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Series: Kavanaugh, Brett – Subject Files

Folder Title: State - Foreign Assets

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The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Fax Cover Sheet	Daliberti v. Powell, et al. - To: Jock Scharfen - From: Sheryl Cottrell	1	08/05/2002	P5;

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
State - Foreign Assets

FRC ID:
9695

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Withdrawal Marker

The George W. Bush Library

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**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

State - Foreign Assets

FRC ID:

9695

OA Num.:

2165

NARA Num.:

2076

FOIA IDs and Segments:

2018-0016-P

2017-0345-F

2015-0166-F

RESTRICTION CODES

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- P1 National Security Classified Information [(a)(1) of the PRA]
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID DALIBERTI, KATHY
DALIBERTI, KENNETH BEATY,
ROBIN BEATY, CLINTON ADAM
HALL also known as CHAD HALL,
ELIZABETH N. HALL, WILLIAM
BARLOON and LINDA BARLOON,

David L. Daliberti
Kathy Daliberti
8040 Cholo Trail
Jacksonville, FL 32244

Kenneth Beaty
Robin Beaty
5500 Stonegate Lane
Mustang, OK 73064

Clinton Adam Hall a/k/a Chad Hall
10508 River Ridge Road
Knoxville, TN 37922

Elizabeth N. Hall
7242 Avenue M
P.O. Box 1335
Santa Fe, TX 77510

William Barloon
2527 Sunrise Ridge Lane
Jacksonville, FL 32211

Linda Barloon
2250 Spanish Moss
Jacksonville, FL 32246

Plaintiffs,

vs.

COLIN L. POWELL, Secretary of State of the United States,

Department of State
2201 C Street NW
Washington, D.C. 20520

Civil Action:

CASE NUMBER 1:02CV01120
JUDGE: Louis F. Oberdorfer
DECK TYPE: General Civil
DATE STAMP: 06/07/2002

and

PAUL H. O'NEIL, Secretary of Treasury of the United States

Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Defendants.

COMPLAINT AND PETITION FOR WRIT OF MANDAMUS

PLAINTIFFS, DAVID DALIBERTI, KATHY DALIBERTI, KENNETH BEATY, ROBIN BEATY, CLINTON ADAM HALL also known as CHAD HALL, ELIZABETH N. HALL, WILLIAM BARLOON and LINDA BARLOON, by and through their undersigned counsel, hereby file this Complaint or in the alternative, a Petition for Writ of Mandamus pursuant to the All Writs Act, 28 U.S.C. §1651(a) against the Defendants, COLIN L. POWELL, Secretary of State of the United States, and PAUL H. O'NEIL, Secretary of the Treasury of the United States, and allege as follows.

1. In Case No. 96-CV 01118, Plaintiffs David Daliberti, Kathy Daliberti, Kenneth Beaty, Robin Beaty, Clinton Adam Hall, Elisabeth N. Hall, William Barloon and Linda Barloon filed an action against the Republic of Iraq for injury stemming from acts of torture and hostage taking. This Court has jurisdiction over these claims under 28 U.S.C. §1605(a)(7).

2. The Defendant, Republic of Iraq filed a motion to dismiss which was denied. *See Daliberti v. Republic of Iraq*, 97 F. Sup. 2d 38 (D.D.C. 2000). After the denial of the motion to dismiss, counsel for the Republic of Iraq withdrew from the case. The Clerk of Court entered a

default against the Defendant on October 16, 2000. On November 9, 2000, Plaintiffs moved for default judgment. Following the entry of default, during a four day ex-parte bench trial in March, 2001, Plaintiffs presented evidence to establish their claims.

3. Based upon the evidence adduced at a four day bench trial, the United States District Court entered an Order on May 25, 2001, awarding each of the Plaintiffs monetary damages by reason of the acts of terrorism which were established by the evidence. The Court expressly found that the Foreign Sovereignty Immunities Act exempted from immunity foreign sovereigns where "money damages are sought against a foreign state for personal injury or death that was caused by act of torture, extra judicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources... for such an act or provision of material support is engaged in by an official, employee or agent of such foreign state while acting within the scope of his or her office, employment, or agency" 28 U.S.C. §1605(a)(7). The Court recognized that the Foreign Sovereignty Immunities Act adopted the definitions of hostage taking and torture used in the International Convention Against the Taking of Hostages and Torture of Victim Act of 1991 respectively. The Court further found that the Secretary of State of the United States designated the Defendant Republic of Iraq as a state sponsor of terrorism pursuant to Section 6J(j) of the Export Administration Act of 1979 on September 13, 1990. 55 Fed. Reg. 37793-01. The Court expressly found that the acts of the Republic of Iraq, as established by the evidence, constituted a violation of that statute and awarded monetary damages as set forth in the Order, a copy which is attached hereto as Exhibit A.

