INTERNATIONAL COURT OF JUSTICE

CERTAIN IRANIAN ASSETS

(ISLAMIC REPUBLIC OF IRAN v. UNITED STATES OF AMERICA)

REJOINDER

SUBMITTED BY

THE UNITED STATES OF AMERICA

May 17, 2021

ANNEXES

VOLUME V

Annexes 359 through 369

ANNEX 359

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW YORK MARINE AND GENERAL INSURANCE COMPANY, et al.

Plaintiff,

-V-

AL-Qaida, et al.

Defendants..

CERTIFICATE OF MAILING

03 MD 1570

04cv 6105(RCC)

I, J. Michael McMahon, Clerk of Court for the Souther District of New York, do hereby certify that on the

March 18, 2005

I served the

SUMMONS & COMPLAINT
NOTICE OF SUIT, CERTIFICATE OF AUTHENTICITY FROM TRANSLATOR
AND $650 CHECK PAYABLE TO THE U.S. EMBASSY-TAERON

pursuant to the foreign sovereign immunities Act {28 U.S. C. §1608(a)(4)},filed and issued herein on the

December 23, 2004

by mailing by registered mail, return receipt requested, at the United States Post Office, Chinatown Station, New York, NY, a copy of each thereof, securely enclosed in a post-paid wrapper addressed to:

See attached for listing of Defendants

That annexed to the original hereof is registered mail receipt(s)

7002 2410 0002 6964 2595

(Chinatown Station) that was issued at my request as aforementioned.

J. Michael McMahon
CLERK

Dated: New York, NY

BROWN GAVALAS & FROMM LLP

United States District Court
March 15, 2005
Page 3

Thank you for your assistance. If you have any questions or require any additional documents, please do not hesitate to contact us..

Very truly yours,

BROWN GAVALAS & FROMM LLP

nk J. Rubino, Jr.

7002 2410 0002 6964 2595

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

WASHINGTON, DC 20520

Postage	$ 5.30	UNIT ID: 0006
Certified Fee	2.30	Postmark Here
Return Receipt Fee (Endorsement Required)	1.75	
Restricted Delivery Fee (Endorsement Required)		Clerk: KSJ4JF
Total Postage & Fees	$ 9.35	03/18/05

Sent To
Edward A. Bentancourt Consular Director of Special ...
Street, Apt. No.; or PO Box No. 2100 Pennsylvania Ave. 4.E. SA-29
City, State, ZIP+4
Washington, DC 20520

PS Form 3800, June 2002 — See Reverse for Instructions

Annex 359

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER 15, 2012, I served: ISLAMIC REPUBLIC OF IRAN AT MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, KHOMEINI STREET TEHRAN, IRAN

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)

by DHL 99 6863 4045, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____

by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Jeanine Viera-Santiago
Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o Islamic Republic of Iran,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

1. Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516
2. Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314
3. Memorandum and Order entered by the Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316
4. Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012, and docketed on October 16, 2012)Case No. 1:03-cv-09848-GBD, Document 317
5. Affidavit from the translator for each Defendant
6. A Cover letter, translated into Farsi, which requests that the Minister of Foreign Affairs accept one package of legal documents for himself, on behalf of the Islamic Republic of Iran, and serve the remaining 15 packages on the other Defendants in the Havlish action.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.

EXPRESS WORLDWIDE
DHL Online

XPD

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin:
ABE

To: Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day Time:

Ref-Code: Havlish Service

Date: 2012-10-29

Shpt Weight: 0.5 lb

Piece: 1/1

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6863 4045

(2L)IR+32000064

(J)JD01 2036 4765 5001 0532

DHL EXPRESS

DHL

1-800-CALL-DHL

Annex 359

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served:
IRANIAN MINISTRY OF INFORMATION AND SECURITY AT MINISTER OF FOREIGN AFFAIRS OF THE IALAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____
by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)
by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____
by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____
by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o Iranian Ministry of Information and Security,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

1. Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516
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5. Affidavit from the translator for each Defendant
6. A Cover letter, translated into Farsi, which requests that the Minister of Foreign Affairs accept one package of legal documents for himself, on behalf of the Islamic Republic of Iran, and serve the remaining 15 packages on the other Defendants in the Havlish action.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.

EXPRESS WORLDWIDE
DHL Online

XPD

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin:
ABE

To: Ministry of Information and Sec.
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day | Time:

Ref-Code: Havlish Service

Date: 2012-10-29

Shpt Weight: **0.5 lb**

Piece: **1/1**

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6988 6183

(2L)IR+32000064

(J)JD01 2036 4769 7000 4668

DHL EXPRESS

DHL EXPRESS

1-800-CALL DHL

1-800-225-5345

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served: ALI AKBAR HASHEMI RAFSANJANIAT MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)

by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____

by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Jeanine Viera-Santiago
Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o Ali Akbar Hashemi Rafsanjani,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

1. Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516
2. Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314
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5. Affidavit from the translator for each Defendant
6. A Cover letter, translated into Farsi, which requests that the Minister of Foreign Affairs accept one package of legal documents for himself, on behalf of the Islamic Republic of Iran, and serve the remaining 15 packages on the other Defendants in the Havlish action.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.

SERVICE ALERT

EXPRESS WORLDWIDE
DHL Online

XPD

DHL EXPRESS

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin:
ABE

To: Ali Akbar Hashemi Rafsanjani
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day Time:

Ref-Code: Havlish Service

Date: 2012-10-29

Shpt Weight: **0.5 lb**

Piece: **1/1**

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6987 9360

(2L)IR+32000064

(J)JD01 2036 4769 7000 3802

DHL EXPRESS

DHL

1-800-CALL DHL

1-800-225-5345

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served: ISLAMIC REVOLUNTIONARY GUARD CORPS AT MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAMKHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)

by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____

by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o Islamic Revolutionary Guard Corps,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

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2. Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314
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6. A Cover letter, translated into Farsi, which requests that the Minister of Foreign Affairs accept one package of legal documents for himself, on behalf of the Islamic Republic of Iran, and serve the remaining 15 packages on the other Defendants in the Havlish action.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.

