep. of Kenya*, 764 F.3d 31, 35 (D.C. Cir. 2014). Second, it must properly raise the argument in this Court, in its opening brief. *E.g.*, *United States ex rel. Totten v. Bombardier Corp.*, 380 F.3d 488, 497 (D.C. Cir. 2004); Order (Doc. #1543975) ("Briefing Order"), No. 14-7193 (Mar. 24, 2015). Importantly, preserving an argument requires not just raising it, but raising it *adequately*. *Ry. Labor Execs.' Ass'n v. U.S. R.R. Ret. Bd.*, 749 F.2d 856, 859 n.6 (D.C. Cir. 1984).

In the FSIA context, these requirements mean that a plaintiff must invoke a particular exception *and* make the same argument in support of that exception's applicability in both the district court and the opening appellate brief. For example, in *Odhiambo*, this Court held that when a party makes a different immunity argument on appeal than it made in the district court, the new argument made on

(continued…)

to the questions that are federal in nature, the rule "may sometimes 'follow state law.'" *Heiser*, 735 F.3d at 940; *id.* at 937–941.

appeal (or new variation of an old argument made at the district court level) is "forfeited." 764 F.3d at 35–36. There, plaintiff forfeited two arguments. First, plaintiff argued in the district court that Kenya implicitly waived its immunity by facilitating his asylum; on appeal, however, he argued that Kenya had waived its immunity by acceding to a treaty. *Id.* This Court held that the latter variation of the argument had been forfeited. *Id.* at 35. Second, plaintiff made a commercial-activity argument in the district court, but then presented a "new twist" on this argument on appeal. *Id.* at 36. This Court held that plaintiff forfeited the "new twist" on his commercial-activity argument because he "failed to raise [it] in the district court." *Id.*

Similarly, in *Rubin v. Islamic Republic of Iran*, 709 F.3d 49 (1st Cir. 2013), the court "refuse[d] to consider the applicability of section 1610(g)," which contains an exception to FSIA attachment immunity, because plaintiffs failed to raise the exception in the lower court or in their opening appellate brief. *Id.* at 54 ("At no point…did the plaintiffs make any argument pertaining to section 1610(g) in their opening brief on appeal. They made the argument for the first time in their reply brief, claiming that they had no opportunity to raise the applicability of section 1610(g) before the district court….We therefore refuse to consider the applicability of section 1610(g).") (citations omitted); *see McKenzie v. U.S. Citizenship & Immigration Servs.*, 761 F.3d 1149, 1155 (10th Cir. 2014).

In the District Court, Appellants did not preserve § 1610(a)(7)'s commercial-activity exception or § 1610(g)'s state-sponsored-terrorism exception. Appellee's motions to quash argued that the Subject ccTLDs were immune from attachment, but Appellants ignored this issue in their opposition. They instead filed a self-styled "Preliminary Response"—a pleading found nowhere in the federal rules—which concededly "offered no substantive analysis." Appellants' Br. 19. Indeed, the only place that Appellants even attempted to address the commercial-activity and state-sponsored-terrorism exceptions in the District Court was in a reply brief relating to a discovery issue. Even there, the sum total of their argument as to why these exceptions apply consisted of a conclusory statement and the following citation-less assertion: "It is Plaintiffs' position that the Internet Assets at issue are used for commercial activity in the United States and the United States is the situs. For example, a .ir second level domain can be purchased in the United States for approximately $100." Discovery Reply 21. Such unsupported, conclusory assertions are plainly insufficient. *Ry. Labor Execs.' Ass'n*, 749 F.2d at 859 n.6 (refusing to resolve an issue "on the basis of briefing which consisted of only three sentences…and no discussion of the relevant…case law"). This is particularly so when such statements are made in a completely unrelated filing—in this instance, in a reply brief in support of a discovery motion in the District Court. *Iverson v. City of Boston*, 452 F.3d 94, 103 (1st Cir. 2006) ("[C]ourts are entitled

to expect represented parties to incorporate all relevant arguments in the papers that directly address a pending motion….[W]e conclude that the plaintiffs' failure to mention—let alone adequately to develop—the barrier-removal theory in their opposition to the City's dispositive motion defeats their belated attempt to advance the theory on appeal.") (alteration in original) (quotation marks and citations omitted). Appellants, therefore, have forfeited this issue.