4. Following the entry of the Order, the Court entered an Order and Judgment on May 25, 2001, a copy which is attached hereto as Exhibit B and incorporated herein by reference.

5. Pursuant to 28 U.S.C.A. §1610(f)(2)(A), Defendant Colin Powell, as Secretary of State, and Defendant Paul H. O'Neil, as Secretary of the Treasury, are directed to make every effort to "fully promptly, and effectively assist any judgment creditor of any court that has issued any judgment in identifying, locating and executing against the property of that foreign state or any agency or instrumentality of such state."

6. In addition to the above described assistance, Defendants Powell, as Secretary of State and O'Neil, as Secretary of the Treasury, are directed to make every effort to provide information in a manner sufficient to allow the Court to direct the United States Marshals Office to promptly and effectively execute against indemnified property.

7. Pursuant to the above described statutory authority, the Plaintiffs, in October, 2001 made a written request to the Defendants for their assistance under 28 U.S.C.A. §§ 1610(f)(2)(a). Copies of these requests are respectively attached hereto as Exhibits C and D and incorporated herein by reference.

8. Defendants O'Neil as Secretary of the Treasury of the United States and Powell as Secretary of State have refused to respond to Plaintiffs' requests and therefore have ignored their statutory duties and responsibilities and have failed to respond to the requests of Plaintiffs and thus failed to provide any assistance whatsoever in connection with the identification of property or to provide any other assistance in order to facilitate execution on this Court's judgment.

9. The Defendants Powell and O'Neil have refused to perform their legal duties regarding assistance to the Plaintiffs.

10. As a result, Plaintiffs are entitled to the entry of a Writ of Mandamus compelling said Defendants to provide such information as is necessary in order to effectively and efficiently identify any and all assets which would be subject to execution.

11. In addition to the foregoing, 28 U.S.C. §1610(f)(1)(A) provides that assets which are otherwise frozen are subject to execution. While this statute provides that the President may waive the provisions of this paragraph for the interest of national security, the congressional history of the statute indicates that such waiver must be on an asset by asset basis. Specifically, the Senate stated: "It is our intention that the President will consider each case on its own merits; this waiver should not be applied in a routine or blanket manner." The House stated: "...in the view of the committee the waiver authority should not be exercised in a routine or blanket manner, but only where U.S. national security interests would be implicated in taking action against particular blocked assets or where alternative recourse-such as vesting and paying those assets-may be preferable to court attachment." Notwithstanding the foregoing, William Jefferson Clinton as President of the United States entered a blanket waiver on October 21, 1998, an act not permitted by this statute.

12. As a result, Defendants Powell and O'Neil should be required to designate such assets as are held by the United States through the Secretary of the Treasury and in particular, the Office of Foreign Asset Control, and make such assets of Iraq that are held by said office available for execution by the Plaintiffs.

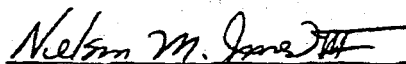
WHEREFORE, Plaintiffs prays that this Honorable Court take jurisdiction of this Complaint and enter a Writ of Mandamus against the Defendants compelling them to comply with their statutory duties and responsibilities with regard to identifying assets which are subject to execution, and specifically, such assets held as frozen assets in order to meet their statutory responsibility notwithstanding the unlawful attempt by William Jefferson Clinton as the President of the United States to enter a blanket waiver.

Respectfully submitted,

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Nelson M. Jones
BAR# 10973400

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(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--

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property--

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: Provided, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605(a)(7), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in 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--

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a) (2), (3), (5), or (7), or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property 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 prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if--

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may

1610

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1996 Acts. Amendment by Pub.L. 104-132 to apply to any cause of action arising before, on, or after Apr. 24, 1996, see section 221(c) of Pub.L. 104-132, set out as a note under section 1605 of this title.

