#### INTERNATIONAL COURT OF JUSTICE

# CERTAIN IRANIAN ASSETS (ISLAMIC REPUBLIC OF IRAN v. UNITED STATES OF AMERICA)

# COUNTER-MEMORIAL SUBMITTED BY THE UNITED STATES OF AMERICA

October 14, 2019

ANNEXES
VOLUME III

Annexes 56 through 79

# ANNEX 56

United Nations A/RES/73/305



Distr.: General 2 July 2019

#### Seventy-third session

Agenda item 74 (b)

### Resolution adopted by the General Assembly on 28 June 2019

[without reference to a Main Committee (A/73/L.88 and A/73/L.88/Add.1)]

### 73/305. Enhancement of international cooperation to assist victims of terrorism

The General Assembly,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights,<sup>1</sup> the International Covenant on Civil and Political Rights<sup>2</sup> and other relevant instruments of international human rights law and international humanitarian law,

Recalling previous resolutions of the General Assembly, the Commission on Human Rights and the Human Rights Council on human rights and terrorism and on the promotion and protection of human rights while countering terrorism,

Recalling also the United Nations Global Counter-Terrorism Strategy<sup>3</sup> and the consecutive General Assembly resolutions on the reviews of the Strategy, including their provisions related to victims of terrorism,

Reaffirming the commitment of Member States to taking measures aimed at addressing the dehumanization of victims of terrorism in all its forms and manifestations,

Recognizing the role that victims of terrorism in all its forms and manifestations can play, including in countering the appeal of terrorism, and emphasizing the need to promote international solidarity in support of victims of terrorism and to ensure that victims of terrorism are treated with dignity and respect,

Reaffirming that Member States have the primary responsibility in countering terrorism and supporting victims of terrorism,

<sup>&</sup>lt;sup>3</sup> Resolution 60/288.





<sup>&</sup>lt;sup>1</sup> Resolution 217 A (III).

<sup>&</sup>lt;sup>2</sup> See resolution 2200 A (XXI), annex.

Recognizing that terrorism has a detrimental effect on the full enjoyment of all human rights and fundamental freedoms, and impedes the full enjoyment of political, civil, economic, social and cultural rights,

Reaffirming that terrorism and violent extremism as and when conducive to terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group,

Recognizing that victims of terrorism should be treated with compassion and respect for their dignity and have their right to access to justice and redress mechanisms, as provided for in applicable domestic law, fully respected, and that the establishment, strengthening and expansion of funds, as permitted under domestic law, for compensation or reimbursement to victims should be encouraged,

Reiterating its unequivocal condemnation of all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, and renewing its unwavering commitment to strengthening international cooperation to prevent and combat terrorism, and to deny impunity and pursue accountability in relation to the perpetrators of terrorist acts and their supporters,

Strongly condemning all forms of sexual and gender-based violence, abductions, trafficking in persons, rape, forced marriage, enslavement and other forms of violence perpetrated by terrorist groups, and stressing the importance of bringing perpetrators to justice and addressing the needs of victims, in particular women and children, in this regard,

Deeply deploring the suffering caused by terrorism to the victims and their families, and, while stressing the need to promote and protect the rights of victims of terrorism, in particular women and children, reaffirming its profound solidarity with them and stressing the importance of providing them with proper support and assistance, while respecting, inter alia, considerations regarding remembrance, dignity, respect, accountability, truth and justice, in accordance with international law,

Recognizing the importance of respecting the human rights of victims of terrorism and their families and of providing them with appropriate support and assistance in accordance with applicable law,

Recalling the adoption of its resolution 72/165 of 19 December 2017, entitled "International Day of Remembrance of and Tribute to the Victims of Terrorism", as an important step,

Taking note of the report of the Secretary-General on the International Day of Remembrance of and Tribute to the Victims of Terrorism,<sup>4</sup>

Underlining that victims of terrorism play an important role in the criminal justice process, highlighting the importance of the sharing of good practices in addressing victims' needs after a terrorist attack and during the criminal justice process, and in this regard taking note of the United Nations Office on Drugs and Crime handbook entitled "The Criminal Justice Response to Support Victims of Acts of Terrorism" and publication entitled "Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework",

Welcoming the United Nations Counter-Terrorism Centre support programme for victims of terrorism for the period 2018–2020, which is focused on raising awareness of victims' issues and strengthening their voices,

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<sup>&</sup>lt;sup>4</sup> A/73/599.

Highlighting the importance of effective coordination among relevant governmental offices and agencies and cooperation with civil society organizations providing support and assistance to victims and their families,

- 1. Calls upon all Member States to develop comprehensive assistance plans for victims of terrorism, consistent with domestic law, taking into account a gender perspective, to address the immediate, short-term and long-term needs of victims of terrorism and their families with regard to their relief and rehabilitation, ensuring that they are provided with proper support and assistance, both immediately after an attack and in the long term, including through the sharing of best practices and lessons learned related to the protection of and assistance to victims of terrorism;
- 2. Urges Member States to establish systems of assistance, consistent with domestic law, that would address the needs of victims of terrorism and their families and promote and protect their rights, including by partnering with health professionals, emergency planning managers and members of law enforcement, prosecutors' offices and civil society, where applicable, to institutionalize the provision of assistance to victims;
- 3. Calls upon all Member States to consider the impacts of terrorism on women and children and to seek greater consultations, as appropriate, with women and women's organizations when developing their victim assistance plans;
- 4. *Emphasizes* that the granting of such assistance should be provided, in accordance with domestic law, to victims of terrorist acts regardless of whether the perpetrator of the terrorist act is identified, apprehended, prosecuted or convicted;
- 5. Underlines that, if a victim does not normally reside in the territory of the State in which the terrorist act occurred, that State should cooperate and coordinate with the victim's State of residence in ensuring that the victim receives assistance, in accordance with domestic law;
- 6. Stresses the importance of effective, fair, humane, transparent and accountable criminal justice systems, in accordance with applicable domestic and international law, in supporting victims of terrorism, and encourages Member States to consider victims of terrorism in this regard, including when developing and maintaining appropriate strategies for prosecution, rehabilitation and reintegration and addressing conditions conducive to the spread of terrorism;
- 7. Calls upon the Office of Counter-Terrorism to further enhance coordination and coherence across the United Nations Global Counter-Terrorism Coordination Compact entities on raising awareness of victims' issues and the delivery of United Nations capacity-building assistance to requesting Member States;
- 8. Also calls upon the Office of Counter-Terrorism, in particular the United Nations Counter-Terrorism Centre, within their respective mandates, to assist requesting Member States in developing their comprehensive assistance plans for victims of terrorism and in building their capacity to assist victims of terrorism;
- 9. Reaffirms the role of the United Nations Office on Drugs and Crime in providing technical assistance for building the capacity of requesting Member States in the development and implementation of programmes of assistance and support for victims of terrorism, in accordance with relevant national legislation, and requests the Office, within its mandate, to continue to enhance its support to Member States, at their request, to improve the criminal justice system response to support victims of acts of terrorism by continuing and enhancing its assistance relating to international legal and judicial cooperation pertaining to countering terrorism and by fostering the development of strong and effective central authorities for international cooperation in criminal matters;

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- 10. Encourages the United Nations Global Counter-Terrorism Coordination Compact working group on promoting and protecting human rights and the rule of law while countering terrorism and supporting victims of terrorism to continue to raise awareness of victims' issues and the promotion and protection of victims' rights, including in the criminal justice process, and urges the working group to increase the attention paid to strengthening efforts to build the capacity of requesting Member States and to engagement with relevant civil society organizations to assist and support victims of terrorism in protecting their rights and needs, including the need to have public recognition and to keep their memory alive;
- 11. Recognizes the valuable roles that civil society and the private sector play in supporting victims of terrorism, including by assisting with the provision of assistance and medical, legal and psychosocial support services, by advocating on behalf of victims and by helping victims to bring public awareness to the human impact of terrorist acts, which can also contribute to the prevention of terrorism and the building of resilience and social cohesion;
- 12. Also recognizes the need to continue to provide tangible capacity-building assistance to requesting Member States in building sustainable national systems to assist victims of terrorism, and in this regard stresses the need to contribute more resources for capacity-building projects;
- 13. Calls upon Member States to respect the dignity and legal rights of victims of terrorism, as provided for in domestic law, in criminal litigation and in gaining access to justice, including the right to be considered for witness protection measures and appropriate assistance and support during criminal proceedings, awareness of court proceedings and charges, the right to be treated with fairness and with respect for their dignity and privacy and for their safety from intimidation and retaliation, in particular where they appear as witnesses, the right to full and timely restitution and the ability to address the court and consult with prosecutors;
- 14. Takes note of the United Nations support portal for victims of terrorism, and urges the United Nations to provide relevant information for victims, their families and communities, including but not limited to psychosocial support and access to national criminal justice systems or rehabilitation opportunities offered by Member States;
- 15. Requests the Secretary-General to submit to the General Assembly at its seventy-fourth session a report on the progress made in the implementation of the present resolution, containing an evaluation of the existing United Nations activities regarding victims of terrorism, with a focus on concrete recommendations and, as appropriate, detailed options, including for a voluntarily funded comprehensive programme to support Member States, at their request, in assisting victims of terrorism through national systems.

95th plenary meeting 28 June 2019

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# ANNEX 57

# Revised Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts

adopted by the Committee of Ministers at its 127<sup>th</sup> Session, Nicosia, 19 May 2017

#### **Preamble**

The Committee of Ministers,

- [a] Considering that terrorism seriously jeopardises human rights, threatens democracy, aims notably to destabilise legitimately constituted governments and to undermine pluralistic civil society and challenges the aspiration of everyone to live free from fear;
- [b] Unequivocally condemning all acts of terrorism as criminal and unjustifiable, wherever and by whoever committed;
- [c] Recognising the suffering endured by the victims of terrorist acts and their close family and considering that these persons must be shown national and international solidarity and support;
- [d] Underlining States' obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life;
- [e] Recalling also that all measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding all forms of arbitrariness and discriminatory treatment, and must be subject to appropriate supervision, and reaffirming member States' obligation to respect, in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), and abide by the final judgments of the European Court of Human Rights to which they are parties;
- [f] Reaffirming the Guidelines on Human Rights and the Fight against Terrorism, adopted on 11 July 2002 at the 804<sup>th</sup> meeting of the Ministers' Deputies, as a permanent and universal reference;
- [g] Underlining that the effects of terrorism on victims and their close family members require at national level the implementation of an efficient protection policy, financial assistance and compensation for victims in light particularly of Article 13 of the Council of Europe Convention on the Prevention of Terrorism

- (Warsaw, 16 May 2005, CETS No. 196), including, in an appropriate way, the societal recognition of the suffering of victims and the maintenance of the duty of remembrance;
- [h] Recalling the Guidelines on the Protection of Victims of Terrorist Acts, adopted on 2nd March 2005 at the 917th meeting of the Ministers' Deputies and wishing to revise them as a response to all forms of terrorism;
- [i] Recalling the United Nations Office on Drugs and Crime handbook of 2012 *The Criminal Justice Response to Support Victims of Acts of Terrorism*;
- [j] Recognising the important role of associations for the protection of victims;
- [k] Having regard to the work carried out by the Steering Committee for Human Rights (CDDH) which, apart from a Revised Text of the Guidelines, produced also a background paper to them, in consultation with the Committee of Experts on Terrorism (CODEXTER);
- [1] Adopts the following revised Guidelines on the protection of victims of terrorist acts which shall replace the ones adopted on the same subject-matter on 2 March 2005, and invites member States to use them as a practical tool in order to address the above challenges in the light of all forms of terrorism and towards ensuring better protection of human rights and fundamental freedoms;
- [m] Invites the governments of the member States to ensure that the revised guidelines are widely translated and disseminated among all authorities responsible for the fight against terrorism and for the protection of the victims, as well as among representatives of civil society.

## I. Purpose of the Guidelines on the protection of victims of terrorist acts

The present Guidelines aim at recalling the measures to be taken by the member States in order to support and protect the fundamental rights of any person who has suffered direct physical or psychological harm as a result of a terrorist act, and, in appropriate circumstances, of their close family. These persons are considered victims for the purposes of these Guidelines.

#### II. Principles

 States should have an appropriate legal and administrative framework including suitable internal structures, in order for victims of terrorist acts (hereafter "the victims") to benefit from the services and measures prescribed by these Guidelines.

- 2. The granting of these services and measures should exclude all forms of arbitrariness, as well as any discriminatory treatment and should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.
- 3. States must respect the dignity and the private and family life of victims.

#### III. Emergency assistance

In order to cover the immediate needs of victims, States should ensure that appropriate (medical, psychological, social and material) emergency assistance is available free of charge to them; they should also facilitate access to spiritual assistance for victims at their request.

#### IV. Information

- 1. States should give information to victims relating to the act from which they have suffered, except where victims indicate that they do not wish to receive such information.
- 2. For this purpose, States should:
  - set up appropriate information contact points for the victims, concerning in particular their rights, the existence of support bodies, and the possibility of obtaining assistance, practical and legal advice as well as redress or compensation;
  - b. ensure that victims are provided with appropriate information in particular about the investigations, the final decision concerning prosecution, the date and place of the hearings, any opportunity in that context to introduce an action for damages, and the conditions under which they may acquaint themselves with the decisions handed down.

#### V. Continuing assistance

- States should provide for appropriate continuing medical, psychological, social
  and material assistance for victims. This assistance should ensure that victims
  are able, as far as is practicable, to resume the normal course of their activities
  and lives which they enjoyed before the terrorist act.
- 2. If the victim does not normally reside on the territory of the State where the terrorist act occurred, that State should co-operate with the State of residence in ensuring that the victim receives such assistance.

#### VI. Investigation and prosecution

- 1. States must effectively investigate terrorist acts without delay, particularly where there have been victims.
- 2. In this framework, special attention should be paid to victims without it being necessary for them to have made a formal complaint.
- 3. States should ensure that their investigators receive specific victim-sensitive training on the needs of victims.
- 4. States should, in accordance with their national legislation, strive to bring individuals suspected of terrorist acts to justice and obtain a decision from a competent, independent and impartial tribunal within a reasonable time.
- 5. In cases where, as a result of an investigation, it is decided not to take action to prosecute a suspected perpetrator of a terrorist act, States should ensure that victims are able to ask for a review of this decision by a competent authority.
- 6. States should ensure that the position of victims is adequately recognised in criminal proceedings.

#### VII. Effective access to the law and to justice

States must provide effective access to the law and to justice for victims by providing the right of access to competent courts in order to bring a civil action in support of their rights, including legal assistance and interpretation as required to this end.

#### VIII. Compensation

- 1. Victims should receive fair, appropriate and timely compensation for the damages which they suffered. When compensation is not available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts, the State on the territory of which the terrorist act happened should contribute to the compensation of victims for direct physical or psychological harm, irrespective of their nationality. To this end States could consider the creation of specific funds, if they do not already exist.
- Compensation should be easily accessible to victims, irrespective of nationality.
   To this end, the State on the territory of which the terrorist act took place should introduce a mechanism allowing for fair and appropriate compensation, after a simple procedure and within a reasonable time.
- States whose nationals are victims of a terrorist act on the territory of another State should also encourage administrative co-operation with the competent authorities of that State to facilitate access to compensation for their nationals.

4. Apart from the payment of pecuniary compensation, States are encouraged to consider, depending on the circumstances, taking other measures to mitigate the harmful consequences of the terrorist act suffered by the victims.

#### IX. Protection of private and family life

- 1. States should take appropriate steps to avoid as far as possible undermining respect for the private and family life of victims, in particular when carrying out investigations or providing assistance after the terrorist act as well as within the framework of proceedings initiated by victims.
- States should, where appropriate, and in full compliance with the principle of freedom of expression, encourage the media and journalists to adopt self-regulatory measures in order to ensure the protection of the private and family life of victims in the framework of their information and awareness-raising activities.
- 3. States must ensure that victims have an effective remedy where they raise an arguable claim that their right to respect for their private and family life has been violated.

#### X. Protection of dignity and security

- 1. At all stages of the proceedings, victims should be treated in a manner which gives due consideration to their personal situation, their rights and their dignity.
- 2. States must ensure the protection and security of victims and take measures, where appropriate, to protect their identity, in particular where they appear as witnesses.

#### XI. Specific training for persons working with victims

States should encourage specific training for persons working with victims, and grant the necessary resources to that effect.

#### XII. Raising public awareness and involving victims

States are encouraged to:

- a. take measures, in an appropriate way, in order to attain societal recognition and remembrance of victims;
- b. facilitate the involvement of representatives of the victims of terrorist acts in raising public awareness.

#### XIII. Co-operation with civil society

States are encouraged to co-operate with and facilitate as much as possible the actions of civil society representatives, and especially those of the associations for the protection of victims.

#### **XIV. Increased protection**

Nothing in these Guidelines prevents States from providing services and adopting measures more favourable than those described in these Guidelines.

### **Background paper**

used for the preparation of the revised quidelines on the protection of victims of terrorist acts

This background paper, prepared by the Steering Committee for Human Rights (CDDH) in consultation with the Committee of Experts on Terrorism (CODEXTER), is not an explanatory report of the revised Guidelines.

The Committee of Ministers, upon adopting the revised Guidelines, wished to draw the background paper to the attention of member States and decided that information contained therein could be updated regularly as appropriate.

#### Preamble

The Committee of Ministers,

- [a] Considering that terrorism seriously jeopardises human rights, threatens democracy, aims notably to destabilise legitimately constituted governments and to undermine pluralistic civil society and challenges the ideals of everyone to live free from fear;
- 1. The first part of this paragraph repeats paragraph [a] of the Preamble of the Guidelines on Human Rights and the Fight against Terrorism, adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies (hereafter "Guidelines of July 2002"). The phrase "free from fear" finds its origin in the second paragraph of the Preamble of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in its resolution 217 A (III) of 10 December 1948.
  - [b] Unequivocally condemning all acts of terrorism as criminal and unjustifiable, wherever and by whomever committed;
- 2. The wording repeats that of paragraph [b] of the Preamble of the Guidelines of July 2002.
  - [c] Recognising the suffering endured by the victims of terrorist acts and their close family and considering that these persons must be shown national and international solidarity and support;
  - [d] Underlining States' obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life;
- 3. The wording of paragraph [d] repeats in part that of Guideline I (Sates' obligation to protect everyone against terrorism) of July 2002 which states that: "States are under the obligation to take the measures needed to protect the

fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life. This positive obligation fully justifies states' fight against terrorism in accordance with the present quidelines."

- [e] Recalling also that all measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding all forms of arbitrariness and discriminatory treatment, and must be subject to appropriate supervision, and reaffirming member States' obligation to respect, in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), and abide by the final judgments of the European Court of Human Rights to which they are parties;
- 4. The wording of paragraph [e] repeats Guideline II of July 2002 and, in part, that of paragraph [i] of the Preamble of the Guidelines of July 2002.
- 5. In this context, the European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 8 on Combating Racism while Fighting Terrorism of 17 March 2004 should be recalled.
  - [f] Reaffirming the Guidelines on Human Rights and the Fight against Terrorism, adopted on 11 July 2002 at the 804th meeting of the Ministers' Deputies, as a permanent and universal reference;
  - [g] Underlining that the effects of terrorism on victims and their close family members require at national level the implementation of an efficient protection policy, financial assistance and compensation for victims in light particularly of Article 13 of the Council of Europe Convention on the Prevention of Terrorism (Warsaw, 16 May 2005, CETS No. 196), including, in an appropriate way, the societal recognition of the suffering of victims and the maintenance of the duty of remembrance;
- 6. In his report *The fight against violent extremism and radicalisation leading to terrorism* (CM(2016)64) presented at the 126th Session of the Committee of Ministers (Sofia, 18 May 2016), the Secretary General indicated an interest in raising public awareness of the need for [societal] recognition of victims, including the role of the media. The Secretary General further pointed out the interest of a revision of the Guidelines on the Protection of Victims of Terrorist Acts, adopted by the Committee of Ministers on 2 March 2005, in order to incorporate additional elements in light of the new face of terrorism. To this end, the Secretary General mentioned the following four lines of action:
  - a. Implementing a general legal framework to assist victims;
  - b. Providing assistance to victims in legal proceedings;
  - c. Raising public awareness of the need for societal recognition of victims, including the role of the media;
  - d. Involving victims of terrorism in the fight against terrorism.

- [h] Recalling the Guidelines on the Protection of Victims of Terrorist Acts, adopted on 2nd March 2005 at the 917th meeting of the Ministers' Deputies and wishing to revise them as a response to all forms of terrorism:
- [i] Recalling the United Nations Office on Drugs and Crime handbook of 2012 The Criminal Justice Response to Support Victims of Acts of Terrorism;
- [i] Recognising the important role of associations for the protection of victims;
- 7. With regard to the United Nations, the Good *Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* of February 2016 (thereafter "Good practices of February 2016") state that "States should promote and support civil society and non-governmental organizations involved in providing support to victims of terrorism within the criminal justice system."
  - [k] Having regard to the work carried out by the Steering Committee for Human Rights (CDDH) which, apart from a Revised Text of the Guidelines, produced also a background paper to them, in consultation with the Committee of Experts on Terrorism (CODEXTER);
  - [I] Adopts the following revised Guidelines on the Protection of Victims of Terrorist Acts which shall replace the ones adopted on the same subject-matter on 2 March 2005, and invites member States to use them as a practical tool in order to address the above challenges in the light of all forms of terrorism and towards ensuring better protection of human rights and fundamental freedoms;
  - [m] Invites the governments of the member States to ensure that the revised guidelines are widely translated and disseminated among all authorities responsible for the fight against terrorism and for the protection of the victims, as well as among representatives of civil society.
- 8. The terms "invites member States to implement them and ensure that they are widely disseminated among all authorities responsible for the fight against terrorism" are taken from the last sentence of the Preamble to the Guidelines of July 2002.

#### I. Purpose of the Guidelines on the protection of victims of terrorist acts

The present Guidelines aim at recalling the measures to be taken by the member States in order to support and protect the fundamental rights of any person who has suffered direct physical or psychological harm as a result of a terrorist act, and, in appropriate circumstances, of their close family. These persons are considered victims for the purposes of these Guidelines.

9. Recommendation 1426 (1999) of the Parliamentary Assembly of the Council of Europe on European democracies facing up to terrorism of 23 September 1999, asked that the Committee of Ministers "consider the incorporation of the principle of fuller protection for victims of terrorist acts at both national and international level".

- 10. Recommendation 1677 (2004) of the Parliamentary Assembly on the Challenge of terrorism in Council of Europe member States of 6 October 2004 asked the Committee of Ministers to "finalise as soon as possible the elaboration of guidelines on the rights of victims and the corresponding duties of member States to provide all necessary assistance and to create a forum for the exchange of good practice and training experiences between member States". Resolution 1677 (2004) of the Parliamentary Assembly on the same topic called on "the national parliaments to (i.) adopt an integrated and co-ordinated approach to countering terrorism at all its stages, including drawing up a legislative framework aimed at: (...) (d.) protecting, rehabilitating and compensating victims of terrorist acts".
- 11. Moreover, *Resolution No. 1 on Combating international terrorism,* adopted by the Ministers at the 24th Conference of European Ministers of Justice (Moscow, 4-5 October 2001) invited the Committee of Ministers to "c) (review) existing or, where necessary, (adopt) new rules concerning: (...) iv. the improvement of the protection, support and compensation of victims of terrorist acts and their families". *Resolution No. 1 on Combating terrorism* adopted by the Ministers at the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003) reiterated this invitation.
- 12. Paragraph 1 of the European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 8 on Combating Racism while Fighting Terrorism of 17 March 2004 recommends to governments of member States "to take all adequate measures, especially through international co-operation, (...) to support the victims of terrorism (...)".
- 13. As concerns the protection of fundamental rights, it is worth mentioning paragraph [i] of the Preamble of the July 2002 Guidelines which states that "Reaffirming states' obligation to respect, in their fight against terrorism, the international instruments for the protection of human rights and, for the member States in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights;"
- 14. Finally, in his report *The fight against violent extremism and radicalisation leading to terrorism* (CM(2016)64) presented at the 126th Session of the Committee of Ministers (Sofia, 18 May 2016), the Secretary General of the Council of Europe, Mr. Thorbjørn JAGLAND, indicated an interest in revising the Guidelines on the protection of victims of terrorist acts adopted by the Committee of Ministers on 2 March 2005, in order to incorporate additional elements in light of the new face

of terrorism. To this end, the Secretary General proposed in his report the four lines of action already mentioned in this background paper (see comments on Preamble (g)).

#### II. Principles

- States should have an appropriate legal and administrative framework including suitable internal structures, in order for victims of terrorist acts (hereafter "the victims") to benefit from the services and measures prescribed by these Guidelines.
- 15. Some member States have put in place the following specific structures:
  - rapid identification procedures for the bodies of victims (centralisation of identifying elements, and their verification) so as to inform and return bodies to the families concerned, while taking into full consideration the key issues arising in this context, particularly psychological trauma;
  - (ii) a service for designating "victim" correspondents within the investigating department and the public prosecution service, in order to facilitate the collection of information and to produce, on that basis, a single list of victims present at the time and place of the terrorist act;
  - (iii) a confidential and free reception and support service for victims through multi-disciplinary teams, taking full account of the specificity and seriousness of the acts and the damage suffered. In particular, these teams are led and co-ordinated in real time by a suitable body or bodies providing assistance to victims. This body is also in charge of setting up an appropriate single telephone helpline for victims;
  - (iv) a network of local "terrorism" correspondents working in tandem with victim support associations. Each correspondent would inter alia be required to:
  - a. identify all of the partners coming to the assistance of victims;
  - b. set up and manage an appropriate network of contacts;
  - c. liaise with the coordinating authority and the public prosecution service;
  - d. co-ordinate and/or take action in support of the continuing assistance provided in co-operation with the victim support associations.
  - (v) local committees to follow-up on victims and information points;
  - (vi) access to translation or interpretation services, where appropriate free of charge, that are necessary for effective interaction with responsible agencies from another State.
- 16. Different approaches may be required for the situation of victims of terrorist acts within the territory of the country and nationals who have suffered such acts abroad.

- 17. Concerning the protection of people from possible terrorist acts, it is worth recalling Guideline I of July 2002 (States' obligation to protect everyone against terrorism) which states that "States are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life. This positive obligation fully justifies States' fight against terrorism in accordance with the present Guidelines."
  - The granting of these services and measures should exclude all forms of arbitrariness, as well as any discriminatory treatment and should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.
- 18. Paragraph 2 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34) states that: "A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted [...]".
  - 3. States must respect the dignity and the private and family life of victims.
- 19. Paragraph 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34) specifies that: "Victims should be treated with compassion and respect for their dignity. [...]".
- 20. Article 2, paragraph 1, of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) states that: "Each Member State [...] shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings".
- 21. With regard to the United Nations, the Good Practices of February 2016 state that: "Victim safety is paramount. Risks to the safety of victims should be assessed throughout the investigation and prosecution, and, where necessary, States should take measures to protect victims during their participation in the criminal justice system".

#### III. Emergency assistance

In order to cover the immediate needs of the victims, States should ensure that appropriate (medical, psychological, social and material) emergency assistance is available free of charge to them; they should also facilitate access to spiritual assistance for victims at their request.

- 22. Paragraph 4 of Recommendation No. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation recommends that the governments of member States "ensure that victims and their families, especially those who are most vulnerable, receive in particular [...] emergency help to meet immediate needs [...]".
- 23. The word "assistance" was preferred to the word "help" in particular because it is used in several articles of the European Social Charter (Revised) (CETS No. 163, of 3 May 1996): see for example Article 13 "Right to social and medical assistance".
- 24. Even if the text of the European Convention of Human Rights does not expressly mention the right to health care nor the right to medical assistance, the Court has clearly indicated that, in certain cases, the State can have an obligation to provide appropriate medical assistance so as not to risk violation of Article 2 of the Convention (Right to life) or Article 3 (Prohibition of torture).
- 25. In its decision *Ilhan v. Turkey* of 27 June 2000, para 76: "The Court observes that these three cases concerned the positive obligation on the State to protect the life of the individual from third parties or from the risk of illness under the first sentence of Article 2 § 1."
- 26. The Court reiterated its position in its decision *Berktay v. Turkey* of 1 March 2001, para. 154.
- 27. In its decision on admissibility no. 65653/01 in the case *Nitecki v. Poland* of 21 March 2002, the Court recalled that: "The Court recalls that the first sentence of Article 2 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. It cannot be excluded that the acts and omissions of the authorities in the field of health care policy may in certain circumstances engage their responsibility under Article 2 (see Powell v. the United Kingdom [decision], no. 45305/99, 4.5.2000).

<sup>1.</sup> Osman v. the United Kingdom (decision of 28 October 1998), Yaşa v. Turkey (decision of 2 September 1998) and L.C.B. v. the United Kingdom (decision of 9 June 1998).

#### IV. Information

- States should give information to victims relating to the act from which they have suffered, except where victims indicate that they do not wish to receive such information.
- 28. The Court recognises that, in certain circumstances, a family member of a "disappeared person" may suffer inhuman treatment, within the meaning of Article 3 of the Convention, if the State authorities remain silent despite attempts to obtain information about the disappeared person. Thus, in the case Cyprus v. Turkey of 10 May 2001, §§ 156-157, "156. [...] The Court recalls that the question whether a family member of a "disappeared person" is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the person concerned a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements will include [...] the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. [...] 157. [...] For the Court, the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attains a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3."
  - 2. For this purpose, States should:
  - a. set up appropriate information contact points for the victims, concerning in particular their rights, the existence of support bodies, and the possibility of obtaining assistance, practical and legal advice as well as redress or compensation;
- 29. Paragraph 2 of Recommendation No. R (85) 11 of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure states that "the police should inform the victim about the possibilities of obtaining assistance, practical and legal advice, compensation from the offender and State compensation".
- 30. Paragraph 4 of Recommendation No. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation provides that the governments of member States "ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) information on the victim's rights".

- b. ensure that victims are provided with appropriate information in particular about the investigations, the final decision concerning prosecution, the date and place of the hearings, any opportunity in that context to introduce an action for damages, and the conditions under which they may acquaint themselves with the decisions handed down.
- 31. Paragraph 3 of Committee of Ministers Recommendation No. R (85) 11 to member States on the position of the victim in the framework of criminal law and procedure states that "the victim should be able to obtain information on the outcome of the police investigation".
- 32. Paragraph 6 of this same Recommendation adds that "the victim should be informed of the final decision concerning prosecution, unless he indicates that he does not want this information".
- 33. Paragraph 9 of Committee of Ministers Recommendation No. R (85) 11 to member States on the position of the victim in the framework of criminal law and procedure states that "the victim should be informed of: the date and place of a hearing concerning an offence which caused him suffering; his opportunities of obtaining restitution and compensation within the criminal justice process, legal assistance and advice; how he can find out the outcome of the case".
- 34. Finally, Article 4 of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) on the "Right to receive information" specifies in particular that "Member States shall take the necessary measures to ensure that, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary".

#### V. Continuing assistance

- States should provide for appropriate continuing medical, psychological, social and material assistance for victims. This assistance should ensure that victims are able, as far as is practicable, to resume the normal course of their activities and lives which they enjoyed before the terrorist act.
- 35. Paragraph 4 of Committee of Ministers Recommendation No. R (87) 21 to member States on assistance to victims and the prevention of victimisation recommends that governments of member States "ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) continuing medical, psychological, social and material help".
- 36. It is also worth mentioning Paragraph 14 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34), states that:

- "Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means."
- 37. Finally, in terms of continuing assistance, some member States have put in place measures to ensure the social integration of victims who have suffered direct physical or psychological harm as a result of a terrorist act by:
  - (i) facilitating their reintegration on the labour market, especially concerning access to employment or reorganising their working conditions due to their physical and psychological situation after the terrorist attack;
  - (ii) ensuring their appropriate housing conditions and sufficient income;
  - (iii) Granting victims with disabilities privileged access to public transport in order to promote their mobility and sociability.
  - If the victim does not normally reside on the territory of the State where the terrorist act occurred, that State should co-operate with the State of residence in ensuring that the victim receives such assistance.
- 38. With regard to the United Nations, the Good Practices of February 2016 state that: "States should ensure that their embassies, consulates and other international diplomatic posts are able to provide effective assistance and support to their nationals who might become victims of terrorism abroad, and have the capacity to co-operate with key government and private sector counterparts and actors."

#### VI. Investigation and prosecution

- States must effectively investigate terrorist acts without delay, particularly where there have been victims.
- 39. The Court recognises that there should be an official investigation when individuals have been killed as a result of the use of force and that this obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. In the case *Ulku Ekinci v. Turkey,* 16 July 2002, § 144 it indicates that "The Court recalls that, according to its case-law, the obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. This obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investiga-

tion authority. The mere fact that the authorities were informed of the killing of the applicant's husband gave rise ipso facto to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death (cf. Tanrikulu v. Turkey [GC], no. 23763/94, §§ 101 and 103, ECHR 1999-IV). The nature and degree of scrutiny which satisfies the minimum threshold of an investigation's effectiveness depends on the circumstances of each particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (cf. Velikova v. Bulgaria, no. 41488/98, § 80, ECHR 2000-VI)."

- 40. In the case *Tepe v. Turkey*, 9 May 2003, § 195 the <u>Court indicates</u> that "Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure (see Kaya, cited above, pp. 330-31, § 107)."
- 41. Moreover, the Court recognises that the investigation must be led with promptness and reasonable expedition. In the case *Finucane v. United Kingdom*, of 1 July 2003, para. 70, it indicates that "A requirement of promptness and reasonable expedition is implicit in this context (see Yaşa v. Turkey, judgment of 2 September 1998, Reports 1998-IV, pp. 2439-2440, §§ 102-104; Cakıcı v. Turkey [GC], no. 23657/94, ECHR 1999-IV, §§ 80, 87 and 106; Tanrıkulu v. Turkey, cited above, § 109; Mahmut Kaya v. Turkey, no. 22535/93, ECHR 2000-III, §§ 106-107). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, for example, Hugh Jordan v. the United Kingdom, cited above, §§ 108, 136 140)."
  - 2. In this framework, special attention should be paid to victims without it being necessary for them to have made a formal complaint.
- 42. In the case *Finogenov v. Russia* of 4 June 2012, para. 270, the Court indicates that "To be "effective", an investigation should meet several basic requirements, formulated in the Court's case-law under Articles 2 and 3 of the Convention: it should be thorough (see Assenov and Others v. Bulgaria, 28 October 1998, §§ 103 et seq., Reports 1998-VIII; see also, *mutatis mutandis*, *Salman v. Turkey*, cited above, § 106, ECHR 2000-VII; Tanrıkulu v. Turkey [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000), expedient (see *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV; *Timurtaş v. Turkeyc* cited above, § 89; Tekin v. Turkey, 9 June 1998, § 67,

- Reports 1998-IV; and Indelicato v. Italy, no. 31143/96, § 37, 18 October 2001), and independent (see Öğur v. Turkey, [GC], no. 21954/93, §§ 91-92, ECHR 1999-III; see also Mehmet Emin Yüksel v. Turkey, no. 40154/98, § 37, 20 July 2004; and Güleç v. Turkey, 27 July 1998, §§ 80-82, Reports 1998-IV); and the materials and conclusions of the investigation should be sufficiently accessible for the relatives of the victims (see Oğur v. Turkey [GC], no. 21594/93, § 92, ECHR 1999-III, and Khadzhialiyev and Others v. Russia, no. 3013/04, § 106, 6 November 2008), to the extent it does not seriously undermine its efficiency."
- The Court recognises that the close family of a deceased victim must be involved in the investigation to the extent necessary to safeguard his or her legitimate interests, failing which this investigation could not be considered "effective". Thus, in the case Slimani v. France of 27 July 2004, para. 32 and 47 the Court indicates that: [The text of this judgment is available in French only] "32. (...) Dans le même type d'affaires, la Cour a souligné qu'il doit y avoir un élément suffisant de contrôle public de l'enquête ou de ses résultats pour garantir que les responsables aient à rendre des comptes, tant en pratique qu'en théorie. Elle a précisé que, si le degré de contrôle public requis peut varier d'une affaire à l'autre, les proches de la victime doivent, dans tous les cas, être associés à la procédure dans la mesure nécessaire à la sauvegarde de leurs intérêts légitimes (voir, notamment, l'arrêt Hugh Jordan c. Royaume-Uni du 4 mai 2001, no 24746/94, § 109 et les arrêts, précités, McKerr, § 115 et Edwards, § 73) ; elle estime qu'il doit en aller ainsi dès lorsqu'une personne décède entre les mains d'autorités." "47. Il n'en reste pas moins que, comme la Cour l'a précédemment souligné, dans tous les cas où un détenu décède dans des conditions suspectes, l'article 2 met à la charge des autorités l'obligation de conduire d'office, dès que l'affaire est portée à leur attention, une « enquête officielle et effective » de nature à permettre d'établir les causes de la mort et d'identifier les éventuels responsables de celleci et d'aboutir à leur punition : les autorités ne sauraient laisser aux proches du défunt l'initiative de déposer une plainte formelle ou d'assumer la responsabilité d'une procédure d'enquête. Or à cela il faut ajouter qu'une telle enquête ne saurait être qualifiée d'« effective » que si, notamment, les proches de la victime sont impliqués dans la procédure de manière propre à permettre la sauvegarde de leurs intérêts légitimes (paragraphes 29-32 ci-dessus). Selon la Cour, exiger que les proches du défunt déposent une plainte avec constitution de partie civile pour pouvoir être impliqués dans la procédure d'enquête contredirait ces principes. Elle estime que, dès lors qu'elles ont connaissance d'un décès intervenu dans des conditions suspectes, les autorités doivent, d'office, mener une enquête, à laquelle les proches du défunt doivent, d'office également, être associés."
- 44. In the case McKerr v. United Kingdom of 4 May 2001, para 148 and 159-160 the Court indicates that: "148. (...) The Court considers that the right of the family of the deceased whose death is under investigation to participate in the procee-

dings requires that the procedures adopted ensure the requisite protection of their interests, which may be in direct conflict with those of the police or security forces implicated in the events. The Court is not persuaded that the applicant's interests as next-of-kin were fairly or adequately protected in this respect." "159. (...) the Court considers that the requirements of Article 2 may nonetheless be satisfied if, while seeking to take into account other legitimate interests such as national security or the protection of material relevant to other investigations, the various procedures provide for the necessary safeguards in an accessible and effective manner. In the present case, the available procedures have not struck the right balance." "160. The Court would observe that the shortcomings in transparency and effectiveness identified above run counter to the purpose identified by the domestic courts of allaying suspicions and rumour. Proper procedures for ensuring the accountability of agents of the State are indispensable in maintaining public confidence and meeting the legitimate concerns that might arise from the use of lethal force. A lack of such procedures will only add fuel to fears of sinister motivations, as is illustrated, inter alia, by the submissions made by the applicant concerning the alleged shoot-to-kill policy."

- 45. With regard to the European Union, Article 10, paragraph 1, of the Council Framework Decision of 13 June 2002 on combating terrorism specifies that: "Member States shall ensure that investigation into, or prosecution of, offences covered by this Framework Decision are not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed on the territory of the Member State."
  - States should ensure that their investigators receive specific victim-sensitive training on the needs of victims.
- 46. With regard to the United Nations, the Good Practices of February 2016 state that: "States should ensure that investigators, prosecutors and any other professionals dealing with victims receive specific victim-sensitive training on the needs of victims, strategies for appropriately dealing with them and the need to prevent secondary victimisation."
  - 4. States should, in accordance with their national legislation, strive to bring individuals suspected of terrorist acts to justice and obtain a decision from a competent, independent and impartial tribunal within a reasonable time.
  - In cases where, as a result of an investigation, it is decided not to take action to prosecute a suspected perpetrator of a terrorist act, States should ensure that victims are able to ask for a review of this decision by a competent authority.
  - 6. States should ensure that the position of victims is adequately recognised in criminal proceedings.
- 47. The Court recognises that victims should be taken into consideration in criminal proceedings, in addition to their right to bring civil proceedings in order to secure at least symbolic reparation or to protect a civil right. In the case *Perez v*.

France, 12 February 2004 (Grand Chamber), §§ 70-72 the Court indicates that: "70. The Court (...) notes that the Convention does not confer any right, as demanded by the applicant, to "private revenge" or to an actio popularis. Thus, the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently: it must be indissociable from the victim's exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a "good reputation" (see Golder v. the United Kingdom, judgment of 21 February 1975, Series A no. 18, p.13, § 27; Helmers, cited above, p. 14, § 27; and Tolstoy Miloslavsky v. the United Kingdom, judgment of 13 July 1995, Series A no. 316-B, p. 78, § 58)." "72. (In addition, the Court notes) the need to safeguard victims' rights and their proper place in criminal proceedings. Simply because the requirements inherent in the concept of a "fair trial" are not necessarily the same in disputes about civil rights and obligations as they are in cases involving criminal trials, as evidenced by the fact that for civil disputes there are no detailed provisions similar to those in Article 6 §§ 2 and 3 (see Dombo Beheer B.V. v. the Netherlands, judgment of 27 October 1993, Series A no. 274, p. 19, § 32) does not mean that the Court can ignore the plight of victims and downgrade their rights. [...] Lastly, the Court draws attention for information to the text of Recommendations R (83) 7, R (85) 11 and R (87) 21 of the Committee of Ministers (see paragraphs 26-28 above), which clearly specify the rights which victims may assert in the context of criminal law and procedure."

- 48. As indicated above by the Court, Recommendations Nos. R (83) 7, R (85) 11 and R (87) 21 of the Committee of Ministers recognise a number of rights that victims may claim under criminal law and in criminal proceedings. In particular, paragraph 29 of Recommendation No R (83) 7 of the Committee of Ministers to member States on participation of the public in crime policy provides that the governments of member States should assist victims by "establishing an efficient system of legal aid for victims so that they may have access to justice in all circumstances". Furthermore, paragraph 4 of Recommendation No. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation states that the governments of member States "ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) assistance during the criminal process, with due respect to the defence".
- 49. Article 6 (Specific assistance to the victim) of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) specifies: "Each Member State shall ensure that victims have access to advice as referred to in Article 4(1)(f)(iii), provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid as referred to in Article 4(1)(f)(ii), when it is possible for them to have the status of parties to criminal proceedings".

- Paragraph 6 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34) mentions that: "The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d)Taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims."
- 51. Finally, with regard to the United Nations, the Good Practices of February 2016 state that: "States should ensure that prosecutors trained in dealing with victims of terrorism are included in multidisciplinary teams, in which all members have been vetted for security purposes, to work with investigators, in order to increase the likelihood of successful prosecution outcomes and improved outcomes for victims."
- 52. Inspired by the Guidance document related to the transposition and implementation of directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, the Good Practices of February 2016 also state that: "States should develop a procedure in their own national laws or criminal procedural codes whereby victims are entitled to ask for a review of a decision not to prosecute."

#### VII. Effective access to the law and to justice

States must provide effective access to the law and to justice for victims of terrorist acts by providing the right of access to competent courts in order to bring a civil action in support of their rights, including legal assistance and interpretation as required to this end.

53. The expression "effective access to the law and to justice" has been taken from Recommendation No. R (93) 1 of the Committee of Ministers to member States on effective access to the law and to justice for the very poor. Principles laid down in Recommendation No. R (81) 7 of the Committee of Ministers on measures facilitating access to justice are applicable, *mutatis mutandis*, to victims of terrorist acts and should be implemented by all member States.

- It is worth mentioning Paragraph 6 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34) adopted on 29 November 1985 by the General Assembly of the United Nations, which states that: "6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) providing proper assistance to victims throughout the legal process; (d) taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims."
- 55. Finally, with regard to the United Nations, the Good Practices of February 2016 state that: "States should ensure that victims are promptly informed of their right to access to justice, the avenues available to them and related services (e.g., interpretation, legal advice). Such services should be provided at no cost to the victim. Where necessary, States should provide interpretation of court proceedings at no cost to victims or their next of kin. Victims of their next of kin should be provided with legal aid at no cost to facilitate their representation in court proceedings."

#### VIII. Compensation

- Victims should receive fair, appropriate and timely compensation for the damages which they
  suffered. When compensation is not available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts, the State on the
  territory of which the terrorist act happened should contribute to the compensation of victims for
  direct physical or psychological harm, irrespective of their nationality. To this end States could
  consider the creation of specific funds, if they do not already exist.
- 56. Guideline No. XVII of July 2002 (Compensation for victims of terrorist acts) recalls that: "When compensation is not fully available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts, the State must contribute to the compensation of the victims of attacks that took place on its territory, as far as their person or their health is concerned."
- 57. Resolution 2002/35 of the United Nations Commission on Human Rights entitled Human rights and terrorism "welcomes the report of the Secretary-General (A/ 56/190), and invites him to continue to seek the views of Member States on the

- implications of terrorism in all its forms and manifestations for the full enjoyment of all human rights and fundamental freedoms and on how the needs and concerns of victims of terrorism might be addressed, including through the possible establishment of a voluntary fund for the victims of terrorism, as well as on ways and means to rehabilitate the victims of terrorism and to reintegrate them into society, with a view to incorporating his findings in his reports to the Commission and the General Assembly."
- 58. Moreover, in its resolution 1566(2004) adopted at its 5053rd meeting on 8 October 2004, the United Nations Security Council "10. Requests further the working group, established under paragraph 9 to consider the possibility of establishing an international fund to compensate victims of terrorist acts and their families, which might be financed through voluntary contributions, which could consist in part of assets seized from terrorist organizations, their members and sponsors, and submit its recommendations to the Council".
- Finally, with regard to compensation, it is useful to recall Article 75 of the Statute of the International Criminal Court: "(1) The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting. (2) The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79. (3) Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States. (4) In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1. (5) A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article. (6) Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law."

- 2. Compensation should be easily accessible to victims, irrespective of nationality. To this end, the State on the territory of which the terrorist act took place should introduce a mechanism allowing for fair and appropriate compensation, after a simple procedure and within a reasonable time.
- 3. States whose nationals are victims of a terrorist act on the territory of another State should also encourage administrative co-operation with the competent authorities of that State to facilitate access to compensation for their nationals.
- 4. Apart from the payment of pecuniary compensation, States are encouraged to consider, depending on the circumstances, taking other measures to mitigate the harmful consequences of the terrorist act suffered by the victims.
- 60. Paragraph 11 of the European Union Council Directive 2004/80/CE of 29 April 2004 relating to compensation to crime victims states that: "A system of cooperation between authorities of the Member States should be introduced to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim's residence".
- 61. With regard to the United Nations, the Good Practices of February 2016 state that "States should consider establishing national victims' funds, resourced by proceeds derived from assets seized in accordance with legislative provisions from persons convicted of serious crimes related to terrorism or legal entities that have been restrained and forfeited, having been found civilly liable for financing terrorist activities" and that "States should consider other means of resourcing a publicly administered fund for victims of terrorism (e.g., levies on life insurance policies or fines assessed or imposed by the courts when sentencing for criminal convictions)."

#### IX. Protection of private and family life

- 1. States should take appropriate steps to avoid as far as possible undermining respect for the private and family life of victims, in particular when carrying out investigations or providing assistance after the terrorist act as well as within the framework of proceedings initiated by victims.
- 62. Paragraph 8 of Recommendation No. R (85) 11 of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure specifies that "at all stages of the procedure, the victim should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity."
- 63. Paragraph 9 of Recommendation No. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation calls on the governments of member States to "take steps to prevent victim assistance services from disclosing personal information regarding victims, without their consent, to third parties".

- 64. In the context of the United Nations, paragraph 6, d) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly (A/RES/40/34) states that: "The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (...) (d) Taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;"
  - States should, where appropriate, and in full compliance with the principle of freedom of expression, encourage the media and journalists to adopt self-regulatory measures in order to ensure the protection of the private and family life of victims in the framework of their information and awareness-raising activities.
  - 3. States must ensure that victims have an effective remedy where they raise an arguable claim that their right to respect for their private and family life has been violated.
- 65. Recommendation No. (97) 19 of the Committee of Ministers to member States on the portrayal of violence in the electronic media and Recommendation No. (99) 5 on the protection of privacy on the Internet should be mentioned in this context.
- 66. With regard to the United Nations, the Good Practices of February 2016 state that "States should encourage the media to adopt self-regulatory measures to ensure victim-sensitive coverage (e.g., media guidelines or standards developed by the industry in consultation with the Government, civil society and victim support professionals)."

#### X. Protection of dignity and security

- At all stages of the proceedings, victims should be treated in a manner which gives due consideration to their personal situation, their rights and their dignity.
- 67. The first paragraph is partly inspired by paragraph 8 of Recommendation No. R (85) 11 of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure which specifies that "at all stages of the procedure, the victim should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity."
  - 2. States must ensure the protection and security of victims and take measures, where appropriate, to protect their identity, in particular where they appear as witnesses.
- 68. Paragraph 6, d) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34) states that: "The responsiveness

of judicial and administrative processes to the needs of victims should be facilitated by: (...) (d) Taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;"

#### XI. Specific training for persons working with victims

States should encourage specific training for persons working with victims, and grant the necessary resources to that effect.

- 69. Paragraph 11 of the preamble of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) provides that "suitable and adequate training should be given to persons coming into contact with victims, as this is essential both for victims and for achieving the purposes of proceedings". Article 14 (Training for personnel involved in proceedings or otherwise in contact with victims) of this same framework decision specifies: "(1) Through its public services or by funding victim support organisations, each Member State shall encourage initiatives enabling personnel involved in proceedings or otherwise in contact with victims to receive suitable training with particular reference to the needs of the most vulnerable groups. (2) Paragraph 1 shall apply in particular to police officers and legal practitioners."
- 70. Paragraph 16 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34) states that: "Police, justice, health, social service and other personnel concerned should receive training to sensitise them to the needs of victims, and guidelines to ensure proper and prompt aid."

#### XII. Raising public awareness and involving victims

States are encouraged to:

- take measures, in an appropriate way, in order to attain societal recognition and remembrance of victims;
- b. facilitate the involvement of representatives of the victims of terrorist acts in raising public awareness.
- 71. Some member States have put in place the following specific structures (1) while fully complying with the principle of freedom of expression, encourage the media and journalists to contribute to such recognition; (2) involve the media and journalists in specific tasks aimed at raising awareness of the vulnerability of victims, their needs and the potential risk of secondary victimisation; (3) consider measures ensuring that educational programmes, in particular, those in the secondary education, contribute to the societal recognition of victims, by the dissemination of factual information on their situation and, when appropriate,

by giving to victims who so wish the possibility to testify; (4) recognise publicly the suffering of victims and pay them public tribute through *inter alia* (a) the presentation of an award; (b) the erection of a public memorial; c) the establishment of foundations aiming at commemorating the memory of victims by enabling an awareness-raising of various sectors of society through conferences, exhibitions or any other appropriate means enabling the awareness-raising of the public opinion.

72. With regard to the United Nations, the Good Practices of February 2016 state that: "States should involve the media in other specific tasks aimed at raising awareness of the vulnerability of victims, their needs and the potential risk of secondary victimisation. States should ensure that victims are provided with information when dealing with the media.

## XIII. Co-operation with civil society

States are encouraged to co-operate with and facilitate as much as possible the actions of civil society representatives, and especially those of the associations for the protection of victims.

- 73. With regard to the United Nations, the Good Practices of February 2016 state that: "States should promote and support civil society and non-governmental organizations involved in providing support to victims of terrorism within the criminal justice system."
- 74. The Good Practices of February 2016 state also that: "States should work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes, and training, as well as in monitoring and evaluating the impact of measures to support and protect victims of terrorism." Finally, they specify that "States should support the actions of victims' associations and civil society to highlight the human cost of terrorism, for example through public displays."

## XIV. Increased protection

Nothing in these Guidelines prevents States from providing services and adopting measures more favourable than those described in these Guidelines.

# ANNEX 58



professionalization, security sector reform, heightened respect for human rights, peacekeepsecurity sector reform, ing preparation, or the demobilization and reintegration of child soldiers.

(Pub. L. 110-457, title IV, §404, Dec. 23, 2008, 122 Stat. 5089; Pub. L. 113-4, title XII, §1208, Mar. 7, 2013, 127 Stat. 142.)

#### REFERENCES IN TEXT

Sections 2370c to 2370c-2 of this title, referred to in subsecs. (a) and (b)(1), was in the original "this title". meaning title IV of Pub. L. 110-457, Dec. 23, 2008, 122 Stat. 5087, known as the Child Soldiers Prevention Act of 2008, which is classified principally to sections 2370c to 2370c-2 of this title For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2151 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Child Soldiers Prevention Act of 2008, and also as part of the William Wilberforce Trafficking Victims Protection Reauthoriza-tion Act of 2008, and not as part of the Foreign Assistance Act of 1961 which comprises this chapter.

2013-Subsec. (a). Pub. L. 113-4, §1208(1). substituted "(b) through (D, the authorities contained in sections 2321], 2347, and 2348 of this title" for "(b), (c), and (d), the authorities contained in section 2321j or 2347 of this

Subsec. (f). Pub. L. 113-4, §1208(2), added subsec. (f).

#### EFFECTIVE DATE

Section effective 180 days after Dec. 23, 2008, see section 407 of Pub. L. 110-457, set out as a note under section 2370c of this title.

## § 2370c-2. Reports

## (a) Investigation of allegations regarding child soldiers

United States missions abroad shall thoroughly investigate reports of the use of child

## (b) Information for annual Human Rights Re-

In preparing those portions of the annual Human Rights Report that relate to child soldiers under sections 2151n and 2304 of this title. the Secretary of State shall ensure that such reports include a description of the use of child soldiers in each foreign country, including

(1) trends toward improvement in such country of the status of child soldiers or the continued or increased tolerance of such practices: and

(2) the role of the government of such country in engaging in or tolerating the use of child soldiers.

## (c) Annual report to Congress

If, during any of the 5 years following December 23, 2008, a country is notified pursuant to section 2370c-1(b)(2) of this title, or a wavier 1 is granted pursuant to section 2370c-1(c)(1) of this title, the President shall submit a report to the appropriate congressional committees not later than June 15 of the following year. The report shall include-

(1) a list of the countries receiving notification that they are in violation of the standards under sections 2370c to 2370c-2 of this title:

(2) a list of any waivers or exceptions exercised under sections 2370c to 2370c-2 of this

(3) justification for any such waivers and exceptions; and

(4) a description of any assistance provided under sections 2370c to 2370c-2 of this title pursuant to the issuance of such waiver

(Pub. L. 110-457, title IV, § 405, Dec. 23, 2008, 122 Stat. 5090.)

#### REFERENCES IN TEXT

Sections 2370c to 2370c-2 of this title, referred to in subsec. (c)(1), (2), (4), was in the original "this title". meaning title IV of Pub. L. 110-457, Dec. 23, 2008, 122 Stat. 5087, known as the Child Soldiers Prevention Act of 2008, which is classified principally to sections 2370c to 2370c-2 of this title. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2151 of this title and Tables

#### CODIFICATION

Section was enacted as part of the Child Soldiers Prevention Act of 2008, and also as part of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and not as part of the Foreign Assistance Act of 1961 which comprises this chapter.

#### EFFECTIVE DATE

Section effective 180 days after Dec. 23, 2008, see section 407 of Pub. L. 110-457, set out as a note under section 2370c of this title.

## DELEGATION OF AUTHORITY

Memorandum of President of the United States, June

14, 2012, 77 F R. 37551, provided: Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by section 405(c) of the Child Sol-diers Prevention Act of 2008, title IV of the William Wilberforce Trafficking Victims Protection Reauthor-

ization Act of 2008 (Public Law 110-457).

You are authorized and directed to publish this

memorandum in the Federal Register.

BARACK OBAMA.

## § 2371. Prohibition on assistance to governments supporting international terrorism

## (a) Prohibition

The United States shall not provide any assistance under this chapter, the Food for Peace Act [7 U.S.C. 1691 et seq.], the Peace Corps Act [22 U.S.C. 2501 et seq.], or the Export-Import Bank Act of 1945 [12 U.S.C. 635 et seq.] to any country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism.

## (b) Publication of determinations

Each determination of the Secretary of State under subsection (a), including each determination in effect on December 12, 1989, shall be published in the Federal Register.

## (c) Rescission

A determination made by the Secretary of State under subsection (a) may not be rescinded

<sup>1</sup> So in original Probably should be "waiver".

unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate

(1) before the proposed rescission would take

effect, a report certifying that-

(A) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(B) that government is not supporting acts

of international terrorism; and

(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

(2) at least 45 days before the proposed rescission would take effect, a report justifying

the rescission and certifying that-(A) the government concerned has not provided any support for international terrorism during the preceding 6-month period;

and

(B) the government concerned has pro-vided assurances that it will not support acts of international terrorism in the future.

#### (d) Waiver

Assistance prohibited by subsection (a) may be provided to a country described in that sub-

section if-

- (1) the President determines that national security interests or humanitarian reasons justify a waiver of subsection (a), except that humanitarian reasons may not be used to justify assistance under subchapter II of this chapter (including part IV, part VI, and part VIII), or the Export-Import Bank Act of 1945 [12 U.S.C. 635 et seq.]; and
- (2) at least 15 days before the waiver takes effect, the President consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate regarding the proposed waiver and submits a report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate containing-

(A) the name of the recipient country;

- (B) a description of the national security interests or humanitarian reasons which require the waiver;
- (C) the type and amount of and the justification for the assistance to be provided pursuant to the waiver; and
- (D) the period of time during which such waiver will be effective.

The waiver authority granted in this subsection may not be used to provide any assistance under this chapter which is also prohibited by section 2780 of this title.

(Pub. L. 87-195, pt. III, §620A, as added Pub. L. 94-329, title III. §303, June 30, 1976, 90 Stat. 753; amended Pub. L. 99-83, title V. §503(a), Aug. 8, 1985, 99 Stat. 220; Pub. L. 99-190, \$101(1) [title V, \$521], Dec. 19, 1985, 99 Stat. 1291, 1305; Pub. L. 101-222, \$5, Dec. 12, 1989, 103 Stat. 1897; Pub. L. 110-246, title III, \$3001(b)(1)(A), (2)(Q), June 18, 1989, 1985, 2008, 122 Stat. 1820.)

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d), was in the original "this Act" and "the Foreign Assistance

Act of 1961", respectively, meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Food for Peace Act. referred to in subsec. (a), is act July 10, 1954, ch. 469, 68 Stat. 454, which is classified principally to chapter 41 (§1691 et seq.) of Title 7. Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

The Peace Corps Act, referred to in subsec. (a), is Pub L. 87-293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Export-Import Bank Act of 1945, referred to in subsecs. (a) and (d)(1), is act July 31, 1945, ch. 341, 59 Stat. 526, as amended, which is classified generally to chapter 6A (§635 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 635 of Title 12 and Tables.

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-246 substituted "Food for Peace Act" for "Agricultural Trade Development and Assistance Act of 1954".

1989-Pub L. 101-222 amended section generally, in subsec. (a) substituting provisions prohibiting assistance if Secretary of State determines country has repeatedly supported terrorism, for provisions prohibiting assistance if President determines country grants sanctuary to terrorists or otherwise supports terrorism; redesignating subsec. (b) as (d) and inserting provisions prohibiting justification of waiver of assistance under specified Acts and provisions describing contents of report on proposed waiver; adding subsecs. (b) and (c); and striking out subsec. (c) which related to imposition of sanction by other countries.

1985-Subsec. (a). Pub. L. 99-190 inserted reference to

the Export-Import Bank Act of 1945. Pub. L. 99-83 amended subsec. (a) generally, substituting provisions relating to covered programs and Presidential determinations respecting termination of assistance, for provisions relating to termination of assistance to countries granting sanctuary to international terrorists and period of ineligibility.

Subsec. (b). Pub. L. 99-83 amended subsec (b) generally, substituting provisions relating to waiver of appli-cation of subsec. (a), for provisions relating to reports respecting continuation of assistance to any country falling within provisions of former subsec. (a) of this section.

Subsec. (c). Pub. L. 99-83, in amending section generally, added subsec. (c).

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-246 effective May 22, 2008, see section 4(b) of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7. Agriculture.

## EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of this title.

## DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

SELF-DEFENSE IN ACCORDANCE WITH INTERNATIONAL LAW

Pub. L. 101-222, §10, Dec. 12, 1989, 103 Stat. 1900. provided that: "The use by any government of armed force in the exercise of individual or collective self-defense in accordance with applicable international agreements and customary international law shall not be considered an act of international terrorism for purposes of the amendments made by this Act [see Short Title of 1989 Amendment note, set out under section 2151 of this title]."

## § 2372. Repealed. Pub. L. 97-113, title VII, § 725(a), Dec. 29, 1981, 95 Stat. 1553

Section, Pub. L. 87-195, pt. III, §620B, as added Pub. L 95-92, §11, Aug. 4, 1977, 91 Stat. 619; amended Pub. L. 95-384, §12(c)(1), Sept. 26, 1978, 92 Stat. 737, prohibited assistance and sales to Argentina.

## § 2372a. Renewal, reissuance, etc., of export licenses to or for Argentina

Any export license referred to in section 23721 of this title which is issued initially on or before September 30, 1978 may from time to time thereafter be renewed, reissued or modified (or in the event of lapse of such license, replacement licenses may be issued), provided that any such renewal, reissuance or modification (or any such replacement license) does not change significantly any such license as initially issued.

(Pub. L. 95-240, title II, §210, Mar. 7, 1978, 92 Stat.

### REFERENCES IN TEXT

Section 2372 of this title, referred to in text, was in the original "Section 11 of Public Law 95-92", meaning section 11 of Pub. L. 95-92, Aug. 4, 1977, 91 Stat. 619, which added section 620B of Pub. L. 87-195. Section 620B of Pub. L. 87-195 was classified to section 2372 of this title and was repealed by Pub. L. 97-113, title VII, §725(a), Dec. 29, 1981, 95 Stat. 1553.

## CODIFICATION

Section was enacted as part of the Supplemental Appropriations Act, 1978, and not as part of the Foreign Assistance Act of 1961 which comprises this chapter.

## § 2373. Eastern Mediterranean policy requirements

## (a) Congressional declaration and statement of findings

The Congress declares that the achievement of a just and lasting Cyprus settlement is and will remain a central objective of United States foreign policy. The Congress further declares that any action of the United States with respect to section 2370(x)<sup>2</sup> of this title shall not signify a lessening of the United States commitment to a just solution to the conflict on Cyprus but is authorized in the expectation that this action will be conducive to achievement of a Cyprus solution and a general improvement in relations among Greece, Turkey, and Cyprus and between those countries and the United States. The Congress finds that—

(1) a just settlement on Cyprus must involve the establishment of a free and independent government on Cyprus and must guarantee that the human rights of all of the people of Cyprus are fully protected;

(2) a just settlement on Cyprus must include the withdrawal of Turkish military forces from Cyprus; (3) the guidelines for inter-communal talks agreed to in Nicosia in February 1977 and the United Nations resolutions regarding Cyprus provide a sound basis for negotiation of a just settlement on Cyprus;

(4) serious negotiations, under United Nations auspices, will be necessary to achieve agreement on, and implementation of, constitutional and territorial terms within such

guidelines; and

(5) the recent proposals by both Cypriot communities regarding the return of the refugees to the city of New Famagusta (Varosha) constitute a positive step and the United States should actively support the efforts of the Secretary General of the United Nations with respect to this issue.

## (b) Governing principles

United States policy regarding Cyprus, Greece, and Turkey shall be directed toward the restoration of a stable and peaceful atmosphere in the Eastern Mediterranean region and shall therefore be governed by the following principles:

(1) The United States shall actively support the resolution of differences through negotiations and internationally established peaceful procedures, shall encourage all parties to avoid provocative actions, and shall strongly oppose any attempt to resolve disputes through force or threat of force.

(2) The United States will accord full support and high priority to efforts, particularly those of the United Nations, to bring about a prompt, peaceful settlement on Cyprus.

(3) All defense articles furnished by the United States to countries in the Eastern Mediterranean region will be used only in accordance with the requirements of this chapter, the Arms Export Control Act [22 U.S.C. 2751 et seq.], and the agreements under which those defense articles were furnished.

(4) The United States will furnish security assistance for Greece and Turkey only when furnishing that assistance is intended solely for defensive purposes, including when necessary to enable the recipient country to fulfill its responsibilities as a member of the North Atlantic Treaty Organization, and shall be designed to ensure that the present balance of military strength among countries of the region, including between Greece and Turkey, is preserved. Nothing in this paragraph shall be construed to prohibit the transfer of defense articles to Greece or Turkey for legitimate self defense or to enable Greece or Turkey to fulfill their North Atlantic Treaty Organization obligations.

(5) The United States shall use its influence to ensure the continuation of the ceasefire on Cyprus until an equitable negotiated settlement is reached.

(6) The United States shall use its influence to achieve the withdrawal of Turkish military forces from Cyprus in the context of a solution to the Cyprus problem.

## (c) Review of policy; report to Congress

Because progress toward a Cyprus settlement is a high priority of United States policy in the Eastern Mediterranean, the President and the

<sup>&</sup>lt;sup>1</sup>See References in Text note below

See References in Text note below

# ANNEX 59

The Export Administration Act of 1979, referred to in subsec. (c), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, which is classified principally to chapter 56 (§4601 et seq.) of Title 50. War and National Defense. For complete classification of this Act to the Code, Tables.

## AMENDMENTS

2010—Subsec. (a). Pub. L. 111-266 inserted "or exported pursuant to a treaty referred to in section 2778(j)(1)(C)(1) of this title" after "under this chapter". 1999—Subsec. (a). Pub. L. 106-113, \$1000(a)(7) [title XII, \$1246(a)], inserted "or licensed" after "sold" and "or export" after "sale".

Subsec (c). Pub. L. 106-113, \$1000(a)(7) [title XIII, \$1303], inserted "section 11(c)(2)(B) of such Act shall not apply, and instead as presented in requirements.

not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may as-sess civil penalties for violations of this chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that" after "except that".

Subsec. (d)(3)(B)(ii) Pub. L. 106-113. \$1000(a)(7) [title

XII. §1246(b)], inserted "or by an entity described in clause (1)" after "subparagraph (A)".

#### DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State by Memorandum of President of the United States, July 26, 1994, 59 F.R. 40205, set out as a note under section 2370a of this title

## § 2780. Transactions with countries supporting acts of international terrorism

#### (a) Prohibited transactions by United States Government

The following transactions by the United

States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government-

(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d), and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or any other law (except as provided in subsection (h)), with respect to the acquisition of any munitions item by a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of State makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made avail-

able for use by such country

(3) Consenting under section 2753(a) of this title, under section 505(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2314(a)], under the regulations issued to carry out section 2778 of this title, or under any other law (except as provided in subsection (h)), to any transfer of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall withdraw any such consent which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been trans-

ferred to such country.

(4) Providing any license or other approval under section 2778 of this title for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been exported or other-

wise transferred to such country

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken-

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or

on behalf of the Government

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

## (b) Prohibited transactions by United States per-

## (1) In general

A United States person may not take any of the following actions:

(A) Exporting any munitions item to any

country described in subsection (d).

(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d).

(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in subsection (d) if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d).

(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d), or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

#### Liability for actions of foreign subsidiaries, etc.

A United States person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue) takes an action described in paragraph (1) outside the United States.

## (3) Applicability to actions outside the United

Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (l)(3)(A) or (B). To the extent provided in regulations issued under subsection (l)(3)(D), paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United States by a person designated as a United States person in those regulations.

## (c) Transfers to governments and persons covered

This section applies with respect to-

(1) the acquisition of munitions items by the government of a country described in subsection (d); and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d), except to the extent that subparagraph (D) of subsection (b)(1) provides otherwise.

## (d) Countries covered by prohibition

The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism. For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups, willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material, or willfully aid or abet the efforts of an individual or group to use, develop, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons.

## (e) Publication of determinations

Each determination of the Secretary of State under subsection (d) shall be published in the Federal Register.

## (f) Rescission

(1) A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—

 (i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

 (i) the government concerned has not provided any support for international terrorism during the preceding 6-month period;

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(2)(A) No rescission under paragraph (1)(B) of a determination under subsection (d) may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows: "That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on is hereby prohibited.", the blank to be completed with the appropriate date.

(B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98-473), except that references in such paragraphs to the Committees on Appropriations of the House of Representatives and the Senate shall be deemed to be references to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, respectively.

## (g) Waiver

The President may waive the prohibitions contained in this section with respect to a specific transaction if—

 the President determines that the transaction is essential to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed transaction, the President—

(A) consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

(B) submits to the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and the chairman of the Committee on Foreign Relations of the Senate a report containing—

(i) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the

## (h) Exemption for transactions subject to National Security Act reporting requirements

The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 ([50 U.S.C. 3091 et seq.]; relating to congressional oversight of intelligence activities).

## (i) Relation to other laws

## (1) In general

With regard to munitions items controlled pursuant to this chapter, the provisions of this section shall apply notwithstanding any other provision of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C.

## (2) Section 614(a) waiver authority

If the authority of section 614(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2364(a)] is used to permit a transaction under that Act [22 U.S.C. 2151 et seq.] or this chapter which is otherwise prohibited by this section, the written policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

## (j) Criminal penalty

Any person who willfully violates this section shall be fined for each violation not more than \$1,000,000, imprisoned not more than 20 years, or

## (k) Civil penalties; enforcement

In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979 [50 U.S.C. 4610(c), (e), (g), 4614(a)] (subject to the same terms and conditions as are applicable to

such powers under that Act [50 U.S.C. 4601 et seq.]), except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000.

### (l) Definitions

As used in this section—
(1) the term 'munitions item' means any item enumerated on the United States Munitions list1 (without regard to whether the item is imported into or exported from the

United States);
(2) the term "United States", when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States:

(3) the term "United States person" means-(A) any citizen or permanent resident

alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person's actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of State, any person that is not described in subparagraph (A), (B), or (C) but-

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

(ii) is otherwise subject to the jurisdic-

tion of the United States.

with respect to that person's actions while outside the United States;

(4) the term "nuclear explosive device" has the meaning given that term in section 6305(4) of this title; and

(5) the term "unsafeguarded special nuclear material" has the meaning given that term in section 6305(8) of this title.

(Pub. L. 90-629, ch. 3, § 40, as added Pub. L. 99-399, title V, §509(a), Aug. 27, 1986, 100 Stat. 874; amended Pub. L. 101-222, §2(a), Dec. 12, 1989, 103 Stat. 1892; Pub. L. 102-138, title III, §321, Oct. 28, 1991, 105 Stat. 710; Pub. L. 103-236, title VIII, §822(a)(2), Apr. 30, 1994, 108 Stat. 511; Pub. L. 106-113, div. B. \$1000(a)(7) [div. B, title XIII, §1303], Nov. 29, 1999, 113 Stat. 1536, 1501A-511; Pub. L. 107-228. div. B, title XII, §1204, Sept. 30,

<sup>1</sup> So in original. Probably should be capitalized

2002, 116 Stat. 1427; Pub. L. 111-195, title I, §107(a)(3), July 1, 2010, 124 Stat. 1337; Pub. L. 113-276, title II. § 208(a)(1), Dec. 18, 2014, 128 Stat.

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (2), (1)(1), and (k), was in the original "this Act", and this chapter, referred to in subsec. (i)(2), was in the original "the Arms Export Control Act", both of which mean Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321. as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Foreign Assistance Act of 1961, referred to in subsecs. (a)(1), (2) and (i)(2), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Section 40(d) of the Arms Export Control Act, referred to in subsec. (f)(2)(A), is classified to subsec. (d) of this section.

Paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98-473), referred to in subsec. (f)(2)(B), is Pub. L. 98-473, title I, \$101(h) [title VIII, \$8066(c)(3)-(7)], Oct. 12, 1984, 98 Stat. 1904, 1936, 1937, which is not classified to the Code

The National Security Act of 1947, referred to in subsec. (h), is act July 26, 1947, ch. 343, 61 Stat. 495, which was formerly classified principally to chapter 15 (§401 et seq.) of Title 50, War and National Defense, prior to editorial reclassification in chapter 44 (§ 3001 et seq.) of Title 50. Title V of the Act is now classified generally to subchapter III (§3091 et seq.) of chapter 44 of Title 50. For complete classification of this Act to the Code, see Tables.

The Export Administration Act of 1979, referred to in subsec. (k), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, which is classified principally to chapter 56 (§4601 et seq.) of Title 50. For complete classification of this Act to the Code, see Tables.

## AMENDMENTS

2014—Subsecs (f)(1), (g)(2)(B). Pub. L. 113-276 substituted "the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and" for "the Speaker of the House of Representatives and" in introductory provisions.

2010—Subsec. (j). Pub. L. 111-195 substituted "20 years" for "10 years".

years 107 "10 years".
2002—Subsec. (d). Pub. L. 107-228 substituted "groups." for "groups or" in second sentence and inserted before period at end ", or willfully aid or abet the efforts of an individual or group to use, develop. produce, stockpile, or otherwise acquire chemical, bio-

logical, or radiological weapons". 1999—Subsec. (k). Pub. L. 106-113 inserted "section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for viola-tions of this chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that" after "except that".

1994—Subsec. (d). Pub. L. 103-236, §822(a)(2)(A), inserted at end "For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups or willfully aid or abet an individual or groups

groups or whitning all or abet an individual or groups in acquiring unsafeguarded special nuclear material."

Subsec (f). Pub. L. 103-236, §822(a)(2)(B), amended subsec. (l) by striking "and" after the semicolon in par. (2), substituting a semicolon for the period at the end

of par. (3), and adding pars. (4) and (5). 1991—Subsec. (f), Pub. L. 102–138, §321, designated existing provisions as par. (1), redesignated former par. (1)

as subpar. (A) and former subpars. (A) to (C) as cls. (1) to (III), respectively, redesignated former par. (2) as subpar. (B) and former subpars. (A) and (B) as cls. (1) and (ii), respectively, and added par. (2). So much of Pub. L. 102-138, §321(1), as directed that subpar. (C) of former par. (2) be redesignated cl. (iii) of par. (1)(B). could not be executed because no such subpar. (C) had been enacted. 1989—Pub L. 101-222 substituted "Transactions with"

for "Exports to" in section catchline and amended text generally. Prior to amendment, text read as follows:

"(a) PROHIBITION.—Except as provided in subsection (b) of this section, items on the United States Munitions List may not be exported to any country which the Secretary of State has determined, for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), has repeatedly provided support for acts of international terrorism.

"(b) WAIVER.—The President may waive the prohibi-tion contained in subsection (a) of this section in the case of a particular export if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-236 effective 60 days after Apr. 30, 1994, see section 831 of Pub L. 103-236, set out as an Effective Date note under section 6301 of this

§2781. Transactions with countries not fully cooperating with United States antiterrorism

## (a) Prohibited transactions

No defense article or defense service may be sold or licensed for export under this chapter in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.

(Pub. L. 90-629, ch. 3, §40A, as added Pub. L. 104-132, title III, §330, Apr. 24, 1996, 110 Stat. 1258.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

## CODIFICATION

Another section 40A of Pub. L. 90-629 is classified to section 2785 of this title.

## DELEGATION OF FUNCTIONS

For delegation of functions of the President under this section, see section 1(q) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16130, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject

## ANNEX 60

50 USC 4813: Additional authorities

Text contains those laws in effect on September 15, 2019

From Title 50-WAR AND NATIONAL DEFENSE

CHAPTER 58-EXPORT CONTROL REFORM

SUBCHAPTER I-AUTHORITY AND ADMINISTRATION OF CONTROLS

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## §4813. Additional authorities

## (a) In general

In carrying out this subchapter on behalf of the President, the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the heads of other Federal agencies as appropriate, shall-

(1) establish and maintain a list of items that are controlled under this subchapter;

- (2) establish and maintain a list of foreign persons and end-uses that are determined to be a threat to the national security and foreign policy of the United States pursuant to the policy set forth in section 4811(2)(A) of this title;
- (3) prohibit unauthorized exports, reexports, and in-country transfers of controlled items, including to foreign persons in the United States or outside the United States;
- (4) restrict exports, reexports, and in-country transfers of any controlled items to any foreign person or end-use listed under paragraph (2);
- (5) require licenses or other authorizations, as appropriate, for exports, reexports, and in-country transfers of controlled items, including-
  - (A) imposing conditions or restrictions on United States persons and foreign persons with respect to such licenses or other authorizations; and
    - (B) suspending or revoking such licenses or authorizations;
- (6) establish a process for an assessment to determine whether a foreign item is comparable in quality to an item controlled under this subchapter, and is available in sufficient quantities to render the United States export control of that item or the denial of a license ineffective, including a mechanism to address that disparity;
  - (7) require measures for compliance with the export controls established under this subchapter;
- (8) require and obtain such information from United States persons and foreign persons as is necessary to carry out this subchapter;
- (9) require, to the extent feasible, identification of items subject to controls under this subchapter in order to facilitate the enforcement of such controls;
- (10) inspect, search, detain, or seize, or impose temporary denial orders with respect to items, in any form, that are subject to controls under this subchapter, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or in-country transferred in violation of this subchapter;

(11) monitor shipments and other means of transfer;

- (12) keep the public appropriately apprised of changes in policy, regulations, and procedures established under this subchapter;
- (13) appoint technical advisory committees in accordance with the Federal Advisory Committee Act [5 U.S.C. App.];
- (14) create, as warranted, exceptions to licensing requirements in order to further the objectives of this subchapter:
- (15) establish and maintain processes to inform persons, either individually by specific notice or through amendment to any regulation or order issued under this subchapter, that a license from the Bureau of Industry and Security of the Department of Commerce is required to export; and
  - (16) undertake any other action as is necessary to carry out this subchapter that is not otherwise prohibited by law.

## (b) Relationship to IEEPA

The authority under this subchapter may not be used to regulate or prohibit under this subchapter the export, reexport, or in-country transfer of any item that may not be regulated or prohibited under section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), except to the extent the President has made a determination necessary to impose controls under subparagraph (A), (B), or (C) of paragraph (2) of such section.

## (c) Countries supporting international terrorism

- (1) Commerce license requirement
  - (A) In general

A license shall be required for the export, reexport, or in-country transfer of items, the control of which is implemented pursuant to subsection (a) by the Secretary, to a country if the Secretary of State has made the following determinations:

(i) The government of such country has repeatedly provided support for acts of international terrorism.

(ii) The export, reexport, or in-country transfer of such items could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

## (B) Determination under other provisions of law

A determination of the Secretary of State under section 2371 of title 22, section 2780 of title 22, or any other provision of law that the government of a country described in subparagraph (A) has repeatedly provided support for acts of international terrorism shall be deemed to be a determination with respect to such government for purposes of clause (i) of subparagraph (A).

## (2) Notification to Congress

## (A) In general

The Secretary of State and the Secretary shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before any license is issued as required by paragraph (1).

The Secretary of State shall include in the notification required under subparagraph (A)-

(i) a detailed description of the items to be offered, including a brief description of the capabilities of any item for which a license to export, reexport, or in-country transfer the items is sought;

(ii) the reasons why the foreign country, person, or entity to which the export, reexport, or in-country transfer is proposed to be made has requested the items under the export, reexport, or in-country transfer, and a description of the manner in which such country, person, or entity intends to use such items;

(iii) the reasons why the proposed export, reexport, or in-country transfer is in the national interest of the United States;

(iv) an analysis of the impact of the proposed export, reexport, or in-country transfer on the military capabilities of the foreign country, person, or entity to which such transfer would be made;

(v) an analysis of the manner in which the proposed export, reexport, or in-country transfer would affect the relative military strengths of countries in the region to which the items that are the subject of such export, reexport, or in-country transfer would be delivered and whether other countries in the region have comparable kinds and amounts of items; and

(vi) an analysis of the impact of the proposed export, reexport, or in-country transfer on the relations of the United States with the countries in the region to which the items that are the subject of such export, reexport, or in-country transfer would be delivered.

## (3) Publication in Federal Register

Each determination of the Secretary of State under paragraph (1)(A)(i) shall be published in the Federal Register, except that the Secretary of State may exclude confidential information and trade secrets contained in such determination.

## (4) Rescission of determination

A determination of the Secretary of State under paragraph (1)(A)(i) may not be rescinded unless the President submits to the Speaker of the House of Representatives, the chairman of the Committee on Foreign Affairs, and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate-

(A) before the proposed rescission would take effect, a report certifying that-

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that-

(i) the government concerned has not provided any support for acts international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

## (d) Enhanced controls

## (1) In general

In furtherance of section 4812(a) of this title, the President shall, except to the extent authorized by a statute or regulation administered by a Federal department or agency other than the Department of Commerce, require a United States person, wherever located, to apply for and receive a license from the Department of Commerce for-

(A) the export, reexport, or in-country transfer of items described in paragraph (2), including items that are not

subject to control under this subchapter; and

(B) other activities that may support the design, development, production, use, operation, installation, maintenance, repair, overhaul, or refurbishing of, or for the performance of services relating to, any such items.

## (2) Items described

The items described in this paragraph include-

(A) nuclear explosive devices;

(B) missiles:

(C) chemical or biological weapons;

(D) whole plants for chemical weapons precursors; and

(E) foreign maritime nuclear projects that would pose a risk to the national security or foreign policy of the United States.

## (e) Additional prohibitions

The Secretary may inform United States persons, either individually by specific notice or through amendment to any regulation or order issued under this subchapter, that a license from the Bureau of Industry and Security of the Department of Commerce is required to engage in any activity if the activity involves the types of movement, service, or support described in subsection (d). The absence of any such notification does not excuse the United States person from compliance with the license requirements of subsection (d), or any regulation or order issued under this subchapter.

## (f) License review standards

The Secretary shall deny an application to engage in any activity described in subsection (d) if the activity would make a material contribution to any of the items described in subsection (d)(2).

( Pub. L. 115-232, div. A, title XVII, §1754, Aug. 13, 2018, 132 Stat. 2212 .)

## REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b), (d)(1)(A), and (e), was in the original "this part", meaning part I (§§1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115–232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115–232, set out as a Short Title note under section 4801 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (a)(13), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

IEEPA, referred to in subsec. (b), is the International Emergency Economic Powers Act, title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

# ANNEX 61



MULTUATERAL AGREEMENT GOVERNING USE OF NUCLEAR-POWERED SATELLITES

Pub. L. 95-426, title VT. \$608, Oct. 7, 1978, 92 Stat. 988, as amended by Pub. L. 97-241, title V. \$505(a)(2). Aug 24, 1982, 96 Stat. 299, provided that.

"(a) The Congress finds that—
"(1) no international regime governs the use of nucleus approximation."

clear-powered satellites in space;
"(2) the unregulated use of such technology poses
the possibility of catastrophic damage to human life

and the global environment; and

"(3) this danger has been evidenced by mishaps encountered, despite certain precautions, by nuclearpowered satellites of both the United States and the Soviet Union.

"(b) It is therefore the sense of the Congress that the United States should take the initiative immediately in seeking a multilateral agreement governing the use

of nuclear-powered satellites in space.

"(c) [Repealed. Pub I. 97-241, title V, §505(a)(2). Aug.
24. 1982, 96 Stat. 299.]"

## § 2656e. Terrorism-related travel advisories

The Secretary of State shall promptly advise the Congress whenever the Department of State issues a travel advisory, or other public warning notice for United States citizens traveling abroad, because of a terrorist threat or other security concern.

(Pub. L. 99-399, title V. §505, Aug 27, 1986, 100 Stat. 871.)

## § 2656f. Annual country reports on terrorism

## (a) Requirement of annual country reports on

The Secretary of State shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, by April 30 of each year, a full and complete report providing-

(1)(A) detailed assessments with respect to

each foreign country-

(i) in which acts of international terrorism occurred which were, in the opinion of the Secretary, of major significance;

(ii) about which the Congress was notified during the preceding five years pursuant to

section 4605(j) of title 50; and
(iii) which the Secretary determines should be the subject of such report; and

(B) detailed assessments with respect to each foreign country whose territory is being used as a sanctuary for terrorists or terrorist organizations:

(2) all relevant information about the activities during the preceding year of any terrorist group, and any umbrella group under which such terrorist group falls, known to be responsible for the kidnapping or death of an American citizen during the preceding five years, any terrorist group known to have obtained or developed, or to have attempted to obtain or develop, weapons of mass destruction, any terrorist group known to be financed by countries about which Congress was notified during the preceding year pursuant to section 4605(j) of title 50. any group designated by the Secretary as a foreign terrorist organization under section 1189 of title 8. and any other known international terrorist group which the Secretary determines should be the subject of such report:

(3) with respect to each foreign country from which the United States Government has sought cooperation during the previous five years in the investigation or prosecution of an act of international terrorism against United States citizens or interests, information on-

(A) the extent to which the government of the foreign country is cooperating with the United States Government in apprehending. convicting, and punishing the individual or individuals responsible for the act; and

(B) the extent to which the government of the foreign country is cooperating in preventing further acts of terrorism against United States citizens in the foreign coun-

(4) with respect to each foreign country from which the United States Government has sought cooperation during the previous five years in the prevention of an act of international terrorism against such citizens or interests, the information described in paragraph (3)(B)

## (b) Provisions to be included in report

The report required under subsection (a) should to the extent feasible include (but not be limited to)-

(1) with respect to subsection (a)(1)(A)-

(A) a review of major counterterrorism efforts undertaken by countries which are the subject of such report, including, as appropriate, steps taken in international fora;

(B) the response of the judicial system of each country which is the subject of such report with respect to matters relating to terrorism affecting American citizens or facilities, or which have, in the opinion of the Secretary, a significant impact on United States counterterrorism efforts, including responses to extradition requests; and

(C) significant support, if any, for international terrorism by each country which is the subject of such report, including (but not

limited to)

(i) political and financial support;

(ii) diplomatic support through diplomatic recognition and use of the diplo-

matic pouch;
(iii) providing sanctuary to terrorists or

terrorist groups;

(iv) providing weapons of mass destruction, or assistance in obtaining or developing such weapons, to terrorists or terrorist groups;1

(V) the positions (including voting records) on matters relating to terrorism in the General Assembly of the United Nations and other international bodies and fora of each country which is the subject of such report:

(2) with respect to subsection (a)(1)(B)-

(A) the extent of knowledge by the government of the country with respect to terrorist activities in the territory of the country; and

(B) the actions by the country—(i) to eliminate each terrorist sanctuary in the territory of the country;

So in original Probably should be followed by "and".

(ii) to cooperate with United States anti-

terrorism efforts; and (iii) to prevent the proliferation of and trafficking in weapons of mass destruction in and through the territory of the country:

(3)2 with respect to subsection (a)(2), any-(A) significant financial support provided by foreign governments to those groups directly, or provided in support of their activi-

(B) provisions of significant military or paramilitary training or transfer of weapons by foreign governments to those groups;

(C) efforts by those groups to obtain or de-

velop weapons of mass destruction;
(D) provision of diplomatic recognition or privileges by foreign governments to those

(E) provision by foreign governments of sanctuary from prosecution to these groups or their members responsible for the commission, attempt, or planning of an act of international terrorism; and

(F) efforts by the United States to eliminate international financial support provided to those groups directly or provided in

support of their activities;

(412 a strategy for addressing, and where possible eliminating, terrorist sanctuaries that shall include

(A) a description of terrorist sanctuaries, together with an assessment of the priorities of addressing and eliminating such sanc-

(B) an outline of strategies for disrupting or eliminating the security provided to ter-

rorists by such sanctuaries;

(C) a description of efforts by the United States to work with other countries in bilateral and multilateral fora to address or eliminate terrorist sanctuaries and disrupt or eliminate the security provided to terrorists by such sanctuaries, and

(D) a description of long-term goals and actions designed to reduce the conditions that allow the formation of terrorist sanc-

tuaries; and

(5) an update of the information contained in the report required to be transmitted to Congress under 3 7120(b) of the 9/11 Commission Im-

plementation Act of 2004.

(3) to the extent practicable, complete statistical information on the number of individuals, including United States citizens and dual nationals, killed, injured, or kidnapped by each terrorist group during the preceding calendar year; and

(4)4 an analysis, as appropriate, of trends in international terrorism, including changes in technology used, methods and targets of attack, demographic information on terrorists,

and other appropriate information.

## (c) Classification of report

(1) Except as provided in paragraph (2), the report required under subsection (a) shall, to the extent practicable, be submitted in an unclassified form and may be accompanied by a classi-

fied appendix.

(2) If the Secretary of State determines that the transmittal of the information with respect to a foreign country under paragraph (3) or (4) of subsection (a) in classified form would make more likely the cooperation of the government of the foreign country as specified in such paragraph, the Secretary may transmit the information under such paragraph in classified form.

#### (d) Definitions

As used in this section—
(1) the term "international terrorism" means terrorism involving citizens or the ter-

ritory of more than 1 country,
(2) the term "terrorism" means premeditated. politically motivated violence per-petrated against noncombatant targets by

subnational groups or clandestine agents:
(3) the term "terrorist group" means any group practicing, or which has significant subgroups which practice, international terrorism:

(4) the terms "territory" and "territory of the country" mean the land, waters, and air-

space of the country; and
(5) the terms "terrorist sanctuary" and "sanctuary" mean an area in the territory of the country-

(A) that is used by a terrorist or terrorist

organization-

(i) to carry out terrorist activities, including training, fundraising, financing, and recruitment; or

(ii) as a transit point; and

(B) the government of which expressly consents to, or with knowledge, allows, tolerates, or disregards such use of its territory and is not subject to a determination under-

(i) section 4605(j)(1)(A) of title 50; (ii) section 2371(a) of this title; or (iii) section 2780(d) of this title.

## (e) Reporting period

(1) The report required under subsection (a) shall cover the events of the calendar year preceding the year in which the report is submitted.

(2) The report required by subsection (a) to be submitted by March 31. 1988, may be submitted

no later than August 31, 1988

(Pub. L. 100-204, title I. §140. Dec 22, 1987, 101 Stat. 1347; Pub. L. 101-246, title I. §122, Feb. 16, 1990, 104 Stat. 27; Pub. L. 103-236, title I. §133(b)(1), Apr. 30, 1994, 108 Stat. 395; Pub. L. \$153(5)(1), Apr. 50, 1394, 100 Stat. 353, 140. Lt. 104-208, div A. title I. \$101(c) [title V. \$578]. Sept. 30, 1996, 110 Stat. 3009-121, 3009-169; Pub. L. 108-458, title VII, \$7102(d)(1)-(3), Dec. 17, 2004, 118 Stat. 3777, 3778; Pub L. 108-487, title VII, \$701(a), Dec. 23, 2004, 118 Stat. 3961.)

## REFERENCES IN TEXT

[Section] 7120(b) of the 9/11 Commission Implementation Act of 2004, referred to in subsec (b)(5), is section 7120(b) of Pub L 108-458, title VII. Dec. 17, 2004, 118 Stat. 3803, which is not classified to the Code.

## AMENDMENT'S

2004-Subsec (a)(1) Pub L 108-458, §7102(d)(1), designated existing provisions as subpar (A), redesignated

<sup>2</sup>So in original Another par. (3) and par (4) follow par (5)

<sup>2</sup> So in original 'The word "section" probably should appear

<sup>&#</sup>x27;So in original. Another par (3) and par (4) precede par (5)

former subpars (A) to (C) as cls (1) to (iii), respec-

tively, of subpar. (A), and added subpar. (B)
Subsec. (a.(2) Pub L 108-487, §701(a)(1), inserted
"any terrorist group known to have obtained or developed, or to have attempted to obtain or develop, weap-ons of mass destruction," after "during the preceding five years," and "any group designated by the Secretary as a foreign terrorist organization under section 1189 of title 8." after "section 2405(j) of the Appendix to

Subsec (b)(1) Pub L. 108-458. §7102(d)(2)(A)(1), substituted "subsection (a)(1)(A)" for "subsection (a)(1)"

stituted "subsection (a)(1)(A) for "subsection (a)(1) in introductory provisions

Subsec. (b)(1)(C)(1v) Pub. L. 108-487, §701(a)(2)(A), added cl. (iv) and redesignated former cl. (iv) as (v),

Subsec. (b)(2) Pub. L. 108-458, §7102(d)(2)(A)(ii), (C), added par. (2) Former par. (2), relating to report provisions with respect to subsec. (a)(2), redesignated (3), Subsec. (b)(3) Pub. L. 108-487, §701(a)(2)(C), added par. (2) relating to statistical information on individuals

(3) relating to statistical information on individuals killed, injured, or kidnapped by terrorist groups
Pub L 108-487, \$701(a)(2)(B)(iii), which directed amendment of subsec. (b)(2)(F), as redesignated by Pub L 108-487, \$701(a)(2)(B)(i), by substituting a semicolon for the period, was probably intended as an amendment to subsec. (b)(2) relating to report report. to subpar (F) of subsec (b)(3) relating to report provisions with respect to subsec (a)(2), as redesignated by Pub L 108-458, \$7102(d)(2)(B), and Pub L 108-487, \$701(a)(2)(B)(1), but could not be executed because of the amendment by Pub L 108-458, \$7102(d)(2)(D). See

below.
Pub L 108-458, §7102(d)(2)(B), (D), redesignated par (2), relating to report provisions with respect to subsec (a)(2), as (3) and substituted a semicolon for the period

at end.

Subsec (b)(3)(C) (F) to Pub \$701(a)(2)(B)(1), (11), which directed amendment of subsec (b)(2) by adding subpar (C) and redesignating former subpars (C) to (E) as (D) to (F), respectively, was executed by making the amendment to subsec. (b)(3) relating to report provisions with respect to sub-sec (a)(2) to reflect the probable intent of Congress and the redesignation of subsec (b)(2) as (b)(3) by Pub L

108-458 See above. Subsec. (b)(4) Pub. L. 108-487. §701(a)(2)(C), added par. (4) relating to analysis of trends in international ter-

rorism.

Pub. L. 108-458, §7102(d)(2)(E), added par. (4) relating to strategy for addressing, and where possible eliminating, terrorist sanctuaries.

Subsec (b)(5) Pub. L. 108-458, §7102(d)(2)(E), added

Subsec (d)(4), (5), Pub L. 108-458, §7102(d)(3), added

pars (41 and (5).

1996—Subsec (a)(3), (4) Pub L 104-208, §101(c) | title V. §578(1)|. added pars (3) and (4), Subsec (c) Pub. L 104-208, §101(c) [title V. §578(2)]. designated existing provisions as par (1), realigned margins, substituted "Except as provided in paragraph (2), the report" for "The report", and added par (2)

1994-Subsec. (b)(2)(E) Pub. L. 103-236 added subpar.

1990—Subsec. (a) Pub L 101-246 substituted "April 30" for "March 31"

## EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108-487, title VII, §701(b), Dec 23, 2004, 118 Stat 3962, provided that. "The amendments made by subsection (a) [amending this section] shall apply beginning with the first report under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 [this section] that is submitted more than one year after the date of the enactment of this Act [Dec.

year after the date of the enactment of this 100 [252, 2004].

Pub. L 108-487, title VIII, §801. Dec. 23, 2004, 118 Stat.
3962, provided that: "Except as otherwise expressly provided in this Act, this Act [enacting sections 1912, 3032, 2021, 2022, 2021, 2022, 2021 3201 to 3205, 3221, 3523, and 3617 of Title 50 War and National Defense, amending this section and sections 1902, 1903, 1910, 1911, 3036, 3361, and 3519a of Title 50, enacting

provisions set out as notes under this section, section 873 of Title 21, Food and Drugs, and sections 1902, 3001, 3032, 3036, 3106, and 3322 of Title 50, and amending provisions set out as a note under section 8331 of Title 5. Government Organization and Employees) (and the amendments made by this Act) shall take effect on the date of the enactment of this Act [Dec. 23, 2004]."

Pub. L. 108-458, title VII. §7102(d)(4), Dec 17, 2004, 118 Stat. 3778, provided that: "The amendments made by this subsection [amending this section] apply with respect to the report required to be transmitted under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U S C 2656f), by April 30,

2006, and by April 30 of each subsequent year." Amendment by Pub L. 108-458 effective Dec. 17, 2004, notwithstanding any other provision of such Act. see section 7122 of Pub L. 108-458, set out as a note under section 112a of Title 1, General Provisions.

