

THE BERKMAN LAW OFFICE, LLC

111 Livingston Street, Suite 1928
Brooklyn, New York 11201

Tel: (718) 855-3627

Fax: (718) 855-4696

December 10, 2015

BY ECF

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

Re: *Weinstein v. Islamic Rep. of Iran (and consolidated cases)*

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

Dear Mr. Langer,

ICANN's letter of December 7 contends that *OBB Personenverkehr v. Sachs* "reaffirmed" and "underscores" one of ICANN's arguments. Not only is that false, *Sachs* is neither "pertinent" nor "significant" to this appeal, so ICANN's reliance on FRAP 28(j) is improper; its letter should be ignored. *See* FRAP 28(j); Circuit Rule 28(f).

ICANN first cites a footnote in *Sachs* where the Supreme Court stated that, because the respondent relied only on one clause of a statute, it would "limit [its] inquiry to that clause." Slip Op. at 3 n3. In that footnote, the Court referred only to filings made *to the Supreme Court*, stating that potential arguments not advanced by a party would not be raised *sua sponte* by the Court. But the Appellants here do not ask the Court to raise any argument *sua sponte*.

ICANN next cites *Sachs*' discussion on pages 9-11, which relied on rules peculiar to the Supreme Court in light of its discretionary review, where the Court refused to consider a "new theory" that was not earlier raised and not the subject

of *certiorari*. Slip Op. at 10 & n.5 (citing Supreme Court Rule 15.2¹ (“Rule 15.2”)). ICANN contends this supports its argument that the Appellants forfeited arguments. It is wrong.

First, Rule 15.2 implies that issues raised in an opposition to a petition for *certiorari* *will* be considered. Rule 15.2. Further, *Sachs* implies that issues not raised before the district court but raised to the court of appeals *will* be considered. Slip Op. at 10 (“That argument was never presented to *any* lower court and is therefore forfeited.” (emphasis added)). The Appellants here properly raised their arguments to this Court.

Second, *Sachs* does not address whether the Appellants can be held to have waived anything at all given that they did not have an adequate opportunity to raise their arguments to the district court.

Respectfully yours,

/s/ Meir Katz

Meir Katz

cc: all counsel of record via ECF

¹ That Rule requires a party opposing *certiorari* to “address any perceived misstatement of fact or law” in its opposition and that failure to do so may constitute waiver. Rule 15.2.

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2015, I filed the foregoing using the ECF system, which is expected to electronically serve all counsel of record.

/s/ Meir Katz
Meir Katz