SERVICE ALERT

EXPRESS WORLDWIDE DHL Online	XPD	DHL Express

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin: ABE

To: Islamic Revolutionary Guard Corps
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day | Time:

Ref-Code: Havlish Service | Date: 2012-10-29 | Shpt Weight: **0.5 lb** | Piece: **1/1**

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6989 1341

(2L)IR+32000064

(J)JD01 2036 4769 7000 5293

DHL EXPRESS

DHL

1-800-CALL DHL

1-800-225-5345

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

-v-

BIN LADEN, ET AL.

Defendant(s)

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served:
HEZBOLLAH, AN UNINCORPORATED ASSOCIATION, MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)

by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

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☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Janine Vera-Santiago
Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o Hezbollah, an unincorporated association,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

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Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.

EXPRESS WORLDWIDE
DHL Online

XPD

DHL EXPRESS

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin:
ABE

To: Hezbollah
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day Time:

Ref-Code: Havlish Service

Date: 2012-10-29

Shpt Weight: **0.5 lb**

Piece: **1/1**

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6989 6786

(2L)IR+32000064

(J)JD01 2036 4769 7000 5915

DHL EXPRESS

1-800-225-534

Annex 359

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served: IRANIAN MINISTRY OF PETROLEUM AT MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)

by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____

by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Janine Vera-Santiago

Print Name: JEANINE VERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o Iranian Ministry of Petroleum,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

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Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.

EXPRESS WORLDWIDE
DHL Online

XPD

DHL EXPRESS

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin:
ABE

To: Iranian Ministry of Petroleum
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day Time:

Ref-Code: Havlish Service

Date: 2012-10-29

Shpt Weight: 0.5 lb

Piece: 1/1

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6990 6785

(2L)IR+32000064

(J)JD01 2036 4769 7000 7129

DHL EXPRESS

DOC #10000416 (6/

DHL EXPRESS

1-800-CALL DH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

-v-

BIN LADEN, ET AL.

Defendant(s)

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served:
NATIONAL IRANIAN TANKER CORPORATION AT MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____
by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)
by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____
by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____
by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o National Iranian Tanker Corporation,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

1. Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516
2. Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314
3. Memorandum and Order entered by the Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316
4. Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012, and docketed on October 16, 2012)Case No. 1:03-cv-09848-GBD, Document 317
5. Affidavit from the translator for each Defendant
6. A Cover letter, translated into Farsi, which requests that the Minister of Foreign Affairs accept one package of legal documents for himself, on behalf of the Islamic Republic of Iran, and serve the remaining 15 packages on the other Defendants in the Havlish action.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.

SERVICE ALERT

EXPRESS WORLDWIDE
DHL Online

XPD

DHL EXPRESS

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin:
ABE

To: National Iranian Tanker Corporation
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day | Time:

Ref-Code: Havlish Service | Date: 2012-10-29 | Shpt Weight: **0.5 lb** | Piece: **1/1**

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6991 5303

(2L)IR+32000064

(J)JD01 2036 4769 7000 8171

DHL EXPRESS

DOC #10000416 (6/05) PN

1-800-CALL DHL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served: NATIONAL IRANIAN OIL CORPORATION AT MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)

by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____

by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Janine Viera-Santiago
Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o National Iranian Oil Corporation,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

1. Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516
2. Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314
3. Memorandum and Order entered by the Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316
4. Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012, and docketed on October 16, 2012)Case No. 1:03-cv-09848-GBD, Document 317
5. Affidavit from the translator for each Defendant
6. A Cover letter, translated into Farsi, which requests that the Minister of Foreign Affairs accept one package of legal documents for himself, on behalf of the Islamic Republic of Iran, and serve the remaining 15 packages on the other Defendants in the Havlish action.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.

DHL 1-800-CALL DHL

EXPRESS WORLDWIDE
DHL Online

XPD

DHL EXPRESS

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin:
ABE

To: National Iranian Oil Corporation
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day Time:

Ref-Code: Havlish Service

Date: 2012-10-29

Shpt Weight: **0.5 lb**

Piece: **1/1**

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6992 3622

(2L)IR+32000064

(J)JD01 2036 4769 7000 9203

DHL EXPRESS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served:
IRAN AIRLINES AT MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____
by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)
by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____
by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____
by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o National Iranian Airlines,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

1. Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516
2. Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314
3. Memorandum and Order entered by the Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316
4. Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012, and docketed on October 16, 2012)Case No. 1:03-cv-09848-GBD, Document 317
5. Affidavit from the translator for each Defendant
6. A Cover letter, translated into Farsi, which requests that the Minister of Foreign Affairs accept one package of legal documents for himself, on behalf of the Islamic Republic of Iran, and serve the remaining 15 packages on the other Defendants in the Havlish action.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.