#### TERRORIST SANCTUARIES

Pub L. 108-458, title VII, §7102(a), (b), Dec. 17, 2004, 118 Stat. 3776, provided that "(a) FINDINGS.—Consistent with the report of the Na-

tional Commission on Terrorist Attacks Upon United States, Congress makes the following findings:

"(1) Complex terrorist operations require locations that provide such operations sanctuary from interference by Government or law enforcement person-

"(2) A terrorist sanctuary existed in Afghanistan

before September 11, 2001, "(3) The terrorist sanctuary in Afghanistan provided direct and indirect value to members of al Qaeda who participated in the terrorist attacks on the United States on September 11, 2001, and in other terrorist operations.

"(4) Terrorist organizations have fled to some of the least governed and most lawless places in the

world to find sanctuary

"(5) During the 21st century, terrorists are often fo-cusing on remote regions and failing states as locations to seek sanctuary.

"(b) SENSE OF CONGRESS ON UNITED STATES POLICY ON TERRORIST SANCTUARIES—It is the sense of Congress that it should be the policy of the United States

"(1) to identify foreign countries that are being used as terrorist sanctuaries;

"(2) to assess current United States resources and tools being used to assist foreign governments to eliminate such sanctuaries,

"(3) to develop and implement a coordinated strategy to prevent terrorists from using such foreign countries as sanctuaries; and

"(4) to work in bilateral and multilateral fora to elicit the cooperation needed to identify and address terrorist sanctuaries that may exist today but, so far, remain unknown to governments.

REPORT ON TERRORIST ACTIVITY IN WHICH UNITED STATES CITIZENS WERE KILLED AND RELATED MATTERS

Pub. L. 106-113, div. B, §1000(a)(7) [div A. title VIII, §805], Nov. 29, 1999, 113 Stat 1536, 1501A-470, as amended by Pub. L. 107-228, div A. title II, §216(e), Sept. 30, 2002, 116 Stat. 1367, provided that.

"(a) IN GENERAL.—Not later than May 1, 2003, and not later than May 1, 2004 the Secretary of State shall pre-pare and submit a report, with a classified annex as necessary, to the appropriate congressional committees [Committee on Foreign Affairs of the House of Representatives and Committee on Foreign Relations of the Senatel regarding terrorist attacks in Israel, in territory administered by Israel, and in territory adminis-tered by the Palestinian Authority The report shall contain the following information

"(1) A list of formal commitments the Palestinian Authority has made to combat terrorism.

"(2) A list of terrorist attacks, occurring between September 13, 1993 and the date of the report, against United States citizens in Israel, in territory administered by Israel, or in territory administered by the Palestinian Authority, including—

"(A) a list of all citizens of the United States killed or injured in such attacks.

'(B) the date of each attack and the total number of people killed or injured in each attack.

"(C) the person or group claiming responsibility for the attack and where such person or group has found refuge or support:

(D) a list of suspects implicated in each attack and the nationality of each suspect, including information on—

"(i) which suspects are in the custody of the Palestinian Authority and which suspects are in the custody of Israel,

(ii) which suspects are still at large in areas controlled by the Palestinian Authority or Israel, and

"(iii) the whereabouts (or suspected whereabouts) of suspects implicated in each attack

"(3) Of the suspects implicated in the attacks described in paragraph (2) and detained by Palestinian or Israeli authorities, information on—

"(A) the date each suspect was incarcerated;

"(B) whether any suspects have been released, the date of such release, and whether any released suspect was implicated in subsequent acts of terrorism: and

"(G) the status of each case pending against a suspect, including information on whether the suspect has been indicted, prosecuted, or convicted by the Palestinian Authority or Israel

"(4) The policy of the Department of State with respect to offering rewards for information on terrorist suspects, including any information on whether a reward has been posted for suspects involved in terrorist attacks listed in the report.

"(5) A list of each request by the United States for assistance in investigating terrorist attacks listed in the report, a list of each request by the United States for the transfer of terrorist suspects from the Palestinian Authority and Israel since September 13, 1993, and the response to each request from the Palestinian Authority and Israel.

"(6) A description of efforts made by United States officials since September 13, 1993 to bring to justice perpetrators of terrorist acts against United States citizens as listed in the report.

"(7) A list of any terrorist suspects in these cases who are mombers of Palestinian police or security forces, the Palestine Liberation Organization, or any Palestinian governing body

"(8) A list of all United States citizens killed or injured in terrorist attacks in Israel or in territory administered by Israel between 1950 and September 13, 1993, to include in each case, where such information is reasonably available, any stated claim of responsibility and the resolution or disposition of each case, except that this list shall be submitted only once with the initial report required under this section unless additional relevant information on these cases becomes available.

"(b) CONSULTATION WITH OTHER DEPARTMENTS.—The Secretary of State shall, in preparing the report required by this section, consult and coordinate with all other Government officials who have information necessary to complete the report Nothing contained in this section shall require the disclosure, on a classified or unclassified basis, of information that would jeopardize sensitive sources and methods or other vital national security interests or jeopardize ongoing criminal investigations or proceedings.

"(c) INITIAL REPORT.—Except as provided in subsection (a)/8). the initial report filed under this section shall cover the period between September 13, 1993 and the date of the report" § 2656g. Report on terrorist assets in United States

## (a) Reports to Congress

Beginning 90 days after October 28, 1991, and every 365 days thereafter, the Secretary of the Treasury, in consultation with the Attorney General and appropriate investigative agencies, shall submit to the Committee on Foreign Relations and the Committee on Finance of the Senate and the Committee on Foreign Affairs and the Committee on Ways and Means of the House of Representatives a report describing the nature and extent of assets held in the United States by terrorist countries and any organization engaged in international terrorism. Each such report shall provide a detailed list and description of specific assets.

#### (b) Definitions

For purposes of this section-

(1) the term "terrorist countries", refers to countries designated by the Secretary of State under section 2780(d) of this title; and

(2) the term "international terrorism" has the meaning given such term in section 2656f(d) of this title.

(Pub. L. 102-138, title III, §304, Oct. 28, 1991, 105 Stat. 710; Pub. L. 103-236, title I, §133(b)(2), Apr. 30, 1994, 108 Stat. 396.)

#### AMENDMENTS

1994—Subsec (a) Pub. L. 103-236 substituted "Secretary of the Treasury, in consultation with the Attorney General and appropriate investigative agencies," for "Secretary of the Treasury" and inserted at end "Each such report shall provide a detailed list and description of specific assets"

## § 2656h. International credit reports

## (a) Report on loan criteria

Not later than 90 days after October 28, 1991, the Assistant Secretary of State for Economic and Business Affairs, in consultation with the Secretary of the Treasury, shall submit to the Chairman of the Foreign Relations Committee of the Senate and the Speaker of the House of Representatives a report setting forth clear criteria for bilateral loans by which the United States can determine the likelihood of repayment by a country seeking to receive United States loans The report should include the criteria used for—

assessing country risk;

(2) projecting loan repayments; and

(3) estimating subsidy levels.

## (b) Reports on loans

Beginning 180 days after the submission of the report in subsection (a) and annually thereafter, the Secretary of State, in consultation with the Secretary of the Treasury, shall submit a report to the Chairman of the Foreign Relations Committee of the Senate and the Speaker of the House of Representatives showing actual repayments by country and by program to the United States Government for the previous 5 years and the scheduled repayments to the United States Government for the next 5 years

(Pub. L. 102-138, title I, §197, Oct. 28, 1991, 105 Stat. 684.)

# ANNEX 62

# Country Reports on Terrorism 2017

## September 2018

United States Department of State Publication Bureau of Counterterrorism Released September 2018

Country Reports on Terrorism 2017 is submitted in compliance with Title 22 of the United States Code, Section 2656f (the "Act"), which requires the Department of State to provide to Congress a full and complete annual report on terrorism for those countries and groups meeting the criteria of the Act.

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## Foreword

The United States and our international partners made major strides to defeat and degrade international terrorist organizations in 2017. We succeeded in liberating nearly all of the territory ISIS once held in Iraq and Syria. We increased pressure on al-Qa'ida to prevent its resurgence. We amplified efforts to expose and curtail Hizballah's malign activities inside Lebanon, in the Middle East, and across the globe. We worked with allies and partners around the world to expand information sharing, improve aviation security, enhance law enforcement and rule of law capacities, and prevent terrorist recruitment and recidivism.

Despite our successes, the terrorist landscape grew more complex in 2017. ISIS, al-Qa'ida, and their affiliates have proven to be resilient, determined, and adaptable, and they have adjusted to heightened counterterrorism pressure in Iraq, Syria, Afghanistan, Libya, Somalia, Yemen, and elsewhere. They have become more dispersed and clandestine, turning to the internet to inspire attacks by distant followers, and, as a result, have made themselves less susceptible to conventional military action. Further, the return or relocation of foreign terrorist fighters from the battlefield has contributed to a growing cadre of experienced, sophisticated, and connected terrorist networks, which can plan and execute terrorist attacks.

As ISIS lost territory, it continued to shift away from a centralized command and control structure toward a more diffuse model. It has experimented with and employed small unmanned aerial systems and has used rudimentary chemical weapons. The group encouraged sympathizers to use whatever weapons were at hand – such as large vehicles – against soft targets and public spaces. Increasingly, the responsibility for deciding where, when, and how to attack has devolved to homegrown terrorists inspired or enabled by ISIS to conduct operations far from the war zone. In 2017, we saw such attacks in Manchester, UK; Barcelona, Spain; Sinai, Egypt; Marawi, Philippines; New York City; and elsewhere.

Al-Qa'ida quietly expanded its membership and operations in 2017. Its global network includes the remnants of its core in Afghanistan and Pakistan, al-Nusrah Front (in Syria), al-Qa'ida in the Arabian Peninsula, al-Qa'ida in the Islamic Maghreb, al-Shabaab (in Somalia), and al-Qa'ida in the Indian Subcontinent. Nusrah's formation of Hayat Tahrir al-Sham, drawing in other hardline Syrian opposition groups, exemplified its effort to rebrand itself to appeal to a wider segment of the Syrian population. Al-Qa'ida affiliates also conducted major attacks, such as in October 2017, when al-Shabaab detonated a truck bomb in the heart of Mogadishu, killing over 300 people, the deadliest terrorist attack in Somali history. Al-Qa'ida leader Ayman al-Zawahiri continued to publicly call for supporters to attack the U.S. government and citizens globally.

Iran remained the world's leading state sponsor of terrorism and continued to support attacks against Israel. It maintained its terrorist-related and destabilizing activities through the Islamic Revolutionary Guard Corps (IRGC) Qods Force and the Lebanon-based terrorist group Hizballah. Iran is responsible for intensifying multiple conflicts and undermining the legitimate governments of, and U.S. interests in, Afghanistan, Bahrain, Iraq, Lebanon, and Yemen. In particular, Iran and Hizballah are emerging from the Syria conflict emboldened and with valuable battlefield experience that they seek to leverage across the globe. IRGC leader Qasem Soleimani recruited and deployed Shia militias from diverse ethnic groups across the Middle

East and South Asia to fight in defense of the Assad dictatorship in Syria. Beyond the Middle East, Iran and its terrorist affiliates and proxies posed a significant threat and demonstrated a near-global terrorist reach. Notably, in June 2017, the FBI arrested two suspected Hizballah operatives in Michigan and New York who allegedly were conducting surveillance and intelligence gathering on behalf of the organization, including in the United States.

Regionally focused terrorists groups remained a threat in 2017. For example, Hamas continued to rebuild its military infrastructure and capabilities to support terrorist attacks against Israel. Additionally, Pakistan-based Jaish-e-Mohammed and Lashkar e-Tayyiba continued to pose a regional threat in the subcontinent. Some regional and local terrorist groups have avoided greater international attention by remaining independent from ISIS and al-Qa'ida while others may have concluded that the benefits of greater expertise, resources, and prominence outweighed the risks of a formal connection with a notorious transnational terrorist network.

In short, the nature of the terrorist threat confronting the United States and our allies around the world evolved in 2017. While the immediate dynamics that led terrorists to flock to Iraq and Syria since 2014 have diminished, other factors that terrorists exploit to recruit new followers remained a challenge, such as sectarianism, failing states, and conflict zones. More than ever, it remains a critical priority for the United States and our allies to defeat our terrorist adversaries.

\*\*\*\*

In 2017, the United States led efforts to enhance the international community's law enforcement and other civilian capabilities that are increasingly essential in the next phase of global counterterrorism. In December, with U.S. leadership, the UN Security Council unanimously adopted Resolution 2396, with 66 co-sponsors. UN Security Council resolution (UNSCR) 2396 requires member states to collect airline reservation data to block terrorist travel, to develop watchlists of known and suspected terrorists, and to use biometrics to spot terrorists who might be trying to cross their borders. The resolution also calls on UN members to enact serious criminal offenses that will enable them to prosecute and penalize terrorists who have returned from the battlefield.

In addition, throughout 2017, the State Department led bilateral diplomatic efforts with key countries to improve border and aviation security and information sharing. We increased the number of Homeland Security Presidential Directive 6 (HSPD-6) arrangements to share information about known and suspected terrorists by almost 15 percent in 2017. Our total number of HSPD-6 partners now stands at 69, including all 38 members of the Visa Waiver Program. The United States also deployed the latest border security systems to key counterterrorism partners, provided screening technology and training, and worked to expand global engagement on transportation-related threats. Border security support through the Personal Identification Secure Comparison and Evaluation Systems (PISCES) expanded to 260 ports of entry in 23 countries.

We also used foreign assistance resources to enable our partners to better identify, deter, disrupt, apprehend, prosecute, and convict terrorists and their supporters. Our goal is for partners to be able to confront the terrorist threats they face themselves without turning to the United States for

assistance. We placed special emphasis on helping partner countries enact appropriate legal frameworks to bring criminal charges against terrorist offenders. At the end of 2017, 70 countries had laws in place to prosecute and penalize foreign terrorist fighters, and 69 had prosecuted or arrested foreign terrorist fighters or their facilitators.

The United States also worked to stanch the flow of money to terrorist networks by designating 30 organizations and individuals as Foreign Terrorist Organizations (FTOs) and/or Specially Designated Global Terrorists (SDGTs). This included top ISIS and al-Qa'ida leaders and operatives. The State Department also continued to expose and sanction states that back terrorism. We designated the Democratic People's Republic of Korea as a State Sponsor of Terrorism in 2017, and also designated key Hizballah figures as SDGTs as we pushed back on Iranian support for terrorism across the globe.

These efforts are only a snapshot of our ongoing work to protect the United States, our allies, and interests from terrorism. Country Reports on Terrorism 2017 provides a more detailed review of last year's successes and challenges so we can consider how to strengthen our counterterrorism efforts going forward. As we look to the rest of 2018 and beyond, the United States remains committed to working with our allies and partners to confront the shared threat of global terrorism. I hope this report will serve as a useful resource for those seeking to better understand this threat and our efforts to defeat it.

Ambassador Nathan A. Sales Coordinator for Counterterrorism

## Chapter 2

## State Sponsors of Terrorism

This report provides a snapshot of events during 2017 relevant to countries designated as State Sponsors of Terrorism. It does not constitute a new announcement regarding such designations.

To designate a country as a State Sponsor of Terrorism, the Secretary of State must determine that the government of such country has repeatedly provided support for acts of international terrorism. Once a country is designated, it remains a State Sponsor of Terrorism until the designation is rescinded in accordance with statutory criteria. A wide range of sanctions is imposed as a result of a State Sponsor of Terrorism designation, including:

- A ban on arms-related exports and sales;
- Controls over exports of dual-use items, requiring 30-day Congressional notification for goods or services that could significantly enhance the terrorist-list country's military capability or ability to support terrorism;
- · Prohibitions on economic assistance; and
- Imposition of miscellaneous financial and other restrictions.

#### DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

On November 20, 2017, the Secretary of State designated the Democratic People's Republic of Korea (DPRK) as a State Sponsor of Terrorism. The Secretary determined that the Government of the DPRK has repeatedly provided support for acts of international terrorism, as the DPRK has been implicated in assassinations on foreign soil. These terrorist acts are in keeping with the DPRK's wider range of dangerous and malicious behavior, including continued nuclear and ballistic missile testing and development as well as Kim Jong Un's threats against American cities and territories and those of our allies.

The DPRK was previously designated as a state sponsor of terrorism in 1988 primarily on the basis of its involvement in the bombing of a Korean Airlines passenger flight in 1987. The DPRK's designation was rescinded in 2008 after a thorough review found that the DPRK met the statutory requirements for rescission. In 2017, the Secretary of State determined that the DPRK has repeatedly provided support for acts of international terrorism since the DPRK's state sponsor of terrorism designation was rescinded in 2008.

In addition to the DPRK's support for acts of international terrorism that led to its 2017 designation, the DPRK has continued to violate UN Security Council resolutions and has historically provided support for acts of international terrorism. Four Japanese Red Army members wanted by the Japanese government for participating in a 1970 Japan Airlines hijacking continued to shelter in the DPRK. The Japanese government also continued to seek a full accounting of the fate of the 12 Japanese nationals believed to have been abducted by DPRK state entities in the 1970s and 1980s; only five such abductees have been repatriated to Japan since 2002.

#### IRAN

Designated as a State Sponsor of Terrorism in 1984, Iran continued its terrorist-related activity in 2017, including support for Lebanese Hizballah (LH), Palestinian terrorist groups in Gaza, and various groups in Syria, Iraq, and throughout the Middle East. Iran used the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) to provide support to terrorist organizations, provide cover for associated covert operations, and create instability in the Middle East. Iran has acknowledged the involvement of the IRGC-QF in both of the conflicts in Iraq and Syria, and the IRGC-QF is Iran's primary mechanism for cultivating and supporting terrorists abroad. Iran uses regional proxy forces to provide sufficient deniability to shield it from the consequences of its aggressive policies.

In 2017, Iran supported various Iraqi Shia terrorist groups, including Kata'ib Hizballah. It also bolstered the Assad regime in Syria. Iran views the Assad regime in Syria as a crucial ally and Syria and Iraq as crucial routes to supply weapons to LH, Iran's primary terrorist group ally. Through financial or residency enticements, Iran has facilitated and coerced primarily Shia fighters from Afghanistan and Pakistan to participate in the Assad regime's brutal crackdown in Syria. Iranian-supported Shia militias in Iraq have also committed serious human rights abuses against primarily Sunni civilians. Iranian forces have directly backed militia operations in Syria with armored vehicles, artillery, and drones.

Since the end of the 2006 Israeli-Lebanese Hizballah conflict, Iran has supplied LH with thousands of rockets, missiles, and small arms, in direct violation of UNSCR 1701. Iran has also provided hundreds of millions of dollars in support of LH and has trained thousands of its fighters at camps in Iran. Lebanese Hizballah fighters have been used extensively in Syria to support the Assad regime. In Bahrain, Iran has continued to provide weapons, support, and training to local Shia militant groups. In March 2017, the Department of State designated two individuals affiliated with the Bahrain-based al-Ashtar Brigades (AAB), which receives funding and support from the Government of Iran, as Specially Designated Global Terrorists under Executive Order 13224.

Iran continued to provide weapons, training, and funding to Hamas and other Palestinian terrorist groups, including Palestine Islamic Jihad and the Popular Front for the Liberation of Palestine-General Command. These Palestinian terrorist groups have been behind a number of deadly attacks originating in Gaza and the West Bank, including attacks against Israeli civilians and Egyptian security forces in the Sinai Peninsula.

The Iranian government maintains a robust offensive cyber program and has sponsored cyberattacks against foreign government and private sector entities.

Iran remained unwilling to bring to justice senior al-Qa'ida (AQ) members residing in Iran and has refused to publicly identify the members in its custody. Iran has allowed AQ facilitators to operate a core facilitation pipeline through Iran since at least 2009, enabling AQ to move funds and fighters to South Asia and Syria.

SUDAN

Sudan was designated as a State Sponsor of Terrorism in 1993 for its support to international terrorist groups, including the Abu Nidal Organization, Palestine Islamic Jihad, Hamas, and Lebanese Hizballah. Sudan does, however, work with the United States on counterterrorism, despite its designation as a State Sponsor of Terrorism. The Government of Sudan continued to pursue counterterrorism operations alongside regional partners, including operations to counter threats to U.S. interests and personnel in Sudan. Sudan's "de-radicalization" program focused on reintegration and rehabilitation of returned foreign terrorist fighters and those espousing terrorist ideologies.

In June 2010, four Sudanese men sentenced to death for the January 1, 2008 killing of two U.S. Embassy staff members escaped from Khartoum's maximum security prison. That same month, Sudanese authorities recaptured one of the escaped convicts; the individual remains in custody serving a life sentence. Two of the escaped convicts were killed in 2011 and 2015 while fighting for terrorist organizations outside of Sudan. In November 2017, the final escaped convict was killed in Somalia during an air strike against an ISIS affiliated terrorist group.

In February 2017, an unidentified group of individuals likely prematurely detonated a bomb in an apartment in the Arkawit neighborhood of Khartoum, causing an explosion. Sudanese officials reported that they had arrested several foreign nationals and seized explosive material, weapons, and foreign passports after a post-blast raid of the apartment. No other terrorist attacks were reported in 2017.

On October 6, 2017, the United States lifted certain economic sanctions on Sudan due to progress the government made through the Five Track Engagement Plan, which includes a process to evaluate Sudan's counterterrorism cooperation with the United States. The Plan calls on Sudan to improve its counterterrorism efforts through enhanced interagency and international cooperation. As part of the government's counterterrorism strategy, Sudanese forces patrol the Sudanese-Libyan border to interdict the flow of suspected terrorists transiting through the region, and to prevent arms smuggling and other illicit activities. Sudan's expansive size, and the government's outdated technology and limited visa restrictions, presented challenges for border security.

#### SYRIA

Designated in 1979 as a State Sponsor of Terrorism, Syria continued its political and military support to a variety of terrorist groups. The regime continued to provide weapons and political support to Lebanese Hizballah (LH) and continued to allow Iran to rearm the terrorist organization. The Assad regime's relationship with LH and Iran grew stronger in 2017 as the regime became more reliant on external actors to fight regime opponents. President Bashar al-Assad remained a staunch defender of Iran's policies, while Iran exhibited equally energetic support for the Syrian regime. Syrian government speeches and press releases often included statements supporting terrorist groups, particularly LH.

Over the past decade, the Assad regime's permissive attitude towards al-Qa'ida and other terrorist groups' foreign terrorist fighter facilitation efforts during the Iraq conflict in turn fed the

growth of al-Qa'ida, ISIS, and affiliated terrorist networks inside Syria. The Syrian government's awareness and encouragement for many years of terrorists' transit through Syria to enter Iraq for the purpose of fighting Coalition Forces is well documented. Those very networks were among the terrorist elements that brutalized the Syrian and Iraqi populations in 2017. Additionally, Shia militia groups, some of which are U.S.-designated Foreign Terrorist Organizations aligned with Iran, continued to travel to Syria to fight on behalf of the Assad regime.

As part of a broader strategy during the year, the regime portrayed Syria itself as a victim of terrorism, characterizing all of the internal armed opposition as "terrorists." From Syria, ISIS plotted or inspired external terrorist operations. Additionally, the Syrian regime has purchased oil from ISIS through various intermediaries, adding to the terrorist group's revenue.

Syria is not in compliance with its obligations under the Chemical Weapons Convention (CWC). The United States assesses that Syria has used chemical weapons repeatedly against the Syrian people every year since acceding to the Convention in 2013, and is therefore in violation of its obligations of the CWC. There have been numerous reports of chemical weapons use by the regime during the current conflict. On April 4, 2017, the Syrian regime attacked the town of Khan Shaykhun with sarin killing up to 100 people. The Joint Investigative Mechanism of the Organization for the Prohibition of Chemical Weapons and the United Nations has attributed four chemical weapons attacks in 2014, 2015, and 2017 to the Syrian government.



the Initial Rule Filing is consistent with the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>8</sup> Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act.<sup>9</sup> to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of Amendment No. 1 in the Federal Register.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

 Use the Commission's Internet comment form (http://www.sec.gov/ rules/sro.shtml), or

 Send an email to rule-comments@ sec.gov. Please include File No. SR— ICC-2015-007 on the subject line.

#### Paper Comments

 Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ICC-2015-007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/ rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal

office of ICC and on ICC's Web site at https://www.theice.com/clear-credit/ regulation.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2015-007 and should be submitted on or before June 25, 2015.

#### VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act <sup>10</sup> and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-ICC-2015-007), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.<sup>12</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Brent J. Fields,

Secretary.

[FR Doc. 2015-13611 Filed 6-3-15; 8:45 am] BILLING CODE 8011-01-P

#### DEPARTMENT OF STATE

[Public Notice: 9162]

#### Rescission of Determination Regarding Cuba

In accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), and as continued in effect by Executive Order 13222 of August 17, 2001, I hereby rescind the Determination of March 1, 1982, regarding Cuba, effective May 29, 2015. This action is based upon the considerations contained in the memorandum accompanying the Presidential Report of April 14, 2015, regarding Cuba.

This rescission shall also satisfy the provisions of section 620A(c) of the Foreign Assistance Act of 1961, Public Law 87–195, as amended (22 U.S.C. 2371(c)), and section 40(f) of the Arms Export Control Act, Public Law 90–629, as amended (22 U.S.C. 2780(f)).

This notice shall be published in the Federal Register.

Dated: May 28, 2015.

John F. Kerry.

Secretary of State.

[FR Doc. 2015–13663 Filed 6–3–15; 8:45 am]

BILLING CODE 4710–10–P

#### DEPARTMENT OF TRANSPORTATION

#### **Federal Aviation Administration**

Notice of Intent To Rule on Request To Release Airport Property at the Lehigh Valley International Airport (ABE), Allentown, Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT. ACTION: Notice of request to release airport property for non-aeronautical purposes.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land for non-aeronautical purposes at the Lehigh Valley International Airport (ABE), Allentown, Pennsylvania under the provision 49 U.P.C. 47125(a).

DATES: Comments must be received on or before July 6, 2015.

ADDRESSES: Comments on this application may be mailed or delivered to the following address:

Ryan Meyer, Senior Aviation Planner, Lehigh Valley International Airport, 3311 Airport Road, Allentown, Pennsylvania 18109, and at the FAA Harrisburg Airports District Office:

Lori K. Pagnanelli, Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011.

FOR FURTHER INFORMATION CONTACT: Rick Harner, Civil Engineer, Harrisburg Airports District Office, location listed above.

The request to release property may be reviewed in person at this same location

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release airport property for non-aeronautical purposes at the Lehigh Valley International Airport under the provisions of Section 47125(a) of Title 49 U.S.C. On May 27, 2015, the FAA determined that the request to release airport property for non-aeronautical purposes at the Lehigh Valley International Airport (ABE), Pennsylvania, submitted by the Lehigh Northampton Airport Authority (Authority), met the procedural requirements. Final release of the

<sup>&</sup>lt;sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F). <sup>9</sup> 15 U.S.C. 78s(b)(2)(C)(iii).

<sup>10 15</sup> U.S.C. 78q-1

<sup>11 15</sup> U.S.C 78s(b)(2)

<sup>&</sup>lt;sup>12</sup> In approving the proposed rule change, the Commission considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f)

<sup>13 17</sup> CFR 200.30-3(a)(12).



For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 15

Nancy M. Morris,

Secretary

[FR Doc. E6-11002 Filed 7-12-06; 8:45 am] BILLING CODE 8010-01-P

#### DEPARTMENT OF STATE

[Public Notice 5463]

Culturally Significant Objects Imported for Exhibition Determinations: "Gregor Mendel: Planting the Seeds of Genetics"

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, et seq.; 22 U.S.C. 6501 note, et seq.), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Gregor Mendel: Planting the Seeds of Genetics", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Field Museum, Chicago, Illinois, beginning on or about September 15, 2006, until on or about April 1, 2007, at a second venue yet to be determined, beginning on or about April 2007, until on or about September 2007, at the Center of Science and Industry, Columbus, Ohio, beginning on or about October 13, 2007, until on or about January 6, 2008, at Pink Palace Family of Museums, Memphis. Tennessee, beginning on or about February 2, 2008, until on or about April 27, 2008, and at Academy of Natural Sciences, Philadelphia, Pennsylvania, beginning on or about May 24. 2008, until on or about September 28, 2008, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the Federal Register.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8052). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: July 6, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6-11048 Filed 7-12-06; 8:45 am]

#### DEPARTMENT OF STATE

[Public Notice 5464]

#### Rescission of Determination Regarding Libya

In accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), and as continued in effect by Executive Order 13222 of August 17, 2001, I hereby rescind the Determination of December 29, 1979 regarding Libya (Public Notice 1264). This action is based upon the considerations contained in the memorandum accompanying Presidential Determination No. 2006—14 of May 12, 2006, [71 FR 31909]

This rescission shall also satisfy the provisions of section 620A(c) of the Foreign Assistance Act of 1961, Public Law 87–195, as amended (22 U.S.C. 2371(c)), and section 40(f) of the Arms Export Control Act, Public Law 90–629, as amended (22 U.S.C. 2780(f)).

Dated. June 30, 2006.

#### Condoleezza Rice,

Secretary of State, Department of State. [FR Doc. E6-11046 Filed 7-12-06; 8:45 am] BILLING CODE 4710-31-P

#### DEPARTMENT OF TRANSPORTATION

#### Office of the Secretary

#### Aviation Proceedings, Agreements Filed the Week Ending June 23, 2006

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2006-25151. Date Filed: June 19, 2006.

Parties: Members of the International Air Transport Association.

Subject:

Mail Vote 490—Resolution 010q TC3 Within South Asian Subcontinent Special Passenger Amending Between Sri Lanka and India (Memo 0983). Intended effective date: 31 October 2006.

Docket Number: OST-2006-25170.
Date Filed: June 20, 2006.
Parties: Members of the International
Air Transport Association.
Subject:

CAC/34/Meet/011/06 dated 15 June 2006

Normal Resolutions 801/801a/801r/ 801re/803/805/805zz/807/809/809zz/ 813/815/815e

(Minutes relevant to the Resolutions are included in CAC/34/Meet/010/06 dated 14 June 2006).

Intended effective date: 1 October 2006.

Docket Number: OST-2006-25172.

Date Filed: June 20, 2006.

Parties: Members of the International
Air Transport Association.

Subject:

TC2 Within Europe
Expedited Resolutions (Memo 0636)
Minutes: TC2 Within Europe (Memo 0637).

Intended effective date: 15 July 2006.

Docket Number: OST-2006-25179.

Date Filed: June 21, 2006.

Parties: Members of the International
Air Transport Association.

Subject:

Mail Vote 491—Resolution 010r TC3 Japan, Korea-South East Asia Special Passenger Amending between Japan and Russia (in Asia) (Memo 0984).

Intended effective date: 1 July 2006.

#### Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison. [FR Doc. E6-11036 Filed 7-12-06; 8:45 am] BILLING CODE 4910-9X-P

#### DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 23, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application

<sup>15 17</sup> CFR 200 30-3(a)(12)



#### SMALL BUSINESS ADMINISTRATION

#### Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before December 20, 2004.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Rachel Newman Karton, Program Manager, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street SW., Suite 6400, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Rachel Newman Karton, Program Manager, (202) 619-1816 or Curtis B. Rich, Management Analyst, (202) 205-

#### SUPPLEMENTARY INFORMATION:

Title: "Quarterly Reports for Drug Free Workplace Program.'

Description of Respondents: Eligible Intermediaries who have received a Drug Free Workplace Program grant.

Form No: N/A. Annual Responses: 48. Annual Burden: 1,344.

#### Jacqueline White,

Chief, Administrative Information Branch. [FR Doc. 04-23463 Filed 10-19-04: 8.45 am] BILLING CODE 8025-01-P

#### DEPARTMENT OF STATE

[Public Notice 4863]

#### Rescission of Determination Regarding Iraq

In accordance with Section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), I hereby rescind the Determination of September 13, 1990 (Public Notice 1264) that Iraq is a country which has repeatedly provided support for acts of international

This action is a further step to cement the partnership of the United States and Iraq in combating acts of international terrorism, and is an act of symbolic

importance to the new Iraqi government. This rescission is appropriate although nearly all the restrictions applicable to countries that have supported terrorism, including the application of 22 U.S.C. 1605(a)(7), were made inapplicable with respect to Iraq permanently in Presidential Directive No. 2003–23 of May 7, 2003, pursuant to sec. 1503 of Pub. L. 108–11, and as affirmed in the Conference Report for Pub. L. 108-106.

This rescission shall also satisfy the provisions of section 620A(c)(1) of the Foreign Assistance Act of 1961, Pub. L. 87-195, as amended, and section 40(f)(1)(A) of the Arms Export Control Act, Pub. L. 90-629, as amended.

Dated: October 7, 2004.

Colin L. Powell,

Secretary of State, Department of State. [FR Doc. 04-23470 Filed 10-19-04; 8:45 am] BILLING CODE 4710-08-P

#### DEPARTMENT OF STATE

[Public Notice 4823]

#### **Shipping Coordinating Committee** Notice of Meeting

The Shipping Coordinating Committee (SCC) will conduct an open meeting between 10:30 a.m. and 12 p.m. on Wednesday, 10 November 2004, in Room 4420, at U. S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. The primary purpose of the meeting is to finalize preparations for the 93rd Session of the International Maritime Organization (IMO) to be held at the IMO Headquarters in London, England from 15 November to 19 November 2004.

The primary matters to be considered include:

- Report on the status of Conventions and other multilateral instruments.
- Consideration of the strategy and policy of the Organization.
- Voluntary IMO Member State Audit Scheme.
- Resource management and other financial matters.
- Consideration of the report of the Organization's Committees.
- -Report on World Maritime Day 2004.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing Director, International Affairs, U.S. Coast Guard (G-CI), 2100 Second Street, SW., Washington, DC 20593-0001 or by calling: (202) 267-2246.

Dated: October 12, 2004.

Margaret F. Hayes,

Chairman, Shipping Coordinating Committee, Department of State.

[FR Doc. 04-23468 Filed 10-19-04; 8:45 am] BILLING CODE 4710-07-P

#### **DEPARTMENT OF TRANSPORTATION**

Surface Transportation Board [STB Finance Docket No. 34540]

The Columbus & Ohio River Rail Road Company—Acquisition and Operation Exemption—Rail Lines of CSX Transportation, Inc.

The Columbus & Ohio River Rail Road Company (CUOH), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate, pursuant to an agreement with CSX Transportation, Inc. (CSXT), approximately 114 miles of rail line: (1) By purchase, between Columbus, OH, milepost BP 138.0, and Newark, OH, milepost BQ 0.0, totalling approximately 32.6 miles; 1 and (2) by lease, between Mt. Vernon, OH, milepost BQ 25.9, and Cambridge, OH, milepost BP 49.49, via Newark, milepost BQ 0.0, totalling approximately 81.4 miles.2 The lines are located in Franklin, Licking, Muskingum, Knox, and Guernsey Counties, OH. CUOH states that following this transaction, CSXT will no longer operate trains on any of the above-described rail lines, and that CUOH will be the sole operator of the rail lines. The transaction also includes approximately 1.5 miles of incidental trackage rights assigned by CSXT to CUOH over a line of the Ohio Southern Railroad, Inc. (OSR) 3 between milepost 16.7 and milepost 18.2 in Zanesville, OH.4

1 CSXT presently holds a 50% ownership interest in the rail line from Columbus to Newark (the C&N Subdivision). The balance of the ownership interest in this line is held by the State of Ohio, and both CUOH and CSXT currently hold operating rights over the C&N Subdivision. See Caprail I— Acquisition Exemption—Consolidated Rail Corporation, Finance Docket No. 31961 (Sub-No. 1). Ohio Department of Transportation—Lease Exemption—Caprail I Lines in Ohio, Finance Docket No. 31961 (Sub-No 2), and Columbus & Ohio River Railroad Company—Lease and Operation Exemption—Ohio Department of Transportation Lines. Finance Docket No. 31961 (Sub-No. 3) (ICC served Jan. 15, 1992). CUOH states that, through this transaction, it will purchase CSXT's 50% share in the Columbus to Newark line.

<sup>2</sup> The line to be leased consists of the Lake Erie Subdivision (Newark to Mt. Vernon) and the Central Ohio Subdivision (Newark to Cambridge) 3 OSR and CUOH are subsidiaries of Summit

View, Inc., a noncarrier holding company.

4 Prior to this transaction, CUOH and the Ohio
Central Railroad (OHCR) interchanged traffic at

Morgan Run (Coshocton), OH. Following this

### PUBLIC LAW 110-301-AUG. 4, 2008

122 STAT. 2999

## Public Law 110-301 110th Congress

#### An Act

To resolve pending claims against Libya by United States nationals, and for other purposes.

Aug. 4, 2008 [S. 3370]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### SECTION 1. SHORT TITLE.

Libyan Claims Resolution Act. 28 USC 1605A note.

This Act may be cited as the "Libyan Claims Resolution Act".

#### SEC. 2. DEFINITIONS.

28 USC 1605A note.

In this Act-

(1) the term "appropriate congressional committees" means the Committee on Foreign Relations and the Committee on the Judiciary of the Senate and the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives;

(2) the term "claims agreement" means an international agreement between the United States and Libya, binding under international law, that provides for the settlement of terrorismrelated claims of nationals of the United States against Libya through fair compensation;

(3) 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)).

tion and Nationality Act (8 U.S.C. 1101(a)(22));
(4) the term "Secretary" means the Secretary of State;
and

(5) the term "state sponsor of terrorism" means a country the government of which the Secretary 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.

#### SEC. 3. SENSE OF CONGRESS.

28 USC 1605A.

Congress supports the President in his efforts to provide fair compensation to all nationals of the United States who have terrorism-related claims against Libya through a comprehensive settlement of claims by such nationals against Libya pursuant to an international agreement between the United States and Libya as a part of the process of restoring normal relations between Libya and the United States.

122 STAT. 3000

### PUBLIC LAW 110-301-AUG. 4, 2008

28 USC 1605A note.

SEC. 4. ENTITY TO ASSIST IN IMPLEMENTATION OF CLAIMS AGREE-MENT.

Federal Register, publication.

(a) DESIGNATION OF ENTITY.—

(1) DESIGNATION.—The Secretary, by publication in the Federal Register, may, after consultation with the appropriate congressional committees, designate 1 or more entities to assist in providing compensation to nationals of the United States, pursuant to a claim's agreement.

(2) AUTHORITY OF THE SECRETARY.—The designation of an entity under paragraph (1) is within the sole discretion of the Secretary, and may not be delegated. The designation shall

not be subject to judicial review.

(b) IMMUNITY.-(1) PROPERTY .-

(A) In GENERAL.—Notwithstanding any other provision of law, if the Secretary designates any entity under subsection (a)(1), any property described in subparagraph (B) of this paragraph shall be immune from attachment or any other judicial process. Such immunity shall be in addition to any other applicable immunity.

(B) PROPERTY DESCRIBED.—The property described in

this subparagraph is any property that-

(i) relates to the claims agreement; and

(ii) for the purpose of implementing the claims agreement, is-

(I) held by an entity designated by the Sec-

retary under subsection (a)(1);

(II) transferred to the entity; or (III) transferred from the entity.

(2) OTHER ACTS.—An entity designated by the Secretary under subsection (a)(1), and any person acting through or on behalf of such entity, shall not be liable in any Federal or State court for any action taken to implement a claims agree-

(c) Nonapplicability of the Government Corporation Con-TROL ACT.—An entity designated by the Secretary under subsection (a)(1) shall not be subject to chapter 91 of title 31, United States Code (commonly known as the "Government Corporation Control Act").

28 USC 1605A note.

#### SEC. 5. RECEIPT OF ADEQUATE FUNDS; IMMUNITIES OF LIBYA.

(1) IN GENERAL.—Notwithstanding any other provision of law, upon submission of a certification described in paragraph

(A) Libya, an agency or instrumentality of Libya, and the property of Libya or an agency or instrumentality of Libya, shall not be subject to the exceptions to immunity from jurisdiction, liens, attachment, and execution contained in section 1605A, 1605(a)(7), or 1610 (insofar as section 1610 relates to a judgment under such section 1605A or 1605(a)(7)) of title 28, United States Code;
(B) section 1605A(c) of title 28, United States Code,

section 1083(c) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 342; 28 U.S.C. 1605A note), section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (28 U.S.C. 1605 note), and any other private right of action relating to acts by a state sponsor of terrorism arising under Federal, State, or foreign law shall not apply with respect to claims against Libya, or any of its agencies, instrumentalities, officials, employees, or agents in any action in a Federal or State court; and

(C) any attachment, decree, lien, execution, garnishment, or other judicial process brought against property of Libya, or property of any agency, instrumentality, official, employee, or agent of Libya, in connection with an action that would be precluded by subparagraph (A) or (B) shall be void.

(2) CERTIFICATION.—A certification described in this para-

graph is a certification—

(A) by the Secretary to the appropriate congressional

committees; and

(B) stating that the United States Government has received funds pursuant to the claims agreement that are sufficient to ensure—

(i) payment of the settlements referred to in section 654(b) of division J of the Consolidated Appropriations Act, 2008 (Public Law 110-161; 121 Stat. 2342); and

Act, 2008 (Public Law 110-161; 121 Stat. 2342); and (ii) fair compensation of claims of nationals of the United States for wrongful death or physical injury in cases pending on the date of enactment of this Act against Libya arising under section 1605A of title 28, United States Code (including any action brought under section 1605(a)(7) of title 28, United States Code, or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (28 U.S.C. 1605 note), that has been given effect as if the action had originally been filed under 1605A(c) of title 28, United States Code, pursuant to section 1083(c) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 342; 28 U.S.C. 1605A note)).

(b) TEMPORAL SCOPE.—Subsection (a) shall apply only with respect to any conduct or event occurring before June 30, 2006, regardless of whether, or the extent to which, application of that subsection affects any action filed before, on, or after that date.

122 STAT, 3002

## PUBLIC LAW 110-301-AUG. 4, 2008

(c) AUTHORITY OF THE SECRETARY.—The certification by the Secretary referred to in subsection (a)(2) may not be delegated, and shall not be subject to judicial review.

Approved August 4, 2008.

LEGISLATIVE HISTORY—S. 3370:

CONGRESSIONAL RECORD, Vol. 154 (2008): July 31, considered and passed Senate and House.



Federal Register

Vol. 73, No. 215

Wednesday, November 5, 2008

## **Presidential Documents**

Title 3-

Executive Order 13477 of October 31, 2008

The President

Settlement of Claims Against Libya

By the authority vested in me as President by the Constitution and the laws of the United States of America, and pursuant to the August 14, 2008, claims settlement agreement between the United States of America and Libya (Claims Settlement Agreement), and in recognition of the October 31, 2008, certification of the Secretary of State, pursuant to section 5(a)(2) of the Libyan Claims Resolution Act (Public Law 110–301), and in order to continue the process of normalizing relations between the United States and Libya, it is hereby ordered as follows:

Section 1. All claims within the terms of Article I of the Claims Settlement Agreement (Article I) are settled.

(a) Claims of United States nationals within the terms of Article I are espoused by the United States and are settled according to the terms of the Claims Settlement Agreement.

(i) No United States national may assert or maintain any claim within the terms of Article I in any forum, domestic or foreign, except under the procedures provided for by the Secretary of State.

(ii) Any pending suit in any court, domestic or foreign, by United States nationals (including any suit with a judgment that is still subject to appeal or other forms of direct judicial review) coming within the terms of Article I shall be terminated.

(iii) The Secretary of State shall provide for procedures governing applications by United States nationals with claims within the terms of Article I for compensation for those claims.

(iv) The Attorney General shall enforce this subsection through all appropriate means, which may include seeking the dismissal, with prejudice, of any claim of a United States national within the terms of Article I pending or filed in any forum, domestic or foreign.

(b) Claims of foreign nationals within the terms of Article I are settled according to the terms of the Claims Settlement Agreement.

(i) No foreign national may assert or maintain any claim coming within the terms of Article I in any court in the United States.

(ii) Any pending suit in any court in the United States by foreign nationals (including any suit with a judgment that is still subject to appeal or other forms of direct judicial review) coming within the terms of Article I shall be terminated.

(iii) Neither the dismissal of the lawsuit, nor anything in this order, shall affect the ability of any foreign national to pursue other available remedies for claims coming within the terms of Article I in foreign courts or through the efforts of foreign governments.

(iv) The Attorney General shall enforce this subsection through all appropriate means, which may include seeking the dismissal, with prejudice, of any claim of a foreign national within the terms of Article I pending or filed in any court in the United States.

Sec. 2. For purposes of this order:

(a) The term "United States national" has the same meaning as "national of the United States" in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)), but also includes any entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches).

- (b) The term "foreign national" means any person other than a United States national.
- (c) The term "person" means any individual or entity, including both natural and juridical persons.
- (d) The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.
- Sec. 3. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

/zuse

THE WHITE HOUSE, Washington, October 31, 2008.

[FR Doc. E8-26531 Filed 11-4-08; 8:45 am] Billing code 3195-W9-P



Federal Register

Vol. 73, No. 24

Tuesday, February 5, 2008

## **Presidential Documents**

Title 3-

The President

Presidential Determination No. 2008-9 of January 28, 2008

Waiver of Section 1083 of the National Defense Authorization Act for Fiscal Year 2008

### Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and section 1083(d) of the National Defense Authorization Act for Fiscal Year 2008 (the "Act"), I hereby determine that:

- All provisions of section 1083 of the Act, if applied to Iraq or any agency or instrumentality thereof, may affect Iraq or its agencies or instrumentalities, by exposing Iraq or its agencies or instrumentalities to liability in United States courts and by entangling their assets in litigation.
- The economic security and successful reconstruction of Iraq continue to be top national security priorities of the United States. Section 1083 of the Act threatens those key priorities. If permitted to apply to Iraq, section 1083 would risk the entanglement of substantial Iraqi assets in litigation in the United States—including those of the Development Fund for Iraq, the Central Bank of Iraq, and commercial entities in the United States in which Iraq has an interest. Section 1083 also would expose Iraq to new liability of at least several billion dollars by undoing judgments favorable to Iraq, by foreclosing available defenses on which Iraq is relying in pending litigation, and by creating a new Federal cause of action backed by the prospect of punitive damages to support claims that may previously have been foreclosed. If permitted to apply to Iraq, section 1083 would have a significant financial impact on Iraq and would result in the redirection of financial resources from the continued reconstruction of Iraq and the harming of Iraq's stability, contrary to the interests of the United States.
- A waiver of all provisions of section 1083 with respect to Iraq and any agency or instrumentality of Iraq is therefore in the national security interest of the United States and will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq.
- Iraq continues to be a reliable ally of the United States and a partner in combating acts of international terrorism. The November 26, 2007, Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship between the Republic of Iraq and the United States of America confirmed the commitment of the United States and Iraq to build an enduring relationship in the political, diplomatic, economic, and security arenas and to work together to combat all terrorist groups, including al-Qaida.

Accordingly, I hereby waive all provisions of section 1083 of the Act with respect to Iraq and any agency or instrumentality thereof.

You are authorized and directed to notify the Congress of this determination and waiver and the accompanying memorandum of justification, incorporated by reference herein, and to arrange for their publication in the Federal Register.

/guse

THE WHITE HOUSE, Washington, January 28, 2008.

Billing code 4710-10-P

MEMORANDUM OF JUSTIFICATION FOR WAIVER OF SECTION 1083
OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008
WITH RESPECT TO IRAQ

Section 1083 of the National Defense Authorization Act for Fiscal Year 2008 (the "Act") amends the Foreign Sovereign Immunities Act, which establishes a framework for lawsuits against foreign countries and their agencies and instrumentalities under U.S. law. Immediately upon enactment, Section 1083 would put at risk substantial Iraqi assets in the United States that are crucial to Iraq's recovery efforts -including the Development Fund for Iraq, the assets of the Central Bank of Iraq held by the Federal Reserve Bank of New York, and assets of Iraqi agencies or instrumentalities used in commercial transactions in the United States. Section 1083 would also expose Iraq to potential new liability by undoing judgments favorable to Iraq, by foreclosing available defenses on which Iraq has relied, and by creating a new Federal cause of action backed by punitive damages. Any and all provisions of section 1083 may adversely affect Iraq or its agencies or instrumentalities, by exposing Iraq or its agencies or instrumentalities to liability in United States courts and by entangling their assets in litigation. Such burdens would undermine the national security and foreign policy interests of the United States, including by weakening the ability of the democratically-elected government of Iraq to use Iraqi funds to promote political and economic progress and further develop its security forces.

Section 1083(d)(1)-(3) of the Act provides that:

- (d) Applicability to Iraq-
  - (1) APPLICABILITY- The President may waive any provision of this section with respect to Iraq, insofar as that provision may, in the President's determination, affect Iraq or any agency or instrumentality thereof, if the President determines that--
    - (A) the waiver is in the national security interest of the United States;

- (B) the waiver will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq; and (C) Iraq continues to be a reliable ally of the United States and partner in combating acts of international terrorism.
- (2) TEMPORAL SCOPE- The authority under paragraph (1) shall apply--
  - (A) with respect to aconduct or event occurring before or on the date of the enactment of this Act;
  - (B) with respect to any conduct or event occurring before or on the date of the exercise of that authority; and
  - (C) regardless of whether, or the extent to which, the exercise of that authority affects any action filed before, on, or after the date of the exercise of that authority or of the enactment of this Act.
- (3) NOTIFICATION TO CONGRESS- A waiver by the President under paragraph (1) shall cease to be effective 30 days after it is made unless the President has notified Congress in writing of the basis for the waiver as determined by the President under paragraph (1).

A waiver of all provisions of section 1083 with respect to Iraq, and all agencies and instrumentalities thereof, is in the national security interest of the United States and will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq. In particular:

- Absent a waiver, section 1083 would have a potentially devastating impact on Iraq's ability to use Iraqi funds to expand and equip the Iraqi Security Forces, which would have serious implications for U.S. troops in the field acting as part of the Multinational Force-Iraq and would harm antiterrorism and counter-insurgency efforts.
- Application of section 1083 to Iraq or any agency or instrumentality thereof will hurt the interests of the United States by unacceptably interfering with political and economic progress in Iraq that is critically important to bringing U.S. troops home.
- If applied to Iraq or any agency or instrumentality thereof, the provisions of section 1083 would redirect financial

resources from the continued reconstruction of Iraq and would harm Iraq's stability, contrary to the interests of the United States. A waiver will ensure that Iraqi assets of the Central Bank of Iraq, the government and commercial entities in which Iraq has an interest, remain available to maintain macroeconomic stability in Iraq and support private sector development and trade.

- By providing for the maintenance of macroeconomic stability, the waiver of section 1083 will promote the consolidation of democracy in Iraq.
- Absent a waiver of section 1083, Iraq's ability to finance employment alternatives, vocational training, and job placement programs necessary to promote community reintegration and development efforts contributing to counterterrorism efforts would be harmed.
- By ensuring that Iraq and its agencies and instrumentalities are not subject to litigation or liability pursuant to section 1083, waiver of section 1083 will promote the close relationship between the United States and Iraq.

In addition, Iraq continues to be a reliable ally of the United States and partner in combating acts of international terrorism. The November 26, 2007 Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship between the Republic of Iraq and the United States of America confirmed the commitment of the United States and Iraq to build an enduring relationship in the political, diplomatic, economic, and security arenas and to work together to combat all terrorist groups and international terrorism, including al-Qaida. This Declaration reinforced the crucial actions Iraq is taking against terrorists groups, including al-Qaida.

[FR Doc. 08-515 Filed 2-4-08; 8:45 am] Billing code 4710-10-C

# ANNEX 69

50 USC 4826: Transition provisions

Text contains those laws in effect on September 15, 2019

From Title 50-WAR AND NATIONAL DEFENSE

CHAPTER 58-EXPORT CONTROL REFORM

SUBCHAPTER I-AUTHORITY AND ADMINISTRATION OF CONTROLS

Jump To:

Source Credit References In Text

# §4826. Transition provisions

# (a) In general

All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect on the day before August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of this subchapter.

# (b) Administrative and judicial proceedings

This subchapter shall not affect any administrative or judicial proceedings commenced, or any applications for licenses made, under the Export Administration Act of 1979 (as in effect on the day before August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]), or the Export Administration Regulations.

# (c) Certain determinations and references

# (1) State sponsors of terrorism

Any determination that was made under section 6(j) of the Export Administration Act of 1979 (as in effect on the day before August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]) shall continue in effect as if the determination had been made under section 4813(c) of this title.

# (2) Reference

Any reference in any other provision of law to 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 (as in effect on the day before August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]), is a government that has repeatedly provided support for acts of international terrorism shall be deemed to refer to a country the government of which the Secretary of State has determined, for purposes of section 4813(c) of this title, is a government that has repeatedly provided support for acts of international terrorism.

( Pub. L. 115-232, div. A, title XVII, §1768, Aug. 13, 2018, 132 Stat. 2233 .)

# REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in text, is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to chapter 56 (§4601 et seq.) of this title and was substantially repealed by Pub. L. 115–232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232. Section 6(j) of the Act was classified to section 4605(j) of this title prior to répeal. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in text, is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

This subchapter, referred to in subsecs. (a) and (b), was in the original "this part", meaning part I (§§1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115–232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115–232, set out as a Short Title note under section 4801 of this title and Tables.

# ANNEX 70



respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after September 14, 1976.

(Pub. L. 94–412, title V, 502, Sept. 14, 1976, 90 Stat. 1258; Pub. L. 95–223, title I, 101(d), Dec. 28, 1977, 91 Stat. 1625; Pub. L. 96-513, title V, §507(b), Dec. 12, 1980, 94 Stat. 2919; Pub. L. 105-362, title IX, §901(r)(2), Nov. 10, 1998, 112 Stat. 3291; Pub. L. 107-314, div. A, title X, §1062(o)(1), Dec. 2, 2002, 116 Stat. 2652.)

#### References in Text

Public Law 85–804, referred to in subsec. (a)(4), is Pub. L. 85-804, Aug. 28, 1958, 72 Stat. 972, as amended, which is classified generally to chapter 29 (§1431 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

Section 2304(a)(1) of title 10, referred to in subsec. (a)(5), originally authorized purchases or contracts without formal advertising when necessary in the public interest during a national emergency declared by Congress or the President, and as amended generally by Pub. L. 98-369 now sets forth the competition requirements for procurement of property or services.

#### CODIFICATION

In subsec. (a)(1), "Chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "Act of June 30, 1949 (41 U.S.C. 252)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(2), "Section 3727(a)—(e)(1) of title 31" substituted for "Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

In subsec. (a)(3), "Section 6305 of title 41" substituted for "Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

# AMENDMENTS

2002—Subsec. (a). Pub. L. 107-314 struck out par. (2), which read "Act of April 28, 1942 (40 U.S.C. 278b);", and redesignated pars. (3) to (7) as (1) to (5), respectively

1998—Subsec. (a)(6). Pub. L. 105–362 substituted "1431 et seq." for "1431–1435".

1980—Subsec. (a)(8). Pub. L. 96-513 struck out par. (8) which made reference to sections 3313, 6386(c), and 8313 of title 10.

1977—Subsec. (a)(1). Pub. L. 95–223 struck out par. (1) which read as follows: "Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5(b)); "

# EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

#### **CHAPTER 35—INTERNATIONAL EMERGENCY ECONOMIC POWERS**

1701. Unusual and extraordinary threat; declaration of national emergency; exercise of

Presidential authorities. 1702. Presidential authorities.

1703. Consultation and reports.

1704. 1705. Authority to issue regulations. Penalties.

1706 Savings provisions. 1707.

Multinational economic embargoes against governments in armed conflict with the

United States. Actions to address economic or industrial es-1708

pionage in cyberspace.

#### §1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

(Pub. L. 95-223, title II, §202, Dec. 28, 1977, 91 Stat. 1626.)

#### SHORT TITLE OF 2016 AMENDMENT

Pub. L. 114-277, §1, Dec. 15, 2016, 130 Stat. 1409, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Iran Sanctions Extension Act'."

Sanctions Extension Act'."

Pub. L. 114-194, §1, July 15, 2016, 130 Stat. 674, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Venezuela Defense of Human Rights and Civil Society Extensions." tension Act of 2016'."

# SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110-96, §1, Oct. 16, 2007, 121 Stat. 1011, provided that: "This Act [amending section 1705 of this title and enacting provisions set out as a note under section 1705of this title] may be cited as the 'International Emergency Economic Powers Enhancement Act'

# SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-353, §1, Oct. 13, 2006, 120 Stat. 2015, provided that: "This Act [amending provisions set out as An note under this section] may be cited as the 'North Korea Nonproliferation Act of 2006'."
Pub. L. 109–293, §1, Sept. 30, 2006, 120 Stat. 1344, pro-

vided that: "This Act [amending section 5318A of Title 31, Money and Finance, enacting provisions set out as notes under this section and section 2151 of Title 22, Foreign Relations and Intercourse, and amending provisions set out as a note under this section] may be cited as the 'Iran Freedom Support Act'.''

# SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–112, §1, Nov. 22, 2005, 119 Stat. 2366, provided that: "This Act [enacting provisions set out as a note under this section and amending provisions set out as notes under this section and section 2797b of Title 22, Foreign Relations and Intercourse] may be cited as the 'Iran Nonproliferation Amendments Act of 2005'.'

# SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107-24, §1, Aug. 3, 2001, 115 Stat. 199, provided that: "This Act [enacting and amending provisions set

Continuations of national emergency declared by Ex. Ord. No. 13288 were contained in the following: Notice of President of the United States, dated Jan.

13, 2017, 82 F.R. 6195.

Notice of President of the United States, dated Mar. 2, 2016, 81 F.R. 11657.

Notice of President of the United States, dated Mar. 3, 2015, 80 F.R. 12069.

Notice of President of the United States, dated Feb. 28 2014 79 F B. 12031

Notice of President of the United States, dated Mar. 1, 2013, 78 F.R. 14427.

Notice of President of the United States, dated Mar. 2, 2012, 77 F.R. 13179.

Notice of President of the United States, dated Mar. 2, 2011, 76 F.R. 12267

Notice of President of the United States, dated Feb. 26, 2010, 75 F.R. 10157. Notice of President of the United States, dated

Mar. 3, 2009, 74 F.R. 9751.

Notice of President of the United States, dated Mar. 4, 2008, 73 F.R. 12005. Notice of President of the United States, dated Feb.

28, 2007, 72 F.R. 9645. Notice of President of the United States, dated Feb.

27, 2006, 71 F.R. 10603.

Notice of President of the United States, dated Mar. 2, 2005, 70 F.R. 10859.

Notice of President of the United States, dated Mar. 2, 2004, 69 F.R. 10313.

Ex. Ord. No. 13469, July 25, 2008, 73 F.R. 43841.

#### § 1702. Presidential authorities

# (a) In general

- (1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise-
  - (A) investigate, regulate, or prohibit-
    - (i) any transactions in foreign exchange,
  - (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,
  - (iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States:

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and.1

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title,

and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of

such person.
(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

# (b) Exceptions to grant of authority

The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly-

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or 2

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not

 $<sup>^{1}\,\</sup>mathrm{So}$  in original. The period probably should not appear.

 $<sup>^2\,\</sup>mathrm{So}$  in original. The word "or" probably should not appear.

limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 4604 of this title, or under section 4605 of this title to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18; or

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

#### (c) Classified information

In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.

(Pub. L. 95–223, title II,  $\S$ 203, Dec. 28, 1977, 91 Stat. 1626; Pub. L. 100–418, title II,  $\S$ 2502(b)(1), Aug. 23, 1988, 102 Stat. 1371; Pub. L. 103–236, title V,  $\S$ 525(c)(1), Apr. 30, 1994, 108 Stat. 474; Pub. L. 107–56, title I,  $\S$ 106, Oct. 26, 2001, 115 Stat. 277.)

#### REFERENCES IN TEXT

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (c), is section 1(a) of Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

# AMENDMENTS

2001—Pub. L. 107-56, §106, which directed certain amendments to section 203 of the International Emergency Powers Act, was executed by making the amendments to this section, which is section 203 of the International Emergency Economic Powers Act, to reflect the probable intent of Congress. See below.

Subsec. (a)(1). Pub. L. 107-56, §106(1)(C), which directed striking out "by any person, or with respect to any property, subject to the jurisdiction of the United States' without providing closing quotation marks designating the provisions to be struck, was executed by striking out "by any person, or with respect to any property, subject to the jurisdiction of the United States" in concluding provisions.

Subsec. (a)(1)(A). Pub. L. 107-56, §106(1)(A), substituted a comma for "; and" at end of cl. (iii) and inserted concluding provisions.

Subsec. (a)(1)(B). Pub. L. 107-56, §106(1)(B), inserted ", block during the pendency of an investigation" after "investigate" and substituted "interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and" for "interest;".

Subsec. (a)(1)(C). Pub. L. 107-56, §106(1)(D), added subpar. (C).

Subsec. (c). Pub. L. 107–56, §106(2), added subsec. (c). 1994—Subsec. (b)(3), (4). Pub. L. 103–236 added pars. (3) and (4) and struck out former par. (3) which read as follows: "the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise

controlled for export under section 2404 of the Appendix to this title or with respect to which no acts are prohibited by chapter 37 of title 18."

1988—Subsec. (b)(3). Pub. L. 100-418 added par. (3).

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-236, title V, §525(c)(2), (3), Apr. 30, 1994, 108 Stat. 475, provided that:

"(2) The amendments made by paragraph (1) to section 203(b)(3) of the International Emergency Economic Powers Act [50 U.S.C. 1702(b)(3)] apply to actions taken by the President under section 203 of such Act before the date of enactment of this Act [Apr. 30, 1994] which are in effect on such date and to actions taken under such section on or after such date.

"(3) Section 203(b)(4) of the International Emergency Economic Powers Act (as added by paragraph (1)) shall not apply to restrictions on the transactions and activities described in section 203(b)(4) in force on the date of enactment of this Act, with respect to countries embargoed under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.] on the date of enactment of this Act."

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–418, title II, §2502(b)(2), Aug. 23, 1988, 102 Stat. 1372, provided that: "The amendments made by paragraph (1) [amending this section] apply to actions taken by the President under section 203 of the International Emergency Economic Powers Act [this section] before the date of the enactment of this Act [Aug. 23, 1988] which are in effect on such date of enactment, and to actions taken under such section on or after such date of enactment."

Ex. Ord. No. 13290. Confiscating and Vesting Certain Iraqi Property

Ex. Ord. No. 13290, Mar. 20, 2003, 68 F.R. 14307, as amended by Ex. Ord. No. 13350,  $\S 3$ , July 29, 2004, 69 F.R. 46055, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the national emergency declared in Executive Order 13303 of March 20 [May 22], 2003 [listed in a table under section 1701 of this title], and expanded in Executive Order 13315 of August 28, 2003 [listed in a table under section 1701 of this title].

I, GEORGE W. BUSH, President of the United States of America, hereby determine that the United States and Iraq are engaged in armed hostilities, that it is in the interest of the United States to confiscate certain property of the Government of Iraq and its agencies, instrumentalities, or controlled entities, and that all right, title, and interest in any property so confiscated should vest in the Department of the Treasury. I intend that such vested property should be used to assist the Iraqi people and to assist in the reconstruction of Iraq, and determine that such use would be in the interest of and for the benefit of the United States.

I hereby order:

SECTION 1. All blocked funds held in the United States in accounts in the name of the Government of Iraq, the Central Bank of Iraq, Rafidain Bank, Rasheed Bank, or the State Organization for Marketing Oil are hereby confiscated and vested in the Department of the Treasury, except for the following:

(a) any such funds that are subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoy equivalent privileges and immunities under the laws of the United States, and are or have been used for diplomatic or consular purposes, and

(b) any such amounts that as of the date of this order are subject to post-judgment writs of execution or at-

# ANNEX 71

[PUBLISH]

# IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
08/11/99

D.C. Docket Nos. 96-CV-10126
96-CV-10127
96-CV-10128

THOMAS K. KAHN
CLERK

MARLENE ALEJANDRE, individually and as personal representative of the Estate of Armando Alejandre, deceased, MIRTA MENDEZ, as personal representative of the estate of Carlos Alberto Costa, deceased, et al.,

Plaintiffs-Appellees,

versus

TELEFONICA LARGA DISTANCIA DE PUERTO RICO, INC.; MCI INTERNATIONAL, INC.; et al.,

Garnishees-Appellants.

Appeal from the United States District Court for the Southern District of Florida

(August 11, 1999)

Before TJOFLAT and DUBINA, Circuit Judges and O'KELLEY\*, Senior U.S. District Judge.

<sup>\*</sup>Honorable William C. O'Kelley, Senior U.S. District Judge for the Northern District of Georgia, sitting by designation.

# [PUBLISH]

# FILED

U.S. COURT OF APPEALS ELEVENTH CIRCUIT 08/11/99 THOMAS K. KAHN CLERK

# TJOFLAT, Circuit Judge:

In this garnishment action, the district court permitted the plaintiffs to collect a portion of their judgments against the Republic of Cuba (the "Cuban Government") and the Cuban Air Force by garnishing certain debts owed to a Cuban telecommunications company. Because we conclude that this company is an entity separate from the Cuban Government, we vacate the judgment of the district court and remand this case with instructions to dissolve the writs of garnishment.

I.

This case grows out of a decision by the Cuban Government, carried out by pilots of the Cuban Air Force, to shoot down two unarmed civilian airplanes over international waters on February 24, 1996. Three citizens of the United States and one non-citizen were killed in the attack. On October 31, 1997, the personal representatives of the estates of the three citizens, plaintiffs herein, brought actions in the United States District Court for the Southern District of Florida seeking monetary damages from the Cuban Government and the Cuban Air Force.

Although neither defendant entered an appearance, the district court conducted a

trial in order to determine whether the plaintiffs had satisfactory evidence to support their claims. See 28 U.S.C. § 1608(e) (1994) (prohibiting default judgment against foreign sovereign unless plaintiff establishes claim "by evidence satisfactory to the court").

On December 17, 1997, the district court entered judgment for the plaintiffs and awarded them compensatory damages of \$49,927,911 against the Cuban Government and Cuban Air Force, as well as punitive damages of \$137,700,000 against the Cuban Air Force alone. See Alejandre v. Republic of Cuba, 996 F. Supp. 1239, 1253-54 (S.D. Fla. 1997) [hereinafter Alejandre I]. In an opinion accompanying the judgment, the court found that the defendants were not immune

The family and estate of each citizen were awarded one-third of the damages. Originally, the district court did not award punitive damages against the Cuban Government because 28 U.S.C. § 1606 (1994) provided that a foreign state could not be liable for such damages. Section 1606 was later amended to allow punitive damages against a foreign state in a suit from which the state was not immune under 28 U.S.C. § 1605(a)(7) (Supp. II 1996); this amendment applied to causes of action arising before, on, or after October 21, 1998. See Pub. L. No. 105-277, § 101(h) [Title I, § 117], 112 Stat. 2681, 2681-491 (1998). The President promptly acted to waive the "requirements" of the statutory section that contained this amendment. See Pres. Determination No. 99-1, 63 F.R. 59201 (1998) (reprinted in 28 U.S.C.A. § 1610 note (West Supp. 1999)). (We express no opinion regarding the scope of the President's waiver authority.)

On November 5, 1998, nearly eleven months after the district court entered final judgment, the plaintiffs moved the court to amend the judgment in order to make the Cuban Government jointly liable for the punitive damages awarded against the Air Force. The district court entered an order granting the motion the same day. The President's purported waiver aside, we question whether the district court had jurisdiction to enter this order. Because we resolve the entirety of this appeal on other grounds, however, we need not pass upon the district court's decision to augment the plaintiffs' damages against the Cuban Government.

from the plaintiffs' suits because the Cuban Air Force (as an agent of the terrorist-sponsoring Cuban Government) had committed an act of extrajudicial killing by shooting down the airplanes. See 28 U.S.C. § 1605(a)(7) (Supp. II 1996);

Alejandre I, 996 F. Supp. at 1247-48. The court also concluded that the defendants were substantively liable to the plaintiffs, under a theory of respondeat superior, for the actions of the Cuban Air Force pilots who shot down the airplanes. See Pub. L. No. 104-208, § 589, 110 Stat. 3009-172 (codified at 28 U.S.C.A. § 1605 note (West Supp. 1999)); 28 U.S.C.A. § 1606 (West Supp. 1999) (providing that a non-immune foreign state "shall be liable in the same manner and to the same extent as a private individual under like circumstances"); Alejandre I, 996 F. Supp. at 1249.

In an effort to collect a portion of this judgment against the Cuban Government and the Cuban Air Force, the plaintiffs filed a motion pursuant to Fed. R. Civ. P. 69(a)<sup>2</sup> and Fla. Stat. ch. 77.03 (1997) requesting that post-judgment writs

<sup>&</sup>lt;sup>2</sup> Rule 69(a) provides:

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.

of garnishment be issued to the following companies (the "garnishees"): AT&T Corp.; AT&T of Puerto Rico, Inc.; Global One Communications, L.L.C.; IDB WorldCom Services, Inc.; MCI International, Inc.; Telefonica Larga Distancia de Puerto Rico, Inc. ("TLD"); WilTel, Inc.; WorldCom, Inc. (collectively, the "carrier garnishees" or the "carriers"); the Chase Manhattan Corporation and its subsidiaries; and Citigroup Inc. and its subsidiaries. On December 9, 1998, the district court granted the motion and directed the clerk to issue the requested writs. Each writ asked the garnishee to serve an answer stating whether it was indebted to "the Cuban Air Force or the Republic of Cuba (including any of its agencies, entities, or instrumentalities), . . . and in what sum." The garnishees answered the writs by stating, inter alia, that they were indebted to Empresa de Telecomunicaciones de Cuba, S.A. ("ETECSA"). They also claimed that their

<sup>&</sup>lt;sup>3</sup> This vague reference to "agencies, entities, or instrumentalities" was made a part of the language of the writs issued by the clerk after the district court granted the plaintiffs' motion. For a discussion of the procedural due process concerns that this addition raises, see note 21, infra.

<sup>&</sup>lt;sup>4</sup> Garnishees Citigroup Inc. and Global One Communications, L.L.C., failed to answer the writs. The district court entered a default judgment garnishing any amounts owed ETECSA in their possession or control.

Of the garnishees that did answer the writs, AT&T Corp. also identified debts owed to Cuban entities other than ETECSA. The Chase Manhattan Corporation's answer did not mention ETECSA by name, but it did identify numerous accounts in which the Cuban Government, the Cuban Air Force, or other Cuban entities had or may have had an interest. The district court judgment presently on appeal, however, addressed only debts owed to ETECSA. Thus, we do not consider the debts owed to other Cuban entities by AT&T and Chase

debts to ETECSA were not subject to garnishment for several reasons, including:

(1) that ETECSA was a separate entity not responsible for the debts of the Cuban Government; and (2) that the writs were void because the plaintiffs had failed to get a license to garnish ETECSA's property as required by the Cuban Assets Control Regulations ("CACR"), 31 C.F.R. pt. 515 (1998). See 31 C.F.R. § 515.203(e) (1998). The plaintiffs replied by denying the garnishees' claims and by affirmatively asserting that any indebtedness owed to ETECSA constituted an indebtedness to the Cuban Government.

On February 4, 1999, the carrier garnishees filed a joint motion to dissolve the plaintiffs' writs of garnishment pursuant to Fla. Stat. ch. 77.07(2) (1997).<sup>5</sup> ETECSA, which had been served with a notice of garnishment as required by Fla. Stat ch. 77.055 (1997), filed a similar motion to dissolve on February 8. These

Manhattan.

<sup>&</sup>lt;sup>5</sup> Although the plaintiffs did not raise the issue below, it could be argued that the carrier garnishees lacked standing to bring their motion to dissolve the writs. "The statutory right to move to dissolve [a writ of garnishment under Fla. Stat. ch. 77.07(2)] is granted only to the defendant [– i.e., the judgment debtor –] and any other person having an ownership interest in the property, as disclosed by the garnishee's answer." Navon, Kopelman & O'Donnell, P.A. v. Synnex Info. Techs.. Inc., 720 So. 2d 1167, 1168 (Fla. 4th DCA 1998) (emphasis added and original emphasis omitted). Some of the carriers' answers did claim a right to set off certain expenses against their debts to ETECSA, but it is unlikely that this claim could give the carriers standing to move to dissolve the writs on the ground that ETECSA is a separate entity not responsible for the Cuban Government's debts. Because the garnishees' answers raised this same ground as a defense to garnishment, however, it is appropriate for us to consider it here.

motions asked the court to dissolve the writs on several grounds, including those raised in the garnishees' answers. The district court conducted a bench trial on these motions and on the garnishment pleadings. Rather than calling witnesses, all parties provided the court with factual background information through affidavits.

These affidavits contained the following relevant information regarding the relationship among ETECSA, the Cuban Government, and the carriers. Prior to a transition period that began in August 1994, the telephone system in Cuba was operated by Empresa de Telecomunicaciones de Cuba ("EMTELCUBA"), a wholly-owned alter ego of the Cuban Government's Ministry of Communications.<sup>7</sup>

<sup>&</sup>lt;sup>6</sup> Under Florida law, the garnishment pleadings – i.e., the plaintiffs' motion for the writs, the garnishees' answers, and the plaintiffs' replies – frame the issues for trial. <u>See</u> 13 <u>Florida</u> Jur. 2d § 151 (1998).

<sup>&</sup>lt;sup>7</sup> In order to facilitate our analysis of this case, we assume <u>arguendo</u> that EMTELCUBA is not a juridical entity separate from the Cuban Government's Ministry of Communications. <u>See infra</u> part II.A. (explaining separate juridical status inquiry under FSIA and Florida garnishment law). The present record provides strong support for this characterization. Instead of being formed under pre-existing Cuban law (as ETECSA later was), EMTELCUBA was simply created by a resolution of the Ministry of Communications on December 23, 1976. While this resolution stated that EMTELCUBA was to be a company "with its own juridical personality," the Supreme Court has recognized that such a characterization is not to be given conclusive effect. <u>See First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba</u>, 462 U.S. 611, 621-22, 103 S. Ct. 2591, 2597-98, 77 L. Ed. 2d 46 (1983). Indeed, in this case, the actual relationship between EMTELCUBA and the Ministry belies this assertion of separate juridical status. As an organizational matter, EMTELCUBA is a national directorate of the Ministry of Communications that is under the oversight and control of the Ministry's Radio Communications directorate. In addition, it was a Ministry press release that announced

Between March and September 1994, all of the carriers except TLD and AT&T of Puerto Rico signed Operating Agreements with EMTELCUBA to provide international telecommunications services between Cuba and the United States. In November 1994, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") granted these carriers licenses under the CACR that permitted them to make payments to EMTELCUBA as required by the Operating Agreements. See 22 U.S.C.A. § 6004(e)(3)(A) (West Supp. 1999) (authorizing the issuance of such licenses); 31 C.F.R. §§ 515.418(a), 515.542(c) (1998)

Operating Agreements between the carriers and "EMTELCUBA, of the Ministry of Communications" to provide U.S.-Cuba telephone service and that prescribed the rules under which the Cuban populace could utilize such service. Finally, it seems that the Cuban Government unilaterally deprived EMTELCUBA of its business by granting ETECSA an exclusive concession to operate the Cuban telephone system in August 1994; the Ministry then transferred certain telecommunications facilities and equipment to ETECSA. The extent to which EMTELCUBA was compensated (separately from the Ministry) for the loss of its business and for the transferred facilities and equipment is unclear.

The licenses issued by the Office of Foreign Assets Control, which we discuss at greater length in the text, also lend support to the premise that EMTELCUBA is not separate from the Cuban Government. For example, all of the licenses contain a reference to "Cuba's share of compensation due for its portion of the jointly provided international telecommunications service" (emphasis added). In addition, all of the licenses (except those issued to TLD and AT&T of Puerto Rico after EMTELCUBA had lost its business) contain a clause that discusses certain deductions from the payments for telecommunications services "owed to Cuba under the Operating Agreement negotiated between [the carrier] and EMTELCUBA" (emphasis added). Given that the Operating Agreements between EMTELCUBA and the carriers do not specifically entitle the Cuban Government to any compensation, the references to "Cuba" in the licenses could be read to suggest that EMTELCUBA is in fact part of the Cuban Government. While we recognize that the term "Cuba" as defined by the CACR can also be read as a reference to an independent government instrumentality, see 31 C.F.R. §§ 515.201(d), 515.301 (1998), it would seem that the interchangeable use of the terms "Cuba" and "EMTELCUBA" in the licenses implies a closer connection between the two.

(implementing this authorization). Each license provided, in pertinent part:

All necessary transactions are hereby authorized incident to the execution and performance of the Operating Agreement [the carrier] has negotiated with Empresa de Telecomunicaciones de Cuba ("EMTELCUBA") for the provision of telecommunications service between the United States and Cuba.

This license authorizes all necessary transactions in connection with the transfer to Cuba of funds representing Cuba's share of compensation due for its portion of the jointly provided international telecommunications service . . . .

Meanwhile, on June 28, 1994, ETECSA was incorporated as a mixed enterprise under the provisions of a 1982 Cuban law. ETECSA's stock was held by the following entities at the time of trial: 51% by Telefonica Antillana, S.A. (a Cuban company); 6.68% by Banco Financiero Internacional, S.A. (a Cuban company); 1% by Banco Internacional de Comercia, S.A. (a Cuban company); 29.29% by STET International Netherlands N.V. (a Dutch subsidiary of the publicly-owned company Telecom Italia S.p.A.); and 12.03% by Universal Trade and Management Corporation (a Panamanian company). The three Cuban companies, which together held 58.68% of ETECSA's stock, are apparently owned or controlled by the Cuban Government.<sup>8</sup> On August 17, the Executive Committee of the Cuban Council of Ministers granted ETECSA an administrative concession

<sup>8</sup> See Alejandre v. Republic of Cuba, 42 F. Supp. 2d 1317, 1336 (S.D. Fla. 1999).

to render public telecommunications services in Cuba. Under the terms of this concession, ETECSA was granted the exclusive right to supply national and international telephone and data transmission services for twelve years.

One result of this exclusive concession was that, between January and April 1995, each of the carriers that had an Operating Agreement with EMTELCUBA signed a document entitled "Amendment to Transfer Rights and Obligations."

Each document, which EMTELCUBA and ETECSA also signed, stated that the signatories agreed to transfer all rights, obligations, and interests of EMTELCUBA under the Operating Agreements to ETECSA. They also agreed to release EMTELCUBA from any future rights, obligations, and interests under the Agreements. ETECSA subsequently negotiated additional Operating Agreements with TLD and AT&T of Puerto Rico; these two carriers received licenses from OFAC that permitted them to make payments to ETECSA9 under the Agreements. These Operating Agreements (whether transferred from EMTELCUBA or

<sup>&</sup>lt;sup>9</sup> The licenses issued to TLD and AT&T of Puerto Rico contained language identical to that previously quoted in text, except that the reference to "('EMTELCUBA')" was omitted. Thus, the name of the Cuban party in the first quoted paragraph simply read "Empresa de Telecomunicaciones de Cuba"; no "S.A." designation was added. While this name could be viewed as a reference to either ETECSA or EMTELCUBA, we think that the omission of the term EMTELCUBA indicates that the license was meant to authorize transactions incident to these carriers' agreements with ETECSA.

negotiated by ETECSA itself) were the source of the carriers' indebtedness to ETECSA.

After reviewing this factual information and holding a hearing on February 16, 1999, the district court issued an opinion disposing of the motions to dissolve and the issues raised by the garnishment pleadings. See Alejandre v. Republic of Cuba, 42 F. Supp. 2d 1317 (S.D. Fla. 1999) [hereinafter Alejandre II]. As an initial matter, the court concluded that the carriers' debts were owed to ETECSA (rather than directly to the Cuban Government itself) and that the Cuban Government's control over ETECSA was insufficient to render ETECSA responsible for the Government's debt to the plaintiffs. See id. at 1334-39. Nevertheless, the court held ETECSA responsible for the Government's debt on the ground that a contrary holding would unjustly prevent the plaintiffs from collecting their judgment and would override the legislative policy in favor of broadening the assets that may be executed upon to compensate victims of terrorist attacks. See id. at 1339. The court also held that 28 U.S.C.A. § 1610(f)(1)(A) (West Supp. 1999), which the President had not waived, permitted the plaintiffs to garnish amounts owed ETECSA without first obtaining a license under the CACR. See id. at 1327-34.10

<sup>&</sup>lt;sup>10</sup> Because we conclude that ETECSA is an entity separate from the Cuban Government that may not be held responsible for the Government's debt to the plaintiffs, we do not reach the

Therefore, the court denied the motions to dissolve and ordered that all amounts owed ETECSA in the possession or control of the garnishees be garnished in aid of execution of the plaintiffs' judgment against the Cuban Government. See id. at 1343. This appeal followed.

II.

The central question that we must answer on appeal is whether ETECSA is an entity separate from the Cuban Government, and therefore not responsible for the Government's debt to the plaintiffs. Our review of the district court's decision to hold ETECSA responsible for this debt is guided both by the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602-11 (1994), and by principles of Florida garnishment law.

A.

1.

The FSIA is the exclusive source of subject matter jurisdiction over all civil actions against foreign states. See Argentine Republic v. Amerada Hess Shipping

issue of whether the President waived section 1610(f)(1)(A). We express no opinion regarding the district court's holding on this issue.

Corp., 488 U.S. 428, 434-35, 109 S. Ct. 683, 688, 102 L. Ed. 2d 818 (1989); Hercaire Int'l, Inc. v. Argentina, 821 F.2d 559, 563 (11th Cir. 1987). Under section 1604 of the FSIA, 11 a foreign state is immune from the jurisdiction of federal or state courts unless one of the statutory exceptions to immunity applies. See 28 U.S.C. §§ 1605, 1607 (1994) (listing the exceptions); see also 28 U.S.C. § 1330(a) (1994) (granting district court jurisdiction over civil action against non-immune foreign state). In addition, section 1609 renders the property in the United States of a foreign state immune from execution or attachment (including garnishment<sup>12</sup>) unless sections 1610-11 provide otherwise. Because section 1603(a) declares that the term "foreign state" includes an agency or instrumentality of a foreign state as defined in section 1603(b), such agencies and instrumentalities also enjoy immunity from suit and execution. The district court found that ETECSA was a government instrumentality because the Cuban Government owned or controlled the companies that held a majority of ETECSA's stock. See 28 U.S.C. § 1603(b)(2) (1994); Alejandre II, 42 F. Supp. 2d at 1336. This ruling is not challenged on appeal. ETECSA's property in the United States

<sup>&</sup>lt;sup>11</sup> Unless otherwise indicated, all subsequent section references are to the 1994 edition of volume 28, United States Code.

<sup>&</sup>lt;sup>12</sup> See H.R. Rep. No. 94-1487, at 28 (1976), reprinted in 1976 U.S.C.C.A.N. 6604, 6627.

is therefore immune from garnishment unless an exception applies.<sup>13</sup>

The exception upon which the plaintiffs relied below is 28 U.S.C. §

1610(a)(7) (West Supp. 1999), 14 which provides:

The property in the United States of a foreign state, . . . used for a commercial activity in the United States, shall not be immune from attachment in aid of execution . . . upon a judgment entered by a court of the United States . . . [if] 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.

The last requirement of this exception is clearly met here, as the plaintiffs'

<sup>13</sup> We note that there are two reasons – neither of which has been raised on appeal – to question whether ETECSA's property is in fact immune from garnishment. First, there is a circuit split (which the district court did not address) on the issue of whether a company that is majority-owned by another company that is in turn owned or controlled by a foreign state can be described as a company "a majority of whose shares . . . is owned by a foreign state or political subdivision thereof" in order to meet the requirement for instrumentality status under section 1603(b)(2). Compare In re Air Crash Disaster Near Roselawn, Ind., 96 F.3d 932, 939-41 (7th Cir. 1996) (yes), with Gates v. Victor Fine Foods, 54 F.3d 1457, 1460-63 (9th Cir. 1995) (no). Second, it is unclear whether ETECSA waived its immunity by filing its motion to dissolve the writs of garnishment as a "non-party" under Fla. Stat. ch. 77.07(2) and then asserting that it has standing to appeal the denial of that motion to this court.

We need not resolve these questions, however, because ETECSA's immunity or lack thereof does not ultimately alter our analysis. Under the circumstances of this case, as we explain in greater detail below, we conduct exactly the same inquiry in order to determine both whether an exception to the Cuban Government's immunity from garnishment also applies to ETECSA and whether ETECSA can be held substantively liable for the Government's debt to the plaintiffs: namely, whether the plaintiffs have overcome the presumption that ETECSA is a juridical entity separate from the Government. Thus, even if we concluded that ETECSA's property was not immune for one of the reasons discussed in the previous paragraph, we would still have to conduct this inquiry in order to determine ETECSA's liability.

<sup>14</sup> See Alejandre II, 42 F. Supp. 2d at 1340.

underlying judgment against the Cuban Government related to a claim from which the Government was not immune by virtue of section 1605(a)(7). Thus, assuming arguendo that the amounts owed to ETECSA are property in the United States used for a commercial activity therein, 15 these amounts are not immune from garnishment if ETECSA constitutes a "foreign state" for purposes of this exception. This question might appear to be easily answered: ETECSA is an instrumentality as defined by section 1603(b), and section 1603(a) declares that the term "foreign state" under the FSIA includes an instrumentality, so ETECSA is a "foreign state" under section 1610(a)(7). The Supreme Court's decision in First National City Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611, 103 S. Ct. 2591, 77 L. Ed. 2d 46 (1983) [hereinafter Bancec], however, teaches that things are not that simple. 16

According to <u>Bancec</u>, "[t]he language and history of the FSIA clearly establish that the Act was not intended to affect the substantive law determining

<sup>15</sup> The district court held that the amounts owed ETECSA were both within the United States and used for a commercial activity therein. See Alejandre II, 42 F. Supp. 2d at 1340-41. We express no opinion on the correctness of this holding.

<sup>&</sup>lt;sup>16</sup> See also Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines, 965 F.2d 1375, 1381 (5th Cir. 1992) ("Section 1603 defines the universe of entities entitled to statutory sovereign immunity. This is completely different from the question whether a foreign state and its agency or instrumentality are alter egos for purposes of substantive liability." (footnote omitted)).

the liability of a foreign state or instrumentality, or the attribution of liability among instrumentalities of a foreign state." Id. at 620, 103 S. Ct. at 2597. Instead, government instrumentalities enjoy a presumption of separate juridical status vis-a-vis the foreign government to which they are related. While Bancec applied this presumption for purposes of determining whether an instrumentality could be held substantively liable for the debts of its related foreign government, subsequent decisions have also applied it in determining whether an exception to immunity that applies to the government may be attributed to the instrumentality as well. See id. at 613, 103 S. Ct. at 2593 (considering whether Citibank could set off value of branches nationalized by Cuban Government against amount Citibank owed to presumptively separate Cuban instrumentality); Hercaire, 821 F.2d at 564-65 (considering whether waiver of immunity by foreign government also operated to deprive presumptively separate instrumentality of immunity). We must consider,

<sup>&</sup>lt;sup>17</sup> See also Foremost-McKesson, Inc. v. Islamic Republic of Iran, 905 F.2d 438, 446 (D.C. Cir. 1990) (finding that presumption of juridical separateness of entities also applies to issue of immunity from jurisdiction); Hester Int'l Corp. v. Federal Republic of Nigeria, 879 F.2d 170, 175-79 (5th Cir. 1989) (considering whether commercial activity by presumptively separate instrumentality could operate to deprive related foreign government of immunity from suit).

In addition, we note that applying this presumption of separate juridical status to instrumentalities at the immunity stage is consistent with the logic of section 1610(a)(7). Unless ETECSA and the Cuban Government are shown to be the same entity, it would make little sense to read section 1610(a)(7) as providing that the U.S. commercial property of ETECSA is not immune from garnishment to satisfy a judgment relating to a claim from which the <u>Cuban Government</u> was not immune under section 1605(a)(7).

therefore, whether this presumption may be overcome in order to make ETECSA's assets the property of a "foreign state" (i.e., the property of the Cuban Government), thus rendering the exception to immunity in section 1610(a)(7) applicable to ETECSA and making ETECSA substantively liable for the Government's debt to the plaintiffs. See Letelier v. Republic of Chile, 748 F.2d 790, 793 (2d Cir. 1984).

In <u>Bancec</u>, the Supreme Court highlighted two situations in which a plaintiff may overcome the presumption of separate juridical status enjoyed by an instrumentality. First, when a corporate entity is so extensively controlled by its owner that a relationship of principal and agent is created, the Court observed that one may be held liable for the actions of the other. Second, the Court recognized the broader equitable principle that the doctrine of corporate entity will not be regarded where to do so would work fraud or injustice or defeat overriding public

The principal/agent terminology used by the Court could be read to suggest only that an owner who exercises sufficient control over his corporate agent may be held liable for the agent's actions. As we discuss below, however, liability can also flow in the other direction. See infra part II.A.2. For example, the corporate agent may be held responsible for its owner's debts to third parties upon a showing that the owner's exercise of control constitutes an abuse of the corporate form sufficient to deprive the agent of its independent juridical identity. See Letelier, 748 F.2d at 795 (placing burden on plaintiff, who sought to execute upon assets of instrumentality in satisfaction of judgment against related foreign government, to show abuse of corporate form of type Bancec recognized as sufficient to overcome instrumentality's presumptively separate existence).

policies. <u>See Bancec</u>, 462 U.S. at 629-630, 103 S. Ct. at 2601-02. In either situation, the plaintiff bears the burden of proving that the instrumentality is not entitled to separate recognition. <u>See Foremost-McKesson</u>. <u>Inc. v. Islamic Republic of Iran</u>, 905 F.2d 438, 447 (D.C. Cir. 1990); <u>Letelier</u>, 748 F.2d at 795. 19

2.

These principles of foreign sovereign immunity provide much of the context necessary for our review of the district court's decision. Given the procedural posture of this case, however, we must also be guided by relevant principles of Florida garnishment law. See Fed. R. Civ. P. 69(a); Buck Creek Indus., Inc. v. Alcon Constr., Inc., 631 F.2d 75, 76 (5th Cir. 1980).<sup>20</sup>

In their replies to the garnishees' answers, the plaintiffs asserted that the amounts owed by the garnishees to ETECSA were subject to garnishment on the

<sup>&</sup>lt;sup>19</sup> While "the presumption of independent status is not to be lightly overcome," <u>Hercaire</u>, 821 F.2d at 565, a court deciding whether a plaintiff has carried this burden must also be mindful that the instrumentality and its related government – not the plaintiff – will frequently possess most of the information needed to determine whether the presumption should be overcome. These foreign entities obviously have little incentive to provide information that will help the plaintiff's case, and it may be difficult for the plaintiff to obtain discovery from them.

<sup>&</sup>lt;sup>20</sup> In <u>Bonner v. City of Prichard</u>, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

ground that any indebtedness owed to ETECSA constituted an indebtedness to the Cuban Government. We interpret this assertion as a claim that ETECSA is an alter ego of the Cuban Government. Under Florida law, when a plaintiff (judgment creditor) seeks to garnish a debt owed to an entity that was not a party to the underlying judgment on the ground that the entity is an alter ego of the judgment debtor, the plaintiff bears the burden of demonstrating the alter ego relationship.

See Live Supply, Inc. v. C&S Plumbing, Inc., 402 So. 2d 505, 506-07 (Fla. 4th DCA 1981);<sup>21</sup> Reeves v. Don L. Tullis & Assocs., 305 So. 2d 813, 815 (Fla. 1st

<sup>&</sup>lt;sup>21</sup> <u>Live Supply</u> requires the plaintiff to make an initial showing regarding the alter ego relationship at an evidentiary hearing on his motion for a writ of garnishment. This requirement is rooted in the procedural due process concerns associated with prejudgment garnishments. <u>See id</u>. Although we do not decide this case based upon whether the plaintiffs successfully showed – at an evidentiary hearing <u>prior to the issuance of the writs</u> – that ETECSA was an alter ego of the Cuban Government, it seems that they did not do so.

In Live Supply, the trial court issued writs of garnishment ex parte based upon the plaintiff's representation in its unsworn motion that an alter ego relationship existed between the judgment debtor and another entity named in the motion; no evidentiary hearing was held regarding this representation. On appeal, the Live Supply court said that all the entity need do to obtain dissolution of the writs was "to alert the court by motion of the impropriety of the writ because of the independent identity of the entity." Id.; see also ABC Sewer Cleaning Co. v. Foxco, Inc., Civ. A. No. 90-1934, 1990 WL 139391 (E.D. Pa. Sept. 21, 1990); Strick Corp. v. Thai Teak Prods. Co., 493 F. Supp. 1210, 1215-17 (E.D. Pa. 1980). In this case, by comparison, the plaintiffs filed an unverified motion for writs of garnishment pursuant to Fla. Stat. ch. 77.03. This motion requested that writs be issued to several garnishees asking them to serve an answer stating, inter alia, whether they were indebted to "the Defendants, the Republic of Cuba and the Cuban Air Force." ETECSA was not mentioned by name in the motion. After the district court granted the motion (apparently without a hearing) but before the writs were issued by the clerk, the plaintiffs incorporated additional language into the writs which asked the garnishees whether they were indebted to any "agencies, entities, or instrumentalities" of the Cuban Government. See supra note 3. Again, ETECSA was not mentioned by name. The plaintiffs' first assertion that ETECSA itself could be held responsible for the Cuban Government's debts came in their

DCA 1975) (placing burden on plaintiff to prove truth of allegation made in reply to garnishee's answer). This burden is consonant with the burden faced by a plaintiff who seeks to overcome an instrumentality's presumptively separate juridical status on the ground that the first situation mentioned by the <u>Bancec</u> Court applies. See supra note 18.

In order to determine whether the plaintiffs carried their burden in this case, we must assess their arguments from the perspective of the Cuban Government. Florida law provides that when a plaintiff holding a judgment serves a writ of garnishment upon a garnishee, the plaintiff steps into the shoes of the judgment debtor and can assert only the rights that the judgment debtor could have asserted against the garnishee. See Hughes Supply, Inc. v. A.C. Elec. Corp., 145 F.R.D. 590, 593 (M.D. Fla. 1993); Reeves, 305 So. 2d at 815-16. Thus, if a contractual debtor-creditor relationship between the garnishee and the judgment debtor is terminated by a non-fraudulent novation that obligates the garnishee to a third party and eliminates the judgment debtor as a party to the contract, the plaintiff has no right to garnish sums owed by the garnishee to the third party. See id. at 816.

replies to the garnishee's answers – well after the issuance of the writs. From a procedural due process perspective, this series of events seems even more troubling than the events in <u>Live Supply</u>.

B.

1.

With these principles in mind, we consider the district court's decision to hold ETECSA responsible for the Cuban Government's debt to the plaintiffs. The court disregarded the presumptively separate juridical status of ETECSA by invoking the second situation mentioned in Bancec: that the corporate entity will not be regarded where to do so would work fraud or injustice or defeat overriding public policies. The court did not rely upon the fraud element of this rule, and indeed there appears to be no evidence in the record that would support a finding of fraud. For example, the plaintiffs made no showing that the apparent novation that transferred the rights and obligations of EMTELCUBA (an alter ego responsible for the debts of the Cuban Government, see supra note 7) under the Operating Agreements to ETECSA was entered into for the purpose of insulating payments made under those Agreements from garnishment by the Cuban Government's creditors. Instead, the court rested its decision on concerns about injustice and public policy. The core of the court's legal rationale was that failing to disregard ETECSA's separate status "not only would prevent [the plaintiffs] from collecting their court-ordered final judgment for the victims of a grave

violation of international law, but also would override the clear legislative policy against such terrorist attacks and in favor of broadening the property which may be executed [upon] to compensate for them." Alejandre II, 42 F. Supp. 2d at 1339. In particular, the court concluded that 28 U.S.C. § 1610(f)(1)(A) constituted an "express[] legislative commitment to subject the property of a government instrumentality to attachment or execution to satisfy a judgment against [a] terrorist foreign state." Id.