Appellants likewise did not preserve any reliance on the blocked-assets exception in § 201(a) in the District Court. Appellants did not mention § 201(a) *at all* in the proceedings below. Their first reference to that provision instead came in a reply to a preliminary motion in *this* Court. Certification Reply 2. That does not suffice. In *Odhiambo*, this Court held that when a party makes a different immunity argument on appeal than it made in the district court, the new argument made on appeal (or the new variation of an old argument) is "forfeited." 764 F.3d at 35–36; *see also Rubin*, 709 F.3d at 54. Appellants did not raise this issue in their opening appellate brief, and even if Appellants attempt to raise this issue in their reply brief, they will be changing course even more sharply than did the plaintiff in *Odhiambo*—because Appellants would in fact be presenting an entirely new argument.

Even if Appellants had properly preserved their reliance on these three FSIA exceptions in the District Court (which they did not), Appellants have failed to do

so in *this* Court. As this Court emphasized in this very case: "All issues and arguments must be raised by appellants in the opening brief. The court ordinarily will not consider issues and arguments raised for the first time in the reply brief." Briefing Order. Despite this admonition, Appellants make no argument about the applicability of § 1610(a)(7), § 1610(g), or § 201(a) in their opening brief. That is reason enough to treat their passing reliance on these arguments—in a reply supporting a discovery motion and a reply supporting a preliminary appellate motion (*see supra* at footnote 8)—as forfeited. *Rubin*, 709 F.3d at 54; *Totten*, 380 F.3d at 497.

B. Each of the FSIA Exceptions Is Inapplicable to This Case.

In addition to having been forfeited, any argument that Appellants might try to mount that § 1610(a)(7), § 1610(g), or § 201(a) applies to this case would be meritless.

1. Appellants have not proven that § 1610(a)(7) applies.

The commercial-activity exception in § 1610(a)(7) provides that "[t]he property in the United States of a foreign state…used for a commercial activity in the United States, shall not be immune from attachment" under certain circumstances. § 1610(a)(7). However, "[a] plaintiff must do more than say 'the foreign sovereign has assets here, and I want them' to avail himself of the commercial activity exception." *Corzo v. Banco Central De Reserva Del Peru*,

243 F.3d 519, 524 (9th Cir. 2001). Instead, Appellants must show that the alleged property: (1) is, in fact, "property"; (2) is owned by a "foreign state"; and (3) is "used for a commercial activity in the United States." § 1610(a).

Appellants cannot satisfy these requirements, because they have not adduced—and Appellee is not aware of—any evidence that the ".ir," ".sy," or ".kp" ccTLDs are "used for commercial activity in the United States." § 1610(a). In the District Court, Appellants stated in passing that " a .ir second level domain can be purchased in the United States for approximately $100." Discovery Reply 21. This, however, is plainly insufficient.

First, Appellants' assertion is unsupported by any factual citations. Thus, even if the factual assertion were relevant—which, as explained below, it is not—it does not satisfy Appellants' burden of "producing *evidence*," *FG Hemisphere Assocs.*, 447 F.3d at 842 (emphasis added), that ccTLDs are used for commercial activity in the United States.

Second, this factual assertion is irrelevant. By its terms, Appellants' assertion pertains to the purported registration of a "*second level* domain" name. *See* Discovery Reply 21 (emphasis added). It does not pertain to *ccTLDs*. This is a critical distinction. "[D]etermining the commercial…status of a property's use requires a more holistic approach." *Af-Cap, Inc. v. Rep. of Congo*, 383 F.3d 361, 369 (5th Cir. 2004). The Fifth Circuit specifically has expressed "reservations

about defining property use as commercial in nature solely by reference to past single and/or exceptional commercial use." *Id.* Here, Appellants are not even relying on a single instance of a past commercial use of a *ccTLD*, but of a *materially different* domain name altogether. Appellants' apparent theory is equivalent to the notion that because a parcel of land within a particular zip code is used for commercial activity, the zip code itself is used for commercial activity. That argument is patently wrong.