EXPRESS WORLDWIDE DHL Online	XPD	DHL EXPRESS

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin: ABE

To: Iran Airlines
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day | Time:

Ref-Code: Havlish Service | Date: 2012-10-29 | Shpt Weight: 0.5 lb | Piece: 1/1

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6993 4461

(2L)IR+32000064

(J)JD01 2036 4769 7001 0597

DHL EXPRESS

DOC #1000416 16/05/PM

DHL 1-800-CALL DHL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served:
NATIONAL IRANIAN PETROCHEMICAL COMPANY AT MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____
by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)
by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____
by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____
by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Janine Vieira-Santiago
Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o National Iranian Petrochemical Company,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

1. Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516
2. Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314
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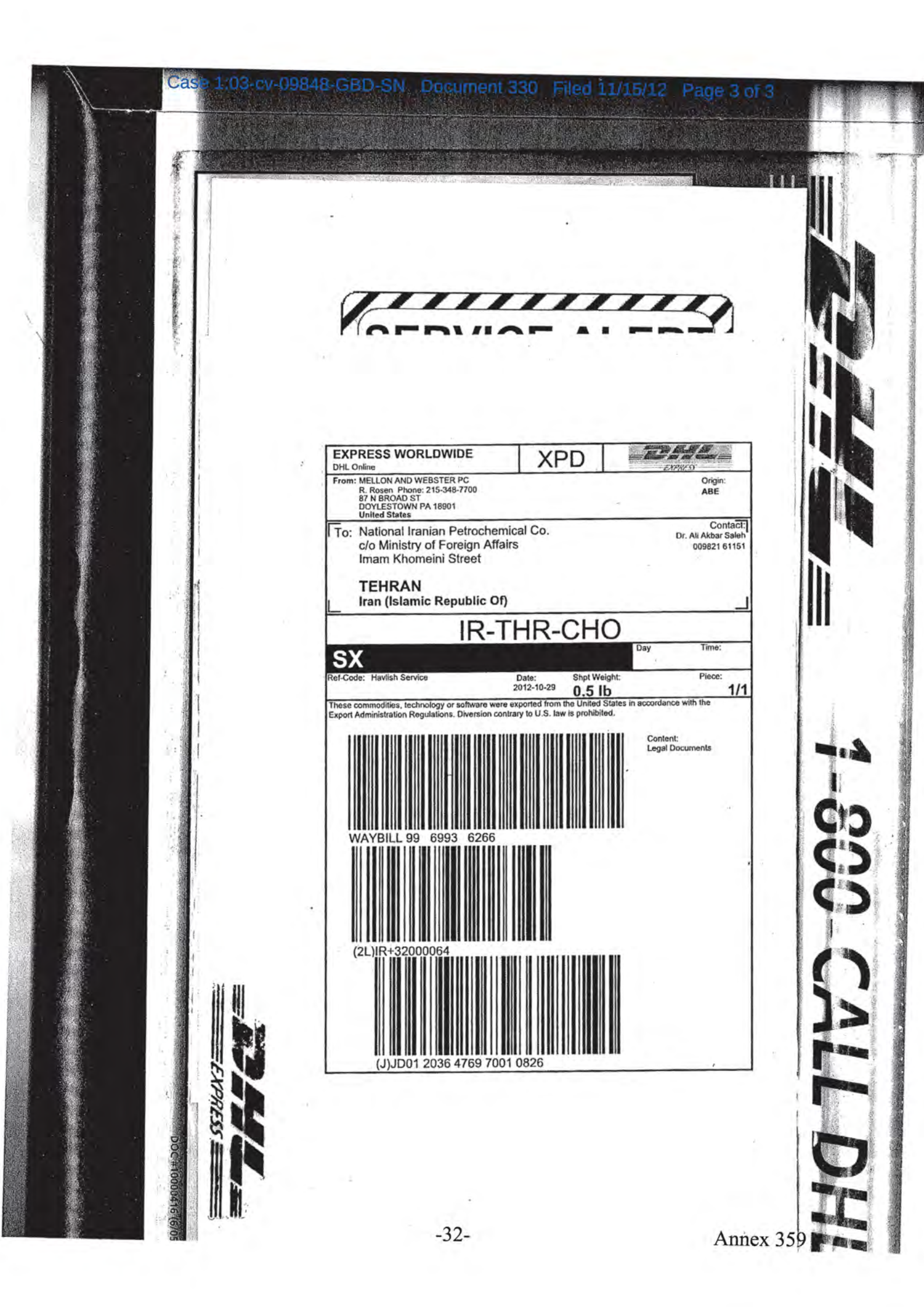
5. Affidavit from the translator for each Defendant
6. A Cover letter, translated into Farsi, which requests that the Minister of Foreign Affairs accept one package of legal documents for himself, on behalf of the Islamic Republic of Iran, and serve the remaining 15 packages on the other Defendants in the Havlish action.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.


SERVICE ALERT
EXPRESS WORLDWIDE
DHL Online
XPD
DHL EXPRESS
From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States
Origin:
ABE
To: National Iranian Petrochemical Co.
c/o Ministry of Foreign Affairs
Imam Khomeini Street
TEHRAN
Iran (Islamic Republic Of)
Contact:
Dr. Ali Akbar Saleh
009821 61151
IR-THR-CHO
SX
Day
Time:
Ref-Code: Havlish Service
Date:
2012-10-29
Shpt Weight:
0.5 lb
Piece:
1/1
These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.
Content:
Legal Documents
WAYBILL 99 6993 6266
(2L)IR+32000064
(J)JD01 2036 4769 7001 0826
DHL EXPRESS
DOC#1000041616/05
DHL EXPRESS
1-800 CALL DHL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served:
IRANIAN MINISTRY OF ECONOMIC AFFAIRS AND FINANCE AT MINISTEROF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____
by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)
by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____
by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____
by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Janine Viera-Santiago
Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o Iranian Ministry of
Economic Affairs and Finance,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

1. Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516
2. Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314
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6. A Cover letter, translated into Farsi, which requests that the Minister of Foreign Affairs accept one package of legal documents for himself, on behalf of the Islamic Republic of Iran, and serve the remaining 15 packages on the other Defendants in the Havlish action.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

EXPRESS WORLDWIDE
DHL Online

XPD

DHL EXPRESS

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin:
ABE

To: Ministry of Econ. Affairs & Fin.
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day | Time:

Ref-Code: Havlish Service | Date: 2012-10-29 | Shpt Weight: **0.5 lb** | Piece: **1/1**

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6993 8963

(2L)IR+32000064

(J)JD01 2036 4769 7001 1133

DHL EXPRESS

DOC #1000416 (6/0

DHL 1-800-CALL DHL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served:
IRANIAN MINISTRY OF COMMERCE AT MINISTEROF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____
by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)
by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____
by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____
by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Jeanine Vera Santiago
Print Name: JEANINE VERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o Iranian Ministry of Commerce,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

1. Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516
2. Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314
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Respectfully yours,

Ruby J. Krajick
Clerk of the Court

Enc.