Upon reviewing this rationale <u>de novo</u>, we conclude that it is not a sufficient basis for overcoming the presumption of separate juridical status that ETECSA enjoys. While the district court's concern about the injustice of preventing plaintiffs from collecting their judgment is understandable,<sup>22</sup> this concern is present in every case in which a plaintiff seeks to hold an instrumentality responsible for the debts of its related government. Allowing the <u>Bancec</u> presumption of separate juridical status to be so easily overcome would effectively render it a nullity. We

We note, however, that the injustice identified by the district court is not the type of injustice that concerned the <u>Bancec</u> Court. <u>See Bancec</u>, 462 U.S. at 632-34, 103 S. Ct. at 2603 (disregarding instrumentality's separate juridical status based on equitable principles in order to "avoid the injustice that would result from permitting a foreign state to reap the benefits of our courts while avoiding the obligations of international law"). In addition, the district court gave no weight to the countervailing injustice that a decision to disregard ETECSA's separate status could impose upon ETECSA's non-Cuban minority shareholders.

recognize that the district court made an effort to distinguish this case based upon the gravity of the underlying violation of international law. Given the absence of any evidence that ETECSA was involved in the violation, however, we fail to see how this distinction is relevant to the question of whether ETECSA's separate juridical status should be overcome.

With regard to the district court's public policy concerns, we agree that recent enactments evince a congressional policy against terrorist attacks and in favor of making additional property of governments that sponsor terrorism (such as Cuba) available to compensate victims of such attacks. We disagree, however, with the district court's conclusion that Congress – in section 1610(f)(1)(A) – took the further step of overriding the <u>Bancec</u> presumption of separate juridical status by making instrumentalities responsible for the debts of their related terrorist-sponsoring governments.<sup>23</sup> Section 1610(f)(1)(A) provides:

presumption of separate juridical status applies for purposes of determining both whether an instrumentality can be held responsible for the debts of its related foreign government and whether the instrumentality retains its immunity from execution. See supra part II.A.1. Thus, even if we agreed with the district court's conclusion that section 1610(f)(1)(A) makes ETECSA liable for the Cuban Government's debt to the plaintiffs, we would also have to conclude that it deprives ETECSA of its immunity from execution in order to allow the plaintiffs to garnish amounts owed ETECSA. It is unclear whether section 1610(f)(1)(A) could be viewed as having this effect. On the one hand, the difference between the operative language of section 1610(a)(7) (property "shall not be immune from" execution) and section 1610(f)(1)(A) (property "shall be subject to" execution) suggests that these two provisions work together: the former provision

Notwithstanding any other provision of law, . . . any property with respect to which financial transactions are prohibited or regulated pursuant to [certain statutes, including those authorizing the CACR,<sup>24</sup>] . . . [or any] license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality of such state) claiming such property is not immune under section 1605(a)(7).

The effect of this section is not to subject property claimed by the instrumentality ETECSA to execution in order to satisfy the plaintiffs' judgment against the Cuban Government, but to allow the plaintiffs to execute upon property claimed by the Government itself in order to satisfy their judgment (which relates to a claim from which the Government was not immune by virtue of section 1605(a)(7)) without first obtaining a license under the CACR. See 31 C.F.R. § 515.203(e). Congress has previously demonstrated in the FSIA context that it knows how to express clearly an intent to make instrumentalities substantively liable for the debts of their

renders a foreign state's U.S. commercial assets non-immune from garnishment to satisfy a judgment relating to a claim from which that state was not immune under section 1605(a)(7); the latter then removes the CACR license requirement for a plaintiff who seeks to garnish non-immune assets to satisfy a judgment that relates to such a claim. Under this interpretation, section 1610(f)(1)(A) does not have any effect upon the immunity of the state. On the other hand, the statement in section 1610(f)(1)(A) that certain state assets shall be subject to execution "[n]otwithstanding any other provision of law" could be read as both an exception to the state's immunity from execution and an exception to the CACR license requirement. Both interpretations seem plausible, but it is not necessary for us to choose between them here.

<sup>&</sup>lt;sup>24</sup> For a discussion of changes in the statutory provisions authorizing the CACR, see Regan v. Wald, 468 U.S. 222, 225-30, 104 S. Ct. 3026, 3029-31, 82 L. Ed. 2d 171 (1984).

related foreign governments.<sup>25</sup> Absent such a clear expression, which does not appear in section 1610(f)(1)(A),<sup>26</sup> we see no reason to interpret that section as contravening Congress' original understanding that the FSIA "[is] not intended to affect the substantive law determining the liability of a foreign state or instrumentality, or the attribution of liability among instrumentalities of a foreign state." Bancec, 462 U.S. at 620, 103 S. Ct. at 2597.

2.

Having concluded that the district court erroneously disregarded ETECSA's separate juridical status on the ground that the second situation mentioned in

<sup>&</sup>lt;sup>25</sup> In 1988, a bill was introduced in the House of Representatives that would have amended 28 U.S.C. § 1610(a) to deprive a foreign state's U.S. property of immunity from execution if "the property belongs to an agency or instrumentality of a foreign state engaged in a commercial activity in the United States and the judgment relates to a claim for which the foreign state is not immune from jurisdiction by virtue of section 1605 or 1607." H.R. Res. 3763, 100th Cong. § 3(1)(D), 134 Cong. Rec. H6484-01 (1988) (emphasis added). This bill was never enacted.

<sup>&</sup>lt;sup>26</sup> The reference in this section to "a foreign state (including any agency or instrumentality of such state) claiming such property" merely indicates that the regulated property claimed by an agency or instrumentality of state X is subject to execution upon a judgment relating to a claim from which that agency or instrumentality was not immune under section 1605(a)(7). In our view, this reference cannot plausibly be interpreted to mean that regulated property claimed by an instrumentality of state X – and thus not by the government of state X or some other instrumentality thereof – is subject to execution upon a judgment relating to a claim from which the government of state X (or its other instrumentality) was not immune under section 1605(a)(7).

Bancec applied, we turn to the question of whether the plaintiffs may instead overcome ETECSA's separate status under the first Bancec situation – that is, whether the plaintiffs carried their burden under Florida law of proving the alter ego relationship between the Cuban Government and ETECSA. After considering the affidavits submitted by the parties, the district court held that the plaintiffs had not carried their burden. See Alejandre II, 42 F. Supp. 2d at 1339 ("Although their relationship may bear some similarities to that between a principal and an agent, the Court does not conclude that the relationship between the Government of Cuba and ETECSA is so similar that the [Bancec] presumption of independent juridical status is overcome."). We agree. Indeed, when the situation is viewed from the perspective of the Cuban Government (in whose shoes the plaintiffs stand), it would be difficult to come to any other conclusion.

Suppose, for example, that the Cuban Government sued AT&T Corp. on the ground that AT&T had failed to pay it (through EMTELCUBA, its alter ego) certain sums that allegedly became due under the Operating Agreement in 1996.

AT&T surely would defend on the ground that while it would have owed such sums to the Government had they become due in 1994, the Government no longer had any right to the sums because ETECSA succeeded to EMTELCUBA's rights

and obligations under the Operating Agreement in early 1995. In order to prevail, then, the Government would have the burden of convincing the court to swallow the argument that the substitution of ETECSA for EMTELCUBA under the Agreement had been a purposeless and ineffectual act by which the Government merely changed its name to "ETECSA" while remaining the real party in interest. The plaintiffs face exactly the same burden in this case, and we find that this argument is too difficult to digest.

Nevertheless, the plaintiffs contend that we must conclude, as a matter of law, that ETECSA is an alter ego of the Cuban Government because ETECSA receives payments from the carriers under the OFAC licenses.<sup>27</sup> In support of this contention, the plaintiffs point out that the relevant statute authorizes the President to "provide for the issuance of licenses for the full or partial payment to Cuba of amounts due Cuba as a result of the provision of telecommunications services." 22 U.S.C. § 6004(e)(3)(A). Not surprisingly, the sections of the CACR that implement this statute and the licenses issued by OFAC thereunder include similar language. See 31 C.F.R. §§ 515.418(a), 515.542(c). The plaintiffs argue that these references to "Cuba" mean that the licenses do not permit the carriers to make

<sup>&</sup>lt;sup>27</sup> The plaintiffs made a similar argument to the district court. The district court rejected it. See Alejandre II, 42 F. Supp. 2d at 1334-36.

payments to any entity other than the Cuban Government.<sup>28</sup> By making and accepting payments under these licenses, therefore, the carriers and ETECSA are supposedly estopped to deny that ETECSA is an alter ego of the Government.

We reject this argument for two reasons. First, while the term "Cuba" is not specifically defined in the statute, the CACR define it to include "any political subdivision, agency, or instrumentality thereof." 31 C.F.R. § 515.301 (1998) (defining "foreign country"); see also 31 C.F.R. § 515.201(d) (1998) (stating that the term "designated foreign country" means Cuba). Thus, the garnishees' payments to "Cuba" under the licenses could be lawfully made to the separate instrumentality ETECSA rather than to the Cuban Government itself. In addition, we note that the licenses issued to all of the carriers authorize more than merely payments to "Cuba"; they also authorize all necessary transactions incident to the performance of the Operating Agreements that the carriers negotiated with

<sup>&</sup>lt;sup>28</sup> The plaintiffs also note that the President has consistently reported to Congress, on a semi-annual basis, that the payments made by the carriers under the OFAC licenses are made to the "Government of Cuba." See, e.g., 144 Cong. Rec. H10343-02 (Oct. 9, 1998). While such reports are required by the statute that authorized the issuance of the licenses, see 22 U.S.C.A. § 6004(e)(6) (West Supp. 1999), there is no evidence that they have any legal effect at all, much less the effect of prohibiting payment to an entity (such as ETECSA) that is not mentioned in the reports but is authorized to receive payment under the terms of the licenses themselves.

EMTELCUBA.<sup>29</sup> Because these Agreements provide that the expression "EMTELCUBA" includes that entity's successors, all necessary transactions with its successor ETECSA are apparently authorized as well.

C.

Finally, the plaintiffs contend on appeal that even if we reject their legal arguments that ETECSA is not a juridical entity separate from the Cuban Government, we must remand this case for discovery regarding the actual relationship between ETECSA and the Government. The plaintiffs argue that such discovery, which they never had an opportunity to seek below, is necessary if they must attempt to prove an alter ego relationship between ETECSA and the Government. We recognize that courts of appeals have not been hesitant to remand for further factual inquiry in an FSIA case after clarifying the legal standards that govern the case. See, e.g., Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines, 965 F.2d 1375, 1383 (5th Cir. 1992); Foremost-McKesson, 905 F.2d at 448, Gilson v. Republic of Ireland, 682 F.2d 1022, 1029-30 (D.C. Cir. 1982). Nevertheless, we conclude that the plaintiffs expressly waived

<sup>&</sup>lt;sup>29</sup> As discussed in note 9, <u>supra</u>, the licenses issued to TLD and AT&T of Puerto Rico authorize transactions incident to those carriers' agreements with ETECSA itself.

any right to discovery upon remand in this case.

On February 12, 1999, only four days before the district court was scheduled to hold a hearing on the carriers' motion to dissolve the writs of garnishment, the plaintiffs filed a motion to postpone the hearing for nine weeks and to set an expedited schedule for discovery regarding the issues raised by the writs. The carriers opposed this motion on the ground that a nine-week delay in payment of funds to ETECSA could lead to disruption of telecommunications services between the United States and Cuba. At the hearing on February 16, the plaintiffs told the court that they were prepared to go forward and address all of the issues before it. They also stated, however, that they did not "want to withdraw the motion . . . , only because we may want to supplement the record." Later in the hearing, the plaintiffs clarified that "[a]ll we are saying to the court [is that] after the court rules, . . . [i]t may be appropriate to supplement the record with certain documents which support the court's ruling and may not even be necessary." The court's response indicated that it construed these statements to mean that the plaintiffs were withdrawing their motion for discovery<sup>30</sup> and moving instead to supplement the record. The court therefore stated that "[y]our motion to supplement the

<sup>&</sup>lt;sup>30</sup> In a subsequent order, the court formally denied as moot the plaintiffs' motion to postpone the hearing and set an expedited discovery schedule.

record, if it should be necessary or required, is granted." Following the hearing, the plaintiffs did supplement the record by filing a compilation of materials (including affidavits) with the court.

We agree with the district court's conclusion that the plaintiffs withdrew their motion for discovery. Therefore, the plaintiffs have waived any right to discovery on remand.

III.

For the foregoing reasons, we VACATE the judgment of the district court and REMAND this case with instructions to dissolve the plaintiffs' writs of garnishment insofar as they seek to garnish amounts owed to ETECSA.

IT IS SO ORDERED.

# ANNEX 72

3

committed by the Saddam Hussein regime that cannot be addressed in the U.S. courts due to a Presidential waiv-

We expect that the Department of State will actively pursue such compensation from Iraq.

As one of the authors of the new section 1083, I want to assure the Senate that the new language authorizes the waiver of section 1083, only as it applies to Iraq. The new subsection (d), which we have added to the bill, specifies that the President may waive any provision of section 1083 "with respect to Iraq" and not with regard to any other country. We explicitly reaffirm in this bill that other cases against state sponsors of terrorism, including both Iran and Libya, may proceed to judgment and collection under section 1083, unaffected by any Presidential

Over the last 2 weeks, concerns have been expressed about the possible impact of this provision on innocent third parties entering joint ventures with Libya or Iran. The concern was that these companies would find their own property seized to satisfy judgments against those countries. Our language does not allow for that result, because that is not our intent. This is not a new issue: the question has been raised by the language of the Lautenberg amendment ever since it was first approved by the Senate last fall.

We specifically addressed the problem of joint ventures in our conference on the Defense authorization bill, previously approved by the Congress. We added language to the bill making it clear that the courts are authorized to compensate victim of state-sponsored terrorism out of Libya's-or other states'-assets, while separating and shielding the assets of companies engaged in joint ventures with those States. In the accompanying statement of managers, we specifically urged the courts to make use of this authority. This language was the strongest action that we could take to protect innocent third parties without also shielding the offending governments from liability for their own actions.

We have included a provision to ensure that the statement of managers on our previous conference report will apply to this new bill in this and all re-

Outside of the modification of section 1083, the bill remains virtually unchanged. We have, however, taken steps to ensure our men and women in uniform will not lose a penny as a result of the delayed enactment of this bill. Toward that end, we have revised a number of provisions in the bill to make pay increases and bonus provisions retroactive to January 1 and avoid any gap in these authorities. These changes have been worked out with the Department of Defense and agreed to by the two Armed Services Committees on a bipartisan basis.

Other than these few changes, the bill before us today is identical to the

conference report that the Senate overwhelmingly passed last month. It is my hope that the bill will receive similar support when we vote on it again later

NATIONAL DEFENSE AUTHORIZA-TION ACT FOR FISCAL YEAR 2008

The PRESIDING OFFICER. clerk will state the bill by title.

The legislative clerk read as follows: A bill (H.R. 4986) to provide for the enactment of the National Defense Authorization Act for fiscal year 2008, and for other pur-

Mr. FEINGOLD, Mr. President, I oppose the fiscal year 2008 Defense authorization bill because it authorizes \$189.5 billion for the war in Iraq but does nothing to end the President's misguided, open-ended Iraq policy. That policy has overburdened our military, weakened our national security, diminished our international credibility, and cost the lives of thousands of brave American soldiers.

There are certain provisions of the bill that I support strongly, including a pay raise for military personnel, Senator WEBB's amendment creating a Commission on Wartime Contracting to examine waste, fraud, and abuse in Iraq and Afghanistan, and Senator LAUTENBERG's amendment to create a Special Investigator General for Afghanistan Reconstruction.

But on balance, I cannot vote to support a bill that defies the will of so many Wisconsinites—and so many Americans—by allowing the President to continue one of the worst foreign policy mistakes in the history of our Nation.

Mr. LAUTENBERG. Mr. President, I rise to applaud the chairman and ranking members of the Senate Armed Services Committee, Senators LEVIN and McCain, respectively, on passage of the National Defense Authorization Act for fiscal year 2008.

Specifically, I would like to express my gratitude to the bill conferees for their inclusion of four amendments that I authored and which were unanimously adopted by the Senate during its initial consideration of this bill. These provisions will increase oversight of our country's economic and security assistance to Afghanistan by creating a Special Inspector General for Afghanistan Reconstruction, section 1229; help victims of state sponsored terrorism to achieve justice through the U.S. courts, section 1083; prevent military health care fees through the TRICARE program from rising, sections 701 and 702; and increase accountability and planning for safety and security at the Warren Grove Gunnery Range in New Jersey, section 359.

First, I was proud to be joined by my cosponsors, Senators COBURN, DODD, HAGEL, FEINGOLD, WEBB, and McCAS-KILL, in creating a Special Inspector General for Afghanistan Reconstruction. I wrote this legislation because I

believe that while a democratic, stable. and prosperous Afghanistan is important to the national security of the United States and to combating international terrorism, I am concerned that we are not achieving all of our goals there. The United States has provided Afghanistan with over \$20 billion in reconstruction and security assistance. However, repeated and documented incidents of waste, fraud, and abuse in the utilization of these funds have undermined reconstruction efforts. I therefore believe that there is a critical need for vigorous oversight of spending by the United States on reconstruction programs and projects in Afghanistan.

I would like to emphasize that the Government Accountability Office and the departmental Inspectors general have provided valuable information on activities. However, I believe that the congressional oversight process requires more timely oversight and reporting of reconstruction activities in Afghanistan. Oversight by this new Special Inspector General would encompass the activities of the Department of State, the Department of Defense, and the U.S. Agency for International Development, as well as other relevant agencies. It would highlight specific acts of waste, fraud, and abuse, as well as other managerial failures in our assistance programs that need to be addressed.

This new position will monitor U.S. assistance to Afghanistan in the civilian and security sectors, as well as in the counternarcotics arena, and will help both Congress and the American people better understand the challenges facing U.S. programs and projects in that country. I am pleased that this provision has been included in this final bill.

Second, this bill includes my legislation to provide justice for victims of state-sponsored terrorism, which has strong bipartisan support. I believe this legislation is essential to providing justice to those who have suffered at the hands of terrorists and is an important tool designed to deter future state-sponsored terrorism. The existing law passed by Congress in 1996 has been weakened by recent judicial decisions. This legislation fixes these problems.

In 1996, Congress created the "state sponsored terrorism exception" to the Foreign Sovereign Immunities Act, FSIA. This exception allows victims of terrorism to sue those nations designated as state sponsors of terrorism by the Department of State for terrorist acts they commit or for which they provide material support. gress subsequently passed the Flatow Amendment to the FSIA, which allows victims of terrorism to seek meaningful damages, such as punitive damages, from state sponsors of terrorism for the horrific acts of terrorist murder and injury committed or supported by them

Congress's original intent behind the 1996 legislation has been muddled by

numerous court decisions. For example, the courts decided in Cicippio-Puleo v. Islamic Republic of Iran that there is no private right of action against foreign governments—as opposed to individuals—under the Flatow Amendment. Since this decision judges have been prevented from applying a uniform damages standard to all victims in a single case because a victim's right to pursue an action against a foreign government depends upon State law. My provision in this bill fixes this problem by reaffirming the private right of action under the Flatow Amendment against the foreign state sponsors of terrorism themselves.

My provision in this bill also addresses a part of the law which until now has granted foreign states an unusual procedural advantage. As a general rule, interim court orders cannot be appealed until the court has reached a final disposition on the case as a whole. However, foreign states have abused a narrow exception to this bar on interim appeals—the collateral order doctrine-to delay justice for, and the resolution of, victim's suits. In Beecham v. Socialist People's Libyan Arab Jamahiriya. Libya has delayed the claims of dead and injured U.S. service personnel who were off duty when attacked by Libyan agents at the Labelle Discothèque in Berlin in 1986. These delays have lasted for many years, as the Libvans have taken or threatened to take frivolous collateral order doctrine appeals whenever possible. My provision will eliminate the ability of state sponsors of terrorism to utilize the collateral order doctrine. My legislation sends a clear and unequivocal message to Libya. Its refusal to act in good faith will no longer be tolerated by Congress.

Another purpose of my provision is to facilitate victims' collection of their damages from state sponsors of ter-rorism. The misapplication of the 'Bancec doctrine," named for the Supreme Court's decision in First National City Bank v. Banco Para El Comercio Exterior de Cuba, has in the past erroneously protected the assets of terrorist states from attachment or collection. For example, in Flatow v. Bank Saderat Iran, the Flatow family attempted to attach an asset owned by Iran through the Bank Saderat Iran. Although Iran owned the Bank Saderat Iran, the court, relying on the State Department's application of the Bancec doctrine, held that the Flatows could not attach the asset because they could not show that Iran exercised day-today managerial control over Bank Saderat Iran. My provision will remedy this issue by allowing attachment of the assets of a state sponsor of terrorism to be made upon the satisfaction of a "simple ownership" test.

Another problem is that courts have mistakenly interpreted the statute of limitations provision that Congress created in 1996. In cases such as Vine v. Republic of Iraq and later Buonocore v. Socialist People's Libyan Arab

Jamahiriya, the court interpreted the statute to begin to run at the time of the attack, contrary to our intent. It was our intent to provide a 10-year period from the date of enactment of the legislation for all acts that had occurred at anytime prior to its passage in 1996. We also intended to provide a period of 10 years from the time of any attack which might occur after 1996. My provision clarifies this intent.

My provision also addresses the problems that arose from overly mechanistic interpretations of the 1996 legislation. For example, in several cases, such as Certain Underwriters v. Socialist People's Libyan Arab Jamahiriya, courts have prevented victims from pursuing claims for collateral property damage sustained in terrorist attacks directed against U.S. citizens. My new provision fixes this problem by creating an explicit cause of action for these kinds of property owners, or their insurers, against state sponsors of terrorism.

Finally, in several cases the courts have prevented non-U.S. nationals who work for the U.S. Government and were injured in a terrorist attack during their official duties from pursuing claims for their personal injuries. My provision fixes this inequity by creating an explicit cause of action for non-U.S. nationals who were either working as an employee of the U.S. Government or working pursuant to a

U.S. Government contract.

I also want to make special mention of the inspiration for this new legislation. On October 23, 1983, the Battalion Landing Team headquarters building in the Marine Amphibious Unit compound at the Beirut International Airport was destroyed by a terrorist bomb killing 241 marines, sailors, and soldiers who were present in Lebanon on a peacekeeping mission. In a case known as Peterson v. the Islamic Republic of Iran, filed on behalf of many of the marine victims and their families, the U.S. District Court ruled in 2003 that the terrorist organization Hezbollah was funded by, directed by, and relied upon the Islamic Republic of Iran and its Ministry of Information and Security to carry out that heinous attack. The judge presiding over this case, Judge Royce Lamberth, referred to this as "the most deadly state sponsored terrorist attack made against United States citizens before September 11, 2001." In September of this year Judge Lamberth found that Iran not only is responsible for this attack but also owes the families of the victims a total of more than \$2.6 billion for the attack. Congress's support of my provision will now empower these victims to pursue Iranian assets to obtain this just compensation for their suffering. This is true justice through American rule of law.

However, President Bush's veto of the initial version of the National Defense Authorization Act for fiscal year 2008, H.R. 1585, on New Year's Eve required that my provision to provide justice for victims of state-sponsored terrorism be amended. The President chose to take this extraordinary action without warning after asserting that he had not been aware of the provision's potential impact on the Government of Iraq. The President contended that this provision would hinder Iraqi reconstruction by exposing the current Iraqi government to liability for terrorist acts committed by Saddam Hussein's government and vetoed the entire Defense Authorization bill on that basis.

To address the President's concerns that the Government of Iraq could be made liable, the revised provision grants the President the authority to waive the terror victim's provision only for cases in which Iraq or its agencies, instrumentalities, or governmental actors are named defendants. The provision does not give the President the authority to waive any part of the provision for any case in which a government, its agencies, instrumentalities, or governmental actors are named defendants other than Iraq.

By insisting on being given the power to waive application of this new law to Iraq, the President seeks to prevent victims of past Iraqi terrorism—for acts committed by Saddam Hussein—from achieving the same justice as victims of other countries. Fortunately, the President will not have authority to waive the provision's application to terrorist acts committed by Iran and

Libva, among others.

In addition, my new provision includes a Sense of the Congress that the Secretary of State should work with Iraq, on a state-to-state basis, to resolve the meritorious claims made against Iraq by terror victims. It is crucial that the victims of these terrorist acts be included in such discussions. Their approval of agreements made between the two governments on their behalf is critical to ensuring that justice is served.

Third, this Defense authorization bill includes my provision to prevent proposed increases in enrollment fees, premiums, and pharmacy copayments for TRICARE, the military community's health plan. The principal coauthor of this provision is Senator Hagel.

Both career members of the uniformed services and their families endure unique and extraordinary demands and make extraordinary sacrifices over the course of 20-year to 30year careers in protecting freedom for all Americans. I believe they deserve the best retirement benefits that a grateful nation can provide. Proposals to compare cash fees paid by retired military members and their families to fees paid by civilians fails to adequately recognize the sacrifice of military members. We must be mindful that military members prepay the equivalent of very large advance pre-miums for health care in retirement through their extended service and sacrifice.

The Department of Defense and our Nation have a committed obligation to

provide health care benefits to Active Duty, National Guard, Reserve, and retired members of the uniformed services, their families, and survivors, that considerably exceed the obligation of corporate employers to provide health care benefits to their employees. Ultimately, the Department of Defense has options to constrain the growth of health care spending in ways that do not disadvantage current and retired members of the uniformed services, and it should pursue any and all such options as a first priority. Raising fees excessively on TRICARE beneficiaries is not the way to achieve this objective.

Finally, I thank the conferees for including my amendment to require increased oversight and accountability, as well as improved safety measures, at the Warren Grove Gunnery Range in New Jersey. I wrote this provision with Senator MENENDEZ because a number of dangerous safety incidents caused by the Air National Guard have repeatedly impacted the residents living nearby the range.

On May 15, 2007, a fire ignited during an Air National Guard practice mission at Warren Grove Gunnery Range, scorching 17,250 acres of New Jersey's Pinelands, destroying 5 houses, significantly damaging 13 others, and temporarily displacing approximately 6,000 people from their homes in sections of

Ocean and Burlington Counties in New Jersey.

My provision will require that an annual report on safety measures taken at the range be produced by the Secretary of the Air Force. The first report will be due no later than March 1, 2008, and two more will be due annually thereafter. My provision will also require that a master plan for the range be drafted that includes measures to mitigate encroachment issues surrounding the range, taking into consideration military mission requirements, land use plans, the surrounding community, the economy of the region, and the protection of the environment and public health, safety, and welfare, I believe that these studies will provide the type of information that we need to ensure that there is long-term safety at the range, both for the military and the surrounding communities.
Mr. SPECTER. Mr. President, I have

Mr. SPECTER. Mr. President, I have sought recognition to address the pay raise given to members of the U.S. military. On December 28, 2007, President Bush vetoed the National Defense Authorization Act for Fiscal Year 2008 because of a disagreement over a provision in the Justice for Victims of State Sponsored Terrorism Act of 2007.

The disagreement over language in the Justice for Victims of State Sponsored Terrorism Act has affected far more individuals than the legislation itself addresses. By holding up the signing of the National Defense Authorization Act for Fiscal Year 2008, it jeopardized the pay raise which was promised to our Nation's servicemen and servicewomen.

On January 4, 2008, the President issued Executive Order 13454, which gave all members of the military a 3percent pay raise effective January 1, 2008. I commend the House for its January 16, 2008, decision to make retroactive to January 1, 2008, a 3.5-percent pay raise for members of the uniformed services. This was the number that the House and the Senate agreed upon before we sent the bill to President Bush in December; I think it is only fair this be the number we return to when we again submit the bill to the President. The men and women of the military should not be made to suffer for disagreements between the Congress and the White House.

Mr. REID. Mr. President, in a few minutes. I am going to ask unanimous consent to take up the authorization bill for the Department of Defense for fiscal year 2008. But before we proceed to consider and pass this important legislation. I want to take just a moment to advise my colleagues of the unfortunate and troubling path that this legislation has taken since the Senate last voted to pass it on Decem-

ber 14.

On December 19, the same day the other body adjourned its first session, the Congress sent to the President legislation, H.R. 1585, that was identical to the bill we are about to take up and pass, with one substantive difference regarding section 1083 and several associated technical corrections necessary due to the delay of the bill's enactment.

What I want to focus on today is the manner in which the President chose to exercise his veto prerogative. As the Chair and our colleagues are well aware, the Framers of our Constitution deliberately gave the President only a limited or qualified veto power, one that could be overridden by Congress if it could muster a two-third vote in both Houses—a formidable challenge. But President Bush was not satisfied simply to veto the bill and risk an override, as contemplated under our

constitutional process.

Rather, on December 28, the President issued a memorandum of disapproval stating that, because the other body had adjourned its first session, while the Senate remained in session to protect its advise-and-consent prerogative, he considered the bill pocket vetoed, relying upon the constitutional provision that protects against the Congress's adjourning in order to prevent the President from exercising his veto power. But the President did not actually pocket the bill. Instead, using the mechanism provided in the rules of the other body for such periods as the December holidays, the White House returned the bill, with the President's veto message, to the Clerk of the House, for transmission to the full body when it reconvened last week. The President said that he was returning the bill "to avoid unnecessary litigation" and "to leave no doubt" that he was vetoing the bill.

The Constitution does not provide for double vetoes: A bill is vetoed either by being returned or, if return is prevented by Congress's adjournment. by being pocketed. Here, the President returned the bill to the other body through delivery to the Clerk. Obviously, the adjournment did not prevent the bill's return. Accordingly, the bill was not subject to a pocket veto. Had the President not returned the bill within the 10 days-excluding Sundayprescribed by the Constitution, the bill would have become law without his signature. That fact explains why the President returned the bill.

Indeed, in 1983, President Reagan attempted to pocket veto a military aid appropriations measure during an analogous adjournment-the break between the first and second sessions of the 98th Congress. On a bipartisan basis, the Senate joined a group of Members of the other body to challenge that attempted misuse of the pocket veto in a Federal court case called Barnes v. Kline. Although the decision was subsequently vacated because the fiscal year for the military aid bill had expired in the meantime, thereby mooting the case, the Court of Appeals for the District of Columbia Circuit rejected the Executive's attempt to pocket veto the bill and held that, because it could have been returned to the House, under the Constitution the bill had become law. The court held that three factors, when taken together, establish that adjournment of the first session of a Congress does not prevent the President from returning a bill under the Constitution: First. '[t]he existence of an authorized receiver of veto messages"; second, "the rules providing for carryover of unfin-ished business" in the second session of a Congress; and third, "the duration of modern intersession adjournments.'

In that decision, the court of appeals built upon the foundation laid by our colleague, the senior Senator from Massachusetts, who, a decade earlier personally had argued and won the case Kennedy v. Sampson in the same court, thereby establishing the President's duty to return bills to Congress, through its appointed officers, during intrasession adjournments. As the court made clear, during both types of adjournments, the application of the pocket veto clause has necessarily been guided from the beginning by its "manifest purpose." And that purpose is solely to ensure that the Congress cannot deprive the President of his right to exercise the qualified veto, not to permit the President to accomplish what the Framers of our Constitution denied him-by transforming the qualified veto into an absolute veto.

I have gone into some detail in explicating the background and history of the pocket veto controversy because of its importance to our constitutional system of separation of powers and checks and balances between the branches. The President should abandon the strange and unseemly practice

of maintaining that he cannot return a bill to Congress, while simultaneously returning the bill. Such game-playing is unworthy of the Office of the President and breaks faith with the brilliant, carefully crafted system that the Founders bequeathed to us and future generations.

However, much as part of me would like to see Congress take the opportunity provided by the President's action here to establish definitively the Congress's constitutional power to override a veto exercised during its adjournment, the Nation's security and the care of our troops and wounded warriors demands that we get this bill signed into law as soon as possible. This bill provides important congressional authorizations and guidance for the Nation's defense budget, a 3.5-percent 9 pay raise and key bonuses for the troops, legislation to improve the system of care for our wounded warriors, and authorization to establish a profiteering commission. The President's veto of this bill in December has already delayed these provisions for too long.

I also want to reiterate that it is my belief that the Government of Iraq should take responsibility for what has taken place there in years past, including the brutal torture of American POWs. Congress has gone on record repeatedly-most recently, in overwhelmingly passing section 1083 of the conference report to H.R. 1585 last year in both the House and Senate and sending it to the President-to support the efforts of these Americans who have suffered so much for their country to hold their torturers accountable. This administration has been fighting for years to oppose efforts to win compensation for these American soldiers, which is, frankly, a disgrace.
In light of the President's veto over

this issue, I call on him and his administration to work with the POWs and their family members to facilitate negotiations with the Government of Iraq. It is my understanding that the administration has been working with Iraq to settle gulf war commercial debts with foreign corporations such as Mitsubishi of Japan and Hyundai of Korea through issuance of Iraqi bonds. This mechanism takes no funds from the reconstruction of Iraq. It is beyond me why the administration would refuse to do at least that for the POWs. The administration needs to make this right.

The bill (H.R. 4986) was ordered to a third reading and was read the third time.

Mr. LEVIN. Mr. President, I ask for

the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on passage of the bill. The clerk will call the roll.

The legislative clerk called the roll. Mr. DURBIN. I announce that the Senator from New York (Mrs. CLIN-TON), the Senator from New Jersey (Mr.

MENENDEZ), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey (Mr. MENENDEZ) would vote "yea."

Mr. KYL. The following Senators are necessarily absent: the Senator from Arizona (Mr. McCain), the Senator from South Dakota (Mr. Thune), and the Senator from Virginia (Mr. War-NER).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced-yeas 91, nays 3, as follows:

## [Rollcall Vote No. 1 Leg.]

#### YEAS-91

Dole Domenici Akaka McCaskill Alexander Allard McConnell Dorgan Mikulski Barrasso Durbin Murkowski Ensign Murray Nelson (FL) Bayh Enzi Bennett Feinstein Nelson (NE) Biden Graham Pryor Bingaman Grassley Reed Reid Boxer Hagel Roberts Brown Harkin Rockefeller Brownback Hatch Salazar Hutchison Bunning Schumer Burr Inhole Cantwell Sessions Inouye Cardin Isakson Carper Johnson Smith Casey Chambliss Kennedy Kerry Specter Klobuchar Coburn Stabenow Cochran Coleman Kohl Stevens Kyl Sununu Collins Landrien Tester Lautenberg Vitter Corker Leahy Voinovich Levin Cornyn Craig Webb Lieberman Whitehouse Crapo Lincoln Wicker DeMint Wyden Dodd Martinez

NAYS-3 Feingold

Byrd Sanders

NOT VOTING-6

Menendez Clinton Obama McCain Warner

The bill (H.R. 4986) was passed. The PRESIDING OFFICER. The motion to reconsider is considered made and laid on the table.

The majority leader is recognized.

#### UNANIMOUS CONSENT REQUEST-S. 2541

Mr. REID. Mr. President, I am glad we have a large number of Senators here today. I want to go over the schedule for this week.

First of all, I am going to ask unanimous consent, and I will do that now, that the Senate proceed to the consideration of S. 2541, which is a 30-day extension of the Foreign Intelligence Surveillance Act we are going to be dealing with; that the bill be read three times, passed, the motion to reconsider be laid upon the table, with no intervening action or debate.

The reason I ask consent on this legislation is that this bill expires on February 1. The House has not acted on this bill yet, so when we pass this bill, the House has to pass their bill, and there has to be a conference. I hope we could have this extension. I need not belabor the point. I asked this consent before we left; I ask it again. The PRESIDING OFFICER. Is there

objection? The Republican leader.

Mr. McCONNELL. Mr. President, reserving the right to object, and I will be objecting, let me say, my good friend, the majority leader, and I have discussed this issue. There is a significant amount of time left this month to pass this bill in the Senate. A conference may or may not be necessary. Back in August, when we did an extension of the FISA bill, the House simply took up the Senate-passed bill and passed it, and it went down to the President for signature. So I think the discussion of extension, particularly when, hopefully, we will turn to this bill in the very near future in the Senate, is not timely and, therefore, I object.

The PRESIDING OFFICER, Objection is heard.

The majority leader.

Mr. REID. Mr. President, for all Members here, we are on the Indian health bill now. I hope we can complete that bill tomorrow. The Republicans are having a retreat. They are having theirs tomorrow; we are going to have ours in 10 days or so. There will be activities on the Senate floor tomorrow. but there will be no votes. If there are any votes tomorrow, it will be after they finish their retreat, after 6 o'clock tomorrow night.

So we hope some work can be done on this bill tomorrow. We know the Republicans will be absent, so that makes

it very difficult.

We have to finish FISA this week. Everyone should be aware of that point. We have to finish it this week. I know there are important trips people want to take. We have the very important economic conference in Davos that Democrats and Republicans alike would like to go to.

I say, unless we finish the bill Thursday-and we will not be able to get to it until tomorrow night-unless we finish the bill on Thursday, then we are going to have to continue working this week until we finish this bill. We have to finish this bill. It is not fair to the House to jam them so that they have 1 day to act on this legislation. If we finish it this week, I have spoken to the Speaker today and they will work to complete this matter next week. It would be to everyone's advantage if we had more time to do this.

I respect what the Republican leader has said, but everyone here should understand all weekend activities have to be put on hold until we finish this bill. Now, it is possible we could finish it fairly quickly. We are going to work from the Intelligence bill, and if amendments are offered that people don't like, I would suggest they move to table those amendments. Because if people think they are going to talk this to death, we are going to be in here all night. This is not something

# ANNEX 73

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

	MIC RI		) ) ) ) IC OF IRAN ) (GATION ) Civil Action Nos. )  01-CV-2094, 01-CV-2684, 02-CV-1811, ) 03-CV-1486, 03-CV-1708, 03-CV-1959, ) 05-CV-2124, 06-CV-473, 06-CV-516, ) 06-CV-596, 06-CV-690, 06-CV-750, ) 06-CV-1116, 07-CV-1302, 08-CV-520, ) 08-CV-531, 08-CV-1273, 08-CV-1615, ) 08 CV-1807, 08-CV-1814	
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# II.

# **INTRODUCTION**

For more than a decade now, this Court has presided over what has been a twisting and turning course of litigation against the Islamic Republic of Iran under the state sponsor of terrorism exception of the Foreign Sovereign Immunities Act (FSIA). Despite the best intentions of Congress and moral statements of support from the Executive Branch, the stark reality is that

the plaintiffs in these actions face continuous road blocks and setbacks in what has been an increasingly futile exercise to hold Iran accountable for unspeakable acts of terrorist violence.<sup>1</sup>

The cases against Iran that will be addressed by the Court today involve more than one thousand individual plaintiffs. Like countless others before them, the plaintiffs in these actions have demonstrated through competent evidence—including the testimony of several prominent experts in the field of national security—that Iran has provided material support to terrorist organizations, like Hezbollah and Hamas, that have orchestrated unconscionable acts of violence that have killed or injured hundreds of Americans. As a result of these civil actions, Iran faces more than nine billion dollars in liability in the form of court judgments for money damages. Despite plaintiffs' best efforts to execute these court judgments, virtually all have gone unsatisfied.

This consolidated opinion focuses on recent legislative changes in this extraordinary area of the law, as implemented by Congress last term in § 1083 of the 2008 National Defense

<sup>&</sup>lt;sup>1</sup> The Islamic Republic of Iran was designated by the Secretary of State as a state sponsor of terrorism on January 19, 1984. The State Department maintains a list of countries that have been designated as state sponsors of terrorism on the Department's website. See U.S. Dep't of State, State Sponsors of Terrorism, www.state.gov/s/ct/c14151.htm (last visited Sept. 29, 2009). As noted at the website, countries designated as state sponsors of terrorism are those countries that the Secretary of State has determined "have repeatedly provided support for acts of international terrorism." Id. The Secretary of State makes that determination and designates state sponsors of terrorism pursuant to three statutory authorities: § 6(j) of the Export Administration Act of 1979, 50 U.S.C. app. § 2405(j); § 620A of the Foreign Assistance Act, 22 U.S.C. § 2371; and § 40(d) of the Arms Export Control Act, 22 U.S.C. § 2780(d). Three other countries are designated as State Sponsors of Terrorism: Cuba, Sudan, and Syria. U.S. Dep't of State, supra note 1. In April 2009, the State Department published its annual Country Reports on Terrorism, reporting that "Iran remained the most active state sponsor of terrorism" in 2008. U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2008, at 182, available at http://www.state.gov/documents/organization/122599.pdf. "Iran's involvement in the planning of financial support of terrorist attacks throughout the Middle East, Europe, and Central Asia has had a direct impact on international efforts to promote peace, threatened economic stability in the Gulf, and undermined the growth of democracy." Id.

Appropriations Act for Fiscal Year 2008 (2008 NDAA). *See* Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338–44. Section 1083 completely repeals the original state sponsor of terrorism exception—28 U.S.C. § 1605(a)(7)—which was originally enacted in 1996, and enacts in its place a new exception—28 U.S.C. § 1605A—that is in many ways more favorable to plaintiffs. This new statute provides, among other reforms, a new federal cause of action against state sponsors of terrorism and allows for awards of punitive damages in these cases. Even more significantly, however, the reforms implemented through § 1083 last year add a number of measures that are intended to help plaintiffs succeed in enforcing court judgments against state sponsors of terrorism, such as Iran.

The primary purpose of this opinion is to consider whether and to what extent these recent changes in the law should apply retroactively to a number of civil actions against Iran that were filed, and, in many instances, litigated to a final judgment prior to the enactment of the 2008 NDAA. In this particular instance, Congress has provided express guidance in § 1083(c) with respect to how § 1605A may be applied retroactively to reach a host of cases that were filed under the original terrorism exception, § 1605(a)(7). In considering this retroactivity question, the Court will address a variety of other legal and procedural issues relating to what may be another lengthy course of litigation against Iran.

As is often the case in this area of the law that the Supreme Court has called sui generis, see Austria v. Altmann, 541 U.S. 677, 698 (2004), this Court must sometimes confront novel legal questions, including constitutional issues of first impression. Today's decision is no different. This Court must address whether § 1083(c) impermissibly directs the reopening of final judgments in violation of Article III of the Constitution. See Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 241 (1995). The Court's attentiveness to this potentially unconstitutional

application of § 1083(c) was heightened significantly by provisions of § 1083(c) that direct courts to essentially disregard the firmly established judicial doctrines of res judicata and collateral estoppel with respect to any matters litigated in a prior FSIA terrorism case.

To the extent that § 1083(c) might be construed as directing the reopening of final judgments entered under the former version of the terrorism exception, § 1605(a)(7), it would usurp the prerogative of the judiciary to decide cases under Article III and thereby offend the principle of separation of powers enshrined within our Constitution. In light of this issue's significance with respect to ongoing litigation against Iran, this Court addresses the Article III question in Part E of this opinion. After careful analysis as set forth below, this Court holds that the statute withstands constitutional scrutiny.

Today, the Court also reaches an even more fundamental conclusion: Civil litigation against Iran under the FSIA state sponsor of terrorism exception represents a failed policy. After more than a decade spent presiding over these difficult cases, this Court now sees that these cases do not achieve justice for victims, are not sustainable, and threaten to undermine the President's foreign policy initiatives during a particularly critical time in our Nation's history. The truth is that the prospects for recovery upon judgments entered in these cases are extremely remote. The amount of Iranian assets currently known to exist with the United States is approximately 45 million dollars, which is infinitesimal in comparison to the 10 billion dollars in currently outstanding court judgments.<sup>2</sup> Beyond the lack of assets available for execution of judgments, however, these civil actions inevitably must confront deeply entrenched and

<sup>&</sup>lt;sup>2</sup> See Office of Foreign Assets Control, U.S. Dep't of the Treasury, Terrorist Assets Report 14–15, tbls. 1, 3 (2007) [hereinafter Terrorist Assets Report], available at http://www.treas.gov/offices/enforcement/ofac/reports/tar2007.pdf.

fundamental understandings of foreign state sovereignty, conflicting multinational treaties and executive agreements, and the exercise of presidential executive power in an ever-changing and increasingly complex world of international affairs.

Unfortunately, the enactment of § 1083 of the 2008 NDAA continues and expands the terrorism exception and its failed policy of civil litigation as the means of redress in these horrific cases. The availability of new federal claims under § 1605A with punitive damages, when combined with the broad retroactive reach accorded to this new statute, means that liability in the form of billions of dollars more in court judgments will continue to mount and mount quickly.

As a result of these latest reforms, the victims in these cases will now continue in their long struggle in pursuit of justice through costly and time-consuming civil litigation against Iran. They will do this at a time in our Nation's history when the President has taken bold and unprecedented steps in an attempt to improve relations with that foreign power while pressing forward on crucial issues, such as the grave threat of nuclear proliferation posed by Iran. Regrettably, the continuation in § 1083 of the same flawed policy that has failed plaintiffs in these actions for over a decade may only stoke the flames of unrealistic and unmanageable expectations in these terrorism victims who so rightly deserve justice, which may in turn serve only to expose the Administration to an unprecedented burden in its management of United States foreign policy towards Iran.

In view of these considerations, the Court will respectfully urge the President and Congress to seek meaningful reforms in this area of law in the form of a viable alternative to private litigation as the means of redress for the countless deaths and injuries caused by acts of terrorism. In Part K of the opinion and in the Conclusion, this Court will speak candidly about

the challenges, complexities, and frustrations borne out by these civil actions over the past decade in an effort to urge our political leaders to act. If the decade-long history of these FSIA terrorism actions has revealed anything, it is that the Judiciary cannot resolve the intractable political dilemmas that frustrate these lawsuits; only Congress and the President can. Today, at the start of a new presidential administration—one that has sought engagement with Iran on a host of critical issues—it may be time for our political leaders here in Washington to seek a fresh approach.<sup>3</sup>

To assist this Court in these matters going forward, the Court will invite the United States to participate in these actions by filing a brief in response to the many issues addressed in this opinion. The Court encourages the United States to express its views regarding this litigation, but, more importantly, the Court hopes the Government might take this opportunity to give due consideration to whether there might be a more viable system of redress for these tragic and difficult cases. With the daunting national security challenges that confront the President with respect to Iran, our political leaders should candidly acknowledge the challenges and pitfalls of these terrorism lawsuits. The Court fears that if reforms are not achieved in the near future, these civil suits against Iran may undermine the President's ability to act at a time when it matters most.

<sup>&</sup>lt;sup>3</sup> Reaching out to the people of Iran and their leaders, President Obama recently stated: "I would like to speak clearly to Iran's leaders: We have serious differences that have grown over time. My administration is now committed to diplomacy that addresses the full range of issues before us and to pursuing constructive ties among the United States, Iran, and the international community." Videotaped Remarks on the Observance of Nowruz, DAILY COMP. PRES. DOC., Mar. 20, 2009.

Today's omnibus opinion consists of twelve parts and is intended to serve a case management function in light of the significant changes in the law relating to these civil suits against Iran. Thus, today's ruling is consistent with this Court's inherent authority to manage the docket. *See, e.g., In re Fannie Mae Sec. Litig.*, 552 F.3d. 814, 822 (D.C. Cir. 2009) ("District judges must have authority to manage their dockets, especially during massive litigation . . . ."). A separate order consistent with this opinion will issue this date.

### III.

## **DISCUSSION**

The Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. §§ 1330, 1602–1611, is the sole basis of jurisdiction over foreign states in our courts. *E.g., Argentine Republic v.*Amerada Hess Shipping Corp., 488 U.S. 428, 434 (1989); Prevatt v. Islamic Republic of Iran, 421 F. Supp. 2d 152, 157–58 (D. D.C. 2006) (Lamberth, J.). Enacted in 1976, the FSIA codifies a restrictive theory of foreign state sovereign immunity by which states are generally immune from the jurisdiction of courts of the United States, subject to a few carefully delineated exceptions. See, e.g., Verlinden B.V. v. Cent. Bank of Nigeria, 461 U.S. 480, 488–89 (1983); Price v. Socialist People's Libyan Arab Jamahiriya, 294 F.3d 82, 87 (D.C. Cir. 2002). In the original FSIA enactment, exceptions to foreign sovereign immunity included cases in which a foreign state had either expressly or implicitly waived its immunity and cases relating to the commercial activities of a foreign sovereign within the United States. See Act of Oct. 21, 1976, Pub. L. No. 94-583, 90 Stat. 2891; see also §§ 1605(a), 1605A (codification of current FSIA exceptions); Verlinden, 461 U.S. at 488 (discussing key exceptions under the FSIA).

The state sponsor of terrorism exception of the FSIA was first enacted in 1996 as part of Mandatory Victims Restitution Act of 1996, which was itself part of the larger Antiterrorism and

Effective Death Penalty Act of 1996. Pub. L. No. 104-132, § 221(a)(1)(C), 110 Stat. 1214, 1241 (formerly codified at § 1605(a)(7)). As noted, however, the original exception at § 1605(a)(7) was repealed last year by the 2008 NDAA, § 1083(b)(1)(A)(iii), and replaced with a new exception at § 1605A. It is unclear why Congress chose to repeal rather than simply amend the prior statute. *See* H.R. REP. No. 110-477, at 1001 (2007) (Conf. Rep.) (discussing § 1605A but omitting discussion of why Congress repealed, instead of amended, § 1605(a)(7)). Perhaps members of Congress wanted to reinforce the significance of their overhaul of the terrorism exception. Whatever the case may be, it is important at the outset for this Court to offer some notes of clarification and historical background information in an effort to avoid any confusion in the ensuing discussion.

The Court's analysis today must simultaneously consider two separate and distinct versions of the terrorism exception of the FSIA—the now-repealed version of the terrorism exception, § 1605(a)(7), and the new version, § 1605A. While the prior version of the exception, § 1605(a)(7), and the new version, § 1605A, differ in many fundamental respects, it is important to keep in mind that the basic grant of subject matter jurisdiction for actions against state sponsors of terrorism remains unchanged. Thus, it makes little difference whether one refers to § 1605(a)(7) or § 1605A when addressing the degree to which foreign sovereign immunity has been removed, subjecting designated state sponsors of terrorism to lawsuits in our courts.

Indeed, the language eliminating sovereign immunity in the new exception, § 1605A, is virtually identical to the operative language in § 1605(a)(7). *Compare* § 1605(a)(7) *with* § 1605A(a)(1).

Accordingly, in those instances in which the Court is merely referring to the grant of subject matter jurisdiction afforded by the virtue of the FSIA's terrorism exception, it will do so broadly,

without any additional effort to underscore the two different statutes, as the two provisions are in fact indistinguishable in terms of the basic jurisdiction conferring language.

While the grant of subject matter jurisdiction for suits against state sponsors of terrorism is virtually unchanged, the latest version of the terrorism exception, § 1605A, adds substantive rights and remedies that were not available previously. As noted above, § 1605A is a much more expansive provision, one which provides a federal cause of action, as well as many other statutory entitlements. These new rights and remedies are the central focus of today's decision. The issue is whether the plaintiffs in actions that were filed, at least initially, under the nowrepealed § 1605(a)(7), can now avail themselves of the additional entitlements associated with the new exception, § 1605A. Thus, to extent that some of these plaintiffs are unable to claim the benefits of the new terrorism law retroactively, then the prior exception, § 1605(a)(7)—even though now repealed—remains viable and indeed is the controlling source of law in their cases. This is consistent with both the guidance provided by Congress in § 1083(c) of the 2008 NDAA and the general presumption against the retroactive application of laws. See Landgraf v. USI Film Prods., 511 U.S. 244, 286 (1994) ("The presumption against statutory retroactivity is founded upon sound considerations of general policy and practice, and accords with long held and widely shared expectations about the usual operation of legislation."). Thus, when dealing with the nuts and bolts of the retroactivity analysis, especially in Part D below where the Court looks individually at each of the 20 cases in this opinion, it is important to keep the two versions of the exception separate and distinct. As underscored recently by the Court of Appeals for this Circuit, terrorism cases that were filed prior the enactment of the 2008 NDAA, and which do not qualify for retroactive treatment under the new exception, are governed by the prior statute, § 1605(a)(7). See Simon v. Republic of Iraq, 529 F.3d 1187, 1192 (D.C. Cir. 2008), rev'd on

other grounds sub. nom Republic of Iraq v. Beaty, 129 S. Ct. 2183 (2009); accord Oveissi v. Islamic Republic of Iran, 573 F.3d 835 (D.C. Cir. 2009); La Reunion Aerienne v. Socialist People's Libyan Arab Jamahiriya, 533 F.3d 837, 845 (D.C. Cir. 2008); Owens v. Republic of Sudan, 531 F.3d 884, 887 (D.C. Cir. 2008).

# HISTORICAL OVERVIEW OF THE FSIA STATE SPONSOR OF TERRORISM EXCEPTION AS IT RELATES TO ACTIONS AGAINST THE ISLAMIC REPUBLIC OF IRAN

The new terrorism exception—§ 1605A—clears away a number of legal obstacles, including adverse court rulings, that have stifled plaintiffs' efforts to obtain relief in civil actions against designated state sponsors of terrorism. In fact, these reforms are in part a legislative fix to certain adverse precedent from the D.C. Circuit because "§ 1605A(c) abrogates *Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024 (D.C. Cir. 2004), by creating a federal right of action against foreign states, for which punitive damages may be awarded." *Simon*, 529 F.3d at 1190. Thus, to fully grasp the significance these latest reforms, it is important to have some understanding regarding the manner in which the state sponsor of terrorism exception was shaped over time through the jurisprudence of this Circuit. More fundamentally, however, this historical backdrop is essential to the Court's analysis of the Article III separation-of-powers issue below in Part E, as well as for the Court's conclusion in Part K that even greater reforms in the law are necessary.

Accordingly, the Court will now briefly provide a historical overview of the state sponsor of terrorism exception, as it was originally constituted under § 1605(a)(7) (repealed), and the so-called Flatow Amendment to that exception, . This part of the discussion will examine some of the early litigation against Iran before this Court in cases arising out of Iran's provision of material support and resources to terrorist organizations, such as Hamas and Hezbollah. The important historical background that follows breaks down roughly into three parts. The Court will begin with a discussion of *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1 (D.D.C. 1998) [hereinafter *Flatow I*] (Lamberth, J.), which was the first case in the country to be decided

against Iran under the state sponsor of terrorism exception. After discussing this Court's ruling in *Flatow*, this Court will then review the decision of the D.C. Circuit Court of Appeals in *Cicippio-Puleo*, 353 F.3d 1024, in which the Court found that neither § 1605(a)(7) nor the Flatow Amendment furnish a cause of action against a foreign state. This Court examines the negative consequences and practical implications of that ruling for plaintiffs in these terrorism cases. After examining the fallout from *Cicippio-Puleo*, this Court proceeds to address what has been the greatest problem for these plaintiffs, and that is the fact that there are simply not sufficient Iranian assets that are amenable to attachment or execution in satisfaction of judgments entered against Iran under the FSIA terrorism exception.<sup>4</sup>

1. The Original State Sponsor of Terrorism Exception to Foreign Sovereign Immunity, Section 1605(a)(7) and the Flatow Amendment, Section 1605 Note, and Litigation Against Iran for its Provision of Material Support to Terrorist Organizations

The state sponsor of terrorism exception to foreign sovereign immunity applies only to foreign sovereigns officially designated as state sponsors of terrorism by the State Department. See § 1605A(a)(2)(A)(i)(I); § 1605(a)(7)(a) (repealed). This exception to foreign sovereign immunity is commonly known as the "terrorism exception." See, e.g., Kilburn v. Socialist

<sup>&</sup>lt;sup>4</sup> For an excellent summary of the litigation and evolution of the law pertaining to the state sponsor of terrorism exception of the FSIA, see JENNIFER K. ELSEA, CONGRESSIONAL RESEARCH SERV., SUITS AGAINST TERRORIST STATES BY VICTIMS OF TERRORISM (2008) [hereinafter SUITS AGAINST TERRORIST STATES], available at http://www.fas.org/sgp/crs/terror/RL31258.pdf. This Congressional Research Service report on terrorism lawsuits is the logical starting point for anyone who is hoping to gain a solid grasp of the development of this area of the law and its many complexities. In addition to chronicling important legislative developments, the report captures and summarizes the civil litigation that has occurred in this Court against Iran under the state sponsor of terrorism exception to the FSIA. This Court is grateful to the Congressional Research Service, and to Ms. Elsea in particular, for their thorough work on this unique and important topic. This Court has examined and relied on many of the original source materials identified in the report for additional insight on these matters beyond the Court's own experience in presiding over dozens of civil actions against Iran.

People's Libyan Arab Jamahiriya, 376 F.3d 1123, 1126 (D.C. Cir. 2004). Under the exception, foreign sovereign immunity is eliminated in two different categories of terrorism cases: (1) those in which the designated foreign state is alleged to have committed certain acts of terrorism, i.e., torture, extrajudicial killing, aircraft sabotage, or hostage taking; and (2) those in which the designated state is alleged to have provided "material support or resources" for such terrorist acts. See § 1605A(a)(1); § 1605(a)(7) (repealed). Thus, a designated state sponsor of terrorism might be held to account for its specific acts of terrorism, as well as, more broadly speaking, its "provision of material support or resources" in furtherance of acts of terrorism. See § 1605A(a)(1); § 1605(a)(7) (repealed).

The statute is intended to protect American victims of state-sponsored terrorism, and therefore only United States citizens and nationals may rely on its grant of subject matter jurisdiction. *See* § 1605A(a)(1); § 1605(a)(7) (repealed); *see also Acosta v. Islamic Republic of Iran*, 574 F. Supp. 2d. 15, 25–26 (D.D.C. 2008) (Lamberth, C.J.) (denying claims of victim, Rabbi Meir Kahane, who had voluntarily renounced his U.S. citizenship years prior to his assassination by Islamic terrorists). Thus, the victim or claimant in an action against a state sponsor of terrorism must have been a United States citizen or national at the time of the incident that gave rise to his claim(s). *See Acosta*, 574 F. Supp. 2d at 26.

Most of the actions in this Court against Iran have proceeded under that portion of the terrorism exception relating to "the provision of material support or resources" for terrorist acts. *See, e.g., Flatow I*, 999 F. Supp. 1; *Eisenfeld v. Islamic Republic of Iran*, 172 F. Supp. 2d 1 (D.D.C. 2000) (Lamberth, J.); *Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229 (D.D.C. 2006) (Lamberth, J.). The terrorism exception adopts the definition of "material support or resources" set forth in the criminal code at 18 U.S.C § 2339A(b)(1):

[T]he term "material support or resources" means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials[.]

See § 1605A(h)(3) (incorporating § 2339A(b)(1) by reference); see also § 1605(a)(7) (repealed).

This Court has determined that "the routine provision of financial assistance to a terrorist group in support of its terrorist activities constitutes 'providing material support and resources' for a terrorist act within the meaning of the [terrorism exception of the FSIA]." *Flatow I*, 999 F. Supp. 1 at 19. Additionally, this Court has found that "a plaintiff need not establish that the material support or resources provided by a foreign state for a terrorist act contributed directly to the act from which his claim arises in order to satisfy 28 U.S.C. § 1605(a)(7)'s statutory requirements for subject matter jurisdiction." *Id.* In other words, there is no "but-for" causation requirement with respect to cases that rely on the material support component of the terrorism exception to foreign sovereign immunity; "[s]ponsorship of a terrorist group which causes personal injury or death of United States national alone is sufficient to invoke jurisdiction." *Id.*; *see also Kilburn*, 376 F.3d at 1129 (holding that Liyba's actions need not be the "but for" causation of an act of terrorism for the purpose of establishing subject matter jurisdiction under the terrorism exception). Once the requirements for jurisdiction over a foreign state are satisfied under the FSIA, then that foreign state can be held liable in a civil action "in the same manner and to the same extent as a private individual under like circumstances." § 1606.

When the FSIA state sponsor of terrorism exception was first enacted in April of 1996, it was far from clear whether that statute, § 1605(a)(7), in and of itself, served as a basis for an independent federal cause of action against foreign state sponsors of terrorism. While the waiver

of foreign sovereign immunity was clear, and hence the provision authorized courts to serve as a forum to adjudicate certain terrorism cases, questions remained regarding whether any civil claims or money damages were available by virtue of that enactment. To clarify matters, Congress created what is commonly referred to as the Flatow Amendment, which was enacted a mere five months after the state sponsor of terrorism exception as part of the Omnibus Consolidated Appropriations Act, 1997. *See* Pub. L. 104-208, § 589, 110 (1996), 110 Stat. 3009-1, 3009-172 (codified at 28 U.S.C. § 1605 note). The Flatow Amendment provides in pertinent part that:

An official, employee, or agent of a foreign state designated as a state sponsor of terrorism . . . while acting within the scope of his office, employment, or agency shall be liable to a United States national or the national's legal representative for personal injury or death caused by acts of that official, employee, or agent for which courts of the United States may maintain jurisdiction under section 1605(a)(7) of title 28, United States Code [repealed] for money damages which may include economic damages, solatium, pain, and suffering, and punitive damages if the acts were among those described in section 1605(a)(7).

### § 1605 note.

The amendment is named for Alisa Michelle Flatow, a 20-year-old Brandeis University student from New Jersey who was mortally wounded in a suicide bombing attack on the Gaza strip in April of 1995. Alisa Flatow's father, Stephen Flatow, was one of the prime movers behind the state sponsor of terrorism exception, and he successfully lobbied to have the amendment incorporated as part of § 1605. See, e.g., Neely Tucker, Pain and Suffering; Relatives of Terrorist Victims Race Each Other to Court, but Justice and Money are Both Hard to Find, WASH. POST, Apr. 6, 2003, at F1 [hereinafter Tucker, Pain and Suffering] (recalling Stephen Flatow's lobbying efforts on behalf of the anti-terrorism legislation); see also Ruthanne M. Deutsch, Suing State-Sponsors of Terrorism Under the Foreign Sovereign Immunities Act:

Giving Life to the Jurisdictional Grant After Cicippio-Puleo, 38 INT'L LAW. 891 (2004) (discussing legislative history of the Flatow Amendment and collecting sources); SUITS AGAINST TERRORIST STATES, *supra* note 4, at 5–7 (discussing legislative history of § 1605(a)(7) and Flatow Amendment).

Stephen Flatow filed suit in this Court shortly after the enactment of the Flatow Amendment. As administrator of Alisa Flatow's estate, plaintiff asserted a wrongful death claim and a claim for Alisa's conscious pain and suffering prior to her death. *See Flatow I*, 999 F. Supp. at 27–29. Plaintiff also asserted solatium claims for the mental anguish and grief suffered by the decedent's parents and siblings as a result of her murder by terrorists. *See id.* at 29–32. Plaintiff also sought punitive damages. *See id.* at 32–35. Iran did not enter an appearance in the action and has never appeared in any FSIA terrorism action to date. *See id.* at 6.<sup>5</sup>

The *Flatow* case was the first in the country to be decided against Iran under the terrorism exception to the FSIA. *See* 999 F. Supp. at 6 n.2. In that decision, this Court examined the statutory language of the terrorism exception, § 1605(a)(7), and the Flatow Amendment, § 1605

<sup>&</sup>lt;sup>5</sup> Iran has never appeared in these actions even though it is "an experienced litigant in the United States Federal Court System generally and in this Circuit. *See, e.g., Cicippio v. Islamic Republic of Iran,* 30 F.3d 164 (D.C. Cir. 1994), *cert. denied* 513 U.S. 1078 (1995); *Foremost-McKesson v. Islamic Republic of Iran,* 905 F.2d 438 (D.C. Cir. 1990); *Presinger v. Islamic Republic of Iran,* 729 F.2d 835 (D.C. Cir. 1984); *Berkovitz v. Islamic Republic of Iran,* 735 F.2d 329 (9th Cir. 1984); *McKeel v. Islamic Republic of Iran,* 722 F.2d 582 (9th Cir. 1983)." *Flatow I,* 999 F. Supp. 1 at 6 n.1. Nevertheless, this Court cannot enter a default judgment against a foreign sovereign unless the plaintiff "establishes his claim or right to relief by evidence satisfactory to the Court." 28 U.S.C. § 1608(e). Thus, this Court must carefully review the plaintiff's evidence with respect to both liability and damages.

While Iran has not defended itself in any of the lawsuits under the terrorism exception, Iran has on occasion come to court to prevent plaintiffs from collecting on default judgments entered under that provision. For example, Iran recently prevailed in an action to prevent the attachment of one of its assets here in the United States. *See, e.g., Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Elahi*, 129 S. Ct. 1732 (2009).

note, *in pari materia* and found that those provisions collectively established both subject matter jurisdiction and federal causes of actions for civil lawsuits against state sponsors of terrorism. *See id.* at 12–13. This Court also ruled that the Flatow Amendment was intended to ensure large punitive damage awards against state sponsors of terrorism. *See id.* In this Court's view, the express provision of punitive damages in the Flatow Amendment, in conjunction with the provisions's legislative history, including statements by the Amendment's co-sponsors, Representative Jim Saxton and Senator Frank Lautenberg of New Jersey, demonstrated that Congress believed punitive damage awards were absolutely necessary to ensure that civil actions against state sponsors of terrorism would effectively deter those nations from perpetuating international terrorism. *See id.* Thus, the Flatow Amendment served as an exception to the general rule, as expressed in § 1606 of the FSIA, that foreign sovereigns are not to be held liable for punitive damages.

During a two-day hearing in March of 1998, plaintiff proceeded in the manner of a non-jury trial. *Id.* at 6. The evidence presented to the Court at that time demonstrated by clear and convincing evidence that Iran was the sole source of funding for the Shaqaqi faction of Palestine Islamic Jihad, a small terrorist cell that claimed responsibility for and in fact perpetuated the suicide bombing that gravely wounded Alisa Flatow on April 9, 1995. *Id.* at 8–9. The suicide bomber rammed a van full of explosives into the number 36 Egged bus that Alisa and others were traveling in on their way to a Mediterranean resort in the Gush Katif community in Gaza. *Id.* at 7. The resulting explosion destroyed the bus and sent shrapnel flying in all directions. *Id.* A piece of that shrapnel pierced Alisa's Flatow's skull and lodged in her brain. *Id.* Once Stephen Flatow learned that his daughter had been injured in the attack, he immediately flew to Israel, and he rushed to the Soroka Medial Center, where Alisa was being treated. Upon his

arrival there, however, the attending physician informed Mr. Flatow that his daughter Alisa "showed no signs of brain activity, that all physical functions relied on life support, and that there was no hope for her recovery." *Id.* at 8. In emotionally powerful testimony before this Court, Stephen Flatow described the heart-wrenching decision he made to have his daughter's life support terminated and her organs harvested for transplant. *See id.* 

This Court ultimately awarded a total of 22.5 million dollars in compensatory damages. More significantly, however, the Court also awarded 225 million dollars in punitive damages, approximately three times Iran's annual expenditures on terrorist activities at that time. *See id.* at 34. In providing for such a large award of punitive damages against Iran, this Court stressed the importance of such awards as a means to deter states like Iran from supporting terrorist organizations. The Court stated as follows:

By creating these rights of action, Congress intended that the Courts impose a substantial financial cost on states which sponsor terrorist groups whose activities kill American citizens. This Cost functions both as a direct deterrent, and also as a disabling mechanism: if several large punitive damage awards issue against a foreign state sponsor of terrorism, the state's financial capacity to provide funding will be curtailed.

*Id.* at 33 (emphasis added). The Court also recognized that any punitive damage award would have to be substantial enough to have an appreciable impact in light of Iran's significant annual revenues from oil exports. *See id.* at 33–34.

At the time the *Flatow* decision was announced, there was a certain degree of energy and optimism surrounding the action. Senator Frank Lautenberg held a press conference outside this courthouse with Alisa Flatow's parents and their attorneys. They underscored the importance of the Court's decision as a measure of justice for victims of terrorism, and they stressed the importance of holding state sponsors of terrorism accountable for their support of terrorist

groups. See Bill Miller & Barton Gellman, Judge Tells Iran to Pay Terrorism Damages; \$247 Million Award for Family of U.S. Victim in Gaza, WASH. POST, Mar. 12, 1998, at A1. Steven Perles, one of the attorneys for the Flatows, spoke of Iran's wealth and expressed his belief that the Flatows would "collect the entirety of the judgment." See id. At the time, the popular sentiment was that terrorism victims were going to "sue the terrorists out of business." See Tucker, Pain and Suffering, supra. In the years immediately following the Flatow decision, many more plaintiffs relied on the original terrorism exception, § 1605(a)(7), in combination with the Flatow Amendment, to successfully litigate cases against Iran. See, e.g., Stern v. Islamic republic of Iran, 271 F. Supp. 2d 286 (D.D.C. 2003) (Lamberth, J.); Hutira v. Islamic Republic of Iran, 211 F. Supp. 2d 115 (D.D.C. 2002) (Lamberth, J.); Eisenfeld, 172 F. Supp. 2d 1.6 Large judgments against the state sponsor of terrorism amassed quickly. Unfortunately, in most cases, the victories obtained by plaintiffs in this courthouse merely signaled the beginning of what would become a long, bitter, and often futile quest for justice.

<sup>&</sup>lt;sup>6</sup> Although this Judge ruled in *Flatow* that the Flatow Amendment, 1605 note, did furnish a cause of action against a state sponsor of terrorism, this Judge elected to revisit the issue even more throughly in Cronin v. Islamic Republic of Iran, a case concerning an American Professor who was taken hostage and tortured by Hizbollah in Beirut, Lebanon in 1984. See 238 F. Supp. 2d 222 (D. D.C. 2002) (Lamberth, J.). The Court did so in part because the Court of Appeals had flagged the issue in *Price* by observing that "the amendment does not list 'foreign states' among the parties against whom an action may be brought." Cornin, 238 F. Supp. 2d at 231 (quoting *Price*, 294 F.3d at 87). As this Court revisited what was then a crucial question, this Court observed that a majority of the judges of this Court by that time had ruled that the Flatow Amendment did provide for a cause of action against a foreign state in cases in which that state is not entitled to immunity by virtue of the terrorism exception, § 1605(a)(7). See id. at 233 (collecting cases). Nonetheless, § 1605 note is not a model of clarity, and as Judge Sullivan pointed out in Roeder v. Islamic Republic of Iran, there are a number of valid reasons why § 1605 note should not be construed as furnishing substantive claims against foreign states. See 195 F. Supp. 2d 140, 171–175 (holding that Flatow Amendment did not furnish a cause of action).

## 2. Setbacks for Plaintiffs: The D.C. Circuit's Decision in *Cicippio-Puleo*

Nearly six years following the *Flatow* decision, and contrary to what this Court and others had determined, the D.C. Circuit Court of Appeals held that "[p]lainly neither section § 1605(a)(7) nor the Flatow Amendment, separately or together, establishes a cause of action against foreign state sponsors of terrorism." *Cicippio-Puleo*, 353 F.3d at 1027. According to the Court of Appeals, the original terrorism exception to the FSIA, § 1605(a)(7), was "merely a jurisdiction conferring provision," and therefore it did not create an independent federal cause of action against a foreign state or its agents. *Id.* at 1032. In other words, the prior version of the terrorism exception, § 1605(a)(7), merely waived foreign sovereign immunity for designated terrorist states with respect to actions taken by those states in furtherance of international terrorism, but it did not furnish a legal claim for money damages that a terrorism victim might then assert in a lawsuit against Iran or any other designated state sponsor of terrorism. Instead, plaintiffs in terrorism cases were required to find a cause of action based on some other source of law. *Id.* at 1037.

With respect to the Flatow Amendment, § 1605 note, the Court held that the provision "provides a private right of action only against individual officials, employees, and agents of a foreign state, but not against the foreign state itself." *Id.* at 1027. Thus, the cause of action furnished by the Flatow Amendment is severely restricted because it applies only to claims against foreign state officials, employees, and agents, "in their *individual capacities*, as opposed to their official capacities." *Id.* at 1034 (emphasis in original). In reaching its holding, the Court of Appeals emphasized that a claim against a foreign state official for actions taken within his official capacity on behalf of a foreign government "is in substance a claim against the government itself" *Id.* (citations omitted). As the Court found that neither the plain language

nor the legislative history of the Flatow Amendment suggested that Congress intended to impose liability on foreign governments, plaintiffs were precluded from relying on that provision for either claims against Iran or claims based on acts taken by Iranian officials within the scope of their official duties. *Id.* at 1034–1036. After rendering its ruling the *Cicippio-Puleo*, the Court of Appeals remanded the action back to this Court in order to enable plaintiffs in that case to amend their complaint to state a cause of action against Iran "under some other source of law, including state law." *Id.* at 1036.

As a result of the *Cicippio-Puleo* decision, plaintiffs in FSIA terrorism cases under § 1605(a)(7) began to use that provision as a "'pass-through'" to causes of actions found in state tort law. *Bodoff v. Islamic Republic of Iran*, 424 F. Supp. 2d 74, 83 (D.D.C. 2006) (Lamberth, J.); *see also Pescatore v. Pan Am. World Airways, Inc.*, 97 F.3d 1, 12 (2d Cir. 1996) (describing how FSIA acts as pass-through to state law by virtue of § 1606) (quoting *Zicherman v. Korean Airlines Co*, 516 U.S. 217, 229 (1996)). By using the pass-through approach under the earlier version of the terrorism exception, § 1605(a)(7), most terrorism victims who pursued FSIA cases against Iran were in fact able to litigate claims based on the tort law of the state jurisdiction where they were domiciled at the time of the terrorist incident giving rise to the lawsuit.

In the large consolidated case of *Peterson v. Islamic Republic of Iran*, for example, this Court found that Iran furnished money, weapons, training, and guidance to Hezbollah in direct support of a terrorist plot that culminated in large-scale suicide bombing attack on the United States Marine barracks in Beirut, Lebanon on October 23, 1983. *See* 264 F. Supp. 2d at 47–59 (D.D.C. 2003) [hereinafter *Peterson I*] (Lamberth, J.). More than 200 American servicemen

 $<sup>^{7}</sup>$  *Peterson* is consolidated with *Boulos v. Islamic Republic of Iran*, No. 01-CV-2684-RCL (D.D.C.).

lost their lives and countless others were injured in the bombing. Prior to September 11, 2001, the attack on the Marines in Beirut was the most deadly terrorist attack ever carried out against American citizens. By examining the claims in that case under a number of sources of state law, this Court awarded to the family members of the deceased servicemen and the injured survivors of the Beirut attack exceeds 2.6 billion dollars and remains one of the largest judgments ever awarded in a FSIA action pursuant to the state sponsor of terrorism exception. *See Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 44–45 (D.D.C. 2007) [hereinafter *Peterson III*] (Lamberth, J.). Like *Peterson*, the majority cases addressed in today's opinion stem from the 1983 bombing of the Marine barracks facility in Beirut, Lebanon.

In another action considered today, *Bennett v. Islamic Republic of Iran*, plaintiffs demonstrated how Iran's financial support of Hamas helped to perpetrate terrorist attacks, including a 2002 suicide bombing incident at Hebrew University in Jerusalem that claimed the life of their 24-year-old daughter. *See* 507 F. Supp. 2d 117 (D.D.C. 2007) (Lamberth, J.). In *Bennett*, the plaintiffs relied on California law. Similarly, in *Beer v. Islamic Republic of Iran*, family members of an American killed in a suicide bombing of a bus in Jerusalem showed how Iran's material support to Hamas in the form of funding, safe haven, training, and weapons, helped to spur on violent suicide attacks in Israel and elsewhere. 574 F. Supp. 2d 1 (D.D.C. 2008) (Lamberth, J.).<sup>8</sup> The plaintiffs in *Beer* relied on New York common law.

<sup>&</sup>lt;sup>8</sup> This Court has also decided FSIA cases arising from Iran-sponsored terrorist attacks that have occurred here in the United States. *Acosta*, for example, arose out of the assassination of Rabbi Meir Kahane, an Israeli political figure and a founder of the Jewish Defense League, who was gunned down by Islamic Jihadists as he was concluding a lecture in New York City on November 5, 1990. *See* 574 F. Supp. 2d 15.

But while larger majority of plaintiffs in actions post-Cicippio-Puelo were able to use the pass-through approach to find relief, hundreds of others equally dissevering plaintiffs had their claims denied because they were domiciled in jurisdictions that did not afford them a substantive claim. In the *Peterson* case, for example, some family members of the Marines and other servicemen who were killed in the 1983 terrorist bombing were barred from asserting intentional infliction of emotional distress claims (IIED) because they lacked standing under the applicable state tort law. Consequently, this Court had to dismiss the IIED claims of family members who were domiciled in either Pennsylvania or Louisiana at the time of the terrorist attack because those jurisdictions would not permit IIED claims by family members who were not physically present at the site of the incident that gave rise to the emotional distress. See Peterson II, 515 F. Supp. 2d at 44–45. Thus, the Pennsylvania and Louisiana plaintiffs in the *Peterson* action were effectively denied their day in court, and yet they watched as many other similarly situated plaintiffs (including some of their own family members) from different state jurisdictions advanced and ultimately prevailed with their claims for IIED. For those Pennsylvania and Louisiana plaintiffs who were denied relief as so many others succeeded based on precisely the same kinds of claims, based on the same horrific and unquestionably traumatic incident, the result must have seemed both arbitrary and unfair.

In addition to the unfairness caused by a lack of uniformity in the underlying state sources of law, the pass-through approach proved cumbersome and tedious in practical application. In a given case based on a single terrorist incident, this Court would usually have to resolve choice of law problems and then proceed through a lengthy analysis of tort claims under the laws of numerous different state jurisdictions. For example, in the *Heiser* case, a large consolidated action involving the Khobar towers bombing, this Court issued a 209-page opinion

in which it ultimately applied the laws of 11 different state jurisdictions. *See* 466 F. Supp. 2d 299. In *Peterson*, this Court had to apply the laws of nearly 40 different jurisdictions in order to resolve the victims' claims. *See Peterson II*, 515 F. Supp. 2d 25. To efficiently manage these terrorism cases under the pass-through regime imposed by *Cicippio-Puleo*, this Court would frequently refer the action to special masters after the Court determined under § 1605(a)(7) that Iran provided material support for a terrorist incident that killed or injured Americans.<sup>9</sup>

Another consequence of the *Cicippio-Puleo* decision was that the Flatow Amendment could not serve as independent basis for punitive damages awards against Iran. As the Court of Appeals found that the amendment was not intended to provide for claims against foreign states, the bar on punitive damages in § 1606 of the FSIA remained in tact, even with respect to state sponsors of terrorism. Accordingly, large awards of punitive damages, like that which this Court granted in *Flatow* to deter Iran from sponsorship of terrorist groups, were no longer available in actions against the state of Iran under § 1605(a)(7).<sup>10</sup>

<sup>&</sup>lt;sup>9</sup> The application of diverse sources of substantive law to claims in accordance with the pass-through approach under § 1605(a)(7) may sometimes requires courts to look to foreign sources of law. *See Oveissi*, 573 F.3d 835. In *Oveissi*, the Court of Appeals ruled that this Court must apply French law to resolve emotional distress and wrongful death claims brought by an American grandson of General Gholam Oveissi, who was the head of the Iranian armed forces under the Shah's regime. General Oveissi was assassinated in France by Hezbollah operatives in February of 1984.

<sup>&</sup>lt;sup>10</sup> In all of the civil actions against the Islamic Republic of Iran considered here today, Iran's Ministry of Information and Security (MOIS) is also named as a defendant. One of the actions also includes the Iranian Islamic Revolutionary Guard Corps (IRGC) as a defendant. *See Rimkus v. Islamic Republic of Iran*, No. 06-CV-1116-RCL (D.D.C.).

As noted, § 1606 of the FSIA provides that foreign states may not be held liable for punitive damages, and, as a result of *Cicippio-Puleo*, that exemption from punitive damages applies to state sponsors of terrorism in actions under § 1605(a)(7), notwithstanding the Flatow Amendment. Section 1606 also provides, however, that an "agency or instrumentality" of a foreign state, as opposed to the state itself, may be liable for punitive damages. Thus, certain

#### 3. The Never-Ending Struggle to Enforce Judgments Against Iran

In the years since the *Flatow* decision, a number of practical, legal, and political obstacles have made it all but impossible for plaintiffs in these FSIA terrorism cases to enforce their default judgments against Iran. This Court has examined this fundamental and longstanding problem time and again as plaintiffs before this Court have sought, with very little success, to

entities of a foreign government may be liable for punitive damages. In terrorism cases against Iran in this Court under § 1605(a)(7), plaintiffs have never identified an appropriate Iranian agency that would qualify as an "agency or instrumentality" of Iran for the purpose of a punitive damages award.

In *Roeder v. Islamic Republic of Iran*, a case that was decided only a few months prior to *Cicippio-Puleo*, the Court of Appeals emphasized that it follows a categorical approach when determining whether a foreign governmental entity should be considered "'a foreign state or political subdivision' rather than an 'agency or instrumentality of the nation'" for purposes of the FSIA. 333 F.3d 228, 234 (D.C. Cir. 2003) (quoting *Transaero*, *Inc. V. La Fuerza Aerea Boliviana*, 30 F.3d 148, 149–50 (D.C. Cir. 1994)). Under the categorical approach, "if the core functions of the entity are governmental, it is considered the foreign state itself; if commercial, the entity is an agency or instrumentality of the foreign state." *Id.* In *Roeder*, the Court determined that Iran's Ministry of Foreign Affairs is part of the foreign state itself, rather than an "agency of instrumentality" because the Ministry of Foreign Affairs, like a nation's armed forces, is governmental in nature. *Id.* Following the *Roeder* decision, this Court found that MOIS must be considered part of the state of Iran itself and is therefore exempt from liability for punitive damages. *See, e.g., Haim v. Islamic Republic of Iran*, 425 F. Supp. 2d 56, 71 n.2 (D.D.C. 2006) (Lamberth, J.).

In *Rimkus*, a case that is addressed in today's consolidated opinion, the plaintiffs asserted claims against IRGC as well as MOIS. In rendering the decision in *Rimkus*, this Court again followed the categorical approach from *Roeder* and determined that IRGC, like MOIS, is part of the state itself and is therefore exempt from punitive damage under the FSIA. *See* 575 F. Supp. 2d 181, 198–200 (D.D.C. 2008) (Lamberth, C.J.); *see also Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 60–61 (D.D.C. 2006) (Lamberth, J.) (concluding that both MOIS and IRGC must be treated as the state of Iran itself for purposes of liability); *Salazar v. Islamic Republic of Iran*, 370 F. Supp. 2d 105, 115–16 (D.D.C. 2005) (Bates, J.) (same). Consequently, in the years following *Cicippio-Puleo*, plaintiffs in actions under the original terrorism exception, § 1605(a)(7), lacked a basis for claiming punitive damages in actions arising out of Iransponsored terrorism.

Because claims against MOIS or IRGC are not legally distinguishable from claims against Iran itself, this opinion refers to Iran as the only defendant.

locate and attach Iranian Government assets in aid of execution of their civil judgments. *See*, *e.g.*, *Bennett v. Islamic Republic of Iran*, 604 F. Supp. 2d 152 (D.D.C. 2009) (Lamberth, C.J.); *Peterson v. Islamic Republic of Iran*, 563 F. Supp. 2d 268 (D.D.C. 2008) [hereinafter *Peterson III*] (Lamberth, C.J.); *Weinstein v. Islamic Republic of Iran*, 274 F. Supp. 2d 53 (D.D.C. 2003) (Lamberth, J.); *Flatow v. Islamic Republic of Iran*, 76 F. Supp. 2d 16 (D.D.C. 1999) [hereinafter *Flatow III*] (Lamberth, J.); *Flatow v. Islamic Republic of Iran*, 74 F. Supp. 2d 18 (D.D.C. 1999) [hereinafter *Flatow III*] (Lamberth, J.). To even begin to appreciate the difficulties plaintiffs face with respect to locating Iranian property in the United States, it is important to first understand the significance of the Iran-Hostage Crisis and its aftermath and, more specifically, the Algiers Accords, the bilateral executive agreement between Iran and the United States that brought about the settlement of the hostage crisis in 1981.

On November 14, 1979, ten days after the start of the Iran hostage crisis in which Iranian revolutionaries seized the United States embassy in Tehran and took most embassy personnel as hostages, President Carter exercised his powers under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701–1706, and "blocked all property and interests in property of the Government of Iran . . . subject to the jurisdiction of the United States." Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (Nov. 14, 1979); *see* Transactions Involving Property in Which Iran or Iranian Entities Have an Interest, 31 C.F.R. § 535.201; *see also Dames & Moore v. Regan*, 453 U.S. 654, 662–664 (1981) (discussing the Iran Hostage Crisis and President Carter's actions in response to the Iran hostage crisis pursuant to his authority under the IEEPA).

Approximately five months later, as the hostage crisis continued to wane on, President Carter severed diplomatic relations with Iran, and the State Department assumed custody of all Iran's diplomatic and consular property here in the United States. *See, e.g., Bennett*, 604 F.

Supp. 2d at 162–66 (discussing the termination of diplomatic relations with Iran and the State Department's assumption of custody over Iran's diplomatic and consular properties within the United States). The hostage crisis was finally resolved when Iran and the United States executed the Algiers Accords on January 19, 1981, and all hostages were released the following day, just moments after President Regan took office. *See* Iran-United States: Settlement of the Hostage Crisis, Jan. 18–20, 1981, 20 I.L.M. 223 [hereinafter Algiers Accords]; *Dames & Moore*, 453 U.S. at 664–65 (discussing the release of the hostages and terms of the Algiers Accords).

As part of the Algiers Accords, the United States agreed in principle to restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979." Algiers Accords, 20 I.L.M. at 223, 224. Additionally, the United States "commit[ted] itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction." Id. at 223–224. Iran and the United States further agreed to settle all litigation between the two governments, to include any outstanding litigation between the nationals of the two countries as of January, 19 1981. Id. at 223-224, 230-232. To this end, the Algiers Accords established an Iran-U.S. Claims Tribunal in the Hague to arbitrate any claims not settled within six moths. *Id.* at 226, 230–34. Consistent with these commitments to restore Iran's financial position, to facilitate the transfer of Iranian assets, and to have unresolved claims presented to the Iran-Claims Tribunal, the United States agreed to "bring about the transfer" of all Iranian assets held in this country by American banks, with one billion dollars in those assets set aside on account of the Central Bank of Algeria for the payment of any awards entered against Iran by the Claims Tribunal. Id. at 225–27. The Claims-Tribunal would also have jurisdiction to revolve disputes between Iran and the United States concerning each other's compliance with the Algiers Accords. Id. at 231.

To comply with the terms of the Algiers Accords, President Carter issued, and President Regan subsequently ratified, a series of Executive Orders in which the President unblocked the majority of Iran assets within the jurisdiction of the United States and directed United States banks to transfer all Iranian assets to the Federal Reserve Bank of New York, where they would be held or transferred to Iran as directed by the Secretary of the Treasury. *See Dames & Moore*, 453 U.S. at 665–66. Subsequent Executive Orders and treasury regulations have controlled the transfer of Iranian Assets consistent with the Algiers Accords. *See, e.g.*, Iranian Assets Control Regulations, 31 C.F.R. pt. 535. Thus, practically speaking, there are simply few assets within the United States that are available for plaintiffs to seize in satisfaction of their judgments under the FSIA terrorism exception.

In *Dames & Moore*, the Supreme Court upheld the validity of actions taken by both President Regan and Carter to settle the Iran Hostage Crisis through the implementation of the Algiers Accords. 453 U.S. 654. Specifically, the Court examined two issues. First, the Court addressed the validity of Executive Orders that nullified all attachments and similar encumbrances on Iranian property in the United States and directed the transfer of Iranian assets to the Federal Reserve Bank of New York for ultimate transfer back to Iran under the terms of the Algiers Accords. Second, the Court addressed Executive Orders that suspended claims pending against Iran in American courts and provided for those claims to be presented to Iran-United States Claims Tribunal for resolution through binding arbitration.

With respect to the termination of attachments on Iran's property and the transfer of Iran's assets, the Court found that Congress had provided in the IEEPA, 50 U.S.C. §§ 1701–1706, specific authorization for the President to take those actions. *Dames & Moore*, 453 U.S. at 674–75. Accordingly, the Court relied on the strong presumption of validity traditionally

accorded to such Executive action pursuant to a federal statute, as described in Justice Jackson's famous concurrence in *Youngstown Sheet & Tube Co. V. Sawyer*, 343 U.S. 579 (1952), and held that, in light of this "specific congressional authorization," it could not find that the power exercised by the President had exceeded the bounds of any powers afforded under the Constitution. *Dames & Moore*, 453 U.S. at 675. The Court observed: "A contrary ruling would mean that the Federal Government as a whole lacked the power exercised by the President, and that we are not prepared to say." *Id.* at 674 (citation omitted).

With respect to the suspension of claims, the Court ultimately upheld that action as well, but the Court's rationale was a bit more nuanced. While the Court could not identity a specific authorization from Congress, the Court did find that, over more than two centuries, Congress had either acquiesced in or implicitly approved of the settlement of claims of United States nationals through executive agreement. *See id.* at 675–687. Thus, in light of what the Court deemed as Congress' consent to the President's actions, the Court held that it could not say that the President's actions in suspending claims against Iran exceeded the President's powers. *Id.* at 686.<sup>11</sup>

<sup>&</sup>lt;sup>11</sup>As a leading case on the scope of Federal Power, particularly Executive Power, as exercised in the realm of foreign affairs and national security, and as a case concerning the Algiers Accords and Iran specifically, *Dames & Moore* remains particularly relevant with respect to many of the issues presented in the terrorism cases considered by this Court today. For example, by reaffirming the strong presumption of validity that should attach to actions expressly authorized by both political branches in the area of foreign affairs, *Dames & Moore* lends supports to this Court's ruling in Part E that § 1083(c) does not offend separation-of-powers principles relating to the independence of the judiciary. Additionally, *Dames & Moore* provides a historical perspective that helps to illustrate some of the unique challenges that plaintiffs in FSIA terrorism cases against Iran face as a consequence of executive actions implementing and honoring the terms of Algiers Accords.

More generally, then-Justice Rehnquist's discussion in *Dames & Moore* concerning our nation's rich history and tradition of the use of Executive authority to settle claims between - 31 -

What few assets of Iran that might be found within jurisdiction of the United States courts since the Algiers Accords are a subject to a dizzying array of statutory and regulatory authorities due in large part to the federal government's obligations under that bilateral executive agreement, but also in part because of the increasing hostility in the relationship between Iran and the United States in the wake of the hostage crisis and the continuous designation of Iran as a state sponsor of terrorism since 1984. In fact, much like the assets of other state sponsors of terrorism, most of Iran's known property or interests in property are blocked, i.e., frozen, or otherwise regulated under any number of United States sanctions programs.<sup>12</sup>

United States nationals and foreign sovereigns, *see* 453 U.S. at 678–687, provides an even broader historical perspective that this Court finds highly instructive for the purposes of today's opinion. Indeed, as Justice Rehnquist illustrated in his opinion for the Court, the exercise of Federal Power by the President to settle claims of U.S. nationals against foreign sovereigns—a long-standing practice to which the Congress has acquiesced and occasionally supported by legislation—has often proven to be the most effective way to ensure relief to United States Nationals aggrieved by foreign sovereigns. In Part K of this opinion, this Court relies on the time-honored practice of claims settlement by the Executive, as expressed in *Dames & Moore*, in support of this Court's call for reforms to help victims of Iran-sponsored terrorism find the relief they deserve.

<sup>12</sup> See Terrorist Assets Report, supra note 2, at 2, 10. The Office of Foreign Assets Control (OFAC) of the Treasury Department administers economic sanction programs relating to terrorists, terrorist organizations, and officially designated state sponsors of terrorism. Each year, OFAC publishes a report to Congress regarding assets in the United States that belong to terrorist nations and other terrorist actors. This annual report discusses both blocked and non-blocked assets of Iran, as well assets attributable to other state sponsors of terrorism. As such, the Terrorist Assets Report is a good reference point for individuals interested in understanding some of the tremendous difficulties terrorism victims face in their efforts to enforce judgments entered against Iran under the FSIA terrorism exception.

According to the CRS, the blocked assets of Iran in the United States "includes property that is blocked under the Iranian Assets Control Regulations, 31 C.F.R. pt. 535, since the hostage crisis was resolved in 1981. The property blocked in 1981 remains blocked in part because of pending claims before the Iran-U.S. Claims Tribunal." *Id.* at 10. Other blocked assets include Iran's diplomatic and consular properties here in the United States, as well as any proceeds from the leasing of those properties, which are now managed and maintained by the State Department's Office of Foreign Missions. *Id.* "Additionally, other sanction authorities designed

Beyond the imposition of economic sanctions and other regulatory controls, however, the inviolable doctrines of both foreign sovereign immunity and federal sovereign immunity have often precluded the attachment or execution of property that plaintiffs have identified as belonging to Iran. With respect to foreign sovereign immunity specifically, the FSIA itself has long forestalled plaintiffs' efforts to enforce judgments entered under § 1605(a)(7). This is largely because, much like foreign sovereigns are generally immune from civil suit under the FSIA, see § 1604, any property belonging to a foreign nation is similarly immune from attachment and execution by judgment creditors. See § 1609. The relevant exceptions to the general rule of immunity from the attachment or execution are listed in § 1610. Prior to the enactment of last year's reforms in the 2008 NDAA, however, these exceptions to the general rule of immunity for foreign government property were limited almost exclusively to property relating to the commercial activities of the foreign sovereign within the United States. See § 1610(a) and (b). Given the lack of formal relations between the United States and Iran, these provisions have been of little utility to the judgment creditors of Iran in FSIA terrorism cases. Thus, the FSIA facilitated a somewhat ironic and perverse outcome because on the one hand, in § 1605(a)(7), it created an opportunity for terrorism victims to sue Iran for money damages, while on the other hand, in §§ 1609 and 1610, it denied these victims the legal means to enforce their court judgments.<sup>13</sup>

to address national emergencies distinct from terrorism have also resulted in the blocking of assets in which the Government of Iran has an interest." *Id.* The report adds that Iran claims "miscellaneous blocked and non-blocked military property that it asserts was in the possession of private entities in the United States when the hostage crisis was resolved in 1981. *Id.* at 12. The United States disputes Iran's claims and the matters are pending before the Claims-Tribunal. *Id.* 

at 13.

<sup>&</sup>lt;sup>13</sup> Another challenge for plaintiffs looking to collect on their judgments in this context is - 33 -

In addition to the immunity from attachment or execution that the FSIA has long provided to foreign property, assets held within United States Treasury accounts that might otherwise be attributed to Iran are the property of the United States and are therefore exempt from attachment or execution by virtue of the federal government's sovereign immunity. *See Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255 (1999); *State of Arizona v. Bowsher*, 935 F.2d 332 (D.C. Cir. 1991). As the Supreme Court held in the seminal case of *Buchanan v. Alexander*, United States sovereign immunity is an extremely broad bar to jurisdiction that prevents creditors from attaching funds held by the United States treasury or its agents. 45 U.S. 20 (1846).

Because the federal government has assumed control over significant portions of what limited Iranian assets remain in the United States, plaintiffs' efforts to enforce judgments under the FSIA have often pitted victims of terrorism against the Executive Branch. Under successive presidential administrations, the Justice Department repeatedly moved to quash writs of attachment issued by judgment creditors of Iran. Two frequently discussed and well-documented examples concern the efforts of Stephen Flatow to enforce his civil judgment, which culminated in litigation against the United States in this Court. *See Flatow II*, 74 F. Supp. 2d 18;

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that many of the world's leading financial institutions are agencies or instrumentalities of foreign nations and are therefore immune from jurisdiction of the United States Courts under the FSIA. *See* §§ 1603–1604. In *Peterson*, for example, this Court recently quashed writs of attachment issued upon Japan Bank for International Cooperation, Bank of Japan, and the Export Import Bank of Korea. *See Peterson III*, 563 F. Supp. 2d 268. Plaintiffs alleged that these three foreign banks posses Iranian assets, but this Court found that all three banks are foreign state entities that qualify for immunity from jurisdiction under the FSIA. For the same reasons, this Court quashed numerous subpoenas that plaintiffs had issued to those financial institutions and denied plaintiffs' request for the appointment of a receivership for any and all assets of Iran held by those foreign banks.

Flatow III, 76 F. Supp. 2d 16. In both cases, this Court had to deny plaintiff relief and thereby granted the federal government's motion to quash.