Third, even if Appellants had put forth evidence of a prior commercial use of another ccTLD—which they have not—it *still* would not prove the commercial use of the *Subject* ccTLDs in the United States. Even if a particular type of property is sometimes used by foreign governments for commercial purposes, it does not follow that all property falling into this category is necessarily used for commercial purposes. For example, even if some airplanes are used by some governments for commercial purposes, that does not mean that *every* airplane owned by *every* government is necessarily used for commercial purposes. So too here. Even assuming *arguendo* that some other ccTLDs have been used by foreign governments for commercial purposes, Appellants have adduced no evidence demonstrating that the Subject ccTLDs have been used for commercial purposes within the United States.

Fourth, Appellants have not only failed to demonstrate that the Subject

ccTLDs are used for commercial activity, but they also have failed to show that any such commercial activity takes place "in the United States." § 1610(a). Again, they have presented no evidence on this issue.

2. Appellants have not proven that § 1610(g) applies.

Section 1610(g) is "an exception to foreign sovereign attachment immunity" that applies only to the "property of foreign state sponsors of terrorism and their agencies or instrumentalities" when "execut[ing] judgments under § 1605A for state-sponsored terrorism." *Gates v. Syrian Arab Republic*, 755 F.3d 568, 572, 575 (7th Cir. 2014); *see also Calderon-Cardona v. BNY Mellon,* 770 F.3d 993, 1000 (2d Cir. 2014) (Section 1605A "creat[ed]" a "private right of action against foreign states" under certain circumstances). Section 1610(g) provides that, "*[s]ubject to paragraph (3)*, the property of a foreign state against which a judgment is entered under section 1605A…is subject to attachment." § 1610(g) (emphasis added). Paragraph (3), in turn, protects third-party interests by providing that "[n]othing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment." For several reasons, Appellants have not proven that § 1610(g) applies.

First, the attachment that Appellants seek would contravene § 1610(g) by unduly impairing third-party interests. Appellants seek the right to determine who

manages the Subject ccTLDs. The ccTLD manager, however, is a central player in the proper functioning domain name system of the single, global Internet. Forced re-delegation, therefore, could jeopardize the structure and operation of the domain name system to the detriment of third-party Internet users worldwide. The forced re-delegation of the Subject ccTLDs to Appellants would likewise impair the interests of the Department and Appellee by overriding their contractual obligations. As discussed above, Appellee does not, itself, have the power to re-delegate a ccTLD to a new manager. Instead, Appellee recommends ccTLD re-delegations based on specified criteria, and the Department decides whether to approve the re-delegations. *See supra* at § I.B.3. Then, another third party executes on the re-delegation authorization. Appellants seek to override this entire process.

Second, Appellants have not carried their "burden of producing evidence to show" that the underlying judgments were "entered under Section 1605A." *FG Hemisphere Assocs.*, 447 F.3d at 842; § 1610(g). Appellants have provided no explanation or evidence about this issue in the District Court or in their opening brief. Moreover, in a reply in support of an appellate motion for certification, Appellants cited § 1610(g), but they never argued—let alone produced evidence—that the judgments were entered under Section 1605A. Instead, they said only that the "judgments were entered under 28 U.S.C. § 1605A *or* § 1605(a)(7) and were

for 'act[s] of terrorism.'" Certification Reply 2 (emphasis added).

Third, regardless of how this Court resolves the independently dispositive points above, Section 1610(g) is clearly inapplicable to three of the seven underlying judgments at issue here. Although Section 1610(g) extends to judgments "entered under section 1605A," it does not apply to judgments entered under § 1605(a)(7), which is § 1605A's predecessor.[10] When Congress enacted § 1605A, it provided that then-pending cases initially brought under § 1605(a)(7) could be *converted* to cases under § 1605A, but only if they satisfied certain statutory prerequisites. Pub. L. No. 110-181, § 1083(c), 122 Stat. 3, 342–43 (2008); *see Bakhtiar v. Islamic Rep. of Iran*, 668 F.3d 773, 774–75 (D.C. Cir. 2012).