SERVICE ALERT

EXPRESS WORLDWIDE
DHL Online

XPD

DHL EXPRESS

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin:
ABE

To: Iranian Ministry of Commerce
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day Time:

Ref-Code: Havlish Service

Date: 2012-10-29

Shpt Weight: **0.5 lb**

Piece: **1/1**

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

Content:
Legal Documents

WAYBILL 99 6994 4062

(2L)IR+32000064

(J)JD01 2036 4769 7001 1755

DHL EXPRESS

DOC #1000015 (6/

DHL 1-800-CALL-DHL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served:
IRANIAN MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS AT MINISTER OF FOREIGN AFFAIR
OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____
_____
_____
by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)
_____
_____
by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____
_____
_____
by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____
_____
_____
by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o Iranian Ministry of
Defense and Armed Forces Logistics,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(3), one copy of the following documents are being served on you on behalf of the Plaintiff in the above-referenced action which names your country and/or a government office as a defendant:

1. Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516
2. Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314
3. Memorandum and Order entered by the Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316
4. Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012, and docketed on October 16, 2012)Case No. 1:03-cv-09848-GBD, Document 317
5. Affidavit from the translator for each Defendant
6. A Cover letter, translated into Farsi, which requests that the Minister of Foreign Affairs accept one package of legal documents for himself, on behalf of the Islamic Republic of Iran, and serve the remaining 15 packages on the other Defendants in the Havlish action.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

SERVICE ALERT

EXPRESS WORLDWIDE DHL Online	XPD	DHL EXPRESS

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin:
ABE

To: Iranian Ministry of Defense
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX Day Time:

Ref-Code: Havlish Service	Date: 2012-10-29	Shpt Weight: 0.5 lb	Piece: 1/1

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

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Legal Documents

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(J)JD01 2036 4769 7001 1928

1-800-CALL DHL

DOC #1000416 (6/05) PN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)
03CV09848

-v-

BIN LADEN, ET AL.

Defendant(s)

I hereby certify under the penalties of perjury that on 15th day of NOVEMBER, 2012, I served:
THE CENTRAL BANK OF THE ISLAMIC REPUBLIC OF IRAN AT MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN, IMAM KHOMEINI STREET, TEHRAN, IRAN

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☒ One copy of the (PLEASE SEE ATTACHED LETTER)

by DHL 99 6987 9360, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☐ Two copies of the _____

by _____, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
NOVEMBER 15, 2012

RUBY J. KRAJICK
CLERK OF COURT

Janine Viera-Santiago
Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

November 15, 2012

H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs
i/c/o The Central Bank of
the Islamic Republic of Iran,
Imam Khomeini Street
Tehran, Iran

Re: Havlish, et al. v. Bin Laden,
03 MDL 1570 (GBD) - 03CV9848

Dear Sir:

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Clerk of the Court

SERVICE ALERT

EXPRESS WORLDWIDE DHL Online	XPD	DHL EXPRESS

From: MELLON AND WEBSTER PC
R. Rosen Phone: 215-348-7700
87 N BROAD ST
DOYLESTOWN PA 18901
United States

Origin: ABE

To: Central Bank of Iran (Markazi)
c/o Ministry of Foreign Affairs
Imam Khomeini Street

TEHRAN
Iran (Islamic Republic Of)

Contact:
Dr. Ali Akbar Saleh
009821 61151

IR-THR-CHO

SX

Day | Time:

Ref-Code: Havlish Service | Date: 2012-10-29 | Shpt Weight: 0.5 lb | Piece: 1/1

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Content:
Legal Documents

WAYBILL 99 6994 8306

(2L)IR+32000064

(J)JD01 2036 4769 7001 2275

DHL EXPRESS

DOC #10000416 (6/05) PN

DHL 1-800-CALL DHL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served: ISLAMIC REPUBLIC OF IRAN VIA H.E. DR. ALI AKBAR SALEHI, MINISTER OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6672, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM Document 2516,

Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314,

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Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317.

2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

Enclosed please find a copy of a letter received from the Law Firm of Mellon & Webster, A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2, Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516, Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314, Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316, and Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317. Additionally, 2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) Also enclosed is a money order in the amount of $2,275.00. Please transmit the documents pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(4). I am hereby requesting service upon:

Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendants:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

7. Iranian Ministry of Petroleum

8. National Iranian Tanker Corporation

9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

ess

FedEx Express **NEW** Package **US Airbill**

FedEx Tracking Number 8000 4543 6672

0200 **Sender's Copy**

1 From *Please print and press hard.*

Date 1/14/13 Sender's FedEx Account Number 1200-7354-0 (SENDER'S FEDEX ACCOUNT NUMBER ONLY)

Sender's Name Ruby J. Krajick, Clerk of Courts Phone (212) 805-6735

Company U.S. District Court, Southern District of N.Y.