In the first case, plaintiff issued writs that purported to attach credits held by the United States for the benefit of Iran, including more than 5 million dollars in the United States Treasury Judgment Fund, which had been earmarked to pay an award issued in Iran's favor by the Iran-United States Claims Tribunal. Flatow II, 74 F. Supp. at 20. Plaintiff pointed to the Iranian Assets Control Regulations in support of his argument that money in the Treasury Judgment Fund should be considered Iranian property that is potentially subject to attachment and execution under the FSIA, 1610. See id. (citing 31 C.F.R. § 535.311 (1999)). In rejecting plaintiff's argument, this Court relied on Buchanan and Blue Fox, and held that funds in the United States Treasury—regardless of whether those funds have been set aside to pay a debt to Iran—remain immune from attachment by virtue of United States sovereign immunity. *Id.* at 21. "In other words, funds held in the U.S. Treasury—even though set aside or 'earmarked' for a specific purpose—remain the property of the United States until the government elects to pay them to who they are owed." Id. Accordingly, as the United States had not waived its sovereign immunity with respect to those funds that had been earmarked to pay a Tribunal Award or other debts to Iran, that money remained exempt from attachment or execution by virtue of federal sovereign immunity. Id. at 23; see also Weinstein, 274 F. Supp. 2d at 58 (holding that funds allegedly owed to Iran in the Treasury's Foreign Military Sales (FMS) Program are immune from attachment by virtue of federal sovereign immunity).

In the second case, plaintiff issued writs of attachment upon three parcels of real estate owned by Iran that once served as the Iranian Embassy and as residences and offices for Iran's diplomatic personnel. *Flatow III*, 76 F. Supp. 2d at 18. Additionally, plaintiff issued writs of

attachment upon two bank accounts that contained funds generated by the State Department's lease of Iran's diplomatic properties. *Id.* The first of the two accounts was used to pay for the maintenance and repair of Iran's properties. *Id.* at 19. The second account contained all the profits generated as a result of the lease of Iran's foreign mission properties. *Id.* 

The United States promptly intervened and moved to quash the writs, arguing that real property and the related banks accounts were immune from attachment under the Foreign Missions Act, the FSIA, the IEEPA, the Vienna Convention on Diplomatic Relations, and Article II of the U.S. Constitution. *Id.* at 19. The plaintiffs countered that because Iran's former embassy properties were being managed and leased out to tenets by the Department of the State under the auspices of the Foreign Missions Act, 22 U.S.C. §§ 4301–4313, the property was being used for a "commercial activity" and therefore satisfied the requirements for attachment under § 1610(a)(7) of the FSIA. *See Flatow III*, 76 F. Supp. 2d. at 21.

Without reaching any of the more fundamental arguments raised by the government's motion to quash, this Court held that the leasing of Iran's real property by the United States did not qualify as a commercial activity in part because the United States' action in taking custody of Iran's property under the authority of the Foreign Missions Act "was decidedly sovereign in nature." *Id.* at 23; *see also Bennett*, 604 F. Supp. 2d at 169 (relying on *Flatow* to grant United States' motion to quash writs of attachment recently issued on Iran's foreign mission properties). For similar reasons, the Court found that the bank account that was used by the State Department's Office of Foreign Missions (OFM) for the maintenance and repair of Iran's real property was also immune from attachment because the funds within that account were expended by OFM in exercise of its statutory prerogative to provide for the upkeep properties that once housed Iran's foreign mission. *Flatow III*, at 24. This Court also found that the other account at

issue, which simply contained the profits earned on the lease of Iran's property, was immune from attachment as a result of federal sovereign immunity. *Id*.

In some frustration, this Court observed in *Flatow* that President Clinton's Administration, including President Clinton himself, had both publicly and privately expressed support for the victims of terrorism and for the plaintiffs in these terrorism cases specifically, and yet the Clinton Justice Department repeatedly fought efforts by these victims to enforce court judgments under the FSIA. See Flatow II, 74 F. Supp. 2d at 26; Flatow III, 76 F. Supp. 2d at 19– 20. Moreover, as will be discussed below, President Clinton twice blocked reforms to the FSIA that would have subjected Iran's blocked assets to attachment and execution. See infra pp. 39-40; SUITS AGAINST TERRORIST STATES, supra note 4, at 10–12 (discussing President's exercise of waiver authority with respect to provisions that would have permitted attachment and execution upon frozen assets of state sponsors of terrorism); see also Flatow, 76 F. Supp. 2d 16 (noting President's first exercise of waiver in the interest of national security of provision that would have permitted attachment of blocked assets). In a letter to the Washington Post cited by this Court in two of its published decisions, Stephen Flatow documented his meetings with President Clinton, including private meetings and phone calls, as well as his meetings with other high ranking members of the Clinton Administration. See Stephen Flatow, In This Case, I Can't Be Diplomatic; I Lost a Child to Terrorism; Now I'm Losing U.S. Support, WASH. POST, Nov. 7, 1999, at B2. Mr. Flatow explained how he grew tremendously frustrated in his long pursuit of justice in which he received statements of support from the Executive Branch, as well as personal assurances of assistance, only to later find that the administration proved to be the most formidable adversary in his efforts to execute judgment upon the blocked assets of Iran. In

reflecting on his experiences some years later, Stephen Flatow referred to his litigation against the United States "as a real cat fight." Tucker, *Pain and Suffering*, *supra*.

As this Court observed how many plaintiffs struggled to enforce their court judgments in FSIA terrorism cases against Iran, this Court began to refer these judgments as "Pyrrhic Victories." *Eisenfeld*, 172 F. Supp. 2d at 9; *Flatow III*, 76 F. Supp. 2d at 27. Moreover, this Court expressed dismay over the fact that the rule of law was being frustrated in these actions. *Eisenfeld*, 172 F. Supp. 2d at 9. Allowing plaintiffs to go forward with suits under § 1605(a)(7) while not freeing up Iran's assets to satisfy those judgments under § 1610, or through the release of blocked assets under United States' control, was a quintessential example of the federal government promising with one hand what it takes away with the other. In fact, it is not uncommon for plaintiffs to receive mixed signals from Congress and the President in this highly-charged political context. *See, e.g., Roeder*, 195 F. Supp. 2d at 145 (observing that the political branches of the Government "should not with one hand express support for the plaintiffs and with the other leave it to this Court to play the role of the messenger of bad news").

In view of the challenges that plaintiffs encountered in their efforts to execute judgments against the assets of state sponsors of terrorism here in the United States, Congress did make a number of efforts on behalf of the victims of terrorism to free up blocked assets for judgments under § 1605(a)(7). The first law enacted as part of this effort to free up assets of state sponsors of terrorism was included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. Pub. L. No. 105-277, div. A, tit. I, § 117(a), 112 Stat. 2681-0, 2681-491 (codified at § 1610(f)(1)(A)). That measure created a new exception—§ 1610(f)—which allowed for the first time attachment and execution against blocked assets of state sponsors of

terrorism.<sup>14</sup> When Congress passed this measure, however, it also provided that the President could waive the provision "in the interest of national security." § 1610(f)(3). Upon signing the bill into law, President Clinton exercised that waiver authority. *See* Pres. Determ. No. 99-1, 63 Fed. Reg. 59,201 (Oct. 21, 1998). In doing so, the President stated:

Absent my authority to waive section 117's attachment provision, it would effectively eliminate the use of blocked assets of terrorist States in the national security interests of the United States, including denying an important source of leverage. In addition, section 117 could seriously impair our ability to enter into global claims settlements that are fair to all U.S. claimants, and could result in U.S. taxpayer liability in the event of a contrary claims tribunal judgment. To the extent possible, I shall construe section 117 in a manner consistent with my constitutional authority and with U.S. international legal obligations, and for the above reasons, I have exercised the waiver authority in the in the national security interest of the United States.

Statement on Signing the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, 2 Pub. Papers 1843, 1847 (Oct. 23, 1998). Thus, § 1610(f)(1)(A)—which would have broadly subjected Iranian assets to attachment and execution—was rendered a nullity. 15

<sup>&</sup>lt;sup>14</sup> Section 1610(f)(1)(A) of the FSIA has not changed in substance since its enactment in 1998. It was amended slightly by § 1083 of the 2008 NDAA in order to account for the repeal of § 1605(a)(7) and enactment of § 1605A. The exception now reads as follows:

Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), 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.C. 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), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

<sup>&</sup>lt;sup>15</sup> The Supreme Court has long recognized the important role that blocked assets can play in a President's efforts to manage a foreign policy crisis. *See Dames & Moore v. Regan*, 453 - 39 -

The following term, Congress passed the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), in which Congress again tried to subject blocked assets of state sponsors of terrorism to attachment of execution. Pub. L. No. 106-386, § 2002, 114 Stat. 1464, 1541. Specifically, Congress aimed in the VTVPA to resurrect § 1610(f)(1)(A) of the FSIA and thus repealed the waiver authority that was exercised by President Clinton under § 117(d) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. *See* § 2002(f)(2). Oddly enough, however, Congress replaced that earlier waiver provision with a new, and nearly identical provision, that again granted the President the authority to waive § 1610(f)(1)(A) "in the interest of national security." § 2002(f)(1)(B). Upon singing the VTVPA into law, the President again exercised the waiver authority, as granted by Congress, which again rendered § 1610 a nullity. Thus, § 1610(f) remains inapplicable in cases under the FSIA terrorism exception.

More significantly, the VTVPA also directed the Secretary of Treasury to pay the compensatory damages awarded in court judgments to plaintiffs in a limited number of FSIA terrorism cases against Iran or Cuba. § 2002(a). With respect to the payment of judgments against Iran specifically, the VTVPA directed the Secretary of Treasury to make those payments out of the rental proceeds that had been accrued as a result of the federal government's lease of

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U.S. at 673 (1980) (relying on *Propper v. Clark*, 337 U.S. 472, 493 (1949)). In *Dames & Moore*, the Court emphasized that blocked assets "serve as a 'bargaining chip' to be used when dealing with a hostile country." 453 U.S. at 673. Notably, the Court also observed how subjecting frozen assets "to attachments, garnishments, and similar encumbrances" would enable "individual claimants throughout the country to minimize or wholly eliminate this 'bargaining chip.'" *Id.* at 673. The efforts by Congress to subject the blocked assets of terrorists states to attachment and execution has been one of the most controversial issues pertaining to the FSIA terrorism exception. The tug of war between Congress and the President over this thorny issue serves as a great example of the ways in which the FSIA terrorism exception and its related enactments constitute a "delicate legislative compromise." *Price*, 294 F.3d at 86.

Iranian diplomatic and consular property and from appropriated funds "not to exceed the total of the amount in the Iran Foreign Military Sales Program account within the Foreign Military Sales Fund." § 2002(b). 16 Once an eligible plaintiff accepts a payment of compensatory damages from the United States Treasury on a judgment against Iran, the plaintiff's right to pursue that claim is "fully subrogated" to the United States. *Id.* As a result of the VTVPA, precisely ten cases against Iran qualified for payments from the United States Treasury. See TERRORIST ASSETS REPORT, supra note 2, at 12–15, app. A (discussing VTVPA program for payment of compensatory damage in judgments entered against Iran and Cuba and listing cases). Flatow was among the cases that qualified, and Stephen Flatow, along with plaintiffs in all of the nine other qualifying cases, opted to have their compensatory damages paid by United States. See id.; see also Tucker, Pain and Suffering, supra (discussing Stephen Flatow's acceptance of payment of compensatory damages from the United States Treasury and his ongoing efforts to enforce the punitive damages portion of his judgment against Iran). Subsequent legal enactments have expanded the number of cases with judgments against Iran that are eligible for payments from the United States Treasury. See Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, § 686, 116 Stat. 1350, 1411 (2002); Terrorism Risk Insurance Act of 2002 (TIRA), Pub. L. No. 107-297, § 201, 116 Stat. 2322, 2337-39.

<sup>&</sup>lt;sup>16</sup> The Foreign Military Sales (FMS) Program account for Iran is a United States Treasury account, subject to federal sovereign immunity, which contains funds relating to military transactions with Iran that pre-date the Iran-hostage crisis and which are currently the subject of ongoing litigation before the Iran-U.S. Claims Tribunal. *See Weinstein*, 274 F. Supp. 2d (discussing the FMS Program account and holding that federal sovereign immunity bars attachment); TERRORIST ASSETS REPORT, *supra* note 2, at 16–17 (discussing both the VTVPA and the FMS Program account).

In the TRIA, Congress not only expanded the class of plaintiffs eligible for payment from the United States Department of Treasury under the VTVPA, but, even more fundamentally, Congress finally succeeded in subjecting the assets of state sponsors of terrorism to attachment and execution in satisfaction of judgments under § 1605(a)(7). See § 201. The TRIA provides that "[n]otwithstanding any other provision of law," the blocked assets of a terrorist state are subject to attachment or execution to the extent of any compensatory damages awarded against that state under the FSIA terrorism exception. Id. The TRIA does, however, continue to exempt diplomatic and consular property from attachment and execution under § 1610. See § 201(d)(2)(B)(ii). Nonetheless, the TRIA has opened a wide range of blocked assets to attachment and execution by the judgment creditors of state sponsors of terrorism. Thus, the TRIA appears to represent something of a victory for these terrorism victims—whose interests have been most vigorously advanced by members of Congress—over the longstanding objections of the Executive Branch.

In the case of Iran, however, the simple fact remains that very few blocked assets exist. In fact, according to OFAC's latest report, there are only 16.8 million dollars in blocked assets relating to Iran. TERRORIST ASSETS REPORT, *supra* note 2, at 14, tbl. 1. This amount is inconsequential—a mere drop in the bucket—when compared to the staggering 9.6 billion dollars in outstanding judgments entered against Iran in terrorism cases as of August 2008, which is the last time the Congressional Research Service compiled data on this issue. *Id.* at 75, app. B, tbl. B-1. The amount of Iranian non-blocked assets within the United States, as reported to OFAC, is similarly inconsequential in comparison to Iran's liability under the FSIA terrorism

exception. According to OFAC, the amount of non-blocked Iranian assets is merely 28 million dollars. *Id.* at 15, tbl. 3.<sup>17</sup>

The billions of dollars in liability that Iran now faces is likely to increase tremendously as a result of the new federal cause of action under § 1605A, which now includes punitive damages. Thus, Congress has continued to fuel expectations in these actions by broadly subjecting Iran to suit for sponsorship of terrorism while simultaneously ignoring the fact that the prospects for recovery are virtually nonexistent. This fundamental problem is an issue that the Court will explore later in this opinion in Part K below.

<sup>&</sup>lt;sup>17</sup> In fairness, it is important to emphasize here that "there is no requirement for U.S. persons to report non-blocked assets to OFAC." TERRORIST ASSETS REPORT, *supra* note 2, at 10. Thus, arguably, there could be any number of undisclosed, non-blocked Iranian assets within the jurisdiction of the United States courts. In light of the lack of formal relations between Iran and the United States, however, the prospect of large sums of Iranian assets being located within the jurisdiction of the federal courts seems remote.

# SECTION 1083 OF THE 2008 NDAA AND THE CREATION OF A NEW TERRORISM EXCEPTION, SECTION 1605A

In light of the significant setbacks that plaintiffs experienced in actions under § 1605(a)(7), Congress implemented a number of major reforms last year. Section 1083 of National Defense Appropriations Act (NDAA) completely repeals § 1605(a)(7) and replaces that provision with a new statute, § 1605A. As noted above, it is important to keep in mind that the exception to foreign sovereign immunity under the new provision, § 1605A, is identical to that which is contained in § 1605(a)(7), but this new law is more comprehensive and more favorable to plaintiffs because it adds a broad array of substantive rights and remedies that simply were not available in actions under § 1605(a)(7).

As noted above, § 1605A accomplishes four basic objectives. This new terrorism statute (1) furnishes a cause of action against state sponsors of terrorism; (2) makes punitive damages available in those actions; (3) authorizes compensation for special masters; and (4) implements new measures designed to facilitate the enforcement of judgments. Each of these four key aspects of § 1605A will now be discussed in turn.

#### 1. New Federal Cause of Action

With respect to the first objective, the new law now expressly provides that designated state sponsors of terrorism may be subject to a federal cause of action for money damages if those terrorist states cause or otherwise provide material support for an act of terrorism that results in the death or injury of a United States citizen or national. *See* § 1605A(c). This new federal right of action for money damages abrogates *Cicippio-Puleo*, 353 F.3d 1024, and is a

crucial change in the law for hundreds of FSIA terrorism plaintiffs who were not able to rely on state tort law to create a cause of action against Iran previously.

Thanks to the enactment of § 1605A, the inconsistent and varied result that was reached in *Peterson* and in similar cases under § 1605(a)(7) will be avoided in actions going forward under the new law. Courts can now work from a single federal cause of action that will ensure a greater degrees of fairness to FSIA terrorism plaintiffs while furnishing a level of consistency and uniformity that is critical in matters of foreign relations.<sup>18</sup>

The new cause of action included with the new terrorism exception § 1605A has a new and expanded statute of limitations. Specifically, § 1605A(b) provides:

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 [the Flatow Amendment] not later than the later of—

- (1) 10 years after April 24, 1996; or
- (2) 10 years after the date on which the cause of action arose.

§ 1605A(b) (emphasis added). The prior statute of limitations applicable to actions under § 1605(a)(7) was simply 10 years from the date the cause of action arose (leading to a cut-off date in April 2006), subject, in some instances, to equitable tolling. *See* § 1605(f) (repealed by § 1083(b)). Accordingly, many new actions that might have been barred by the statute of limitations for § 1605(a)(7) may now move forward under § 1605A.

<sup>&</sup>lt;sup>18</sup> Unlike § 1605(a)(7), the Flatow Amendment, § 1605 note, was not repealed by § 1083 of the 2008 NDAA. Thus, technically speaking, the Flatow Amendment remains on the books even though it was rendered a virtual nullity by the *Cicippio-Puleo* decision. Moreover, to the extent that the Flatow Amendment might have any operative effect, the provision is now largely superfluous in light of the private right of action contained in the new terrorism exception, § 1605A.

As § 1605A establishes a new federal cause of action against state sponsors of terrorism, this Court will have to determine what basic principles of law should be applied to resolve claims sounding in tort pursuant to this new private right of action under the FSIA. This is an important issue that many judges of this Court grappled with through the application of the Flatow Amendment in FSIA terrorism cases that reached final judgments prior to the Circuit's ruling in *Cicippio-Puleo*. At that time, judges of this Court frequently referred to "federal common law" as providing the rule of decision for claims under the FSIA. *See, e.g., Stethem v. Islamic Republic of Iran*, 201 F. Supp. 2d 78, 89 (D.D.C. 2002) (Jackson, J.); *Wagner v. Islamic Republic of Iran*, 172 F. Supp. 2d 128, 134 (D.D.C. 2001) (Jackson, J.); *Flatow I*, 999 F. Supp. 1 at 15.

In *Bettis v. Islamic Republic of Iran*, however, which one of the last FSIA terrorism cases decided by the Circuit prior to *Cicippio-Puleo*, the Court of Appeals cautioned trial judges against the use of the term "federal common law." 315 F.3d 325, 333 (D.C. Cir. 2003). The appeal in *Bettis* involved claims for intentional infliction of emotional distress. In examining those claims, the Court warned that the Flatow Amendment did not "authorize federal courts to fashion a complete body of federal law" to address the claims of plaintiffs under that statute. *Id.* (*quoting Burks v. Lasker*, 441 U.S. 471, 476 (1979)). Instead of relying on "federal common law," the Court looked to § 46 of the Restatement (Second) of Torts, as well as a number of

<sup>&</sup>lt;sup>19</sup> See, e.g., Jenco v. Islamic Republic of Iran, 154 F. Supp. 2d 27 (D.D.C. 2001) (Lambeth, J.) (relying on tort law treatises, including the Restatement (Second) of Torts, as well as leading state court decisions to resolve claims of battery, assault, false imprisonment, and intentional infliction of emotional distress); Sutherland v. Islamic Republic of Iran, 151 F. Supp. 2d 27 (D.D.C. 2001) (Lamberth, J.) (applying the Restatement (Second) of Torts to resolve claims of battery, assault, false imprisonment, and intentional infliction of emotional distress); Flatow I, 999 F. Supp. 1 (applying common law standards for wrongful death, survival pain and suffering, and solatium).

secondary source compilations, such as legal encyclopedias, law reviews, and survey of leading state tort law cases. *See id.* at 333–338.

Admittedly, *Bettis* was decided under the Flatow Amendment, but this Court finds nonetheless that *Bettis* should still control now that Congress has clearly established a private right of action against a foreign state sponsor of terrorism for "personal injury or death" in those cases in which terrorism exception to foreign sovereign immunity applies. § 1605A(c). The questions confronted relating to sources of common law for claims sounding in tort under the Flatow Amendment, are, in substance, the same as those that will now confront this Court as result of the new private right of action in § 1605A(c). Thus, the question of what substantive tort law norms should control in these actions is an issue this Court will have to continue to explore in actions under § 1605A, as it once did in actions under the Flatow Amendment prior to *Cicippio-Puleo*.<sup>20</sup>

Consistent with the approach this Court initially took in *Flatow*, some commentators - 47 -

<sup>&</sup>lt;sup>20</sup> In cautioning against the use of federal common law, the Court of Appeals in *Bettis* relied heavily on § 1606 of the FSIA. That provision provides in relevant part: "As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or section 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." The Court reasoned that § 1606 "in effect instructs federal judges to find relevant law, not to make it." 315 F.3d at 333. At this juncture, however, it is unclear whether § 1606 should even apply in cases that rely on the new federal cause of action in § 1605A. For starters, § 1606 by its plain terms applies only to sections § 1605 and § 1607 of the FSIA. Moreover, § 1606 conflicts with § 1605A because it provides that punitive damages are not available in actions against foreign states, whereas § 1605A expressly authorizes punitive damages in cases against state sponsors of terrorism. Notably, Congress did not make any changes or updates to § 1606 when it repealed § 1605(a)(7) in the 2008 NDAA, and yet Congress did include a lengthy list of "Conforming Amendments" in § 1083(b) to ensure that both § 1605A and other reforms relating to terrorism actions, such as § 1610(g), were properly integrated into the larger statutory scheme of the FSIA. Thus, this Court can reasonably infer that Congress' failure to update § 1606 to include a reference to § 1605A evinces Congress intent that those standards pertaining to the scope of foreign state liability in § 1606 do not apply in actions against state sponsors of terrorism under § 1605A.

As this Court views *Bettis* as the as the controlling precedent with respect to application of tort law principles to in cases under the FSIA terrorism exception, this Court will therefore look to that decision as the starting point for the analysis of substantive claims under § 1605A. Consistent with *Bettis*, this Court will rely on well-established principles of law, such as those found in Restatement (Second) of Torts and other leading treatises, as well as those principles that have been adopted by the majority of state jurisdictions. Today, this Court will issue a separate opinion in the consolidated action of *Heiser v. Islamic Republic of Iran*, No. 00-CV-23290-RCL (D.D.C.), a case concerning the Khobar Towers bombing, in which this Court analyzes new claims for compensatory damages under § 1605A. Plaintiffs looking for more guidance regarding the standards that this Court will apply to claims under § 1605A should review that decision in conjunction with this omnibus opinion.

#### 2. Punitive Damages

The second key reform found in § 1605A is the availability of punitive damages. *See* § 1605A(c). Consequently, the majority of the of the plaintiffs in prior actions under § 1605(a)(7) who were unable to claim punitive damages following the *Cicippio-Puleo* decision will now have an opportunity to do so. The prospect of large punitive damage awards may help

have urged courts to fashion federal common law standards as the substantive rules of decision in cases under the FSIA terrorism exception. *See Deutsch*, *supra*, at 891 (criticizing *Bettis* and urging the adoption of federal common law standards to resolve terrorism claims under the FSIA terrorism exception). Ms. Deutsch argues that federal common law standards are needed in this area largely because of the unique nature of claims involving acts of international terrorism, the primacy of the federal interest in terrorism cases, and the potential inconsistencies that may result from reliance on state law standards. In the absence of additional guidance from the Court of Appeals on this issue, this Court is bound to follow the admonishment in *Bettis* and will therefore eschew any reliance on "federal common law."

to deter Iran and other states sponsors of terrorism from their support of international terrorist organizations.

Through the separate opinion and judgment entered in *Heiser*, this Court awards plaintiffs in that action punitive damages under § 1605A(c)). In doing so, the Court reaffirms the principles first articulated in *Flatow* with respect to awards of punitive damages against Iran. Other plaintiffs who now seek punitive damages under § 1605A should review this Court's discussion of punitive damages in *Flatow* and look to the opinion issued today in *Heiser*.

## 3. Compensation for Special Masters

Over the years, a number of attorneys have been appointed by this Court to serve as special masters to assist the Court in determining money damage awards for the many individual plaintiffs and estates represented on this Court's sizable docket of civil actions against Iran. The work completed by these officers of the Court is extraordinarily tedious and time-consuming, and, until recently, the special masters were not entitled to any compensation for their efforts. In last year's NDAA, however, Congress directed that special masters in cases against designated states sponsors of terrorism should receive compensation for their work, and thus the new terrorism exception now provides that special masters should be reimbursed for their work from the Attorney General's Victims of Crime Fund. *See* § 1605A(e).

#### 4. More Robust Provisions for the Execution of Civil Judgments

Like many prior legislative enactments relating to civil suits against designated state sponsors of terrorism, the new terrorism exception in combination with certain other reforms achieved through § 1083 takes aim at what is perhaps the most fundamental problem confronting these actions: the inability of plaintiffs to execute their civil judgments against Iran. As noted above, *supra*, most plaintiffs in FSIA terrorism cases have been thwarted in their efforts to

execute civil judgments in part because there are few Iranian Government assets within the jurisdiction of the United States Courts. What little that does exist is generally immune from attachment or execution under § 1609. Additionally, in the past plaintiffs have encountered the problem of United States sovereign immunity because most property or interests in property within the United States that might be attributed to state sponsors of terrorism are subject to federal regulatory control, or are, in a number of instances, within the possession of the federal government. *See, e.g., Weinstein,* 274 F. Supp. 2d 53.

In an apparent effort to overcome some of the challenges relating to the execution of judgments, § 1605A entitles plaintiffs to what are in effect automatic pre-judgment liens on property belonging to a designated state sponsor of terrorism.<sup>21</sup> In addition to these new pre-judgment attachment procedures, any actions filed or otherwise maintained under § 1605A may benefit from certain reforms to § 1610, which is the section of the FSIA that prescribes the limited circumstances in which the property of a foreign state may be subject to attachment or execution upon a civil judgment. Specifically, § 1083 of the 2008 NDAA adds to § 1610 new provisions that are plainly intended to limit the application of foreign sovereign immunity or

<sup>&</sup>lt;sup>21</sup> The procedure in § 1605A(g) entitles plaintiffs to file notices of lis pendens. Generally speaking, a notice of lis pendens concerns specific property belonging to a party involved in civil litigation. *See generally*, 51 AM. Jur. 2D *Lis Pendens* § 2. The lis pendens notice serves to alert third parties that any rights concerning the noticed property are subject to the outcome of the civil litigation. *See generally id.* While it is not technically a lien, the legal effect of a properly filed notice of lis pendens is that any third-party purchaser who receives title to the noticed property is bound by the outcome of the civil case, without any additional rights to that property. *See generally id.* Lis pendens is a creature of state law that has never before been available through the federal courts. Consistent with the new statutory entitlement contained in § 1605A(g), this Court recently approved a form and procedures for plaintiffs to file notices of lis pendens in the consolidated action of *Heiser v. the Islamic Republic of Iran*, No. 00-CV-2329-RCL (D.D.C.) and *Campbell v. Islamic Republic of Iran*, 01-CV-2104-RCL (D.D.C.). *See Heiser*, No. 00-CV-2329-RCL (D.D.C.), Dk. ## 144–145; *Campbell*, 01-CV-2104-RCL (D.D.C.), Dk. ## 132, 135.

United States sovereign immunity as defenses to attachment or execution with respect to property belonging to designated states sponsors of terrorism. *See* § 1083(b) ("Conforming Amendments") (codified at § 1610(g)). The full implications of § 1610(g) are far from clear. Only time will tell whether § 1610(g) will enable plaintiffs going forward with actions under § 1605A to experience greater success in executing civil judgments against Iranian assets. Given the scarcity of assets and the difficulty of locating what assets might be available—it seems unlikely that this provision will be of great utility to plaintiffs. Suffice it to note, however, these latest additions to the FSIA demonstrate that Congress remains focused on eliminating those barriers that have made it nearly impossible for plaintiffs in these actions to execute civil judgments against Iran or other state sponsors of terrorism.

# RETROACTIVE APPLICATION OF SECTION 1605A TO CASES PREVIOUSLY FILED UNDER SECTION 1605(a)(7)

Today the Court must determine whether the new terrorism exception should be applied retroactively to reach cases that were originally filed under § 1605(a)(7) prior to enactment of the new statute, § 1605A. In this instance, Congress has in § 1083(c) of the 2008 NDAA provided guidance with respect to the retroactive reach of this new provision of law, and so the Court's analysis begins with that statutory guidance. See, e.g., Hamdan v. Rumsfeld, 548 U.S. 557, 575–584 (2006) (applying "ordinary principles of statutory construction" to determine whether the Detainee Treatment Act should operate retroactively); Landgraf, 511 U.S. at 271 (noting that when "Congress has expressly prescribed the statute's proper reach[,] there is no need to resort to judicial default rules"). Section § 1083 contains a number of subsections, but two are especially critical for purposes of this Court's analysis. These are subsections (c)(2) and (c)(3), which set forth the qualifying conditions and procedures that must be fulfilled before a prior action under § 1605(a)(7) may be eligible to proceed under the new terrorism law, § 1605A.

Subsection (c)(2) refers to "Prior Actions," but this subsection actually concerns a relatively narrow category of prior cases, all of which are probably best characterized as pending cases. Pending in this instance means cases that were awaiting a disposition by a court at the time of the 2008 NDAA's enactment. This includes actions that were on direct appeal and those with unresolved postjudgment motions.

The next subsection, (c)(3), referring to "Related Actions," reaches a far broader category of cases, including many that simply were not pending with the courts in any form at the time the 2008 NDAA became law. This is because the plain terms of the related-actions provisions in

subsection (c)(3) specify that if an action was timely commenced under § 1605(a)(7), then "any other action arising out of the same act or incident may be brought under section 1605A" § 1083(c)(3) (emphasis added). Thus, the heading of § 1083(c)—"Application to Pending Cases"—is something of a misnomer because, in reality, § 1083(c) may encompass cases that are not pending at all—meaning prior actions that have since reached final judgment and are no longer before the courts in any form.

Additionally, there are two other aspects of § 1083(c) that are critical to today's analysis. First, the statute sets up limitation periods or filing deadlines for plaintiffs desiring to take advantage of the newly enacted terrorism statute. *See* § 1083(c)(2)(C), (c)(3). Second, in a section of the statute referred to as "Defense Waived," the enactment provides that the defenses of res judicata and collateral estoppel are waived to the extent that such defenses are based on a claim that was presented in a prior FSIA terrorism case under § 1605(a)(7). *See* § 1083(c)(2)(B).

As each of these provisions within § 1083(c) are central to today's decision, the Court will now review the specifics of each of these statutory mandates in turn.

## 1. Section 1083(c)(2) – "Prior Actions"

In accordance with the procedures in § 1083(c)(2), a "prior action" that was timely commenced under either § 1605(a)(7) or the Flatow Amendment is eligible to proceed under the new statute, § 1605A, if three straightforward criteria are satisfied. Specifically, the plaintiff must demonstrate the prior action: (1) relied on § 1605(a)(7) or the Flatow Amendment as creating a cause of action, (2) has "been adversely affected on the grounds that either or both of those provisions failed to create a cause of action against the state," and (3) as of the date of the enactment of the 2008 NDAA, the case was "before the court[] in any form, including on appeal or motion under Rule 60(b) of the Federal Rules of Civil Procedure." § 1083(c)(2)(A)(ii)–(iv).

If these requirements are met, then "the action shall, on motion made by plaintiffs to the United States district court where the action was initially brought, or judgment in the action was originally entered, be given effect as if the action had originally been filed under section 1605A(c) of title 28, United States Code." § 1083(c)(2)(A)(iv). This subsection also contemplates that the plaintiff may chose to "refile" his action, rather than make a motion. *See* § 1083(c)(2)(C).

In another action before this Court, Syria argued recently that plaintiffs who filed actions under § 1605(a)(7) following the Court of Appeals' decision in Cicippio-Puleo, or after June 16, 2004, are precluded from taking advantage of § 1083(c)(2) because, as Syria reads the statute, such plaintiffs could not have reasonably relied on § 1605(a)(7) or the Flatow Amendment, as Cicippio-Puleo made plain that those provisions do not furnish a cause of action against a foreign state. See Gates v. Syrian Arab Republic, No. 06-CV-1500-RMC, 2009 WL 2562660 (D.D.C. Aug. 20, 2009) (Collyer, J.). In this Court's view, however, such an interpretation of § 1083(c)(2)(A) is a crabbed reading of the statute, which, if accepted, would frustrate the broad remedial purposes Congress sought to achieve through the enactment of § 1083. In fact, the House Conference Report that accompanied § 1083 strongly suggests that Congress envisioned an expansive retroactive reach for § 1605A as a means to overcome the many setbacks plaintiffs encountered under § 1605(a)(7) and the Flatow Amendment. That report states: "The provision would allow any case previously brought under the state sponsor of terrorism exception to the FSIA under the section 1605(a)(7), or under section 101(c) of Public Law 101-208 [the Flatow Amendment], and which is still before a court, to be refiled as if the original claim has been filed under the provisions of this section." H.R. REP. No. 110-477, at 1001 (2007) (Conf. Rep.). Accordingly, this Court construes § 1083(c)(2)(A) broadly, consistent with the remedial

purposes of the new anti-terrorism enactment, to include actions adversely impacted by *Cicippio-Puleo*, regardless of when those actions were filed. For similar reasons, this Court reads the requirement that the prior actions must be adversely impacted on the grounds that § 1605(a)(7) and the Flatow Amendment failed to establish a cause of action against a foreign state to include those instances in which plaintiffs failed to recover punitive damages, a critical component of these terrorism actions.

### 2. Section 1083(c)(3) – "Related Actions"

Section 1083(c)(3), the provision concerning "related actions" offers another method by which certain prior actions may be filed with the Court as new actions under § 1605A.

Specifically, § 1083(c)(3) provides that "[i]f an action arising out of an act or incident has been timely commenced under section 1605(a)(7)..., any other action arising out of the same act or incident may be brought under section 1605A." As this Court has recognized in prior decisions, § 1083(c)(3) enables plaintiffs who achieved final judgments under the former terrorism exception, § 1605(a)(7), to pursue new federal causes of action under § 1605A based on the same prior act or incident. In *Bodoff*, for example, this Court determined that plaintiff was not entitled to relief under § 1083(c)(2) because the case was not before the court in any form, but in reaching that conclusion, this Court emphasized that plaintiff had the right to file a new action, pursuant to § 1083(c)(3). *See* 567 F. Supp. 2d 141, 142–43 (D.D.C. 2008) (Lamberth, C.J.).

Thus, § 1083(c)(3) offers an avenue of relief in those cases that reached final judgment some years prior to the enactment of the 2008 NDAA and therefore are less likely to be "before the court[] in any form," as required for treatment on motion under § 1083(c)(2).

Additionally, § 1083(c) allows plaintiffs in a prior action under § 1605(a)(7) to file an action under the new law, § 1605A, as a related case to any other pending action that was timely

commenced under § 1605(a)(7) and based on the same terrorist act or incident. In other words, plaintiffs' right to proceed under the new section is not tied exclusively to their prior action; plaintiffs may identify other cases that are pending under § 1605(a)(7) that are based on the same act or incident.

# 3. The 60-Day Rule – Filing Deadline for Cases Based on Prior Actions Under Section 1605(a)(7)

No matter how plaintiffs wish to qualify their prior actions under the new terrorism exception, § 1605A—that is, regardless of whether they seek to do so pursuant to § 1083(c)(2) or whether they opt to file a new action pursuant § 1083(c)(3)—plaintiffs have only a limited window of opportunity to elect the benefits of the new statute. Plaintiffs who hope to gain the benefits of the new law by filing a motion or by refiling pursuant to § 1083(c)(2), must file their motions "within the 60-day period beginning on the date of the enactment of the [2008 NDAA]," or no later than March 28, 2008. § 1083(c)(2)(c). Plaintiffs who wish to file a new action as a related case"—as related to either their own prior action under § 1605(a)(7) or some other case based on the same act or incident—pursuant to § 1083(c)(3), must do so no later than 60 days after the entry of judgment in the original action or within 60 days after the date of the enactment of the 2008 NDAA, whichever is later. § 1083 (c)(3).

# 4. Section 1083(c)(2)(B) – "Defenses Waived": Res Judicata, Collateral Estoppel, and Statute of Limitations Are Deemed Waived to the Extent that those Defenses Relate to Claims Litigated in a Prior Action Under Section 1605(a)(7)

Subsection § 1083(c)(2)(B), referred to as "Defenses Waived," purports to limit "[t]he defenses of res judicata, collateral estoppel, and limitation period" in any new action under § 1605A. Specifically, the statute provides that any defense based on either the doctrines of res judicata or collateral estoppel or the limitation period shall be deemed waived to the extent that

the new action under § 1605A relies, either in whole or in part, on an earlier terrorism case brought under the prior version of the terrorism exception, § 1605(a)(7). *See* § 1083(c)(2)(B). This waiver applies to cases that are converted to § 1605A on motion, consistent with § 1083(c)(2)(A), as well as to any other prior cases that are "refiled under [§] 1605A(c)." In other words, prior judgments under the state sponsor terrorism exception to the FSIA, § 1605(a)(7) are not to be given any preclusive effect in new actions brought under the current version of the terrorism exception, § 1605A.

## EFFORTS TO OBTAIN RETROACTIVE TREATMENT UNDER THE NEW TERRORISM EXCEPTION, SECTION 1605A

In view of the language that Congress has included within § 1083(c)—both with respect to the criteria defining whether a claim is eligible for treatment under the new terrorism section, § 1605A, as well as the time limits for electing treatment under the new statute—this Court is not persuaded by any reading of § 1083 that would have § 1605A apply automatically to prior terrorism cases under § 1605(a)(7). While some counsel before this Court may have glossed over the requirements within § 1083(c), it is the duty of this Court "to give effect, if possible, to every clause and word of a statute." *United States v. Menasche*, 348 U.S. 528, 538–39 (1955) (quotation and citation omitted). This Court presumes that Congress "says in a statute what it means and means in a statute what it says there." Conn. Nat'l Bank v. Germain, 503 U.S. 249, 252–54 (1992). These time-honored cannons of statutory construction are particularly critical in this context because the FSIA terrorism exception is a "delicate legislative compromise" that balances a host of competing foreign policy considerations. See Price, 294 F.3d at 89. More fundamentally, however, this Court never presumes that a law applies retroactively; instead, Congress must clearly instruct courts as to whether and to what extent a new law is to apply to cases that preceded its enactment. See Plaut, 514 U.S. at 237. In this case, Congress has done just that by setting forth specific parameters in § 1083(c).

Thus, the framework established by § 1083(c) is the template that this Court must apply when determining whether prior actions under the old exception for state sponsors of terrorism, § 1605(a)(7), are entitled to go forward as new actions under the recently enacted § 1605A with all the benefits that new section entails. Consistent with § 1083, this Court has held on prior

occasions that the latest revision of the state sponsor of terrorism exception to sovereign immunity, § 1605A does not have automatic, retroactive application to cases filed under the now-repealed § 1605(a)(7). *See Kirschenbaum v. Islamic Republic of Iran*, 572 F. Supp. 2d 200, 204 n.1 (D.D.C. 2008) (Lamberth, C.J.); *Beer*, 574 F. Supp. 2d at 5 n.1. Similarly our Court of Appeals observed recently that failure to adhere to those procedures means that the prior action remains under § 1605(a)(7), rather than § 1605A, and thus plaintiffs are not entitled to any of the benefits of the new enactment under those circumstances. *See Simon*, 529 F.3d at 1192; *see also Oveissi*, 573 F.3d 835 (holding that § 1605A provides a federal cause of action for those plaintiffs who meet the statutory criteria).

Notwithstanding the guidance offered in § 1083(c), as well as recent decisions that have applied those provisions to prior terrorism cases, it appears to this Court that there is some degree of confusion among counsel regarding the scope and application of § 1083(c) to FSIA cases that were previously filed against Iran under the former version of the terrorism exception, § 1605(a)(7). In their efforts to avail themselves of the new provision, § 1605A, counsel for plaintiffs in many of these prior actions have taken a variety of different approaches, as § 1083(c) contemplates, but some attorneys have pursued seemingly conflicting tactics. For instance, some attorneys have invoked (c)(2) as well as (c)(3) in their efforts to qualify a single earlier action under § 1605A. Perhaps this sort of move should be viewed by the Court as something of a "belt and suspenders" approach that has been taken out an abundance of caution. Other attorneys have relied on § 1083(c)(3) exclusively, by filing new complaints that assert the right to now pursue a federal cause of action under § 1605A. Many of the new complaints, however, do little more than regurgitate the very same state tort law claims that plaintiffs

litigated in prior FSIA terrorism actions in accordance with the *Cicippio-Puleo* precedent under § 1605(a)(7).

Numerous other attorneys have missed the filing deadlines imposed by the 2008 NDAA, and thus it appears that these individuals were laboring under the false assumption that § 1083 of the 2008 NDAA made the new terrorism exception applied automatically to their terrorism cases. As will be discussed in the analysis that follows, at least one attorney claims that his reading of § 1083 led him to conclude that § 1605A applied retroactively to his cases. Other attorneys have not claimed as much, but they have filed motions that appear to rest on the erroneous assumption that § 1083 somehow makes § 1605A retroactive to any cases under § 1605(a)(7) that were pending as of the date § 1605A was enacted. For instance, this Court recently denied several motions requesting that this Court provide for payment to the special masters who assisted this Court with the determination of damages in the large consolidated action of *Peterson v. Islamic* Republic of Iran. See No. 01-CV-2094-RCL (D.D.C.), Dk. # 430. While § 1605A now includes a provision enabling special masters in FSIA terrorism cases to receive payment for their services in certain instances, see § 1605A(e), no similar entitlement exists for actions like Peterson, which remain under § 1605(a)(7). Counsel in Peterson never addressed the retroactivity issues; it appears that they simply presupposed that any relief included in the new law, § 1605A, applied automatically to their case. As counsel failed to follow the procedures in §1083(c), this Court had to deny those motions seeking payment of the special masters.

In sum, there is in this Court's view, a good deal of confusion regarding how parties should avail themselves of the benefits of the new statute. Having to deny relief to so many plaintiffs is particularly regrettable in light of the fact that the recent reforms to the FSIA, as enacted through § 1083, are plainly intended to help these victims of terrorism. It is therefore the

hope of this Court that today's decision and the articulation of the statutory framework of § 1083(c) may lend greater clarity to this area for counsel prosecuting these important actions. 22 It should be noted at the outset that there are both winners and losers in today's omnibus opinion. While a number of cases have not obtained retroactive treatment under the new terrorism statute, many in fact have. At this juncture, however, guidance from this Court across this range of cases should lend the greatest degree of clarity to these matters for the benefit of all plaintiffs, and that in turn should help facilitate litigation going forward. The bottom line is that there should no more confusion, guesswork, or misguided notions regarding the retroactive application of § 1605A. If counsel for plaintiffs in these action have in good faith misunderstood or misapplied § 1083(c) to their respective actions—and are time-barred from taking advantage of the new state sponsor of terrorism exception—then they may consider filing a motion for relief under Rule 60 and consistent with the guidance provided by the Court in Part G of this opinion.

This is not to say that all counsel with cases pending against Iran in this Court have failed to adhere to procedures set forth in § 1083(c). That is certainly not the case. Some attorneys have managed to get it right, and this Court has recently granted a number of motions permitting prior actions under § 1605(a)(7) to go forward under § 1605A. See, e.g., Spencer v. Islamic Republic of Iran, 06-CV-750-RCL (D.D.C.), Dk. # 20; Heiser v. Islamic Republic of Iran, 00-CV-2329-RCL (D.D.C.), Dk. #143. As noted supra, p. 47, this Court issues a separate opinion today in Heiser in which this Court analyzes new claims for both compensatory and punitive damages under § 1605A. As the Court has determined that plaintiffs are entitled to relief under the new statute, the Court will also enter a judgment for plaintiffs in Heiser pursuant to § 1605A.

#### EXAMINATION OF SECTION 1083(c) OF THE 2008 NDAA UNDER ARTICLE III OF THE UNITED STATES CONSTITUTION

Before proceeding any further, however, there is a critical threshold matter that this Court must address and that is the question of whether § 1083(c) directs the reopening of final judgments in violation of Article III of the United States Constitution. See Plaut, 514 U.S. at 241; see also Miller v. French, 530 U.S. 327, 344 (2000). In this instance, the Court is troubled by the related-case provisions of § 1083(c)(3), to the extent that those measures enable individuals who litigated FSIA actions against Iran previously to now file new cases against Iran under § 1605A. For similar reasons, the Court is troubled by § 1083(c)(2)(B) ("Defenses Waived") which directs that in any new action under § 1605 courts must deem as waived "[t]he defenses of res judicata and collateral estoppel" with respect to any claims that were brought previously under § 1605(a)(7). The question presented is whether these particular legislative enactments abrogate final judgments in a manner that the Supreme Court has determined is "repugnant to the text, structure, and traditions of Article III." *Plaut*, 530 U.S. at 217–18. As no court has had the opportunity to address this issue, it now confronts this Court as a substantial question of first impression, and one of great and immediate consequence to hundreds of plaintiffs who have filed new actions against Iran consistent with the related-case procedures of § 1083(c).

Examining the constitutionality of an act of Congress requires a journey into treacherous waters, to say the least. It is at these times that a mere district judge would prefer to take refuge in the doctrine of "constitutional avoidance" or "constitutional doubt" rather than engage in a confrontation on such fundamental matters. *See, e.g., Boumediene v. Bush*, 128 S. Ct. 2229, 271

(2008); French, 530 U.S. at 341; Nat'l Mining Ass'n v. Kempthorne, 512 F.3d 702, 711 (D.C. Cir. 2008); Citizens for Responsibility and Ethics in Washington v. U.S. Dep't of Homeland Sec., 592 F. Supp. 2d 127 (D.D.C. 2009) (Lamberth, C.J.). Consistent with this cardinal rule of statutory construction, courts are obligated to construe legislative enactments in a manner that avoids constitutional questions whenever there is a saving construction that is "not plainly contrary to the intent of Congress." French, 530 U.S. at 341 (quoting Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1985)).

Regrettably, the constitutional question is presented squarely and unavoidably in this case. The import of § 1083(c)(3) and § 1083(c)(2)(B) could not be clearer: An individual who received a final judgment in a prior case against Iran, under an earlier version of the FSIA state sponsor of terror exception, § 1605(a)(7), is now permitted to file a new action against Iran under the current version of the terrorism exception, § 1605A. Moreover, this Court is instructed that it may not give any preclusive effect to its prior judgment, even though the prior action was based on the very same act or incident. Thus, there is a legitimate question of whether this enactment offends deeply entrenched constitutional principles relating to the separation of powers and the ability of the judiciary to function independently without interference from the political process. *See, e.g., United States v. Klein,* 80 U.S. 128, 147 (1871) (emphasizing that the powers afforded to the Congress and the Courts under the Constitution must be kept separate and distinct). This Court must not shirk from its duty, where, as here, the question of the constitutional validity of an act of Congress is starkly presented. *French,* 530 U.S. at 341 (quoting *Commodity Futures Trading Comm'n v. Schor,* 478 U.S. 833, 841 (1986))); *see also Boumediene,* 128 S. Ct. at 2271 ("We cannot ignore the text and purpose of a statute in order to save it."); *Citizens for* 

Responsibility and Ethics in Washington, 592 F. Supp. 2d at 131 ("[I]n the absence of statutory ambiguity the constitutional avoidance doctrine has no place.").

There are other important considerations that militate in favor of this Court addressing the constitutional question in this case. More than a decade ago when this Court first considered the "novel enactments" of the FSIA terrorism exception, § 1605(a)(7) and the Flatow Amendment, § 1605 note, this Court underscored its "special role in the development of foreign sovereign immunity jurisprudence." Flatow I, 999 F. Supp. at 6 (citing 28 U.S. C. 1391 (f)(4)) (providing that this Court is a designated venue for actions brought against a foreign state or political subdivision thereof"). Consistent with this role, this Court undertook in Flatow "a systemic review of the dispositive legal issues," including a number of constitutional issues, in an effort to ensure that the plaintiff was fully entitled to relief under the law. Id. The plaintiffs before the Court today certainly deserve no less. In light of the substantial personal, financial, and emotional investments that these victims have made in these cases over the years, this Court simply cannot afford to overlook potential legal infirmities that could prove fatal to their cause. Thus, similar to *Flatow*, and consistent with this Court's historical role in the development of jurisprudence under the FSIA, this Court should examine carefully whether the latest terrorism exception, § 1605A, can be applied retroactively to cases that were litigated to a final judgment under § 1605(a)(7) in a manner that comports with Article III of the Constitution.

More fundamentally, however, the Court is mindful that these FSIA actions under the state sponsor of terror exception involve a handful of rogue nations, who, like Iran, have had an extremely rocky relationship with the United States. On the other side of this difficult problem, are hundreds of victims of international terrorism who have long suffered, and who desperately hope to see Iran held accountable for its role in perpetuating terrorist acts that have destroyed

countless lives. In this highly charged and inevitably political context—and especially where the offending nation is in default—this Court needs to be extremely leery of overreaching by Congress. It is also out of respect for the principle of comity between nations that this Court must assure itself that any lawsuit against a foreign power, no matter how unpopular that foreign sovereign may be, is an action that comports with our Constitution.<sup>23</sup> It is precisely at these challenging moments that our Courts must be ever vigilant to uphold the rule of law and take full stock of our Article III responsibility "to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

In candor, this Court is not the first to observe that certain parts of § 1083(c) might suffer from constitutional infirmities in violation of the principles expounded by the Supreme Court in its jurisprudence concerning the independent authority of Article III courts to decide civil cases. The potential infirmities analyzed here were first noted by Jennifer Elsea in the report she authored for the Congressional Research Service. *See* SUITS AGAINST TERRORIST STATES, *supra* note 4, at 61.<sup>24</sup> The issue presented here today is troubling, but, this Court is of the view that § 1083(c)(3) and § 1083(c)(2)(B) withstand constitutional scrutiny.

<sup>&</sup>lt;sup>23</sup> By working from the general proposition that foreign sovereigns should be immune from suit in our courts, *see* § 1604, the FSIA builds from the principle of comity among nations. Moreover, this time-honored principle is reinforced throughout the FSIA. Even in cases in which a foreign state is in default, the Court may not enter judgment unless the plaintiff "establishes his claim or right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e).

<sup>&</sup>lt;sup>24</sup> The Court's analysis of the Article III question is limited to the procedures for related actions in § 1083(c)(3). Specifically not considered are the procedures for prior actions in § 1083(c)(2). For the sake of argument, this Court assumes that § 1083(c)(2) does not raise any constitutional issues under Article III because that subsection reaches only those cases that were "before the court[] in any form" at the time of the enactment of the 2008 NDAA. As will be discussed in further detail in this part of the opinion, the Supreme Court has made clear that Article III is not offended when courts are directed to apply changes in the law to pending cases,

### 1. Principles of Law – The Independence of the Federal Judiciary Under Article III and the Finality of Judgments

More than two centuries of Supreme Court jurisprudence has reinforced the basic understanding that the Federal Judiciary has sole responsibility for deciding cases and controversies arising under the federal law. *See, e.g., Hayburn's Case*, 2 U.S. 408 (1792); *Klein*, 80 U.S. 128; *Plaut*, 514 U.S. 211. As Justice Scalia observed in *Plaut*:

including those on direct appeal. *See Plaut*, 514 U.S. at 227. Thus, to the extent that § 1083(c)(2) reaches cases that were in fact "pending" under § 1605(a)(7) at the time the new terrorism exception was enacted, the constitutional issue regarding the finality of Article III court judgments is not implicated. The problem, however, is that it is not entirely clear what constitutes the range of cases that might qualify as "pending cases" for Article III purposes, as it was not necessary for the Supreme Court to fully explore this issue in *Plaut*.

The Court's opinion in *Plaut* strongly suggests that a "pending case" under Article III is one that is simply awaiting either the entry of a final judgment in district court or the outcome of a direct appeal. *See id.* If this common sense definition is applied here, then § 1083(c)(2), much like § 1083(c)(3), might also present some constitutional concerns. Section 1083(c)(2) provides that cases that were "before the courts *in any form*, including on appeal or motion under rule 60(b) of the Federal Rules of Civil Procedure" may be eligible for treatment under the new law. *See* § 1083(c)(2)(A)(iv) (emphasis added). While the broad categorization of "in any form" undoubtedly includes cases that are actually "pending" consistent with *Plaut*, it may also reach back to closed cases that just happen to be before the court in some form because of ongoing litigation relating to efforts to enforce the judgment. In this default context involving Iran, it is not uncommon for the Court to preside over extensive postjudgment litigation with respect to efforts to enforce judgments. The *Peterson* action is a prime example. *See* No. 01-CV-2094, Dk. # 434 (Memorandum Opinion and Order denying motions to appoint receivers for various Iranian assets); *Bennett*, 604 F. Supp. 2d 152 (granting motion to quash five writs of attachment issued against the property that once comprised the Iranian embassy here in Washington, DC).

This Court is satisfied, however, that it need not subject § 1083(c)(2) to scrutiny under Article III because the Court finds today that even § 1083(c)(3)—which has far greater retroactive reach than § 1083(c)(2)—does not offend the principle of the finality of court judgments. Consequently, if there is no Article III problem with the related-actions procedures of § 1083(c)(3), which enable a plaintiff to file as a new action under § 1605A a case that was previously closed under § 1605(a)(7), and which was not "pending" before this court in any sense when the 2008 NDAA was enacted, then, *a fortiori*, the procedures in § 1083(c)(2) concerning prior actions that are still before the court in some form must also withstand scrutiny.

The record of history shows that the Framers crafted this charter of the judicial department with an expressed understanding that it gives the Federal Judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy—with an understanding, in short, that "a judgment conclusively resolves the case" because "'a judicial power'" is one to render dispositive judgments.

*Plaut*, 514 U.S. at 218–19 (quoting Frank J. Easterbrook, *Presidential Review*, 40 CASE W. RES. L. REV. 905, 926 (1990)) (emphasis in original). Thus, a case submitted to the federal judiciary and resolved in a final judgment is settled conclusively and may not be reversed, undone, or otherwise revisited as a result of subsequent actions taken by the political branches.

In *Hayburn's Case*, five out the six Supreme Court justices, while sitting in their capacities as circuit judges, considered a federal statute that gave the Secretary of War complete discretion to either accept or reject Circuit Court findings regarding the appropriate amounts of pensions owed to Revolutionary War Veterans. The Justices explained in a recorded opinion how they each found that the statute violated the separation of powers established by the Constitution. The Justices noted that the statute allowed for court judgments to be "revised and controlled by the legislature, and by an office in the executive department," a practice "deemed radically inconsistent with the independence of that judicial power which is vested in the courts." 2 U.S. at 410.

Following the Civil War, the Supreme Court decided the *Klein* case in which the Court rejected an effort by the Congress to "prescribe rules of decision to the Judicial Department of the Government in cases pending before it." 80 U.S. at 146. At issue in *Klein* was a measure by Congress intended to direct the outcome in certain cases brought by former confederates who sought compensation for property that was either captured by the United States Government or abandoned during the course of the War. Congress had originally provided, by statute, that such

cases would be decided by the Court of Claims. The right to recovery depended on proof to the satisfaction of the court demonstrating that the claimant both owned the property at issue and had not supported the rebellion in any way. *Id.* at 131. In deciding such cases, the Court of Claims determined that a presidential pardon was sufficient to cure claimants of their participation in the rebellion. *Id.* at 132–33. The Supreme Court expressly affirmed that principle, holding that the pardon showed the claimant "was innocent in law as though he had never participated [in the rebellion], and that his property was purged of whatever offence he had committed and relieved of any penalty that he might have occurred." *Id.* at 133 (*citing United States v. Padelford*, 76 U.S. 531 (1870)).

Shortly thereafter, Congress sought to abrogate the Supreme Court's ruling. Congress passed a new statute providing that the courts were no longer permitted to consider a pardon as evidence curing a claimant of his participation in the rebellion. *Id.* at 133–34. Instead, courts were instructed to deem the pardon as conclusive proof that the claimant had supported the rebellion, and, moreover, once proof of a claimant's pardon was furnished by either party, the Court would cease to have jurisdiction over the case and was therefore required to dismiss the action accordingly. *Id.* at 134.

In holding that Congress had exceeded its authority under the Constitution, the Supreme Court stated:

We must think that Congress has inadvertently passed the limit which separates the legislature from the judicial power.

It is of vital importance that these powers be kept distinct. The Constitution provides that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress shall from time to time ordain and establish.

. . .

Congress has already provided that the Supreme Court shall have jurisdiction of the judgments of the Court of Claims on appeal. Can it prescribe a rule in conformity with which the court must deny to itself the jurisdiction thus conferred, because and only because its decision, in accordance with settled law, must be adverse to the Government and favorable to the suitor. The question seems to answer itself.

The rule prescribed is also liable to just exception as impairing the effect of a pardon, and thus infringing on the constitutional power of the Executive.

*Id.* at 147.

The precise meaning of *Klein* is subject to much debate in part because the Court's decision appears to rest as much on the principle that Congress cannot nullify the President's authority under Article II as much as it is based on any sense that the Congress had interferred with the Judicial Department's authority to independently decide cases under Article III. *See generally* ERWIN CHEMERINSKY, FEDERAL JURISDICTION 183–88 (3d ed. 1999); *see also Nat'l Coalition to Save Our Mall v. Norton*, 269 F.3d 1092, 1096–1098 (D.C. Cir. 2001) (noting that "*Klein*'s exact meaning is far from clear" and discussing differing interpretations). While the full implications of *Klein* will likely be subject to debate for years to come, the Supreme Court has recognized that, at a minimum, *Klein* stands for the proposition that Congress cannot dictate a rule of decision to courts in pending cases without amending the underlying substantive law. *Plaut*, 514 U.S. at 218 ("Whatever the precise scope of *Klein*, however, later decisions have made clear that its prohibition does not take hold when Congress 'amend[s] applicable law."") (quoting *Robertson v. Seattle Audobon Soc'y*, 503 U.S. 429, 441 (1992)); *accord French*, 530 U.S. at 349.

The Supreme Court has decided two cases in which it has considered federal statutes that waived res judicata and collateral estoppel in civil actions. *See United States v. Sioux Nation*, 448 U.S. 371 (1980); *Cherokee Nation v. United States*, 270 U.S. 476 (1926). Both cases,

however, concerned a waiver of those preclusion defenses by the United States Government in ongoing litigation with Indian tribes. Neither of those decisions required the Court to examine whether or to what extent Congress may pass a statute waiving res judicata or *collateral estoppel* as defenses by parties other than the Federal Government, such as private litigants or foreign governments, and the Court did not express any views on the matter.

In *Cherokee Nation*, the Court reviewed the passage of a special act by Congress that permitted the Court of Claims to adjudicate Cherokee claims against the United States Government that were previously considered in a prior action that the Court had decided several years earlier. 270 U.S. at 485–86. In declining to give res judicata effect to the prior adjudication, the Court stressed that Congress has the authority to deem the prior judgment as waived in actions against the Federal Government. *Id.* at 486.

More than half a century later, the Court considered a similar issue in the case of *Sioux Nation*. The Sioux alleged that their ouster from the Black Hills of South Dakota by the United States during the late 1800s amounted to a taking under the Fifth Amendment for which just compensation was due. *See* 448 U.S. at 384. The question was subject to considerable litigation over a period of several decade, and Congress consistently passed legislation in an effort to help the Indians press their claim against the federal government. At each step of the way, the Sioux Indians were opposed in litigation by the Executive Branch.

At the end of the first wave of litigation in 1942, the Court of Claims first ruled against the Indians on the merits, holding that the Sioux had merely presented "a moral claim not protected by the Just Compensation Clause." *Id.* at 384. Subsequent to that decision, Congress established the Indian Claims Commission, which again considered the Sioux Indians' Takings Clause claim regarding the Black Hills and ultimately decided the question in favor of the

Indians. *Id.* at 384–85. The Federal Government then appealed the Commission's ruling to the Court of Claims. *Id.* Without reaching the merits, the Court of Claims ruled that the Sioux Indians' claim against the Federal Government was barred by the res judicata effect of the Court's 1942 decision. Shortly after the Court's ruling, Congress passed special legislation directing the Court of Claims to reconsider the Takings Clause question *de novo* and without regard to the defenses of res judicata and collateral estoppel. *See id.* at 390. Following that special enactment by Congress, the Court of Claims promptly reconsidered the Sioux Indian case on the merits and found in favor the Indians. *Id.* at 380–390. The Supreme Court granted the Federal Government's petition for certiorari.

In a lengthy opinion, the Supreme Court considered carefully whether Congress has "inadvertently passed the limit which separates the legislative from the judicial power" by directing the Court of Claims to reconsider the Sioux Indians' taking case. *Id.* at 392 (quoting *Klein*, 80 U.S. at 147). In holding that Congress had not encroached on the independent powers of the Judiciary under Article III, the Court relied heavily—if not exclusively—on its prior decision in *Cherokee Nation*. The Court stated:

The Holding in *Cherokee Nation* that Congress has the power to waive the res judicata effect of a prior judgment entered in the Government's favor on a claim against the United States is dispositive of the question here. Moreover, that holding is consistent with a substantial body of precedent affirming the broad Constitutional power of Congress to define and "to pay the Debts . . . of the United States." U.S. Const. art. I., § 8, cl. 1. That precedent speaks directly to the separation-of-powers objections discussed above.

Sioux Nation, 448 U.S. at 397. The Court emphasized, that consistent with *Cherokee Nation*, numerous cases throughout history "have recognized or acted upon Congress" power to waive the defense of res judicata to claims against the United States." *Id.* at 398 n.24 (collecting cases).

Despite the Court's conclusion that the issue was resolved by the waiver principles announced in *Cherokee Nation*, the majority did examine the *Klein* precedent in some detail. The Court explained that unlike the statute that was found unconstitutional in *Klein*, the waiver of res judicata with respect to actions brought by the Cherokee and Sioux Nations did not amount to an effort by Congress to control the outcome of those cases on the merits. *Id.* at 404–407. According to the Court, Congress was merely providing a "forum so that a new judicial review of the Black Hills claim could take place." *Id.* at 407.

Justice Rehnquist vigorously dissented. Among other points, he argued that the legislature had impermissibly taken on a judicial function by directing the rehearing of a case that had reached a final judgment. *See id.* at 428–32 (Rehnquist, J., dissenting). The Justice noted that Congress' broad powers to pay public debts under Article I had nothing to do with the question of whether Congress could direct the federal courts to rehear cases that courts had already heard and decided pursuant to the judiciary's own independent authority under Article III. *See id.* at 429. The Justice suggested that if Congress truly wanted to pay debts owed to Indians, then it could simply do so consistent with its authority to make such appropriations under Article I. *See id.* at 429–32. It was offensive to the Constitution, however, for Congress to insist that Courts keep hearing cases until Congress received the outcome it desired. *Id.* at 430–32. Moreover, Justice Rehnquist emphasized that res judicata is a long-standing judicial doctrine that may be exercised sua sponte by Courts consistent with the obligation to efficiently manage the business that comes before the them. *Id.* at 432–33.

The very next term, the Supreme Court emphasized that res judicata is "a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S.

394, 401 (1981) (quoting *Hart Steel Co. v. R.R. Supply Co.*, 244 U.S. 294, 299 (1917)). The Supreme Court has since stated that the *Cherokee Nation* and *Sioux Nation* decisions are narrow rulings that merely stand for the proposition that the doctrine of separation of powers is not offended when Congress waives res judicata effect with respect to a "judgment entered in the Government's favor on a claim against the United States." *Plaut*, 514 U.S. at 230 (quoting *Sioux Nation*, 448 U.S. at 397).<sup>25</sup>

In the watershed case of *Plaut v. Spendthrift Farm*, the Supreme Court reviewed its

Article III separation-of-powers jurisprudence spanning more than three centuries—from *Hayburn's* case to *Sioux Nation*—and held that Congress may not direct the reopening of final judgments in civil actions for money damages. 514 U.S. at 218–219. At issue in *Plaut* was an act of Congress that allowed plaintiffs to reinstate stock fraud cases that had been dismissed previously as time-barred. The dismissals were required by a set of companion Supreme Court decisions in which the Court construed the limitation period for such stock fraud actions and then determined that its ruling on the matter would be applied retroactively to pending cases. *Id.* at 214 (citing *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991); *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (1991)). A few months after those decisions were issued on June 20, 1991, Congress passed a law directing that plaintiffs who had their claims dismissed as time-barred were allowed to reinstate their actions under the limitation period that would have been applicable to their claims on June 19, 1991. *Id.* Thus, the statute purported to save all those cases that were dismissed as a result of the Supreme Court's rulings.

<sup>&</sup>lt;sup>25</sup> Even though the Supreme Court acknowledged in *Sioux Nation* that Congress has the power to waive the defense of res judicata to claims against the United States, this Court is not aware of any decision in which the Supreme Court has upheld the waiver of res judicata with respect to claims against a third party, which is the case presented here.

The Court found that the statute clearly presented a separations-of-power issue because the enactment provided in plain terms that an individual who had received a final judgment of dismissal could nonetheless "reinstate" his previously dismissed case. *Id.* at 215–217. Writing for the Court, Justice Scalia stressed that the finality of judgments issued by Article III Courts and the separation of powers under the Constitution were the fundamental principles implicated by the case. In light of those fundamental principles, neither the motive of Congress nor the manner in which it sought to have Article III courts revisit the final judgments were relevant to the Court's determination. *Id.* at 227–28. "The issue here is not the validity of the source of the legal rule that produced the Article III judgments, but rather the immunity from legislative abrogation of the judgments themselves." *Id.* at 230. Justice Scalia elaborated on this point for the Court:

To be sure, [the statute] reopens (or directs the reopening of) final judgments in a whole class of cases rather than in a particular suit. We do not see how that makes any difference. The separation-of-powers violation here, if there is any, consists of depriving judicial judgments of the conclusive effect that they had when they were announced, not of acting in a manner—viz., with particular rather than general effect—that is unusual (though, we must note, not impossible) for a legislature. To be sure, a general statute such as this one may reduce the perception that legislative interference with judicial judgments was prompted by individual favoritism; but it is legislative interference with judicial judgments nonetheless. Not favoritism, nor even corruption, but *power* is the object of the separation-of-powers prohibition. The prohibition is violated when an individual final judgment is legislatively rescinded for even the *very best* of reasons, such as the legislature's genuine conviction (supported by all the law professors in the land) that the judgment was wrong; and it is violated 40 times over when 40 final judgments are legislatively dissolved.

*Id.* at 227–228 (emphasis in original). Thus, the fundamental question, and perhaps the only question, that was critical to the Court's holding in *Plaut* was whether the statute had directed the reopening of final judgments entered prior to the statute's enactment.

In defining final judgment for the purpose of its analysis under Article III, the Court was careful to explain that a final judgment is one in which the time for appeal has expired. *Id.* at 226–227. Thus, the Court emphasized that courts must apply new law retroactively to any pending cases, including those on appeal, when Congress clearly instructs the Courts to do so. *Id.* at 226 (citing *United States v. Schooner Peggy*, 5 U.S. 103 (1801); *Landgraf*, 511 U.S. at 273–280). As the Court explained, Article III creates a single judicial department, and thus no judgment in a case is truly the final judgment of the Article III Judiciary until all potential appeals have either been foregone or exhausted. *Id.* at 227. Accordingly, separation of powers concerns are generally not implicated when Congress directs that a new law should be applied to cases still pending anywhere within the federal judiciary, including on appeal.

The Court concluded its opinion by underscoring the very remarkable and unique nature of the statute Congress had enacted in its effort to "reinstate" certain stock fraud actions that the Court had previously dismissed. The Court stated:

We know of no previous instance in which Congress has enacted retroactive legislation requiring an Article III court to set aside a final judgment, and for good reason. The Constitution's separation of legislative and judicial powers denies it the Authority to do so. [The statute] is unconstitutional to the extent that it requires federal courts to reopen final judgments entered before its enactment.

*Id.* at 241.<sup>26</sup>

<sup>&</sup>lt;sup>26</sup> In *Miller v. French* the Court revisited *Plaut* in a case involving an act of Congress that in effect required a district court to revisit a remedial injunction issued against a state correctional facility. 530 U.S. 327. The Court held that the statute did not offend any separations of powers principles. *Id.* at 350. In reaching that conclusion, the Court emphasized that the Article III principle emphasized in *Plaut* regarding the finality of civil judgments for money damages does not apply to the same degree with respect to a court order issuing an equitable remedy like an injunction or other kinds of prospective relief. *Id.* at 347–48. The Court also stressed, that, unlike judgments for money damages, court orders providing for prospective relief are "subject to the continuing supervisory jurisdiction of the court, and -75 -

Thus, the Court's holding in *Plaut* appears based at least in part on the truly extraordinary nature of Congress' action in directing the Article III Courts to set aside final judgments entered in certain stock fraud actions prior the legislation's enactment.

## 2. Analysis of the Constitutional Question in Light of the Supreme Court's Jurisprudence

In view of the Supreme Court's jurisprudence in this area, the fundamental question remains whether § 1083(c) violates Article III to the extent that it applies to FSIA terrorism cases that were terminated in final judgments under § 1605(a)(7). This Court is the view that the Article III question presented in this case, requires the consideration of two distinct but related issues, each of which, when considered either individually or in concert with one another, may lead to the conclusion that § 1083(c) is unconstitutional as applied to prior FSIA actions. The first question is whether § 1083(c)(3) calls for the reopening of final judgments entered before its enactment and therefore contravenes Article III as construed by the Supreme Court in *Plaut*. The second question is assuming that § 1083(c)(3) does not direct the reopening of final judgments, does § 1083(c)(2)—the waiver of res judicata and collateral estoppel effect of any prior terrorism FSIA action—nonetheless offend Article III because Congress has directed the Courts to ignore fundamental and longstanding judicial doctrine. Both issues are constitutional questions of first impression.

therefore may be altered according to subsequent changes in the law." *Id.* at 347 (citation omitted).

# a. Does Section 1083(c)(3) Direct the Reopening of Final Judgments Entered Before its Enactment and Therefore Contravene Article III as Construed by the Supreme Court in *Plaut*?

Applying the principles articulated by the Supreme Court in *Plaut*, this Court is of the view that § 1083 (c) does not violate Article III of the United States Constitution. Critical to this decision today is this Court's understanding that by enacting § 1083—thereby repealing § 1605(a)(7) and replacing it with § 1605A—Congress and the President have accomplished a fundamental change in substantive federal law with respect to civil actions against state sponsors of terrorism. The former terrorism exception to the FSIA, § 1605(a)(7), which still controls in certain actions, *see Simon*, 529 F.3d at 1192, is "merely a jurisdiction conferring provision" devoid of any substantive law claims against foreign states. *Cicippio-Puleo*, 333 F.3d at 1032. The new terrorism exception, § 1605A, is a fundamentally different law, however, because it creates a federal cause of action against foreign states, *see* § 1605A(c), thereby allowing for new actions that simply were not available to terrorism victims prior to the enactment of § 1083 last year. Accordingly, this case is distinguishable from *Plaut*, in which the statute the Supreme Court found unconstitutional made no changes in substantive law and, in fact, was nothing more than a directive instructing courts to reopen stock fraud actions that had been previously dismissed as time-barred.

The change in federal substantive law that has occurred in this case should not be understated. As our Circuit first observed in the case of *Cicippio-Puleo*: "Plainly, neither section 1605(a)(7) nor the Flatow Amendment, separately or together, establishes a cause of action against foreign state sponsors of terrorism." 353 F.3d at 1027. As a mere jurisdiction conferring statute, § 1605(a)(7) does little more than offer a pass-through to causes of actions that may exist under state law or other sources of law. *Bodoff*, 424 F. Supp. 2d at 83. In practical application

before this Court, plaintiffs in actions under § 1605(a)(7) have relied on state tort law as the source of law for substantive causes of actions. *See*, *e.g.*, *Rimkus*, 575 F. Supp. 2d at 196–99 (applying Missouri law); *Peterson II*, 515 F. Supp. 2d at 41–60 (applying laws from 34 different state jurisdictions, the District of Columbia, and the Philippines); *Greenbaum v. Islamic Republic of Iran*, 451 F. Supp. 2d 90, 101–108 (D.D.C. 2006) (Lamberth, J.) (applying California and New Jersey law); *Prevatt*, 421 F. Supp. 2d at 159–162 (D.D.C. 2006) (Lamberth, J.) (applying Georgia law).

The reliance on state tort law in the "pass-through" mechanism of § 1605(a)(7) has resulted in a total lack of uniformity in civil cases under that provision. Moreover, the lack of uniformity in turn has caused a certain degree of unfairness to plaintiffs, as the differences in tort law among the many state and territorial jurisdictions has naturally resulted in significant disparities with respect to the availability of relief for similarity situated plaintiffs. Given the unbending supremacy of the federal government in matters of foreign relations, combined with the basic aim of the anti-terrorism provision—which is to hold state sponsors of terror accountable for their role in perpetuating terrorist acts that have injured or killed Americans this Court has long thought it odd that Congress chose to, in effect, rely on state tort law to achieve its national objectives. Ordinarily, individual state laws must "yield to the National Government's policy, given the 'concern for uniformity in this country's dealings with foreign nations' that animated the Constitution's allocation of foreign relations power to the National Government in the first place." Am. Ins. Ass'n v. Garamendi, 539 U.S. 396, 413 (2003) (quoting Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 427 n. 25 (1964)). Why then, for purposes of liability under the state sponsor of terror exception, should it matter at all which particular State in the Union the American plaintiff happens to hail from? But that is precisely the kind of

perverse result that § 1605(a)(7) mandates. In *Peterson*, for example, hundreds of plaintiffs, all victims of the Marine barracks bombing in Lebanon, and all Americans, sought relief for a variety of claims. *Peterson II*, 515 F. Supp. 25. Many family members hoped to receive compensation for their emotional distress, and many were successful, but many others with precisely the same kinds of emotional distress cases, had no recovery whatsoever because they happened to be domiciled in a state that denied them standing to assert such claims. *See id.* at 44–45. With § 1605(a)(7), Congress sent something of a mixed message: The United States is serious about deterring states sponsors of terrorism and compensating victims, but only to the extent that our individual state jurisdictions allow. If you happen to live in a state that will not permit you a substantive claim for relief, so be it.

Rather than leave the substantive law for actions under the FSIA terrorism exception at the disposal of the 50 individual states and numerous other territories, this Court expressed the view in *Flatow* that the preferable approach would have been to have a federal cause of action consistent with the traditional principle of uniformity in this Country's dealings with foreign nations. *See* 999 F. Supp. 1 at 15. In the *Cicippio-Puleo* decision, the Court of Appeals even noted how a federal cause of action might better achieve the goals of § 1605(a)(7). The Court stated:

Clearly, Congress's authorization of a cause of action against officials, employees, and agents of a foreign state was a significant step toward providing a judicial forum for the compensation of terrorism victims. Recognizing a federal cause of action against foreign states undoubtedly would be an even greater step toward that end, but it is a step Congress has yet to take. And it is for Congress, not the courts, to decide when a cause of action should lie against foreign states.

353 F.3d at 1036 (emphasis added). Thus, this Court and our Circuit both stressed how a federal cause of action against foreign states could help to further the purposes of the state sponsor of terrorism exception to foreign sovereign immunity.<sup>27</sup>

Congress was listening, and it of course responded by implementing a cause of action within the new version of the terrorism exception, § 1605A, through the passage of the § 1083 of the 2008 NDAA. By doing so, Congress completely changed the landscape with respect to actions against state sponsors of terror. This latest version of the terrorism exception is not a mere jurisdiction conferring or "pass-through" statute, but rather it is a source of substantive federal law—a uniform federal standard designed to hold rogue nations accountable for their promotion of terrorists acts.

But as fundamental as this shift to federal law surely is, § 1605A also contains a broad array of substantive rights and remedies that simply were not available under § 1605(a)(7). As emphasized in the introduction to this opinion, the changes implemented through § 1083 are in effect a new statutory regime designed to accomplish a variety of objectives in addition to the creation of a new federal cause of action. Unlike its predecessor exception, § 1605A includes, among other new entitlements, the availability of punitive damages against foreign states, *see* § 1605A(c), the ability to assert pretrial liens on property, *see* § 1605A(g), and plaintiffs in actions under this new exception may take advantage of new restrictions on the types of

<sup>&</sup>lt;sup>27</sup> As noted above in Part A, *supra*, in *Flatow I*, this Court actually read § 1605(a)(7) as providing for a federal cause of action against foreign state sponsors of terror, and "in the interest of promoting uniformity with respect to liability determinations" this Court chose to "employ interstitial federal common law" to determine liability and damages. 999 F. Supp. at 15. Regardless of our different views on the issue at the time, both this Court's decision in *Flatow I* and the Circuit's decision in *Cicippio-Puleo* nonetheless highlighted the potential advantages of a federal cause of action in this area.

immunities that have historically protected the properties of foreign states from attachment and execution, *see* § 1610(g). Thus, § 1605A not only creates a new substantive federal claim, but it includes greater remedies, more robust judgment enforcement provisions, and other mechanisms intended to better promote and execute the federal interest in deterring terrorist attacks and compensating victims. Consequently, § 1605A is qualitatively distinct, and, frankly, many times removed from the mere "pass-through" mechanism of § 1605(a)(7).

Ultimately, § 1083—in both its design and practical application—does not portend to achieve an overruling or abrogation of final judgments under § 1605(a)(7), and thus Congress in this case has not sought to impose a legislative veto of court rulings of the kind that the Supreme Court rejected in both *Plaut* and *Klein*. Nothing in § 1083 directs this Court to revisit or reopen any judgments entered under § 1605(a)(7). Indeed, that sort of action is not even contemplated by the statute. Section 1083(a) simply repeals § 1605(a)(7) entirely and replaces it with the new provision § 1605A. Noticeably absent from § 1083 are any procedures or directives that might instruct this Court to re-look, reopen, or otherwise abrogate any judgments entered on the basis of state tort law in accordance with the "pass-through" regime of § 1605(a)(7); those prior judgments remain intact as final judgments. Rather than revisiting prior cases under the old "pass-through" system of § 1605(a)(7), § 1083 is geared instead toward bringing into existence a whole new statutory regime—one that has as its cornerstone a new federal cause of action against foreign states, for which punitive damages may be awarded.

Some may argue that this Court is merely embracing form over substance here, and, thus they might suggest that this Court has limited *Plaut* or otherwise given that decision much too narrow of an application with respect to § 1083(c). They might argue that, regardless of whatever differences might exist between causes of actions based in state tort law under

§ 1605(a)(7) and the new federal cause of actions authorized under § 1605A(c), the fundamental problem is that § 1083(c) offers a mechanism by which a previously determined tort case against Iran may be resurrected from the dead and brought back into court disguised as a new federal claim under federal law. Thus, some may believe today's ruling rests on an overly narrow or technical view of the definition of cause of action, and, consequently, attaches too much significance to the change from state law to federal law with respect to the determination of liability in these actions. *See Apotex v. FDA*, 393 F.3d 210, (D.C. Cir. 2004) (holding that, for claims preclusion purposes, "[w]hether two cases implicate the same cause of action turns on whether they share the same 'nucleus of facts'") (citations omitted).

Absent further guidance from the Supreme Court or from this Circuit, however, it is not up to this Court to expand upon the basic holding in *Plaut*—that a statute is unconstitutional as a violation of the separations of power to the extent that it requires the reopening of a final judgment for money damages. 514 U.S. at 240. As no reopening of a final judgment under § 1605(a)(7) occurs by virtue of our courts honoring the terms of § 1083(c), that statute withstands scrutiny under the controlling precedent. To rule otherwise, would require this Court to reach well beyond existing precedent, and that is something this trial judge is loathe to do.

Even if the fundamental shift away from the jurisdiction-conferring approach of § 1605(a)(7) is viewed as little more than a than a change in the rule of decision for liability in federal terrorism actions, Congress in this instance has amended all the underlying law by virtue of its complete repeal of § 1605(a)(7) and substitution of § 1605A. Accordingly, this case does not run afoul of *Klein* in the way the Supreme Court has construed that foundational decision. *See Plaut*, 514 U.S. at 218; *see also Klein*, 80 U.S. at 146. Moreover, the kind of across-the-board change in the terrorism exception that Congress undertook and ultimately accomplished

with the passage of § 1083 is not the kind that embodies or otherwise enhances the risk that certain politically connected groups might twist the lawmaking process into a tool for the unraveling of disfavored civil judgments. *See Plaut*, 514 U.S. at 219–226 (noting how the Nation's founders viewed finality of court judgments as a safeguard against the risk that politically connected groups might use the legislative process to unravel civil court judgments); *see also id.* at 240–247 (stressing that the Article III principle of finality in civil judgments is generally intended to prevent the legislative process from being used to direct the reopening of specific civil judgments) (Breyer, J., concurring).

Moreover, while the question of whether the statute impacts the outcome of a civil case on the merits is not a central consideration, *see id.* at 228–29, it is worth noting that § 1083(c), much like the enactments that were upheld in *Cherokee Nation* and *Sioux Nation*, and in sharp contrast to the enactment struck down in *Klein*, does not dictate the outcome of a case on the merits. *See Sioux Nation*, 448 U.S. at 405; *Cherokee Nation*, 270 U.S. at 486; *Klein*, 80 U.S. at 146. Plaintiffs still must prove that they are entitled to relief under the new terrorism enactment, §1605A(c). There is no guarantee that federal law will provide relief to plaintiffs any more or less than state tort law might have in an action under § 1605(a)(7).

Finally, this Court is not convinced that the principles announced in *Plaut* apply with the same degree of force in actions under the FSIA. As the Supreme Court observed in *Austria v*.

Altmann, FSIA questions are sui generis. 541 U.S. at 697. To begin with, the FSIA is a farreaching, retrospective law—the statute reaches conduct by foreign powers that long predates its enactment and it directly addresses sensitive matters of foreign relations, which, as the Court emphasized, are inherently subject to "current political realities and relationships." *Id.* at 696. It is beyond question that foreign relations matters are soundly committed to the political branches.

Oetjen v. Cent. Leather Co., 246 U.S. 297, 311 (1918); see also United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319 (1936) (holding that the Federal Government's powers over foreign affairs differ "in origin and essential character" from its powers over domestic law matters). And while neither the retrospective nature of the FSIA, nor the fact that it directly concerns our relationships with foreign nations, is enough to justify a usurpation of the federal courts' powers and responsibilities under Article III, there must be at least be some recognition—as there was in Altmann—that the political branches have greater authority and leeway with respect to decisions apportioning the liability of foreign nations.

In the realm of foreign affairs, our Courts must attach a strong presumption of validity to actions in which both the Congress and President are in agreement. See Dames & Moore v. Regan, 453 U.S. 654, 669 (1981); see also Youngstown Sheet & Tube, 343 U.S. at 637 (Jackson, J., concurring). As our Circuit has emphasized time and again, the FSIA terrorism exception represents a "delicate legislative compromise." See Price, 294 F.3d at 89; accord Cicippio-Puleo, 353 F.3d at 1035. Here, § 1083 represents precisely the kind of "delicate legislative compromise" involving foreign affairs that is best left to the political branches of our Federal Government. Indeed, President Bush vetoed the first attempt by Congress to enact § 1605A. See Memorandum to the House of Representatives Returning Without Approval the "National Defense Authorization Act for Fiscal Year 2008," 43 WEEKLY COMP. PRES. DOC. 1641 (Dec. 28, 2007). At that time, the President expressed concerns about how these reforms to the FSIA terrorism exception would negatively impact Iraq's economy and reconstruction efforts as the United States worked to help that nation rebuild. See id. Shortly thereafter, Congress redrafted its proposed legislation to accommodate the President's concerns by adding a provision that authorized the President to waive any part of § 1083 with respect to Iraq. See § 1083(d). As a

result, the President signed § 1083 into law on January 28, 2008, *see* Pub. L. No. 110-181, thereby enacting the sweeping reforms to the FSIA contained in § 1605A.<sup>28</sup> When, as here, both the President and Congress—the two branches vested with responsibility for our conduct of foreign affairs—are working together toward a common foreign policy objective, the Judicial Branch should be extremely hesitant about intervening in a way that would unravel those efforts.

Under the former version of the terrorism exception, § 1605(a)(7), Congress and the President had in a sense left an important federal policy relating to state sponsors of terrorism to the many diverse substantive bodies of law within state and territorial jurisdictions. The new law, §1605A, however, demonstrates that both Congress and the President have come to an agreement that this federal policy aimed at deterring foreign state sponsors of terror should now fall squarely under federal law and control. Moreover, Congress and the President have greatly expanded the range of remedies and legal processes available in these federal actions. It may well be that Iran will not be pleased with the changes implemented by § 1083, but whatever concerns Iran may have are best addressed through diplomatic channels.

Important questions concerning how best to deal with state sponsors of terrorism will most certainly be a topic of ongoing debate and discussion between the Legislative and Executive Branches for many years to come. With the enactment of § 1083, the political branches have ordained a fundamental shift in policy pertaining to state sponsors of terrorism. In recognition of these significant reforms, this Court cannot say that § 1083 offends Article III of the Constitution to extent that this new law offers certain victims of state-sponsored terrorism an

<sup>&</sup>lt;sup>28</sup> The President immediately exercised the waiver in § 1083(d) and waived the entire section with respect to Iraq. *See* Pres. Determ. No. 2008-9, 73 Fed. Reg. 6571 (Jan. 28, 2008); *see also Republic of Iraq v. Beaty*, 129 S. Ct. 2183, 2191–2193 (June 8, 2009) (discussing President's waiver of § 1083 concerning Iraq.)

opportunity to lay claim to new federal rights and remedies in actions under the FSIA. While it is the Federal Judiciary that decides individual cases and controversies arising under federal law, it is our political branches that ultimately bear full responsibility for our relations with foreign powers.

b. Assuming that Section 1083(c)(3) Does Not Direct the Reopening of Final judgments, Does the Waiver of the Res Judicata or Collateral Estoppel Effect of an Prior Terrorism FSIA Action Nonetheless Offend Article III because Congress has Directed the Courts to Ignore Fundamental and Longstanding Judicial Doctrines?

Having decided that § 1083(c)(3) does not direct the reopening of final judgments in violation of Article III, this Court is of the view that the waiver of res judicata and collateral estoppel in § 1083(c)(2)(B) should also withstand Constitutional scrutiny under the narrow facts of these cases. In this Court's opinion, the holding that there is not prohibited reopening of final judgments—because any terrorism action brought under § 1605A is fundamentally different from an action under § 1605(a)(7)—largely resolves any question regarding the constitutional validity of Congress' decision to waive the preclusive effect (if there is any) of a prior court adjudication under § 1605(a)(7). In practical terms, this Court recognizes that the issue of whether a statute violates the constitutional prohibition against Congress directing the reopening of final civil judgments for money damages, is really an issue that is separate and apart from the question of when and to what extent the preclusion doctrines—res judicata and collateral estoppel—should apply in a given case. Nonetheless, these two important questions raise overlapping concerns and are in many ways inextricably connected. Thus, this Court finds that some additional scrutiny of the statute is warranted with regard to the waiver of claim and issue preclusion defenses in § 1083(c)(2)(B).

Generally speaking, the doctrine of res judicata precludes the parties from relitigating claims only when the parties previously litigated the claims or could have litigated them in a prior civil action that reached a final judgment on the merits. *See*, *e.g*, *Allen v. McCurry*, 449 U.S. 90, 414 (1980); *Drake v. FAA*, 291 F.3d 59 (D.C. Cir. 2002). The related doctrine of collateral estoppel provides that parties may be precluded from litigating any issue of fact or law that was previously resolved by a court in the course of reaching a final judgment in another action between those parties. *See*, *e.g.*, *McCurry*, 449 U.S. at 415; *U.S. Postal Serv. v. Am*. *Postal Workers Union*, 553 F.3d 686, 696 (D.C. Cir. 2009).

A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent lawsuit between the same parties or privies." *Montana v. United States*, 440 U.S. 147, 153 (1979) (quoting *S. Pac. R.R. Co. v. United States*, 168 U.S. 1, 48–49 (1897)). Both doctrines serve to "relieve parties of the cost of and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Id.* at 153–54 (1979). Thus, the primary purpose served by the doctrines of res judicata and collateral estoppel is the preservation of the finality of judgments. *See, e.g., Crist v. Bretz*, 437 U.S. 28, 33 (1978). More fundamentally, however, the Supreme Court has stated that the "[a]pplication of res judicata and collateral estoppel is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions." *Montana*, 440 U.S. at 154 (citing *Southern Pacific Railroad Co.*, 168 U.S. at 49; *Hart Steel and Railroad Supply Co.*, 244 U.S. 294 (1917)). Thus, a statutory directive instructing courts to waive res judicata and collateral estoppel may raise separation of powers concerns under Article III.

Indeed, in *Plaut*, the Supreme Court suggested that a waiver of res judicata that is not subject to "the control of the courts themselves" might raise separations-of-powers issues. 514 U.S. at 232–33; *see also Sioux Nation*, 448 U.S. at 432–434 (Rehnquist, J., dissenting). The language waiver res judicata at issue is particularly troublesome because, as noted previously, *supra*, only two Supreme Court decisions have considered a waiver of that doctrine by Congress, and both decisions involved cases brought against the United States by Indian tribes. *See Sioux Nation*, 448 U.S. 317; *Cherokee Nation*, 270 U.S. 476. And, as underscored by the Supreme Court more recently in *Plaut*, those two decisions are narrowly tailored to the specific facts of those cases—meaning the basic proposition established by those rulings is simply that Congress may "waive the res judicata effect of a prior judgment entered in the Government's favor on a claim against the United States." 514 U.S. at 230. In fact, the Court pointed to Justice Rehnquist's dissent in *Sioux Nation*, and emphasized that Court had yet to consider whether Congress could prohibit the Federal Judiciary from applying the doctrine of res judicata in specific cases. The Court wrote:

The statute at issue in *United States v. Sioux Nation* seemingly prohibited courts from raising the res judicata defense sua sponte. The Court did not address that point; as far as it appears it saw no reason to raise the defense on its own. Of course the unexplained silences of our decisions lack precedential weight.

Id. at 232 n.6 (citations omitted).

The bottom line is that both *Sioux Nation* or *Cherokee Nation* leave open the question of whether Congress may waive res judicata or collateral estoppel with respect to a litigant other than the Federal Government —but this is precisely what Congress has sought to achieve with § 1083(c)(2)(B). By its terms, that statutory provision requires this Court to ignore any defense of res judicata or collateral estoppel that Iran may wish to assert in a new action under § 1605A.

Because res judicata and collateral estoppel are long held judicial doctrines that are central to the judiciary's purpose in rendering final judgments in civil cases, this Court is inclined to agree with the opinion expressed by Justice Rehnquist in Sioux Nation. It seems to this Court that Congress has little business directing whether or when those judicial doctrines should be invoked any more than this Judge should play a role in directing federal appropriations. This Court, however, must, at least in this particular instance, separate out the question of whether there has been some effort by the legislative branch to claim those salutary judicial doctrines in pursuit of their own legislative ends, from the more fundamental question of whether there has in fact been a prohibited reopening of final judgments for money damages in contravention of *Plaut*, the Supreme Court's last word on this matter. While the two issues may be overlapping at times, they are nonetheless distinct. For Article III purposes, the question is not necessarily whether the preclusion doctrines of res judicata or collateral estoppel have been invoked by the Legislative Branch; it is simply whether Congress has in effect directed the reopening of final judgments for money damages. Here, that sort of Article III violation—albeit in the most technical sense—has not occurred.<sup>29</sup> Accordingly, this judge cannot say that the waiver of res judicata or collateral estoppel are offensive under the circumstances presented in this case.<sup>30</sup>

<sup>&</sup>lt;sup>29</sup> It might very well be a different case if Congress had directed that res judicata and collateral estoppel are waived in any cases brought under the very same cause of action. The appropriate example here would be if Congress had directed the Courts to reinstate, under §1605(a)(7), all the claims that this Court and others had previously dismissed under that very same provision. As Congress in this case has seen fit to create an entirely new cause of action under § 1605A, and has repealed § 1605(a)(7) outright, this Court need not reach that more difficult issue.

 $<sup>^{30}</sup>$  In light of the Court's cautionary remarks regarding *Sioux Nation* in the *Plaut* decision, the Supreme Court may one day take the opportunity to consider and decide whether res judicata, -89 -

Moreover, this Court is of the view that—regardless of Congress' wishes on the matter—it simply would not be appropriate for this Court to give res judicata or collateral estoppel effect to a prior action under § 1605(a)(7). With respect to res judicata, that doctrine cannot be applied, where, as here, the claims now being asserted could not have been raised in the prior litigation. *See, e.g., McCurry*, 449 U.S. at 414; *Montana*, 440 U.S. at 154; *Nat'l Res. Def. Council v. EPA*, 513 F.3d 257, 260 (D.C. Cir. 2008); *Drake*, 291 F.3d at 417. Prior to the enactment of the 2008 NDAA last year, § 1605A and the new federal cause of action it creates did not exist in any shape or form. As our Circuit has emphasized, res judicata "does not bar a litigant from doing in the present what he had no opportunity to do in the past." *Drake*, 291 F.3d at 67. Accordingly, res judicata, as a doctrine, does not afford preclusive effect to those cases presented here that were litigated in accordance with state law under § 1605(a)(7) at a time when no federal cause of action existed.<sup>31</sup>

and perhaps even collateral estoppel, are so intrinsic or central to the Federal Judiciary's responsibilities under Article III that Congress should not limit the ability of the Courts to independently apply those doctrines. It is not the role of this trial court, however, to reach beyond the essential holdings within the Supreme Court's decisions. Those decisions are binding on this Court until the Supreme Court rules otherwise.

<sup>31</sup> It is true that subsequent changes in decisional law or case law is normally not sufficient to overcome res judicata. *E.g.*, *Moitie*, 452 U.S. at 398 (holding that res judicata effect "of a final unappealed judgment on the merits is not altered by the fact that the judgment may have been wrong or rested on a legal principle that is subsequently overruled in another case"); *Hardison v. Alexander*, 655 F.2d 1281, 1288–89 (D.C. Cir. 1981) (holding that res judicata is not overcome by a subsequent change in the law of the Circuit); *accord Apotex*, 393 F.3d at 218. A change in the applicable case law, however, must be distinguished from a change in statutory law. Many Circuits have recognized that a change in statutory law can be sufficient to overcome res judicata. *See Alvear-Velez v. Mukasey*, 540 F.3d 672, 678–80 (7th Cir. 2008) (collecting and discussing cases from the Circuits and holding that res judicata does not necessarily apply when the change in the law "is statutory in nature, as opposed to a change in case law").

Similarly, with respect to collateral estoppel, our Circuit has recently emphasized that issue preclusion is generally not appropriate when the legal context has changed. *See U.S. Postal Serv.*, 553 F.3d at 696; *Pharm. Care Mgmt. Ass'n v. District of Columbia*, 522 F.3d 443, 447 (D.C. Cir. 2008). The decisions of our Circuit build on the Supreme Court's decision in *Montana v United States*, in which the Court observed that a "a change in the controlling legal principles" may be sufficient to prevent the application of collateral estoppel. 440 U.S. at 161. As emphasized throughout this opinion, the enactment of § 1083 of the 2008 NDAA altered the entire legal context pertaining to litigation against state sponsors of terrorism because the underlying substantive legal basis for the such actions has been shifted from state law to federal law. As the legal analysis in these actions will now be determined by a uniform federal standard—rather than the laws of numerous state and territorial jurisdictions—the collateral estoppel doctrine should not be invoked in any of the new actions proceeding under § 1605A(c).