Here, three of the underlying judgments were neither entered nor converted to a judgment under § 1605A. Appellants brought *Haim v. Islamic Republic of Iran I* under § 1605(a)(7), and the District Court denied their motion to convert. 567 F. Supp. 2d 146, 146–47 (D.D.C. 2008). Appellants brought two other cases under § 1605(a)(7), and they never moved to convert the cases. *See Stern v. Islamic Rep. of Iran*, 271 F. Supp. 2d 286, 296–97 (D.D.C. 2003); SA12–14 (*Weinstein* order). Thus, at a minimum, Appellants may not rely on § 1610(g) in

[10] *See, e.g.*, *Calderon-Cardona*, 770 F.3d at 999–1000; *Peterson v. Islamic Rep. of Iran*, 627 F.3d 1117, 1123 n.2 (9th Cir. 2010); *Estate of Heiser v. Islamic Rep. of Iran*, 807 F. Supp. 2d 9, 18 n.5 (D.D.C. 2011); *In re Islamic Rep. of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 101–03 (D.D.C. 2009).

these three cases.

3. Appellants have not proven that § 201(a) applies.

Although Appellants' brief fails to argue that the exception set forth in § 201(a) of the Terrorism Risk Insurance Act of 2002 applies here, they cite it (without elaboration) in their jurisdictional statement. *See* Appellants' Br. 1. Section 201(a), as amended and as relevant here, provides:

> [I]n 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 1605A or 1605(a)(7)…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….

116 Stat. 2322.

First, Section 201(a) is inapplicable to this case. Section 201(a)'s exception to attachment immunity is limited to "blocked assets." That term is defined, with certain exceptions, as "any asset seized or frozen by the United States" under certain statutes. § 201(d)(2); *FG Hemisphere Assocs.*, 447 F.3d at 842. Here, Appellants have not carried their burden of demonstrating that the Subject ccTLDs are "blocked assets." Indeed, as noted above, they have not made any argument—

or presented any evidence—on this issue.[11]

Second, even if Appellants had preserved an argument based on § 201(a) and even if that exception is not categorically inapplicable, it is irrelevant to several of the cases that have been consolidated here.

No "blocked assets" are at issue in *Calderon-Cardona v. Democratic People's Rep.*, Misc. No. 14-648-RCL (D.D.C.), in which the named Defendants are the Democratic People's Republic of North Korea and North Korea's Cabinet General Intelligence Bureau. Executive Order 13687 is limited to property owned by a "person determined by the Secretary of the Treasury, in consultation with the Secretary of State" to be either: (i) "an agency, instrumentality, or controlled entity of the Government of North Korea" or (ii) "an official of the Government of North Korea." 80 Fed. Reg. 819. That language does not encompass the Government of North Korea. Nor has the Treasury Secretary "determined" that the

[11] Nor can Appellants now argue that the Subject ccTLDs are "blocked assets" under Executive Orders 13582, 13599, and 13687. They have plainly forfeited that argument. Regardless, these Executive Orders are not applicable. *First*, they are limited to "property and interests in property." Executive Order 13582, 76 Fed. Reg. 52209 (Aug. 17, 2011); Executive Order 13599, 77 Fed. Reg. 6659 (Feb. 5, 2012); Executive Order 13687, 80 Fed. Reg. 819 (Jan. 2, 2015). ccTLDs are neither. *See supra* at § I.A. *Second*, these Executive Orders are limited to the property "of" the Syrian Government, the Iranian Government, or certain persons related to the North Korean Government. The Subject ccTLDs, however, are not owned by such persons and therefore do not constitute "blocked assets" under these Executive Orders. *See supra* at § II.

Cabinet Intelligence Bureau is "an agency, instrumentality, or controlled entity of the Government of North Korea."[12]

Additionally, Section 201(a) is categorically inapplicable to one of the underlying judgments, and has limited applicability to five other judgments, because § 201(a) permits attachment only "to the extent of any *compensatory damages* for which [the] terrorist party has been adjudged liable." (Emphasis added.) Because the judgment in *Haim v. Islamic Republic of Iran II*, 784 F. Supp. 2d 1, 12–14 (D.D.C. 2011), is wholly for punitive damages, Section 201(a) cannot be used in that case. Moreover, because significant parts of the judgments in five cases also involve punitive damages, Section 201(a) could—at most—be used in those five cases only insofar as necessary to satisfy the compensatory-damage awards.[13]

Third, Section 201(a) does not extend to the judgment in *Calderon-Cardona* because the Defendant in that case—North Korea—was not a state sponsor of terrorism at the time the relevant judgment was entered. *See* §§ 201(a), (d)(4); 73

[12] Office of Foreign Assets Control, http://www.treasury.gov/ofac/downloads/prgrmlst.txt (last visited Aug. 24, 2015).