Address 500 Pearl St., Room 120 Dept./Floor/Suite/Room

City New York State NY ZIP 10007

2 Your Internal Billing Reference First 24 characters will appear on invoice. OPTIONAL

3 To

Recipient's Name Attn: Director of Consular Services Phone 202) 647-4000

Office Company of Policy Review + Inter-Agency Liaison (CA/OCS/PRI)

Address U.S. Dept of State, SA-29 Dept./Floor/Suite/Room
We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address 2201 Street NW, 4th Floor
Use this line for the HOLD location address or for continuation of your shipping address.

City Washington State DC ZIP 20520

*Islamic Republic of Iran

HOLD Weekday FedEx location address REQUIRED. NOT available for FedEx First Overnight.

HOLD Saturday FedEx location address REQUIRED. Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

4 Express Package Service * To most locations.

NOTE: Service order has changed. Please select carefully.

Packages up to 150 lbs. *For packages over 150 lbs., use the new FedEx Express Freight US Airbill.*

Next Business Day

- ☐ FedEx First Overnight — Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☒ FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.

2 or 3 Business Days

- ☐ NEW FedEx 2Day A.M. — Second business morning.* Saturday Delivery NOT available.
- ☐ FedEx 2Day — Second business afternoon.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

5 Packaging * Declared value limit $500.

☐ FedEx Envelope* ☒ FedEx Pak* ☐ FedEx Box ☐ FedEx Tube ☐ Other

6 Special Handling and Delivery Signature Options

☐ SATURDAY Delivery — NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

☐ No Signature Required — Package may be left without obtaining a signature for delivery.

☒ Direct Signature — Someone at recipient's address may sign for delivery. *Fee applies.*

☐ Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. *Fee applies.*

Does this shipment contain dangerous goods? One box must be checked.

☒ No ☐ Yes As per attached Shipper's Declaration. ☐ Yes Shipper's Declaration not required. ☐ Dry Ice Dry ice, 9, UN 1845 ____ x ____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box. ☐ Cargo Aircraft Only

7 Payment *Bill to:* Enter FedEx Acct. No. or Credit Card No. below.

☒ Sender Acct. No. in Section 1 will be billed. ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

FedEx Acct. No. / Credit Card No. 1200-7354-0 Exp. Date

Total Packages	Total Weight	Total Declared Value†
1	____ lbs.	$ ____ .00

†Our liability is limited to $100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

612

Rev. Date 11/10 • Part #163136 • ©1994–2010 FedEx • PRINTED IN U.S.A. SRY

The FedEx US Airbill has changed. See Section 4.
For shipments over 150 lbs., order the new FedEx Express Freight US Airbill.

fedex.com 1.800.GoFedEx 1.800.463.3339

Press Here Press Here Press Here Press Here

RETAIN THIS COPY FOR YOUR RECORDS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served: AYATOLLAH ALI KHAMENENI , SUPREME LEADER OF IRAN

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6661, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM Document 2516,

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2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

Enclosed please find a copy of a letter received from the Law Firm of Mellon & Webster, A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2, Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516, Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314, Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316, and Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317. Additionally, 2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) Also enclosed is a money order in the amount of $2,275.00. Please transmit the documents pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(4). I am hereby requesting service upon:

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On behalf of the following defendants:

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Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

7. Iranian Ministry of Petroleum

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9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served:
AKBAR HASHEMI RAFSANJANI, CHAIRMAN, EXPEDIENCY DISCERNMENT COUNCIL

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

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Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

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OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
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On behalf of the following defendants:

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Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

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10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

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Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served: IRANIAN MINISTRY OF INFORMATION AND SECURITY

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6639, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM Document 2516,

Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314,

Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316,

Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317.

2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

Enclosed please find a copy of a letter received from the Law Firm of Mellon & Webster, A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2, Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516, Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314, Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316, and Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317. Additionally, 2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) Also enclosed is a money order in the amount of $2,275.00. Please transmit the documents pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(4). I am hereby requesting service upon:

Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendants:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

7. Iranian Ministry of Petroleum

8. National Iranian Tanker Corporation

9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served: ISLAMIC REVOLUNTIONARY GUARD CORP.

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6628, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM Document 2516,

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Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317.

2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

Enclosed please find a copy of a letter received from the Law Firm of Mellon & Webster, A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2, Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516, Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314, Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316, and Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317. Additionally, 2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) Also enclosed is a money order in the amount of $2,275.00. Please transmit the documents pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(4). I am hereby requesting service upon:

Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendants:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

7. Iranian Ministry of Petroleum

8. National Iranian Tanker Corporation

9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served: HEZBOLLAH, AN UNINCORPORATED ASSOCIATION

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6606, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Janine Viera-Santiago

Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM Document 2516,

Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314,

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Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317.

2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

Enclosed please find a copy of a letter received from the Law Firm of Mellon & Webster, A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2, Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516, Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314, Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316, and Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317. Additionally, 2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) Also enclosed is a money order in the amount of $2,275.00. Please transmit the documents pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(4). I am hereby requesting service upon:

Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendants:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

7. Iranian Ministry of Petroleum

8. National Iranian Tanker Corporation

9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served:
IRANIAN MINISTRY OF PETROLEUM

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6508, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Jeanine Viera-Santiago
Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM Document 2516,

Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314,

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2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

Enclosed please find a copy of a letter received from the Law Firm of Mellon & Webster, A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2, Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516, Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314, Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316, and Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317. Additionally, 2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) Also enclosed is a money order in the amount of $2,275.00. Please transmit the documents pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(4). I am hereby requesting service upon:

Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendants:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

7. Iranian Ministry of Petroleum

8. National Iranian Tanker Corporation

9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served: NATIONAL IRANIAN TANKER CORPORATION

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6569, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

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2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

Enclosed please find a copy of a letter received from the Law Firm of Mellon & Webster, A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2, Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516, Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314, Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316, and Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317. Additionally, 2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) Also enclosed is a money order in the amount of $2,275.00. Please transmit the documents pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(4). I am hereby requesting service upon:

Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendants:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

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8. National Iranian Tanker Corporation

9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served: NATIONAL IRANIAN OIL CORPORATION

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6570, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

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Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

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2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

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Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendants:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

7. Iranian Ministry of Petroleum

8. National Iranian Tanker Corporation

9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served: NATIONAL IRANIAN GAS COMPANY

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6650, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Jeanine Viera-Santiago
Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM Document 2516,

Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314,

Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316,

Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317.