More fundamentally speaking, many of the purposes served by the preclusion doctrines are not as easily realized in this sui generis context involving civil actions against foreign states. In the domestic law context, private citizens involved in civil litigation may certainly achieve settled expectations that are reinforced and well served by the application of preclusion doctrines, but the same cannot be said of foreign states acting within the vast international arena. As *Altmann* underscored, foreign states order their affairs primarily on the basis of their understanding of how present political realties within the global sphere might influence their standing vis-à-vis other nations. *See* 541 U.S. at 696; *see also Price*, 294 F.3d at 97 ("Relations between nations in the international community are seldom governed by the domestic law of one state or the other.") (citing Lori Fisler Damrosch, *Foreign States and the Constitution*, 73 VA. L. REV. 483, 520 (1987). Thus, while individual lawsuits by United States citizens and nationals

against state sponsors of terrorism may have some bearing on how rogue nations, like Iran, might perceive and manage their relations with the United States, it strains credulity to assert that Iran has any reliance interests or settled expectations with respect to prior civil actions litigated against it under § 1605(a)(7). Indeed, the notion is almost laughable because that nation has never appeared in any of the terrorism actions that have been litigated against it in this Court.

Finally, applying any of the preclusion doctrines with respect to actions that were previously litigated to a final judgment under the former version of the state sponsor of terrorism exception, would completely undermine the purpose behind the most recent enactment § 1605A. As noted, supra, Part B, the new statute aims to provide a uniform federal cause of action in lieu of the old "pass-through" regime under § 1605(a)(7) that was viewed as unjust and ineffective largely because it was beholden to the laws of the many state and territorial jurisdictions. Thus, the application by courts of preclusion defenses in new actions under § 1605A would lead to a result entirely at odds with the aim of the new statute because our courts, by granting preclusive effect to prior judicial determinations under state law, would, practically speaking, allow those individual state sources of law to again control outcomes in civil actions against state sponsors of terror. Such a perverse result should be avoided, especially in this foreign affairs context in which both the President and Congress have expressed a clear policy preference in favor of a uniform federal standard. See Dames & Moore, 453 U.S. at 668-69 (1981) (suggesting that Courts should be extremely hesitant about undermining foreign policy initiatives when both Congress and the President are in agreement); Garamendi, 539 U.S. at 414–15 (emphasizing that state law touching on foreign policy matters must give way to federal policy in the light of the strong need for uniformity in this country's dealings with foreign sovereigns); Alvear-Valez, 540

F.3d 672 (stating that preclusion doctrines should not be applied when doing so would frustrate Congress' purpose for changes in the statutory law).

In sum, where, as in this case, Congress and the President have provided for a new federal cause of action against a foreign state, application of res judicata or collateral estoppel with respect to prior actions that relied on the "pass-through" regime of § 1605(a)(7) would be inconsistent with the Judiciary's own principles regarding the application of those salutary preclusion doctrines. Thus, under the circumstances presented here, the wavier of res judicata and collateral estoppel expressed in § 1083(c)(2)(B) is perhaps best understood as nothing more than a poor choice of statutory language that is merely intended to reinforce the understanding that Congress and the President have accomplished a fundamental change in public policy with respect to actions against state sponsors of terrorism.

As a caveat to this analysis, this Court wishes to stress that this decision does not consider whether the waiver of basic and long-established common law defenses in § 1083(c)(2)(B) might offend the Due Process Clause, as some commentators have suggested recently. See Suits Against Terrorist States, supra note 4, at 6, 61 nn. 231–232; Debra M. Strauss, Reaching out to the International Community: Civil Lawsuits as the Common Ground in the Battle Against Terrorism, 19 Duke J. Comp. & Int'l L. 307 (2009). Technically speaking, it is an open question whether a foreign state is even entitled to Due Process under the Fifth Amendment because the Supreme Court expressly declined to consider the question in Republic of Argentina v. Weltover, Inc., and has not revisited the issue since. 504 U.S. 607, 619 (1992). Both the Court of Appeals in Price and this Court in Flatow have emphasized how the Supreme Court has never squarely addressed this matter. See Price, 294 F.3d at 97; Flatow I, 999 F. Supp. 1 at 19. Nonetheless, this Court finds that—unlike the Article III question—the issue of

whether the statutory waiver of preclusion defenses like res judicata offends the Due Process Clause is not ripe for consideration at this time.

In contrast to the Article III question, which speaks to the power of this Court to decide cases independently, free from interference from the political branches, the Due Process issue (if there is any) speaks to the degree of fairness to which Iran may or may not be entitled as a party named in these FSIA terrorism cases. To the extent that there is an argument that the statutory waiver of res judicata or collateral estoppel amounts to a violation of Due Process with respect to the treatment of Iran as a civil defendant, that argument is best articulated in the first instance by Iran itself. As emphasized, supra, n. 5, Iran is an experienced litigant in this Court and throughout the federal courts generally, but the Iranian Government has elected not to defend itself during the merits phases of these actions. It should also be stressed again here that Iran has appeared repeatedly before the federal courts during the postjudgment phases of these actions, and has successfully defeated efforts by plaintiffs to execute the default civil judgments entered against the Government of Iran. See, e.g., Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Elahi, 129 S. Ct. 1732 (April 21, 2009) (demonstrating how Iran litigated an action from the district court all the way through to the Supreme Court and thereby prevented certain FSIA judgment creditors from attaching one of its assets here in the United States). In view of these facts, this Court sees no reason to sua sponte examine whether the waiver of preclusion doctrines in new actions under § 1605A might somehow compromise purported Due Process rights of that foreign sovereign. This Court is certainly not interested in affording constitutional rights to Iran, especially when Iran has not asserted its right to defend itself in the actions filed here.

Thus, the only constitutional issue considered today has nothing to do with Due Process and everything to do with the separation of powers and the independent authority of the Article III judiciary to conclusively resolve cases and controversies. Accordingly, this Court has scrutinized the statutory waiver of res judicata and collateral estoppel in § 1083(c)(2)(B) only to consider whether that measure—either in isolation or in concert with § 1083(c)(3)—amounts to a prohibited usurpation of judicial power by Congress. This basic question does not implicate a legal defense of Iran so much as it concerns the delicate system of checks and balances envisioned under our Constitution and, ultimately, the authority and integrity of this Court. No other constitutional issues warrant the Court's attention at this time.

Moreover, this Court is rather dubious of any suggestion that Due Process would prevent or otherwise limit the application of § 1083(c) to matters that were previously litigated to final judgments against Iran under § 1605(a)(7). As the D.C. Circuit held in *Price*, "foreign nations are external to the constitutional compact[,]" and therefore foreign states do not have Due Process rights. 294 F.3d at 97. In its extensive analysis of the issue, the Court of Appeals relied heavily on the Supreme Court's decision in *South Carolina v. Katzenbach*, in which the Court held that the "the word 'person' in the context of the Due Process Clause of the Fifth Amendment, cannot, by any reasonable measure of interpretation, be expanded to encompass the States of the Union." 383 U.S. 301, 323–24 (1966), *quoted in Price*, 294 F.3d at 96.

Accordingly, as Court of Appeals explained that "it would be highly incongruous to afford greater Fifth Amendment rights to foreign nations, who are entirely alien to our constitutional system, than are afforded to the states, who help make up the very fabric of that system." *Price*, 294 F.3d at 97. Four years earlier, in the *Flatow decision*, this Court reached the precisely the same conclusion for similar reasons. *Flatow I*, 999 F. Supp. 1 at 19–21.

In *Price*, the D.C. Circuit also underscored several practical problems with respect to the extension of Due Process rights to foreign nations. The Court observed, for example, that the freezing of assets of foreign nations by Congress and the President, or the imposition of sanctions, might be challenged as deprivations of property without due process of law. *Price*, 294 F.3d at 100. "The courts would be called upon to adjudicate these sensitive questions, which could in turn tie the hands of the other branches as they sought to respond to foreign policy crises. The Constitution does not demand this." *Id.* at 99 (citations omitted). For all the sound reasons expressed by the Court of Appeals in *Price*, this Court finds it unlikely that the Supreme Court would extend Due Process protections to foreign states like Iran. The clear weight of authority suggests otherwise.

### 3. Additional Considerations

There are other aspects of § 1083 of the 2008 NDAA that—while not directly at issue here—nonetheless give this Court pause and lead it to question whether today's ruling finding no Constitutional infirmities with respect to § 1083(c) is truly the right decision. For instance, within the new terrorism exception, § 1605A, which is implemented at § 1083(a), Congress suggests that this Court should rehear "Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia." *See* § 1605A(a)(2)(B)). The case that the statute is referring to in this instance is *Roeder v. Islamic Republic of Iran*, an action that Judge Sullivan dismissed in April 2002 because it was barred by the Algiers Accords. 195 F. Supp. 2d 140 (D.D.C. 2002) (Sullivan, J.), *aff'd*, 333 F.3d 228 (D.C. Cir. 2003).

*Roeder* concerns the more than 50 U.S. diplomatic and military personnel taken hostage, held captive, and tortured at the U.S. Embassy in Tehran from 1979 through 1981. The victims and their loved ones brought a class action lawsuit under the prior version of the state sponsor of

terrorism exception, § 1605(a)(7). As the litigation moved forward, it became clear that the action was barred by the Algiers Accords. Once this became apparent, and as dismissal of the case was imminent, Congress passed legislation instructing Judge Sullivan to go forward with the case, and to do so notwithstanding the unmistakable fact that the action was plainly barred under the terms of the Algiers Accords.<sup>32</sup>

Needless to say, Judge Sullivan found himself facing an Article III problem in the *Roeder* case. Judge Sullivan was able to avoid the Constitutional question, however, because Congress had not clearly expressed its intent to abrogate the Algiers Accords, as is required before Courts will hold that an international agreement is abrogated by a subsequent act of Congress. *See id.* at 145 ("Ultimately, however, this Court need not resolve these important Constitutional questions because while Congress' intent to interfere with this litigation was clear, its intent to abrogate the Algiers Accords was not."). Thus, Judge Sullivan was able to dismiss the action on the narrow ground that the Algiers Accords remained intact as binding legal authority and therefore required dismissal of any claims arising out of the Iran hostage taking. *Id.* at 178–183.<sup>33</sup>

Judge Sullivan also went to some length in his opinion to explain that, while our Court cannot ignore or refuse to give effect to the Algiers Accords, both Congress and the President have the authority to abrogate them, if they so desire. *Id.* at 183–84. The opinion could not have

<sup>&</sup>lt;sup>32</sup> Following the entry of default judgment with respect to liability, and on the eve of the date set for trial on the issue of damages, the United States intervened as a matter of right under Fed. R. Civ. Pro. 24(a) and moved the Court to dismiss the case. *See Roeder*, 195 F. Supp. 2d at 150–52, 154–59.

<sup>&</sup>lt;sup>33</sup> While Judge Sullivan was able to avoid the Article III constitutional question, he did so in an exceedingly thoughtful and careful manner. *See id.* at 163–67. This Court is grateful to Judge Sullivan for his excellent opinion and thoughtful discussion of the jurisprudence relevant to the consideration of the difficult issues Courts must inevitably face when confronted with the possibility of overreaching by Congress in violation of Article III.

been any clearer on this point. To date, however, neither branch has taken such action; the political consequences are likely too great, but that is precisely why it is a decision best left to the political branches, and not the Courts. *See id.* at 145.<sup>34</sup>

Unfortunately, § 1605A(a)(2)(B) suggests that at least some members of Congress still believe that Judge Sullivan should decide the Iran hostage case, notwithstanding the Court's determination that the action is barred by the Algiers Accords. Indeed, consistent with § 1605A(a)(2)(B) plaintiffs in *Roeder* have filed a new action in this Court. *See Roeder v. Islamic Republic of Iran*, No. 08-CV-487-RCL (D.D.C.), Dk. #1 (Complaint filed Mar. 21, 2008). Despite these realities, however, this Court refuses to believe members of Congress—in a nation of committed to the rule of law—would willingly direct our Courts to turn a blind eye to our longstanding and binding international agreements. That certainly cannot be the case, especially now when our current administration appears committed more than ever to the spirit of international engagement and cooperation.

<sup>&</sup>lt;sup>34</sup> Some members of Congress sharply criticized the administration for its role in urging the dismissal of the Iran hostages' case and have flatly rejected the notion that the Algiers Accord bars the victims' claims. For example, Senator Tom Harkin of Iowa issued a statement in 2001 in which he proclaimed: "The Algiers Accord is not a treaty and was never submitted to the Congress for ratification. It is a kidnapping and ransom agreement that entered into under duress while the Ayatollah was threatening to put the Americans on trial as 'spies' and execute them." *See* Patrick Goodenough, *Carter Era Agreement Again Cited in Bid to Block Iran Hostage Lawsuit*, CyberCast News Serv., Apr. 23, 2009, http://www.cnsnews.com/Public/Content/Article.aspx?rsrcid=47064.

<sup>&</sup>lt;sup>35</sup> As it did in the prior action under § 1605(a)(7), the United States has again intervened under Fed. R. Civ. Pro. 24(a) and has filed a Motion to dismiss the action, arguing that the plaintiffs' claims remains barred by the Algiers Accords. *See Roeder*, No. 08-CV-487-RCL (D.D.C.), Dk. # 23 (Motion to Intervene as Defendant, filed by the United States Apr. 21, 2009), Dk. # 24 (Minute Order, entered May 5, 2009, granting Government's Motion to Intervene), Dk. # 26 (Motion to Dismiss, filed by the United States May 5, 2009).

Nonetheless, the troubling language does suggest that perhaps certain interest groups were able to tuck the offensive language into the voluminous Defense Appropriations Act, realizing that perhaps it might not receive the same level of scrutiny there. The meddlesome draftsmanship might be easy enough to dismiss as an empty political gesture, if it were not for the Article III problem. Our Courts are here to uphold the rule of law and will not serve as ready accomplices in what appears as yet another political maneuver designed to make an end run around important international obligations.

Suffice it to note, what appears to this Court as an effort in § 1083 by Congress to reopen a specific case that was previously dismissed as barred by the Algiers Accords is extremely troubling. As a result, this Judge must now think long and hard about whether the questionable aspects of § 1083(c) considered in this decision should be viewed as nothing more than a vehicle to reopen an array of cases against Iran that were already litigated to final judgment prior to this new enactment. Congress has made some difficult constitutional questions even more difficult.

In the end, however, this Court is of the view that if it can it come to rest in its determination that § 1083(c)—to the extent that it allows cases closed under § 1605(a)(7) to now move forward as new actions under § 1605A—can withstand Constitutional scrutiny on its own terms, and thus any language outside of that particular section should not alter this Court's conclusion. To hold otherwise, would effectively bootstrap one Constitutional issue to another. Moreover, relying on language pertaining to the other litigation not pending before this judge, runs the risk of presenting an advisory opinion and one that might interfere with a case pending before another Article III judge in this courthouse. In this case, that would be a particularly undesirable result. As noted, Judge Sullivan produced an exceptional opinion addressing the fundamental problem with Congress' efforts to create a cause of action for the victims of the Iran

Hostage crisis, and there is no doubt that Judge Sullivan can appropriately address that question again in the event that the issue becomes ripe for consideration once more.

This Court is also troubled by the way in which a large defense appropriations bill was used in this instance to effectuate an overhaul of the substantive law governing lawsuits against foreign sovereigns. Like Judge Sullivan observed in *Roeder*, however, this Judge too recognizes that Congress is free to accomplish changes in substantive law through an appropriations bill. *See Roeder*, 195 F. Supp. 2d at 184 (citing *Robertson*, 503 U.S. at 440). Nonetheless, as Justice Scalia noted in *Plaut*, the independence of Article III courts serves a fundamental purpose in our system of limited government guarded by checks and balances. The judiciary's independent authority to decide cases with finality protects against the risk that influential groups might use—indeed exploit—the legislative process to make an end run around civil judgments that they find adverse to their own personal interests or desires. *See Plaut*, 514 U.S. at 219–226. This Court has a suspicion that is precisely what may have occurred in this case. To be sure, there are many aspects of § 1083 of the 2008 NDAA are remarkable much like the statute that did not withstand Constitutional scrutiny in *Plaut*. In the end, however, this Court cannot allow its suspicion to shift the analysis of these important issues away from the plain text of the statute before it.

In sum, this Court holds that § 1083(c) withstands constitutional scrutiny because that provision does not require the reopening of final judgments issued under § 1605(a)(7). Critical to today's ruling is the Court's determination that the political branches of our government have in essence wiped the slate clean by creating an entirely new statutory provision that is chock full of rights and remedies that never existed under § 1605(a)(7). In so holding, this Court recognizes that this ruling may rest on a narrow view of the terms cause of action and judgment.

Absent some clear authority suggesting a contrary result, however, it is not the province of this Court to expand existing Supreme Court precedent.

# ANALYSIS OF WHETHER ACTIONS UNDER SECTION 1605(a)(7) HAVE QUALIFIED FOR RETROACTIVE TREATMENT UNDER SECTION 1605A

With the statutory framework of § 1083(c) of the 2008 NDAA to guide the analysis, this Court now examines those efforts by a variety of counsel in these Iran cases to bring their prior actions under § 1605(a)(7) within the ambit of the new enactment, § 1605A. The cases this Court will examine here break down into roughly three categories, and so the analysis will be framed accordingly. The first category of cases are those in which counsel for plaintiffs have taken a "belt and suspenders" approach by invoking both § 1083(c)(2) and (c)(3). In these instances, plaintiffs' counsel have not only filed motions under subsection (c)(2) seeking to have their prior actions under § 1605(a)(7) given effect as if these actions had been filed under § 1605A originally, but they have also filed new actions entirely, relying on the related case procedures of (c)(3) and citing in their complaint, the new terrorism exception, § 1605A. The second category of cases involves those actions in which plaintiffs' counsel rely only on § 1083(c)(3), and so the attorneys in these actions have simply filed new actions under § 1605A as related actions to their prior cases, or as related to other cases pending under § 1605(a)(7) based on the same act or incident. The third category of cases are those in which plaintiffs' counsel have failed to invoke either § 1083(c)(2) or (c)(3), and yet, strangely, the attorneys in this category of cases have nonetheless filed motions that presume the right to relief under § 1605A. Without saying as much, it appears that counsel in this last category of cases have operated under the flawed assumption that § 1605A is automatically retroactive to their cases.

With few exceptions, each of the cases addressed below represents two separate civil actions on this Court's docket, even though the two docketed actions are based on the same act

or incident and involve the same plaintiffs and defendants. This odd posture with respect to these matters did not come about because plaintiffs wished to be duplicative or believed that there is some tactical advantage in maintaining two actions based on the same act or incident. Quite the contrary, what has occurred here in many instances is that plaintiffs' counsel—whether they were required to or not—invoked the procedures of § 1083(c)(3), thereby filing their prior cases as new actions under § 1605A, instead of simply filing a motion, pursuant to § 1083(c)(2), that would have enabled this Court to treat their original action as if it was filed under § 1605A, as Congress intended.

As will be underscored in the Court's analysis of these FSIA terrorism cases, § 1083(c)(3) pertaining to related actions—as it may be invoked for certain cases that were previously filed under § 1605(a)(7)—is really a vehicle best reserved for those cases that had reached a final judgment and were not before the courts at time of the enactment of the 2008 NDAA. In other words, it is best reserved for those civil actions that were never eligible for § 1083(c)(2) and therefore could not have been simply transformed on motion into an action under § 1605A. More liberal use of § 1083(c)(3), invites unnecessary duplication of effort, requiring this Court to maintain two nearly identical actions on the docket—one under § 1605(a)(7) and one under § 1605A—by the very same plaintiffs, at approximately the same time, and will inevitably require this Court to flip back and forth between dozens of related cases involving hundreds upon hundreds of repeat plaintiffs. Suffice it to say, such a result wastes time and resources, and invites great confusion. Thus, as this Court understands the new statute, § 1083(c)(3) is the appropriate avenue for relief in those cases that reached final judgment sometime prior to the enactment of the 2008 NDAA and which were not "before the court[] in any form," as required for treatment on motion pursuant to § 1083(c)(2). With these initial

observations in mind, this Court turns its attention toward many of the individual terrorism actions now pending against Iran.

## 1. The "Belt and Suspenders" Plaintiffs: Those Who Have Invoked Both Section 1083(c)(2) and (c)(3)

Nine of the 20 cases considered today fall within the "belt and suspenders" category. As noted, this category of cases involves prior actions under § 1605(a)(7) in which counsel have sought to obtain retroactive treatment under the new terrorism exception by filing both a motion under § 1083(c)(2) and a new complaint consistent with (c)(3). To the extent the use of these dual approaches leads to duplicative actions on the docket, this Court will exercise its docket management prerogative as appropriate to stay the most recently filed actions, pending resolution of efforts by counsel to move forward on motion in accordance with § 1083(c)(2). These actions are addressed here in chronological order

Kirschenbaum, 03-CV-1708 and 08-CV-1814. These cases arise out a suicide bombing in Jerusalem and were brought under § 1605(a)(7). Plaintiffs are an American citizen injured in that attack and several of his family members. An opinion was published and judgment was entered in favor of all plaintiffs on August 26, 2008. Kirschenbaum, 572 F. Supp. 2d 200. In reaching that judgment, this Court found liability against Iran based on the underlying causes of action, which were all based in state tort law, and then awarded compensatory damages but declined to award any punitive damages against Iran. *Id.* at 204 n.1. In making that determination, this Court stressed that § 1605A does not have automatic, retroactive application to cases that were filed under § 1605(a)(7), and because plaintiffs had failed to follow the procedures in § 1083(c), punitive damages were not available. *Id.* 

*Kirschenbaum's Motion Pursuant to Section 1083(c)(2).* Shortly after the judgment, plaintiffs sought reconsideration under Rule 59(e) of the Federal Rules of Civil Procedure and requested leave to file a motion *nunc pro tunc* under § 1083(c)(2), thereby enabling plaintiffs to proceed under the new terrorism exception § 1605A. *Kirschenbaum*, No. 03-CV-170-RCL (D.D.C.), Dk. # 32. Counsel for plaintiffs argues that, based on a careful analysis of the entire § 1083, he honestly but mistakenly concluded that § 1605A applied retroactively to his case.

Beginning his analysis with § 1083(c)(2), counsel claims he believed that particular provision did not apply to his clients because, in his view, these plaintiffs were not "adversely affected on the ground that 28 U.S.C. § 1605(a)(7) failed to create a cause of action against a foreign state," as § 1083(c)(2)(iii) expressly requires. Dk. # 32, at 3. Counsel explains that the law recognizes a clear distinction between a "cause of action"—essentially the right to bring a civil suit—and the special remedy of punitive damages that may be awarded in certain kinds of lawsuits. *Id.* at 3–4. Counsel relies on a variety of legal authorities, including treatises and case precedent from many other jurisdictions, all of which support the proposition that a cause of action is necessarily separate and distinct from punitive damages. Indeed, as counsel asserts, punitive damages are dependent entirely on the underlying cause of action and cannot exist independently of an underlying claim. *Id.*; *see*, *e.g.*, *Burke v. Deere & Co.*, 6 F.3d 497, 511 (8th Cir. 1993) ("[T]here is no separate cause of action for punitive damages under Iowa law . . . .").

Additionally, plaintiffs' counsel notes that the language in (c)(2)(iii) regarding the failure "to create a cause of action against a foreign state" appears to specifically address the problems encountered by certain plaintiffs in the *Peterson* litigation involving the 1983 bombing of the United States Marine barracks in Beirut, Lebanon. *Id.* at 4. In that case, for instance, a large number of plaintiffs with claims under § 1605(a)(7) were in fact barred from even presenting a

cause of action by the applicable state tort law of certain jurisdictions. *See, e.g., Peterson II*, 515 F. Supp. 2d at 44–45 (denying certain emotional distress claims of plaintiffs from Pennsylvania on the ground that they did not have standing to bring such claims under Pennsylvanian law). Counsel suggests that some of the legislative history, specifically statements from Senator Arlen Specter, reinforces the view that the (c)(2) provision was intended to apply only to plaintiffs, who, like the Pennsylvania litigants and others in *Peterson*, were barred from presenting their claims for recovery under the former pass-through regime that existed pursuant to § 1605(a)(7). Dk. # 32, at 4.

Thus, counsel reads § 1083(c)(2) in light of the legal distinction between an underlying cause of action and the special remedy of punitive damages, and thereby argues that he determined, in good faith, that he was not entitled to rely on (c)(2) because all the plaintiffs in his case had succeeded in their underlying causes of action under § 1605(a)(7). Consistent with this argument, counsel stresses that his clients neither need nor desire to pursue new claims under federal law; instead, their only request at this time is the additional remedy of punitive damages against Iran, as the new law, § 1605A, now makes available.

With respect to availability of § 1083(c)(3), plaintiffs again relies on the distinction between an action and damages. Counsel states:

Plaintiffs did not interpret § 1083(c)(3) to apply to the instant case, especially where the original complaint already included a demand for punitive damages against the Defendant. [Section] 1083(c)(3) states that "any other action arising out of the same act or incident may be brought under section 1605A." Under Plaintiffs' interpretation of the word "action" this provision did not cover a situation such as Plaintiffs' where the only difference was in damages, and there was no separate action to bring.

Dk. # 32, at 5 (citations omitted). Accordingly, plaintiff ultimately concluded that neither § 1083(c)(2) nor (c)(3) governing the applicability of § 1605A to pending cases applied to the *Kirshenbaum* case.

Having determined that his clients had no recourse under § 1083(c), counsel claims that he finally reached the conclusion that actions like *Kirschenbaum* must fall under § 1605A automatically because of the language within § 1605A(b) that provides "an action may be . . . *maintained* under this section if the action is commenced . . . under section 1605(a)(7) (before the date of the enactment of this section)." § 1605A(b) (emphasis added).

While today's decision makes clear that this Court finds counsel's interpretation of § 1083 unpersuasive, counsel's reading of the statute is not unreasonable. To be sure, this new enactment is hardly a model of clarity and is "somewhat disjointed in its organization," as counsel observes. On a matter of first impression, such as was presented by this new statute, reasonable legal minds can, and often do, differ in their interpretations. This Court appreciates counsel's candor, insightful analysis, and prompt action in this matter.

At this time, however, the Court must deny the motion for reconsideration under Rule 59(e). This Court is not inclined to overlook a deadline for filing motions that Congress has imposed by statute. The 60-day time limit in § 1083(c)(2) is what Congress directed, and counsel has not provided this Court with any case precedent or other authority to suggest that this Court may override or waive the time limit for filing imposed by Congress under the circumstances presented here. Absent such authority, this Court is compelled to abide by the time limit Congress imposed. Accordingly, plaintiffs' motion will be denied, as will the motion requesting a hearing on this matter (*Kirschenbaum*, No. 03-CV-170-RCL (D.D.C.), Dk. # 33). A separate order denying these motions will issue this date. If, however, counsel is able to find

some authority that might permit this Court to grant relief, notwithstanding the deadline imposed by statute, then Counsel may wish to file another motion for reconsideration under Rule 59(e) or a motion under Rule 60(b) seeking relief from today's order. Any motion and argument under Rule 60(b) should comply with the guidance expressed in Part G below.

Kirschenbaum's New Action Pursuant to § 1083(c)(3). About a month after filing their motion for reconsideration, plaintiffs also filed an action under § 1605A in accordance with the related case procedures set forth in § 1083(c)(3). See Kirschenbaum, No. 08-CV-1814-RCL (D.D.C.), Dk. #3 (filed Oct. 17, 2008). This new action complies with the procedures in § 1083(c)(3) because it relates to plaintiffs' prior case under § 1605(a)(7), and the complaint in this new action was filed with 60 days of "the date of entry of judgment in the original action." See § 1083(c)(3)(A). Accordingly, this new case may proceed under § 1605A as a related action. The Court observes, however, that the complaint in this new action continues to assert New York common law as the source of plaintiffs claims against Iran, but reliance on state law is no longer necessary or appropriate under § 1605A because it expressly provides plaintiffs with a federal cause of action. Moreover, as plaintiffs in this new action previously succeeded with claims under New York law by utilizing the pass-through approach in their prior action under § 1605(a)(7), the doctrine of double recovery would likely bar or severely limit plaintiffs' efforts to claim additional compensatory damages in this new case under § 1605A. See, e.g., Consol. Edison Co. of N.Y., Inc., v. Bodman, 445 F.3d 338, 451 (D.C. Cir. 2006); Peterson II, 515 F. Supp. 2d at 40 n.7. As counsel stressed in their Rule 59(e) motion, however, plaintiffs are not seeking additional compensatory damages in this action. Instead, plaintiffs are now proceeding under § 1605A in order to claim punitive damages, which were not available under § 1605(a)(7).

Accordingly, determining an award of punitive damages in this new action will not require this Court to consider any double recovery problems.

*Beer, 06-CV-473 and 08-CV-1807.* These cases arise out of the suicide bombing of a bus in Jerusalem on June 11, 2003. Plaintiffs are family members of one of the victims, the late Alan Beer, who was killed in that bombing. Plaintiffs in this action are represented by the same attorney who is handling the *Kirschenbaum* case, and therefore it should come as no surprise that the issues and arguments presented in this action are identical to those addressed above.

This Court issued an opinion and entered a judgment in favor of the plaintiffs on August 26, 2008. *See Beer*, 574 F. Supp. 2d 1. As in the *Kirschenbaum* case, this Court denied punitive damages because plaintiffs' action fell under § 1605(a)(7), not § 1605A. On September 10, 2008, plaintiffs filed a motion pursuant to Rule 59(e) for reconsideration and requested leave to file a motion *nunc pro tunc* under § 1083(c)(2) to enable plaintiffs to proceed under § 1605A. *Beer*, No. 06-CV-473-RCL (D.D.C.), Dk. # 30. That motion is in all critical respects identical to the motion for reconsideration filed in the *Kirschenbaum* action. Also like *Kirschenbaum*, plaintiffs in this case have made an additional effort to move forward under the new law by filing a new action in accordance with the related case procedures set forth in § 1083(c)(3). Incorporating by reference the analysis applied to the *Kirschenbaum* case above, this Court addresses both the motion and the newly filed action.

Beer's Motion Pursuant to § 1083(c)(2). For the reasons expressed above, this motion for reconsideration (id. Dk. # 31) must be denied at this time. If plaintiffs wish for this Court to reconsider the judgment and decide whether to grant leave for plaintiffs to proceed under § 1083(c)(2) on motion, then counsel must direct this Court to some authority suggesting that this Court need not comply with a time limit imposed by Congress under the circumstances

presented here. The motion for a hearing on this matter, *id.*, will also be denied in a separate order issued this date.

Beer's New Action Pursuant to Section 1083(c)(3). Plaintiffs also filed a new action under § 1605A on October 17, 2008, see Beer, 08-CV-1708-RCL (D.D.C.), in accordance with the procedures for related actions under § 1083(c)(3). Like the plaintiffs in Kirschenbaum, plaintiffs in this case have met the requirement of § 1083(c)(3) and therefore may proceed under § 1605A as a related action. The Court again observes, however, that the complaint in this new action continues to assert New York common law as the source of plaintiffs' claims against Iran. In light of the new federal cause of action in § 1605A reliance on state law is no longer necessary or appropriate. Moreover, much like Kirschenbaum, the plaintiffs in this new action also succeeded previously with claims under New York law by utilizing the pass-through approach in their prior case under § 1605(a)(7). Thus, as noted above, the doctrine of double recovery should bar or severely limit plaintiffs' efforts to claim additional compensatory damages in this new case under § 1605A. As counsel stressed in their Rule 59(e) motion, however, plaintiffs are not seeking additional compensatory damages in this action. Instead, plaintiffs are now proceeding under § 1605A in order to claim punitive damages, which were not available under § 1605(a)(7). Accordingly, determining an award of punitive damages in this new action will not require this Court to consider any double recovery problems.

Haim, 02-CV-1811 and 08-CV-520. These cases arise from the same terrorist attack that claimed the life of Alisa Flatow. As noted in Part A, *supra*, a suicide bomber belonging to and acting on behalf of the Palestine Islamic Jihad drove a van loaded with explosives into the passenger bus traveling on the Gaza Strip on April 9, 1995, and the resulting explosion destroyed the bus and killed eight of the passengers. Many others were injured in the explosion. The

plaintiffs in these actions are a United States citizen who was injured in that attack and members of his family. They first brought an action under § 1605(a)(7) on September, 12, 2002. Plaintiffs achieved a final judgment in their favor on March 24, 2006. *See Haim*, 425 F. Supp. 2d 56. As that case was under § 1605(a)(7), no punitive damages were awarded against Iran. *See id.* at 71.

Like plaintiffs in *Kirschenbaum* and *Beer*, plaintiffs in this action have taken a belt and suspenders approach in their efforts to take advantage of the new law, § 1605A. Following the enactment of the 2008 NDAA, plaintiffs first filed a new action, *Haim*, No. 08-CV-520-RCL (D.D.C.), on March 26, 2008, in accordance with the related cases provisions of § 1083(c)(3), thereby seeking punitive damages against Iran under the revised terrorism exception, § 1605A. Plaintiffs also filed a motion in their original action in an effort to obtain treatment under § 1605A by using the procedures in § 1083(c)(2). *See Haim*, 02-CV-1811-RCL (D.D.C.), Dk. # 32. As their prior case was no longer "before the court[] in any form" at the time of the enactment of the 2008 NDAA (January, 28, 2008), this Court denied the motion. *See Haim v. Islamic Republic*, 567 F. Supp. 2d 146 (D.D.C 2008) (Lamberth, C.J.).

Unlike a number of other cases addressed by the Court today, *Haim* was never eligible for treatment under § 1083(c)(2). Accordingly, the only way plaintiffs in this case can claim the benefits of § 1605A is through the related case provisions in § 1083(c)(3). Plaintiffs filed their new action within 60 days of the enactment of the 2008 NDAA, and therefore plaintiffs have properly applied the related case provisions of § 1083(c)(3) in this instance. As plaintiffs have taken the appropriate steps to avail themselves of § 1605A, no further action is required of the Court at this time.

Bland, 05-CV-2124. This civil action was filed under § 1605(a)(7) and arises out of the bombing of the United States Marine barracks in Beirut, Lebanon on October 23, 1983. See Bland, No. 05-CV-2124-RCL (D.D.C.), Dk. # 2 (Complaint). There are nearly 100 plaintiffs in this action, including numerous estates of those service members killed in the terrorist attack and dozens of family members of those who were killed or injured during the terrorist incident. On December 6, 2006, this Court took judicial notice of the findings of fact and conclusions of law in the Peterson action, which also concerns the Marine barracks bombing, see Peterson I, 264 F. Supp. 2d 47, and entered judgment in favor of the Plaintiffs and against Iran with respect to all issues of liability. Bland, No. 05-CV-2124-RCL (D.D.C.), Dk. # 16. This Court then referred this action to a special master for consideration of plaintiffs' claims for damages. See id. Dk. ## 15–16.

On March 10, 2008, and while this action was still pending with the special master under § 1605(a)(7), counsel for plaintiff timely filed a motion seeking to proceed in their action under the newly-enacted terrorism exception, § 1605A. *See id.* Dk. # 17. As counsel followed the proper procedures and qualified for retroactive treatment in accordance with § 1083(c)(2), this Court granted the motion, thereby enabling plaintiffs to taken advantage of the new statute in their claims before the special master. *See id.* Dk. # 19. While plaintiffs' motion was still under consideration, however, and apparently out of an abundance of caution, counsel added the plaintiffs from this case to a complaint in a new action, styled *Brown v. Islamic Republic for Iran*, which is discussed below and also arises from the Marine barracks bombing incident. *See Brown*, 08-CV-531-RCL (D.D.C.), Dk. # 1 (Complaint, filed Mar. 27, 2008). As will be discussed in more detail below, the *Brown* action includes plaintiffs from one another action, *Spencer v. Islamic Republic of Iran*, No. 06-CV-750-RCL (D.D.C.), which, like *Bland*, has

qualified for treatment under § 1605A in accordance with the requirements of § 1083(c)(2) and arises out the Marine barracks bombing. Plaintiffs in *Bland*, *Spencer*, and now *Brown*, are all are represented by the same counsel, and thus counsel have taken a belt and suspenders approach by filing a new action in their cases, *Bland* and *Spencer*, that were eligible—and in fact qualified for—retroactive treatment under the terms of § 1605A.

To date, *Bland* is still pending with the special master. At a status conference set by the Court in accordance with this opinion and by separate order issued this date, this Court will see what must be done to sort out the claims and move matters forward on behalf of these Marine barracks bombings plaintiffs that are now spread out among three actions under § 1605A.

Spencer, 06-CV-750. This action also arises out of the Marine barracks bombing and was originally filed on April 24, 2006 under the § 1605(a)(7). See Spencer, No. 06-CV-750-RCL (D.D.C.), Dk. # 3 (Complaint). As the plaintiffs in this action are represented by the same counsel as plaintiffs in Bland, the issues and procedural history of this case largely mirror those discussed in Bland above. On October 10, 2007, this Court took judicial notice of the findings of fact and conclusions of law in the Peterson action, which also concerns the Marine barracks bombing, see Peterson I, 264 F. Supp. 2d 47 (D.D.C. 2003), and entered judgment in favor of the plaintiffs and against Iran with respect to all issues of liability, Spencer, No. 06-CV-750-RCL (D.D.C.), Dk. # 18. At that time the Court, referred this action to a special master for consideration of plaintiffs' claims for damages. See id.

On March 10, 2008, and while this action was still pending with the special master under § 1605(a)(7), counsel for plaintiffs timely filed a motion, pursuant to § 1083(c)(2), seeking to proceed in their action under the newly enacted terrorism exception, § 1605A. *See id.* Dk. # 19. As counsel followed the proper procedures and qualified for retroactive treatment in accordance

with § 1083(c)(2), this Court granted the motion, thereby enabling plaintiffs to taken advantage of the new statute in their claims before the special master. *See id.* Dk. # 20. While plaintiffs' motion was still under consideration, however, counsel also added the plaintiffs from this case to a complaint in a new action, styled *Brown v. Islamic Republic for Iran*, which is discussed below and also arises from the Marine barracks bombing incident. *See Brown*, No. 08-CV-531-RCL (D.D.C.), Dk. # 1 (Complaint, filed Mar. 27, 2008). As noted above, the *Brown* action also includes plaintiffs from *Bland*, and the plaintiffs in *Bland*, *Spencer*, and now *Brown*, are all are represented by the same counsel. Thus, it appears that counsel have taken a belt and suspenders approach by filing a new action for the plaintiffs in their cases, *Bland* and *Spencer*, even those plaintiffs were eligible for—and in fact qualified for—retroactive treatment on motion in accordance with § 1083(c)(2).

*Spencer* is still pending with the special master. At the status conference set by the Court in accordance with this opinion and by separate order issued this date, this Court will see what must be done to sort out the claims and move matters forward under § 1605A.

*Brown*, *08-CV-531*. As noted, the new case of *Brown v. Islamic Republic of Iran*, No. 08-CV-531-RCL (D.D.C.), includes plaintiffs from both *Bland and Spencer*, as discussed above. Accordingly, those plaintiffs who are now proceeding under § 1605A in their original cases, either *Bland* or *Spencer*, should be dismissed from the *Brown* action. To the extent that there any new plaintiffs in the *Brown* action, those plaintiffs may, of course, proceed in this new case.

Currently, service of process in *Brown* is being carried out through diplomatic channels, as that is the standard procedure in these actions against Iran. *See* § 1608(a). Once that process is completed, counsel for plaintiffs shall provide this Court with the names of all plaintiffs in *Brown* who appear in either the *Bland* or *Spencer* cases. As these plaintiffs now have the right to

proceed under § 1605A in their original actions, they must be dismissed from this new action. Along with the list of names identifying the duplicative plaintiffs, counsel shall furnish the Court with a proposed order of dismissal of those plaintiffs. If these plaintiffs have any reason to oppose being dismissed from the *Brown* case, such opposition shall be filed with the Court at that time. An order consistent with the guidance expressed herein shall issue this date.

### 2. The "Related Action" Plaintiffs: Those Who Have Filed New Actions Pursuant to Section 1083(c)(3)

The next five civil cases to be addressed by the Court today are those in which counsel have invoked the procedures for related actions in § 1083(c). By doing so, plaintiffs' counsel have filed a new case under § 1605A as a "related action." Consistent with § 1083(c)(3) the new action must be related to either the plaintiffs' own prior action under § 1605(a)(7) or to some other currently pending action that is based on the same underlying terrorist incident. The Court will now examine these actions in chronological order.

Rimkus, 06-CV-1116 and 08-CV-1615. These cases arise from the bombing of the Kobar Towers, a residential military complex operated by the United States Air Force in Dhahran, Saudi Arabia. Plaintiff is the father of one of the 19 servicemen killed in that terrorist attack. On August 26, 2008, this Court issued an opinion and entered judgment in favor of plaintiff in accordance with § 1605(a)(7). See Rimkus, 575 F. Supp. 2d 181. Even though his action was pending at the time the 2008 NDAA was enacted, plaintiff never moved the Court, pursuant to § 1083(c)(2), to treat his case as if it were filed under the new law, § 1605A. Instead of following those straightforward procedures, plaintiff opted to file what he has styled as a "Complaint For Punitive Damages Pursuant to Section § 1083(c)(3)." See Rimkis, No. 08-CV-

1615-RCL (D.D.C.). The only purpose of this new action is affix punitive damages against Iran for the claims that were litigated previously in *Rimkis*, No. 06-CV-1116-RCL (D.D.C.).

Notwithstanding the questionable validity of a complaint for punitive damages, plaintiff was undoubtedly entitled to relief under § 1083 (c)(3) when he filed it. Similarly, plaintiff was also eligible for treatment on motion as the litigation in his prior action, No. 06-CV-1116-RCL, wound to a close. While plaintiff's new complaint for punitive damages under § 1083(c)(3) is not the best or most straightforward way to achieve the relief plaintiff desires, it was filed in a timely manner and with recognition of the applicable procedures in § 1083(c). In view of these considerations, plaintiff's new case, No. 08-CV-1615-RCL, is permitted to proceed under § 1605A.

*Bonk*, *08-CV-1273*. This action, like many considered today, emanates from the terrorist bombing of the United States Marine Barracks in Beirut, Lebanon on October 23, 1983. The plaintiffs in this action were all originally part of the large consolidated action *Peterson v*. *Islamic Republic of Iran*, No. 01-CV-2094-RCL (D.D.C.). As noted Part A, *supra*, *Peterson* was brought under § 1605(a)(7), the case proceeded to trial, and this Court ultimately awarded damages to most of the plaintiffs in the case. *See Peterson II*, 515 F. Supp. 2d 25.

Bonk is a new case that was filed several months ago by the plaintiffs who were dismissed from the *Peterson* action because the applicable state tort law—specifically Louisiana and Pennsylvania law—did not provide them standing to assert their claims for the intentional infliction of emotional distress. *See id.* at 45. *Bonk* is brought in accordance with § 1083(c)(3) as a related action to several other cases that were timely commenced under § 1605(a)(7). Plaintiffs point to the cases of *Valore*, No. 03-CV-1959-RCL (D.D.C.); *Bland*, No. 05-CV-2124-RCL (D.D.C.); and *Davis*, No. 07-CV-1302-RCL (D.D.C.), all of which are open cases pending

against Iran, and all of which arise from the bombing of the Marine barracks in Lebanon. As these plaintiffs seek relief based on that same terrorist incident, § 1083(c)(3) by its plain terms authorizes them to file this new action under § 1605A. Accordingly, *Bonk* has been filed properly as a related action, and so these plaintiffs who were dismissed from *Peterson* my now move forward with their claims under § 1605A.

All that said, however, this Court is somewhat baffled by the approach taken by counsel here. As the *Peterson* action was on appeal at the time of the enactment of the 2008 NDAA, counsel could have simply moved this Court, pursuant to § 1083(c)(2), to treat the *Peterson* case as if it were filed under § 1605A. Had counsel made such a motion within 60 days of the enactment of the 2008 NDAA, this Court could have easily revisited and reconsidered the claims of the Pennsylvania and Louisiana plaintiffs within their original consolidated case, and that, of course, would have avoided the need to file this new civil action. Converting *Peterson* to an action under § 1605A would have enabled this Court to give effect to many of the other advantages of the new statute, such as the increased availability of punitive damages, within the confines of the original *Peterson* case and for the benefit of all of the hundreds of plaintiffs in that action.

Perhaps counsel in *Peterson* did not believe that the appeal by the Pennsylvania and Louisiana plaintiffs—a small subset of the nearly one thousand plaintiffs in *Peterson*—was sufficient to satisfy the requirement that the action be "before the court[] in any form, *including* on appeal" for treatment on motion under § 1605A. § 1083(c)(2)(iv) (emphasis added).<sup>36</sup>

<sup>&</sup>lt;sup>36</sup> Approximately one month after the enactment of the 2008 NDAA, on February 27, 2008, the plaintiffs now included in *Bonk* had their appeal dismissed without prejudice by the Court of Appeals. In a subsequent filing by counsel in *Peterson*, counsel for plaintiffs informed this Court that the dismissal without prejudice was on their own motion. *See Peterson*, No. 01-

Perhaps counsel in *Peterson* also reached a conclusion, similar to that reached by counsel in *Kirschenbaum* and *Beer*, that certain aspects of the statute were automatically retroactive and therefore did not implicate the provisions of § 1083(c). Whatever the reasons for the apparent confusion, counsel would do well to consider whether they have a good faith basis for a motion under Rule 60(b). In considering such a motion, plaintiffs should take heed of the guidance provided in Part E, *infra*, of this opinion.

*Valore*, 03-CV-1959. This action is one of the many other cases in addition to *Peterson* that arises from the terrorist bombing of the United States Marine Barracks in Beirut, Lebanon in 1983. The case involves nearly fifty plaintiffs, and it is currently an open case, as the Court is awaiting the recommendations from the special masters with respect to the issue of damages. As this was an open case with the Court at the time the 2008 NDAA was enacted, plaintiffs were eligible to convert their action to § 1605A on motion in accordance with the procedures specified in § 1083(c)(2). Several weeks ago, however, plaintiffs filed an amended complaint. *See Valore*, No. 03-CV-1959-RCl (D.D.C.), Dk. # 27. While the complaint is very similar to the original complaint in the sense that it continues to rely on District Columbia law for wrongful death and survivorship claims, it adds § 1605A as the basis for a variety of tort claims, including battery, intentional infliction of emotional distress, and the derivative claim of loss of solatium. To the extent that the complaint continues to assert District of Columbia law, this Court has in the past recognized that the laws of this District are an appropriate model for the development of a federal standard with respect to liability in actions against state sponsors of terrorism. *Flatow* 

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CV-2094, Dk. # 388, at 2 (Plaintiffs' Motion and Memorandum in Support of Extension to File a Supplemental Memorandum in Support of Plaintiffs' Motion Pursuant to Fed. R. Civ. Pro. 59(e), filed July 28, 2008).

*I*, 999 F. Supp. at 15, n.6. Thus, the Court is of the view that the plaintiffs' amended complaint sufficiently comports with the related case filing procedures of § 1083(c)(3), and thus this action may now proceed under § 1605A. Moreover, as this action is a pending case that was eligible for treatment under § 1083(c)(2), this Court will exercise it prerogative to manage the docket by treating this case as if it were converted on motion.

Davis, 07-CV-1302. This is the last action the Court will address in this section and it too stems from the terrorist bombing of the Marine barracks in Beirut. This case involves more than 200 plaintiffs. The complaint has been amended several times and it appears that a sizable number of the plaintiffs in this action are those who had their claims dismissed without prejudice from the Peterson case due to lack of evidence. See Peterson II, 515 F. Supp. 2d at 46–47.

Many of the other plaintiffs in this action, however, appear to be coming before the Court for the first time. To lend some clarity to this matter going forward, counsel for plaintiff shall file a separate document with the Court that identifies all the plaintiffs in this new action who were dismissed from Peterson and list the grounds for each of those dismissals. Additionally, counsel should be certain to identify in a like manner any other plaintiffs who may have appeared in any of the other prior actions arising from the Marine barracks bombing. A separate order consistent with this guidance shall issue this date.

3. The "Do-Nothing" Plaintiffs: Those Who Have Invoked Neither Section 1083(c)(2) Nor (c)(3) in Their Efforts to Retroactively Claim the New Entitlements Under Section 1605A

The last five actions considered today are those in which plaintiffs' counsel have not seen fit to invoke either § 1083(c)(2) or (c)(3) in their efforts to claim the entitlements available in terrorism cases under § 1605A. In most of these actions, however, plaintiffs' counsel have

proceeded as if § 1605A is automatically retroactive to prior terrorism actions under § 1605(a)(7). Each of these cases will now be addressed in chronological order.

Peterson, 01-CV-2094 and 01-CV-2684. As noted throughout this opinion, this case arises out the suicide bombing of the United States Marine Barracks facility in Beirut, Lebanon in 1983. This large consolidated case is essentially the lead action of the cases filed based on the Beirut attack, and with nearly 1000 plaintiffs, it is by far the largest of the group. As noted above in the discussion concerning Bonk, No. 08-CV-1273-RCL (D.D.C.), supra, and at other points throughout today's decision, counsel for plaintiffs in this large action never filed a motion pursuant to § 1083(c)(2) and they have not filed a new action under § 1083. As will be made clear in both Parts H and I of this opinion, counsel for plaintiffs have, however, filed numerous motions that have presumed the right to relief under § 1605A. For example, they filed several motions for payments to the special masters under § 1605A(e), which this Court ultimately denied. See Peterson, 01-CV-2094-RCL (D.D.C.), Dk. # 430 (Memorandum Opinion and Order, issued Jan. 5, 2009). Similarly, plaintiffs' counsel filed numerous motions seeking appointment of receivers to locate and take hold of a variety of Iranian assets. See, e.g., id. Dk. ## 251, 259, 404. All of the motions for receivers, however, were premised on the new provisions in § 1610(g) that purport to limit the availability of sovereign immunity defenses in efforts by plaintiffs to satisfy judgments entered under the new law, § 1605A. Accordingly, this Court has denied all motions for the appointment of receivers in Peterson. See, e.g., id. Dk. #434 (Memorandum Opinion and Order, dated Mar. 31, 2009, denying all motions for receivers).

As plaintiffs' counsel have not complied with the requirements set forth in § 1083(c), the action remains under § 1605(a)(7). At this juncture, counsel in *Peterson* may want to consider filing an amended complaint, consistent with the procedures for related actions in § 1083(c), and

similar to that which was filed in *Valore*, *supra*, as there are several cases still pending with the special masters that relate to the Marine Barracks Bombing and which were timely commenced under § 1605(a)(7). *Valore*, *supra*; *Bland*, *supra*; *Spencer*, *supra*; *Arnold*, *infra*; *and Murphy*, *infra* are five good examples of actions arising out of the Beirut Bombing that were commenced under § 1605(a)(7).

When considering whether to file an amended complaint pursuant to § 1083(c)(3), counsel also look to the new action they filed on behalf of the Pennsylvania and Louisiana plaintiffs in *Bonk*, *supra*. As noted, counsel have properly invoked the related case procedures for those plaintiffs. The complaint filed in *Bonk* is a good example in that it not only expressly identifies the related case provision of § 1083(c)(3), but it also identifies pending actions on this Court's docket that the *Bonk* action relates to. Additionally, in the event that counsel file such an amended complaint, counsel should address what impact, if any, the *Bonk* action will have on *Peterson* going forward. Absent use of the procedures for related cases, counsel should consider this Court's guidance below in Part G with respect to a motion pursuant to Rule 60(b).

Bennett, 03-CV-1486. This case concerns a suicide bombing at Hebrew University in Jerusalem in July of 2002. The bombing claimed the life of Marla Ann Bennett, an American citizen and a resident of California. Marla's parents filed an action under § 1605(a)(7). Plaintiffs ultimately demonstrated that Iran provided material support to Hamas in furtherance of terrorist objectives, including suicide bombing attacks in Israel, including the one that claimed their daughter's life in July of 2002. See Bennett, 507 F. Supp. 2d 117. Plaintiffs were awarded a judgment in excess of 12 million dollars. To date, that judgment remains unsatisfied.

Recently, this Court quashed five writs attachment issued by plaintiffs against properties that once comprised the Iranian Embassy compound here in Washington, DC. *See Bennett*, 604

F. Supp. 2d 152. In one of the arguments in support of that motion, plaintiffs stated that § 1610(g) renders Iran's former diplomatic properties subject to attachment. In one of their arguments in support of the writs of attachment, plaintiffs asserted that § 1610(g) strips away any immunity that might otherwise exempt that former embassy from attachment and execution upon a civil judgment. In quashing the writs of attachment, this Court noted that plaintiffs could not take advantage of the new measures in § 1610(g) because they never elected to proceed under the new terrorism exception, § 1605A. *Id.* at 162. Moreover, this Court observed that a plain reading of § 1610(g) offers no indication that Congress intended to eliminate the immunity that has long been afforded to diplomatic properties, like Iran's former embassy here in the United States, that are maintained in protective custody by the State Department pursuant to the Foreign Missions Act. *Id.* While this Court is not convinced that there any reading of § 1610(g) that would permit plaintiffs to attach any of the properties that once comprise the Iranian Embassy, plaintiffs may certainly hope to avail themselves of § 1610(g) in pursuit of other Iranian assets. For this reason, plaintiffs' counsel should consider the guidance in Part G and weigh options for moving forward in the postjudgment phase of this action.

Murphy, 06-CV-596. This action, like so many others on this Court's docket, arises out of the Marine barracks bombing. It was filed on March 31, 2006 under § 1605(a)(7). See Murphy, No. 06-CV-596-RCL (D.D.C.), Dk. # 1 (Complaint). Plaintiffs include the estate of a United States Marine killed in that attack and several other Marines who were injured in the explosions. See id. On October 10, 2007, this Court took judicial notice of the findings of fact and conclusion of law in the Peterson action, and entered judgment in favor of the plaintiffs and against Iran with respect to all issues of liability. Id. Dk. #27. This Court also referred this case to special masters for consideration of the plaintiffs' claims for damages. See id.

To date, this action remains pending with the special masters. Notably, counsel for plaintiffs in this case have not taken any action to qualify their case for treatment under § 1605A. Accordingly, this action remains under § 1605(a)(7). As the 60-day window in which counsel for plaintiffs could have filed a motion to bring this action under § 1605A has long since passed, see § 1083(c)(2), counsel may want to consider a motion under Rule 60, as discussed in Part G, or, alternately, the related case procedures in § 1083(c)(3). At any rate, the few claims presented in this case have been pending for nearly two years, and thus this Court will want to determine at a status conference what must be done to enter final judgment in this action in due course.

*O'Brien, 06-CV-690.* This action also arises out of the Marine barracks bombing. It was filed on April 17, 2006 under § 1605(a)(7). *See O'Brien*, 06-CV-690-RCL (D.D.C.), Dk. # 3, (Complaint). Plaintiffs include several United States Marines who were injured in that attack and several of their family members. For over a year, plaintiffs' counsel sought to effect service of process by mailing the summons and complaint to the Iranian Ministry of Information and Security and Tehran. *See id.* Dk. ## 3–11. Those efforts proved unsuccessful, and thus plaintiffs moved this Court for an order authorizing service though diplomatic channels, consistent with § 1608(4). *Id.* Dk. #12. This Court granted that motion on October 12, 2007, and service of process is now being carried out through the Department of State. *See Id.* Dk. #14.

Notably, counsel for plaintiffs in this case have not taken any action to qualify their case for treatment under § 1605A. Accordingly, this action remains under § 1605(a)(7). As the 60-day window in which counsel for plaintiffs could have filed a motion to bring this action under § 1605A has long since passed, *see* § 1083(c)(2), counsel may want to consider a motion under Rule 60, as discussed in Part G, or, alternately, the related case procedures in § 1083(c)(3).

Arnold, 06-CV-516. This case is another one of the many actions arising out of the bombing of the Marine barracks in Beirut, Lebanon. This case, like *Valore* above, was filed under § 1605(a)(7) and is now pending with the special masters. Like both *Peterson* and *Valore*, this action was eligible for the procedures in § 1083(c)(2) that would have permitted this Court, on motion by the plaintiffs, to treat this action as if it was filed under § 1605A. As the 60-day period in which plaintiffs counsel could have filed such a motion has passed, plaintiffs' only remaining option is to invoke the procedures for related actions in § 1083(c)(3).

A few points should be stressed in connection with the issue of whether this action might obtain retroactive treatment under § 1605A. First, plaintiffs' counsel have not filed any motions seeking entitlements under the § 1605A. As this case is still pending with the special masters, however, this observation is not all that surprising because the kinds of postjudgment motions and actions undertaken by counsel in *Peterson* and *Bennett* would obviously be premature at this stage in the case. Nonetheless, most of the attorneys in this case are also counsel in Bennett and *Peterson*, and thus they are the same attorneys who appear have taken the erroneous view that § 1605A is automatically retroactive. Thus, in the interest of judicial economy, and in furtherance of the docket management function of this opinion, this Court has elected to address this case now, as it appears that the same issues that have challenged *Peterson* and *Bennett* above are likely to apply here. What is surprising about this case is that the lead counsel in this action is also lead counsel in Valore, as discussed above, in which counsel actually filed a new complaint under § 1605A pursuant to the procedures for related actions in § 1083(c)(3). The inconsistency in the approaches taken by counsel in these two actions is rather curious and seems to this Court to underscore the degree of confusion among counsel with respect to how they might ensure that § 1605A is applied retroactively to actions originally filed under § 1605(a)(7).

The Court hopes that this opinion, and the analysis in the part of the discussion in particular, serves to eliminate any further confusion going forward.

#### 4. General Guidance for All Cases

As has become evident during the course of the Court's analysis here, many of these cases are very large actions involving hundreds of plaintiffs each. In view of the recent wave of new actions under § 1605A, the Court encourages counsel in these new matters to identify those plaintiffs who pursued claims in a prior case under § 1605(a)(7). It would be helpful for the Court to know at the outset of a new action which plaintiffs, if any, appeared previously, in what cases, as well as the ultimate disposition of the prior claims. Counsel can provide this information through a separate filing, or, going forward, counsel may simply identify the earlier plaintiffs within the complaint. The Court recognizes and appreciates that counsel for some of the plaintiffs have already taken this proactive approach in the filing of their new complaints under § 1605A. As plaintiffs well know, these cases can go on for quite some time and often require the assistance of special masters to assist the Court in culling through voluminous data with respect to the losses suffered by these hundreds of victims of terrorism. Providing the Court with the appropriate reference points in any new filings, will greatly assist with the management of this massive body of litigation and avoid delay in providing appropriate redress to the plaintiffs.

### SERVICE OF NEW CLAIMS IN PENDING CASES

Because § 1605A applies retroactively to Court actions under § 1605(a)(7), this Court must now decide whether and to what extent new claims asserted under § 1605A should be served on Iran pursuant to § 1608 of the FSIA, which is the statutory provision that governs service on foreign states. As there is no question that new civil actions under § 1605A, such as *Brown* and *Bonk*, *supra*, must be served on Iran, the Court's analysis here is concerned strictly with cases that were pending under § 1605(a)(7) but which have now been converted to § 1605A, either on motion, consistent with § 1083(c)(2) of the 2008 NDAA, or through the filing of an amended complaint, consistent with the procedures for related actions under § 1083(c)(3). With respect to these actions, this Court holds that service of claims is not required under § 1608 of the FSIA.

The question of whether new federally based claims under § 1605A should be served on Iran under the unique circumstances presented here appears to be a matter of first impression. This Court finds, however, that principles espoused in two prior decisions of this Court, *Dammarell v. Islamic Republic of Iran*, 370 F. Supp. 2d 218 (D.D.C. 2005) (Bates, J.), and *Bodoff*, 424 F. Supp. 2d 74, guide the resolution of this matter and strongly suggest that service is not required in actions that were pending under § 1605(a)(7) and which have since been converted to § 1605A through the procedures in § 1083(c) of the 2008 NDAA.

In *Dammarell*, Iran was found in default for failing to appear and plaintiffs' substantive claims were initially considered by the Court under § 1605(a)(7) and the Flatow Amendment, § 1605 note. 370 F. Supp. 2d 218. As the action was pending, the Court of Appeals ruled in both *Cicippio-Puleo*, 353 F.3d 1024, and *Acree v. Republic of Iraq*, 370 F.3d 41 (D.C. Cir.

2004), that § 1605(a)(7) and the Flatow Amendment do not furnish a cause of action against foreign states. In so ruling, however, the Court of Appeals suggested that other sources of law, including state common law or statutory law, might furnish viable claims for plaintiffs in actions pursuant § 1605(a)(7). *See Dammarell*, 370 F. Supp. 2d at 220 (quoting *Acree*, 370 F.3d at 59); *see also* Part A, *supra*, (discussing *Cicippio-Puleo* and *Acree* and the use of § 1605(a)(7) as a pass-through to causes of actions found in state law). Consequently, Judge Bates instructed plaintiffs to file an amended complaint identifying particular causes of action based on state common law or statutory law. *Dammarell*, 370 F. Supp. 2d at 221. Thereafter, plaintiffs filed a motion in which they sought, among other relief, an order stating that they were not required to serve the amended complaint on Iran pursuant to § 1608. *Id*.

After considering supplemental briefing on the issue, Judge Bates held that service of an amended complaint is not required by § 1608 where "the defendant foreign state has failed to appear, and is therefore in default, and where the amendment does not add any claims but instead clarifies existing claims." *Id.* at 224. In reaching this holding, Judge Bates carefully reviewed both the text and legislative history of § 1608, finding that both supported the conclusion that the statute "is concerned with service of the initial complaint that commences the lawsuit, and not with the ensuing pleadings or papers." *Id.* Moreover, Judge Bate noted that his decision to dispense with service under § 1608 was consistent with Federal Rule of Civil Procedure Rule 5(a), which requires service of "new claims" on a party in default. *Id.* (citing FED. R. CIV. P. 5(a)). Judge Bates reasoned that simply identifying the specific sources of state law that would furnish causes of action in plaintiffs' case under the FSIA terrorism exception should not constitute "new claims" within the meaning of Rule 5. *Id.* In Judge Bates's view, the amended complaint would simply clarify existing claims under § 1605(a)(7). Thus, *Dammarell* appears to

rest, at least in part, on the view that changes in the substantive rules of decision governing these actions against state sponsors of terrorism does not amount to the creation of new claims for purposes of the service requirements under the Federal Rules.

In *Bodoff*, this Judge reached a decision that is largely consistent with Judge Bates's ruling. *See* 424 F. Supp. 2d 74. As in *Dammarell*, Iran was in default, and the plaintiffs in *Bodoff* initially proceeded with federal claims under § 1605(a)(7) and the Flatow Amendment. However, plaintiffs failed to amend their complaint to identify state law causes of action following the D.C. Circuit's decisions in *Cicippio-Puleo* and *Acree*. *Id.* at 78. In ruling that the plaintiffs were not required to amend their complaint, this Court stated:

[P]laintiffs' original complaint is sufficiently detailed to provide fair notice of the claims: it delineates the claims asserted and relief requested. For purposes of the complaint, it is not significant that the source of the law underlying the cause of action may have changed. Courts have not construed the pleading requirements of [Fed. R. Civ. P.] 8 to require a plaintiff to recite specific source(s) of law in a complaint. *See MacIntosh v. [Bldg.] Owners & Managers Ass'n Int'l*, 355 F. Supp. 2d 223, 228 (D.D.C. 2005) (Sullivan, J.) (citing FED. R. CIV. P. 8(f) for the proposition that "pleadings shall be construed so as to do substantial justice").

Bodoff, 424 F. Supp. 2d at 78. Thus, similar to Dammarell, this Court found that a defendant foreign state in default need not receive an amended complaint when the amendment would merely reflect a change in the source of substantive law applicable to the Court's adjudication of a case under the FSIA terrorism exception. *Id.*; accord Prevatt, 421 F. Supp. 2d at 155.

The situation presented in *Dammarell* and *Bodoff* following the Court of Appeals' decisions in *Cicippio-Puleo* and *Acree* is analogous to the situation the Court finds itself in today. Instead of shifting from federal law to state law, however, the Court is now shifting away from state law under § 1605(a)(7) to federal law under § 1605A. Now, as emphasized in Parts B and E, *supra*, it is certainly not insignificant for purpose of this Court's adjudication that claims

under § 1605A are based on federal law, and are thus subject to a federal analytical framework, whether it is considered federal common law or otherwise. The simple fact remains, however, that these new claims are nonetheless actions for personal injury or death, which sound in tort, and which are based on the same underlying terrorist act or incident as the failed state law claims that were originally advanced under § 1605(a)(7). Additionally, plaintiffs in all the actions considered today sought punitive damages in their complaint under § 1605(a)(7), and plaintiffs have consistently pressed for such relief in their prosecution of these cases.

Thus, consistent with *Dammarell* and *Bodoff*, even though actions converted to § 1605A are now presenting what are new claims in the sense that the substantive law is now federal law, they need not be considered as new claims for purposes of the pleading requirements applicable to these actions. This determination is consistent with the requirements of § 1608, which requires little more than "notice of the suit" and concerns the initiation of an action against a foreign state, rather than any intermediate filings in the case. Similarly, this ruling is consistent the notions of fair play and substantial justice embraced by the liberal concept of "notice pleading" under the Federal Rules of Civil Procedure. *See, e.g., Hanson v. Hoffmann*, 628 F.2d 42, 53 (D.C. Cir. 1980). In these pending cases under § 1605A, Iran has sufficient notice of the nature of the suit and the type of claims against it. While the source of law applicable to these terrorism actions sounding in tort under the FSIA has changed, nothing else has.<sup>37</sup>

<sup>&</sup>lt;sup>37</sup> Out of concern that some parties may read this part of the decision concerning service of claims too broadly, this Court wishes to stress that this is a sui generis context. Today's ruling is limited to the circumstances of these actions, which are pending suits against a foreign state in default in which the substantive source of law for personal injury and wrongful death claims has been converted, by retroactive application of a new federal statute, from state law sources to federal law. In reaching this determination today, this Court is particularly mindful of the distinct requirements in § 1608 for service of process on a foreign state. It would therefore not be prudent for either this Court or the parties before it to assume that today's holding or the

As an important caveat to today's ruling, it must be noted that Judge Collyer recently held in circumstances identical to those presented here that a new claim asserted under § 1605A must be served on the foreign state defendant. *See Gates*, 2009 WL 2562660, at \*9. In *Gates*, plaintiffs made a motion, pursuant to § 1083(c)(2), to convert their pending case under § 1605(a)(7) to an action under § 1605A. Judge Collyer ruled, however, that the new claim had to be served on Syria before plaintiffs could proceed under the terms of the new statute. *Id.* at \*9–10.

This Judge respectfully disagrees with Judge Collyer for several reasons. As an initial matter, it is not entirely clear whether Rule 5 should even apply in actions against foreign state sponsors of terrorism, as there are specific requirements governing service on a foreign state in § 1608 of the FSIA. Assuming, however, that Rule 5(a)(2) is generally applicable in actions involving foreign states, the plain language of that provision indicates that it should not apply to new claims asserted on motion by way of § 1083(c)(2). Rule 5(a)(2) reads as follows: "No service is required on a party who is in default for failing to appear. But a *pleading* that asserts a new claim for relief against such a party must be served on that party under Rule 4." FED. R. CIV. P. 5(a)(2) (emphasis added). Thus, by its very terms, Rule 5(a)(2) applies only to new claims presented in a "pleading" and therefore should not apply when plaintiffs are proceeding on motion under § 1083(c)(2).

For those who might suggest that this Court's determination hinges on a technical or overly narrow interpretation of Rule 5, this Court adds that there is a clear distinction between pleadings and motions with respect to civil practice in the federal courts. Rule 7 provides that

underlying rationale should apply with any force in civil actions involving ordinary civil litigants.

the following documents are considered pleadings: "(1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court considers one, a reply to an answer." FED. R. CIV. P. 7(a). Motions, however, are specifically excluded from the list of "pleadings" in Rule 7(a). In fact, a motion is described separately under Rule 7(b), as "a request for an order." FED. R. CIV. P. 7(b); *see also Structural Concrete Prods. v. Clarendon Am. Ins. Co.*, 244 F.R.D. 317, 321 (E.D. Va. 2007) (emphasizing that a motion is not a pleading and citing Rule 7(a)).

Additionally, the text of § 1083(c)(2) warrants consideration. Under the terms of that provision, when the requisite conditions are satisfied in a pending case under § 1605(a)(7), the action "shall[] on motion made by the plaintiffs . . . be given effect as if the action had originally been filed under section 1605A(c)." § 1083(c)(2)(A)(iv) (emphasis added). Thus, by its plain terms, § 1083 indicates that no further action—under Rule 5 or otherwise—should be required of plaintiffs before their case may move forward under § 1605. More fundamentally, however, as emphasized above, this Court does not find that a change in the rule of decision applicable to personal injury or wrongful death claims under the FSIA terrorism exception results in new claims of relief for purposes of the pleading requirements in these cases.

In light of the foregoing, this Court holds that service of new federal claims is not required under § 1608 of the FSIA in actions that were pending under § 1605(a)(7) and have since converted to § 1605A in accordance with § 1083 of the 2008 NDAA. In an abundance of caution, however, counsel might well consider serving Iran with their new claims that now fall under § 1605A. Needless to state, however, reasonable judges can, and apparently do, differ on this issue, which suggests counsel may want to take the cautious approach by serving their

§ 1605A claims on Iran. Service of process is a jurisdictional requirement, and thus on this issue of first impression, counsel is well advised to take the most cautious approach.

# GUIDANCE FOR PLAINTIFFS WHO MAY WISH TO PURSUE RELIEF UNDER RULE 60 OF THE FEDERAL RULES OF CIVIL PROCEDURE

Today's decision is likely to have negative consequences for many of these FSIA plaintiffs—all of whom are victims of terrorism perpetrated by Iran. For years now, these victims—individually and as representatives of the deceased—have come before this Court in the hopes of holding Iran to account for its sponsorship of terrorist organizations and their relentless attacks on innocents. In short, these victims hope to find justice. That goal, however, has proven very elusive, and today's decision will undoubtedly come as yet another setback for many of these FSIA plaintiffs who have not been able to take advantage of the new terrorism exception, § 1605A. That enactment, which was intended to aid them specifically, with its new language providing for a federal cause of action and punitive damages against Iran, as well as enhanced measures for the enforcement of judgments, simply will not extend to a number of plaintiffs addressed here. This is an undeniable fact that deeply troubles the Court.

This Court is particularly concerned that counsel for at least some of the plaintiffs who have failed to quality for treatment under § 1605A, appear to have been laboring under an erroneous view of the law, as provided by section 1083 of the 2008 NDAA. Some, like counsel for the plaintiffs in *Beer* and *Kirschenbaum*, may have erroneously, but in good faith, believed that they were not bound by certain procedures in § 1083(c) because they were not seeking to assert a new cause of action, but were merely looking to take advantage of other entitlements within §1605A, such as the right to an award of punitive damages against Iran directly. It may well be that counsel in other actions also had their own good faith reasons for failing to adhere to the requisite procedures. Whatever those reasons may be, the indisputable fact is that many

different attorneys before this Court, representing plaintiffs in a diverse range of cases against Iran, have failed to take the necessary steps to bring their actions under § 1605A. Whether and to what extent this result stems from strategic choices, misunderstandings of the law, tactical blunders or omissions, or other reasons, is difficult for this Court to say. It does appear, however, that at least some of these apparent failures to qualify actions under § 1605A are due to misunderstanding or misapplication of the statutory language within § 1083.

As this Court has recognized here today, § 1083 is hardly a model of clarity and the requirements and conditions with respect to "Pending Cases" are presented in a disjointed manner. *See* Part C, *supra*. Moreover, counsel for most plaintiffs in these actions had only 60 days from the enactment of § 1083 in which they had to elect to proceed under § 1605A. During those first two critical months of the statute's existence, there was not sufficient opportunity for the courts of this Circuit to examine § 1083 in written opinions that counsel might have looked to in an effort to better understand the statute. Indeed, the leading decision on this matter, *Simon v. Iraq*, was not decided until June 2008, nearly three months after the 60 day window of opportunity had passed for most plaintiffs. 529 F.3d 1187. Thus, the lack of clarity with respect to the statutory language in this instance was compounded by a lack of decisional law that might have otherwise aided counsel in their efforts.

In view of the very real potential for injustice these statutory issues of first impression may work for plaintiffs, this Court hereby emphasizes that the denial of relief under § 1605A is without prejudice. Plaintiffs may want to consider whether this Court has authority under Rule 60(b) to grant relief under the circumstances presented by their respective cases. As this Court has recognized in the past, Rule 60(b) is a powerful tool that grants judges broad authority to

accomplish justice in certain limited circumstances. *See Bryson v. Gere*, 268 F. Supp. 2d 46, 53 (D.D.C. 2003) (Lamberth, J.). It is well established that a

district judge, who is in the best position to discern and assess all the facts, is vested with a large measure of discretion in deciding whether to grant a Rule 60(b) motion, and the district court's grant or denial of relief under Rule 60(b), unless rooted in an error of law, may be reversed only for abuse of discretion.

Twelve John Does v. District of Columbia, 841 F.2d 1133, 1138 (D.C. Cir. 1988) (citing Browder v. Director, 434 U.S. 257, 263 n.7 (1978)).

Plaintiffs should be cautioned, however, that they will have to overcome a significant burden under Rule 60(b). To be clear, this Court expresses no view with respect any potential motion seeking relief under Rule 60(b) for any of the groups of plaintiffs who have suffered adverse consequences as a result of the Court's action today. It is, of course, the responsibility of counsel—not of this Court—to articulate what grounds, if any, exist for Rule 60 relief within the parameters set by that rule, as applied to the specific circumstances in their respective cases. Whether counsel assert reasons of "mistake, inadvertence, surprise, or excusable neglect" under (b)(1) or "any other reason that justifies relief" under (b)(6), empty rhetoric or *post hoc* justifications will not suffice. This Court's discretion is not unfettered. *See Kramer v. Gates*, 481 F.3d 788, 792 (D.C. Cir. 2007) (reversing district judge's decision to grant relief to plaintiffs pursuant to Rule 60(b)(6)). Nothing in today's decision should be read as an invitation to "take a mulligan." *Id*.

Regardless of what part of Rule 60(b) may be relied upon, this Court would certainly have to consider the length of time that has passed since the enactment of the 2008 NDAA over one year ago. Perhaps more importantly, however, this Court would have to factor into its analysis the passage of time since June of last year, when our Court of Appeals issued its

decision in *Simon*, which construed § 1083, the very provision at issue here today. See 529 F.3d at 1192. This is to say nothing of the numerous opinions published by this Court last July and August that applied § 1083(c) to a number of prior actions filed under § 1605(a)(7). See, e.g., Bodoff, 567 F. Supp. 2d 141 (D.D.C. 2008) (Lamberth, C.J.); Stethem v. Islamic Republic of Iran, 568 F. Supp. 2d 1 (D.D.C. 2008) (Lamberth, C.J.). Counsel who have not moved promptly to see that their actions fall under § 1605A will have to explain to the Court why they have not seen fit to file for relief prior to now.

Additionally, counsel for plaintiffs interested in pursuing relief under Rule 60 must also detail how their prior actions under § 1605(a)(7) would have fit within the framework established by § 1083(c) and therefore qualified for treatment under the new terrorism exception, § 1605A. In so doing, plaintiffs should hone in Parts B and C, *supra*, of the discussion section of this opinion. In particular, plaintiffs who would rely on the § 1083(c)(3) concerning related actions need to carefully and specifically identify the new federal causes of action, presumably based on federal common law as applied in FSIA actions. *See*, *e.g.*, *Flatow I*, 999 F. Supp. at 15. This type of detailed analysis with respect to the merits of the underlying claims is necessary to ensure that any decision granting relief under Rule 60(b) "will not be an empty exercise of futile gesture." *See Norman v. United States*, 467 F.3d 773, 775 (D.C. Cir. 2006) (quoting *Murray v. District of Columbia*, 52 F.3d 353, 355 D.C. Cir. 1995)).

Finally, plaintiffs who believe in good faith that they can assert a basis for relief under Rule 60 should heed these words and act with dispatch. Whether this Court can in fact grant Rule 60 relief to plaintiffs who did not timely comply with § 1083(c)(2) of the 2008 NDAA should also be briefed by the parties and will of course have to be addressed by this Court before rendering any rulings on the matter.

### COMPENSATION FOR SPECIAL MASTERS

In the course of addressing the variety of issues presented by these civil actions, this Court considered, and ultimately denied, three motions requesting that certain special masters receive compensation for the work that they completed on behalf of the Court in the large consolidated case of *Peterson v. Islamic Republic of Iran. See* No. 01-CV-2094-RCL (D.D.C.), Dk. # 430. The special masters have rendered crucial assistance by helping the Court to determine the appropriate amount of monetary damages for hundreds and hundreds of plaintiffs. As alluded to earlier in this opinion, calculating damages in an action like *Peterson* is not an easy task. The special masters are required to review hundreds, if not thousands of documents, including economic reports and deposition testimony. Needless to say, the work required of the special masters to achieve justice in these terrorism cases demands great attention to detail and is extraordinarily time-consuming.

In *Peterson*, the three special masters who were denied payment were but a few of the more than one dozen special masters who have been called upon by this Court to examine hundreds of claims in that large consolidated case and in many other large actions under § 1605(a)(7). These three special masters alone performed more than eight months worth of work in *Peterson*. *See* No. 01-CV-2094-RCL (D.D.C.), Dk. ## 242, 243, 245. Had this Court been required to take on the functions preformed by these special maters, the work of this Court with respect to numerous other pending civil and criminal cases would have come screeching to a halt.

But the sheer volume of the endeavor surely pales in comparison to the emotional toll that such work extracts from these individuals who have worked diligently to achieve justice for

victims of terrorism. This Court listened first-hand to some of the heart-wrenching stories of the victims during live testimony in the bench trial in *Peterson*. The testimony in that case, as in others, was extraordinarily powerful. As a human being and a fellow American, it is difficult not to be moved by a sense of sorrow and grief for these victims who have long suffered. This is a basic reality that is true in all of these horrific cases from Flatow to Peterson. While this Court is sometimes spared all the intimate and excruciatingly painful details of the lives that have been shattered, the special masters are not. It is their job to undertake a very thorough, painstaking review of all the relevant testimony, medical evidence, economic reports, and other evidence in order to make clear, accurate recommendations to this Court. In going about their important work in these actions, these special masters learn over and over again of the senseless carnage the horrific deaths and grievous injuries—and of the real and often very personal ways that the deliberate slaughtering of innocents inflicts deep emotional wounds. During a recent status conference, counsel in Peterson spoke of how some of the special masters experienced a sort of emotional fatigue. A special master in another action also spoke at that time about the emotional toll that his responsibilities have exerted on him personally. Thus, it is important to keep in mind that the special masters are handling emotionally wrenching matters as they revisit acts of carnage over and over again and hear the stories of hundreds of Americans whose lives will never be the same.

It was therefore with some regret that this Court was not able to afford compensation to several of the special masters in *Peterson*. The specific provision at issue was § 1605A(e), which provides:

## (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.

The three motions for payment, as noted above in Part D, *supra*, were based on the erroneous assumption that this new provision allowing for compensation, which did not exist prior to the enactment of the 2008 NDAA, somehow automatically and retroactively applied to their case. In denying relief, this Court emphasized that the special masters in *Peterson* are not entitled to the benefits of the new statute because plaintiffs have not taken appropriate action, consistent with § 1083(c), to convert their case to an action under § 1605A. Thus, the new statutory entitlements do not apply to their case, which remains under the former state sponsor of terrorism exception—Section 1605(a)(7).

The Court was very careful to render the most narrow ruling possible; the determination that the special masters have not qualified for payment from the Victims of Crime Fund hinged exclusively on the fact that the plaintiffs had failed to follow the requisite procedures in § 1083(c). That ruling stands. Note, however, that the Court did not address the prospect of retroactivity problems or other arguments that the United States presented in a brief submitted on the issue by invitation of this Court. *See Peterson*, No. 01-CV-2094-RCL (D.D.C.), Dk. # 389. The Court declined to comment on those issues at the time of its ruling because this Court anticipated that a Rule 60(b) motion or other action by plaintiffs in *Peterson* might otherwise

permit these plaintiffs to move forward under § 1605A, and that, in turn, might require this Court to revisit the issue of compensation for the special masters.

Having had an opportunity recently to take a close look at the issue of retroactivity, this Court is not convinced that any sort of retroactively problem would serve as a bar to payment of the special masters in these cases. It is difficult for this Court to conceive of how § 1605A(e) operates retroactively in the disfavored sense by impairing previously established rights of the parties or by imposing new duties with respect to past conduct. *See Altmann*, 541 U.S. at 694. Moreover, § 1083(c), provides a clear mechanism by which cases that were previously decided or pending under § 1605(a)(7) may be brought within the reach of the revised terrorism exception § 1605A, and so this Court need not resort to speculation or judicial default rules to infer Congress' intent in that regard. *See Simon v. Republic of Iraq*, 529 F.3d 1187, 1191 (D.C. Cir. 2008), *rev'd on other grounds sub. nom Beaty*, 129 S. Ct. 2183. More fundamentally, however, to the extent that retroactivity analysis should apply, affording payment to the special masters is, in this Court's view, much more akin to the court ordering payment of attorneys' fees, which are collateral to the litigation and therefore do not trigger retroactivity concerns. *See Landgraf*, 511 U.S. at 277.

This Court must also keep in mind that Congress has exceedingly broad power to acknowledge and pay debts under Article I, Section 8, Clause 1 of the Constitution. *Sioux Nation*, 448 U.S. at 397. With § 1083 of the 2008 NDAA, Congress has plainly acknowledged the services rendered by the special masters, and, through the enactment of § 1605A(e) provided a means, consistent with the legislature's Article I powers of the purse, to compensate the special masters for service previously rendered in terrorism cases. Thus, assuming the procedures in § 1083(c) are complied with, or assuming that there is some way for plaintiffs to overcome the

procedural deficiencies in their cases by way of Rule 60(b) motion, or otherwise, this Court sees no reason why it would not have authority to issue an order directing that the special masters receive payment from the Victims of Crime Fund.

Recently, plaintiffs in *Peterson* filed a new motion for payments to the special masters. *See* No. 01-CV-2094-RCL (D.D.C.), Dk. # 435. This most recent motion seeks payment for nine of the special masters, to include two of the special masters who were denied payment previously as a result of the Court's denial of the three prior motions for payment under § 1605A(e). *See id.* Dk. # 430. The current motion seeks more than \$ 200,000 in total payments.

In contrast to the prior motions, the current motion does not rely on the new authorization in § 1605A(e) for payments from the Victims of Crime Fund, and it does not request or otherwise require the expenditure of government funds. Instead, plaintiffs have made arrangements to have a private organization known as the Peace Through Law Foundation, Inc. pay the nine special masters directly. Dk. # 436. Under the terms of the arrangement that the plaintiffs have asked this Court to endorse, the Peace Through Law Foundation, Inc. will first remit payments to the special masters directly. *Id.* Following those payments, and only after satisfactory proof of the payments is submitted to this Court, this Court will then enter a money judgment against Iran and in favor of plaintiffs for the total amount paid by the Peace Through Law Foundation, Inc. *Id.* Plaintiffs also ask that this Court include in its initial order directing the payments that the plaintiffs are to repay the Peace Through Law Foundation, Inc. once they collect on the judgment entered under the terms of compensation scheme proposed in their current motion. *Id.* 

This Court appreciates the persistency, hard work, and creativity of counsel in their efforts to obtain compensation for the special masters. In this Court's view, the special masters

have rendered a great service not only to the plaintiffs and this Court but also to the nation as a whole.<sup>38</sup> In light of today's opinion, however, it is not appropriate for this Court to consider the novel approach proposed by the plaintiffs at this time. It seems to this Court that the most prudent course of action at this juncture is to allow counsel to first determine whether, consistent with the guidance offered in this opinion, they might be able to qualify the *Peterson* action for retroactive treatment under § 1605A. If that can be achieved, then the special masters may have recourse to the Victims of Crime Fund, consistent with the plain terms of § 1605A(e)(2), rather through the privately subsidized subrogation scheme that plaintiffs have proposed in their most recent motion. For this reason, the current motion for payment of the special masters will denied without prejudice in a separate order issued this date.<sup>39</sup>

<sup>&</sup>lt;sup>38</sup> One of the Special Masters included in the current motion, Judge Howard P. Rives of Florida, passed away shortly after concluding his work. The Court is grateful for Judge Rives's assistance and expresses it condolences to Judge Rives's family.

<sup>&</sup>lt;sup>39</sup> The Court expresses no opinion at this time regarding the reasonableness of the requested payments.

#### MOTIONS FOR APPOINTMENT OF RECEIVERS

This Court also recently denied three motions for the appointment of receivers in *Peterson. See* No. 01-CV-2094-RCL (D.D.C.), Dk. # 434. Like the motions for payments to the special masters discussed above, these three motions for receivers were based on the erroneous assumption that the *Peterson* action should automatically fall under § 1605A. Two of the motions for appointment of receivers, *id.* Dk. #3 251, 259, sought what counsel referred to as "broad-based" receiverships that would have operated under a sweeping mandate to seek out and take hold of a wide range of Iranian Government assets. *See* Dk. ## 251, at 7; 259, at 4. The first of these two broad-based receiverships urged by plaintiffs would have sought possession of any assets of Iran held by financial institutions within the United States. *See* Dk. # 251. The second broad-based receivership urged by the plaintiffs would have sought possession of "all oil, natural gas, petroleum, hydro-carbon and similar revenues due to and in favor of the Islamic Republic of Iran." *See* Dk. # 259, at 1.<sup>40</sup>

In each of the two motions, plaintiffs recommended that this Court appoint three members of the Gavel Consulting Group to serve as the receivers. The three individuals proposed by plaintiffs were Eugene R. Sullivan, Retired Chief Judge of the United States Court

<sup>&</sup>lt;sup>40</sup> One of the three motions, *Peterson*, No. 01-CV-2094-RCL (D.D.C.), Dk. #404, concerned specific assets held by a financial institution in New York. That matter remains under seal and subject to a protective order in part because plaintiffs have alleged that Iran is the beneficial owner of approximately two billion dollars in specific debt securities. These securities have been restrained and are subject to ongoing garnishment action initiated by plaintiffs in the United States District Court for the Southern District of New York. This section of today's opinion concerning the prior motions for receivers concerns only the two broad-based requests, Dk. ## 251 and 259, and does not speak to plaintiffs' prior effort to establish a receivership for the interests in securities identified in the action in New York.

of Appeals for the Armed Forces; Stanley Sporkin, Retired United States District Court Judge for the District of Columbia and Former General Counsel to the Central Intelligence Agency; and Louis Freeh, Former Director of the Federal Bureau of Investigation and Former United States District Court Judge for the Southern District of New York. *See* Dk. ## 251, at 4; 259, at 4. Plaintiffs noted that "[e]ach one of these individuals are former federal judges, all with backgrounds in national security, military, and intelligence matters, and all of them would be more than capable of performing this assignment, and meeting the expectations of all parties." Dk. ## 251, at 22; 259, at 26. Thus, plaintiffs' two motions would have effectively established one large receivership headed by members of the Gavel Consulting Group and with sweeping powers to identify, take possession of, and liquidate a host of undisclosed Iranian Government assets. Plaintiffs argued that a properly appointed receivership in their case would have the authority to demand possession of any of Iran's assets located within the jurisdiction of the United States Courts.<sup>41</sup>

<sup>&</sup>lt;sup>41</sup> Plaintiffs rely on a variety of different publicly available sources of information concerning Iranian assets. With respect to the receivership proposed for Iran Assets in United States banks, plaintiffs observe that the Terrorist Assets Report, which is published periodically by the United States Treasury Department's Office of Foreign Asset Control, indicates that upwards of 49 million dollars in non-blocked funds belonging to Iran may currently be in the possession of United States financial institutions. See Dk. # 251, at 5, Ex. D. Similarly, with respect to oil, gas, and hydrocarbon revenues, plaintiffs observe that various Government reports, including reports prepared by the Energy Information Administration of the United States Department of Energy, confirm that Iran earns billions and billions of dollars each year as a result of its diversified oil and gas industries. See id. at 4–9. Similarly, plaintiffs point to a number of cases that have been litigated before the Iran-U.S. Claims Tribunal over payments or other assets owed to Iran's oil and gas industries. See id. at 5-9, Exs. E-I. While acknowledging that most of Iran's oil assets are located in other foreign countries and outside the jurisdiction of the United States, plaintiffs nonetheless stress that a receivership for these assets would "not be futile" because certain subsidiaries or other entities connected with Iran's staterun enterprises might "have some type of nexus in and to the United States, and therefore might be subject to United States jurisdiction." Id. at 15. In fact, plaintiffs identify eight specific oil

In support of their motions, plaintiffs relied on § 1610(g), a new FSIA provision that was enacted in conjunction with § 1605A last year. *See* § 1083(b). As noted above, § 1610(g) is intended to limit the application of sovereign immunity defenses that have often protected Iran's property from attachment and execution upon civil judgments entered under the terrorism exception. As enacted through § 1083(b) of the 2008 NDAA, 1610(g) reads as follows:

## (g) PROPERTY IN CERTAIN ACTIONS.—

- (1) IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—
  - (A) the level of economic control over the property by the Government of the foreign state;
  - (B) whether the profits of the property go to that government;
  - (C) the degree to which officials of that government manage the property or otherwise control its daily affairs
  - (D) whether the government is the sole beneficiary in interest of the property; or
  - (E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States Courts while avoiding its obligations.

# (2) UNITED STATES SOVEREIGN IMMUNITY INAPPLICABLE.—

Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from

companies that they believe can and should be reached by the receivership they propose. *Id.* at 1, 15.

attachment in aid of execution, or execution, upon a judgment entered under [§] 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Powers Act.

Plaintiffs argue that this new provision removes Iran's sovereign immunity with respect to its property, as well as any United States sovereign immunity that might otherwise apply, and that therefore Iran's assets "are now subject to clear levy and execution." *See, e.g.*, Dk. # 259, at 4. Consistent with this Court's prior decision denying the special masters motions under § 1605A(e), this Court denied the motions for receivers on the narrow basis that plaintiffs had failed to follow the necessary steps, pursuant to § 1083(c), to obtain treatment under the new terrorism exception. *See* Dk. # 434, at 3. The Court was careful in its ruling not to express any view with respect to the merits of plaintiffs' argument concerning the utility of § 1610(g), as a means to enforce a judgment under § 1605A, as that question was not ripe for consideration. As the Court explained:

Whatever might be said of § 1610(g), the simple fact is that provision does not apply here. By its express terms, § 1610(g) applies only to "judgments entered under [§] 1605A." Notably, plaintiffs could have converted their judgment under § 1605(a)(7) into a new action under § 1605A. *See* § 1083(c). Plaintiffs failed to do so.

Dk. # 434, at 3. Thus, plaintiffs' action remains under § 1605(a)(7), they are not entitled to take advantage of any of the new limitations in immunities pertaining to Iran's assets that might otherwise facilitate efforts to satisfy their 2.5 billion dollar judgment against Iran.

In the event that the *Peterson* action were to qualify for treatment under § 1605A as the result of a motion pursuant to Rule 60, or through some other approach, this Court could of course reconsider the plaintiffs' motions for receivers. The Court is well aware of the outstanding professional reputations of the three individuals that plaintiffs proposed to oversee a

receivership in their case. The depth of the experience that these three former judges would bring to the table, especially in light of their backgrounds in national security matters, could certainly prove advantageous to plaintiffs. Thus, there is at least some possibility that the sort of broad-based receivership that plaintiffs envisioned for their case might offer them a better chance to overcome some of the challenges that have thus far prevented these terrorism victims from obtaining the compensation they deserve. This Court will keep an open mind about the potential for a receivership in the event that this issue comes up for consideration again under the new terrorism exception, § 1605A.

In the interest of both candor and fairness to plaintiffs, however, the Court wishes to offer some additional guidance on this unique matter. As this Court has emphasized on several occasions in this very case, "the appointment of a receivership is 'an equitable remedy of rather drastic nature." Dk. # 434, at 3 (quoting Peterson III, 563 F. Supp. 2d 268) (citations omitted). For this reason, the Court must proceed cautiously and will take a critical view of any renewed motions for the appointment of receivers. Among other issues, this Court will need to consider what the realistic probability is that a broad-based receivership would actually succeed in efforts to take hold of Iranian government assets of sufficient value to compensate plaintiffs. On this critical issue, the Court might solicit the opinions of whatever experts the plaintiffs propose to serve as the receivers in their case. Government reports and generalized assertions about the wealth of Iran simply do not provide an adequate basis for this Court to make an assessment of whether there are sufficient assets of Iran available for turnover to a receivership in the sweeping manner that plaintiffs have envisioned. This Court will also have take a closer look at § 1610(g) and consider in what ways this new provision might apply in legal proceedings to seize Iranian

assets in satisfaction of judgments in terrorism cases under § 1605A. It is not at all clear to this Court that § 1610(g) is the panacea that the plaintiffs believe it is.

Second, this Court is mindful that in some cases the costs associated with the receivership can actually exceed the value of the funds that the receivers might make available to satisfy the plaintiffs' money judgment. As a consequence, the Court is dragged into a long, costly, and futile exercise that is entirely inconsistent with the basic purpose of a receivership. In view of this potential problem, this Court would undoubtedly want to get some idea of what costs—whether attorneys' fees, expenses, or others—would be associated with any proposed receivership and how those costs would compare with any success the proposed receivers might anticipate with respect to the obtainment of Iranian assets to compensate the actual plaintiffs.

Third, in reviewing any equitable considerations that may or may not militate in favor of a receivership, this Court would want to gauge the potential impact on similarly situated plaintiffs in the many FSIA terrorism cases that have been litigated against Iran in this Court. While there are nearly one thousand plaintiffs in *Peterson*, there are also hundreds of other victims of Iran-sponsored terrorism who are equally challenged in their ability to enforce judgments against Iran. What should not be overlooked here is that it is for the most part a small, local, and highly specialized bar that handles the vast majority of these cases. Indeed, the attorneys in *Peterson* serve as counsel in many of the other Iran actions in this Court and vice versa. Thus, it seems to this Court that if certain members of this specialized bar believe that a receivership offers plaintiffs the best chance of collecting on their judgment, then fairness might dictate that such a receivership should work for the benefit of all the plaintiffs as a class, rather than just a select group in a single action.

Most importantly, this Court must bear in mind that the receivership that plaintiffs have urged with respect to Iran's assets is rather extraordinary and unprecedented. It is therefore difficult to contemplate all the practical and legal implications of such a drastic measure, but the establishment of any kind of receivership in the *Peterson* case would likely have a significant and negative impact on the to ability of the President to conduct foreign relations with Iran. More problematically, the sort of receivership that the plaintiffs have proposed in the *Peterson* case might serve as a precedent that would prove troublesome with respect to our relations with other foreign sovereigns. The very thought of imposing a receivership on another foreign sovereign seems to conflict with the principles of comity and mutual respect that have traditionally governed our relations with foreign powers.