[13] *See Stern v. Islamic Rep. of Iran*, 271 F. Supp. 2d 286, 302 (D.D.C. 2003); SA15–23; *Campuzano v. Islamic Rep. of Iran*, 281 F. Supp. 2d 258, 263–279 (D.D.C. 2003); *Wyatt v. Syrian Arab Rep.*, 908 F. Supp. 2d 216, 231–33 (D.D.C. 2012); *Calderon-Cardona v. Democratic People's Rep. of Korea*, 723 F. Supp. 2d 441, 460–485 (D.P.R. 2010).

Fed. Reg. 63540-01 (Oct. 24, 2008); *Calderon-Cardona*, 723 F. Supp. 2d 441; *Calderon-Cardona*, 770 F.3d at 999.

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY REFUSING TO ALLOW FURTHER DISCOVERY.

Appellants' jeremiad about purportedly inadequate discovery is misguided. The relevant question is whether the District Court abused its discretion when it concluded that enough discovery had been conducted. *Recording Industry Ass'n of Am., Inc. v. Verizon Internet Servs.*, 351 F.3d 1229, 1233 (D.C. Cir. 2003); *In re Subpoena Served Upon Comptroller of Currency*, 967 F.2d 630, 633 (D.C. Cir. 1992). It did not.

First, Appellants had ample opportunity for discovery. Appellants falsely claim that "the parties have not yet engaged in discovery." Appellants' Br. 44; *see id.* at 16. This is simply not true, which is why *Appellants* characterized their request as a plea for "*additional* discovery." Pls.' Reply to Opp'n to Mot. for Enlargement of Time, D.E. 100 at 6 (Aug. 28, 2014) (emphasis added). On June 24, 2014, Appellants served the writs of attachment and issued seven subpoenas that demanded multiple categories of documents. *See* Pls.' Mem. in Support of Discovery Mot., D.E. 107 at 12. In response, Appellees produced over sixteen hundred pages of documents. Appellants also had three months to seek further discovery, yet chose not to do so. Instead, they waited until September 25, 2014—just three business days before their oppositions to the motions to quash were

due—to seek *six months* of additional discovery and delay. Accordingly, to the extent Appellants believe they obtained insufficient discovery that is a consequence of their own making. The District Court did not abuse its discretion for failing to further delay these proceedings.

Second, the discovery Appellants obtained was more than adequate to address the issues at hand. Appellee directed Appellants to all of the publicly available records and reports relating to the Subject ccTLDs. Additionally, Appellee responded to Appellants' subpoenas and produced approximately 1,660 pages of documents, *see* Discovery Opp'n 16, including documents detailing Root Zone changes and name-server changes for the Subject ccTLDs, correspondence with the administrative contacts for those ccTLDs, and documents relating to the fast-track submission for ".ایران," which is the Arabic script equivalent of "Iran." Besides the publicly available documents on Appellee's website, these are the only documents that were responsive to the document requests. Moreover, when Appellee filed its motions to quash, it included two declarations that, as Appellants concede, contained "a detailed factual presentation and 240 pages of documentary evidence." Discovery Reply 5 n.3; *see* Appellants' Br. 17. Appellee even produced additional documents for the purpose of resolving a motion to compel. In light of this discovery—as well as the ninety-day window between service of the writs and Appellants' request for more discovery—the District Court's decision

not to provide an *additional* six months of discovery was not an abuse of discretion. *See, e.g.*, *Hunter v. Dist. of Columbia*, 943 F.2d 69, 73–74 (D.C. Cir. 1991) ("three months" constitutes "'ample time'"); *Davis v. G.N. Mortg. Corp.*, 396 F.3d 869, 886 (7th Cir. 2005).