2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

Express US Airbill Tracking Number 8000 4543 6650

Form 0200 Sender's Copy

1 From *Please print and press hard.*

Date 1/14/13 Sender's FedEx Account Number 1200-7364-0 ENTER FEDEX ACCT. NUMBER ONLY

Sender's Name Ruby J. Krajick, Clerk of Courts 212-805-6735

Company U.S. District Court, Southern District of New York

Address 500 Pearl St., Room 120 Dept./Floor/Suite/Room

City New York State NY ZIP 10007

2 Your Internal Billing Reference First 24 characters will appear on invoice. OPTIONAL

3 To

Recipient's Name Attn: Director of Consular Services Phone 202-647-4000

Company Office of Policy Review & Inter-Agency Liaison (CA/OCS/PRI)

Address U.S. Dept. of State, SA-29 Dept./Floor/Suite/Room
We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address 2201 Street NW, 4th Floor
Use this line for the HOLD location address or for continuation of your shipping address.

City Washington State DC ZIP 20520

HOLD Weekday FedEx location address REQUIRED. NOT available for FedEx First Overnight.

HOLD Saturday FedEx location address REQUIRED. Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

* National Iranian Gas Company

The FedEx US Airbill has changed. See Section 4.
For shipments over 150 lbs., order the new FedEx Express Freight US Airbill.

4 Express Package Service * To most locations.

NOTE: Service order has changed. Please select carefully.

Packages up to 150 lbs. *For packages over 150 lbs., use the new FedEx Express Freight US Airbill.*

Next Business Day

- ☐ FedEx First Overnight — Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☒ FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.

2 or 3 Business Days

- ☐ NEW FedEx 2Day A.M. — Second business morning.* Saturday Delivery NOT available.
- ☐ FedEx 2Day — Second business afternoon.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

5 Packaging * Declared value limit $500.

☐ FedEx Envelope* ☒ FedEx Pak* ☐ FedEx Box ☐ FedEx Tube ☐ Other

6 Special Handling and Delivery Signature Options

☐ SATURDAY Delivery — NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

☐ No Signature Required — Package may be left without obtaining a signature for delivery.

☒ Direct Signature — Someone at recipient's address may sign for delivery. Fee applies.

☐ Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

Does this shipment contain dangerous goods? One box must be checked.

☒ No ☐ Yes As per attached Shipper's Declaration ☐ Yes Shipper's Declaration not required. ☐ Dry Ice Dry Ice, 9, UN 1845 ____ x ____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box. ☐ Cargo Aircraft Only

7 Payment *Bill to:* Enter FedEx Acct. No. or Credit Card No. below.

☒ Sender Acct. No. in Section 1 will be billed. ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

FedEx Acct. No. or Credit Card No. 1200-7364-0 Exp. Date

Total Packages 1 Total Weight ____ lbs. Total Declared Value† $____.00

†Our liability is limited to $100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

612

Rev. Date 11/10 • Part #163136 • ©1994–2010 FedEx • PRINTED IN U.S.A. SRY

This pouch is sealable. Express

Press Here. Press Here. Press Here. Press Here. Press Here.

The World On Time®

Padded Pak

For FedEx Express® Shipments Only

x 359

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

Enclosed please find a copy of a letter received from the Law Firm of Mellon & Webster, A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2, Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516, Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314, Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316, and Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317. Additionally, 2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) Also enclosed is a money order in the amount of $2,275.00. Please transmit the documents pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(4). I am hereby requesting service upon:

Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendants:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

7. Iranian Ministry of Petroleum

8. National Iranian Tanker Corporation

9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served: IRAN AIRLINES

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6683, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINEVIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM Document 2516,

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Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317.

2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

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Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendants:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

7. Iranian Ministry of Petroleum

8. National Iranian Tanker Corporation

9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MD1570 (gbd)

-v-

BIN LADEN ET AL.

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2012, I served:
NATIONAL IRANIAN PETROCHEMICAL COMPANY

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING # 8000 4543 6710, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
1/14/2013

RUBY J. KRAJICK
CLERK OF COURT

Jeanine Viera-Santia

Print Name: JeanineViera-Santia
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM Document 2516,

Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314,

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Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317.

2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

Align top of FedEx PowerShip Label or Astra

FedEx Express NEW Package US Airbill

FedEx Tracking Number 8000 4543 6710

0200 Sender's Copy

1 From *Please print and press hard.*

Date 1/14/13 Sender's FedEx Account Number 1200-7354-0 (WRITE-IN NUMBER ONLY)

Sender's Name Ruby J. Krajick, Clerk of Courts Phone 212 805-6735

Company U.S. District Court, Southern District of N.Y.

Address 500 Pearl Street, Room 120 Dept./Floor/Suite/Room

City New York State N.Y. ZIP 10007

2 Your Internal Billing Reference First 24 characters will appear on invoice. OPTIONAL

3 To

Recipient's Name Attn: Director of Consular Services Phone 202 647-4000

Company Office of Policy Review + Inter-Agency Liason (CA/OCS/PRI)

Address U.S. Dept. of State, SA-29 Dept./Floor/Suite/Room
We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address 2201 Street NW, 4th Floor
Use this line for the HOLD location address or for continuation of your shipping address.