With respect to these larger concerns relating to principles of foreign sovereignty and the conduct of foreign relations, this Court should note that there was another motion for the appointment of receivers in *Peterson* that this Court found very troubling. Specifically, plaintiffs asked this Court to establish a receivership to take the place of Iran at the Iran-United States Claims Tribunal ("Tribunal") established by the Algiers Accords. *See Peterson*, No. 01-CV-2094-RCL (D.D.C.), Dk. # 260. This remarkable and unprecedented proposal by plaintiffs called for court-appointed receivers vested with, among other powers, the authority to "prosecute all Tribunal claims in the name of Iran." *Id.* at 2. As part of this truly extraordinary request, plaintiffs asked the Court to "specifically authorize" the receivers to go before the Tribunal in The Hague, Netherlands in order to dispose of Iran's claims "in any manner which may include settlement, resolution, dismissal" without any requirement to consult with or report to Iran in that process. *Id.* Accordingly, the receivership envisioned by plaintiffs would have received authorization from this Court to replace Iran's lawyers at the Tribunal with counsel appointed by

the receivership. *Id.* at 3, 17. Counsel on behalf of the receivership would then continue to advance Iran's claims at the Tribunal, and they would attempt to engage in settlement negotiations with the United States in an effort to convince the United States Government to pay the plaintiffs' multi-billion dollar judgment against the Islamic Republic Iran. *Id.* at 2, 12, 17, 24–25.<sup>42</sup>

While plaintiffs' motion was pending, the United States filed a Statement of Interest in the matter. Dk. # 432. The United States asserted that the receivership proposed by the plaintiffs' is squarely foreclosed by the sovereign immunity of the United States, as well as the basic understanding under our Constitution that "the operation and implementation of international agreements is a matter left to the exclusive province of the political branches." *Id.* at 3. In response, plaintiffs promptly withdrew their motion. *Peterson*, No. 01-CV-2094-RCL (D.D.C.), Dk. # 433. In their notice of withdrawal to this Court, plaintiffs state:

The statement of interest filed by the United States raises certain issues which indicate that the court should deny Plaintiffs' motion based upon the court's prior rulings, the impact upon the interest of the United States, the sovereign immunity of the United States, issues which relate to FSIA, international geopolitical concerns, issues which arise out of the U.S.-Iran Claims Tribunal, public policy, and the like. This list is descriptive and illustrative only.

*Id.* at 1. While not expressly conceding as much, the notice of withdrawal suggests that counsel for plaintiffs came to the realization that their motion was not likely to succeed.

The authorities and legal arguments presented by the United States in this matter clearly demonstrate why this Court cannot appoint a receivership to oust Iran from the Tribunal. A few of the points raised by the United States are worth reinforcing at this time, however, in the

<sup>&</sup>lt;sup>42</sup> Counsel argued that the substitution of Iran with a receivership "might prompt a faster settlement (albeit at a discount) in which the beneficiaries of the settlement would be the victims of terror, and not the terrorist." Dk. # 260, at 12.

interest of ensuring that these controlling legal principles are fully considered by plaintiffs' counsel in any additional requests for extraordinary relief. First and foremost, a critical legal doctrine that is almost always implicated in this context is the sovereign immunity of the United States. The sovereign immunity of the United States is an exceedingly broad jurisdictional bar that precludes attempts by creditors to obtain government funds or property to collect on a debt. *See, e.g., Blue Fox*, 525 U.S. at 264. More to the point, this Court has previously rejected an effort to attach United States Treasury funds that were earmarked for the payment of a Tribunal award to Iran. As noted in Part A, *supra*, in *Flatow* this Court ruled that "funds held in the U.S. Treasury—even though set aside or 'earmarked' for a specific purpose—remain the property of the United States until the government elects to pay them *to whom they are owed*." *Flatow III*, 74 F. Supp. 2d 18 at 21 (D.D.C. 1999) (Lamberth, J.) (emphasis added) (citing *Buchanan*, 45 U.S. at 21; *Blue Fox*, 525 U.S. 255)).

Plaintiffs attempted to distinguish *Flatow* in their submission to this Court. They argued that, in contrast to plaintiff's effort to go directly after United States Treasury Funds through writs of attachment in *Flatow*, receivers would merely "stand in the shoes of Iran" and would simply receive whatever funds the United States might designate for payment to Iran in satisfaction of Tribunal Awards in Iran's favor or in settlement of Iran's pending claims. Dk. # 260, at p. 12, 24. Accordingly, the plaintiffs claimed that the mere creation of a receivership to oust Iran-U.S. Claims Tribunal would not implicate any issues of United States sovereign immunity unless and until the receivers found it necessary to further action in the Courts to

<sup>&</sup>lt;sup>43</sup> The Court should also note that plaintiffs and the United States stipulated to a withdrawal of plaintiffs' motion without prejudice. *See* Dk. # 433, at 2. The notice of withdrawal also suggests that plaintiffs are considering filing another motion regarding the Iran-U.S. Claims Tribunal.

enforce Iran's awards and claims against the United States. *Id.* at 7, 24–25. Plaintiffs' argument wholly lacked merit. As this Court emphasized to these very plaintiffs previously, they may not use receivers "to do *indirectly* what they cannot do *directly*." *Peterson III*, 563 F. Supp. 2d at 278 (emphasis in original). As the funds within the United States Treasury are immune from the jurisdiction of this Court, this Court is therefore without jurisdiction to appoint receivers whose express objective would be to take hold of any of those funds that the United States might, within its discretion, use to resolve Tribunal Claims with Iran. Simply put, to allow court-appointed receivers on behalf of the plaintiffs to inject themselves into a process involving payments from the United States Government to Iran would violate the basic purpose of sovereign immunity, as the powers of this Court would be harnessed in a way that would burden the United States in the exercise of its broad discretion to appropriate and allocate federal dollars as it deems fit.

Even if § 1610(g)(2) were to apply in this case—and it does not—this new measure would not alter the analysis. Section § 1610(g)(2) by it plain terms speaks only to funds that were originally held by a state sponsor of terrorism but which later came under the control of the United States by virtue of Executive Orders blocking those assets pursuant to the Trading With the Enemy Act or the International Emergency Economics Powers Act. There is no indication, however, that Congress intended to waive the sovereign immunity of the United States with respect to the Federal Government's own funds within the United States Treasury. Accordingly, § 1610(g)(2) simply does not reach these federal dollars, which the political branches of our Government may, within their discretion, decide to disperse to Iran consistent with the United States' obligations to settle claims under the terms of the Algiers Accord.

Moving beyond the controlling legal precedent that squarely forecloses the relief requested by plaintiffs, this Court finds utterly disturbing the way in which plaintiffs' counsel

described in some detail their strange vision of how receivers might invoke the powers of this Article III court to assert control over Iran's affairs before an international tribunal. *See* Dk. # 260, at 15–21. In a rather bizarre and perverse twist of events, counsel would have the Court oversee receivers as they advanced Iran's claims against the United States. Plaintiffs' counsel candidly acknowledged that the ultimate objective of this proposed scheme was to leverage the powers of this Court through the appointment of a receivership in order to pressure the United States into settling its claims with Iran, at least up to the amounts needed to satisfy plaintiffs' 2.5 Billion dollar judgment. Plaintiffs' counsel actually referred to this perverse result as an "elegant outcome." *Id.* at 21.

Putting aside the enormous practical and political obstacles that a receivership conceived to take Iran's place at the Tribunal would instantly confront, this Court is simply without authority to assert any level of control or supervision over the affairs of an international body established to resolve disputes between two sovereign nations. As the United States correctly observed, this Federal Court may not involve itself in the operation or implementation of a bilateral agreement between the United States and Iran. *See Dk. #* 432, at 12–16 (Statement of Interest by the United States). As bilateral agreements that resolved a crisis between two foreign powers, the Algiers Accords are precisely the sort of international agreements that depend exclusively on the political branches for its implementation and enforcement. *See, e.g., Bancoult v. McNamara*, 370 F. Supp. 2d 1, 14 (D.D.C. 2004); *Kucinich v. Bush*, 236 F. Supp. 2d, 1, 16 (D.D.C. 2002); *Antolok v. United States*, 873 F.2d 369, 380 (D.C. Cir. 1989); *see also Dames & Moore*, 453 U.S. at 664 (describing how the United States and Iran entered into the Algiers Accords and established the Iran-United States Claims Tribunal to bring about an end to the hostage crisis).

Plaintiffs' proposal for the appointment of a receivership to oust Iran from the U.S.-Iran Claims Tribunal illustrates how litigation in these FSIA terrorism cases can run amuck as plaintiffs desperately seek out ways to enforce their court-judgments. The default judgment context of these actions only adds to this problem, as there is a risk that unopposed counsel may at times overreach and float meritless, even preposterous arguments. In the end, however, these postjudgment actions—no matter how creative or vigorously pursued—hardly ever net results for plaintiffs, and yet these actions frequently threaten the foreign policy interests of the United States while consuming significant amounts of court time and other resources.

This Court is grateful for the well-crafted statement of interest that apparently brought counsel to their senses and ultimately saved this Court some valuable time and energy. For this reason, this Court will solicit the views of the United States before considering any further motions for the appointment of receivers in any of these terrorism cases pending against Iran. This Court also appreciates that plaintiffs' counsel ultimately withdrew their motion when confronted with clear legal authority that precluded the relief they sought. This Court wishes to remind plaintiffs' counsel, however, that before they file any motion in this Court, they have a duty to fully consider any controlling legal authority—including adverse precedent—that may be dispositive of the relief they request.

There is one statement, however, in the plaintiffs' notice of withdrawal that this Court finds rather heartening. Plaintiffs note that the executive and legislative branches may be able to offer "alternative remedies" and that the type of relief sought through plaintiffs' proposed receivership "may be pursued through an alternative forum, or pursued after addressing the issues raised by the United States." Perhaps plaintiffs have come to realize—as this Court has—that only the political branches have the authority to grant the kinds of extraordinary relief that

the victims in these actions require. This Court hopes that there may indeed be some real opportunities in the near future for the plaintiffs in *Peterson* and in other cases to work closely with our political leaders, including those in the new administration, to move beyond civil litigation in the Courts as a means to achieve the justice that these victims of terrorism so rightly deserve. Unless these actions are to exist in perpetuity as empty promises—which drain the resources of our courts and undercut the foreign affairs prerogative of the President—then some alterative to the private litigation approach must be found. Frankly, plaintiffs have waited far too long for meaningful reforms, and they have exhausted themselves in a seemingly endless quest for justice. The time for real reform is now, and it is to this critical issue that the Court now turns.

### A CALL FOR MEANINGFUL REFORM

The most difficult issues confronting this unique area of the law relate to how plaintiffs in these FSIA terrorism cases might enforce their court judgments against the Islamic Republic of Iran. While this highly charged topic of debate has been the subject of numerous legislative proposals and enactments over the last decade—and is again the subject of many of the most recent reforms implemented by the 2008 NDAA—very little has been achieved. Today, the overwhelming majority of successful FSIA plaintiffs with judgments against Iran still have not received the relief that our courts have determined they are entitled to under the law.<sup>44</sup>

In speaking to this critical issue today in light of the nineteen civil actions addressed in this opinion—and the more than one thousand American victims of Iran-sponsored terrorism that these actions represent—the Court fully appreciates first and foremost the delicate nature of the political compromise the FSIA terrorism exception embodies. "While such legislation had long

This Court's observations and comments in this part of the opinion and throughout relate only to civil actions against the Iran under the FSIA terrorism exception. The Court therefore does not express any views with respect to the viability of actions against other state sponsors of terrorism. While it appears that similar issues as those that impact actions against Iran may also be present in civil actions against other state sponsors of terrorism under either § 1605(a)(7) or § 1605A, cases against Iran face a number of unique challenges, such as the Algiers Accords and the establishment of the Iran-United States Claims Tribunal, which make it particularly difficult for plaintiffs to recover in these actions. Finally, the vast majority of cases that have been filed in this Court under the FSIA terrorism exception, have been filed against Iran. Thus, this Court does not want to assume problems or issues in other FSIA terrorism cases in which it has much more limited experience.

Additionally, it should be noted that the Court's opinion today concerns only the FSIA terrorism exception. This Court does not address the Antiterrorism Act, 18 U.S.C. §§ 2331–38; the Torture Victim Protection Act, 28 U.S.C. § 1350 note; the Alien Tort Claims Act, 28 U.S.C. § 1350; or any other civil statutes that may permit civil actions for personal injury or death caused by terrorist acts.

been sought by victims' groups, it had been consistently resisted by the executive branch." *See Price*, 294 F.3d at 89 (citations omitted). As our Court of Appeals has emphasized, certain features of the terrorism exception "reveal the delicate legislative compromise out of which it was born." *Id.* Among these is the restriction providing that only "state sponsors of terrorism," as officially designated by the State Department, may be subject to suit under the terms of the statute. *Id.* (citing § 1605(a)(7)(A) (repealed)). Additionally, only United States nationals are entitled to file lawsuits under the statute, and the offending state must be given a reasonable opportunity to arbitrate any claims based on an incident that occurred within its borders. *Id.* (citing § 1605(a)(7)(B) (repealed)).

In this Court's view, however, the compromise is perhaps best evinced by the resistance of the Executive Branch to legislation permitting the execution of court judgments through assets of state sponsors of terrorism. As discussed in Part A, *supra*, the enforcement of judgments through the attachment and execution of the assets of terrorist states, whether those assets are blocked or not, has been a particularly controversial issue, and it is one that has been tackled continuously in legislative enactments almost since the inception of the FSIA terrorism exception ten years ago. For instance, the enactment of the VTVPA, the TRIA, and now § 1083 of the 2008 NDAA, which provides the most sweeping judgment enforcement authority to date, illustrates the gradual progress that terrorism victims have achieved though Congress over the Executive Branch in their efforts to obtain more power to enforce judgments under the FSIA terrorism exception. Thus, § 1083 is just the latest chapter in what has been a longstanding political debate over how best to achieve some measure of justice for these victims.<sup>45</sup>

<sup>&</sup>lt;sup>45</sup> Executive Branch resistance to legislation permitting the enforcement of judgments through the assets of terrorist states is probably best documented in SUITS AGAINST TERRORIST - 157 -

In view of the incremental nature of these reforms as meted out through the political process over the years, perhaps the Court's words here will make little difference. This Court is certainly mindful of its limited authority under Article III, and this Court certainly does not wish to wade into the politics of these matters, but it is precisely because this Court's authority is so very limited in this context that this Court has grown increasingly frustrated by the way the political process has treated the terrorism victims in these cases under the FSIA. The experience of this Court in presiding over these actions for over a decade now has revealed that the political compromise achieved through the FSIA terrorism exception and its related enactments is superficial, filled with contradictions, and utterly in denial of practical and political realities—to say nothing of separation-of-powers problems—that courts can do little to address. Moreover, if this Court's experience in any indicator, the most recent reforms in § 1083 are not only destined to fail, but these new measures may even make matters worse.

To be sure, the changes to the FSIA enacted through § 1083 of the 2008 NDAA appear, on the surface at least, to be extraordinarily advantageous to plaintiffs. The direct cause of action contained in the new terrorism exception § 1605A will make it easier for most plaintiffs to file and litigate cases against Iran, and the availability of punitive damages in these actions creates a tremendous incentive for these lawsuits. With respect to the substantial problems plaintiffs in these actions have encountered in their efforts to execute judgments, the provision allowing for prejudgment liens of lis pendens, *see* § 1605A(g), and the new measures added to § 1610 that purport to limit the applicability of both foreign sovereign immunity and United States sovereign

STATES, *supra* note 4, at 7–23.

immunity are the most significant legislative initiatives to date that aim to overcome the inability of plaintiffs to execute judgments against Iran.

From the bench of this Article III Judge, however, what the Court sees in § 1083 is not so much meaningful reform, but rather the continuation of a failed policy and an expansion of the empty promise that the FSIA terrorism exception has come to represent. Through the enactment of § 1083, the political branches have promoted or otherwise acquiesced in subjecting Iran to sweeping liability while simultaneously overlooking the proverbial elephant in the room—and that is the fact that these judgments are largely unenforceable due to the scarcity of Iranian assets within the jurisdiction of the United States courts. As noted Part A, supra, few Iranian assets remain with the jurisdiction of the United States courts since the transfer of those assets out of the United States was accomplished in 1981 in fulfillment of the Federal Government's obligations under the terms of Algiers Accords. OFAC's latest report on blocked assets indicates that the total value of blocked assets relating to Iran in the United States is approximately 16.8 million dollars, an infinitesimal amount in comparison to the more than 9.6 billion dollars in civil judgments against Iran under the FSIA terrorism exception. See TERRORIST ASSETS REPORT, supra note 2, at 14, tbl. 1. Similarly, OFAC's records suggest that there are very few nonblocked assets within the United States—perhaps no more than 28 million dollars worth. See id. at 15, tbl. 3.

Even if one assumes, however, that there are sufficient Iranian assets within the jurisdiction United States courts to satisfy the billions of dollars in judgments entered in these civil suits, proceedings before this District Court have revealed that whatever non-blocked assets might be found may be held by certain large financial institutions that are in fact agencies of instrumentalities of other foreign nations, which are in and of themselves subject to sovereign

immunity under the FSIA. *See* § 1604. Indeed, this is precisely the problem that foiled plaintiffs' efforts to enforce their judgment in *Peterson*; it is the sovereign immunity from jurisdiction afforded to the financial entities of other foreign states—and not of Iran—that frequently frustrates recovery. *See Peterson III*, 563 F. Supp. 2d 268 (quashing writs of attachment issued against Japan Bank for International Cooperation, the Bank of Japan, and the Export and Import Bank of Korea).

Moreover, plaintiffs still have the burden of proving Iranian ownership—whether beneficial or otherwise—of the assets at issue, which can be extraordinary challenging in this context.<sup>46</sup> In this regard, this Court observes that § 1610(g) expressly protects the rights of third parties in actions to levy or execute upon a judgment entered against Iran. Section 1610(g)(3) states:

Nothing 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 the judgment in property subject to attachment in aid of execution or execution upon such judgment.

Thus, the tremendous complexities and challenges with respect to proving Iranian ownership of the assets in this thorny context are likely to persist.

Finally, United States sovereign immunity will remain an issue under § 1610(g), as nothing prevents the President from seizing Iranian assets and vesting title to them in the U.S. Treasury, as Presidents have often done in the interest of important foreign policy objectives.<sup>47</sup>

<sup>&</sup>lt;sup>46</sup> See Flatow v. Islamic Republic of Iran, 67 F. Supp. 2d 535 (D. Md 1999) (quashing writs of attachment issued against the Alavi Foundation and rejecting argument that this separately incorporated entity should be considered an agent or alter ego of the Iranian Government). For more detailed analysis of the difficulties of establishing foreign state ownership in these actions, see SUITS AGAINST TERRORIST STATES, *supra* note 4, at 54–59.

<sup>&</sup>lt;sup>47</sup> See, e.g., Smith v. Fed. Reserve Bank of N.Y., 346 F.3d 246 (2d Cir. 2003). In Smith, - 160 -

Accordingly, the language in § 1610(g)(2) purporting to render United States sovereign immunity "inapplicable" may be of utility because, while it speaks to sovereign immunity that might be inferred by virtue of the Federal Government's regulation of assets under either the Trading with the Enemy Act or the International Emergency Economic Powers Act, it does not abrogate United States sovereign immunity with respect to funds held in the United States treasury.<sup>48</sup>

In terms of real and tangible property that Iran owns in the United States, much of it was once used for diplomatic or consular purposes by Iran and is therefore subject to the Vienna Conventions on Diplomatic and Consular Relations. This property is thus immune from

the Court held that certain blocked assets of Iraq were not susceptible to attachment because the President had, in the interest of national security, confiscated those assets and vested title to those assets in the United States Treasury.

<sup>48</sup> This Court is not overlooking the possibility of execution of judgments through enforcement proceedings in foreign jurisdictions, as least one scholar has recently suggested as a still-viable means of recovery in these actions. *See* Strauss, *supra*, at 307 (arguing for broader, multilateral approach to suits against sponsors of terrorism with leadership from the United Nations and other international organizations, and involving courts worldwide, that would enable victims of terrorism to more effectively execute civil judgments in foreign jurisdictions). The possibility of widespread enforcement of these terrorism judgments in foreign jurisdictions is a difficult prospect in these actions, as Professor Strauss concedes. *See id.* at 325–327 (discussing reluctance of foreign courts to honor U.S. terrorism judgments); *see also* Michael T. Kotlarczyk, Note, "*The Provision of Material Support and Resources*" and Lawsuits Against State Sponsors of Terrorism, 96 GEO. L. J. 2029 (2008). Mr. Kotlarczyk discusses the difficulties in enforcing judgments against liable states respect and stresses how terrorism cases under the FSIA terrorism exception lack legitimacy under international law. Kotlarczyk, *supra* note 48, at 2044–47. "The United States remains essentially alone in international law in applying the jurisdiction of its civil courts to actions performed overseas by foreign sovereigns." *Id.* at 2047.

More fundamentally, however, the continued focus in Congress on the private litigation model, and ad hoc litigation fixes around the failed concept, may be limiting the opportunity for the types proposals that can result in more meaningful and systemic reforms. In short, the focus on the terrorism exception is a distraction from the long-term, practical, and political dilemmas that challenge this area of the law.

attachment and execution because it is currently being held in protective custody by the Department of State under the auspices of the Foreign Mission Act. *See, e.g., Bennett*, 604 F. Supp. 2d 152.<sup>49</sup>

In sum, § 1610(g) is unlikely to be the cure-all that some plaintiffs perceive it to be. As with past measures intended to help victims execute judgments, a myriad of legal issues still await to befuddle plaintiffs at every turn. Thus, these victims will continue to struggle in their attempts to execute court judgments, whether those efforts involve the very limited disclosed Iranian assets known to OFAC or other yet-undisclosed Iranian property that may or may not be within the jurisdiction of the courts of the United States.<sup>50</sup>

The lack of available Iranian assets to satisfy court judgments has contributed to a rather harsh and unseemly unfairness in these actions because a few dozen plaintiffs in the earliest

<sup>&</sup>lt;sup>49</sup> Recent OFAC estimates indicate that the total value of Iran's diplomatic property, to include any remaining furnishings for that property, is unlikely to exceed 23.2 million dollars. Again, this figure represents little more than a drop in the bucket when compared to the nearly 10 billion dollars owed judgment creditors of Iran under the FSIA terrorism exception.

 $<sup>^{50}</sup>$  The Court recognizes that plaintiffs are optimistic that  $\S~1610(g)$  is a tool that will finally enable them to execute judgments, and it appears that some victims have invested a great deal of emotional stock in this provision. See Strauss, supra, at 331–336, 354–355 (discussing § 1083 of the 2008 NDAA, and in particular the measures now codified at § 1610(g), and observing positive reactions expressed by the victims upon the signing of the law). As Professors Strauss observes: "Victims of terrorism and their families have praised the new law and voiced their intention to put it quickly to action." Id. at 335. Professor Strauss quotes Lynn Derbyshire, who serves as national spokesperson for the victims of the Beirut Marine Corps Barracks Bombing, as stating: "Our focus now turns back to the court system, where we intend to move vigorously and rapidly to identify and attach the \$2.6 billion in Iranian assets' awarded by the U.S. Court to the victims and their families." *Id.* It is precisely because these victims appear to have placed so much emotional stock in this provision, however, that this Judge finds that it is important to speak candidly about the continuing problems that await these victims in their efforts to execute judgments in these cases. This Court believes it is especially important to engage in an honest dialog with these victims who have waited so long for justice; it hopes our political leaders will do the same.

cases managed to obtain compensation for their losses, but hundreds of other equally deserving victims of terrorism—including the more than one thousand plaintiffs in the actions considered in today's decision—have gotten nothing. As noted in Part A, *supra*, the VTPVA directed the Secretary of the Treasury to pay the compensatory damages portion of court judgments entered in a select number of cases against Iran. Under the terms of the VTPVA, payments of compensatory damages in qualifying cases were made from either funds that had accrued as a result of the Federal Government lease of Iran's diplomatic and consular properties or from appropriated funds up to the total amount of funds contained in Iran's FMS Program account. Ultimately, plaintiffs in 16 cases against Iran received payments of compensatory damages. *See* SUITS AGAINST TERRORIST STATES, supra note 4, at p. 11–23, app. A. By as early as 2004, however, the funds made available for payment to plaintiffs under the VTVPA were totally exhausted and the program has not been continued. *Id.* at app. A.

Thus, there has not only been a race to this federal courthouse in these civil actions, but there also appears to have been something of a race across the street to Capitol Hill. In the end, the terrorism victims who had access to a Congressman or a Senator—or who could otherwise afford to spend the time or money to lobby Congress—obtained millions of dollars in compensation under the VTVPA program, but those victims who were not able to get in early and gain access to Congress have been left to fend for themselves. This inequitable result is not only unseemly, it is just plain wrong.<sup>51</sup>

<sup>&</sup>lt;sup>51</sup> Washington Post Staff Writer Neely Tucker has reported extensively on terrorism lawsuits in this Courthouse and on suits against Iran in particular. See, e.g., Neely Tucker, Iran Hostages Seek Suit's Reinstatement; Case Reflects Hill-White House Divide, WASH. POST, May 13, 2003, at A10; Neely Tucker, Iran Stands on Trial in 1983 Suicide Bombing in Beirut, WASH. POST, Apr. 8, 2003, at A9. Mr. Tucker's work Pain and Suffering; Relatives of Terrorist Victims Race Each Other to the Court, but Justice and Money are Both Hard to Find, supra, is

The harsh reality is that the promise of relief in these actions—if there ever was one—is more distant and seemingly illusory today than it was when this exercise started more than a decade ago, when judgment creditors in these terrorism cases first encountered resistance in their efforts to execute judgments against Iran. The reforms enacted through § 1083 of the 2008 NDAA to the FSIA terrorism exception and related provisions in § 1610 are in all likelihood destined to fail because these changes remain premised on the same flawed private litigation concept that has proven unworkable since the original terrorism exception was first enacted in 1996. In fact, the availability of punitive damages under § 1605A, when combined with the authorization in § 1083(c) for claims that were compromised or failed on state law grounds under § 1605(a)(7) to now be reinstated as federal causes of action under § 1605A, means that both the total amount of liability and the overall quantity of civil judgments against Iran is likely to increase exponentially, and in short order. Indeed, in the immediate aftermath of the enactment of § 1083, dozens of new cases against Iran were filed in this Court. With virtually no Iranian assets within the jurisdiction of our courts to satisfy judgments in these many additional cases, the great travesty in all this is that our political branches have essentially told victims of terrorism to continue their long march to justice down a path that leads to nowhere.

particularly insightful. In it, Mr. Tucker chronicles the plight of terrorism victims, to include Stephen Flatow and many others, in their struggles to achieve justice though civil lawsuits under the FSIA terrorism exception. Mr. Tucker reports on interviews with these victims, which adds a human touch that is often missing in the discussion of these terrorism lawsuits. More significantly, Mr. Tucker's article highlights the perils, contradictions, and unintended consequences that victims face in these actions. His reporting on the race to the courthouse and Congress, in which victims compete against each other for what limited assets might be available, that helped this Court to see the inherent and unseemly unfairness that these actions

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create among the victims.

Beyond the scarcity of Iranian assets, however, there are a number of other fundamental problems that confront these actions against Iran under the FSIA terrorism exception. In terms of United States foreign policy and national security objectives, one of the perverse outcomes of Congress' legislative victories over the Executive Branch is that what limited resources might have served as a bargaining chip that the President could have used in dealings with Iran are now subject to depletion as a result of the TRIA. These frozen assets, once at the disposal of the President in his management of foreign policy crises under the IEEPA and other authorities, are now largely subject to the jurisdiction of the Article III courts to be divided up among what few plaintiffs first lay claim to them in satisfaction of judgments under § 1605(a)(7) or § 1605A.<sup>52</sup>

Finally, because of the potential for these lawsuits to interfere with the foreign policy prerogatives of the President, another fundamental problem is that these actions have often pitted victims of terrorism against the Executive Branch, engendering a tremendous amount of acrimony in these victims toward the Federal Government, and, at times, the President. Beyond the wrangling back and forth over legislative initiatives intended to aid victims in these lawsuits—which is best exemplified by the blocked assets issue, discussed Part A, *supra*,—the victims in these cases often face stiff resistance in court from Department of Justice lawyers. In fact, in the absence of Iran, which never shows to defend itself in these actions, the Federal Government has turned out to be the number one adversary of these victims in litigation before this Court.

<sup>&</sup>lt;sup>52</sup> Another troubling aspect of litigation under the FSIA terrorism exception is that it appears to have spurred on reciprocal lawsuits in the courts of Iran against the United States for actions allegedly committed against Iran and its citizens by United States agencies and officials. *See* Tucker, *Pain and Suffering*, *supra* (discussing antiterrorism lawsuits in the Iranian courts against the United States).

As noted in Part E, *supra*, the victims of the Iran hostage crisis—and their backers in Congress—have been opposed repeatedly by the Federal Government in their efforts to sue Iran in this Court. The administration has consistently maintained that such a lawsuit is barred by the Algiers Accords. Similarly, as noted in Part A, *supra*, successive presidential administrations have intervened to quash writs of attachment issued by judgment creditors of Iran against Iranian diplomatic properties here in Washington, DC and against other assets under the control of either the Department of State or the Department of Treasury. Thus, victims of Iran-sponsored terrorism have grown increasingly frustrated as the Department of Justice has repeatedly opposed them in this context and defeated them in litigation. This frustration has been exacerbated by the fact that many high-level Executive officials, to include the President at times, have expressed sympathy for these victims and have even made public pronouncements of support for their cause, thereby sending mixed, and even outright contradictory signals.

The Executive Branch, in its dealings with Congress and in litigation before this Court, often takes the position that these actions threaten to undermine United States foreign policy and national security interests, both with respect to Iran specifically, as well as with respect to our relations with other nations more broadly. The victims in these cases counter with what are often extremely emotional retorts to the Executive Branch's opposition. In frustration and anger, the victims, their lawyers, and even some members of Congress, have unfairly accused the Administration of defending Iran and siding with terrorists. While such extreme rhetoric undoubtedly reveals the depth of the frustration experienced by the victims in these civil actions against Iran, it inaccurately characterizes the position of the Executive Branch and the true nature of the interests at stake in these important actions. What the victims, their attorneys, and backers in Congress apparently fail to see, or perhaps conveniently overlook, is that these actions

frequently run into direct conflict with other sources of law, including bilateral Executive agreements, multilateral treaty obligations, and numerous other statutory and regulatory authorities relating to foreign policy and the President's powers to manage national security crises.

Nonetheless, the victims in these lawsuits are right to feel abandoned and frustrated to a certain extent. After all, these Americans are merely pursuing justice under the terms of a federal statute that, twice now, the Congress has passed and two Presidents have signed. Yet, in taking action in accordance with that federal law, these victims are all too frequently stopped in their tracks by their own Government, which quickly and poignantly reveals in open Court, that the promise of justice that they thought they had achieved in the FSIA terrorism exception is nothing more than an illusion.

In the end, both the victims of terrorism and the Federal Government each have valid concerns—and both sides are ultimately seeking to achieve the same broad objectives of holding terrorists accountable and eliminating terrorism against United States nationals—but the private litigation model for resolving these terrorism claims has had the very unfortunate consequence of casting the United States Government and American victims of terrorism as constant and bitter adversaries. This cold reality will undoubtedly continue under § 1605A.

As Congress usually backs the victims in their desire to press forward with lawsuits against Iran in the courts, the FSIA terrorism exception has had another unfortunate consequence of turning these already extraordinary lawsuits against a foreign power into high stakes contests between the two political branches. As this inter-branch feud over terrorism suits has heated up over the years, the Executive Branch and Congress have in essence waged a war by proxy against one another through these FSIA terrorism lawsuits. As difficult separation-of-powers

problems and other challenging legal questions loom large in these supercharged actions, the victims are often relegated to the role of bystanders, stuck in the middle, caught up, and emotionally torn up in the cross-fire of an inter-branch political feud turned-litigation event.

But it is not only the victims who are caught up in the middle of this volatile political mix; this Court itself is also stuck in the middle and forced to referee these highly charged and highly political disputes. Like the victims, this Court finds itself relegated to the role of a powerless and frustrated bystander at times because under Article III this Court has neither foreign affairs powers nor any of the plenary authorities that are rightly vested in the political branches under our Constitution. It is these powers of governance, and not the powers of the courts, that must be used to help these victims overcome the significant challenges they face. Thus, this Court is caught in something of a political quagmire in which it is called upon to consume judicial resources chewing on novel legal issues and jurisprudential problems while carefully dodging delicate political questions. All the while the victims in these actions are no closer to justice. More fundamentally, respect for this Court and for the rule of law are undermined as judges in these actions are cast as the perennial bearers of bad news and as the designated apologists for the meaningless charade that our the political branches have created.

All these problems might be easy enough to ignore, if it were not for the real people involved. As this Court and others continue to wrestle with and mete out judicial solutions to the variety of legal issues that stem from this delicate political compromise that is the terrorism exception to foreign sovereign immunity, it can be all too easy to lose sight of the human beings whose lives have been torn apart. These victims have poured much of their emotional energy and time, to say nothing of their financial resources, into these civil cases in the hope of finding justice for themselves and for the loved ones they have lost due to terrorist violence. Over the

last decade, this Court has listened to live testimony of these victims in dozens of tragic cases, and this Court will not forget—and no one familiar with the harsh and intimate details of these cases could ever forget—the stories these victims have to tell of lives destroyed by unjustifiable violence committed against them or their family members and against the laws of all civilized nations.

These Americans pour their hearts out in these actions, and yet with more than ten years gone by now, the notion of suing the terrorists out of business has not been realized, and the vast majority of victims have not collected so much as a dime on their court judgments against Iran. In fact, as discussed Part A, *supra*, it was almost ten years ago to this date that this Court regrettably had to deny some of Stephen Flatow's first efforts to execute his civil judgment. This Court held that Mr. Flatow could not attach certain Iranian diplomatic property and related bank accounts. *See Flatow III*, 76 F. Supp. 2d 16. Following that tough decision, the *Washington Post* published an editorial in which it called for the repeal of the FSIA terrorism exception. The *Post* stated in part:

Judge Lamberth quashed an effort by a man whose daughter was killed in a suicide bombing in the Gaza Strip to satisfy a judgment he had obtained against Iran by tapping such frozen assets as that country's old embassy. The opinion is not just, but it is correct. The executive branch's ability to conduct foreign policy simply must trump the right of any individual plaintiff to collect money damages against a sovereign state.

The administration and Congress both deserve blame for a law that is, in large measure, a lie. Because frozen assets—whether consular or otherwise—are tools of foreign policy, the executive branch has to resist their being turned over to private plaintiffs. Congress never should have passed, nor President Clinton signed, a law that could only offer Mr. Flatow justice by depriving the administration of control over important instruments of foreign policy. This law should be repealed.

Editorial, WASH. POST, Dec. 26, 1999, at B6.

While this Court will not go so far as to call for an outright repeal of the terrorism exception, this Judge has come to the conclusion, after careful deliberation and reflection, that substantial reforms in the law are needed with respect to civil actions against Iran. This judge has taken a special interest in these cases since their inception, and after presiding over these actions for over ten years now, this Court has grown increasingly troubled by the fact that no matter how hard they struggle—and struggle they must—it is virtually impossible for the victims in these terrorism cases to collect on the civil judgments entered against Iran in this Court.

Thus, as a measure devised to achieve justice for victims, the FSIA terrorism exception has failed, and judged by the plaintiffs before the Court today, it has failed one thousand times over and seems all but certain to fail again, unless a real—rather than a superficial and politically convenient solution—is found, and found soon. Our political branches should not continue to tell victims of terrorism to come into this Court in search of justice for unspeakable harms that they have suffered at the hands of terrorists when our political leaders know, or should know, that these lawsuits will not offer redress of any kind for the vast majority of victims in these actions against Iran. In fact, to the extent any of the judgments have been paid in these cases, those payments have come from U.S. Treasury funds under the VTVPA, and these costs may ultimately be borne by U.S. taxpayer. Thus, Iran has not been held accountable and the vast majority of victims have not received compensation of any kind. In the final analysis, the terrorism exception is at best an empty promise, and at worst, it is a provision that has demoralized—and in some ways exploited—these victims of horrific acts of violence.

By other important measures, the private litigation model as a means to resolve terrorism cases against Iran has not achieved success. It has not deterred Iran. Today, Iran is still the world's foremost sponsor of terrorism, and the same oppressive regime is in power and appears

committed to staying in power at all costs. United States relations with Iran remain openly hostile, and it appears that this is likely to continue into the foreseeable future. Thus, if the goals of the FSIA terrorism exception are justice in terms of compensation for victim and accountability for Iran, as well as deterrence of Iran from its material support for terrorists, civil litigation against Iran has not brought our nation any closer to these goals today than we were when the terrorism exception was first enacted in 1996. Yet, in addition to imposing tremendous costs on the victims who have invested their hopes, time, money, and emotions into these lawsuits, civil litigation against Iran in this context has undermined the President's ability to handle some of our most sensitive foreign relations matters, exposed the United States to reciprocal lawsuits in Iran, and wastefully consumed the resources of our Courts here at home.

Now today, in 2009, and ten years after this Court first found itself in the disquieting predicament of having to quash the first efforts of victims to enforce judgments achieved in this Court under the original version of the FSIA terrorism exception, this Court finds itself committed to a new round of litigation under the terms of § 1083 of the 2008 NDAA and a new, and supposedly improved, FSIA terrorism exception, § 1605A. Candidly, this Court has grown increasingly frustrated as the political branches have now enabled new lawsuits and new claims against Iran to populate this Court's docket without first addressing the more fundamental problems that will again condemn these actions, if successful before this Court, to the status of "Pyrrhic victories." Quite simply, this is déjà vu all over again.

The new terrorism exception § 1605A—much like § 1605(a)(7) before it—is in many respects a lie. The truth is, as long as civil litigation is the means by which our political branches choose to redress the harms suffered as a result of terrorism sponsored by Iran, the victims in these cases will continue to be unwitting participants in a meaningless charade. And let no one

forget that both political branches are responsible for this problem, as Congress drafted both the original and the most recent version of the state sponsor of terrorism exception, and now two different Presidents, one Democrat, and one Republican, signed these provisions into law. Accordingly, the frustrations and anger of the victims in these actions, which are often manifested in emotional outbursts and extreme rhetoric directed toward the Executive, are in many ways a direct result of the overblown expectations that the political branches have themselves created.

What this Court hopes our political branches will realize and appreciate today is that it is extraordinarily difficult to tell these victims that the rights and remedies they believe they are entitled to under the FSIA terrorism exception either do not exist or cannot be enforced. These victims have been waiting for years, and, in many cases, decades, for justice. How much longer should this meaningless kabuki dance continue?

This is not the first time that this Court has been critical of the FSIA terrorism exception and nothing said here is all that original. Numerous commentators in the legal community, among others, have called for the repeal of the terrorism exception or have otherwise proposed significant reforms intended to improve this provision of law that virtually all recognize has not achieved redress for victims of terrorism. <sup>53</sup> More significantly, there have been some efforts at

<sup>&</sup>lt;sup>53</sup> See, e.g., Kotlarczyk, supra note 48, at 2030 (arguing that the "provision of material support and resources" clause of the FSIA terrorism exception should be eliminated thereby limiting suits to those case in which the state or its officials have directly participated in a specified act of terrorism); Keith Sealing, "State Sponsors of Terrorism" Is a Question, Not an Answer: The Terrorism Amendment to the FSIA Makes Less Sense Now Than it Did Before 9/11, 38 Tex. Int'l L.J. 119, 122 (2003) (arguing for the outright repeal of the FSIA terrorism exception); Jonathan Fischbach, Note, The Empty Pot at the End of the Rainbow: Confronting "Hallow-Rights Legislation" After Flatow, 87 CORNELL L. REV. 1001 (arguing that, in addition to the existing jurisdictional requirements for an action under the FSIA terrorism exception, jurisdiction should also be predicated on a court determination that there are sufficient assets

systemic reforms introduced in Congress in recent years in the form of proposals for alternative compensations scheme that shift away from the private litigation paradigm. Most of these proposals would have established what would in essence function as a government insurance program in which qualifying victims of terrorism and their loved ones could file claims with the government for compensation. To date, none of these proposals has gotten any traction on Capitol Hill.<sup>54</sup>

Perhaps nothing said here can add to what has already been stated by legal commentators, critics, and those that have explored alternative proposals on the Hill and in other policy-making circles, but unlike political leaders, academic pundits, and media commentators, this Court has the benefit of years of experience—difficult experience—with these cases. By just looking at these actions on the Court's docket, this Court sees today all too clearly just how unsustainable these actions have become. Our political branches have opened the floodgates to even greater numbers of actions against Iran and have added the lure of punitive damage awards. Reforms are needed now before things get out of hand. This Court senses the enactment of § 1083, which greatly expands the failed private litigation concept and all its pitfalls, while combined with the start of a new Administration—one which has promoted a policy of engagement with Iran and

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available to satisfy any money judgment awarded in such an action). *But see* Strauss, *supra*, at 307 (arguing that a multilateral strategy focused on both the freezing of assets and civil litigation against terrorist groups and states would serve as the most effective deterrent of international terrorism and would best ensure justice for terrorism victims).

<sup>&</sup>lt;sup>54</sup> The proposals introduced in Congress recently, including a comprehensive alternative compensation scheme proposed by Bush Administration, are well documented in SUITS AGAINST TERRORIST STATES, *supra* note 4, at 20, 23, 47. *See also* Kotlarczyk, *supra* note 48, at 2044 (suggesting a terrorism victim compensation fund similar to the September 11th Victim Compensation Fund as an alternative to civil actions under the FSIA state sponsor of terrorism exception).

with the Middle East more broadly—may offer something of a perfect storm, which may perhaps serve as the perfect opportunity to accomplish something meaningful for the victims in these tragic cases.

Looking back on these matters now, the Court cannot help but see the wisdom in two of Justice Rehnquist's opinions, both of which formed part of this Court's analysis of issues addressed earlier in today's decision, *see* Parts A & E, *supra*, and appear particularly relevant now to the Court's request of our political leaders to find meaningful reform. The first is Justice Rehnquist's opinion for the Court in *Dames & Moore*, 453 U.S. 654, and the second is the Justice's dissenting opinion in *Sioux Nation*, 448 U.S. 371.

Dames & Moore is most relevant for a number of reasons. Historically speaking, the decision documents the Iran Hostage Crisis and upholds the Algiers Accords and related Executive actions taken to bring about the end of that crisis, including, most importantly, the transfer of Iranian assets outside the jurisdiction of the United States courts and the settlement of claims of United States nationals. Thus, Dames & Moore reveals the inviolability of the Algiers Accords and related Executive actions as large stumbling blocks standing in the way of meaningful redress of terrorism claims against Iran. More significantly, Justice Rehnquist's opinion for the Court underscores the very limited powers of Article III Courts to resolve issues relating to a foreign policy crisis and places emphasis on the role of Executive power and discretion in the resolution of sensitive matters with hostile nations like Iran. Indeed, since the implementation of the Algiers Accords, the ability of the political branches—particularly the Executive—to manage our hostile relations with Iran has been in a constant state of tension with the desire of United States nationals to assert claims against Iran for acts of terrorism. This is an inherent tension under our Constitution that this Court is not at liberty to resolve.

Finally, what this Court sees as an essential take-away from *Dames & Moore* is the discussion of the history of the longstanding practice of Executive claims settlement as a means to redress claims of United States nationals against foreign sovereigns. As Justice Rehnquist's discussion points out, Executive settlement of claims is a practice that reaches far back to the time of President George Washington, and numerous other American Presidents have exercised this authority consistently throughout our history. *See* 453 U.S. at 679–688. Moreover, as the Court's opinion observes, Executive claims settlement is a practice that has been reinforced by Congress though statutes establishing claims settlement commissions, such as the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, 22 U.S.C. §§ 1621–1645o. *See Dames & Moore*, 453 U.S. at 680–81. Historically speaking, claims settlement by the Executive has often proven to be the only effective means of redress of those claims that originate during a period of strained relations with another nation.

Thus, while private litigation is now authorized under the FSIA against state sponsors of terrorism, Executive action is historically an important and necessary practice to ensure relief for United States nationals who have suffered at the hands of an unfriendly foreign government.

Courts can only function at the margins on these matters, if at all. Indeed, in comparison to the long-standing tradition of Executive settlement of claims, these private terrorism suits represent a novel and unprecedented experiment, and one that has failed.

This brings the Court to Justice Rehnquist's dissent in *Sioux Nation*, which he penned in the term immediately prior to that in which he wrote the opinion for the Court in *Dames & Moore v. Regan*. As discussed Part E, *supra*, *Sioux Nation*, involved a no less challenging and difficult context—the mistreatment of the Sioux Indians and their divestment from their lands in the Black Hills of South Dakota. The Court's opinion in the case recounts this American tragedy

in painstaking detail. *See* 448 U.S. at 374–384. Like many difficult political issues, the failure to address that injustice apparently had much to do with money, as the Sioux Indians were claiming upwards of a billion dollars in compensation for the land and mineral rights they lost, as compounded over time. *See id.* at 390.

As noted in Part E, *supra*, *Sioux Nation* involved a claim under the Taking Clause of the Fifth Amendment. The Sioux Indians claimed that their ouster from their lands in the Blacks Hills by the Federal Government in 1877 violated the terms of the Fort Laramie Treaty of 1868 and therefore amounted to a taking for which just compensation was owed. *See* 448 U.S. at 384. Over a series of decades, Congress intervened on no less than three occasions in order to allow the Sioux to press their case against the Federal Government. *See id.* at 384–90. These efforts were consistently opposed by the Executive Branch.

At the culmination of the first action brought by the Sioux Nation in 1942, the Court of Claims ruled squarely against the Indians, holding that the Sioux had merely presented "a moral claim not protected by the Just Compensation Clause." *See id.* at 384. Thereafter, Congress established the Indian Claims Commission, and the Sioux Indians then resubmitted their Black Hills takings clause claim to that body. *Id.* at 384–85. After the Commission ruled in favor of the Sioux, the Federal Government appealed to the Court of Claims. *Id.* at 386–87. Without reaching the merits of the issue, the Court of Claims held that the Sioux Indian's takings claim was barred by the res judicata effect of its 1942 decision. *Id.* at 387. In the meantime, however, Congress again passed special legislation in favor of the Sioux Indians in which Congress directed the Court of Claims to hear the Sioux Indians claim "[n]otwithstanding any other provisions of law . . . [and] without regard to the defense of res judicata or collateral estoppel." *Id.* at 389, 391. Pursuant to that special enactment, the Court of Claims promptly reheard the

Sioux Indians' case on the merits and ultimately decided in their favor. *Id.* at 389–390. The Supreme Court granted the Federal Government's petition for a writ of certiorari to in order to review constitutional "questions not only of long-standing concern to the Sioux, but also of significant economic import to the Government." *Id.* at 390.

In a narrowly crafted decision, the Supreme Court ruled that the doctrine of separation of powers did not prevent the reinstatement of the Sioux Indians claim on the grounds that Congress was free, if it wished to do so, to waive the res judicata effect of the prior judicial decision in the Government's favor. *Id.* at 407. The Court found that the Federal Government had effectively waived those defenses though the special legislation allowing the Sioux Nation case to be reinstated. *See id.* at 406–407. In so doing, the Court emphasized Congress' broad powers to acknowledge and pay debts under the Constitution. *See id.* at 397 (citing U.S. Const., Art. I, § 8, cl. 1). On the merits, the Court upheld the Court of Claims' determination that the Government actions amounted to a taking in violation of the Fifth Amendment and the Court's award of compensation, plus interest, in favor of the Sioux. *Id.* at 432–424.

As stressed in Part E, *supra*, Justice Rehnquist mounted a vigorous dissent. *See* 448 U.S. at 424–437. At the heart of Justice Rehnquist's dissent in *Sioux Nation* was the basic sense that Congress should not be permitted to co-opt the judicial powers of the Article III Courts to resolve a claim decided previously in a manner not to its liking. *See id.* at 427–32. The Justice stated, "Congress may not attempt to shift its legislative responsibilities and satisfy its constituents by discarding final judgments and ordering new trials." *Id.* at 431–432. According to Justice Rehnquist, if Congress really wanted to achieve justice for the Indians, it could have simply passed legislation providing the sizable compensation owed. Unlike the majority of the Court at that time, Justice Rehnquist would hold that Congress had impermissibly attempted to

usurp judicial power by reopening a case that was previously resolved in a final judgment—albeit unfavorably to the Indians—long ago. *Id.* at 424–25.

The parallels between the factual circumstances surrounding the claim of the Sioux Indians against the Federal Government and those that now afflict the claims of victims of state-sponsored terrorism in actions under the FSIA terrorism actions are remarkably striking. Similar to the *Sioux Nation* case, the difficult problems confronting these FSIA terrorism cases have been foisted upon the Article III Courts in part because of a lack of real consensus between our co-equal political branches of Government on how to deal with this controversial topic. Much like the takings claim of the Sioux, Congress persistently pushes for the litigation of claims of terrorism victims in the Federal Courts, where these victims are opposed by the Federal Government and encounter adverse court rulings.

In the dicey political context of these terrorism cases, that message of Justice Rehnquist's dissent in *Sioux Nation* reads clarion clear: If Congress and the President are serious about finding redress of the injustices suffered by these terrorism victims, then they should pull together to find meaningful, workable solutions, rather than finding new and creative ways to push these tragic claims back onto the Courts. The private litigation has not worked, and simply is not workable, in this highly sensitive context involving affairs with a hostile nation. It is the plenary powers of governance, and not the powers of the courts, that must be used to help these victims overcome the significant challenges they face.

Even though the President has lost much of his "bargaining chip" with respect to Iran because of the depletion of blocked assets under the VTVPA and the TRIA, there is still room for the President to reassert his prerogative in foreign affairs in this sensitive context. In light of the scarcity of Iranian assets and the tension in United States relations with Iran, the President

might consider renewing efforts to move forward with the establishment of a terrorism claims settlement commission, like those that have been introduced in Congress in recent years. This would be consistent with longstanding historical practice as described in *Dames & Moore v*.

\*Regan.

To succeed, however, any proposal in this area will have to do more than simply provide compensation to victims. Experience in these actions has demonstrated convincingly to this Court that what these victims truly want is justice. This point was underscored poignantly in live testimony in this Court during the trial in *Peterson* case involving the bombing of the Marine Barrack in Beirut. In finding Iran liable for that terrorist attack, this Court recounted some of the testimony. When Lt. Col Howard Gerlach of the United States Marine Corps, who was paralyzed in the attack, was asked about what he hoped to achieve by participating in these actions, he answered:

Well, I guess there's three words: accountability, deterrence and justice. And they are interrelated. The accountability, and I swear it was on Sunday, I was listening to a rerun of one of the TV—I don't know, Meet the Press or whatever, but Vice President Cheney was talking and he was saying that they, the terrorists feel that they can do things with impunity, and he said ever since the Marines in '83. Yes, there hasn't been any accountability.

Deterrence effect is, in some way, and this is also what he was talking about, was one thing we have to go after—and I think I'm stating this correctly; this is what I heard, is the funding. It's the funding. Even on the radio coming over here, we heard some talk about funding for terrorist organizations.

Then the third thing is the justice, and this refers to the people, a good portion of [whom] are in this room. . . . They lost a large chunk of their lives, young Marines, sons, husbands, fathers, brothers. They were attempting to do a noble thing. They went as peacekeepers in the tradition of this country. . . . [W]e weren't trying to conquer land, we weren't trying to get anything for ourselves; we were really trying in a humanitarian way to help those people in Lebanon. I think this is . . . the day in court, literally and figuratively speaking, for recognition of just how great these guys were.

Peterson I, 264 F. Supp. 2d at 63–64.

On this salient point, this Court recognizes again today, as it did in *Peterson* in 2003, that "there is little that the Court can do to add to the eloquent words" of witnesses who came to this Court in an effort to "achieve some small measure of justice." *Id.* at 64. It would indeed be naive and insulting to the victims to suggest that these difficult cases can be resolved through cash pay outs from our Federal Government. Nothing could be further from the truth. Justice requires accountably for Iran, and a claims authority that simply doles out compensation to victims will not achieve that end any more than actions before this Court will. 55

The accountability aspect of the justice these victims seek certainly does not admit of any easy answers, and this is precisely the sort of challenging question that is best left to the capable minds in the Administration and in Congress. It seems to this Court, however, that such a commission might include administrative law judges within the Executive Branch who could adjudicate claims under the terrorism exception and the body of law around it, as modified for such administrative proceedings. Through that process, the Executive Branch could obtain a thorough record of these horrific cases with the active participation of the victims, and thus these matters could then be more easily presented to the policy makers within the Executive Branch who are in the best position to hold Iran accountable. To enhance the prospect of accountability in these matters, the record from hearings on these case could then be published in an annual report to both Congress and the President and made available publicly to the citizens at large in an effort to keep these matters in focus.

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<sup>&</sup>lt;sup>55</sup> But see Kotlarczyk, supra note 48, at 2044 (suggesting that a compensation fund similar to the September 11th Fund might be the most appropriate way to redress terrorism claims.)

Another advantage of a claims commission process within the Executive Branch is that Executive departments, and particularly the Department of State, have superior access to data and information that can help verify these terrorist incidents, and determine more reliably to what extent Iran may have played a role in supporting a particular act of terrorism. With the benefit of such data, the findings of a terrorism claims commission might carry more weight with the State Department and the President during periods of negotiations with Iran and thus further advance the prospect of settlement with Iran down the road. Similarly, the Executive Branch through the Treasury Department, particularly OFAC, is in the best position to locate assets of Iran in the United States, including unblocked assets. Accordingly, if it is empowered to do so, such a commission would be most capable of tracking down these assets and could more effectively liquidate them in satisfaction of claims, which would provide real accountability and might also defray the costs of the commission.

Finally, the commission might work on an ongoing basis to make recommendations on how best to structure a large settlement with Iran, and perhaps other state sponsors of terrorism as well, in the event of normalization. Whatever the case may be, the commission will have to conduct itself in an open and transparent manner, use all available renounces to verify and document terrorist incidents, speak candidly with the victims, and work aggressively on their behalf. Such a terrorism commission, if well resourced and able to report independently on its findings to both political branches of Government, should provide victims of terrorism with a better opportunity for meaningful redress of their claims.

The need for substantial reforms with respect to terrorism lawsuits has become even more apparent over the last several months. As the events in Iran since that country's presidential election in June have revealed, the affairs of that nation are tremendously complex. There are

forces for both good and evil in that society, and there are those who want reform and a new day for Iran, and for its relations with the larger international community. While that day is still undoubtedly a long ways off, we cannot ignore its promise. And while we must decry and condemn the current regime and its use of terror in furtherance of its political objectives—we cannot forget the courage of the people, including women and young people, who took to the streets of Tehran and elsewhere in the hope of a better day.

What we have seen from the citizens of Iran is inspiring and brings a brief flicker of hope for a lasting peace and a chance to settle grievances—real or perceived—whatever they may be. It is in that process of normalization, whenever and however it might occur, that there is the best chance for achieving justice for all those who have suffered over the last thirty years.

Regrettably, the same cannot be said of the FSIA terrorism exception—whether § 1605(a)(7) or § 1605A. Frankly, these measures are politically superficial and overly simplistic solutions to much deeper problems. These measures are empty political gestures that offer no justice for so many victims who—whether intentionally or not—have been exploited by the politics of these terrorism lawsuits.

There is an important dialogue occurring in our nation over how best to deal with terrorism, including state sponsors of terrorism like Iran, but neither tough rhetoric nor large, unenforceable court judgments will help to resolve these extraordinarily sensitive and complex matters. By fanning flames and fueling unrealistic exceptions, these court actions do not contribute to a productive dialogue. These actions may even add to the atmosphere of tension and hostility between Iran and the United States that moves that rogue country further down the path of isolation and paranoia, thereby contributing to the conditions that strengthen and further the ends of a regime that seems determined to do us in. Certainly, these actions under the FSIA

terrorism exception do nothing to enhance the President's ability to carefully and intelligently respond to a host of sensitive matters pertaining to our relations with Iran, and there are indeed many substantial competing considerations in this context. The most paramount of these is the grave risk of nuclear proliferation.

Make no mistake about it, terrorism is a grave threat to our society. Our citizens will continue to be targeted precisely because they are Americans.<sup>56</sup> The White House may have declared the war on terrorism over,<sup>57</sup> but the threat of terrorism remains very real, and Americans will continue to suffer casualties as a result of this insidious and murderous evil. These victims certainly deserve justice, but the private litigation approach to redress is unsustainable and works at cross purposes of the President's foreign policy initiatives other developments that may lead to lasting change and peace. Nothing that occurs in this Court can achieve those ends.

Thus, today's decision is merely a roadmap for the long road ahead that awaits these victims in renewed litigation before this Court under the FSIA terrorism exception, a provision

Terrorists attack American targets more often than those of any other country. America's pre-eminent role in the world guarantees that this will continue to be the case, and the threat of attacks creating massive casualties is growing. If the United States is to protect itself, if it is to remain a world leader, this nation must develop and continuously refine sound counterterrorism policies appropriate to the rapidly changing world around us."

NAT'L COMM'N ON TERRORISM, COUNTERING THE CHANGING THREAT OF INTERNATIONAL TERRORISM, at iii (2008), *available at* http://www.gpo.gov/nct/nct1.pdf.

<sup>&</sup>lt;sup>57</sup> The Administration has apparently decided to stop using the phrase "war on terrorism." *See* John Brennan, Assistant to the President for Homeland Sec. and Counterterrorism, A New Approach for Safeguarding Americans, Address at the Center for Strategic and International Studies (Aug. 6, 2009) ("[T]he president does not describe this as a 'war on terrorism."") (transcript available at http://csis.org/files/attachments/090806\_brennan\_transcript.pdf); *see also* John Ward, *U.S. No Longer at War with "Terrorism"; Administration Deems Terms from Bush Era Unacceptable*, WASH. TIMES, Aug. 7, 2009, at A1.

of law that so far has gotten the victims of terrorism no closer to the justice they seek.<sup>58</sup> What this Court really hopes for, however, is that some of our political leaders may read this opinion and consider the experiences of this Court in a broader effort to obtain meaningful reform. Our political leaders must find a way to muster the commitment and courage it will take to address the fundamental problems—the roadblocks—that will continue to undermine the efforts of these victims to find justice in new lawsuits under § 1605A. This meaningless charade under the FSIA has gone on far too long. It is high time for our political leaders to consider the flaws of this private litigation experience and address the deeper political problems that this Court has no authority to resolve.

This Court's experience with these terrorism lawsuits might not offer any immediate answers, but it may lend some valuable insights, and thus this Court hopes these insights—these lessons learned—will assist in a larger dialogue about reform. Is there a better way to address these important terrorism cases and achieve justice for the victims? It is in this spirit that today's decision is offered. This opinion is in no way intended as a criticism of the victims and their noble efforts, but as a call to action for their cause. If the President and Congress are able to candidly acknowledge the both the legitimate grievances of the terrorism victims and the fundamental problems that undercut the private litigation model long embraced by FSIA terrorism exception, they can undoubtedly develop a workable system of redress for these tragic cases. Key Executive Branch officials, including the Secretary of State, the Attorney General,

<sup>&</sup>lt;sup>58</sup> This opinion speaks only to 20 pending cases, which is only a fraction of the number now pending against Iran in this Court. This judge has several more not included in this opinion, and there dozens of others representing billions in potential liability for Iran that are now pending with other judges of this Court.

and the Secretary of the Treasury, among others will likely prove crucial to the success of such an undertaking.

Whatever measures might be advanced to aid terrorism victims in this context should neither limit the President's ability to extend his hand nor encourage Iran to continue to clench its fist. Now more than ever, it is important for our President to be able to speak with one voice and to marshal the full measure of American power and diplomacy in search of better relations with Iran in the interest of all Americans. This Court is concerned, however, that if these unsustainable civil actions continue to fan flames and exhaust terrorism victims who have already suffered enough, judgments entered by this Court will continue to undermine the President's ability to address sensitive matters of national security and will do so at crucial times when the President's ability to act is likely to matter most.

## AN INVITATION FOR THE UNITED STATES TO PARTICIPATE IN THESE ACTIONS

This Court has found on past occasions that the appearance of the United States in actions against Iran has greatly assisted the Court. The United States often brings to light additional, relevant legal authorities and arguments bearing on the questions presented and generally provides the kind of broader perspective that this Court must have when addressing cases against foreign sovereigns. For these reasons, the United States will be invited to file a brief within 60 days in which the United States may express its views regarding any of the issues raised by this consolidated opinion and the accompanying order. Filing a brief by invitation of this Court will not prejudice the United States with respect to any submissions it may wish to make in response to specific filings by plaintiffs in any of the civil actions addressed today.

Additionally, in an effort to further the case-management function of this opinion, this

Court will hold a series of status conferences for all the civil cases addressed in this decision.

The United States will be invited to attend the status conferences along with the parties. The

Court anticipates holding similar status conferences in these cases approximately every 60 days
thereafter to ensure that these matters remain on track. Many of these cases have been
languishing on the Court's docket for quite some time, and thus the Court is eager to bring these
matters to conclusion as expeditiously as possible. The clerk will contact counsel for plaintiffs
and the United States to schedule a time on the Court's docket that is convenient for all parties.

#### **CONCLUSION**

Nearly thirty years ago, the Hostage Crisis began as Islamic students seized the United States Embassy in Tehran and took more than 50 Americans as hostages. For over four hundred long and painful days, Americans looked on with shock and horror as they followed the nightly news coverage of the events in Tehran. It seemed as if our whole nation was being held hostage. On the eve of Ronald Reagan's Inauguration, the hostage standoff was finally settled peacefully through the conclusion of the Algiers Accords on January 19, 1981. All American hostages were released the following day, only moments after President Reagan took the oath of office. Little did we know at that time that the Hostage Crisis merely signaled the beginning of what would become an increasingly hostile era of relations between the Islamic Republic of Iran and the United States.

Less than three years later, in Beirut, Lebanon, more than two hundred United States

Marines and numerous other uniformed service members, most of whom were asleep in their
barracks, would die in a tremendously powerful explosion—the result of a highly sophisticated
and carefully executed suicide bombing orchestrated by Hezbollah operatives acting with
training, guidance, and other material support from Iran's Ministry of Information and Security.

By January 1984, Iran was designated as a state sponsor of terrorism by the State Department. In
the years that followed, Iran's material support for terrorism would lead to unprecedented suicide
bombing attacks throughout the Gaza Strip and Israel. Schools and buses were frequent targets
of the terrorist perpetrators of these attacks—unjustified killings of innocents in contravention of
all the laws of humanity—which have claimed the lives of many bright young American men
and women.

Since 1996, the civil cases brought under the FSIA state sponsor of terrorism exception have chronicled the senseless violence and carnage that have dotted the last three decades of hostile relations between the Islamic Republic of Iran and the United States. These terrorism cases are the tragic stories of the many victims—like the more than one thousand victims represented here today—who have suffered dearly as a result of a campaign of terror that has included hostage takings, torture, suicide bombings, and assassinations.

Regrettably, the tragedies represented by these cases under the FSIA terrorism exception have been compounded by what has turned into a long and often futile quest for justice under this novel provision of law. The reality is that the FSIA terrorism exception, as applied by our Article III Courts of limited jurisdiction and powers, has not provided the victims the relief they deserve. Instead of finding justice, most of these plaintiffs have found themselves holding unenforceable judgments. They have faced years of costly, emotionally draining, and time-consuming postjudgment litigation. They have often been opposed by the Executive Branch, and their struggles have rarely produced positive results. Similarly, these victims have fought in the halls of Congress for *ad hoc* and often ineffectual legislative fixes in an effort to give some real teeth to this failed provision of law.

This Court commends Stephen Flatow, Deborah Peterson, and the many others who have bravely pursued justice under the terrorism exception. They have brought to light to an important issue, and their cases in the courts provide an important historical record concerning all those who have been injured or killed as a result of state-sponsored terrorism. Our Nation has been served by their efforts. It is out of respect and appreciation for these victims—and out of observance of the frustrations that experience with this terrorism law has borne out over time in proceedings before this Court—that this Court expresses the view that these FSIA terrorism

actions cannot achieve justice as intended. In the long and difficult process that this Court has witnessed over the last decade, these cases have consumed substantial judicial resources while achieving few tangible results for the victims. The problems encountered by the Flatows a decade ago are the same problems experienced by Deborah Peterson today. More fundamentally, the rule of law is being frustrated in what now seems to be an increasingly counterproductive and largely academic exercise.

For the sake of these terrorism victims, however, and for the sake of our Nation as a whole, these actions should not continue on as academic exercises. The stakes are far too high, both in terms of the losses sustained, and in terms of the larger foreign policy interests of the United States.

To be sure, the current regime in Iran is apparently not going away any time soon and the problem of state-sponsored terrorism will be with us for years to come, and long after the judges of this Court who have presided over this grand experiment have passed from the bench. But these are complicated matters. If anything, the events of the last few months and weeks have underscored the depth of that complexity. There are forces for evil in that country, as there are in any nation, but there are also forces for good, and with that there is a glimmer of hope for a better future.

Meanwhile, here at home, the reforms implemented as part of § 1083 of the 2008 NDAA last year—which are just now being implemented in individual cases here today—will not, in this Court's humble opinion, lend much support to the cause of these victims or their long march toward justice. These most recent reforms, like others before them, are premised on the same failed private-litigation model that has, in effect, doomed these actions from the start. These terrorism cases—whether under § 1605(a)(7) or § 1605A—are likely to face the same obstacles

discussed in this opinion, such as the Algiers Accords, limited assets to satisfy judgments, conflicting laws and regulations, and the President's foreign policy prerogative, among others. These are intractable problems that are more often political, rather than jurisprudential, and so it seems that the new § 1605A, although well intentioned, is destined to prolong and perhaps aggravate the ways in which the same intractable issues have continuously foiled plaintiffs in these cases time and again. Today, more than a decade after these suits began—and with the majority of Iran's blocked assets depleted to pay for earlier judgments—the hope for justice under the terrorism exception is growing increasingly distant and unobtainable.

But these difficult realities should not give license to those who would rather ignore the plight of American victims of terrorism. Instead, this Court sincerely hopes that today, on the dawn of a new presidential administration—one that remains committed to a policy of engagement with Iran and the Middle East as whole—that the President, the Secretary of State, the Attorney General, the Secretary of the Treasury, and leaders in Congress will look at these matters and look for ways to make real change. The President should be commended for his work to foster a dialogue with the Middle East generally and the Muslim world specifically. In light of this fresh and inspiring approach, perhaps today more than ever there is hope for real reform.

The challenges that confront the President with respect to our relations with Iran are as daunting as ever, and thus this Court must leave it to the experts in the political branches to consider whether a balanced and meaningful political compromise can be reached with respect to these difficult terrorism cases. It seems to this judge that it is time for a new approach, and perhaps it is time to think more systematically about how these cases can work in concert, rather

than in conflict, with a broader strategy towards the goals of better relations with the Muslim world, peace in the Middle East, and the eradication of terrorism.

To all the plaintiffs, this Court wishes to stress that it, as always, will endeavor to see to it that plaintiffs in these actions get all the relief to which they are entitled under the law. This Court continues to hope that one day soon justice might be achieved.

**ROYCE C. LAMBERTH** 

CHIEF JUDGE U.S. DISTRICT COURT WASHINGTON, D.C.

**SEPTEMBER 30, 2009** 

# ANNEX 74



110TH CONGRESS

1st Session

HOUSE OF REPRESENTATIVES

REPORT 110-477

### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008

### CONFERENCE REPORT

TO ACCOMPANY

H.R. 1585



DECEMBER 6, 2007.—Ordered to be printed

prehensive strategy for replacing the aerial refueling tanker air-

craft fleet, which includes the following elements:

 replacement of the aging tanker aircraft fleet with newer and improved capabilities under the KC-X program of record which supports the tanker replacement strategy, through the purchase of new commercial derivative aircraft;

(2) sustainment and extension of the legacy tanker aircraft fleet until replacement through depot-type modifications and upgrades of KC-135R and KC-10 aircraft; and

(3) augmentation of the aerial refueling capability through

aerial refueling fee-for-service.

The conferees note that several studies have been conducted that indicate a potential for cost savings and other benefits of a feefor-service air refueling program. Executing a pilot program for feefor-service air refueling should be given full and fair consideration in order to test the costs, benefits, and appropriateness of such actions. To ensure the viability of such a program, it should be based on an appropriate business model, utilizing sufficient aircraft and flying hours to support a program that will meet the needs and best interests of the Air Force to meet air refueling requirements. The conferees direct that the pilot program be enacted as soon as practicable, and be incorporated into the operations of the Air Mobility Command.

Advisory panel on Department of Defense capabilities for support of civil authorities after certain incidents (sec. 1082)

The Senate amendment contained a provision (sec. 1066) that would establish an advisory panel to assess and make recommendations on Department of Defense capabilities to support civil authorities in the event of a chemical, biological, radiological, nuclear, or high-yield explosive incident.

The House bill contained no similar provision.

The House recedes with an amendment that would add a requirement for the advisory panel to assess and make recommendations on whether there should be additional Weapons of Mass Destruction Civil Support Teams (WMD-CSTs) and, if so, how many and where they should be located. It would also require the advisory panel to assess and make recommendations on what criteria and considerations are appropriate for determining whether additional WMD-CSTs are needed and, if so, where they should be located.

Terrorism exception to immunity (sec. 1083)

The Senate amendment contained a provision (sec. 1087) that would amend the Foreign Sovereign Immunities Act (FSIA) to allow victims of terrorism to seek redress in U.S. courts against foreign states that commit or provide material support to acts of terrorism, by clarifying subject matter jurisdiction over these claims and establishing a private cause of action under the exception for state sponsors of terrorism to sovereign immunity.

The provision would consolidate provisions relating to the exception to sovereign immunity for state sponsors of terrorism in a new section 1605A to the FSIA, and repeal the previous exception set out in section 1605(a)(7). The provision would permit claims to be brought for money damages, including punitive damages, against a foreign state designated as a state sponsor of terrorism, for acts of torture, extrajudicial killing, aircraft sabotage, hostage taking, or providing material support or resources for these acts, committed by any official, employee, or agent of that state acting within the scope of his or her office, employment, or agency. The provision would also expand the ability of claimants to seek recourse against the property of that foreign state, both by permitting a lien to be placed on the foreign state's property during litigation and, once a judgment has been obtained, by permitting any property in which the foreign state has a beneficial ownership to be subject to execution of that judgment. The provision would allow any case previously brought under the state sponsor of terrorism exception to the FSIA under section 1605(a)(7), or under section 101(c) of Public Law 104–208, and which is still before a court, to be refiled as if the original claim had been filed under the provisions of this section.

The House bill contained no similar provision.

The House recedes with an amendment that would establish a private cause of action under the state sponsor of terrorism exception to the FSIA. Courts would have jurisdiction to hear a claim brought against a foreign state that was designated as a state sponsor of terrorism at the time of the terrorist act, or was so designated as a result of the act, and which remains designated as a state sponsor of terrorism at the time a claim is filed. Claims brought prior to the enactment of this Act against a foreign state that at the time was designated as a state sponsor of terrorism, or an action related to such a claim, would still be heard under this section. The conferees intend that the amendments made under this section shall apply to any claim filed or refiled under the new section 1605A of the FSIA, and any execution or attachment in aid of execution of a judgment relating to such a claim under section 1610(g) of the FSIA.

The provision would also provide for courts to hear a claim under this section if the terrorist act is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia. The conferees intend that nothing in this section would prejudice the claimants or their representatives in that case.

The provision would allow claimants to establish a lien of lis pendens, upon the filing of a notice that an action is pending, on a foreign state's real property or tangible personal property that is subject to execution or attachment in aid of execution under the FSIA. The conferees intend that property used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of Mission, which is not subject to execution or attachment in aid of execution of a judgment, should not be subject to a lien of lis pendens under this provision.

The provision would also give claimants who obtain a judgment against a foreign state recourse to property of the foreign state in execution or attachment in aid of execution of the judgment. While the provision is written to subject any property interest in which the foreign state enjoys a beneficial ownership to attachment and execution, the provision would not supersede the court's authority to appropriately prevent impairment of interests

in property held by other persons who are not liable to the claimants in connection with the terrorist act. The court would fully retain its authority to take whatever steps it finds warranted to preserve the value of an ongoing business enterprise in which a third party may be a joint venture partner, for example. The conferees encourage the courts to protect the property interests of such innocent third parties by using their inherent authority, on a case-by-case basis, under the applicable procedures governing execution on judgment and attachment in anticipation of judgment.

The provision would further provide that a foreign state's property would not be immune from execution upon a judgment due to the property being regulated by the United States Government under the Trading With the Enemy Act or the International Emergency Economic Powers Act due to the sovereign immunity of the

United States

The provision would clarify that nothing in section 1503 of the Emergency Supplemental Appropriations Act, 2003 (Public Law 108–11) has ever authorized making any provision of the Foreign Sovereign Immunities Act inapplicable, or the removal of the jurisdiction of any court of the United States. The conferees stress that this provision should not be construed in any way as support for the use of United States appropriated funds to satisfy a claim brought under this section.

#### LEGISLATIVE PROVISIONS NOT ADOPTED

Hate crimes

The Senate amendment contained a provision (sec. 1023) that would address hate crimes.

The House bill contained no similar provision.

The Senate recedes.

Comprehensive study and support for criminal investigations and prosecutions by State and local law enforcement officials

The Senate amendment contained a provision (sec. 1024) that would require a comprehensive study and support for certain criminal investigations and prosecutions by State and local law enforcement officials.

The House bill contained no similar provision.

The Senate recedes.

Extension of period for transfer of funds to Foreign Currency Fluctuations, Defense account

The Senate amendment contained a provision (sec. 1007) that would extend from 2 to 4 fiscal years the length of time after the end of the period of availability of obligation in which funds can be transferred back to the "Foreign Currency Fluctuations, Defense" (FCFD) appropriation account to offset losses caused by fluctuations in foreign currency exchange rates.

The House bill contained no similar provision.

The Senate recedes.

# ANNEX 75

#### Syllabus

NOTE. Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader See United States v Detroit Timber & Lumber Co., 200 U S. 321, 337

#### SUPREME COURT OF THE UNITED STATES

#### Syllabus

#### RUBIN ET AL. v. ISLAMIC REPUBLIC OF IRAN ET AL.

#### CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 16-534. Argued December 4, 2017-Decided February 21, 2018

The Foreign Sovereign Immunities Act of 1976 (FSIA) grants foreign states and their agencies and instrumentalities immunity from suit in the United States and grants their property immunity from attachment and execution in satisfaction of judgments against them, see 28 U.S.C. §§1604, 1609, but with some exceptions. Petitioners hold a judgment against respondent Islamic Republic of Iran pursuant to an exception that applies to foreign states designated as state sponsors of terrorism with respect to claims arising out of acts of terrorism. See §1605A. To enforce that judgment, petitioners filed an action in the District Court to attach and execute against certain Iranian assets—a collection of ancient clay tablets and fragments housed at respondent University of Chicago. The District Court concluded that §1610(g)-which provides that certain property will be "subject to attachment in aid of execution, and execution, upon [a §1605A] judgment as provided in this section"-does not deprive the collection of the immunity typically afforded the property of a foreign sovereign. The Seventh Circuit affirmed.

Held: Section 1610(g) does not provide a freestanding basis for parties holding a judgment under §1605A to attach and execute against the property of a foreign state; rather, for §1610(g) to apply, the immunity of the property at issue must be rescinded under a separate provision within §1610. Pp. 4–15.

(a) Congress enacted the FSIA in an effort to codify the careful balance between respecting the immunity historically afforded to foreign sovereigns and holding them accountable, in certain circumstances, for their actions. As a default, foreign states have immunity "from the jurisdiction of the courts of the United States and of the States," §1604, but there are express exceptions, including the one at issue

#### Syllabus

here, for state sponsors of terrorism, see §1605A(a). The FSIA similarly provides as a default that "the property in the United States of a foreign state shall be immune from attachment arrest and execution." §1609. But §1610 outlines certain exceptions to this immunity. For example, §1610(a)(7) provides that property in the United States of a foreign state that is used for a commercial activity in the United States shall not be immune from attachment and execution where the plaintiff holds a §1605A judgment against the foreign state. Before 2008, the FSIA did not expressly address under which circumstances a foreign state's agencies or instrumentalities could be held liable for judgments against the state. The Court had addressed that question in First Nat. City Bank v. Banco Para el Comercio Exterior de Cuba, 462 U. S. 611, 628 (Bancec), and held that, as a default, agencies and instrumentalities of a foreign state are separate legal entities that cannot be held liable. It recognized the availability of exceptions, however, and left the lower courts to determine whether an exception applied on a case-by-case basis. The lower courts coalesced around five relevant factors (the Bancec factors) to assist in those determinations. In 2008, Congress amended the FSIA, adding §1610(g). Subparagraphs (A) through (E) incorporate almost verbatim the Bancec factors, leaving no dispute that, at a minimum, §1610(g) serves to abrogate Bancec where a §1605A judgment holder seeks to satisfy a judgment held against the foreign state. The question here is whether, in addition to abrogating Bancec, it provides a freestanding exception to property immunity in the context of a §1605A judgment. Pp. 4-8.

(b) The most natural reading of §1610(g)(1)'s phrase "as provided in this section" is that it refers to §1610 as a whole, so that §1610(g)(1) will apply to property that is exempted from the grant of immunity as provided elsewhere in §1610. Those §1610 provisions that do unambiguously revoke the immunity of a foreign state's property employ phrases such as "shall not be immune," see §1610(a)(7), and "[n]otwithstanding any other provision of law," see §1610(f)(1)(A). Such textual markers are conspicuously absent from §1610(g). Thus, its phrase "as provided in this section" is best read to signal only that a judgment holder seeking to take advantage of §1610(g)(1) must identify a basis under one of §1610's express immunity-abrogating provisions to attach and execute against a relevant property. This reading provides relief to judgment holders who previously would not have been able to attach and execute against property of an agency or instrumentality of a foreign state in light of Bancec. It is also consistent with the basic interpretive canon to construe a statute so as to give effect to all of its provisions, see Corley v. United States, 556 U. S. 303, 314, and with the historical practice of rescinding attach-

#### Syllabus

ment and execution immunity primarily in the context of a foreign state's commercial acts, see *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 487-488. Pp. 8-11.

(c) Petitioners' counterarguments are unpersuasive. They assert that the phrase "as provided in this section" might refer to the procedures in §1610(f)(1), which permits §1605A judgment holders to attach and execute against property associated with certain prohibited financial transactions, but which was waived by the President before it could take effect. However, it is not logical to read the phrase as indicating a congressional intent to create §1610(g) as an alternative to §1610(f)(1), particularly since Congress knows how to make clear when it is rescinding immunity. Nor could Congress have intended "as provided in this section" to refer only to §1610(f)(2)'s instruction that the Federal Government assist in identifying assets, since that provision does not provide for attachment or execution at all. Finally, there is no basis to conclude that "this section" in §1610(g) reflects a mere drafting error.

The words "property of a foreign state," which appear in the first substantive clause of §1610(g), are not rendered superfluous under the Court's reading. Section 1610(g) serves to identify in one place all the categories of property that will be available to §1605A judgment holders for attachment and execution, and commands that the availability of such property will not be limited by the Bancec factors. Also, without the opening clause, §1610(g) would abrogate the Bancec presumption of separateness in all cases, not just those involving terrorism judgments under §1605A. Although petitioners contend that any uncertainty in §1610(g) should be resolved by giving full effect to the legislative purpose behind its enactment—removing obstacles to enforcing terrorism judgments—they offer no real support for their position that §1610(g) was intended to divest all property of a foreign state or its agencies or instrumentalities of immunity. Bank Markazi v. Peterson, 578 U.S. \_\_\_\_\_, n. 2, distinguished. Pp. 12–15.

830 F. 3d 470, affirmed.

SOTOMAYOR, J., delivered the opinion of the Court, in which all other Members joined, except KAGAN, J., who took no part in the consideration or decision of the case.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press

#### SUPREME COURT OF THE UNITED STATES

No. 16-534

JENNY RUBIN, ET AL., PETITIONERS v. ISLAMIC REPUBLIC OF IRAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[February 21, 2018]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

The Foreign Sovereign Immunities Act of 1976 (FSIA) grants foreign states and their agencies and instrumentalities immunity from suit in the United States (called jurisdictional immunity) and grants their property immunity from attachment and execution in satisfaction of judgments against them. See 28 U.S.C. §§1604, 1609. But those grants of immunity are subject to exception.

Petitioners hold a judgment against respondent Islamic Republic of Iran pursuant to one such exception to jurisdictional immunity, which applies where the foreign state is designated as a state sponsor of terrorism and the claims arise out of acts of terrorism. See §1605A. The issue presented in this case is whether certain property of Iran, specifically, a collection of antiquities owned by Iran but in the possession of respondent University of Chicago, is subject to attachment and execution by petitioners in satisfaction of that judgment. Petitioners contend that the property is stripped of its immunity by another provision of the FSIA, §1610(g), which they maintain provides a blanket exception to the immunity typically afforded to

the property of a foreign state where the party seeking to attach and execute holds a §1605A judgment.

We disagree. Section 1610(g) serves to identify property that will be available for attachment and execution in satisfaction of a §1605A judgment, but it does not in itself divest property of immunity. Rather, the provision's language "as provided in this section" shows that §1610(g) operates only when the property at issue is exempt from immunity as provided elsewhere in §1610. Petitioners cannot invoke §1610(g) to attach and execute against the antiquities at issue here, which petitioners have not established are exempt from immunity under any other provision in §1610.

# IA

On September 4, 1997, Hamas carried out three suicide bombings on a crowded pedestrian mall in Jerusalem, resulting in the deaths of 5 people and injuring nearly 200 others. Petitioners are United States citizens who were either wounded in the attack or are the close relatives of those who were injured. In an attempt to recover for their harm, petitioners sued Iran in the District Court for the District of Columbia, alleging that Iran was responsible for the bombing because it provided material support and training to Hamas. At the time of that action, Iran was subject to the jurisdiction of the federal courts pursuant to 28 U.S. C. §1605(a)(7) (1994 ed., Supp. II), which rescinded the immunity of foreign states designated as state sponsors of terrorism with respect to claims arising out of acts of terrorism. Iran did not appear in the action, and the District Court entered a default judgment in favor of petitioners in the amount of \$71.5 million.1

<sup>&</sup>lt;sup>1</sup>Congress amended the FSIA in 2008 and replaced 28 U.S.C. §1605(a)(7) with a separate, more expansive provision addressing the foreign sovereign immunity of foreign states that are designated as

When Iran did not pay the judgment, petitioners brought this action in the District Court for the Northern District of Illinois to attach and execute against certain Iranian assets located in the United States in satisfaction of their judgment. Those assets—a collection of approximately 30,000 clay tablets and fragments containing ancient writings, known as the Persepolis Collection—are in the possession of the University of Chicago, housed at its Oriental Institute. University archeologists recovered the artifacts during an excavation of the old city of Persepolis in the 1930's. In 1937, Iran loaned the collection to the Oriental Institute for research, translation, and cataloging.<sup>2</sup>

Petitioners maintained in the District Court, inter alia, that §1610(g) of the FSIA renders the Persepolis Collection subject to attachment and execution. The District Court concluded otherwise and held that §1610(g) does not deprive the Persepolis Collection of the immunity typically afforded the property of a foreign sovereign. The Court of Appeals for the Seventh Circuit affirmed. 830 F. 3d 470 (2016). As relevant, the Seventh Circuit held that the text of §1610(g) demonstrates that the provision serves to identify the property of a foreign state or its agencies or

state sponsors of terrorism, §1605A. See National Defense Authorization Act for Fiscal Year 2008 (NDAA), §1083(a), 122 Stat. 338–341. Shortly thereafter, petitioners moved in the District Court for an order converting their judgment under §1605(a)(7) to one under the new provision, §1605A, which the District Court granted. See Rubin v. Islamic Republic of Iran, 563 F. Supp. 2d 38, 39, n. 3 (DC 2008).

<sup>&</sup>lt;sup>2</sup> Petitioners also sought to execute the judgment against three other collections that are no longer at issue in this case: the Chogha Mish Collection, the Oriental Institute Collection, and the Herzfeld Collection. The Chogha Mish Collection has been removed from the territorial jurisdiction of the federal courts, and the Court of Appeals for the Seventh Circuit determined that the Oriental Institute Collection and Herzfeld Collection are not property of Iran. See 830 F. 3d 470, 475–476 (2016). Petitioners do not challenge that decision here.

instrumentalities that are subject to attachment and execution, but it does not in itself divest that property of immunity. The Court granted certiorari to resolve a split among the Courts of Appeals regarding the effect of §1610(g).<sup>3</sup> 582 U.S. \_\_\_ (2017). We agree with the conclusion of the Seventh Circuit, and therefore affirm.

B

We start with a brief review of the historical development of foreign sovereign immunity law and the statutory framework at issue here, as it provides a helpful guide to our decision. This Court consistently has recognized that foreign sovereign immunity "is a matter of grace and comity on the part of the United States." Verlinden B. V. v. Central Bank of Nigeria, 461 U. S. 480, 486 (1983); Schooner Exchange v. McFaddon, 7 Cranch 116, 136 (1812). In determining whether to exercise jurisdiction over suits against foreign sovereigns, courts traditionally "deferred to the decisions of the political branches . . . on whether to take jurisdiction over actions against foreign sovereigns." Verlinden, 461 U. S., at 486.

Prior to 1952, the State Department generally held the position that foreign states enjoyed absolute immunity from all actions in the United States. See *ibid*. But, as foreign states became more involved in commercial activity in the United States, the State Department recognized that such participation "makes necessary a practice which will enable persons doing business with them to have their rights determined in the courts." J. Tate, Changed Policy

<sup>&</sup>lt;sup>3</sup>Compare Bennett v. Islamic Republic of Iran, 825 F. 3d 949, 959 (CA9 2016) (holding that §1610(g) provides a freestanding exception to attachment and execution immunity); Weinstein v. Islamic Republic of Iran, 831 F. 3d 470, 483 (CADC 2016) (same); Kirschenbaum v. 650 Fifth Avenue and Related Properties, 830 F. 3d 107, 123 (CA2 2016) (same), with 830 F. 3d, at 481 (concluding that §1610(g) does not create a freestanding exception to immunity).

Concerning the Granting of Sovereign Immunity to Foreign Governments, 26 Dept. State Bull. 984, 985 (1952). The Department began to follow the "restrictive" theory of foreign sovereign immunity in advising courts whether they should take jurisdiction in any given case. Immunity typically was afforded in cases involving a foreign sovereign's public acts, but not in "cases arising out of a foreign state's strictly commercial acts." Verlinden, 461 U.S., at 487.

In 1976, Congress enacted the FSIA in an effort to codify this careful balance between respecting the immunity historically afforded to foreign sovereigns and holding them accountable, in certain circumstances, for their actions. 90 Stat. 2891, as amended, 28 U.S.C. §1602 et seq. "For the most part, the Act" tracks "the restrictive theory of sovereign immunity." Verlinden, 461 U.S., at 488. As a default, foreign states enjoy immunity "from the jurisdiction of the courts of the United States and of the States." §1604. But this immunity is subject to certain express exceptions. For example, in line with the restrictive theory, a foreign sovereign will be stripped of jurisdictional immunity when a claim is based upon commercial activity it carried out in the United States. See, e.g., §1605(a)(2). The FSIA also provides that a foreign state will be subject to suit when it is designated as a state sponsor of terrorism and damages are sought as a result of acts of terrorism. See §1605A(a).

With respect to the immunity of property, the FSIA similarly provides as a default that "the property in the United States of a foreign state shall be immune from attachment arrest and execution." §1609. But, again, there are exceptions, and §1610 outlines the circumstances under which property will not be immune. See §1610. For example, subsection (a) expressly provides that property "shall not be immune" from attachment and execution where, inter alia, it is "used for a commercial activity in the

United States" and 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." §1610(a)(7).

Prior to 2008, the FSIA did not address expressly under what circumstances, if any, the agencies or instrumentalities of a foreign state could be held liable for judgments against the state. Faced with that question in First Nat. City Bank v. Banco Para el Comercio Exterior de Cuba, 462 U. S. 611 (1983) (Bancec), this Court held that "government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such." Id., at 626–627. Thus, as a default, those agencies and instrumentalities of a foreign state were to be considered separate legal entities that cannot be held liable for acts of the foreign state. See id., at 628.

Nevertheless, the Court recognized that such a stringent rule should not be without exceptions. The Court suggested that liability would be warranted, for example, "where a corporate entity is so extensively controlled by [the state] that a relationship of principal and agent is created," id., at 629, or where recognizing the state and its agency or instrumentality as distinct entities "would work fraud or injustice," ibid. (internal quotation marks omitted). See id., at 630. But the Court declined to develop a "mechanical formula for determining" when these exceptions should apply, id., at 633, leaving lower courts with the task of assessing the availability of exceptions on a case-by-case basis. Over time, the Courts of Appeals coalesced around the following five factors (referred to as the Bancec factors) to aid in this analysis:

"(1) the level of economic control by the government;

- "(2) whether the entity's profits go to the government;
- "(3) the degree to which government officials manage the entity or otherwise have a hand in its daily affairs;
- "(4) whether the government is the real beneficiary of the entity's conduct; and
- "(5) whether adherence to separate identities would entitle the foreign state to benefits in United States courts while avoiding its obligations." Walter Fuller Aircraft Sales, Inc. v. Republic of Philippines, 965 F. 2d 1375, 1380, n. 7 (CA5 1992); see also Flatow v. Islamic Republic of Iran, 308 F. 3d 1065, 1071, n. 9 (CA9 2002).

In 2008, Congress amended the FSIA and added §1610(g). See NDAA §1083(b)(3)(D), 122 Stat. 341-342. Section 1610(g)(1) provides:

- "(g) Property in Certain Actions .-
- "(1) In general. [T]he property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—
- "(A) the level of economic control over the property by the government of the foreign state;
- "(B) whether the profits of the property go to that government;
- "(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;
- "(D) whether that government is the sole beneficiary in interest of the property; or

"(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations."

Subparagraphs (A) through (E) incorporate almost verbatim the five Bancec factors, leaving no dispute that, at a minimum, §1610(g) serves to abrogate Bancec with respect to the liability of agencies and instrumentalities of a foreign state where a §1605A judgment holder seeks to satisfy a judgment held against the foreign state. The issue at hand is whether §1610(g) does something more; whether, like the commercial activity exception in §1610(a)(7), it provides an independent exception to immunity so that it allows a §1605A judgment holder to attach and execute against any property of the foreign state, regardless of whether the property is deprived of immunity elsewhere in §1610.

TT

We turn first to the text of the statute. Section 1610(g)(1) provides that certain property will be "subject to attachment in aid of execution, and execution, upon [a §1605A] judgment as provided in this section." (Emphasis added.) The most natural reading is that "this section" refers to §1610 as a whole, so that §1610(g)(1) will govern the attachment and execution of property that is exempted from the grant of immunity as provided elsewhere in §1610. Cf. Reno v. American-Arab Anti-Discrimination Comm., 525 U. S. 471, 487 (1999) (noting that the phrase "[e]xcept as provided in this section" in one subsection serves to incorporate "the rest of" the section in which the subsection appears).

Other provisions of §1610 unambiguously revoke the immunity of property of a foreign state, including specifically where a plaintiff holds a judgment under §1605A, provided certain express conditions are satisfied. For example, subsection (a) provides that "property in the

United States ... used for a commercial activity in the United States ... shall not be immune" from attachment and execution in seven enumerated circumstances, including when "the judgment relates to a claim for which the foreign state is not immune under section 1605A ...." §1610(a)(7). Subsections (b), (d), and (e) similarly set out circumstances in which certain property of a foreign state "shall not be immune."4 And two other provisions within §1610 specifically allow §1605A judgment holders to attach and execute against property of a foreign state, "[n]otwithstanding any other provision of law," including those provisions otherwise granting immunity, but only with respect to assets associated with certain regulated and prohibited financial transactions. See §1610(f)(1)(A); Terrorism Risk Insurance Act of 2002 (TRIA), §201(a), 116 Stat. 2337, note following 28 U. S. C. §1610.

Section 1610(g) conspicuously lacks the textual markers, "shall not be immune" or "notwithstanding any other provision of law," that would have shown that it serves as an independent avenue for abrogation of immunity. In fact, its use of the phrase "as provided in this section" signals the opposite: A judgment holder seeking to take advantage of §1610(g)(1) must identify a basis under one of §1610's express immunity-abrogating provisions to attach and execute against a relevant property.

Reading §1610(g) in this way still provides relief to judgment holders who previously would not have been able to attach and execute against property of an agency or instrumentality of a foreign state in light of this Court's decision in *Bancec*. Suppose, for instance, that plaintiffs obtain a §1605A judgment against a foreign state and seek

<sup>&</sup>lt;sup>4</sup>Section 1610(b), for example, provides that "any property... of [the] agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune" from attachment and execution in satisfaction of a judgment on a claim for which the agency or instrumentality is not immune under §1605A. §1610(b)(3).

to collect against the assets located in the United States of a state-owned telecommunications company. Cf. Alejandre v. Telefonica Larga Distancia de Puerto Rico, Inc., 183 F. 3d 1277 (CA11 1999). Prior to the enactment of §1610(g), the plaintiffs would have had to establish that the Bancec factors favor holding the agency or instrumentality liable for the foreign state's misconduct. With §1610(g), however, the plaintiffs could attach and execute against the property of the state-owned entity regardless of the Bancec factors, so long as the plaintiffs can establish that the property is otherwise not immune (e.g., pursuant to §1610(a)(7) because it is used in commercial activity in the United States).

Moreover, our reading of §1610(g)(1) is consistent "with one of the most basic interpretive canons, that [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." Corley v. United States, 556 U.S. 303, 314 (2009) (internal quotation marks omitted). Section 1610 expressly references §1605A judgments in its immunity-abrogating provisions, such as 28 U.S.C. §§1610(a)(7), (b)(3), (f)(1), and §201 of the TRIA, showing that those provisions extend to §1605A judgment holders' ability to attach and execute against property. If the Court were to conclude that §1610(g) establishes a basis for the withdrawal of property immunity any time a plaintiff holds a judgment under §1605A, each of those provisions would be rendered superfluous because a judgment holder could always turn to §1610(g), regardless of whether the conditions of any other provision were met.5

<sup>&</sup>lt;sup>5</sup>To the extent petitioners suggest that those references to §1605A were inadvertent, see Brief for Petitioners 41–44, the statutory history further supports the conclusion that §1610(a)(7) applies to §1605A judgment holders, as the reference to §1605A was added to §1610(a)(7) in the same Act that created §§1605A and 1610(g). See NDAA §§1083(a), (b)(3), 122 Stat. 338–342.

The Court's interpretation of §1610(g) is also consistent with the historical practice of rescinding attachment and execution immunity primarily in the context of a foreign state's commercial acts. See *Verlinden*, 461 U.S., at 487–488. Indeed, the FSIA expressly provides in its findings and declaration of purpose that

"[u]nder international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities." §1602.

This focus of the FSIA is reflected within §1610, as subsections (a), (b), and (d) all outline exceptions to immunity of property when that property is used for commercial activity. The Court's reading of §1610(g) means that individuals with §1605A judgments against a foreign state must primarily invoke other provisions revoking the grant of immunity for property related to commercial activity, including §1610(a)(7), unless the property is expressly carved out in an exception that applies "[n]otwithstanding any other provision of law," §1610(f)(1)(A); §201(a) of the TRIA. That result is consistent with the history and structure of the FSIA.

Throughout the FSIA, special avenues of relief to victims of terrorism exist, even absent a nexus to commercial activity. Where the FSIA goes so far as to divest a foreign state or property of immunity in relation to terrorism-related judgments, however, it does so expressly. See §§1605A, 1610(a)(7), (b)(3), (f)(1)(A); §201(a) of the TRIA. Out of respect for the delicate balance that Congress struck in enacting the FSIA, we decline to read into the statute a blanket abrogation of attachment and execution immunity for §1605A judgment holders absent a clearer indication of Congress' intent.

# III

Petitioners resist that the phrase "as provided in this section" refers to §1610 as a whole and contend that Congress more likely was referencing a specific provision within §1610 or a section in the NDAA. That explanation is unpersuasive.

Petitioners first assert that "this section" might refer to procedures contained in §1610(f). Section 1610(f) permits §1605A judgment holders to attach and execute against property associated with certain regulated and prohibited financial transactions, §1610(f)(1), and it provides that the United States Secretary of State and Secretary of the Treasury will make every effort to assist in "identifying, locating, and executing against the property of [a] foreign state or any agency or instrumentality of such state," §1610(f)(2). Petitioners point out that paragraph (1) of subsection (f) has never come into effect because it was immediately waived by the President after it was enacted, pursuant to §1610(f)(3).6 So, the argument goes, it would make sense that Congress created §1610(g) as an alternative mechanism to achieve a similar result.