Third, Appellants' own characterization of their discovery requests demonstrates that the requests related to only "two essential arguments": (1) whether the Subject ccTLDs are property owned by Defendants and (2) whether Appellee can transfer such ccTLDs. Appellants' Br. 17. Yet additional discovery on these issues is entirely irrelevant to the vast majority of reasons why the District Court's order should be affirmed. For example, Appellants' motion for additional discovery requested *no* discovery as to FSIA immunity. Nor did Appellants' motion identify discovery requests aimed at rebutting Appellee's arguments that ccTLDs are not "goods, chattel, or credits," that ccTLDs are inextricably bound up with the provision of services, and that the forced transfer of the Subject ccTLDs would destroy their value and subvert Appellee's contract with the Department. Consequently, additional discovery on the two narrow issues identified by Appellants is unnecessary.

Fourth, further discovery would have imposed an unjustified burden on Appellee, which is a third party that is unrelated to the substance of the underlying lawsuits. "[C]oncern for the unwanted burden thrust upon non-parties is a factor

entitled to special weight in evaluating the balance of competing needs." *Watts v. SEC*, 482 F.3d 501, 509 (D.C. Cir. 2007) (quotation marks omitted); *see Burak v. Scott*, 29 F. Supp. 775, 776 (D.D.C. 1939); *Strick Corp. v. Thai Teak Prods. Co.*, 493 F. Supp. 1210, 1217–18 (E.D. Pa. 1980). This rationale has particular force here, because the implication of Appellants' discovery theory would be severe—namely, Appellee could potentially be subjected to onerous discovery any time a judgment debtor allegedly owns a TLD.

Fifth, many documents identified in Appellants' motion for additional discovery can be obtained from other "more convenient, less burdensome, [and] less expensive" sources. *See* Fed. R. Civ. P. 26(b)(2)(C)(i). Indeed, much of the information Appellants sought is freely and publicly available. For example, Appellants seek discovery regarding Appellee's formation and operations, its management of the Root Zone, its contracts with the U.S. Government regarding the Root Zone, and the Internet Assigned Numbers Authority functions that Appellee performs. Discovery Opp'n 36. All of this information is available on Appellee's website. *Id.* Appellants also seek discovery regarding a presentation given during one of Appellee's meetings; however, Appellee's opposition to the motion for additional discovery directed Appellants to a website containing this presentation *and* a multitude of others. Discovery Opp'n 36. In such

circumstances, it is appropriate to deny further discovery requests. *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 716 (1st Cir. 1998).

V. THIS COURT SHOULD DENY APPELLANTS' CERTIFICATION REQUEST.

There are two separate and independent reasons why this Court should not certify the attachment question to the D.C. Court of Appeals. *First*, certification is appropriate only when "District of Columbia law is 'genuinely uncertain' with respect to the dispositive question."[14] Here, this Court can—and should—resolve the present appeals based on any one of the various threshold federal questions, thereby eliminating the need to address the D.C. attachment issue. For example, *even if* ccTLDs were attachable, FSIA would divest federal courts of jurisdiction here. *See supra* at § III. Additionally, this Court could dispose of the appeals by resolving the federal questions of whether ccTLDs are property and/or are owned by Defendants. *See supra* at §§ I.A, II & n.9.

Second, the certification statute provides that the D.C. Court of Appeals "may answer questions of law certified to it" *only if* "it appears to the certifying court there is *no controlling precedent* in the decisions of the District of Columbia Court of Appeals." D.C. Code § 11-723(a) (emphasis added). "In deciding

[14] *Nationwide Mut. Ins. Co. v. Richardson*, 270 F.3d 948, 950 (D.C. Cir. 2001); *see United States v. Old Dominion Boat Club*, 630 F.3d 1039, 1047 (D.C. Cir. 2011); *East v. Graphic Arts Indus. Joint Pension Trust*, 107 F.3d 911, 911 (D.C. Cir. 1997).

whether to certify a case," this Court "look[s] to whether local law is 'genuinely uncertain' with respect to a dispositive question, and to whether the 'case is one of extreme public importance.'" *Dial A Car, Inc. v. Transp., Inc.*, 132 F.3d 743, 746 (D.C. Cir. 1998) (citations omitted). "If, however, there is a 'discernible path for the court to follow,' then [this Court does] not stop short of deciding the question." *Id.*; *see Khan v. Parsons Global Servs., Ltd.*, 428 F.3d 1079, 1082–83 (D.C. Cir. 2005) (declining certification because, although the D.C. Court of Appeals had not addressed the precise factual scenario at issue, it had "already provided the guidance necessary to resolve [the disputed] point of law").