City Washington State DC ZIP 20520

HOLD Weekday FedEx location address REQUIRED. NOT available for FedEx First Overnight.

HOLD Saturday FedEx location address REQUIRED. Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

* National Iranian Petrochemical Company

4 Express Package Service * To most locations. NOTE: Service order has changed. Please select carefully.

Packages up to 150 lbs. For packages over 150 lbs., use the new FedEx Express Freight US Airbill.

Next Business Day

- ☐ FedEx First Overnight — Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☒ FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.

2 or 3 Business Days

- ☐ NEW FedEx 2Day A.M. — Second business morning.* Saturday Delivery NOT available.
- ☐ FedEx 2Day — Second business afternoon.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

5 Packaging * Declared value limit $500

☐ FedEx Envelope* ☒ FedEx Pak* ☐ FedEx Box ☐ FedEx Tube ☐ Other

6 Special Handling and Delivery Signature Options

☐ SATURDAY Delivery — NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

☐ No Signature Required — Package may be left without obtaining a signature for delivery.

☒ Direct Signature — Someone at recipient's address may sign for delivery. *Fee applies.*

☐ Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. *Fee applies.*

Does this shipment contain dangerous goods? One box must be checked.

☒ No ☐ Yes As per attached Shipper's Declaration. ☐ Yes Shipper's Declaration not required. ☐ Dry Ice Dry Ice, 9, UN 1845 ____ x ____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box. ☐ Cargo Aircraft Only

7 Payment *Bill to:* Enter FedEx Acct. No. or Credit Card No. below.

☒ Sender Acct. No. in Section 1 will be billed. ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

FedEx Acct. No. or Credit Card No. 1200-7354-0 Exp. Date

Total Packages 1 Total Weight ____ lbs. Total Declared Value† $ ____ .00

†Our liability is limited to $100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

612

Rev. Date 11/10 • Part #163138 • ©1994–2010 FedEx • PRINTED IN U.S.A. SRY

The FedEx US Airbill has changed. See Section 4.
For shipments over 150 lbs., order the new FedEx Express Freight US Airbill.

RETAIN THIS COPY FOR YOUR RECORDS.

Press here to seal

Press here to seal

Express

fedex.com 1.800.GoFedEx 1.800.463.3339

The World On Time®

LAW OFFICES
Mellon & Webster
A PROFESSIONAL CORPORATION
87 NORTH BROAD STREET
DOYLESTOWN, PA 18901
215-348-7700 • FAX 215-348-0171

THOMAS E. MELLON, JR.
SARA WEBSTER
THOMAS E. MELLON, III

DEBORAH A. ROMANSKI
OF COUNSEL

tmellon@mellonwebster.com

January 14, 2013

VIA HAND DELIVERY
Ruby J. Krajick, Clerk of Court
U.S. District Court for the
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: ***Havlish, et al. v. bin Laden, et al.*, 03 MDL 1570 (GBD)(FM), 1:03-CV-09848 (GBD)(FM)**

Dear Ms. Krajick:

We respectfully request service of the final judgment in the above-captioned matter via the Department of State in accordance with the Foreign Sovereign Immunities Act, 28 U.S.C. § 1608(a)(4). Service of the judgment was attempted upon the Islamic Republic of Iran pursuant to 1608(a)(3) by the Clerk's office via DHL Express on November 15, 2012. Returns of Service were transmitted the Court on December 7, 2012, with attached tracking summaries for 16 DHL packages sent to Iran, stating that Iran's Ministry of Foreign Affairs refused each of the mailings on November 26, 2012. Thirty days have expired since these packages were refused by Iran.

Iran's Ministry of Foreign Affairs is located at the following address:

Imam Khomeini Street
Tehran, Iran

We provide 16 FedEx envelopes to the Court for transmission to the Department of State. These 16 envelopes are for service upon the following Defendants:

(1) Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi, Minister of Foreign Affairs of the Islamic Republic of Iran
(2) Ayatollah Ali Khamenei, Supreme Leader of Iran
(3) Akbar Hashemi Rafsanjani, Chairman, Expediency Discernment Council

(4) Iranian Ministry of Information and Security
(5) Islamic Revolutionary Guard Corps
(6) Hezbollah, an unincorporated association
(7) Iranian Ministry of Petroleum
(8) National Iranian Tanker Corporation
(9) National Iranian Oil Corporation
(10) National Iranian Gas Company
(11) Iran Airlines
(12) National Iranian Petrochemical Company
(13) Iranian Ministry of Economic Affairs and Finance
(14) Iranian Ministry of Commerce
(15) Iranian Ministry of Defense and Armed Forces Logistics
(16) The Central Bank of the Islamic Republic of Iran

The documents to be served are as follows:

(1) A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2;

(2) Order of Judgment entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516);

(3) Report and Recommendation to the Honorable George B. Daniels issued by U.S. Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, Document 314);

(5) Memorandum and Order entered by the Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316); and,

(6) Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012, and docketed on October 16, 2012 (Case No. 1:03-cv-09848-GBD, Document 317).

We provide two copies of each document, in both English and Farsi for each Defendant, as well as an Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101(b), in accordance with Page 12 of the Court's Foreign Mailing Instructions. Also enclosed are cashier's checks in the amount of $2,275 made payable to "U.S. Embassy Bern" for each of the 16 Defendants to be served is included.

Do not hesitate to contact us with any comments or questions.