This is a strained and unnatural reading of the phrase "as provided in this section." In enacting §201(a) of the TRIA, which, similar to 28 U.S.C. §1610(f), permits attachment and execution against blocked assets, Congress signaled that it was rescinding immunity by permitting attachment and execution "[n]otwithstanding any other provision of law." See §201(a) of the TRIA. Had

<sup>&</sup>lt;sup>6</sup>Section 1610(f)(3) authorizes the President to waive paragraph (1) of subsection (f) "in the interest of national security." President Clinton immediately waived the provision, and the waiver has never been withdrawn. See Pres. Determ. No. 99–1, 63 Fed. Reg. 59201 (1998); Pres. Determ. No. 2001–03, 65 Fed. Reg. 66483 (2000).

<sup>&</sup>lt;sup>7</sup>Petitioners reference the decision of the Court of Appeals for the Ninth Circuit in *Bennett*, 825 F. 3d 949, in support of this position.

Congress likewise intended §1610(g) to have such an effect, it knew how to say so. Cf. Bank Markazi v. Peterson, 578 U.S. \_\_\_, n. 2 (2016) (slip op., at 4, n. 2) (noting that "[s]ection 1610(g) does not take precedence over 'any other provision of law,' as the TRIA does").

Petitioners fare no better in arguing that Congress may have intended "this section" to refer only to the instruction in §1610(f)(2) that the United States Government assist in identifying assets. Section 1610(f)(2) does not provide for attachment or execution at all, so petitioners' argument does not account for the lack of textual indicators that exist in provisions like §§1610(a)(7) and (f)(1) that unambiguously abrogate immunity and permit attachment and execution.

Finally, petitioners assert that "this section" could possibly reflect a drafting error that was intended to actually refer to §1083 of the NDAA, the Public Law in which §1610(g) was enacted. This interpretation would require not only a stark deviation from the plain text of §1610(g), but also a departure from the clear text of the NDAA. Section 1083(b)(3) of the NDAA provides that "Section 1610 of title 28, United States Code, is amended ... by adding at the end" the new subsection "(g)." 122 Stat. 341. The language "this section" within (g), then, clearly and expressly incorporates the NDAA's reference to "Section 1610" as a whole. There is no basis to conclude that Congress' failure to change "this section" in §1610(g) was the result of a mere drafting error.

#### B

In an effort to show that §1610(g) does much more than simply abrogate the *Bancec* factors, petitioners argue that the words "property of a foreign state," which appear in the first substantive clause of §1610(g), would otherwise be rendered superfluous because the property of a foreign state will never be subject to a *Bancec* inquiry. By its

plain text, §1610(g)(1) permits enforcement of a §1605A judgment against both the property of a foreign state and the property of the agencies or instrumentalities of that foreign state. Because the *Bancec* factors would never have applied to the property of a foreign state, petitioners contend, those words must signal something else: that §1610(g) provides an independent basis for the withdrawal of immunity.

The words "property of a foreign state" accomplish at least two things, however, that are consistent with the Court's understanding of the effect of §1610(g). First, §1610(g) serves to identify in one place all the categories of property that will be available to §1605A judgment holders for attachment and execution, whether it is "property of the foreign state" or property of its agencies or instrumentalities, and commands that the availability of such property will not be limited by the *Bancec* factors. So long as the property is deprived of its immunity "as provided in [§1610]," all of the types of property identified in §1610(g) will be available to §1605A judgment holders.

Second, in the context of the entire phrase, "the property of a foreign state against which a judgment is entered under section 1605A," the words "foreign state" identify the type of judgment that will invoke application of §1610(g); specifically, a judgment held against a foreign state and entered under §1605A. Without this opening phrase, §1610(g) would abrogate the Bancec presumption of separateness in all cases, not just those involving terrorism judgments under §1605A. The words, "property of a foreign state," thus, are not rendered superfluous under the Court's reading because they do not merely identify a category of property that is subject to §1610(g) but also help inform when §1610(g) will apply in the first place. Indeed, §1610(g) would make no sense if those words were removed.

C

All else aside, petitioners contend that any uncertainty in §1610(g) should be resolved by giving full effect to the legislative purpose behind its enactment. Petitioners posit that Congress enacted §1610(g) "with the specific purpose of removing the remaining obstacles to terrorism judgment enforcement." Brief for Petitioners 26. In support of that position, they reference a brief discussion of §1610(g) in a footnote to the Court's decision in Bank Markazi, 578 U. S. \_\_\_, that notes that Congress "expand[ed] the availability of assets for postjudgment execution" when it added §1610(g) by making "available for execution the property (whether or not blocked) of a foreign state sponsor of terrorism, or its agency or instrumentality, to satisfy a judgment against that state." Id., at \_\_\_, n. 2 (slip op., at 4, n. 2). But Bank Markazi's characterization of §1610(g) simply mirrors the text of §1610(g) and is entirely consistent with the Court's holding today that §1610(g) expands the assets available for attachment and execution by abrogating this Court's decision in Bancec with respect to judgments held under §1605A. Beyond their citation to Bank Markazi, petitioners have not directed us to any evidence that supports their position that §1610(g) was intended to divest all property of a foreign state or its agencies or instrumentalities of immunity.

#### IV

For the foregoing reasons, we conclude that 28 U.S.C. §1610(g) does not provide a freestanding basis for parties holding a judgment under §1605A to attach and execute against the property of a foreign state, where the immunity of the property is not otherwise rescinded under a separate provision within §1610. The judgment of the Seventh Circuit is affirmed.

It is so ordered.

JUSTICE KAGAN took no part in the consideration or decision of this case.

# ANNEX 76

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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)
) Consolidated Civil Actions:
) 01-2094 (RCL)
) 01-2684 (RCL)
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### JUDGMENT

In accord with the Memorandum Opinion issued this date, it is hereby

ORDERED that Default Judgment be entered in favor of plaintiffs and against defendants, jointly and severally, in the amount of \$2,656,944,877.00, which shall be allocated in the following manner:

 Wrongful Death Claims Brought by the Personal Representatives and Estates of Deceased Servicemen

Abbott, Terry	\$1,485,243.00
Allman, John Robert	\$545,937.00
Bates, Ronny Kent	\$2,991,659.00
Baynard, James	\$626,517.00
Beamon, Jess W.	\$988,897.00
Belmer, Alvin Burton	\$8,384,746.00
Blankenship, Richard D.	\$1,421,889.00
Blocker, John W.	\$975,621.00
Boccia, Joseph John Jr.	\$1,276,641.00
Bohannon, Leon	\$706,549.00

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Bonk, John Jr.	\$904,220.00
Boulos, Jeffrey Joseph	\$1,154,112.00
Boyett, John Norman	\$2,235,375.00
Burley, William	\$170,847.00
Callahan, Paul	\$974,546.00
Camara, Mecot	\$1,882,308.00
Campus, Bradley	\$433,959.00
Ceasar, Johnnie	\$313,593.00
Conley, Robert Allen	\$962,677.00
Cook, Charles Dennis	\$837,147.00
Copeland, Johnny Len	\$541,325.00
Cosner, David	\$1,105,668.00
Coulman, Kevin	\$1,287,092.00
Crudale, Rick	\$1,004,731.00
Cyzick, Russell	\$575,554.00
Devlin, Michael	\$939,887.00
Dorsey, Nathaniel	\$638,703.00
Dunnigan, Timothy	\$709,232.00
Earle, Bryan	\$1,286,372.00
Estes, Danny R.	\$1,000,157.00
Fluegel, Richard Andrew	\$1,089,811.00
Fulcher, Michael D.	\$1,257,150.00
Gallagher, Sean	\$674,382.00
Gangur, George	\$1,000,935.00
Garcia, Randall	\$1,127,694.00
Ghumm, Harold	\$1,260,508.00
Giblin, Timothy	\$1,301,526.00
Gorchinski, Michael	\$1,931,668.00
Gordon, Richard	\$965,609.00
Green, Davin M. ·	\$1,025,050.00
Hairston, Thomas	\$1,489,395.00
Haskell, Michael	\$2,871,058.00
Helms, Mark Anthony	\$1,028,509.00
Hester, Stanley G.	\$1,493,349.00
Hildreth, Donald Wayne	\$1,425,177.00
Holberton, Richard	\$1,818,176.00
Hudson, Dr. John	\$4,072,010.00
Hukill, Maurice Edward	\$3,038,258.00
lacovino, Edward Jr.	\$407,196.00
Innocenzi, Paul III	\$1,715,253.00
Jackowski, James	\$463,355.00
James, Jeffrey Wilbur	\$251,607.00
Jenkins, Nathaniel Walter	\$7,599,314
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Johnston, Edward Anthony	\$1,246,535.00
Jones, Steven	\$801,721.00
Julian, Thomas Adrian	\$415,311.00
Keown, Thomas	\$1,013,901.00
Kluck, Daniel	\$922,630.00
Knipple, James C.	\$1,018,665.00
Kreischer, Freas H. III	\$1,059,185.00
Laise, Keith	\$447,984.00
Langon, James IV	\$1,066,903.00
LaRiviere, Michael Scott	\$1,056,282.00
LaRiviere, Steven	\$986,622.00
Lemnah, Richard	\$1,842,869.00
Livingston, Joseph R. ("Joel") III	\$1,762,193.00
Lyon, Paul D. Jr.	\$1,034,459.00
Macroglou, John	\$2,183,935.00
Maitland, Samuel Jr.	\$970,700.00
Martin, Charlie Robert	\$1,316,085.00
Massa, David	\$674,558.00
McCall, John	\$853,420.00
McDonough, James E.	\$952,847.00
McMahon, Timothy R.	\$984,020.00
Menkins, Richard II	\$850,938.00
Meurer, Ronald	\$1,855,272.00
Milano, Joseph Peter	\$674,258.00
Moore, Joseph	\$980,150.00
Myers, Harry Douglas	\$891,144.00
Nairn, David	\$1,562,682.00
Olson, John Arne	\$1,010,497.00
Owens, Joseph Albert	\$502,237.00
Page, Connie Ray	\$1,012,211.00
Parker, Ulysses Gregory	\$641,523.00
Pearson, John L.	\$1,816,369.00
Perron, Thomas S.	\$424,110.00
Phillips, John Arthur Jr.	\$1,030,308.00
Pollard, William Roy	\$1,111,556.00
Prevatt, Victor Mark	\$862,635.00
Price, James	\$989,921.00
Prindeville, Patrick Kerry	\$305,675.00
Quirante, Diomedes J.	\$2,178,822.00
Richardson, Warren	\$796,673.00
Rotondo, Louis J.	\$2,276,348.00
Sauls, Michael Caleb	\$974,601.00
Schnorf, Charles Jeffrey	\$2,790,541.00

Schultz, Scott Lee	\$675,361.00
Scialabba, Peter	\$2,462,179.00
Scott, Gary Randall	\$432,024.00
Shipp, Thomas Alan	\$738,895.00
Shropshire, Jerryl	\$212,061.00
Simpson, Larry H. Jr.	\$5,995,660.00
Smith, Kirk Hall	\$710,042.00
Smith, Thomas Gerard	\$980,543.00
Smith, Vincent	\$1,285,915.00
Sommerhof, William Scott	\$1,361,062.00
Spencer, Stephen Eugene	\$974,298.00
Stelpflug, William	\$1,094,429.00
Stephens, Horace Renardo Jr. ("Ricky")	\$446,107.00
Stockton, Craig	\$1,007,526.00
Stokes, Jeffrey	\$1,599,994.00
Sturghill, Eric D.	\$725,378.00
Sundar, Devon	\$1,394,608.00
Thorstad, Thomas Paul	\$1,921,086.00
Tingley, Stephen	\$1,439,655.00
Vallone, Donald H. Jr.	\$462,193.00
Washington, Eric Glenn	\$1,069,270.00
Wigglesworth, Dwayne	\$1,001,122.00
Williams, Rodney J.	\$671,206.00
Williams, Scipio Jr.	\$1,635,994.00
Williamson, Johnny Adam	\$443,409.00
Winter, William Ellis	\$2,534,910.00
Woollett, Donald Elberan	\$2,021,565.00
Wyche, Craig	\$1,025,860.00
Young, Jeffrey D.	\$618,891.00

## 2. Battery Claims Brought by Injured Servicemen

Albright, Marvin	\$5,000,000.00
Arroyo, Pablo	\$5,000,000.00
Banks, Anthony	\$7,500,000.00
Burnette, Rodney Darrell	\$8,000,000.00
Comes, Frank Jr.	\$1,500,000.00
Dolphin, Glenn	\$3,000,000.00
Eaves, Frederick Daniel	\$1,500,000.00
Frye, Charles	\$2,200,000.00
Garner, Truman Dale	\$7,500,000.00
Gerlach, Larry	\$12,000,000.00
Hlywiak, John	\$1,500,000.00
Hiywiak, John	\$1,500,000.00

Hunt, Orval	\$8,000,000.00
Jacobs, Joseph P.	\$5,000,000.00
Kirkpatrick, Brian	\$8,000,000.00
Matthews, Burnham	\$7,000,000.00
Mitchell, Timothy	\$4,555,099.00
Moore, Lovelle "Darrell"	\$8,314,513.00
Nashton, Jeffrey	\$11,776,632.00
Oliver, John	\$3,277,542.00
Rivers, Paul	\$7,000,000.00
Russell, Stephen	\$9,252,749.00
Spaulding, Dana	\$9,559,609.00
Swinson, Craig Joseph	\$1,500,000.00
Toma, Michael	\$7,500,000.00
Wheeler, Danny	\$5,000,000.00
Young, Thomas D.	\$1,500,000.00

## 3. Claims Brought by Family Members of Deceased Servicemen

Abbey, Lilla Woollett	\$2,500,000.00
Abbott, James	\$5,000,000.00
Abbott, Mary (Estate of)	\$5,000,000.00
Adams, Elizabeth	\$2,500,000.00
Ahlquist, Eileen Prindeville	\$2,500,000.00
Alarcon, Miralda (Judith Maitland)	\$8,000,000.00
Allman, Anne	\$5,000,000.00
Allman, Robert	\$5,000,000.00
Allman, Theodore (Estate of)	\$2,500,000.00
Allman, DiAnne Margaret ("Maggie")	\$2,500,000.00
Alvarez, Margaret E.	\$2,500,000.00
Angus, Kimberly F.	\$2,500,000.00
Bates, Donnie	\$2,500,000.00
Bates, Johnny	\$2,500,000.00
Bates, Laura	\$5,000,000.00
Bates, Margie	\$5,000,000.00
Bates, Monty	\$2,500,000.00
Bates, Thomas Jr.	\$2,500,000.00
Bates, Thomas C., Sr.	\$5,000,000.00
Baumgartner, Mary E.	\$2,500,000.00
Baynard, Anthony	\$2,500,000.00
Baynard, Barry	\$2,500,000.00
Baynard, Emerson	\$2,500,000.00
Baynard, Philip	\$2,500,000.00
Baynard, Thomasine	\$8,000,000.00

December 1 To the	\$2.500.000.00
Baynard, Timothy	\$2,500,000.00
Baynard, Wayne	\$2,500,000.00
Baynard, Stephen	\$5,000,000.00
Beard, Anna	\$2,500,000.00
Beck, Mary Ann	\$2,500,000.00
Belmer, Alue	\$5,000,000.00
Belmer, Annette	\$2,500,000.00
Belmer, Clarence	\$2,500,000.00
Belmer, Colby Keith	\$5,000,000.00
Belmer, Denise	\$2,500,000.00
Belmer, Donna	\$2,500,000.00
Belmer, Faye	\$8,000,000.00
Belmer, Kenneth	\$2,500,000.00
Belmer, Luddie	\$5,000,000.00
Biellow, Shawn	\$2,500,000.00
Black, Mary Frances	\$2,500,000.00
Blankenship, Donald Jr.	\$2,500,000.00
Blankenship, Donald Sr.	\$5,000,000.00
Blankenship, Mary (Estate of)	\$5,000,000.00
Blocker, Alice	\$5,000,000.00
Blocker, Douglas	\$2,500,000.00
Blocker, John R.	\$5,000,000.00
Blocker, Robert	\$2,500,000.00
Boccia, James	\$2,500,000.00
Boccia, Joseph Sr.	\$5,000,000.00
Boccia, Patricia	\$5,000,000.00
Boccia, Raymond	\$2,500,000.00
Boccia, Richard	\$2,500,000.00
Boccia, Ronnie (Veronica)	\$2,500,000.00
Boddie, Leticia	\$2,500,000.00
Bohannon, Angela	\$2,500,000.00
Bohannon, Anthony	\$2,500,000.00
Bohannon, Carrie	\$5,000,000.00
Bohannon, David	\$2,500,000.00
Bohannon, Edna	\$8,000,000.00
Bohannon, Leon Sr.	\$5,000,000.00
Bohannon, Ricki	\$2,500,000.00
Bolinger, Billie Jean	\$5,000,000.00
Boulos, Joseph	\$5,000,000.00
Boulos, Lydia	\$2,500,000.00
Boulos, Marie	\$5,000,000.00
Bowler, Rebecca	\$2,500,000.00
Boyett, Lavon	\$5,000,000.00
Boyett, Norman E. Jr. (Estate of)	\$5,000,000.00
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Boyett, Theresa U. Roth	\$8,000,000.00
Boyett, William A.	\$2,500,000.00
Breeden, Susan Schnorf	\$2,500,000.00
Briscoe, Damion	\$2,500,000.00
Brown, Christine	\$5,000,000.00
Brunette, Rosanne	\$2,500,000.00
Buckner, Mary Lynn	\$8,000,000.00
Burley, Claude (Estate of)	\$5,000,000.00
Burley, William Douglas (Estate of)	\$2,500,000.00
Burley, Myra	\$2,500,000.00
Calabro, Kathleen	\$2,500,000.00
Caldera, Rachel	\$2,500,000.00
Callahan, Avenell	\$5,000,000.00
Callahan, Michael	\$2,500,000.00
Calloway, Patricia (Patsy Ann)	\$2,500,000.00
Camara, Elisa Rock	\$2,500,000.00
Camara, Theresa Riggs	\$2,500,000.00
Campbell, Candace	\$2,500,000.00
Campus, Clare	\$5,000,000.00
Capobianco, Elaine	\$2,500,000.00
Carter, Florene Martin	\$2,500,000.00
Cash, Phyllis A.	\$2,500,000.00
Catano, Theresa	\$2,500,000.00
Ceasar, Bruce	\$2,500,000.00
Ceasar, Franklin	\$2,500,000.00
Ceasar, Fredrick	\$2,500,000.00
Ceasar, Robbie Nell	\$5,000,000.00
Ceasar, Sybil	\$1,250,000.00
Cecca, Christine Devlin	\$2,500,000.00
Chapman, Tammy	\$2,500,000.00
Cherry, James	\$2,500,000.00
Cherry, Sonia	\$2,500,000.00
Chios, Adele H.	\$2,500,000.00
Christian, Jana M.	\$2,500,000.00
Christian, Sharon Rose	\$2,500,000.00
Ciupaska, Susan	\$2,500,000.00
Clark, LeShune Stokes	\$2,500,000.00
Clark, Rosemary	\$2,500,000.00
Cobble, Mary Ann	\$5,000,000.00
Collard, Karen Shipp	\$2,500,000.00
Collier, Jennifer	\$5,000,000.00
Collier, Melia Winter	\$8,000,000.00
Coltrane, Deborah M.	\$8,000,000.00
Conley, James N. Jr.	\$5,000,000.00

Conley, Roberta Li	\$5,000,000.00
Cook, Charles F.	\$5,000,000.00
Cook, Elizabeth A.	\$2,500,000.00
Cook, Mary A. (Estate of)	\$5,000,000.00
Copeland, Alan Tracy	\$2,500,000.00
Copeland, Betty	\$5,000,000.00
Copeland, Donald	\$5,000,000.00
Corry, Blanche	\$2,500,000.00
Cosner, Harold	\$5,000,000.00
Cosner, Jeffrey	\$2,500,000.00
Cosner, Leanna	\$5,000,000.00
Cosner, Marva Lynn (Estate of)	\$5,000,000.00
Cossaboom, Cheryl	\$2,500,000.00
Coulman, Bryan Thomas	\$2,500,000.00
Coulman, Christopher J.	\$2,500,000.00
Coulman, Dennis P.	\$2,500,000.00
Coulman, Lorraine M.	\$5,000,000.00
Coulman, Robert D.	\$2,500,000.00
Coulman, Robert Louis	\$5,000,000.00
Covington, Charlita Martin	\$5,000,000.00
Crouch, Amanda	\$5,000,000.00
Crudale, Marie	\$5,000,000.00
Cyzick, Eugene	\$2,500,000.00
Dallachie, Lynn	\$8,000,000.00
Deal, Anne	\$2,500,000.00
Derbyshire, Lynn Smith	\$2,500,000.00
Desjardins, Theresa	\$5,000,000.00
Devlin, Christine	\$5,000,000.00
Devlin, Daniel	\$2,500,000.00
Devlin, Gabrielle	\$2,500,000.00
Devlin, Richard	\$2,500,000.00
Devlin, Sean	\$2,500,000.00
Donahue (Milano), Rosalie	\$2,500,000.00
Doray, Ashley	\$5,000,000.00
Doss, Rebecca	\$2,500,000.00
Dunnigan, Chester	\$2,500,000.00
Dunnigan, Elizabeth Ann	\$2,500,000.00
Dunnigan, Michael	\$2,500,000.00
Dunnigan, William	\$2,500,000.00
Dunnigan, Claudine	\$5,000,000.00
Edquist, Janice Thorstad	\$2,500,000.00
Ervin, Mary Ruth	\$5,000,000.00
Estes, Barbara	\$5,000,000.00
Estes, Charles	\$5,000,000.00

Estes, Frank		\$2,500,000.00
Fansler, Lori		\$2,500,000.00
Farthing, Angela Dawn		\$2,500,000.00
Ferguson, Arlington		\$1,250,000.00
Ferguson, Hilton		\$1,250,000.00
Fish, Linda Sandback	4	\$8,000,000.00
Fox, Nancy Brocksbank		\$5,000,000.00
Fox, Tia		\$2,500,000.00
Freshour, Tammy		\$8,000,000.00
Fulcher, Ruby		\$5,000,000.00
Gallagher, Barbara		\$5,000,000.00
Gallagher, Brian		\$2,500,000.00
Gallagher, James (Estate of)		\$5,000,000.00
Gallagher, James Jr.		\$2,500,000.00
Gallagher, Kevin		\$2,500,000.00
Gallagher, Michael		\$2,500,000.00
Gangur, Dimitri		\$5,000,000.00
Gangur, Mary		\$5,000,000.00
Garcia, Jess		\$5,000,000.00
Garcia, Ronald		\$2,500,000.00
Garcia, Roxanne		\$2,500,000.00
Garcia, Russell		\$2,500,000.00
Garcia, Violet		\$5,000,000.00
Garza, Suzanne Perron		\$2,500,000.00
Gattegno, Jeanne		\$2,500,000.00
Ghumm, Arlene		\$8,000,000.00
Ghumm, Ashley		\$5,000,000.00
Ghumm, Bill		\$2,500,000.00
Ghumm, Edward		\$2,500,000.00
Ghumm, Hildegard		\$5,000,000.00
Ghumm, Jedaiah (Estate of)		\$5,000,000.00
Ghumm, Jesse		\$2,500,000.00
Ghumm, Leroy		\$5,000,000.00
Ghumm, Moronica		\$5,000,000.00
Giblin, Donald		\$2,500,000.00
Giblin, Jeanne		\$5,000,000.00
Giblin, Michael		\$2,500,000.00
Giblin, Tiffany		\$5,000,000.00
Giblin, Valerie		\$8,000,000.00
Giblin, William		\$2,500,000.00
Gilford-Smith, Thad		\$2,500,000.00
Gintonio, Rebecca		\$2,500,000.00
Goff, Dawn		\$2,500,000.00
Gorchinski, Christina		\$5,000,000.00
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Gorchinski, Judy	\$8,000,000.00
Gorchinski, Kevin	\$5,000,000.00
Gorchinski, Valerie	\$5,000,000.00
Gordon, Alice	\$5,000,000.00
Gordon, Joseph	\$2,500,000.00
Gordon, Linda	\$2,500,000.00
Gordon, Norris (Estate of)	\$5,000,000.00
Gordon, Paul	\$2,500,000.00
Grant, Andrea	\$2,500,000.00
Graves, Deborah	\$2,500,000.00
Green, Deborah	\$8,000,000.00
Gregg, Liberty Quirante	\$2,500,000.00
Griffin, Alex	\$2,500,000.00
Grimsley, Catherine E.	\$2,500,000.00
Gummer, Megan	\$2,500,000.00
Guz, Lyda Woollett	\$2,500,000.00
Hairston, Darlene	\$8,000,000.00
Hanrahan, Tara	\$2,500,000.00
Hart, Mary Clyde	\$2,500,000.00
Haskill, Brenda	\$2,500,000.00
Haskell, Jeffrey	\$2,500,000.00
Hedge, Kathleen S.	\$8,000,000.00
Helms, Christopher Todd	\$2,500,000.00
Helms, Marvin R.	\$5,000,000.00
Hester, Doris	\$8,000,000.00
Hildreth, Clifton	\$5,000,000.00
Hildreth, Julia	\$5,000,000.00
Hildreth, Mary Ann	\$8,000,000.00
Hildreth, Michael Wayne	\$5,000,000.00
Hilton, Sharon A.	\$2,500,000.00
Holberton, Donald	\$2,500,000.00
Holberton, Patricia Lee	\$5,000,000.00
Holberton, Thomas	\$2,500,000.00
Hollifield, Tangie	\$2,500,000.00
Horner, Debra	\$8,000,000.00
House, Elizabeth	\$2,500,000.00
Houston, Joyce A.	\$5,000,000.00
Howell, Tammy Camara	\$8,000,000.00
Hudson, Lisa H.	\$8,000,000.00
Hudson, Lorenzo	\$2,500,000.00
Hudson, Lucy	\$5,000,000.00
Hudson, Ruth	\$2,500,000.00
Hudson, Samuel (Estate of)	\$5,000,000.00
Hudson, William J.	\$5,000,000.00

Hugis, Susan Thorstad (Estate of)	\$2,500,000.00
Hurlburt, Nancy Tingley	\$2,500,000.00
Hurston, Cynthia Perron	\$2,500,000.00
Iacovino, Edward Sr. (Estate of)	\$5,000,000.00
Iacovino, Elizabeth	\$5,000,000.00
Innocenzi, Deborah	\$8,000,000.00
Innocenzi, Kristin	\$5,000,000.00
Innocenzi, Mark	\$2,500,000.00
Innocenzi, Paul IV	\$5,000,000.00
Jaccom, Bernadette	\$2,500,000.00
Jackowski, John Jr.	\$2,500,000.00
Jackowski, John Sr.	\$5,000,000.00
Jacobus, Victoria	\$2,500,000.00
James, Elaine	\$5,000,000.00
Jenkins, Nathalie C.	\$5,000,000.00
Jenkins, Stephen	\$2,500,000.00
Jewett, Rebecca	\$2,500,000.00
Johnson, Linda Martin	\$2,500,000.00
Johnson, Ray	\$2,500,000.00
Johnson, Rennitta Stokes	\$2,500,000.00
Johnson, Sherry	\$5,000,000.00
Johnston, Charles	\$2,500,000.00
Johnston, Edwin	\$5,000,000.00
Johnston, Mary Ann	\$5,000,000.00
Johnston, Zandra LaRiviere	\$2,500,000.00
Jones, Alicia	\$2,500,000.00
Jones, Corene Martin	\$2,500,000.00
Jones, Kia Briscoe	\$2,500,000.00
Jones, Mark	\$2,500,000.00
Jones, Ollie	\$5,000,000.00
Jones, Sandra D.	\$5,000,000.00
Jones, Synovure (Estate of)	\$2,500,000.00
Jordan, Robin Copeland	\$2,500,000.00
Jordan, Susan Scott	\$2,500,000.00
Julian, Joyce	\$5,000,000.00
Julian, Karl	\$5,000,000.00
Jurist, Nada	\$2,500,000.00
Keown, Adam	\$2,500,000.00
Keown, Bobby Jr.	\$2,500,000.00
Keown, Bobby Sr.	\$5,000,000.00
Keown, Darren	\$2,500,000.00
Keown, William	\$2,500,000.00
Kirker, Mary Joe	\$2,500,000.00
Kluck, Kelly	\$2,500,000.00
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Kluck, Michael	\$2,500,000.00
Knipple, John D. (Estate of)	\$5,000,000.00
Knipple, John R.	\$2,500,000.00
[]	\$5,000,000.00
Knipple, Pauline (Estate of)	\$2,500,000.00
Knox, Shirley L.	\$5,000,000.00
Kreischer, Doreen	\$5,000,000.00
Kreischer, Freas H. Jr.	
Lake, Cynthia D.	\$2,500,000.00
Lange, Wendy L.	\$2,500,000.00
Langon, James III	\$5,000,000.00
LaRiviere, Eugene	\$2,500,000.00
LaRiviere, Janet	\$5,000,000.00
LaRiviere, John M.	\$2,500,000.00
LaRiviere, Lesley	\$2,500,000.00
LaRiviere, Michael	\$2,500,000.00
LaRiviere, Nancy	\$2,500,000.00
LaRiviere, Richard	\$2,500,000.00
LaRiviere, Richard G. (Estate of)	\$5,000,000.00
LaRiviere, Robert	\$2,500,000.00
LaRiviere, William	\$2,500,000.00
Lawton, Cathy L.	\$2,500,000.00
LeGault, Heidi Crudale	\$8,000,000.00
Lemnah, Clarence (Estate of)	\$5,000,000.00
Lemnah, Etta	\$5,000,000.00
Lemnah, Fay	\$2,500,000.00
Lemnah, Harold	\$2,500,000.00
Lemnah, Marlys	\$8,000,000.00
Lemnah, Robert	\$2,500,000.00
Lemnah, Ronald	\$2,500,000.00
Livingston, Annette R.	\$8,000,000.00
Livingston, Joseph R. IV	\$5,000,000.00
Livingston, Joseph R. Jr. (Estate of)	\$5,000,000.00
Lynch, Robin M.	\$2,500,000.00
Lyon, Earl	\$2,500,000.00
Lyon, Francisco	\$2,500,000.00
Lyon, June	\$2,500,000.00
Lyon, Maria	\$5,000,000.00
Lyon, Paul D. Sr.	\$5,000,000.00
Lyon, Valerie	\$2,500,000.00
Macroglou, Heather	\$5,000,000.00
Mahoney, Kathleen Devlin	\$2,500,000.00
Maitland, Kenty	\$2,500,000.00
Maitland, Leysnal	\$5,000,000.00
Maitland, Samuel Sr.	\$5,000,000.00
Transition Distriction Distriction	\$5,000,000.00

Maitland, Shirla	\$2,500,000.00
Marshall, Virginia Boccia	\$2,500,000.00
Martin, John	\$2,500,000.00
Martin, Pacita	\$8,000,000.00
Martin, Renerio	\$5,000,000.00
Martin, Ruby	\$5,000,000.00
Martin, Shirley	\$5,000,000.00
Mason, Mary	\$5,000,000.00
Massa, Cristina	\$5,000,000.00
Massa, Edmund	\$2,500,000.00
Massa, Joao ("John")	\$2,500,000.00
Massa, Jose ("Joe")	\$2,500,000.00
Massa, Manuel Jr.	\$2,500,000.00
Massa, Ramiro	\$2,500,000.00
McCall, Mary	\$5,000,000.00
McCall, Thomas (Estate of)	\$5,000,000.00
McCall, Valerie	\$2,500,000.00
McDermott, Gail	\$2,500,000.00
McFarlin, Julia A.	\$2,500,000.00
- 10일 전 전에 10일 전략 10일 보다 1	\$2,500,000.00
McMahon, George McMahon, Michael	\$2,500,000.00
	\$5,000,000.00
McPhee, Patty	\$2,500,000.00
Menkins, Darren	\$2,500,000.00
Menkins, Gregory	\$5,000,000.00
Menkins, Margaret	
Menkins, Richard H.	\$5,000,000.00
Meurer, Jay T.	\$2,500,000.00
Meurer, John	\$5,000,000.00
Meurer, John Thomas	\$2,500,000.00
Meurer, Mary Lou	\$5,000,000.00
Meurer, Michael	\$2,500,000.00
Meyer, Penny	\$2,500,000.00
Milano, Angela	\$5,000,000.00
Milano, Peter Jr.	\$5,000,000.00
Miller, Earline	\$5,000,000.00
Miller, Henry	\$2,500,000.00
Miller, Patricia	\$2,500,000.00
Montgomery, Helen	\$2,500,000.00
Moore, Betty	\$5,000,000.00
Moore, Harry	\$5,000,000.00
Moore, Kimberly	\$2,500,000.00
Moore, Mary	\$8,000,000.00
Moore, Melissa Lea	\$2,500,000.00
Moore, Michael (Estate of)	\$2,500,000.00

Myers, Debra \$2,500,000.00  Myers, Geneva \$5,000,000.00  Myers, Harry A. \$5,000,000.00  Nairn, Billie Ann \$5,000,000.00  Nairn, Campbell J. III \$2,500,000.00  Nairn, Campbell J. Jr. (Estate of) \$5,000,000.00  Nairn, William P. \$2,500,000.00  O'Connor, Deborah \$2,500,000.00  Olson, Bertha (Estate of) \$5,000,000.00  Olson, Bertha (Estate of) \$5,000,000.00  Olson, Raren L. \$2,500,000.00  Olson, Randal D. \$2,500,000.00  Olson, Roger S. \$2,500,000.00  Olson, Roger S. \$2,500,000.00  Owens, David \$2,500,000.00  Owens, David \$2,500,000.00  Owens, David \$2,500,000.00  Owens, Frances \$5,000,000.00  Owens, Frances \$5,000,000.00  Owens, James (Estate of) \$5,000,000.00  Owens, Steven \$2,500,000.00  Page, Connie Mack \$5,000,000.00  Page, Judith K. \$5,000,000.00  Pare, Maureen \$2,500,000.00  Parker, Henry James \$2,500,000.00  Parker, Henry James \$2,500,000.00  Parker, Henry James \$2,500,000.00  Parker, Sharon \$2,500,000.00  Parker, Sharon \$2,500,000.00  Pearson, John L. Jr. \$5,000,000.00  Pearson, John L. Jr. \$5,000,000.00  Pearson, Brett \$2,500,000.00  Perron, Brett \$2,500,000.00  Perron, Brett \$2,500,000.00  Perron, Ronald R. \$5,000,000.00  Perron, Ronald R. \$5,000,000.00  Petry, Sharon Conley \$2,500,000.00  Petry, Sharon \$2,500,000.00  Petry, Sharon Conley \$2,500,000.00  Petrick, Sandra \$2,500,000.00  Phillips, Harold \$2,500,000.00  Phillips, Harold \$2,500,000.00  Plickys, Donna Tingley \$2,500,000.00	Moy, Elizabeth Phillips	\$2,500,000.00
Myers, Geneva         \$5,000,000.00           Myers, Harry A.         \$5,000,000.00           Nairn, Billie Ann         \$5,000,000.00           Nairn, Campbell J. III         \$2,500,000.00           Nairn, William P.         \$2,500,000.00           Norfleet, Richard         \$5,000,000.00           O'Connor, Deborah         \$2,500,000.00           Olaniji, Pearl         \$5,000,000.00           Olson, Bertha (Estate of)         \$5,000,000.00           Olson, Karen L.         \$2,500,000.00           Olson, Roger S.         \$2,500,000.00           Olson, Roger S.         \$2,500,000.00           Olson, Sigurd (Estate of)         \$5,000,000.00           Owens, David         \$2,500,000.00           Owens, Prances         \$5,000,000.00           Owens, Frances         \$5,000,000.00           Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Pare, Maureen         \$2,500,000.00           Pare, Maureen         \$2,500,000.00           Parker, Henry James         \$2,500,000.00           Parker, Henry James         \$2,500,000.00		
Myers, Harry A.       \$5,000,000.00         Nairn, Billie Ann       \$5,000,000.00         Nairn, Campbell J. III       \$2,500,000.00         Nairn, Campbell J. Jr. (Estate of)       \$5,000,000.00         Nairn, William P.       \$2,500,000.00         Norfleet, Richard       \$5,000,000.00         O'Connor, Deborah       \$2,500,000.00         Olaniji, Pearl       \$5,000,000.00         Olson, Bertha (Estate of)       \$5,000,000.00         Olson, Randal D.       \$2,500,000.00         Olson, Roger S.       \$2,500,000.00         Olson, Roger S.       \$2,500,000.00         Olson, Romald J.       \$2,500,000.00         Owens, David       \$2,500,000.00         Owens, David       \$2,500,000.00         Owens, Prances       \$5,000,000.00         Owens, Prances       \$5,000,000.00         Owens, James (Estate of)       \$5,000,000.00         Owens, Steven       \$2,500,000.00         Page, Connie Mack       \$5,000,000.00         Page, Judith K.       \$5,000,000.00         Page, Judith K.       \$5,000,000.00         Palmer, Lisa Menkins       \$2,500,000.00         Pare, Maureen       \$2,500,000.00         Pare, Maureen       \$2,500,000.00		
Nairn, Billie Ann         \$5,000,000.00           Nairn, Campbell J. III         \$2,500,000.00           Nairn, Campbell J. Jr. (Estate of)         \$5,000,000.00           Nairn, William P.         \$2,500,000.00           Norfleet, Richard         \$5,000,000.00           O'Connor, Deborah         \$2,500,000.00           Olaniji, Pearl         \$5,000,000.00           Olson, Bertha (Estate of)         \$5,000,000.00           Olson, Randal D.         \$2,500,000.00           Olson, Roger S.         \$2,500,000.00           Olson, Romald J.         \$2,500,000.00           Olson, Sigurd (Estate of)         \$5,000,000.00           Owens, David         \$2,500,000.00           Owens, David         \$2,500,000.00           Owens, Prances         \$5,000,000.00           Owens, Prances         \$5,000,000.00           Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Pare, Maureen         \$2,500,000.00           Pare, Maureen         \$2,500,000.00           Pare, Maureen         \$2,500,000.00		
Nairn, Campbell J. JI. (Estate of)         \$2,500,000.00           Nairn, Campbell J. Jr. (Estate of)         \$5,000,000.00           Nairn, William P.         \$2,500,000.00           Norfleet, Richard         \$5,000,000.00           O'Connor, Deborah         \$2,500,000.00           Olaniji, Pearl         \$5,000,000.00           Olson, Bertha (Estate of)         \$5,000,000.00           Olson, Karen L.         \$2,500,000.00           Olson, Ronald D.         \$2,500,000.00           Olson, Ronald J.         \$2,500,000.00           Olson, Ronald J.         \$2,500,000.00           Owens, David         \$2,500,000.00           Owens, Deanna         \$2,500,000.00           Owens, Frances         \$5,000,000.00           Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Pare, Maureen         \$2,500,000.00           Pare, Maureen         \$2,500,000.00           Parker, Sharon         \$2,500,000.00           Pearson, John L. Jr.         \$5,000,000.00           Pearron, Brett         \$2,500,000.00		
Nairn, Campbell J. Jr. (Estate of)         \$5,000,000.00           Nairn, William P.         \$2,500,000.00           Norfleet, Richard         \$5,000,000.00           O'Connor, Deborah         \$2,500,000.00           Olson, Bertha (Estate of)         \$5,000,000.00           Olson, Bertha (Estate of)         \$5,000,000.00           Olson, Rarndal D.         \$2,500,000.00           Olson, Roger S.         \$2,500,000.00           Olson, Ronald J.         \$2,500,000.00           Owens, David         \$2,500,000.00           Owens, David         \$2,500,000.00           Owens, Deanna         \$2,500,000.00           Owens, Frances         \$5,000,000.00           Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Parer, Maureen         \$2,500,000.00           Parer, Maureen         \$2,500,000.00           Parer, Maureen         \$2,500,000.00           Parson, John L. Jr.         \$5,000,000.00           Pearson, Sonia         \$8,000,000.00           Perron, Brett         \$2,500,000.00 <t< td=""><td></td><td></td></t<>		
Nairn, William P.         \$2,500,000.00           Norfleet, Richard         \$5,000,000.00           O'Connor, Deborah         \$2,500,000.00           Olaniji, Pearl         \$5,000,000.00           Olson, Bertha (Estate of)         \$5,000,000.00           Olson, Randal D.         \$2,500,000.00           Olson, Roger S.         \$2,500,000.00           Olson, Ronald J.         \$2,500,000.00           Olson, Sigurd (Estate of)         \$5,000,000.00           Owens, David         \$2,500,000.00           Owens, Deanna         \$2,500,000.00           Owens, Frances         \$5,000,000.00           Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Palmer, Lisa Menkins         \$2,500,000.00           Pare, Maureen         \$2,500,000.00           Pare, Maureen         \$2,500,000.00           Parker, Henry James         \$2,500,000.00           Parker, Sharon         \$2,500,000.00           Pearson, John L. Jr.         \$5,000,000.00           Pearson, Brett         \$2,500,000.00		
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O'Connor, Deborah       \$2,500,000.00         Olaniji, Pearl       \$5,000,000.00         Olson, Bertha (Estate of)       \$5,000,000.00         Olson, Karen L.       \$2,500,000.00         Olson, Randal D.       \$2,500,000.00         Olson, Roger S.       \$2,500,000.00         Olson, Sigurd (Estate of)       \$5,000,000.00         Owens, David       \$2,500,000.00         Owens, Deama       \$2,500,000.00         Owens, Frances       \$5,000,000.00         Owens, James (Estate of)       \$5,000,000.00         Owens, Steven       \$2,500,000.00         Page, Connie Mack       \$5,000,000.00         Page, Judith K.       \$5,000,000.00         Palmer, Lisa Menkins       \$2,500,000.00         Pare, Maureen       \$2,500,000.00         Parker, Henry James       \$2,500,000.00         Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Perrsky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00 <td< td=""><td>- A-1 A-1</td><td></td></td<>	- A-1	
Olaniji, Pearl         \$5,000,000.00           Olson, Bertha (Estate of)         \$5,000,000.00           Olson, Karen L.         \$2,500,000.00           Olson, Randal D.         \$2,500,000.00           Olson, Roger S.         \$2,500,000.00           Olson, Sigurd (Estate of)         \$5,000,000.00           Owens, David         \$2,500,000.00           Owens, Deanna         \$2,500,000.00           Owens, Frances         \$5,000,000.00           Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Palmer, Lisa Menkins         \$2,500,000.00           Pare, Maureen         \$2,500,000.00           Parker, Henry James         \$2,500,000.00           Parker, Sharon         \$2,500,000.00           Pearson, Helen M.         \$5,000,000.00           Pearson, Sonia         \$8,000,000.00           Perron, Brett         \$2,500,000.00           Perron, Brett         \$2,500,000.00           Perron, Ronald R.         \$5,000,000.00           Perrsky, Muriel         \$5,000,000.00           Peterson, Deborah D.         \$2,500,000.00 <t< td=""><td></td><td></td></t<>		
Olson, Bertha (Estate of) Olson, Karen L. Olson, Randal D. Olson, Roger S. Olson, Roger S. Olson, Sigurd (Estate of) Owens, David Owens, Deanna Owens, Frances Owens, James (Estate of) Owens, Steven Page, Connie Mack Page, Judith K. Palmer, Lisa Menkins Paolozzi, Geraldine Parker, Henry James Parker, Sharon Pearson, John L. Jr. Pearson, Sonia Perron, Brett Perron, Ronald R. Persky, Muriel Petrick, Sandra Pholosy Pallore Parel Marold Phillips, Harold Phillips, John Arthur Sr.	The 10 of 10 is 10	
Olson, Karen L.         \$2,500,000.00           Olson, Randal D.         \$2,500,000.00           Olson, Roger S.         \$2,500,000.00           Olson, Sigurd (Estate of)         \$5,000,000.00           Owens, David         \$2,500,000.00           Owens, Deanna         \$2,500,000.00           Owens, Frances         \$5,000,000.00           Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Palmer, Lisa Menkins         \$2,500,000.00           Paolozzi, Geraldine         \$2,500,000.00           Pare, Maureen         \$2,500,000.00           Parker, Henry James         \$2,500,000.00           Parker, Sharon         \$2,500,000.00           Parson, Helen M.         \$5,000,000.00           Pearson, John L. Jr.         \$5,000,000.00           Perron, Brett         \$2,500,000.00           Perron, Brett         \$2,500,000.00           Perron, Ronald R.         \$5,000,000.00           Perrsky, Muriel         \$5,000,000.00           Petrson, Deborah D.         \$2,500,000.00           Petry, Sharon Conley         \$2,500,000.00		
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Olson, Ronald J.         \$2,500,000.00           Olson, Sigurd (Estate of)         \$5,000,000.00           Owens, David         \$2,500,000.00           Owens, Deanna         \$2,500,000.00           Owens, Frances         \$5,000,000.00           Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Palmer, Lisa Menkins         \$2,500,000.00           Parler, Henry James         \$2,500,000.00           Pare, Maureen         \$2,500,000.00           Parker, Sharon         \$2,500,000.00           Parker, Sharon         \$2,500,000.00           Pearson, John L. Jr.         \$5,000,000.00           Pearson, Sonia         \$8,000,000.00           Perron, Brett         \$2,500,000.00           Perron, Michelle         \$2,500,000.00           Perron, Ronald R.         \$5,000,000.00           Persky, Muriel         \$5,000,000.00           Petrson, Deborah D.         \$2,500,000.00           Petrick, Sandra         \$2,500,000.00           Phelps, Donna Vallone         \$5,000,000.00           Phillips, Harold         \$2,500,000.00           <		
Olson, Sigurd (Estate of)         \$5,000,000.00           Owens, David         \$2,500,000.00           Owens, Deanna         \$2,500,000.00           Owens, Frances         \$5,000,000.00           Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Palmer, Lisa Menkins         \$2,500,000.00           Parler, Henry James         \$2,500,000.00           Parker, Henry James         \$2,500,000.00           Parker, Sharon         \$2,500,000.00           Pearson, Helen M.         \$5,000,000.00           Pearson, John L. Jr.         \$5,000,000.00           Pearson, Sonia         \$8,000,000.00           Perron, Brett         \$2,500,000.00           Perron, Deborah Jean         \$2,500,000.00           Perron, Ronald R.         \$5,000,000.00           Perron, Ronald R.         \$5,000,000.00           Persky, Muriel         \$5,000,000.00           Petrson, Deborah D.         \$2,500,000.00           Petrick, Sandra         \$2,500,000.00           Phelps, Donna Vallone         \$5,000,000.00           Phillips, Harold         \$2,500,000.00		
Owens, David         \$2,500,000.00           Owens, Deanna         \$2,500,000.00           Owens, Frances         \$5,000,000.00           Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Palmer, Lisa Menkins         \$2,500,000.00           Parler, Maureen         \$2,500,000.00           Parker, Henry James         \$2,500,000.00           Parker, Sharon         \$2,500,000.00           Pearson, Helen M.         \$5,000,000.00           Pearson, Sonia         \$8,000,000.00           Perron, Brett         \$2,500,000.00           Perron, Deborah Jean         \$2,500,000.00           Perron, Ronald R.         \$5,000,000.00           Perron, Ronald R.         \$5,000,000.00           Perry, Sharon Conley         \$2,500,000.00           Petry, Sharon Conley         \$2,500,000.00           Petry, Sharon Conley         \$2,500,000.00           Phelps, Donna Vallone         \$5,000,000.00           Phillips, Harold         \$2,500,000.00           Phillips, John Arthur Sr.         \$5,000,000.00	- 100kg	
Owens, Deanna       \$2,500,000.00         Owens, Frances       \$5,000,000.00         Owens, James (Estate of)       \$5,000,000.00         Owens, Steven       \$2,500,000.00         Page, Connie Mack       \$5,000,000.00         Page, Judith K.       \$5,000,000.00         Palmer, Lisa Menkins       \$2,500,000.00         Parler, Lisa Menkins       \$2,500,000.00         Parker, Maureen       \$2,500,000.00         Parker, Henry James       \$2,500,000.00         Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Perron, Ronald R.       \$5,000,000.00         Perry, Sharon Conley       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petry, Sharon Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Owens, Frances       \$5,000,000.00         Owens, James (Estate of)       \$5,000,000.00         Owens, Steven       \$2,500,000.00         Page, Connie Mack       \$5,000,000.00         Page, Judith K.       \$5,000,000.00         Palmer, Lisa Menkins       \$2,500,000.00         Paolozzi, Geraldine       \$2,500,000.00         Pare, Maureen       \$2,500,000.00         Parker, Henry James       \$2,500,000.00         Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Owens, James (Estate of)         \$5,000,000.00           Owens, Steven         \$2,500,000.00           Page, Connie Mack         \$5,000,000.00           Page, Judith K.         \$5,000,000.00           Palmer, Lisa Menkins         \$2,500,000.00           Parker, Lisa Menkins         \$2,500,000.00           Parker, Maureen         \$2,500,000.00           Parker, Henry James         \$2,500,000.00           Parker, Sharon         \$2,500,000.00           Pearson, Helen M.         \$5,000,000.00           Pearson, John L. Jr.         \$5,000,000.00           Pearson, Sonia         \$8,000,000.00           Perron, Brett         \$2,500,000.00           Perron, Deborah Jean         \$2,500,000.00           Perron, Ronald R.         \$5,000,000.00           Perron, Ronald R.         \$5,000,000.00           Persky, Muriel         \$5,000,000.00           Petry, Sharon Conley         \$2,500,000.00           Petrick, Sandra         \$2,500,000.00           Phelps, Donna Vallone         \$5,000,000.00           Phillips, John Arthur Sr.         \$5,000,000.00		
Owens, Steven       \$2,500,000.00         Page, Connie Mack       \$5,000,000.00         Page, Judith K.       \$5,000,000.00         Palmer, Lisa Menkins       \$2,500,000.00         Pare, Maureen       \$2,500,000.00         Parker, Henry James       \$2,500,000.00         Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, John L. Jr.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Page, Connie Mack       \$5,000,000.00         Page, Judith K.       \$5,000,000.00         Palmer, Lisa Menkins       \$2,500,000.00         Parolozzi, Geraldine       \$2,500,000.00         Pare, Maureen       \$2,500,000.00         Parker, Henry James       \$2,500,000.00         Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, John L. Jr.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Perron, Ronald R.       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Page, Judith K.       \$5,000,000.00         Palmer, Lisa Menkins       \$2,500,000.00         Paolozzi, Geraldine       \$2,500,000.00         Pare, Maureen       \$2,500,000.00         Parker, Henry James       \$2,500,000.00         Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, John L. Jr.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Palmer, Lisa Menkins       \$2,500,000.00         Paolozzi, Geraldine       \$2,500,000.00         Pare, Maureen       \$2,500,000.00         Parker, Henry James       \$2,500,000.00         Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, John L. Jr.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Perron, Ronald R.       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Paolozzi, Geraldine       \$2,500,000.00         Pare, Maureen       \$2,500,000.00         Parker, Henry James       \$2,500,000.00         Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, John L. Jr.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Pare, Maureen       \$2,500,000.00         Parker, Henry James       \$2,500,000.00         Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, John L. Jr.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Parker, Henry James       \$2,500,000.00         Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, John L. Jr.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Parker, Sharon       \$2,500,000.00         Pearson, Helen M.       \$5,000,000.00         Pearson, John L. Jr.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Pearson, Helen M.       \$5,000,000.00         Pearson, John L. Jr.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		
Pearson, John L. Jr.       \$5,000,000.00         Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00	Parker, Sharon	\$2,500,000.00
Pearson, Sonia       \$8,000,000.00         Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00	Pearson, Helen M.	\$5,000,000.00
Perron, Brett       \$2,500,000.00         Perron, Deborah Jean       \$2,500,000.00         Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00	Pearson, John L. Jr.	\$5,000,000.00
Perron, Deborah Jean       \$2,500,000.00         Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		\$8,000,000.00
Perron, Michelle       \$2,500,000.00         Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00		\$2,500,000.00
Perron, Ronald R.       \$5,000,000.00         Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00	Perron, Deborah Jean	\$2,500,000.00
Persky, Muriel       \$5,000,000.00         Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00	Perron, Michelle	\$2,500,000.00
Peterson, Deborah D.       \$2,500,000.00         Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00	Perron, Ronald R.	\$5,000,000.00
Petry, Sharon Conley       \$2,500,000.00         Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00	Persky, Muriel	\$5,000,000.00
Petrick, Sandra       \$2,500,000.00         Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00	Peterson, Deborah D.	\$2,500,000.00
Phelps, Donna Vallone       \$5,000,000.00         Phillips, Harold       \$2,500,000.00         Phillips, John Arthur Sr.       \$5,000,000.00	Petry, Sharon Conley	\$2,500,000.00
Phillips, Harold \$2,500,000.00 Phillips, John Arthur Sr. \$5,000,000.00	Petrick, Sandra	\$2,500,000.00
Phillips, John Arthur Sr. \$5,000,000.00	Phelps, Donna Vallone	\$5,000,000.00
HR. 1. (1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1	Phillips, Harold	\$2,500,000.00
	Phillips, John Arthur Sr.	\$5,000,000.00
	Plickys, Donna Tingley	\$2,500,000.00

Pollard, Margaret Aileen	\$8,000,000.00
Pollard, Stacey Yvonne	\$5,000,000.00
Prevatt, Lee Hollan	\$2,500,000.00
Prevatt, Victor Thornton	\$5,000,000.00
Price, John	\$5,000,000.00
Price, Joseph	\$2,500,000.00
Prindeville, Barbara D. (Estate of)	\$5,000,000.00
Prindeville, Kathleen Tara	\$2,500,000.00
Prindeville, Michael	\$2,500,000.00
Prindeville, Paul	\$5,000,000.00
Prindeville, Sean	\$2,500,000.00
Quirante, Belinda J.	\$5,000,000.00
Quirante, Edgar	\$2,500,000.00
Quirante, Godofredo (Estate of)	\$5,000,000.00
Quirante, Milton	\$2,500,000.00
Quirante, Sabrina	\$2,500,000.00
Ray, Susan	\$2,500,000.00
Reininger, Laura M.	\$2,500,000.00
Richardson, Alan	\$2,500,000.00
Richardson, Beatrice	\$5,000,000.00
Richardson, Clarence	\$5,000,000.00
Richardson, Eric	\$2,500,000.00
Richardson, Lynette	\$2,500,000.00
Richardson, Vanessa	\$2,500,000.00
Richardson-Mills, Philiece	\$5,000,000.00
Ricks, Melrose	\$5,000,000.00
Riva, Belinda Quirante	\$2,500,000.00
Rockwell, Barbara	\$5,000,000.00
Rooney, Linda	\$2,500,000.00
Rose, Tara Smith	\$2,500,000.00
Ruark, Tammi	\$2,500,000.00
Rudkowski, Juliana	\$2,500,000.00
Russell, Marie McMahon	\$2,500,000.00
Sanchez, Alicia Lynn	\$5,000,000.00
Sauls, Andrew	\$2,500,000.00
Sauls, Henry Caleb	\$2,500,000.00
Sauls, Riley A.	\$2,500,000.00
Schnorf, Margaret Medler	\$5,000,000.00
Schnorf, Richard (brother)	\$2,500,000.00
Schnorf, Richard (father)	\$5,000,000.00
Schnorf, Robert	\$2,500,000.00
Schultz, Beverly	\$5,000,000.00
Schultz, Dennis James	\$2,500,000.00
Schultz, Dennis Ray	\$5,000,000.00
The Wallet of Strands and	

Scialabba, Frank	\$5,000,000.00	
Scialabba, Jacqueline	\$8,000,000.00	
Scialabba, Samuel Scott	\$5,000,000.00	
Scott, Jon Christopher	\$2,500,000.00	
Scott, Kevin James	\$2,500,000.00	
Scott, Larry L. (Estate of)	\$5,000,000.00	
Scott, Mary Ann	\$5,000,000.00	
Scott, Sheria ·	\$2,500,000.00	
Scott, Stephen Allen	\$2,500,000.00	
Seguerra, Jacklyn	\$2,500,000.00	
Shipp, Bryan Richard	\$5,000,000.00	
Shipp, James David	\$2,500,000.00	
Shipp, Janice	\$2,500,000.00	
Shipp, Maurice	\$2,500,000.00	
Shipp, Pauline	\$8,000,000.00	
Shipp, Raymond Dennis	\$2,500,000.00	
Shipp, Russell	\$2,500,000.00	
Sinsioco, Susan J.	\$2,500,000.00	
Smith-Ward, Ana	\$8,000,000.00	
Smith, Angela Josephine (Estate of)	\$5,000,000.00	
Smith, Bobbie Ann	\$5,000,000.00	
Smith, Cynthia	\$2,500,000.00	
Smith, Donna Marie	\$2,500,000.00	
Smith, Erma	\$2,500,000.00	
Smith, Holly	\$2,500,000.00	
Smith, Ian	\$5,000,000.00	
Smith, Janet	\$2,500,000.00	
Smith, Joseph K. III	\$2,500,000.00	
Smith, Joseph K. Jr.	\$5,000,000.00	
Smith, Keith	\$5,000,000.00	
Smith, Kelly B.	\$2,500,000.00	
Smith, Shirley L.	\$5,000,000.00	
Smith, Tadgh	\$2,500,000.00	
Smith, Terrence	\$2,500,000.00	
Smith, Timothy B.	\$2,500,000.00	
Sommerhof, Jocelyn J.	\$5,000,000.00	
Sommerhof, John	\$2,500,000.00	
Sommerhof, William J.	\$5,000,000.00	
Spencer, Douglas	\$2,500,000.00	
Stelpflug, Christy Williford	\$2,500,000.00	
Stelpflug, Joseph	\$2,500,000.00	
Stelpflug, Kathy Nathan	\$2,500,000.00	
Stelpflug, Laura Barfield	\$2,500,000.00	
Stelpflug, Peggy	\$5,000,000.00	
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Stelpflug, William	\$5,000,000.00	
Stephens, Horace Sr.	\$5,000,000.00	
Stephens, Joyce	\$5,000,000.00	
Stephens, Keith	\$2,500,000.00	
Stockton, Dona	\$5,000,000.00	
Stockton, Donald (Estate of)	\$5,000,000.00	
Stockton, Richard	\$2,500,000.00	
Stokes, Irene	\$5,000,000.00	
Stokes, Nelson Jr.	\$2,500,000.00	
Stokes, Nelson Sr. (Estate of)	\$5,000,000.00	
Stokes, Robert	\$2,500,000.00	
Stokes-Graham, Gwenn	\$2,500,000.00	
Sturghill, Marcus D.	\$2,500,000.00	
Sturghill, Marcus L. Jr.	\$5,000,000.00	
Sturghill, NaKeisha Lynn	\$2,500,000.00	
Sundar, Doreen	\$8,000,000.00	
Tella, Margaret	\$2,500,000.00	
Terlson, Susan L.	\$2,500,000.00	
Thompson, Mary Ellen	\$2,500,000.00	
Thorstad, Adam	\$5,000,000.00	
Thorstad, Barbara	\$5,000,000.00	
Thorstad, James Jr.	\$2,500,000.00	
Thorstad, James Sr.	\$5,000,000.00	
Thorstad, John	\$2,500,000.00	
Thorstad, Ryan	\$5,000,000.00	
Thurman, Betty Ann	\$2,500,000.00	
Tingley, Barbara	\$5,000,000.00	
Tingley, Richard L.	\$5,000,000.00	
Tingley, Russell	\$2,500,000.00	
Tolliver, Keysha	\$5,000,000.00	
Turek, Mary Ann	\$5,000,000.00	
Valenti, Karen	\$5,000,000.00	
Vallone, Anthony	\$2,500,000.00	
Vallone, Donald H.	\$5,000,000.00	
Vallone, Timothy	\$2,500,000.00	
Vargas, Leona Mae	\$2,500,000.00	
Voyles, Denise	\$2,500,000.00	
Wallace, Ila	\$5,000,000.00	
Wallace, Kathryn Thorstad	\$2,500,000.00	
Wallace, Richard J.	\$2,500,000.00	
Warwick, Barbara Thorstad	\$2,500,000.00	
Washington, Linda	\$2,500,000.00	
Washington, Vancine	\$2,500,000.00	
Watson, Kenneth	\$2,500,000.00	
watson, Kenneth	\$2,500,000.00	

Wigglesworth, Daryl       \$2,500,000.00         Wigglesworth, Darrin A.       \$2,500,000.00         Wigglesworth, Henry       \$5,000,000.00         Wigglesworth, Mark       \$2,500,000.00         Wigglesworth, Robyn       \$2,500,000.00         Wigglesworth, Sandra       \$5,000,000.00         Wigglesworth, Shawn       \$2,500,000.00         Williams, Dianne Stokes       \$2,500,000.00         Williams, Gussie Martin       \$2,500,000.00         Williams, Johnny       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodlet, Beverly       \$5,000,000.00         Woollett, Beverly       \$5,000,000.00         Worlght, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00	Whitener, Diane	\$2,500,000.00	
Wigglesworth, Darrin A.       \$2,500,000.00         Wigglesworth, Henry       \$5,000,000.00         Wigglesworth, Mark       \$2,500,000.00         Wigglesworth, Robyn       \$2,500,000.00         Wigglesworth, Sandra       \$5,000,000.00         Wigglesworth, Shawn       \$2,500,000.00         Williams, Dianne Stokes       \$2,500,000.00         Williams, Gussie Martin       \$2,500,000.00         Williams, Johnny       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ruth       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodlett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00			
Wigglesworth, Henry       \$5,000,000.00         Wigglesworth, Mark       \$2,500,000.00         Wigglesworth, Robyn       \$2,500,000.00         Wigglesworth, Sandra       \$5,000,000.00         Wigglesworth, Shawn       \$2,500,000.00         Williams, Dianne Stokes       \$2,500,000.00         Williams, Gussie Martin       \$2,500,000.00         Williams, Johnny       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodlet, Beverly       \$5,000,000.00         Woollett, Beverly       \$5,000,000.00         Worlght, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00 </td <td></td> <td></td>			
Wigglesworth, Mark         \$2,500,000.00           Wigglesworth, Robyn         \$2,500,000.00           Wigglesworth, Sandra         \$5,000,000.00           Wigglesworth, Shawn         \$2,500,000.00           Williams, Dianne Stokes         \$2,500,000.00           Williams, Gussie Martin         \$2,500,000.00           Williams, Johnny         \$2,500,000.00           Williams, Rhonda         \$2,500,000.00           Williams, Ronald         \$2,500,000.00           Williams, Ruth         \$5,000,000.00           Williams, Scipio J.         \$5,000,000.00           Williams, Wesley         \$5,000,000.00           Williams-Edwards, Delma         \$2,500,000.00           Williamson, Tony         \$2,500,000.00           Williamson, Jewelene         \$5,000,000.00           Winter, Michael         \$5,000,000.00           Wiseman, Barbara         \$8,000,000.00           Woodlet, Joyce         \$2,500,000.00           Woollett, Beverly         \$5,000,000.00           Worlght, Melvina Stokes         \$2,500,000.00           Wright, Patricia         \$5,000,000.00           Wyche, Glenn         \$2,500,000.00           Wyche, John         \$2,500,000.00           Young, John F.         \$5,000,000.00 </td <td>14 TO 1 1 TO 1 TO 1 TO 1 TO 1 TO 1 TO 1</td> <td>\$5,000,000.00</td>	14 TO 1 1 TO 1 TO 1 TO 1 TO 1 TO 1 TO 1	\$5,000,000.00	
Wigglesworth, Robyn       \$2,500,000.00         Wigglesworth, Sandra       \$5,000,000.00         Wigglesworth, Shawn       \$2,500,000.00         Williams, Dianne Stokes       \$2,500,000.00         Williams, Gussie Martin       \$2,500,000.00         Williams, Janet       \$5,000,000.00         Williams, Johnny       \$2,500,000.00         Williams, Rhonda       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ruth       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodlet, Beverly       \$5,000,000.00         Woollett, Beverly       \$5,000,000.00         Worlght, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00      <		\$2,500,000.00	
Wigglesworth, Shawn       \$2,500,000.00         Williams, Dianne Stokes       \$2,500,000.00         Williams, Gussie Martin       \$2,500,000.00         Williams, Janet       \$5,000,000.00         Williams, Johnny       \$2,500,000.00         Williams, Rhonda       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ruth       \$5,000,000.00         Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodlet, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John W.       \$2,500,000.00         Young, John W.       \$2,500,000.00         <	두 열 본 구 경기 그렇게 하는 역시 사람이 가는 수지 수 있습니다.	\$2,500,000.00	
Williams, Dianne Stokes       \$2,500,000.00         Williams, Gussie Martin       \$2,500,000.00         Williams, Janet       \$5,000,000.00         Williams, Johnny       \$2,500,000.00         Williams, Rhonda       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ruth       \$5,000,000.00         Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodlet, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Wigglesworth, Sandra	\$5,000,000.00	
Williams, Gussie Martin       \$2,500,000.00         Williams, Janet       \$5,000,000.00         Williams, Johnny       \$2,500,000.00         Williams, Rhonda       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ruth       \$5,000,000.00         Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodle, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Wigglesworth, Shawn	\$2,500,000.00	
Williams, Janet       \$5,000,000.00         Williams, Rhonda       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ruth       \$5,000,000.00         Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodlet, Beverly       \$5,000,000.00         Woollett, Beverly       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williams, Dianne Stokes	\$2,500,000.00	
Williams, Johnny       \$2,500,000.00         Williams, Rhonda       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ruth       \$5,000,000.00         Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodle, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williams, Gussie Martin	\$2,500,000.00	
Williams, Rhonda       \$2,500,000.00         Williams, Ronald       \$2,500,000.00         Williams, Ruth       \$5,000,000.00         Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodlet, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williams, Janet	\$5,000,000.00	
Williams, Ronald       \$2,500,000.00         Williams, Ruth       \$5,000,000.00         Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodle, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williams, Johnny	\$2,500,000.00	
Williams, Ruth       \$5,000,000.00         Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodlet, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williams, Rhonda	\$2,500,000.00	
Williams, Scipio J.       \$5,000,000.00         Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodle, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williams, Ronald	\$2,500,000.00	
Williams, Wesley       \$5,000,000.00         Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodle, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williams, Ruth	\$5,000,000.00	
Williams-Edwards, Delma       \$2,500,000.00         Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodlerd, Phyllis       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williams, Scipio J.	\$5,000,000.00	
Williamson, Tony       \$2,500,000.00         Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodlet, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williams, Wesley	\$5,000,000.00	
Williamson, Jewelene       \$5,000,000.00         Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodle, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williams-Edwards, Delma	\$2,500,000.00	
Winter, Michael       \$5,000,000.00         Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodle, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00		\$2,500,000.00	
Wiseman, Barbara       \$8,000,000.00         Woodford, Phyllis       \$2,500,000.00         Woodle, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Williamson, Jewelene	\$5,000,000.00	
Woodford, Phyllis       \$2,500,000.00         Woodle, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Winter, Michael	\$5,000,000.00	
Woodle, Joyce       \$2,500,000.00         Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Wiseman, Barbara	\$8,000,000.00	
Woollett, Beverly       \$5,000,000.00         Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00		\$2,500,000.00	
Woollett, Paul       \$5,000,000.00         Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Woodle, Joyce	\$2,500,000.00	
Wright, Melvina Stokes       \$2,500,000.00         Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Woollett, Beverly	\$5,000,000.00	
Wright, Patricia       \$5,000,000.00         Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Woollett, Paul	\$5,000,000.00	
Wyche, Glenn       \$2,500,000.00         Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Wright, Melvina Stokes	\$2,500,000.00	
Wyche, John       \$2,500,000.00         Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00	Wright, Patricia	\$5,000,000.00	
Young, John F.       \$5,000,000.00         Young, John W.       \$2,500,000.00         Young, Judith Carol       \$5,000,000.00		\$2,500,000.00	
Young, John W. \$2,500,000.00 Young, Judith Carol \$5,000,000.00		\$2,500,000.00	
Young, Judith Carol \$5,000,000.00	Young, John F.	\$5,000,000.00	
- T. (T. (T. T. T		\$2,500,000.00	
Young, Sandra Rhodes \$5,000,000.00	Young, Judith Carol	\$5,000,000.00	
	Young, Sandra Rhodes	\$5,000,000.00	
Zimmerman, Joanne \$2,500,000.00	Zimmerman, Joanne	\$2,500,000.00	
Zone, Stephen Thomas \$2,500,000.00	[6] The Control of th		
Zosso, Patricia Thorstad \$2,500,000.00	Zosso, Patricia Thorstad	\$2,500,000.00	

## 4. Claims Brought by Family Members of Injured Servicemen

Ali, Jamaal Muata	\$1,250,000.00
Angeloni, Margaret	\$1,250,000.00
Arroyo, Jesus	\$1,250,000.00
Arroyo, Milagros	\$1,250,000.00

Carletta, Olympia	\$2,500,000.00
Carpenter, Kimberly	\$4,000,000.00
Comes, Joan	\$2,500,000.00
Comes, Patrick	\$1,250,000.00
Comes, Christopher	\$1,250,000.00
Comes, Frank Sr.	\$2,500,000.00
Crawford, Deborah	\$1,250,000.00
Davis, Barbara	\$4,000,000.00
Franklin, Alice Warren	\$1,250,000.00
Gerlach, Patricia	\$4,000,000.00
Gerlach, Travis	\$2,500,000.00
Gerlach, Megan	\$2,500,000.00
Hernandez, Arminda	\$1,250,000.00
Hlywiak, Margaret	\$2,500,000.00
Hlywiak, Peter Jr.	\$1,250,000.00
Hlywiak, Peter Sr.	\$2,500,000.00
Hlywiak, Paul	\$1,250,000.00
Hlywiak, Joseph	\$1,250,000.00
Hunt, Cynthia Lou	\$4,000,000.00
Ibarro, Rosa	\$2,500,000.00
Jacobs, Andrew Scott	\$2,500,000.00
Jacobs, Daniel Joseph	\$2,500,000.00
Jacobs, Danita	\$4,000,000.00
Kirkpatrick, Kathleen	\$4,000,000.00
Lewis, Grace	\$2,500,000.00
Magnotti, Lisa	\$1,250,000.00
Mitchell, Wendy	\$4,000,000.00
Moore, James Otis (Estate of)	\$1,250,000.00
Moore, Johnney S. (Estate of)	\$2,500,000.00
Moore, Marvin S.	\$1,250,000.00
Moore, Alie Mae	\$2,500,000.00
Moore-Jones, Jonnie Mae	\$1,250,000.00
Nashton, Alex W. (Estate of)	\$2,500,000.00
Oliver, Paul	\$2,500,000.00
Oliver, Riley	\$2,500,000.00
Oliver, Michael John	\$2,500,000.00
Oliver, Ashley E.	\$2,500,000.00
Oliver, Patrick S.	\$2,500,000.00
Oliver, Kayley	\$2,500,000.00
Russell, Tanya	\$2,500,000.00
Russell, Wanda	\$4,000,000.00
Russell, Jason	\$2,500,000.00
Shaver, Clydia	\$1,250,000.00
Spaulding, Scott	\$1,250,000.00
	a Marian Marian

Stanley, Cecilia	\$2,500,000.00
Stilpen, Mary	\$1,250,000.00
Swank, Kelly	\$1,250,000.00
Swinson, Kenneth J. (Estate of)	\$2,500,000.00
Swinson, Ingrid M. (Estate of)	\$2,500,000.00
Swinson, Daniel	\$1,250,000.00
Swinson, William	\$1,250,000.00
Swinson, Dawn	\$1,250,000.00
Swinson, Teresa	\$1,250,000.00
Warren, Bronzell	\$1,250,000.00
Watson, Jessica	\$1,250,000.00
Webb, Audrey	\$1,250,000.00
Wheeler, Jonathan	\$2,500,000.00
Wheeler, Benjamin	\$2,500,000.00
Wheeler, Marlis "Molly" (Estate of)	\$2,500,000.00
Wheeler, Kerry	\$1,250,000.00
Wheeler, Andrew	\$2,500,000.00
Wheeler, Brenda June	\$4,000,000.00
Wold, Jill	\$1,250,000.00
Young, Nora (Estate of)	\$2,500,000.00
Young, James	\$1,250,000.00
Young, Robert (Estate of)	\$2,500,000.00

IT IS FURTHER ORDERED that the claims brought by the following plaintiffs are

## hereby DISMISSED WITHOUT PREJUDICE:

Albright, Marvin Jr.

Albright, Mirequrn

Albright, Shertara

Banks, Anthony (son)

Banks, Michael

Banks, Taiarra

Berry, Lori

Burnette, Christopher

Burnette, Gwen

Camara, Mecot Jr.

Comes, Dale

Comes, Tommy

Crop, Kimberly

Decker, Connie

Dolphin, Erin

Douglass, Frederick (Estate of)

Eaves, Christopher

Eaves, India

Eaves, Sylvia Jean

Foister, Gerald

Frye, Charles Jr.

Frye, Gina

Frye, Lialani

Frye, Lincoln

Frye, Randall

Garner, Joseph

Garner, Justina

Garner, Penny

Garner, Reva

Goodman, Karl

Haskell, Barbara

Haskell, Richard

Hlywiak, Jordan

Hlywiak, Taylor

Hunt, Jack Darrell

Hunt, Marcy Elizabeth

Hunt, Mendy Leigh

Hunt, Molly Faye

Livingston, Carol

Massa, Manuel Sr. (Estate of)

Matthews, Chadwick

Matthews, Debra

Matthews, Drew

Meurer, Deborah

Miller, Shirley D.

Mitchell, Elvera

Mitchell, Robert

Price, Betty Lou (Estate of)

Price, Timothy

Rivers, Jeremy

Rivers, Paul (son)

Rivers, Sandra

Schak, Carol

Schak, George

Spencer, Lynne M.

Washington, Patrice

Williams, Kevin Coker

Williams, George Robinson

Williams, Dorothy (Estate of)

Williamson, Bill

Wise, Debra

#### Woodcock, Gwen

IT IS FURTHER ORDERED that the claims brought by the following plaintiffs are

## hereby DISMISSED WITH PREJUDICE:

Beamon, Ashley Tutwiler

Beresford, Michael

Beresford, Susan

Beresford, William

Bianco, Sandra Karen

Bianco, Sandra

Bonk, Catherine

Bonk, John Sr.

Bonk, Kevin

Bonk, Thomas

Calloway, Donald

Clark, Michael Jr.

Corry, Charles

DiGiovanni, Lisa

DiGiovanni, Marion

DiGiovanni, Robert

DiGiovanni, Danielle

Fiedler, Sherry Lynn

Fluegel, Robert

Fluegel, Thomas A.

Fluegel, Marilou

Green, Rebecca Iverson

Hairston, Evans

Hairston, Felicia

Hairston, Julia Bell

Hukill, Henry Durban

Hukill, Mark Andrew

Hukill, Matthew Scott

Hukill, Melissa

Hukill, Meredith Anne

Hukill, Mitchell Charles

Hukill, Monte

Hukill, Virginia Ellen

Jackowski, Mary

Jones, Storm

Joyce, Penni

Kirkwood, Carl Sr.

Kirkwood, Jeff

Kirkwood, Shirley

Kirkwood, Carl Arnold Jr.

Kronenbitter, Patricia

Laise, Kris

Laise, Bill

Laise, Betty

Lewis, Natalie

Macroglou, James

Macroglou, Lorraine

Macroglou, Bill

Mason, Richard

McDonald, Kathy

McDonough, Edward W.

McDonough, Sean

McDonough, Edward Joseph

Morgan, Geraldine

Nashton, Pamela J.

Persky, Herbert

Phelps, Charles Jr.

Phelps, Charles Sr.

Prevatt-Wood, Victoria

Rhosto, Deborah Spencer

Rochwell, Natalie

Rockwell, Donald

Rotondo, Rose (Estate of)

Rotondo, Luis (Estate of) (father)

Santoserre, Phyllis (Estate of)

Simpson, Robert

Simpson, Renee Eileen

Simpson, Larry H. Sr.

Simpson, Anna Marie

Vallone, Donna Beresford

Wallace, Bobby L.

Watkins, Lula Mae (Estate of)

Watkins, Simon

Wirick, Sally Jo

IT IS FURTHER ORDERED that plaintiffs, at their own cost and consistent with the requirements of 28 U.S.C. § 1608(e), send a copy of this Judgment and the Findings of Fact and Conclusions of Law issued this date to defendants.

IT IS FURTHER ORDERED that the Clerk of this Court shall terminate this case from

the dockets of this Court.

SO ORDERED.

Signed by Royce C. Lamberth, United States District Judge, September 7, 2007.

# ANNEX 77

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DEBORAH D. PETERSON,	3
Personal Representative of the	)
Estate of James C. Knipple (Dec.), et al.,	)
Plaintiffs,	)
	) Consolidated Civil Actions:
ν,	) 01-2094 (RCL)
	) 01-2684 (RCL)
ISLAMIC REPUBLIC OF IRAN, et al.,	)
Defendants.	)
	)

#### MEMORANDUM OPINION

#### BACKGROUND

These actions arise from the October 23, 1983, bombing of a United States Marine barracks in Beirut, Lebanon, in which 241 American servicemen operating under peacetime rules of engagement were murdered by a suicide bomber. This attack was regarded as the most deadly state-sponsored terrorist attack made against American citizens, until the tragic attacks on September 11, 2001.

The nearly one thousand plaintiffs in this consolidated action are many of the family members and estates of the 241 servicemen killed in the attack. Plaintiffs allege that the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS") are liable for damages from the attack because they provided material support and assistance to

Hezbollah, the terrorist organization that orchestrated and carried out the bombing. Plaintiffs have relied upon causes of action founded upon provisions of the Foreign Sovereign Immunities Act ("FSIA"), inter alia, 28 U.S.C. § 1605(a)(7).

#### PROCEDURAL HISTORY

On March 17-18, 2003, this Court conducted a bench trial to determine the defendants' liability for their part in the perpetration of this attack. After reviewing the evidence presented by plaintiffs at trial, including testimony from lay and expert witnesses, this Court issued an opinion finding that the defendants were legally responsible for providing material financial and logistical support to help carry out this tragic attack on the 241 servicemen in Beirut in 1983. Peterson v. Islamic Republic of Iran, 264 F. Supp. 2d 46, 61 (D.D.C. 2003). In that opinion, this Court also found that the surviving family members have suffered and will continue to suffer mental anguish and loss of society. Id. Finally, this Court directed special masters to consider each claim brought by plaintiffs, and indicated that it would make a determination on the amount of compensatory and punitive damages for each claim after the Court received reports from the special masters.<sup>2</sup> The Court reaches this determination on the issue of damages in this opinion.

<sup>&</sup>lt;sup>1</sup> According to the Oxford English Dictionary, the term "Hezbollah" is synonymous with the terms "Hizbollah" and "Hizbullah," all of which are English transliterations of the Arabic term referring to the extremist Shiite Muslim group also known as the "Party of God." *See* Oxford English Dictionary (2d ed. 1989). Accordingly, to the extent that any of these terms are used within this opinion, they shall be used interchangeably.

<sup>&</sup>lt;sup>2</sup> In a prior case where this Court held Iran responsible under the Foreign Sovereign Immunities Act as a state sponsor of terrorism, this Court noted that its statutory duty is clear and that there is no danger of inadvertent interference with foreign relations. See Flatow v. Islamic Republic of Iran, 999 F. Supp. 1, 16 (D.D.C. Mar. 11, 1998) (Lamberth, J.). "Article I of the Constitution establishes that Congress has 'authority to enact laws applicable to conduct beyond the territorial boundaries of the United States." Id. (quoting EEOC v. Aramco, 499 U.S. 244, 260-61 (1991). The Foreign Sovereign Immunities Act not only applies to extraterritorial

The Court reviews the determinations made by the special masters de novo. See Fed. R. Civ. P. 53(g)(3).

#### DISCUSSION

## I. Assessment of Validity of Each Plaintiff's Cause of Action

In order to ensure that the Court determines the appropriate amount of damages available to each plaintiff under the law, it must first ensure that each plaintiff has a valid claim under state law. The FSIA does not itself provide a cause of action, but rather "acts as a 'pass-through' to substantive causes of action against private individuals that may exist in federal, state or international law." Blais v. Islamic Republic of Iran, 459 F. Supp. 2d 40, 54 (D.D.C. Sept. 29, 2006) (Lamberth, J.) (citing Dammarell v. Islamic Republic of Iran, Civ. A. No. 01-2224, 2005 WL 756090, at \*8-10, 2005 U.S. Dist. LEXIS 5343, at \*27-32 (D.D.C. Mar. 29, 2005) (Bates, J.)).

In order to determine the applicable state law to each action, the Court must look to the choice of law rules of the forum, in this case, the choice of law rules of the District of Columbia. See Blais, 459 F. Supp. 2d at 54. Under District of Columbia choice of law rules, courts employ a modified government interest analysis under which they "evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be most

conduct, but one of its express purposes is to affect the conduct of terrorist states outside the United States, in order to promote the safety of United States citizens overseas. Congress specifically restricted application of the statute to foreign state defendants which the Executive Branch, via the State Department, has determined are foreign state sponsors of terrorism. See id. This Court is aware that the judgment entered today may be the largest ever entered by a court of the United States against a foreign nation. The President has not filed a suggestion of interest indicating that actions by this Court will in any way interfere with the foreign relations of the United States. This Court is properly performing its duty under a constitutional statute.

advanced by having its law applied to the facts of the case under review." Hercules & Co. v. Shama Rest. Corp., 566 A.2d 31, 41 (D.C. 1989) (citations and internal quotations omitted).

Application of this governmental interest test generally points to the law of plaintiff's domicile as having the greatest interest in providing redress to its citizens. Accordingly, the validity of each of the plaintiffs' claims shall be determined by the state in which they were domiciled at the time of the attack.

In this action, three types of claims have been sought. First, the personal representatives and estates of the servicemen killed in the attack have brought claims for wrongful death, in which the plaintiffs and beneficiaries seek compensation in the form of the present value of the decedent's lost wages and earnings that he would have earned but for his untimely death.

Second, the surviving servicemen have brought claims for battery against the defendants. Third, the family members of both the deceased and surviving servicemen have brought claims for intentional infliction of emotional distress ("IIED") against the defendants for their part in materially bringing about the attack. The Court will assess the relative merits of each of the claims separately.

#### A. Wrongful Death Claims

Wrongful death claims were brought by the personal representatives and estates of the following deceased servicemen:

Terry Abbott, John Robert Allman, Ronny Kent Bates, James Baynard, Jess W. Beamon, Alvin Burton Belmer, Richard D. Blankenship, John W. Blocker, Joseph John Boccia Jr., Leon Bohannon, John Bonk Jr., Jeffrey James Boulos, John Norman Boyett, William Burley, Paul Callahan, Mecot Camara, Bradley Campus, Johnnie Ceaser, Robert Allen Conley, Charles Dennis Cook, Johnny Len Copeland, David Cosner, Kevin Coulman, Rick Crudale, Russell Cyzick, Michael Devlin, Nathaniel Dorsey, Frederick Douglass, Timothy Dunnigan, Bryan Earle,

Danny R. Estes, Richard Andrew Fluegel, Michael D. Fulcher, Sean Gallagher, George Gangur, Randall Garcia, Harold Ghumm, Timothy Giblin, Michael Gorchinski, Richard Gordon, Davin M. Green, Thomas Hairston; Michael Haskell, Mark Anthony Helms, Stanley G. Hester, Donald Wayne Hildreth, Richard Holberton, Dr. John Hudson, Maurice Edward Hukill, Edward Iacovino Jr., Paul Innocenzi III, James Jackowski, Jeffrey Wilbur James, Nathaniel Walter Jenkins, Edward Anthony Johnston, Stephen Jones, Thomas Adrian Julian, Thomas Keown, Daniel Kluck, James C. Knipple, Freas H. Kreischer III, Keith Laise, James Langon IV, Michael Scott LaRiviere, Steven LaRiviere, Richard Lemnah, Joseph Raymond ("Joel") Livingston III, Paul D. Lyon Jr., John Macroglou, Samuel Maitland Jr., Charlie Robert Martin, David Massa, John McCall, James E. McDonough, Timothy R. McMahon, Richard Menkins II, Ronald Meurer, Joseph Peter Milano, Joseph Moore, Harry Douglas Myers, David Nairn, John Arne Olson, Joseph Albert Owens, Connie Ray Page, Ulysses Gregory Parker, John L. Pearson, Thomas S. Perron, John Arthur Phillips Jr., William Ray Pollard, Victor Mark Prevatt, James Price, Patrick Kerry Prindeville, Diomedes J. Quirante, Warren Richardson, Luis J. Rotondo, Michael Caleb Sauls, Charles Jeffrey Schnorf, Scott Lee Schultz, Peter Scialabba, Gary Randall Scott, Thomas Alan Shipp, Jerryl Shropshire, Larry H. Simpson Jr., Kirk Hall Smith, Thomas Gerard Smith, Vincent Smith, William Scott Sommerhof, Stephen Eugene Spencer, William Stelpflug, Horace Renardo ("Ricky") Stephens Jr., Craig Stockton, Jeffrey Stokes, Eric D. Sturghill, Devon Sundar, Thomas Paul Thorstad, Stephen Tingley, Donald H. Vallone Jr., Eric Glenn Washington, Dwayne Wigglesworth, Rodney J. Williams, Scipio Williams Jr., Johnny Adam Williamson, William Ellis Winter, Donald Elberan Woollett, Craig Wyche, Jeffrey D. Young.3

Out of the 128 deceased servicemen, 123 were domiciled in North Carolina at the time of the attack.<sup>4</sup> The servicemen who were not domiciled in North Carolina at the time of the attack

<sup>&</sup>lt;sup>3</sup> In association with their wrongful death claims, the respective estates of Alvin Burton Belmer, Nathaniel Walter Jenkins, Luis J. Rotondo, Larry H. Simpson, Jr., and Stephen Tingley have sought damages for pain and suffering incurred during the time at which they were alive after the attack and the time at which they died. The measure of damages for each of these servicemen will be assessed in the damages portion of this opinion, see infra Section II.B.1, and does not affect the validity of their wrongful death claims.

<sup>&</sup>lt;sup>4</sup> Deceased serviceman, Diomedes J. Quirante, was born in the Phillippines in 1958, and was not a United States citizen. Therefore, an issue exists as to whether Diomedes J. Quirante has standing to recover against Iran and MOIS under the FSIA's "state sponsored terrorism" exception. In order for a plaintiff to so recover, he or she must show that: (1) the State

were domiciled in California, Oklahoma, South Carolina, and Vermont.<sup>5</sup> This difference in domicile is of no moment, however, because the wrongful death statutes of each of the servicemen's respective states of domicile imposes liability on an actor when his "wrongful act, neglect, or default" causes a person's death, and had that person lived, he could have recovered damages from the actor. Cal Civ. Proc. Code § 377.60(a) (2007); N.C. Gen. Stat. § 28A-18-2(a) (2007); 12 Okl. St. Ann. § 1053 (2007); S.C. Code Ann. § 15-51-10 (2006); Vt. Stat. Ann. tit. 14, § 1491 (2007). Each statute provides for recovery of numerous categories of damages, including

There still remains the issue of what law governs Diomedes' claims. In light of the fact that he was stationed in Camp LeJeune, North Carolina before being sent to Lebanon, this Court finds that North Carolina is the state with which Diomedes had the closest and most substantial connection. Therefore, the law of North Carolina shall govern Diomedes' wrongful death claim.

Department had previously designated the foreign sovereign as a "state sponsor of terrorism" or did so based on the event in question; (2) the victim or plaintiff was a U.S. national when the event took place; and (3) "the foreign sovereign engaged in conduct that falls within the ambit of the statute." *Prevatt v. Islamic Republic of Iran*, 421 F. Supp. 2d 152, 158 (D.D.C. Mar. 28, 2006).

As this Court has already found in its Memorandum Opinion establishing the defendants' liability for this attack, the first and third requirements are satisfied. Therefore, the only issue remaining is whether Diomedes qualifies as a United States national. The term "U.S. national" embraces both United States citizens and non-citizens who owe permanent allegiance to the United States. 8 U.S.C. § 1101(a)(22) (2006). In this case, the evidence shows that Diomedes clearly was a U.S. national. First, though a citizen of the Phillippines, Diomedes enlisted in the United States Army when he was twenty one years old. As a part of his commitment to becoming a member of the United States Armed Forces, Diomedes was required to take an oath to defend and uphold the Constitution of the United States. Once enlisted, he was assigned to the 2nd Marine Division, Fleet Marine Force (FMF) in Camp Lejeune, North Carolina. He remained a member of the United States Army in North Carolina from that time until his death in Beirut, Lebanon in 1983. His oath, and ultimate heroic act of dying while a member of the United States Army establishes beyond any doubt that Diomedes J. Quirante's allegiance to the United States was permanent. Therefore, this Court finds that Diomedes J. Quirante was a United States national at the time he was killed. Accordingly, Diomedes has standing under the FSIA to recover against the defendants.

<sup>&</sup>lt;sup>5</sup> The Court could not determine the domicile of one serviceman, Frederick Douglass, because no evidence was presented on behalf of his estate. For this reason, the Court will dismiss the claim brought by the personal representative of his estate without prejudice.

pecuniary loss in the form of the present monetary value of the decedent to the persons entitled to receive the damages recovered, expenses for care, treatment and hospitalization incident to the injury resulting in death; and reasonable funeral expenses. See Cal Civ. Proc. Code § 377.61 (2007); N.C. Gen. Stat. § 28A-18-2(b) (2007); 12 Okl. St. Ann. § 1053 (2007); S.C. Code Ann. § 15-51-20 (2006); Vt. Stat. Ann. tit. 14, § 1491 (2007). Additionally, North Carolina allows for the recovery of compensation for pain and suffering of the decedent. N.C. Gen. Stat. § 28A-18-2(b).6

Based upon the evidence presented to the special masters and the Court, each of the deceased servicemen has made out a valid claim for wrongful death under North Carolina law.

Accordingly, those valid heirs and beneficiaries under North Carolina's intestate statute are entitled to share in the recovery of the damages awarded as a result of each serviceman's untimely death.

#### B. Battery Claims

Claims of battery were brought against the defendants by the following servicemen who ultimately survived the attack:

Marvin Albright, Pablo Arroyo, Anthony Banks, Rodney Darrell Burnette, Frank Comes Jr., Glenn Dolphin, Frederick Daniel Eaves, Charles Frye, Truman Dale Garner, Larry Gerlach, John Hlywiak, Orval Hunt, Joseph P. Jacobs, Brian Kirkpatrick, Burnham Matthews, Timothy Mitchell, Lovell "Darrell" Moore, Jeffrey Nashton, John Oliver, Paul Rivers, Stephen Russell, Dana Spaulding,

<sup>&</sup>lt;sup>6</sup> The servicemen who seek pain and suffering during the survival period between the attack and their deaths were each domiciled in North Carolina at the time of the attack. Therefore, the Court need only concern itself with North Carolina law on the issue of pain and suffering.

Craig Joseph Swinson, Michael Toma, Danny Wheeler, Thomas D. Young<sup>7</sup>

Out of the twenty six surviving servicemen seeking damages for battery, twenty five of them were domiciled in North Carolina at the time of the attack. The one remaining surviving serviceman, Charles Frye, was domiciled in California at the time of the attack. Both states, however, recognize that a battery is deemed to be an offensive touching of the person by another without consent. See Rains v. Superior Court, 198 Cal. Rptr. 249, 252 (Cal. Ct. App. 1984); Ormond v. Crampton, 191 S.E.2d 405, 410 (N.C. App. 1972). Therefore, the battery claims for each of the servicemen can be assessed evenly.

Based upon the evidence presented to the special masters and the Court, each of the deceased servicemen has made out a valid claim for battery under North Carolina and California law. Therefore, each may recover the appropriate amount of compensatory damages as determined by this Court.

#### C. Intentional Infliction of Emotional Distress Claims

The remaining 753 plaintiffs have sought claims for intentional infliction of emotional distress, and awards for pain and suffering incurred as a result of their extreme emotional grief and psychological anguish associated with the knowledge that their family members are either deceased or alive but permanently scarred both physically and mentally. Each of these plaintiffs were domiciled in a number of different states—and in one family's case, the Phillippines—at the time of the attack. Accordingly, this Court must determine whether each of these plaintiffs has brought a valid cause of action under each state's respective law.

<sup>&</sup>lt;sup>7</sup> Because these individuals can recover for their mental anguish and suffering under their respective battery claims, the Court need not consider each plaintiff's intentional infliction of emotional distress claim, which would result in an impermissible double recovery.

In order to accomplish this, the Court must first analyze whether such a cause exists under each state's laws. Next, to the extent that a state recognizes IIED claims, this Court must determine which family members have standing to recover for IIED under each state's laws. Then this Court must assess whether the plaintiffs have established the essential elements of the claim.

1. Intentional Infliction of Emotional Distress: State Law Analysis

The states of domicile for these 753 plaintiffs are: Alabama, California, Connecticut,

District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland,

Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New

Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South

Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and

Wisconsin. The family of serviceman Diomedes J. Quirante was domiciled in the Phillippines.<sup>8</sup>

Each of the states mentioned above recognize the existence of a cause of action for intentional infliction of emotional distress, rooted in Section 46 of the Restatement (Second) of

<sup>&</sup>lt;sup>8</sup> Though the surviving immediate family members of Diomedes J. Quirante are not United States citizens, the Court finds that they have standing under the FSIA to bring claims for intentional infliction of emotional distress under North Carolina law. The "state sponsored terrorism" exception to the FSIA requires only that either the plaintiffs or the victim be a United States national at the time of the attack. Prevatt, 421 F. Supp. 2d at 158. Therefore, the Quirante family members' intentional infliction of emotional distress claims may be brought because Diomedes was a United States national at the time he was killed. See supra note 3. Applying District of Columbia choice of law principles, North Carolina is the state with the strongest interest in determining the claims brought by Diomedes' family members because their claims are intertwined with—and result from—Diomedes' death. Therefore, this Court finds that the claims brought by the Quirante family are governed by North Carolina law.

Torts.<sup>9</sup> Though each state has its own particular means of describing intentional infliction of emotional distress, upon inspection of each state's laws the elements of intentional infliction of emotional distress are met in each state if it can be demonstrated that: (1) the defendant engaged in extreme and outrageous conduct with the intent to cause, or with reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe or extreme emotional distress; and (3) the defendant's conduct is the actual and proximate cause of the plaintiff's emotional distress.<sup>10</sup>

There still remains the issue of whether each plaintiff has standing to recover under state

See, e.g., American Rd. Serv. Co. v. Inmon, 394 So.2d 361 (Ala. 1980); Davidson v. City of Westminster, 649 P.2d 894, 901 (Cal. 1982); Rugg v. McCarty, 476 P.2d 753, 756 (Colo. 1970); Murray v. Bridgeport Hosp., 480 A.2d 610, 614 (Conn. 1984); Johnathan Woodner Co. v. Breeden, 665 A.2d 929, 934-35 (D.C. 1995); Metropolitan Life Ins. Co. v. McCarson, 467 So.2d 277, 278-79 (Fla. 1985); Yarbray v. Southern Bell Tel. & Tel. Co., 409 S.E.2d 835, 837 (Ga. 1991); Palmateer v. International Harvester Co., 406 N.E.2d 595, 598 (III. App. Ct. 1980), rev'd on other grounds, 421 N.E.2d 876 (III. 1981); Creel v. I.C.E. & Assocs., Inc., 771 N.E.2d 1276, 1282 (Ind. Ct. App. 2002); Craft v. Rice, 671 S.W.2d 247, 251 (Ky. 1984); White v. Monsanto Co., 585 So.2d 1205, 1208-1210 (La. 1991); Harris v. Jones, 380 A.2d 611, 614 (Md. 1977); George v. Jordan Marsh Co., 258 N.E.2d 958, 921 (Mass. 1971); Dornfeld v. Oberg, 503 N.W.2d 115, 117 (Minn. 1993); Nazeri v. Missouri Valley College, 860 S.W.2d 303, 316 (Mo. 1993); Morrison v. Means, 680 So. 2d803, 805-06 (Miss. 1996); Dickens v. Puryear, 276 S.E.2d 325, 332 (N.C. 1981); Gall v. Great Western Sugar Co., 363 N.W.2d 373, 376 (Neb. 1985); Buckley v. Trenton Saving Fund Soc., 544 A.2d 857, 863 (N.J. 1988); Mantz v. Follingstad, 505 P.2d 68, 74-75 (N.M. App. 1972); Murphy v. Am. Home Prods. Corp., 448 N.E.2d 86, 90 (N.Y. 1983); Yeager v. Local Union 20, Teamsters, Chauffeurs, Warehousemen, & Helpers of America, 453 N.E.2d 666, 671 (Ohio 1983); Breeden v. League Servs. Corp., 575 P.2d 1374, 1376 (Okla. 1978); Forster v. Manchester, 189 A.2d 147, 151-52 (Pa. 1963); Champlin v. Washington Trust Co., 478 A.2d 985, 988 (R.I. 1984); Ford v. Hutson, 276 S.E.2d 776, 778 (S.C. 1981); Christians v. Christians, 637 N.W.2d 377, 382 (S.D. 2001); Levy v. Franks, 159 S.W.3d 66, 82-83 (Tenn. Ct. App. 2004); Hoffmann-La Roche Inc. v. Zeltwanger, 144 S.W.3d 438, 445 (Tex. 2004); Sheltra v. Smith, 392 A.2d 431, 433 (Vt. 1978); Womack v. Eldridge, 210 S.E.2d 145, 148 (Va. 1974); Robel v. Roundup Corp., 59 P.3d 611, 619 (Wash. 2002); Wayne County Bank v. Hodges, 338 S.E.2d 202, 205 (W. Va. 1985).