Here, "certification is unnecessary." *Dial A Car, Inc.*, 132 F.3d at 746. To begin with, the statutory language is clear—it limits attachment to "goods, chattel, and credits." This Court need not certify this case to the D.C. Court of Appeals to determine what the plain language of this provision means. Additionally, as to the District Court's holding that the Subject ccTLDs are inextricably bound up with services—again, controlling precedent "is reasonably clear and provides a 'discernible path' to the resolution of this case." *Dial A Car, Inc.*, 132 F.3d at 746. In particular, the District Court's decision is supported by two D.C. Court of Appeals decisions that apply the "well settled" rule that services, or rights relating thereto, are not attachable under D.C. law. *See Cummings*, 230 A.2d at 713; *Shpritz*, 393 A.2d at 70. Moreover, Appellee has provided additional D.C. cases to

support various other arguments as to why ccTLDs are not attachable. *See supra* at § I.B. In short, the statutory text and these D.C. authorities "provide[] a 'discernible path' to the resolution of this case," and certification would thus be inappropriate. *Dial A Car, Inc.*, 132 F.3d at 746; *see also Khan*, 428 F.3d at 1083.

CONCLUSION

This Court should affirm the District Court's order.

Dated: September 28, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 13,998 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and D.C. Circuit Rule 32(e)(1). In addition, I hereby certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman type.

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2015, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. In addition, the electronic filing described above caused the foregoing to be served on all registered users to be noticed in this matter, including:

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STATUTORY ADDENDUM

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Reproduction of Relevant Authorities:

28 U.S.C. § 1605A. Terrorism exception to the jurisdictional immunity of a foreign state

(a) In general.—

(1) No immunity.—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources 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.

(2) Claim heard.—The court shall hear a claim under this section if—

(A)(i)(I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; or

(II) in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act, the foreign state was designated as a state sponsor of terrorism when the original action or the related action under section 1605(a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) was filed;

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

(B) the act described in paragraph (1) is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia.

(b) Limitations.—An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) not later than the latter of—

(1) 10 years after April 24, 1996; or

(2) 10 years after the date on which the cause of action arose.

(c) Private right of action.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3), for personal injury or death caused by acts described in subsection (a) (1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

(d) Additional damages.—After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

(e) Special masters.—

(1) In general.—The courts of the United States may appoint special masters to hear damage claims brought under this section.

(2) Transfer of funds.—The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c), to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(f) Appeal.—In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

(g) Property disposition.—

(1) In general.—In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property that is—

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

(2) Notice.—A notice of pending action pursuant to this section shall be

filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

(3) Enforceability.—Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

(h) Definitions.—For purposes of this section—

(1) the term "aircraft sabotage" has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(2) the term "hostage taking" has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages;

(3) the term "material support or resources" has the meaning given that term in section 2339A of title 18;

(4) the term "armed forces" has the meaning given that term in section 101 of title 10;

(5) the term "national of the United States" has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(6) the term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

(7) the terms "torture" and "extrajudicial killing" have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

28 U.S.C. § 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

28 U.S.C. § 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

* * *

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

* * *

28 U.S.C. § 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

D.C. Code § 11-723. Certification of questions of law.

(a) The District of Columbia Court of Appeals may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or the highest appellate court of any State, if there are involved in any proceeding before any such certifying court questions of law of the District of Columbia which may be determinative of the cause pending in such certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the District of Columbia Court of Appeals.

* * *

D.C. Code § 28:2-105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit".

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (section 28:2-107).

* * *

Federal Rules of Civil Procedure 26. Duty to Disclose; General Provisions Governing Discovery

* * *

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

* * *