1988 Acts. Amendment to this section by section 2 of Pub.L. 100-640, enacting subsec. (e) of this section, to apply to actions commenced on or after Nov. 9, 1988, see section 3 of Pub.L. 100-640, set out as a note under section 1605 of this title.

1976 Acts. Section effective 90 days after Oct. 21, 1976, see section 8 of Pub.L. 94-583, set out as a note under section 1602 of this title.

Waiver of Exception to Immunity from Attachment or Execution

Pub.L. 105-277, Div. A, § 101(h) [Title I, § 117(d)], Oct. 21, 1998, 112 Stat. 2681-491, which had provided authority for the President to waive the requirements of section 117 of Pub.L. 105-277 [amending this section and section 1606 of this title and enacting provisions set out as notes under this section] in the interest of national security, was repealed by Pub.L. 106-386, Div. C, § 2002(f)(2), Oct. 28, 2000, 114 Stat. 1543.

DETERMINATION OF PRESIDENT

PRESIDENTIAL DETERMINATION NO. 2001-03

<Oct. 28, 2000, 65 FR 66483>

DETERMINATION TO WAIVE ATTACHMENT PROVISIONS RELATING TO BLOCKED PROPERTY OF TERRORIST-LIST STATES

Memorandum for the Secretary of State [and] the Secretary of the Treasury

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 2002(f) of H.R. 3244, "Victims of Trafficking and Violence Protection Act of 2000 [section 2002(f) of Pub.L. 106-386, Div. C, Oct. 28, 2000, 114 Stat. 1543, amending this section], (approved October 28, 2000), I hereby determine that subsection (f)(1) of section 1610 of title 28, United States Code, which provides that any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S. App. 5(b), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701--1702), and proclamations, orders, regulations, and licenses issued pursuant thereto, be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state claiming such property is not immune from the jurisdiction of courts of the United States or of the States under section 1605(a)(7) of title 28, United States Code, would impede the ability of the President to conduct foreign policy in the interest of national security and would, in particular, impede the effectiveness of such prohibitions and regulations upon financial transactions. Therefore, pursuant to section 2002(f) of H.R. 3244, the "Victim's [sic; probably should be "Victims"] of Trafficking and Violence Protection Act of 2000," I hereby waive subsection (f)(1) of section 1610 of title 28, United States Code, in the interest of national security. This waiver, together with the amendment of subsection (f)(2) of the Foreign Sovereign Immunities Act [probably means subsec. (f)(2) of this

section] and the repeal of the subsection (b) of section 117 of the Treasury and General Government Appropriations Act, 1999 [Pub.L. 105-277, Div. A, § 101(h) [Title I, § 117(b)], Oct. 21, 1998, 112 Stat. 2681-491; see Tables for classification] [amending section 1606 of this title], supersedes my prior waiver of the requirements of subsections (a) [amending this section] and (b) of said section 117, executed on October 21, 1998 [Presidential Determination No. 99-1, Oct. 21, 1998, 63 f.R. 59201, formerly set out as a note under this section].

The Secretary of State is authorized and directed to publish this determination in the Federal Register.

WILLIAM J. CLINTON

Prior similar determinations of the President were as follows:

Presidential Determination No 99-1, Oct. 21, 1998, 63 FR 59201.

AMERICAN LAW REPORTS

Effect of Foreign Sovereign Immunities Act (28 USCA §§ 1330, 1441(d), 1602 et seq.) on right to jury trial in action against foreign state. 56 ALR Fed 679.

Exceptions to jurisdictional immunity of foreign states and their property under the Foreign Sovereign Immunities Act of 1976 (28 USCA §§ 1602 et seq.). 59 ALR Fed 99.

LIBRARY REFERENCES

American Digest System

Procedure in actions against foreign sovereign; attachment and execution, see International Law ¶10.29 et seq., 10.42.

Encyclopedias

Procedure in actions against foreign sovereign; attachment and execution, see C.J.S. International Law § 53 et seq.

30 Am. Jur. 2d, Executions and Enforcement of Judgments (1994) § 129.

4 Am. Jur. 2d, Ambassadors, Diplomats § 18.

6 Am. Jur. 2d, Attachment § 218.5.

9A Am. Jur. 2d, Bankruptcy § 1201.

