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January 28, 2016

**BY CM/ECF**

Mark Langer, Clerk of the Court  
U.S. Court of Appeals for the D.C. Circuit  
E. Barrett Prettyman Courthouse  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

Re: *Weinstein, et al. v. Islamic Republic of Iran, et al.*, Nos. 14-7193 (lead),  
14-7194, 14-7195, 14-7198, 14-7202, 14-7203, and 14-7204

Dear Mr. Langer:

As ICANN explained at argument, this Court can affirm on D.C. attachment law without resolving the FSIA and TRIA issues.

The bar on hypothetical jurisdiction, established in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), applies “only when the existence of Article III jurisdiction is in doubt.” *Chalabi v. Hashemite Kingdom of Jordan*, 543 F.3d 725, 728 (D.C. Cir. 2008); *Kramer v. Gates*, 481 F.3d 788, 791 (D.C. Cir. 2007) (“*Steel Company* explicitly recognized the propriety of addressing the merits where doing so made it possible to avoid a doubtful issue of statutory jurisdiction; the case excluded such jurisdiction from the rule of absolute priority that it established for Article III jurisdiction.”); *United States ex rel. Shea v. CellCo P’ship*, 748 F.3d 338, 346 (D.C. Cir. 2014) (Srinivasan, J., concurring in part and dissenting in part) (same), *vacated by* 135 S. Ct. 2376 (2015). Accordingly, this Court expressly held that when a question arises as to “the limits of [the Court’s] statutory jurisdiction under [FSIA], ... [the] bar on hypothetical jurisdiction poses no obstacle to resolving [the merits] first.” *Chalabi*, 543 F.3d at 728.

Contrary to Appellants’ contention, *Chalabi* did not require—or even mention—“overlap between the merits and jurisdictional questions.” Letter at 2; *see Bulgartabac Holding AD v. Republic of Iraq*, 451 F. App’x 9, 12 (2d Cir. 2012) (not requiring overlap). Moreover, *Sherrod v. Breitbart*, 720 F.3d 932, 937 (D.C.

Cir. 2013), applied the separate “*Norton doctrine*,” and thus did not alter *Chalabi*’s holding. Regardless, *Chalabi* is not an outlier. *Umsted v. Umsted*, 446 F.3d 17, 20 n.2 (1st Cir. 2006); *Conyers v. Rossides*, 558 F.3d 137, 150 (2d Cir. 2009); *Byrd v. Republic of Honduras*, 613 F. App’x 31, 33 (2d Cir. 2015); *Bowers v. NCAA*, 346 F.3d 402, 416–17 (3d Cir. 2003).

Finally, if, as Appellants claim, this Court must address FSIA and TRIA, then Appellants must likewise raise these issues. By failing to do so below or in their opening brief here, Appellants forfeited these issues. *Odhiambo v. Republic of Kenya*, 764 F.3d 31, 35–36 (D.C. Cir. 2014).

Respectfully submitted,

/s/ Noel J. Francisco

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of January, 2016, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system. 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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Dated: January 28, 2016

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