<sup>10</sup> See supra note 7.

law for the defendant's attack on the plaintiffs' respective family members. Section 46(2) of the Restatement (Second) of Torts governs the ability of plaintiffs to recover for intentional infliction of emotional distress where the defendant's conduct is directed at a third party. Restatement (Second) of Torts § 46(2). Section 46(2) of the Restatement specifically states that only present third parties may recover for an IIED claim. Nonetheless, the Caveat to the section leaves open the possibility of other possible situations where a defendant could be liable for intentional infliction of emotional distress under this section.

Each state has interpreted this ambiguity differently. Some states have explicitly allowed for situations where the presence requirement is unnecessary to establish an IIED claim. Florida, for example, has acknowledged that an immediate family member may recover for intentional infliction of emotional distress even if he or she was not present at the time of the outrageous conduct. Williams v. City of Minneola, 575 So.2d 683, 690 (Fla. App.1991). Along the same lines, California has found that a plaintiff's presence is not always required, and is deemed unnecessary in situations where the defendant is aware of the high probability that the defendant's acts will cause a plaintiff severe emotional distress. Christensen v. Superior Court, 820 P.2d 181, 203-204 (Cal. 1992). Therefore, as this Court found in Heiser, when a terrorist attack occurs, the presence element is not required to bring a valid IIED claim under either Florida or California law, and that plaintiffs domiciled in these states at the time of the attack may bring a

<sup>&</sup>lt;sup>11</sup> Applying this standard, this Court found in *Heiser* that, given the extreme nature of a terrorist attack, the presence element for an IIED claim under California law did not need to be proven. *See Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229, 305 (D.D.C. Dec. 22, 2006) (Lamberth, J.).

claim for IIED without establishing their presence at the scene of the injury.<sup>12</sup> Much like Florida and California, Vermont has no presence requirement for plaintiffs to recover for the intentional or reckless infliction of emotional distress. *Thayer v. Herdt*, 586 A.2d 1122, 1126 (Vt. 1990).

Additionally, there are a number of states at issue in this action whose Supreme Courts have not specifically addressed the issue of whether a plaintiff's presence is required. Some of the laws of these states—Texas, Minnesota, Wisconsin, New York, North Carolina, Indiana, Oklahoma, and Kansas—were previously analyzed by this Court in *Heiser*, in which this Court found that no such presence requirement was necessary in these states given the severe nature of terrorist attacks. *See Heiser*, 466 F. Supp. 2d at 328-29, 333 (Tex.), 341 (Minn.), 343-44 (Wisc.), 345-46 (N.Y.), 349 (N.C.), 352 (Ind.), 354 (Okla.), 355 (Kans.). In this case, the respective

<sup>&</sup>lt;sup>12</sup> This finding, of course, is on the assumption that those plaintiffs have standing to recover in the first place. Those plaintiffs without standing to recover under the law of their respective domiciliary states may not recover, regardless of whether a plaintiff with standing could so recover.

<sup>13</sup> The Oklahoma Supreme Court has rejected recovery for mental anguish and suffering under an IIED claim brought by bystanders. See Slaton v. Vansickle, 872 P.2d 929, 931-32 (Okla, 1994). According to Oklahoma's Supreme Court, it is long recognized that "recovery for mental anguish is restricted to such mental pain or suffering as arises from an injury or wrong to the person rather than from another's suffering or wrongs committed against another person." Vansickle, 872 P.2d at 931. Following this logic, the Oklahoma Supreme Court limited recovery when a plaintiff's IIED claim rests on conduct directed at a third party to situations where: "1) the plaintiff was directly physically involved in the incident; 2) the plaintiff was damaged from actually viewing the injury to another rather than from learning of the accident later; and 3) a familial or other close personal relationship existed between the plaintiff and the party whose injury gave rise to the plaintiff's mental anguish." Kraszewski v. Baptist Med. Ctr. Of Okla., Inc., 916 P.2d 241, 248 (Okla. 1996). This limitation on third party recovery is of no moment, however, due to the simple fact that it has been repeatedly found that "a terrorist attack-by its nature-is directed not only at the victims but also at the victims' families." Heiser, 466 F. Supp. 2d. at 328 (quoting Salazar v. Islamic Republic of Iran, 370 F. Supp. 2d 105, 115 n.12 (D.D.C. 2005) (Bates, J.)). Therefore, the decedents' near relatives are also direct victims of this horrendous attack. Accordingly, this Court finds that the limitations imposed by the Oklahoma Supreme Court on recovery for pain and suffering due to injuries sustained by a third party do not

state supreme courts of a number of states—Alabama, Connecticut, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, New Jersey, New Mexico, Rhode Island, Tennessee, Virginia—have not specifically addressed whether a plaintiff's presence is required to establish a viable IIED claim. Accordingly, "in light the severity of [a terrorist attack,] and the obvious range of potential grief and distress that directly results from such a heinous act," <sup>14</sup> and because "a terrorist attack-by its nature—is directed not only at the victims but also at the victims' families, <sup>15</sup> this Court adopts the rationale it set forth in *Heiser* regarding the presence element for IIED claims in states that have been silent on the issue. *See Heiser*, 466 F. Supp. 2d at 328-29. Therefore, this Court finds that claims for intentional infliction of emotional distress may be brought by family members without having to establish a presence requirement under Texas, Minnesota, Wisconsin, New York, North Carolina, Indiana, Oklahoma, Kansas, Alabama, Connecticut, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, New Jersey, New Mexico, Rhode Island, Tennessee, and Virginia laws. <sup>16</sup>

Other states at issue in this case-Georgia, Missouri, South Carolina, South Dakota,
Washington, and West Virginia-have allowed third party plaintiffs to recover, but only when the
defendant's conduct is "directed at" the third party plaintiffs themselves. As this Court and

apply to the family members seeking redress before this Court today.

<sup>14</sup> Heiser, 466 F. Supp. 2d at 328.

<sup>15</sup> Id. (quoting Salazar, 370 F.Supp.2d at 115 n. 12).

<sup>16</sup> See supra note 10.

<sup>&</sup>lt;sup>17</sup> See, e.g., Ryckeley v. Callaway, 412 S.E.2d 826, 827 (Ga. 1992); Samsonetti v. City of St. Joseph, 976 S.W.2d 572, 580 (Mo. App. W.D. 1998) (citing Gibson v. Brewer, 952 S.W.2d

others within this district have noted, "a terrorist attack—by its nature—is directed not only at the victims but also at the victims' families." *Heiser*, 466 F. Supp. 2d. at 328 (quoting *Salazar v. Islamic Republic of Iran*, 370 F. Supp. 2d 105, 115 n.12 (D.D.C. 2005) (Bates, J.)). Therefore, this Court finds that those plaintiffs domiciled in Georgia, Missouri, South Carolina, South Dakota, Washington, and West Virginia at the time of the attack, may bring a claim for IIED under the laws of those states because the attack was directed at them as well as those killed in the attack.<sup>18</sup>

Two other states at issue in this case-Louisiana and Pennsylvania-have narrowly construed their interpretation of what constitutes a valid IIED claim, and have expressly found that the presence element is required for third party plaintiffs to recover. Accordingly, this Court finds those plaintiffs who were not contemporaneously present at the site of the attack would not be able to recover under either Louisiana or Pennsylvania law for a claim of IIED. Without a valid cause of action under state law, the plaintiffs domiciled in Louisiana and Pennsylvania lack a viable means to redress their injury, and therefore lack standing.

<sup>239, 249 (</sup>Mo. 1997) (en banc)); Upchurch v. New York Times Co., 431 S.E.2d 558, 561 (S.C. 1993) (citing Christensen v. Superior Court, 820 P.2d 181 (Cal. 1991)); Hayes v. Northern Hills General Hospital, 628 N.W.2d 739, 744 (S.D. 2001); Reid v. Pierce County, 961 P.2d 333, 337 (Wash. 1988); Courtney v. Courtney, 413 S.E.2d 418, 422 (W. Va. 1991).

<sup>18</sup> See supra note 10.

<sup>&</sup>lt;sup>19</sup> See Daigrepont v. State Racing Com'n, 663 So.2d 840, 841 (La. App.1995) (requiring plaintiff's actual presence at the scene of the injury, and not allowing any further interpretation of the provision in the Louisiana Code establishing a cause of action for IED); Taylor v. Albert Einstein Medical Center, 754 A.2d 650, 652-53 (Pa. 2000) (limiting IIED recovery to those plaintiffs "who were present at the time, as distinguished from those who discover later what has occurred," even in those situations where the defendant may be substantially certain that the plaintiff will suffer severe emotional distress as a result of the offensive act).

Accordingly, this Court must regrettably deny and dismiss the claims of those plaintiffs who were domiciled in Louisiana and Pennsylvania at the time of the attack.<sup>20</sup> The claims brought by the following individuals must be DISMISSED due to lack of standing:

Deborah Spencer Rhosto, Catherine Bonk, John Bonk Sr., Thomas Bonk, Patricia Kronenbitter, Catherine Bonk Hunt, Kevin Bonk, Marilou Fluegel, Thomas A. Fluegel, Penni Joyce, Robert Fluegel, Julia Bell Hairston, Felicia Hairston, Evans Hairston, Virginia Ellen Hukill, Henry Durban Hukill, Melissa Hukill, Meredith Anne Hukill, Mark Andrew Hukill, Matthew Scott Hukill, Mitchell Charles Hukill, Monte Hukill, Bill Laise, Betty Laise, Kris Laise, Lorraine Macroglou, Bill Macroglou, James Macroglou, Shirley Kirkwood, Carl Kirkwood Sr., Kathy McDonald, Sally Jo Wirick, Storm Jones (a/k/a Shirley Ann Storm Pettry), Edward Joseph McDonough, Sean McDonough, Edward W. McDonough, Carl Arnold Kirkwood Jr., Jeff Kirkwood, Marion DiGiovanni, (Estate of) Luis Rotondo (father), (Estate of) Rose Rotondo, Danielle DiGiovanni, Lisa DiGiovanni, Robert DiGiovanni, (Estate of) Phyllis Santoserre, Larry H. Simpson Sr., Anna Marie Simpson, Renee Eileen Simpson, Sherry Lynn Fiedler, Robert Simpson.

Intentional Infliction of Emotional Distress: Extent of Family Members'
 Respective Recovery

Though many of the states at issue in this case have recognized the existence of IIED claims for family members who were not present at the scene of the injury, this does not necessarily extend the ability to bring an IIED claim to all family members. As the D.C. Circuit has noted previously, Section 46 of the Restatement (Second) of Torts does not extend causes of action beyond members of the victim's "immediate family." See Bettis v. Islamic Republic of Iran, 315 F.3d 325, 334-35 (D.C. Cir. 2003) (refusing to extend "direct victims" under § 46(1)

<sup>&</sup>lt;sup>20</sup> To the extent that these plaintiffs are relatives to any of the deceased servicemen, it should be noted that the dismissal of these plaintiffs' IIED claims does not hinder these individuals' ability to recover any portion of a wrongful death damages awarded to the estates of those servicemen to which these dismissed plaintiffs may be entitled under North Carolina law.

and "third party victims" under § 46(2) to include nieces and nephews not present at the scene of injury). Accordingly, this Court finds that those members of the families of the servicemen who are not within the immediate family of the serviceman at the time of the attack may not recover.

This Court has previously deemed near relatives to include only the victim's spouse, parents, children, and siblings. See Jenco v. Islamic Republic of Iran, 154 F. Supp. 2d 27 (D.D.C. 2002) (Lamberth, J.), affirmed sub nom., Bettis, 315 F.3d at 335. Though the Court does not deny the extreme pain and suffering felt by those outside of this class of individuals, it is necessary to draw such a line at immediate family members in order "to prevent a potentially unlimited number of plaintiffs who were not present at the site of the attack from seeking redress." Heiser, 466 F. Supp. 2d at 329. Moreover, such a delineation is consistent with the provisions of Section 46 of the Restatement. See Restatement (Second) of Torts § 46, cmt. 1; cf. Bettis, 315 F.3d at 335 (finding that permitting nieces and nephews to recover under § 46(1) would undermine the limitations on recovery of "immediate family" members under § 46(2)). Therefore, those plaintiffs who are not members of this class of individuals in relation to the servicemen cannot recover. Accordingly, the Court must dismiss the claims of the following plaintiffs: Ashley Tutwiler Beamon, David Clark, Michael Clark, Jr., Rebecca Iverson Green, Geraldine Morgan, Pamela Nashton, Natalie Rochwell, (Estate of) Lula Mae Watkins, 22 and

<sup>&</sup>lt;sup>21</sup> Current spouses who were not yet married to an injured servicemen at the time of the attack are not considered "immediate family" for the purposes of recovery. These individuals are therefore among the group of plaintiffs who cannot recover damages sustained as a result of the attack.

<sup>&</sup>lt;sup>22</sup> According to the special master's report, Lula Mae Watkins was the legal guardian of Jerryl Shropshire. There is no evidence, however, of a formal order terminating the rights of Jerryl's natural parents. *See* Ga. Stat. Ann. 15-11-93 (2007). Absent such an order, "there is no Georgia law under which the loss of parental power also results in the parent's loss of a right to

Simon Watkins.

 Claims That Must Be Dismissed Due to Lack of Evidence and Participation

"[T]he entry of a default judgment is not automatic." Mwani v. bin Laden, 417 F.3d 1, 6 (D.C. Cir. 2005). Personal Jurisdiction must still be determined before entering default judgment against an absent defendant. Id. As standing must be determined prior to and independent of any determination of a court's jurisdiction,<sup>23</sup> so too must standing be determined before a court enters default judgment against an absent defendant.

With respect to standing, the trial court has power "to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing. If, after this opportunity, the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed." Warth v. Seldin, 422 U.S. 490, 501-02 (1975).

After an evidentiary hearing before this Court establishing the defendants' complicity in bringing about the attacks, the Court designated special masters to hear each of the plaintiffs' respective claims, so that damages might be determined. As is unfortunately sometimes the case in a situation with as far-reaching an effect as this, certain family members of the deceased and

inherit as an heir from a child's estate." Blackstone v. Blackstone, 639 S.E.2d 369, 370 (Ga. Ct. App. Nov. 21, 2006). This is true even if the parents have failed to provide any support for the child during the child's lifetime. Id. at 371. Accordingly, the estate of Lula Mae Watkins may not recover for damages arising out of Jerryl's death because she is not a parent or other immediate family member under Georgia law. Likewise, Geraldine Morgan and Simon Watkins—as Lula Mae's granddaughter and son, respectively—may also not recover.

<sup>&</sup>lt;sup>23</sup> See Steel Co. v. Citizens for a Better Environment, 523 U.S. at 91.

injured servicemen—family members who undoubtedly shared equally in the grief and suffering caused by the tragic deaths of their loved ones—could not be located or were unable to present evidence before this Court and its designated special masters to establish a valid claim for damages. Without evidence supporting their claims of intentional infliction of emotional distress, the Court cannot determine at this time whether these individuals have sufficient standing to bring a claim. Accordingly, the claims from the following individuals shall be DISMISSED WITHOUT PREJUDICE due to lack of evidence:

Marvin Albright, Jr., Mirequrn Albright, Shertara Albright, Anthony Banks (son), Michael Banks, Taiarra Banks, Lori Berry, Christopher Burnette, Gwen D. Burnette, Mecot Camara Jr., Dale Comes, Tommy Comes, Kimberly Crop, Connie Burnette Decker, Erin Dolphin, Frederick Douglass, Christopher Eaves, India Eaves, Sylvia Jean Eaves, Charles Frye Jr., Gina Frye, Lialani Frye, Lincoln Frye, Randall Frye, Gerald Foister, Joseph Garner, Justina Garner, Penny Garner, Reva Garner, Karl Goodman, Barbara Haskell, Richard Haskell, Jordan Hlywiak, Taylor Hlywiak, Mendy Leigh Hunt, Jack Darrell Hunt, Marcy Elizabeth Hunt, Molly Faye Hunt, Carol Livingston, (Estate of) Manuel Massa Sr., Chadwick Matthews, Debra Matthews, Drew Matthews, Deborah Meurer, Shirley Douglass Miller, Elvera Mitchell, Robert Mitchell, (Estate of) Betty Lou Price, Timothy Price, Jeremy Rivers, Paul Rivers (son), Sandra Rivers, Carol Schak, George Schak, Lynne M. Spencer, Patrice Washington, (Estate of) Dorothy Williams, George Robinson Williams, Kevin Coker Williams, Bill Williamson, Debra Wise, Gwen Woodcock.

The Court will now turn its attention to those remaining claims that must be dismissed for reasons not yet specified within this opinion.

- 4. Other Remaining Claims That Must Be Dismissed
  - a. Claim of Bobby Wallace

Under Oklahoma law, a non-adopted stepchild is not considered "issue" or a "child" for purposes of inheritance. See Okla. Stat. Ann. tit. 84, § 213 (2007); cf. Green v. Wilson, 240 P. 1051, 1052 (Okla. 1925) (finding that, under § 213, estate of deceased intestate is inherited by

surviving spouse and legitimate children, and adopted child surviving inherits as if born in wedlock). In light of the disparate treatment of adoptive and non-adoptive children in terms of inheritance, it stands to reason that non-adoptive stepparents of stepchildren would be treated differently under Oklahoma law than stepparents who adopt those stepchildren. Accordingly, under Oklahoma law, a stepfather would not be able to inherit from or through his non-adopted stepson; likewise, nor would he be able to recover damages as a result of the stepson's death. Accordingly, this Court finds that Bobby Wallace, as Stephen Eugene Spencer's non-adoptive stepfather, may not recover for IIED resulting from Stephen's death in the attack, and his claim must be DISMISSED.

#### b. Claim of Herbert Persky

As the stepfather to Timothy R. McMahon, Herbert Persky has brought an IIED claim against the defendants. Based on the evidence presented to the Court, however, Mr. Persky may not recover for IIED due to the fact that, as a stepparent, Mr. Persky lacks standing to bring such a claim.

As this Court has previously noted, Texas has adopted Section 46 of the Restatement (Second) of Torts in establishing a cause of action for IIED. *Heiser*, 466 F. Supp. 2d at 333. Moreover, the Texas Supreme Court has remained silent on the issue of whether a plaintiff's presence is required in order for a third party to recover for IIED. *Id.* Accordingly, this Court has found that the near relatives of a victim who were not present at the time of the attack would still be able to recover for IIED under Texas law. *Id.* Therefore, Mr. Persky may only recover for IIED if he is considered a near relative under Texas law.

Under Texas law, however, stepparents that do not adopt a child are not deemed the same

as natural parents for purposes of inheriting from that child. Tex. Civ. Prac. & Rem.Code Ann. § 71.004(a) (Vernon 1997) (stating that only the victim's surviving spouse, children, and parents of the deceased may recover for the victim's wrongful death). "A stepparent who takes no steps to legally adopt his stepchild does not qualify as a parent for purposes of Texas's wrongful death statute." Garcia v. BRK Brands, Inc., 266 F. Supp. 2d 566, 578 (S.D. Tex. 2003) (citing Boudreaux v. Texas & N.O.R. Co., 78 S.W.2d 641 (Tex.Civ.App.-Beaumont 1935, writ refd)).

In this case, notwithstanding the relationship that Mr. Persky had with Mr. McMahon, there is no evidence that Mr. Persky legally adopted Mr. McMahon. Accordingly, Mr. Persky is not considered a parent for purposes of being able to recover for pain and suffering as a result of his stepson's untimely death. Therefore, Mr. Persky does not have standing to bring a claim for IIED in this case, and his claim must be DISMISSED.

### c. Claims of Sandra Bianco and Sandra Karen Bianco

Under New Jersey law, a natural birth parent may recover for and inherit from and through their child. Once that child is legally adopted by another parent, however, the natural parent's privileges and obligations cease, "including the right of the natural parents and their kindred to take and inherit intestate personal and real property from and through the person adopted." N.J. Stat. Ann. 2A: 22-3(b) (2007) (emphasis added). Moreover, upon adoption all rights, privileges and obligations normally bestowed upon natural parents-including the right to take and inherit from and through the adopted child-become bestowed upon the adoptive parent instead, who is treated in the eyes of the law "as if the person adopted had been born to them in lawful wedlock . . . . " N.J. Stat. Ann. 2A: 22-3(c) (2007).

Here, Sandra Bianco (natural mother to serviceman Richard Andrew Fluegel) and Ms.

Bianco's daughter Sandra Karen Bianco (Richard's half-sister) seek under respective IIED claims to recover pain and suffering damages arising out of Richard's death. Richard, however, is survived by his natural father Thomas A. Fluegel, his adoptive mother Marilou Fluegel, and his full blood siblings Penni Joyce and Robert Fluegel. Therefore, though Ms. Bianco is Richard's natural mother, she may nonetheless not recover for pain and suffering from Richard's death because, under New Jersey law, Ms. Bianco's entitlement to take and recover from or through her son ceased once Richard was adopted by Marilou Fluegel. Therefore, the privilege of recovering as a mother to Richard for the pain and suffering associated with Richard's death has been bestowed upon Marilou Fluegel due to the fact that she legally adopted Richard. Therefore, this Court must DISMISS Sandra Bianco's claim for IIED for lack of standing.

For similar reasons, this Court must also dismiss Sandra Karen Bianco's claim for IIED for lack of standing. As noted previously, the privileges and obligations of the natural parent and their kindred ceases upon the child's adoption by another parent. Therefore, as kindred to Sandra Bianco, Sandra Karen Bianco may not recover damages associated with Richard Fluegel's death, and her claim must also be DISMISSED.

d. Claims of Donald Rockwell, Charles Corry and Michael Clark Jr.

Donald Rockwell (stepbrother to Michael Caleb Sauls), Charles Corry (brother-in-law to Eric Glenn Washington), and Michael Clark, Jr. (brother-in-law to James Baynard) seek to recover for IIED in this case as step-siblings of the deceased servicemen. Under Virginia law, however, only blood siblings and adoptive step-siblings qualify as siblings for purposes of recovering damages resulting from a victim's wrongful death. See Brown v. Brown, 309 S.E.2d 586, 590 (Va. 1983). Individuals are siblings to another individual only if they are of the same

parental origin as their sibling, or if they are adopted by a shared parent. *Id.* (citing *Jones v. Jones*, 530 P.2d 34 (Ore. 1974) (declining to expand class entitled to recovery as direct beneficiaries under wrongful death statute beyond spouse and children of decedent so as to include as dependents-such as non-adopted stepchildren-a person to whom decedent had no legal obligation of support). Non-adopted step-siblings do not qualify as siblings because they are not of the same origin as their step-sibling, nor deemed of the same origin as their step-sibling under the law because they were not legally adopted. *Brown*, 309 S.E.2d at 590. Therefore, in Virginia non-adoptive step-siblings may not recover for pain and suffering arising out of an IIED claim because they are not deemed siblings under the law. *Cf. id. A fortiori*, a sibling-in-law-who has virtually no chance of being either adopted or of the same parental origin as the victim-may not recover for pain and suffering arising out of an IIED claim.

In this case, there is no evidence that Donald Rockwell was an adopted stepbrother to Michael Caleb Sauls. Therefore, Mr. Rockwell's claim for IIED fails for lack of standing, and must therefore be denied. Similarly, Messrs. Corry and Clark's claims must also be denied because, as a siblings-in-law, neither is deemed a sibling under the law. Accordingly, this Court finds that none of these three plaintiffs may recover for IIED as a sibling under Virginia law, and each of their IIED claims must be DISMISSED.

#### e. Victoria Prevatt-Wood

Victoria Prevatt-Wood has already brought a claim against the defendants for conduct arising out of this attack. See Prevatt, 421 F. Supp. 2d at 152. Ms. Prevatt-Wood was awarded \$2.5 million by this Court for her pain and suffering associated with the loss of her brother, Victor Mark Prevatt. Id. at 161. To allow her to seek additional damages would grant her

impermissible double recovery. Accordingly, her claim in this action must be DISMISSED.

#### f. Mary Jackowski

Mary Jackowski, stepmother to deceased serviceman James Jackowski, seeks to recover for IIED for the death of James. Under New York law, however, "[n]either step-children nor step-parents inherit property from each other." Erie County Bd. of Social Welfare v. Schneider 163 N.Y.S.2d 184, 186 (N.Y. Child Ct. 1957). Therefore, Mary Jackowski may only recover for the death of James if she legally adopted James. There is no evidence in this case, however, indicating that James was legally adopted by Mary. Therefore, she has no standing to bring a claim for damages arising out of the death of her stepson. Accordingly, the claim brought by Mary Jackowski must be DISMISSED.

## g. Stepparents and Step-siblings of Donald H. Vallone, Jr.

Charles Phelps (stepfather to Donald H. Vallone, Jr.) and Charles Phelps, Jr. (stepbrother to Donald H. Vallone, Jr.), Donna Beresford Vallone (stepmother to Donald H. Vallone, Jr.), William Beresford (stepbrother to Donald H. Vallone, Jr.), Susan Beresford Vallone (stepsister to Donald H. Vallone, Jr.), Natalie Lewis (stepsister to Donald H. Vallone, Jr.), and Michael Beresford (stepbrother to Donald H. Vallone, Jr.) each seek recovery for IIED associated with the death of serviceman Donald H. Vallone, Jr. in the attack at issue. As this Court has previously found in *Heiser*, however, under California law, a stepparent lacks standing to recover for intentional infliction of emotional distress in connection with a stepchild's death, where the stepparent had not legally adopted the stepchild, and there was no indication that the stepparent would have adopted the stepchild but for a legal impediment. *Heiser*, 466 F. Supp. 2d at 309-10 (citing Cal Civ. Proc. Code § 377.60; Cal. Prob. Code § 6402).

In this case, there is no evidence that either of the stepparents of Donald H. Vallone, Jr. legally adopted Donald H. Vallone, Jr., nor is there evidence that either would have adopted Donald but for a legal impediment. Accordingly, neither Charles Phelps nor Donna Beresford Vallone has standing to bring a claim for damages arising out of the death of their stepson, Donald H. Vallone, Jr. Therefore, the claim brought by Charles Phelps and Donna Beresford Vallone must be DISMISSED. By this same logic, and because the viability of the claims brought by the birth children of stepparents of the deceased (consequently, stepsiblings to the deceased) is dependent upon the viability of their parents' claim, the claims brought by Charles Phelps, Jr., William Beresford, Susan Beresford Vallone, Natalie Lewis Vallone, and Michael Beresford must also be DISMISSED due to a lack of standing to bring the claim.

#### h. Donald Calloway

Donald Calloway, brother-in-law to deceased serviceman Jess W. Beamon, seeks recovery for IIED arising out of his brother-in-law's death in the attack. Under Florida law, however, only plaintiffs who are the spouse, child, sibling, or parent of a decedent have standing to recover for intentional infliction of emotional distress even though plaintiffs were not present at the scene. Williams v. City of Minneola, 575 So.2d 683, 690 (Fla. App. 1991). Siblings-in-law do not fall within this category of eligible plaintifs. Accordingly, the claim brought by Donald Calloway must be DISMISSED for lack of standing.

#### i. Richard Mason

Richard Mason, stepfather to deceased serviceman Russell Cyzick, seeks to recover for IIED arising out of his stepson's death in the attack. Under West Virginia law, damages arising out of the death of an individual may be awarded to the surviving spouse and children of the

decedent, including adopted children and stepchildren, as well as the decedent's siblings, parents and any persons who were financially dependent upon the decedent at the time of his or her death. See W. Va. Code §§ 55-7-5, 55-7-6(b) (2007). Further, under West Virginia law, an individual qualifies as a "legal parent" if that individual is "defined as a parent, by law, on the basis of biological relationship, presumed biological relationship, legal adoption or other recognized grounds, [such as financial dependence]." W. Va. Code, § 48-1-232 (2007). In this case, the evidence shows that Russell Cyzick's birth mother married Richard Mason when Russell was nearly eighteen years old. There is no evidence that Russell was either legally adopted or financially dependent upon Richard Mason during what was left of his minor years. Accordingly, Richard Mason lacks standing to bring a claim because he is not a "legal parent" under West Virginia law. Therefore, this Court finds that Richard Mason's IIED claim must be DISMISSED.

Individuals with Valid Intentional Infliction of Emotional Distress Claims
 Accordingly, the Court finds that the individuals listed in Appendix A to this opinion may
 bring intentional infliction of emotional distress claims. See Appendix A.

The Court will now turn its attention to damages for these IIED claims, as well as those claims for battery and wrongful death.

#### II. Damages

#### A. Damages Framework

The validity of each claim having been assessed, the Court can now turn to the respective amounts of damages associated with each valid claim before this Court. Under the FSIA, a "foreign state shall be liable in the same manner and to the same extent as a private individual

under like circumstances." 28 U.S.C. § 1606. Therefore, plaintiffs are entitled to the typical array of compensatory damages that may be awarded against tortfeasors in the plaintiffs' respective domiciliary states. "In determining the appropriate compensatory damages for each plaintiff's pain and suffering, this Court is guided not only by prior decisions awarding damages for pain and suffering, but also by those which awarded damages for solatium." Haim, 425 F. Supp. 2d at 71. This Court has previously looked to the nature of the relationship between the family member and the victim in order to help determine the amount of each award. See Blais, 459 F. Supp. 2d at 59-60; Haim 425 F. Supp. 2d at 75.24 Parents of victims typically receive awards similar in amount to those awarded to children of the victim. See generally Heiser, 466 F. Supp. 2d at 271-356 (awarding children and parents of a terrorist attack decedents \$5 million in pain and suffering damages). This award for parents and children of the decedents is typically smaller than the award for pain and suffering damages provided to spouses, but is larger than awards of pain and suffering damages to siblings. See id. (awarding spouses of decedents \$8 million in pain and suffering damages, while awarding siblings to decedents \$2.5 million). Moreover, "families of victims who have died are typically awarded greater damages than families of victims who remain alive." Blais, 459 F. Supp. 2d at 60 (quoting Haim, 425 F. Supp. 2d at 75).

This Court finds that the damages framework set forth in Heiser to be an appropriate

<sup>&</sup>lt;sup>24</sup> As noted previously, damages for pain and suffering have traditionally been available to those members of the decedent serviceman's near relatives, which consists of his or her immediate family. See supra Section I.C.2. "This Court defines one's immediate family as his spouse, parents, siblings, and children. This definition is consistent with the traditional understanding of one's immediate family." Jenco, 154 F. Supp. 2d at 36 n.8.

measure of damages for those family members of victims who died in this attack.<sup>25</sup> The Court finds that the framework detailed in *Blais* is appropriate to help determine damages for those surviving servicemen and their families seeking redress. *See Blais*, 459 F. Supp. 2d at 59.<sup>26</sup>

Accordingly, unless otherwise specifically addressed in Section B below, see infra

Section II.B., the Court finds that the following damages amounts for pain and suffering shall be
awarded to the plaintiffs who this Court deems to have standing to bring a valid cause of action.

First, in terms of lost wages due the servicemen in this case, the Court hereby ADOPTS all of the
financial calculations and recommendations made by the special masters as to lost wages.<sup>27</sup>

Those calculations for lost wages shall be specified in Appendix B to this opinion. Second,
unless otherwise specified in Section B below, the Court finds that the awards for pain and
suffering to the servicemen are appropriate and hereby ADOPTS them. Third, the Court finds

In cases that involve an attack where the victim survives, and where no captivity occurred, courts typically award a lump sum award based in large part on an assessment of the following factors: "the severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life."

Id.

Towers bombing brought various claims against the Islamic Republic of Iran, MOIS, and IRGC for their part in providing material financial and logistical support in bringing about the attack. Heiser, 466 F. Supp. 2d at 248-51. This Court awarded the valid claims brought by spouses of deceased servicemen \$8 million in pain and suffering, parents and children of deceased servicemen \$5 million, and siblings of deceased servicemen \$2.5 million. See generally Heiser, 466 F. Supp. 2d at 271-356.

<sup>&</sup>lt;sup>26</sup> As this Court stated in Blais:

<sup>&</sup>lt;sup>27</sup> As mentioned above, *see supra* note 2, there are a few servicemen who have sought damages for pain and suffering incurred during the time at which they were alive after the attack and the time at which they died. Those claims will be addressed in Section II.B.1, *infra*.

that the appropriate amount of pain and suffering damages for the spouse of a deceased serviceman to be \$8 million. Fourth, the Court finds that the appropriate amount of pain and suffering damages for the parents and children of a deceased serviceman to be \$5 million, per individual.<sup>28</sup> Fifth, the Court finds that the appropriate pain and suffering damages award for each sibling in this case to be \$2.5 million, per sibling. Siblings of half-blood to the servicemen in this case are presumed to recover as a full-blood sibling would—that is, they are entitled to \$2.5 million—unless the law of the state in which they were domiciled at the time of the attack states that they are not entitled to so recover.<sup>29</sup> Next, the Court finds that the appropriate amount of damages for family members of surviving servicemen are as follows: spouse (\$4 million); parents (\$2.5 million); children (\$2.5 million); siblings (\$1.25 million).<sup>30</sup> Unless otherwise specified below in Section B, to the extent that the special masters have awarded a plaintiff more or less than the aforementioned respective award amounts based upon the plaintiff's relation to the serviceman, those amounts shall be altered so as to conform with the respective award amounts set forth in this paragraph.

<sup>&</sup>lt;sup>28</sup> Each parent and child shall receive this amount. See Heiser, 466 F. Supp. 2d at 271-356.

<sup>&</sup>lt;sup>29</sup> This Court will address the claims of those half-blood siblings whose award recommendations differ from the permissible awards under the respective state laws, *infra*. See *infra* Section II.B.3.

<sup>&</sup>lt;sup>30</sup> The Court recognizes that the parents in *Blais* received \$3.5 million for their IIED claims for pain and suffering damages associated with the aftermath of taking care of their son, who survived the attack on the Khobar Towers in 1996. *See Blais*, 459 F. Supp. 2d at 60. This exceptional award was given in light of the extremely severe and continuing nature of their son's maladies, and in light of the facts that their son was in a coma and vegetative state for a period of over five weeks. *Id.* at 59-60. Attention was also given to the fact that the parents in *Blais* gave up their jobs in order to take full-time care of their son. *Id.* at 60.

# B. Special Damages Cases

 Pain and Suffering Amount for Deceased Servicemen Who Initially Survived Attack

The personal representatives and estates of deceased servicemen Alvin Burton Belmer, Nathaniel Walter Jenkins, Luis J. Rotondo, Larry H. Simpson, Jr., and Stephen Tingley have each sought damages for pain and suffering incurred during the time at which they were alive after the attack and the time at which they died, in addition to the damages for lost wages and earnings arising out of their respective wrongful death claims. Several cases have awarded damages for the victim's pain and suffering that occurred between the attack and the victim's death shortly thereafter. *Haim*, 425 F. Supp. 2d at 71-72 (citing *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1, 8 (D.D.C.2000) (Lamberth, J.); *Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97, 112-13 (D.D.C.2000) (Green, J.). When the victim endured extreme pain and suffering for a period of several hours or less, courts in these cases have rather uniformly awarded \$1 million. *Haim*, 425 F.Supp.2d at 71-72. This award increases when the period of the victim's pain is longer. *Id.* at 72. In line with this precedent, this Court recently awarded \$500,000 to a serviceman who survived a terrorist attack for 15 minutes, and was in conscious pain for 10 minutes.

The estate of Alvin Burton Belmer established before the special master that serviceman Belmer was alive and conscious for nearly eight days (7 days and 20 hours). The special master recommended an award of pain and suffering of \$15 million. Though the Court recognizes Mr. Belmer was under excruciating pain during that period of time, it is not prepared to adopt such a recommendation. In light of his nearly eight days of pain and suffering, this Court finds that the

estate of Alvin Burton Belmer should be awarded \$7.5 million in pain and suffering, in addition to the amount of lost wages he is awarded.

Similarly, the estate of Nathaniel Walter Jenkins established before a special master that serviceman Jenkins was alive for seven days after the attack. The special master recommended that Mr. Jenkins be awarded \$7 million for pain and suffering undergone by Mr. Jenkins during this period of time. The Court finds this award amount is appropriate and finds that the estate of Nathaniel Walter Jenkins should be awarded \$7 million in pain and suffering, in addition to the amount of lost wages he is awarded.

The estate of Luis J. Rotondo established before a special master that serviceman Rotondo was alive for six hours after the attack. The special master recommended a pain and suffering damages award of \$250,000. In keeping with the precedent set forth in *Haim*, the Court finds that Luis J. Rotondo is entitled to \$1 million in pain and suffering damages, in addition to the amount of lost wages he is awarded.

The estate of Larry H. Simpson, Jr. established before a special master that serviceman Simpson was alive for nine years after the attack, living with severe injuries throughout that time. The special master recommended an award of pain and suffering damages of \$2 million. In light of the fact that Mr. Simpson was saddled with injuries from this attack that plagued him until his death, but conscious of the fact that Mr. Simpson appears to have led a somewhat functional life after the attack, the Court finds that Mr. Simpson should be awarded \$5 million in pain and suffering, in addition to the amount of lost wages he is awarded.

The estate of Stephen Tingley established before a special master that serviceman Tingley was alive for a short but unknown amount of time. The special master recommended a pain and

suffering damages award of \$1 million. Though the Court is certain that Mr. Tingley endured a great deal of pain during the minimal time he survived the attack, the Court is reluctant to grant such an award without any definitive proof of a duration of time that Mr. Tingley was alive.

Therefore, this Court finds that Stephen Tingley is entitled to \$500,000 in pain and suffering damages, in addition to the amount of lost wages he is awarded.

# 2. Pain and Suffering Amount for Surviving Servicemen

Each of the twenty six surviving servicemen have sought pain and suffering awards associated with their claims for battery. In awarding pain and suffering damages, the Court must take pains to ensure that individuals with similar injuries receive similar awards. Due to the large number of plaintiffs represented in this action, the Court needed to enlist the help of many different special masters to help calculate damages for each of the plaintiffs. Understandably, each special master calculated pain and suffering damages differently, which resulted in varying awards for varying maladies suffered by the surviving servicemen. Upon examination of the nature of the injuries of each of the servicemen, the Court makes the following findings about the pain and suffering damages for the twenty six surviving servicemen arising out of their respective battery claims:

- Marvin Albright suffered compound fracture of his right leg, injuries to the toes
  on his left foot, wounds and scars from shrapnel, in addition to lasting and severe
  psychological harm as a result of the attack. Therefore, this Court finds that he is
  entitled to \$5 million in pain and suffering;
- Pablo Arroyo suffered a broken jaw, severe flesh wounds and scars on his arms,
   legs and face, a loss of teeth, and lasting and severe psychological harm as a result

- of the attack. Therefore, this Court finds that he is entitled to \$5 million in pain and suffering;
- Anthony Banks suffered as a result of this attack loss of sight in one eye, a
  perforated right eardrum resulting in some hearing loss, and a shrapnel injury to
  the back of his right thigh. He also suffered lasting and severe psychological
  problems from the attack. Therefore, this Court finds that he is entitled to \$7.5
  million in pain and suffering;
- Rodney Darrell Burnette was initially thought dead as a result of the attack, and was placed in a body bag, buried alive in the morgue for four days until someone heard him moaning in pain. His injuries from the attack include a closed head injury, a basilar skull fracture, a facial nerve palsy, rib injuries, a rupturing to the timpanic membrane in both ears, and injuries to both feet. He also suffered lasting and severe psychological problems from the attack. Accordingly, this Court finds that he is entitled to \$8 million in pain and suffering;
- Glenn Dolphin suffered injuries in the back, arm and head from being hit with shrapnel from the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, the Court finds that he is entitled to \$3 million in pain and suffering;
- Charles Frye was minimally injured from small arms fire occurring just after the initial bomb explosion, and has experienced resulting nerve pain and foot numbness. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to \$2 million in pain and

- suffering, plus \$200,000 in loss of earnings suffered;31
- Truman Dale Garner suffered as a result of the attack a shrapnel injury to the head, a subdural hematoma, a perforated right eardrum, crushed left ankle, collapsed left lung, and other shrapnel wounds that became infected. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to \$7.5 million in pain and suffering damages;
- Larry Gerlach suffered severe injuries including a broken neck, which has
  resulted in permanent quadriplegia. He also suffered lasting and severe
  psychological problems from the attack. Therefore, this Court finds that he is
  entitled to \$12 million in pain and suffering damages;<sup>32</sup>
- Orval Hunt suffered skull fractures, brain bruising, various broken bones in his
  leg, and an exposed Achilles tendon as a result of the attack. He also suffered
  lasting and severe psychological problems from the attack. Therefore, this Court
  finds that he is entitled to \$8 million in pain and suffering damages;
- Joseph P. Jacobs suffered a shoulder injury, and still suffers from neck, shoulder and back pain to this day. He also suffered lasting and severe psychological problems from the attack, and has admitted to having problems with alcohol abuse. Therefore, this Court finds that he is entitled to \$5 million in pain and

<sup>&</sup>lt;sup>31</sup> Charles Frye admits that his physical injuries were minimal, and that he suffered severe psychological harm from the attack.

<sup>&</sup>lt;sup>32</sup> Cf. Mousa v. Islamic Republic of Iran, 238 F. Supp. 2d 1, 12-13 (D.D.C. 2001) (Bryant, J.) (awarding \$12 million to plaintiff with permanent and debilitating injuries, including complete deafness and blindness in one eye).

suffering damages;

- Brian Kirkpatrick suffered an eye injury, a perforated left ear drum, broken ribs, various shrapnel wounds, and the lining of his lungs were burned as a result of the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to \$8 million in pain and suffering damages;
- Burnham Matthews suffered a shrapnel wound in the forehead that destroyed the middle part of his nose, cuts to the head and back, and a perforated eardrum as a result of the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to \$7 million in pain and suffering damages;
- Timothy Mitchell suffered lacerations to the back of his head, back injuries, and has resulting chronic back pain and headaches as a result of the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to \$3 million in pain and suffering damages, in addition to \$1,555,099 in lost wages;
- Lovelle "Darrell" Moore suffered a torn ear, broken leg, damaged foot, and cuts
  from shrapnel from the attack. He also suffered lasting and severe psychological
  problems from the attack. Therefore, this Court finds that he is entitled to \$7
  million in pain and suffering damages, in addition to \$1,314,513 in lost wages;
- Jeffrey Nashton suffered a skull fracture, a shattered cheekbone, eyebrow and
   right eye orbit, crushed arms, a broken left leg, bruised right leg, two collapsed

lungs, burns on his arms and back, and internal bleeding. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to \$9 million in pain and suffering damages, in addition to \$2,776,632 in lost wages;

- Paul Rivers suffered two broken eardrums, skin lacerations, burned skin, and knee damage from the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to \$7 million in pain and suffering damages;
- Stephen Russell suffered a broken femur, hand and pelvis bone, and was covered in cuts and bruises from the attack. His left foot was turned completely backwards. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to \$7.5 million in pain and suffering damages, in addition to \$1,752,749 in lost wages;
- Dana Spaulding suffered two broken clavicles, a broken middle ear which caused internal bleeding and continued vertigo, a punctured lung, bruised kidney, broken ribs, a severe laceration across his back, and a loss of his eyelashes. Moreover in the ten days after the attack, Dana was in a coma. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to \$8 million in pain and suffering damages, in addition to \$1,559,609 in lost wages;
- Michael Toma suffered various cuts from shrapnel, internal bleeding in his urinary system, a deflated left lung, and a permanently damaged right ear drum.

He also suffered lasting and severe psychological problems from the attack.

Therefore, this Court finds that he is entitled to \$7.5 million in pain and suffering damages;

 Danny Wheeler suffered soft tissue damage to the chest and sternum area, flash burns, and lingering back problems, internal maladies and physical scarring. He also suffered lasting and severe psychological problems from the attack.
 Therefore, this Court finds that he is entitled to \$5 million in pain and suffering damages.

In addition, Frank Comes Jr., Frederick Daniel Eaves, John Hlywiak, John Oliver, and Craig Joseph Swinson, and Thomas D. Young suffered no physical injuries, and are not required to do so to recover for IIED under North Carolina law. *See Dickens v. Puryear*, 276 S.E.2d 325, 332 (N.C. 1981). Still, each has demonstrated that he has suffered severe and lasting psychological harm, and may recover damages for that. Accordingly, the Court finds that each is entitled to \$1.5 million in pain and suffering damages.<sup>33</sup>

#### Individual Family Member Cases

In certain instances, the special masters were presented with claims from individuals who were related by half-blood to a deceased serviceman in this case. This section addresses those claims under which the special master awarded the half-blood siblings an amount different than would be permissible under the laws of the half-blood siblings respective states of domicile at the time of the attack.

<sup>&</sup>lt;sup>33</sup> In addition to his award for pain and suffering, John Oliver is entitled to \$1,777,542 in lost wages.

#### Richard J. Wallace

Under Oklahoma law, "[k]indred of the half-blood inherit equally with those of the whole blood in the same degree, unless the inheritance come [sic] to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance." Okla. Stat. Ann. tit. 84, § 222 (2007).

Stephen Eugene Spencer's half-brother, Richard J. Wallace, was awarded \$1.25 million for pain and suffering arising out of his IIED claim. By contrast, Stephen's full-blooded brother, Douglas Spencer, was awarded \$2.5 million. Richard J. Wallace did not come into this damages award as a result of descent, devise or a gift of one of his ancestors. Therefore, this disparity in awards is impermissible under Oklahoma law. Richard J. Wallace is entitled to the same amount as Douglas Spencer, his half-brother, and therefore should be awarded \$2.5 million.

#### Hilton and Arlington Ferguson

Under Florida law, "[w]hen property descends to the collateral kindred of the intestate and part of the collateral kindred are of the whole blood to the intestate and the other part of the half blood, those of the half blood shall inherit only half as much as those of the whole blood . . . . " Fla. Stat. Ann. § 732.105 (2007). Half blood siblings may recover a whole amount only "if all [remaining siblings] are of the half blood . . . . " Fla. Stat. Ann. § 732.105 (2007).

In this case, Hilton and Arlington Ferguson are half-brothers to serviceman Rodney J.

Williams. Therefore, each may recover only half as much as Mr. Williams' full blood siblings, if
there are any. If there are no full blood siblings, then Hilton and Arlington may recover whole
amounts, each. Here, Mr. Williams is survived by two full blood siblings: Rhonda and Ronald
Williams. Accordingly, though Hilton and Arlington Ferguson are entitled to recover for pain

and suffering under an IIED claim for the loss of their half-brother, they may only recover half the amount of damages as will be awarded to Rhonda and Ronald Williams. Therefore, Hilton and Arlington Ferguson may recover \$1.25 million each because Rhonda and Ronald Williams are each entitled to recover \$2.5 million for pain and suffering damages associated with the untimely loss of their brother.

#### c. Damien Briscoe and Kia Briscoe Jones

Under Maryland law, half-blood siblings are given the same status as full blood siblings of the same degree. Md. Code Ann., Estates & Trusts § 1-204 (2007). The special master charged with determining the appropriate amount of pain and suffering damages for relatives of serviceman Davin M. Green, however, recommended that Mr. Green's half-siblings Damien Briscoe and Kia Briscoe Jones be awarded \$1.25 million for their pain and suffering associated with Mr. Green's death, while at the same time awarding Mr. Green's full blood siblings \$2.5 million for pain and suffering.

This Court finds that this recommended disparity in award does not conform to the requirement that full blood and half blood siblings of the same degree be treated equally under the law. Accordingly, this Court finds that under Maryland law, Mr. Green's half-siblings are entitled to the same amount of recovery as their full blood sibling counterparts. This Court has typically found \$2.5 million to be an appropriate level of pain and suffering damages under an IIED claim arising out of a terrorist attack. Accordingly, this Court adopts the special master's damages recommendation of \$2.5 million for Mr. Green's full blood siblings, and finds that Mr. Green's half-siblings-Damien Briscoe and Kia Briscoe Jones-are also entitled to \$2.5 million in pain and suffering damages in connection with their IIED claim against the defendants.

#### d. Darren Keown

Darren Keown is the half-brother of deceased serviceman Thomas Keown. Darren was domiciled in Tennessee at the time of the attack. It has long been recognized under Tennessee law that full and half-blood siblings may share equally in inheritance and intestate distribution. Kyle v. Moore, 35 Tenn. 183 (3 Sneed) (Tenn. 1855). The special master charged with determining the appropriate amount of pain and suffering damages for relatives of Thomas Keown recommended awarding Darren \$4 million for pain and suffering, which was similar to the recommended award for Thomas' full-blooded brothers, Adam, Bobby Jr., and William, which was also \$4 million. In light of the fact that full-blooded siblings in this case shall be awarded \$2.5 million, however, the award for Adam, Bobby Jr., and William must be reduced to \$2.5 million. Darren's award must be similarly lowered. Accordingly, this Court finds that the pain and suffering award for Darren Keown is \$2.5 million.

# e. Kenty Maitland & Alex Griffin

Kenty Maitland is the half-brother of Samuel Maitland, Jr. Alex Griffin is Samuel Maitland Jr.'s legally adopted brother. Both were domiciled in New York at the time of the attack. Under New York law, both half-blood siblings and adopted siblings are treated as equals to full-blooded siblings for purposes of inheritance and recovery. See N.Y. Est. Powers & Trusts § 4-1.1(b) (2007); N.Y. Dom. Rel. § 117 (2007). Accordingly both Kenty Maitland and Alex Griffin are entitled to recover in the same manner as Samuel's actual full-blooded siblings. The special master recommended that Kenty and Alex receive \$1 million, each, for pain and suffering damages. Samuel's full-blood sister, Shirla Maitland, is entitled to recover \$2.5 million in pain and suffering arising from her IIED claim against the defendants. Accordingly, this Court finds

that both Kenty Maitland and Alex Griffin are entitled to recover \$2.5 million, each, in pain and suffering damages arising out of their respective IIED claims in this case.

#### f. Florene Martine Carter

Florene Martin Carter is the half-sister of deceased serviceman Charlie Robert Martin.

Florene was domiciled in North Carolina at the time of the attack. Under North Carolina law, half-blood siblings may inherit and recover in the same manner as full-blood siblings. *Peel v. Corey*, 144 S.E. 559, 562 (N.C. 1928); *Univ. of North Carolina v. Markham*, 93 S.E. 845, 846 (N.C. 1917). Accordingly, Florene Martin Carter is entitled to recover in the same manner as Charlie's full-blooded siblings would have recovered. The special master recommended that Florene receive \$1.25 million in pain and suffering damages. Charlie Robert Martin does not have full-blooded siblings. Still, siblings of deceased servicemen in this action are entitled to \$2.5 million in pain and suffering damages arising out of their IIED claims against the defendants. Accordingly, the Court finds that Florene Martin Carter is entitled to \$2.5 million in pain and suffering damages arising out of her IIED claim in this action.

Linda Martin Johnson, Corene Martin Jones, John Martin,
Gussie Martin Williams, Mary Ellen Thompson

Linda Martin Johnson, Corene Martin Jones, John Martin, Gussie Martin Williams, and Mary Ellen Thompson are also half-siblings of deceased serviceman Charlie Robert Martin.

Each was domiciled in Georgia at the time of the attack. Under Georgia law, half-blood siblings inherit equally with whole-blood siblings. *Bacon v. Smith*, 474 S.E.2d 728, 731-32 (Ga. Ct. App. 1996). Accordingly, Linda Martin Johnson, Corene Martin Jones, John Martin, Gussie Martin Williams, and Mary Ellen Thompson are entitled to recover in the same manner as Charlie's full-

blooded siblings would have recovered. The special master recommended that Linda, Corene, John, Gussie, and Mary Ellen each receive \$1.25 million in pain and suffering damages. Charlie Robert Martin does not have full-blooded siblings. Still, siblings of deceased servicemen in this action are entitled to \$2.5 million in pain and suffering damages arising out of their IIED claims against the defendants. Accordingly, the Court finds that Linda Martin Johnson, Corene Martin Jones, John Martin, Gussie Martin Williams, and Mary Ellen Thompson are entitled to \$2.5 million in pain and suffering damages, each, arising out of their respective IIED claims in this action.

## h. Sybil Caeser

Under Florida law, "[w]hen property descends to the collateral kindred of the intestate and part of the collateral kindred are of the whole blood to the intestate and the other part of the half blood, those of the half blood shall inherit only half as much as those of the whole blood . . . . " Fla. Stat. Ann. § 732.105 (2007). Half blood siblings may recover a whole amount only "if all [remaining siblings] are of the half blood . . . . " Fla. Stat. Ann. § 732.105 (2007).

Here, Sybil Caeser is the half-sister of deceased serviceman Johnnie Caesar. Johnnie, however, has full-blooded siblings who have also survived him. Therefore, Sybil Caesar is entitled to one-half of what Johnnie's full-blooded siblings received. The full-blood siblings of Johnnie Caeser received \$2.5 million. Therefore, this Court finds that Sybil Caeser is entitled to \$1.25 million in pain and suffering damages arising out of her IIED claim in this action.

#### C. Punitive Damages

Punitive damages, however, are not available against foreign states such as the Islamic Republic of Iran. Haim v. Islamic Republic of Iran, 425 F.Supp.2d 56, 71 (D.D.C. Mar. 24,

2006) (Lamberth, J.). Therefore, plaintiffs' claim for punitive damages against the Islamic Republic of Iran is DENIED. Moreover, this Court has previously found on a number of occasions that punitive damages are not available against MOIS because MOIS is a governmental entity, and part of the state of Iran itself. *Heiser*, 466 F. Supp. 2d at 270-71; *Greenbaum v. Islamic Republic of Iran*, 451 F. Supp. 2d 90, 105 & n.1 (D.D.C. Aug. 10, 2006) (Lamberth, J.) (citing *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 232-33 (D.C. Cir. 2003); *Haim*, 425 F. Supp. 2d at 71 n.2. Accordingly, plaintiffs' claim for punitive damages against defendant MOIS is also DENIED.

#### CONCLUSION

This Court is sadly aware that there is little it can do to heal the physical wounds and emotional scars suffered by the servicemen in this case and their family members. Though the attack on the Marine barracks in Beirut, Lebanon occurred nearly twenty four years ago from this date, it is clear from the testimony presented to this Court and the special masters that the intense suffering experienced on that day has had a tragically lasting effect on the plaintiffs who have brought this action. The fact that almost 1000 individuals sought redress in this action confirms the sheer number of individuals whose lives were forever altered as a result of this senseless attack on these courageous servicemen.

Indeed, at a time like this and an era such as ours, it is important to acknowledge the selfless courage that these—and all—servicemen demonstrated by choosing to take action and make this world a safer and better place in which to live. The fact that the servicemen in this action made the ultimate sacrifice to pursue such a noble cause only serves to further establish the legacy of these courageous individuals in the annals of history.

Not to be forgotten is the courage demonstrated by the family members who have come forth in bringing this claim. These individuals, whose hearts and souls were forever broken on October 23, 1983, have waited patiently for nearly a quarter of a century for justice to be done, and to be made whole again. And though this Court can neither bring back the husbands, sons, fathers and brothers who were lost in this heinous display of violence, nor undo the tragic events of that day, the law offers a meager attempt to make the surviving family members whole, through seeking monetary damages against those who perpetrated this heinous attack. The Court hopes that this extremely sizeable judgment will serve to aid in the healing process for these plaintiffs, and simultaneously sound an alarm to the defendants that their unlawful attacks on our citizens will not be tolerated.

A separate Order and Judgment consistent with these findings shall issue this date.

SO ORDERED.

Signed by Royce C. Lamberth, United States District Judge, September 7, 2007.

# ANNEX 78

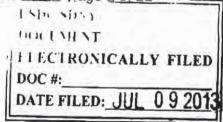
# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT NEW YORK

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), et al.,

Plaintiffs,

ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI a/k/a CENTRAL BANK OF IRAN; BANCA UBAE SpA; CITIBANK, N.A., and CLEARSTREAM BANKING, S.A.,

Defendants.



10 Civ. 4518 (KBF)

ORDER ENTERING PARTIAL FINAL JUDGMENT PURSUANT TO FED. R. CIV. P. 54(b), DIRECTING TURNOVER OF THE BLOCKED ASSETS, DISMISSAL OF CITIBANK WITH PREJUDICE AND DISCHARGING CITIBANK FROM LIABILITY

# The Miscellaneous Proceeding

WHEREAS, the plaintiffs in the action captioned *Peterson*, et al. v. Islamic Republic of Iran, et al., Civil Action Nos. 01-cv-2094 and 2684 (D.D.C.) (the "Peterson Judgment Creditors") obtained a default judgment for damages pursuant to 28 U.S.C. § 1605(a)(7) against the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS");

WHEREAS, on or about June 13, June 17, and June 24, 2008, the Peterson Judgment Creditors served a writ of execution, a restraining notice and an amended restraining notice on Citibank, N.A. ("Citibank") with respect to 22 debt securities and related cash held by Citibank in an omnibus account for its customer Clearstream Banking, S.A. ("Clearstream") in which Iran was alleged to have an interest (the "Miscellaneous Proceeding");

WHEREAS, the aforementioned debt instruments and securities have varying maturity dates all of which have now matured and been converted to cash;

WHEREAS, on or about June 16, June 23 and October 27, 2008, the Peterson Judgment Creditors served writs and amended writs of execution and restraining and amended restraining notices on Clearstream in New York with respect to the same assets;

WHEREAS, upon consideration of the Order to Show Cause submitted by Citibank with supporting documentation, and following a hearing on June 27, 2008, the Court issued an Order vacating the restraints corresponding to securities ISIN US298785DM51 and ISIN US465410BK38 and upheld the restraints with respect to the remaining assets (the "Restrained Assets");

WHEREAS, the restraints, writs of execution and levies upon Citibank and Clearstream were extended by Court Order through the date of commencement of this action;

# The Turnover and Interpleader Proceedings

WHEREAS, on or about June 8, 2010, the Peterson Judgment Creditors commenced this action seeking turnover of the Restrained Assets (the "Turnover Proceeding"). On or about October 20, 2010, the Peterson Judgment Creditors filed an Amended Complaint naming as defendants Iran, Bank Markazi a/k/a Central Bank of Iran ("Bank Markazi"), Banca UBAE SpA ("UBAE"), Citibank and Clearstream. The Peterson Judgment Creditors filed a Second Amended Complaint on or about December 7, 2011;

WHEREAS, on or about June 27, 2011, the Court consolidated the Miscellaneous Proceeding and the Turnover Proceeding, and authorized Citibank to file and serve third-party interpleader petitions (the "Interpleader Petitions") on all those persons or entities who had served Citibank or Clearstream with writs of execution, lis pendens or other process indicating that they may have an interest in the Restrained Assets. Citibank filed the interpleader action (the "Interpleader Action" which, together with the Miscellaneous Proceeding and the Turnover Proceeding constitute the "Consolidated Proceedings") to provide notice to potential claimants who were not parties to the proceeding, to provide notice to potential claimants to funds targeted for turnover by plaintiffs, and to obtain a discharge from liability in interpleader. On or about May 24, 2012, the Court authorized Citibank to file and serve additional third-party interpleader petitions on additional third-parties similarly situated;

WHEREAS, Citibank is a stakeholder without interest in the ultimate outcome of this dispute and its interest is in resolution of ownership of the funds at issue herein so that it may, when so ordered, ensure that they are appropriately disbursed;

WHEREAS, by Order dated November 28, 2011 the Interpleader Petitions were consolidated with the Turnover Proceeding;

WHEREAS, the judgment creditors and third-party respondents named in the Interpleader Petitions include the following plaintiffs in the following actions: (1) the Peterson Judgment Creditors; (2) Acosta, et al. v. Islamic Republic of Iran, et al., 06-cv-00745 (D.D.C.); (3) Greenbaum v. Islamic Republic of Iran, et al., 02-cv-02148-RCL (D.D.C.); (4) Estate of Michael Heiser v. Islamic Republic of Iran et al., 00-02329 and 00-cv-2104 (D.D.C.) (the "Heiser Judgment Creditors"); (5) Jeremy and Dr. Lucille Levin v. The Islamic Republic of Iran, et al., Civil Action No. 05-cv-2494 (D.D.C.); (6) Valore v. The Islamic Republic of Iran, et al., Civil Action No. 08-cv-1273 (D.D.C.); (7) Beer, et al. v. Islamic Republic of Iran, et al., Civil Action Nos. 06-cv-473 and 08-cv-1807 (D.D.C.); (8) Kirschenbaum, et al. v. Islamic Republic of Iran, et al., Civil Action Nos. 03-cv-1708 and 08-cv-1814 (D.D.C.); (9) Murphy, et al. v. Islamic Republic of Iran, et al., Civil Action No. 06-cv-596 (D.D.C.) (the "Murphy Judgment Creditors"); (10) Rubin v. Islamic Republic of Iran, et al., Civil Action No. 01-cv-1655 (D.D.C.); (11) Estate of Anthony K. Brown v. Islamic Republic of Iran, et al., Civil Action No. 08-cv-531 (D.D.C.); (12) Estate of Stephen B. Bland v. Islamic Republic of Iran, et al., Civil Action No. 05cv-2124 (D.D.C.); (13) )Bonk, et al. v. Islamic Republic of Iran, et al., Civil Action No. 08-cv-1273 (D.D.C.); (14) Arnold, et al. v. Islamic Republic of Iran, et al., Civil Action 06-cv-516 (D.D.C.); (15) Estate of James Silvia, et al. v. Islamic Republic of Iran, et al., Civil Action No. 06-cv-750 (D.D.C.) (the foregoing judgment creditors numbered (1) through (15) are collectively referred to herein as "Plaintiffs"); (16) Mwila, et al. v. Islamic Republic of Iran, et al., Civil Action No. 08-cv-1377 (D.D.C.) (the "Mwila Action"); (17) Owens, et al., v. Republic of Sudan, et al., Civil Action No. 01-cv-2244 (D.D.C.) (the "Owens Action"); and (18) Khaliq, et al. v. Republic of Sudan, et al., Civil Action No. 08-cv-1273 (D.D.C.) (the "Khaliq Action");

WHEREAS, on or about January 13, 2013, judgment creditors of Iran who were plaintiffs in the case captioned *Shahintaj Bakhtiar v. Islamic Republic of Iran*, Civil Action No. 02-cv-92 (D.D.C.) moved this Court to intervene in this proceeding and assert a claim to the Blocked Assets. The Bakhtiar Plaintiffs withdrew the motion, and the writ of execution served on Citibank, on January 25, 2013;

WHEREAS, Iran and MOIS were served with the Summons and Complaint and with the Amended and Second Amended Complaint, and Iran with the Interpleader Petition (both in English and Farsi), and that said service constitutes good and sufficient service pursuant to 28 U.S.C. §1608, but they have not appeared and default was entered against them by this Court;

WHEREAS, on or about February 5, 2012, the President of the United States issued Executive Order 13599, declaring "[a]ll property and interests in property of" Iran or Bank Markazi held in the United States or by a "United States person" "blocked" pursuant to the President's authority under the International Emergency Economic Powers Act. In compliance therewith, Citibank designated the Restrained Assets as "blocked" (hereinafter the "Blocked Assets"), reported the blocking to the United States Treasury Department's Office of Foreign Assets Control ("OFAC") as required by applicable OFAC regulations, and has held the funds in a blocked account in accordance with OFAC regulations;

#### The Motions and the Court's Decision

WHEREAS, on or about December 22, 2011, Clearstream moved to vacate the writs of execution and restraining orders with respect to the Restrained Assets (the "Motion to Vacate Restraints");

WHEREAS, on or about March 15, 2012, Bank Markazi moved to dismiss the Second Amended Complaint;

WHEREAS, on or about April 2, 2012, a Motion for Partial Summary Judgment with respect to the Blocked Assets was filed by and/or on behalf of the Plaintiffs, which sought to enforce turnover of the Blocked Assets pursuant to § 201 of the Terrorism Risk Insurance Act ("TRIA"), codified as a note to 28 U.S.C. §1610;

WHEREAS, on or about August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "2012 Act"), 22 U.S.C. §8701, et seq., §8772 of which refers explicitly to the Blocked Assets and makes them subject to turnover to the Plaintiffs subject to Court determination of certain issues enumerated therein;

WHEREAS, Plaintiffs supplemented their motion for summary judgment based on the grounds set forth in 22 U.S.C. §8772;

WHEREAS, on or about December 10, 2012 and December 14, 2012, Clearstream moved to dismiss the turnover claims alleged in the Second Amended Complaint and certain cross-claims by incorporating by reference its Motion to Vacate Restraints, and its prior briefing concerning the supposed lack of personal jurisdiction over it;

WHEREAS, on or about December 21, 2012, UBAE moved to dismiss the Second Amended Complaint based upon the supposed lack of personal jurisdiction over it;

WHEREAS, on or about February 25, 2013, judgment creditors of Iran who were plaintiffs in the case captioned Wultz v. Islamic Republic of Iran, Civil Action No. 08-cv-1460 (D.D.C.) moved this Court to intervene in this proceeding and assert a claim to the Blocked Assets, which motion was opposed by Plaintiffs. On May 10, 2013, the Court granted the motion shortly after Plaintiffs and the Wultz plaintiffs had reached a resolution regarding the Wultz plaintiffs' interest in the Restrained Assets;

WHEREAS, on February 28, 2013, the Court issued an Opinion and Order (the "Turnover Order"), denying in their entirety the Motions to Dismiss filed by Clearstream, UBAE and Bank Markazi, and Clearstream's Motion to Vacate Restraints, and granting Plaintiffs' Motion for Partial Summary Judgment in favor of turnover and the Bland judgment creditors' motion for execution;

WHEREAS, Clearstream and UBAE moved for reconsideration of the Turnover Order, which motion was denied by order dated May 20, 2013 (the "Reconsideration Order");

WHEREAS the findings and conclusions of the Turnover Order and the Reconsideration Order, are incorporated in this Partial Judgment by reference and with respect to which this Partial Judgment constitutes the final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure for purposes of an appeal;

WHEREAS, counsel for the plaintiffs in the Owens Action, the Khaliq Action and the Mwila Action filed declarations dated June 26, 2013, informing the Court that none of the plaintiffs in those actions have obtained judgments for damages against Iran and thus have no claim to the Blocked Assets, and consenting to entry of an order vacating the Turnover Order to the extent that it granted partial summary judgment in favor of the plaintiffs in the Owens Action, the Khaliq Action and the Mwila Action and to entry of a final order to the same extent as provided in this Partial Judgment releasing and discharging Citibank and Clearstream from any obligations to the plaintiffs in those actions pursuant to C.P.L.R. §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure as applicable, from any and all liability and obligations or other liabilities of any nature, which relate to the Blocked Assets, to the full extent that any such order also discharges and releases Citibank's obligations and liabilities as to all other parties to this action, and as further provided therein;

WHEREAS, the Plaintiffs have agreed among themselves to settle their competing claims with respect to the Blocked Assets;

WHEREAS, the Court has found that only Bank Markazi has a beneficial interest in the Blocked Assets;

WHEREAS, UBAE has represented to the Court that it claims no legally cognizable interest in or to the Blocked Assets;

WHEREAS, the Court has found that Citibank and Clearstream are neutral stakeholders of the Blocked Assets;

WHEREAS, by Order of this Court dated July 9, 2013, a trust was created for the benefit of the Plaintiffs (the "QSF") for the purpose of, *inter alia*, receiving the turnover of the Blocked Assets; holding the Blocked Assets in accordance with the terms of that Order pending appeal of this Partial Judgment Pursuant to Fed. R. Civ. P. 54(b) (the "Partial Judgment") and the Turnover Order; and distributing the Blocked Assets to the individual Plaintiffs;

WHEREAS, the Restrained and/or Blocked Assets have been maintained at Citibank in segregated and/or blocked accounts;

WHEREAS, Citibank, having commenced third-party proceedings in the nature of interpleader, as described above, pursuant to Rule 22 of the Federal Rules of Civil Procedure and other applicable provisions of law, and having brought before the Court in these proceedings all potential claimants to the Blocked Assets as in accordance with, and pursuant to the Court's June 27, 2011 and May 24, 2012 Orders so that they could assert their claims to the Blocked Assets, is entitled to an order discharging it from any and all liability with respect to any and all claims made by any party with regard to the Blocked Assets, as more fully described below;

WHEREAS, 22 U.S.C. § 8772(a)(2) provides that the Court's determination thereunder to turn over the Blocked Assets to judgment creditors like the Plaintiffs is in furtherance of the broader goals of the 2012 Act, which, as expressed in 22 U.S.C. § 8711, are to sanction Iran in order to compel Iran to abandon efforts to acquire a nuclear weapons capability and other threatening activities by imposing all available sanctions against Iran, including those imposed by the 2012 Act, in a complete, timely, and vigorous manner;

WHEREAS, the vast majority of the more than one thousand individual Plaintiffs suffered serious injuries at the hands of Iran in connection with the terrorist bombing of the U.S. Marine barracks in Beirut, Lebanon on October 23, 1983, and the balance of the Plaintiffs suffered serious injuries a number of years ago in connection with various terrorist attacks sponsored by Iran;

WHEREAS, the issues presented by the remaining claims asserted by only some of the Plaintiffs are based upon fraudulent conveyance and tort theories alleged against defendants Clearstream, Markazi and UBAE only and are related to Markazi's 2008 sales of debt securities with a face amount of \$250 million, and the facts and law relevant to those claims differ from the legal and factual issues presented by Plaintiffs' claims for turnover of the Blocked Assets, as decided by the Court in connection with the Turnover Order; and

WHEREAS, by email dated May 16, 2013 the Office of the Chief Counsel (Foreign Assets Control) of the U.S. Department of the Treasury advised counsel for Citibank and the Peterson Judgment Creditors that OFAC will issue a license (the "License") authorizing the transfer of the Blocked Assets pursuant to 31 C.F.R. 501 on receipt of an order from the Court directing Citibank to turnover the Blocked Assets in accordance with this Order (see ECF No. 404);

For the foregoing reasons, and those set forth in the Turnover Order and the Reconsideration Order,

# NOW, THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- This Court has jurisdiction over the subject matter of this action and the res. This
  Court has personal jurisdiction over Citibank, Clearstream, and Bank Markazi. This Court has
  not made a final determination as to personal jurisdiction over UBAE with respect to the
  remaining claims asserted by some of the Plaintiffs against UBAE.
  - Plaintiffs are awarded judgment for turnover of the Blocked Assets.
- 3. OFAC shall issue the License within fourteen (14) business days after entry of this Order, and such License shall include a License to the Trustee of the QSF and UBS Wealth Management (Americas) Inc. to transfer the Blocked Assets to the Registry of the Court as may be required under paragraph 7 of this Order. Citibank shall, within fourteen (14) business days of the issuance by OFAC of the License, deposit the Blocked Assets, plus all accrued interest thereon to date, minus any reasonable fees calculated thereon (the amount of which remains subject to Court approval), which as of June 4, 2013 constituted \$1,895,600,513.03, in an account opened in the name of the QSF at UBS Wealth Management (Americas) Inc. (the "QSF Account") in accordance with, and under the terms of, the Order approving the formation of the QSF dated July 9, 2013.

- 4. Until either of the events in paragraphs 5 or 7 of this Order have occurred, the funds shall be held in the QSF Account and shall not be distributed therefrom to any party other than to pay to Citibank such reasonable attorneys' fees as shall be awarded by the Court in accordance with paragraph 17 hereof, to pay fees on the QSF Account, taxes on earnings from the QSF Account, and any fees and expenses payable to the trustee of the QSF as may be approved by further order of the Court.
- 5. Within thirty days after this Partial Judgment becomes a "Non-Appealable Sustained Judgment" (as defined below), the Plaintiffs shall apply to the Court for an order authorizing the distribution of the funds in the QSF Account in accordance with the terms of the Plaintiffs' agreement concerning the distribution of those funds.
- 6. This Partial Judgment shall be considered a Non-Appealable Sustained Judgment when the time to file an appeal from the Partial Judgment has expired or, if any appeal is filed and not dismissed, after the Partial Judgment is upheld in all material respects on appeal or after review by writ of certiorari and is no longer subject to review upon appeal or review by writ of certiorari.
- 7. If this Partial Judgment does not become a Non-Appealable Sustained Judgment because the Partial Judgment is not upheld in all material respects on appeal or after review by writ of certiorari, the Blocked Assets will be transferred to the Registry of the Court upon application for, and receipt of the License from OFAC, and shall not, in any event, be transferred to Citibank.
- 8. The Court intends that the deposit by Citibank of the Blocked Assets plus interest and minus fees calculated thereon, into the QSF Account in accordance with paragraph 3 hereof, shall constitute a turnover to the Plaintiffs. Nevertheless, to the extent that an appellate court deems the effect of this Partial Judgment or the Turnover Order stayed pending appeal, the Court

hereby extends the priority established in favor of the Plaintiffs upon the filing of this Partial Judgment under New York C.P.L.R. §5234(c) until sixty (60) days after the later of (a) the date this Partial Judgment becomes a Non-Appealable Sustained Judgment, or (b) the filing of an order of the Court directing turnover of the Blocked Assets or any part thereof that is issued on remand from any appeal of this Partial Judgment.

- 9. Upon deposit by Citibank of the Blocked Assets, plus all accrued interest thereon to date, and minus any reasonable fees calculated thereon, into the QSF Account in accordance with paragraph 3 hereof, Citibank shall be fully discharged pursuant to C.P.L.R. §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure as applicable, and released from any and all liability and obligations or other liabilities of any nature, to any person or entity including but not limited to defendant Iran, any agency and instrumentality of Iran, Bank Markazi, Clearstream and UBAE, the Plaintiffs, and any other person or entity, which relate to the Blocked Assets, to the full extent of such amounts so held and deposited in the QSF Account in compliance with this Partial Judgment.
- 10. Upon deposit by Citibank of the Blocked Assets, plus all accrued interest thereon to date, and minus any reasonable fees calculated thereon, into the QSF Account in accordance with paragraph 3 hereof, Defendants Iran, Bank Markazi, Clearstream and UBAE, the Plaintiffs and all other persons and entities, shall be permanently restrained and enjoined from instituting or prosecuting any claim, or pursuing any actions against Citibank in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the Blocked Assets to the full extent of such amounts so held and turned over to the QSF Account in compliance with paragraph 3 of this Order.
- 11. Once Citibank deposits the Blocked Assets, plus all accrued interest thereon, and minus any reasonable fees payable thereon, into the QSF Account in accordance with paragraph

3 hereof, Citibank's obligations shall be deemed discharged with respect to the Blocked Assets only under all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind, whether served on, or delivered to Citibank, to the extent that they apply, purport to apply or attach only to the Blocked Assets (Citibank's obligations shall continue with respect to such writs of execution, notices of pending action, restraining notices and other judgment creditor process with respect to any assets other than the Blocked Assets as provided by applicable law); provided, however, that such writs of execution, notices of pending action, restraining notices or other creditor process served on behalf of any of the Plaintiffs shall continue as a lien on assets of Markazi, MOIS, and/or Iran or any of its agencies and instrumentalities, as provided by applicable law.

- 12. Upon the issuance of an order authorizing the distribution of the funds in the QSF Account in accordance with paragraph 5 hereof, and provided that Clearstream does not interfere with the implementation and execution of such order in any way (including but not limited to motions or appeals directed at such order), Clearstream shall be fully discharged pursuant to C.P.L.R. §§5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedures as applicable, and released from any and all liability and obligations or other liabilities of any nature, to any person or entity, including but not limited to defendant Iran, any agency or instrumentality of Iran, Bank Markazi, UBAE, the Plaintiffs, and any other person or entity, which relate to the Blocked Assets, to the full extent of such amounts deposited by Citibank in the QSF Account in compliance with this Partial Judgment.
- 13. Upon the issuance of an order authorizing the distribution of the funds in the QSF Account in accordance with paragraph 5 hereof, and provided Clearstream does not interfere with the implementation and execution of such order in any way (including but not limited to motions or appeals directed at such order), Defendants Iran, Bank Markazi and UBAE, the

Plaintiffs and all other persons and entities shall be permanently restrained and enjoined from instituting or prosecuting any claim or pursuing any actions against Clearstream in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the Blocked Assets to the full extent of those funds that are being deposited by Citibank in compliance with this Partial Judgment.

- Appealable Sustained Judgment and the issuance of a payment to the Heiser Judgment Creditors in accordance with paragraph 5 hereof, the Heiser Judgment Creditors shall file a stipulation of voluntary partial dismissal with prejudice with respect to Citibank and the Blocked Assets only in the form attached to this Partial Judgment as Exhibit A in the following actions Estate of Michael Heiser, et al. v. Clearstream Banking, S.A., Case No. 11 Civ. 1597 (S.D.N.Y.), Estate of Michael Heiser, et al. v. Citibank, N.A., Case No. 11-cv-1698 (RPB) (S.D.N.Y.) and Estate of Michael Heiser, et al. v. JPMorgan Chase Bank, N.A., et al., Case No. 11-cv-2570 (LBS) (S.D.N.Y.).
- 15. Within fourteen (14) business days after Citibank deposits the Blocked Assets, plus all interest accrued thereon, and minus any reasonable fees payable thereon, into the QSF Account in accordance with paragraph 3 hereof, the Murphy Judgment Creditors shall file a stipulation of voluntary dismissal with prejudice with respect to the remaining claims asserted in their pleadings against Citibank that have not been adjudicated by this Partial Judgment, in the form attached to this Partial Judgment as Exhibit B.
- 16. Citibank shall be entitled to apply for its reasonable costs and attorneys' fees in connection with these proceedings and the parties reserve their right to object to such application. Notwithstanding Fed. R. Civ. P. 54(d)(2)(B), Citibank shall be entitled to submit its

motion or application for attorney's fees and costs at any time until fourteen (14) days after this

Partial Judgment and the Turnover Order shall be considered a Non-Appealable Sustained

Judgment.

- 17. Upon the later of: (a) fourteen (14) business days from the date on which the Court approves any award in respect of Citibank's reasonable costs and attorneys' fees; or (b) fourteen business days after this Partial Judgment becomes a Non-Appealable Sustained Judgment, the QSF shall pay Citibank any amount of attorneys' fees and costs awarded by the Court from the QSF Account. The payment of those fees and expenses from the QSF Account shall not prejudice the right of any party to pursue an appeal of any decision reached by the Court with respect to the payment of Citibank's fees and expenses.
- 18. This Partial Judgment, which incorporates the Turnover Order and the Reconsideration Order, constitutes a final judgment within the meaning of Federal Rule of Civil Procedure 54(b), and there is no just reason for delay of the entry of judgment as provided herein.
- 19. The Turnover Order is hereby vacated only to the extent that it granted partial summary judgment in favor of the plaintiffs in the Owens Action, the Khaliq Action and the Mwila Action.
- 20. Among other reasons, the Court concludes that entry of a final judgment pursuant to Rule 54(b) is appropriate because: (a) the factual and legal issues raised by the remainder of the claims that Plaintiffs have alleged are substantially different from the factual and legal issues presented by the claims under TRIA and 22 U.S.C. § 8772 adjudicated in connection with the Turnover Order regarding Plaintiffs' motion for partial summary judgment; (b) the Plaintiffs in this action are victims of terrorism who have been waiting for some compensation for their losses for many years, and most Plaintiffs are victims of the 1983 attack on the Marine Barracks

in Beirut, Lebanon; (c) the Court credits the representations of Plaintiffs' counsel that many of the Plaintiffs are elderly and many others have passed away since the terrorist attacks that underlie this matter, and further delay in payment to the Plaintiffs will result in many victims of the relevant terrorist attacks receiving no compensation at all for their losses; (d) the Court credits the representations of Plaintiffs' counsel that many of the Plaintiffs face difficult financial circumstances and have a significant need for the funds owed to them in connection with this action; (e) several groups of creditor plaintiffs are not asserting any claims that remain to be adjudicated in this matter, so this Partial Judgment resolves all matters relevant to those Plaintiffs; and (f) the goal of Congress to compel Iran to abandon efforts to acquire a nuclear weapons capability and other threatening activities by timely and vigorous imposition of sanctions on Iran under the 2012 Act is furthered by the finality of any determination by this Court to turn over the Blocked Assets to the Plaintiffs in accordance with 28 U.S.C. § 8772.

21. Upon deposit by Citibank of the Blocked Assets, plus all interest accrued thereon, and minus any reasonable fees into the QSF Account in accordance with paragraph 3 hereof, Citibank shall be deemed to have satisfied all duties and responsibilities of an interpleader Stakeholder in these Consolidated Proceedings. Citibank shall have no continuing or further obligations with respect to those assets, and all claims, counterclaims and cross-claims that were or could have been asserted against Citibank in this action by any party herein relating to the Blocked Assets (to the full extent of such amounts so held and turned over to the QSF Account in compliance with Paragraph 3 of this Order) shall be dismissed with prejudice. There being no additional claims asserted against Citibank in this action, upon deposit of the Blocked Assets, plus interest and minus reasonable fees payable thereon, into the QSF Account in accordance with Paragraph 3 hereof, it shall be dismissed as a party from this action; provided however, that if, notwithstanding paragraph 7 of this Order, the Blocked Assets are returned to Citibank

pending proceedings on remand after any appeal of this Partial Judgment, Citibank may again be joined in this action by order of the court and the dismissal, discharge and release contained in this Partial Judgment shall be deemed null and void.

22. This Court shall retain jurisdiction over this matter to adjudicate the remaining claims asserted by the Plaintiffs against Clearstream, Markazi and UBAE, and all funds deposited into the QSF Account shall remain subject to the Court's jurisdiction until they are distributed in accordance with the terms of this Partial Judgment.

SO ORDERED.

Dated: New York, New York July 9, 2013

> KATHERINE B. FORREST United States District Judge

#### **EXHIBIT A**

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT NEW YORK

THE ESTATE OF MICHAEL HEISER, deceased, et al.,

٧.

11-CV-1598

Petitioners,

[RE: Islamic Republic of Iran, Iranian Ministry of Information and Security, and the Iranian Islamic Revolutionary Guard Corps., Judgment Debtors]

CITIBANK, N.A.,

Respondent.

## STIPULATION OF VOLUNTARY PARTIAL DISMISSAL WITH PREJUDICE OF CLAIMS AND RIGHTS TO CERTAIN FUNDS HELD BY CITIBANK, N.A.

Petitioners the Estate of Michael Heiser, et al. (collectively, the "Petitioners") and Citibank, N.A. ("Citibank"), by their undersigned attorneys, hereby submit this stipulation and state as follows:

. WHEREAS, on or about December 10, 2010, the Petitioners served writs of execution issued by this Court (collectively, the "Writs") on the United States Marshal for the Southern District of New York (the "U.S. Marshal"); [add others]

WHEREAS, on January 3, 2011, the U.S. Marshal levied the Writs upon Citibank; and WHEREAS, the Petitioners instituted this action by filing a Petition for Turnover Order Pursuant to Fed. R. Civ. P. 69 and N.Y. C.P.L.R. §§ 5225 & 5227 (this "Civil Action"); and

WHEREAS, on May \_\_\_, 2013, in the matter styled Peterson et al. v. Islamic Republic of Iran, et al., Civ. No 10 Civ 4518 (KBF), the United States District Court for the Southern District of New York entered a turnover order and discharge (the "Peterson Judgment") with respect to certain assets (the "Blocked Assets");

WHEREAS, the Blocked Assets have been paid to the Petitioners pursuant to the terms of the Peterson Judgment and the order of the Court dated [ ];

WHEREAS, the Petitioners and Citibank have resolved all pending claims in this matter with respect to the Blocked Assets pursuant to the terms of this stipulation;

NOW, THEREFORE, the Petitioners and Citibank hereby stipulate as follows:

Pursuant to Federal Rule of Civil Procedure 41(a), the Petitioners and
Citibank, by their undersigned counsel, hereby stipulate and agree that the Civil
Action shall be dismissed with prejudice with respect to Citibank and the Blocked
Assets only. This Civil Action shall not be dismissed with respect to any other assets
subject to this proceeding.

#### STIPULATED AND AGREED TO:

Dated: New York, New York May \_\_, 2013

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Attorneys for the Petitioners

Dated: New York, New York May , 2013

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sharonschneier@dwt.com chrisrobinson@dwt.com Attorneys for Citibank, N.A.

#### EXHIBIT B

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT NEW YORK

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), et al.

10 Civ 4518 (KBF)

ISLAMIC REPUBLIC OF IRAN, et. al.

Defendants.

Plaintiffs.

CITIBANK, N.A.

Third-Party Petitioner,

V

ANNA BEER, HARRY BEER, ESTATE OF ALAN BEER, ESTELLE CARROL, PHYLLIS MAISEL, JASON KIRSCHENBAUM, ISABELLE KIRSCHENBAUM, ESTATE OF MARTIN KIRSCHENBAUM, DANIELLE TEITLEBAUM, DAVID KIRSCHENBAUM, JOSHUA KIRSCHENBAUM, LOLITA M. ARNOLD, ESTATE OF MOSES ARNOLD JR., NEALE SCOTT BOLEN, SHELDON H. BOLEN, BETTY J. BOLEN, KEITH EDWIN BOLEN, SHARLA M. KORZ, LISA ANN BECK, ELIZABETH MURPHY, ARMANDO YBARRA, ESTATE OF TERRANCE RICH, JOHN L'HEUREUX, KERRY L'HEUREUX, JANE L'HEUREUX, MARY WELLS, and BRYAN HARRIS,

Third-Party Respondents.

ELIZABETH MURPHY, ARMANDO YBARRA, ESTATE OF TERRANCE RICH, JOHN L'HEUREUX, KERRY L'HEUREUX, JANE L'HEUREUX, MARY WELLS, and BRYAN HARRIS,

Counterclaim Claimants/Plaintiffs,

V.

CITIBANK, N.A.

Counterclaim Respondent/Defendant.

ELIZABETH MURPHY, ARMANDO YBARRA, ESTATE OF TERRANCE RICH, JOHN L'HEUREUX, KERRY L'HEUREUX, JANE L'HEUREUX, MARY WELLS, and BRYAN HARRIS,

Cross-claimants,

V.

ISLAMIC REPUBLIC OF IRAN; BANK MARKAZI (Central Bank of Iran); BANCA UBAE, S.p.A., CLEARSTREAM BANKING, S.A.

Cross-claim Defendants.

#### STIPULATION OF DISMISSAL WITH PREJUDICE OF CITIBANK, N.A.

WHEREAS, Citibank, N.A. served Elizabeth Murphy, Armando Ybarra, Estate of Terrance Rich, John L'Heureux, Kerry L'Heureux, Jane L'Heureux, Mary Wells, and Bryan Harris (hereinafter "Murphy Judgment Creditors") with a Supplemental Third Party Petition Alleging Claims in the Nature of Interpleader in the above action on or about May 29, 2012, in response to which the Murphy Judgment Creditors served their Answer, Counterclaims and Cross-claims on or about June 19, 2012 (the "Counterclaim");

WHEREAS, on May \_\_\_, 2013, in the above captioned matter, the United States District Court for the Southern District of New York entered a turnover order and discharge (the "Peterson Judgment") with respect to certain assets (the "Blocked Assets") in favor of all judgment creditors of the Islamic Republic of Iran who are parties to this consolidated action ("Plaintiffs");

WHEREAS, the Blocked Assets have been deposited in a Qualified Settlement Fund in accordance with the Peterson Judgment and the order of the Court dated [\_\_\_\_];

WHEREAS, the Plaintiffs and Citibank have resolved all pending claims in this matter with respect to the Blocked Assets pursuant to the terms of this stipulation;

NOW, THEREFORE, the Petitioners and Citibank hereby stipulate as follows:

 Pursuant to Federal Rule of Civil Procedure 41(a), the Plaintiffs and Citibank, by their undersigned counsel, hereby stipulate and agree that the remaining claims asserted in their Counterclaims against Citibank that have not been adjudicated by the Peterson Judgment shall be dismissed with prejudice with respect to Citibank only, and that the above-referenced action shall be dismissed with prejudice against Citibank.

#### STIPULATED AND AGREED TO:

Dated: New York, New York May \_\_, 2013

> John W. Karr KARR & ALLISON, P.C. 1250 Connecticut Ave., N.W., Suite 200 Washington, DC 20036 Tel. (202) 331-7600 Fax. (202) 618-6211 E-mail jwkarr@msn.com

Pro hac vice Attorneys for the Murphy Judgment Creditors

Dated: New York, New York May \_\_\_, 2013

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Attorneys for Citibank, N.A.

# ANNEX 79

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT NEW YORK

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), et al.,

Plaintiffs,

v

ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI a/k/a CENTRAL BANK OF IRAN; BANCA UBAE SpA; CITIBANK, N.A., and CLEARSTREAM BANKING, S.A.,

Defendants.

10 Civ 4518 (KBF)

ORDER AUTHORIZING DISTRIBUTION OF FUNDS

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED JUN 0 6 2016

WHEREAS, the Court entered a partial final judgment in this matter pursuant to Fed. R. Civ. P. 54(b) on July 9, 2013, awarding turnover of the sum of \$1,895,600,513.03 plus interest ("Blocked Assets") by Citibank, N.A. to certain judgment creditors holding judgments against the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS"), who are identified as the "Plaintiffs" in said partial final judgment (the "Turnover Judgment") (Dkt. No. 462);

WHEREAS, the Court entered an Order on July 9, 2013, by which it created a trust for the benefit of the Plaintiffs (the "QSF") for the purpose of, *inter alia*, receiving the turnover of the Blocked Assets; holding the Blocked Assets in accordance with the terms of that Order pending appeal of the Turnover Judgment; and distributing the Blocked Assets to the individual Plaintiffs in accordance with the terms of Plaintiffs' agreement concerning the distribution of those funds, as set forth in a written agreement executed by counsel for the Plaintiffs dated as of June 1, 2012 entitled "Litigation Cooperation and Settlement Agreement" (hereinafter, "Cooperation Agreement") and in written agreements between the Plaintiffs and other judgment creditors of Iran (the "QSF Order") (Dkt. No. 460);

WHEREAS, the QSF is governed by the Agreement for the Peterson §468B Fund Pursuant to 26 U.S.C. §468B, executed by the trustee of the QSF, Hon. Stanley Sporkin (the "Trustee"), and filed with the Court on July 9, 2013 (the "QSF Agreement") (Dkt. No. 461);

WHEREAS, the QSF Order mistakenly defined the "Plaintiffs" for whose benefit the QSF was created to include groups of plaintiffs in the following underlying actions identified in the Turnover Judgment who were excluded from the award of turnover of the Blocked Assets for reasons stated therein: Mwila, et al. v. Islamic Republic of Iran, et al., Civil Action No. 08-cv-1377 (D.D.C.) (the "Mwila Action"); Owens, et al., v. Republic of Sudan, et al., Civil Action No. 01-cv-2244 (D.D.C.) (the "Owens Action"); and Khaliq, et al. v. Republic of Sudan, et al., Civil Action No. 08-cv-1273 (D.D.C.) (the "Khaliq Action");

WHEREAS, Citibank turned over the Blocked Assets to the QSF in the amount of \$1,895,672,127.31 on August 8, 2013;

WHEREAS, the Turnover Judgment directed the Office of the Chief Counsel (Foreign Assets Control) of the U.S. Department of the Treasury ("OFAC") to issue a license authorizing the transfers of the Blocked Assets as set forth in the Turnover Judgment, and OFAC issued such a license bearing license number 1A-2013-303215-1 on July 24, 2013, which authorizes the Trustee to engage in all transactions necessary to administer the QSF;

WHEREAS, the Turnover Judgment directs Plaintiffs to apply to the Court for an order authorizing the distribution of the funds held by the QSF in accordance with the terms of the Plaintiffs' agreements concerning the distribution of those funds within thirty days after the Turnover Judgment becomes a "Non-Appealable Sustained Judgment" (as defined therein);

WHEREAS, the Turnover Judgment became a Non-Appealable Sustained Judgment as defined in the Turnover Judgment by virtue of Defendants Clearstream Banking S.A. and Banca UBAE SpA having appealed the Turnover Judgment to the United States Court of Appeal for the Second Circuit and said appeals having been withdrawn by Orders of said court dated December 4, 2013 and December 3, 2013, respectively, Bank Markazi having appealed the Turnover Judgment to the United States Court of Appeals for the Second Circuit, the affirmance thereof by

judgment of the United States Court of Appeals for the Second Circuit dated July 9, 2014, the Order of the United States Court of Appeals for the Second Circuit denying Bank Markazi's petition for rehearing, or in the alternative for rehearing *en banc* dated September 29, 2014, Bank Markazi having petitioned the Supreme Court of the United States for a writ of certiorari, and the Supreme Court of the United States having issued an Order dated October 1, 2015, granting Bank Markazi's petition for a writ of certiorari, the Supreme Court of the United States having heard argument on January 13, 2016 and having issued an opinion and judgment on April 20, 2016 affirming the Judgment of the United States Court of Appeals for the Second Circuit dated July 9, 2014, the United States Court of Appeals for the Second Circuit having issued its mandate on May 24, 2016 and this Court having received the mandate on May 24, 2016 (Dkt. No. 616), the time to file an appeal from the Turnover Judgment having expired and no other party having appealed therefrom, and the Turnover Judgment being no longer subject to review upon appeal or review by writ of certiorari;

NOW, ON MOTION OF THE PLAINTIFFS, IT IS HEREBY ORDERED that the QSF Order is hereby modified by deleting from the definition of "Plaintiffs" the plaintiffs in the Mwila Action, the Owens Action and the Khaliq Action.

AND IT IS FURTHER ORDERED that, effective immediately upon execution of this Order, the Trustee of the QSF is hereby authorized to commence distribution of the assets held by the QSF in accordance with the terms of the Cooperation Agreement and in written agreements between the Plaintiffs and other judgment creditors of Iran. The Trustee of the QSF shall distribute the assets of the Fund, reserving a reasonable amount for expenses and contingencies, by making payments to the Plaintiffs and other judgment creditors of Iran that have written agreements with any of the Plaintiffs to share in the distribution of the Fund, and their respective attorneys in accordance with paragraph 3.1.3 of the QSF (Dkt. No. 461), and no further order from the Court shall be required to make such distributions. The Trustee is authorized to engage such service providers as he reasonably deems necessary to carry out his duties under the QSF Agreement and to pay such service providers' agreed reasonable fees and

expenses from the assets of the Fund without further order from the Court. The Court's prior Orders dated October 1, 2013 (Dkt. No. 500) and December 16, 2013 (Dkt. No. 538) are hereby superseded to the extent that they prevent the Trustee from paying service providers reasonable and necessary fees and expenses incurred in connection with the performance of the Trustee's duties. Nothing herein shall be construct as terminating the QSF Trust, nor this Court's continuing jurisdiction over the Fund, pursuant to Treasury Regulation Section 1.468B-I (c)(1) and the QSF Order.

The Clerk of the Court is directed to terminate this case upon entry of this Order.

SO ORDERED:

Dated: New York, New York

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