30 Am. Jur. 2d, Executions § 102.5.

32 Am. Jur. 2d, Federal Practice and Procedure § 27.

45A Am. Jur. 2d, Job Discrimination (1993) § 53.

Law Review and Journal Commentaries

Default on foreign sovereign debt. 18 Ind.L.Rev. 959 (1985).

Defenses to payment of foreign debt. Lawrence W. Newman and Michael Burrows, 214 N.Y.L.J. 3 (Oct. 31, 1995).

Draft brief concerning claims to foreign sovereign immunity and human rights: Nonimmunity for violations of international law under the FSIA. Jordan J. Paust, 8 Hous.J.Int'l L. 49 (Autumn, 1985).

FSIA: Torture and waiver to jurisdiction. Richard W. Cutler, 211 N.Y.L.J. 1 (Feb. 15, 1994).

Immunity of states for noncommercial torts: A comparative analysis of the international law



U.S. Department of Justice

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FAX TRANSMITTAL COVER SHEET

DATE: August 7, 2002

TO: JOCK SCHARFEN
456-9110

FROM: CAROL FEDERIGHI

THERE ARE A TOTAL OF ___ PAGES INCLUDING THIS COVER PAGE IN THIS TRANSMITTAL.

JAMES COOPER-HILL, P.C.

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JAMES COOPER-HILL
AS CERTIFIED, COMMERCIAL REAL ESTATE LAW
AS CERTIFIED, RESIDENTIAL REAL ESTATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

October 15, 2001

Honorable Colin L. Powell
Department of State
2201 C Street NW
Washington, D.C. 20520

Re: Daliberti et al vs. Republic of Iraq; Cause No. 96-CV-1118 in the United States
District Court for the District of Columbia.

Dear Mr. Secretary:

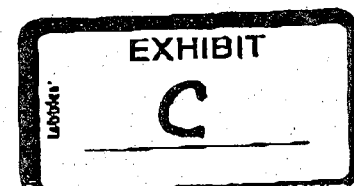
My co-counsel, Andrew Hall and Nelson Jones, and I represent four United States citizens and their spouses who are the plaintiffs and judgment creditors in the above referenced matter. Each of the four men were detained by the government of Iraq in three episodes. Chad Hall was kidnaped at gunpoint in Kuwait in 1992, transported across the border into Iraq and tortured.

Ken Beaty was captured at a checkpoint and held hostage for seven months in 1993. Iraq sought to have the sanctions lifted in exchange for his release but after the delivery of \$5 million in exempt medical supplies, Senator David Boren (D. Okla) obtained his release from Deputy Premier Tariq Azziz and brought Mr. Beaty home.

David Daliberti and Bill Barloon were also captured at a checkpoint. Again the government of Iraq attempted to link their release to a lifting of the sanctions. Then Congressman Bill Richardson negotiated directly with Premier Saddam Hussein and brought the men home.

Suit was filed in May, 1996 on behalf of these four men and their spouses pursuant to the Anti-Terrorism & Effective Death Penalty Act of 1996. While Iraq sought dismissal and challenged the suit over a period of several years, the matter was tried earlier this year and a judgment entered against Iraq. A copy of the Judgment and Order is enclosed.

The time for any appeal has now passed and the judgment is final. All that is left is to levy on assets of the Republic of Iraq to obtain satisfaction of the judgment. Under existing law both the Department of State and the Department of the Treasury are required to assist in this effort.



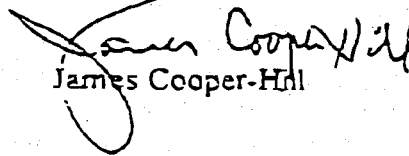
An informal request was made of the State Department in June this year but assistance in satisfying the judgment was refused. This letter is a formal request that the Department of State provide the assistance the law requires and comply with the following statute:

"At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under §1605(a)(7), the Secretary of the Treasury and the Secretary of State shall fully, promptly and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state." 28 U.S.C. §1610(f)(1)(A).

A similar letter is being sent this date to the Secretary of the Treasury, likewise seeking the assistance which the law requires. Two weeks from the date of this letter, a Writ of Execution will be requested from the court if an affirmative response is not forthcoming within that time period.

We all look forward to your assistance in bringing justice and closure to these brave Americans who have suffered at the hands of terrorist states.

Very truly yours,


James Cooper-Hill

JCH/ns

cc: Andrew Hall
Nelson Jones