Very Truly Yours,

Thomas E. Mellon, Jr.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served:
IRANIAN MINISTRY OF ECOMOMIC AFFAIRS AND FINANCE

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING# 8000 4543 6709, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

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2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

Enclosed please find a copy of a letter received from the Law Firm of Mellon & Webster, A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2, Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516, Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314, Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316, and Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317. Additionally, 2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) Also enclosed is a money order in the amount of $2,275.00. Please transmit the documents pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(4). I am hereby requesting service upon:

Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendants:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Republic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

6. Hezbollah, an unincorporated association

7. Iranian Ministry of Petroleum

8. National Iranian Tanker Corporation

9. National Iranian Oil Corporation

10. National Iranian Gas Company

11. Iran Airlines

12. National Iranian Petrochemical Company

13. Iranian Ministry of Economic Affairs and Finance

14. Iranian Ministry of Commerce

15. Iranian Ministry of Defense and Armed Forces Logistics

16. The central Bank of the Islamic Republic of Iran

Upon completion, please send me a certified copy of the diplomatic note of transmittal.

Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

-v-

BIN LADEN, ET AL.

Defendant(s)

CERTIFICATE OF MAILING

Case No.: 03MD1570 (gbd)

I hereby certify under the penalties of perjury that on 14th day of January, 2012, I served: IRANIAN MINISTRY OF COMMERCE

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

☐ One copy of the _____

by _____, to the head of the ministry of foreign affairs, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(3).

☒ Two copies of the PLEASE SEE ATTACHED LETTER

by FED EX TRACKING # 8000 4543 6617, to the Secretary of State, Attn: Director of Consular Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, 2201 C Street NW, Washington, DC 20520, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(a)(4).

☐ One copy of the _____

by _____, to the head of the agency or instrumentality of the foreign state, pursuant to the provisions of Foreign Services Immunities Act, 28 U.S.C. § 1608(b)(3)(B).

Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JeanineViera-Santia
DEPUTY CLERK OF COURT

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Annex 359

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM Document 2516,

Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314,

Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316,

Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317.

2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF CLERK

January 14, 2013

Attn: Director of Special Consular Services
United States Department of State
Office of Policy Review And Inter-Agency Liason
(CA/OCS/PRI)
2201 Street NW, 4th floor
Washington, DC 20520

Re: Havlish, et al. v. Bin Laden
03 MDL 1570 (GBD)

Dear Sir:

Enclosed please find a copy of a letter received from the Law Firm of Mellon & Webster, A Notice of Default Judgment prepared in accordance with 22 CFR § 93.2, Order of Judgement entered by the Honorable George B. Daniels on December 22, 2011 (Case No. 1:03-md-01570-GBD-FM, Document 2516, Report and recommendation to the Honorable George B. Daniels issued by Magistrate Judge Frank Maas on July 30, 2012 (Case No. 1:03-cv-09848-GBD, document 314, Memorandum and Order entered by the Honorable Honorable George B. Daniels on October 3, 2012 (Case No. 1:03-cv-09848-GBD, Document 316, and Order and Judgment entered by the Honorable George B. Daniels on October 12, 2012 (Case No. 1:03-cv-09848-GBD, Document 317. Additionally, 2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) Also, enclosed is a money order in the amount of $2,275.00. Please transmit the documents pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §1608(a)(4). I am hereby requesting service upon:

Irans Ministry of Foreign Affairs located at the following address

On behalf of the following defendant's:

1. Islamic Republic of Iran via H.E. Dr. Ali Akbar Salehi
Minister of Foreign Affairs of the Islamic Repubic of Iran

2. Ayatollah Ali Khamenei
Supreme Leader of Iran

3. Akbar Hashemi Rafsanjani
Chairman, Expendiency Discernment Council

4. Iranian Ministry of Information and Security

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6. Hezbollah, an unincorporated association

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Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAVLISH, ET AL.

Plaintiff(s)

CERTIFICATE OF MAILING

Case No.: 03MDL1570 (gbd)

-v-

BIN LADEN, ET AL.,

Defendant(s)

I hereby certify under the penalties of perjury that on 14th day of January, 2013, I served:
THE CENTRAL BANK OF ISLAMIC REPUBLIC OF IRAN

☐ One copy of the _____

by _____, to the individual of the foreign state, pursuant to the provisions of FRCP 4(f)2(c)(ii).

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☐ One copy of the _____

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Dated: New York, New York
JANUARY 14, 2013

RUBY J. KRAJICK
CLERK OF COURT

Print Name: JEANINE VIERA-SAN
DEPUTY CLERK OF COURT

Notice of Default Judgment prepared in accordance with 22 CFR § 93.2,

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2 copies of each document, in both English and Farsi for each Defendant, as well as and Affidavit from the translator for each Defendant which comports with the requirements with NY CVP. LAW § 2101 (b) .Also enclosed is a money order in the amount of $2,275.00

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On behalf of the following defendants:

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2. Ayatollah Ali Khamenei
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4. Iranian Ministry of Information and Security

5. Islamic Revolutionary Guard Corps

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7. Iranian Ministry of Petroleum

8. National Iranian Tanker Corporation

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Thank you for your assistance. If you have any questions, please contact me.

Respectfully yours,

Ruby J. Krajick
Clerk of the Court

ANNEX 360

No. 16-1094

In the Supreme Court of the United States

REPUBLIC OF SUDAN, PETITIONER

v.

RICK HARRISON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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Counsel of Record
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Washington, D.C. 20520

QUESTION PRESENTED

The Foreign Sovereign Immunities Act of 1976, 28 U.S.C. 1330, 1441(d), 1602 *et seq.*, provides four exclusive, hierarchical means for a litigant to serve a foreign state in the courts of the United States. 28 U.S.C. 1608(a)(1)-(4). The third means, in Section 1608(a)(3), provides for "a copy of the summons and complaint and a notice of suit * * * to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. 1608(a)(3).

The question presented is whether service under Section 1608(a)(3) may be accomplished by requesting the clerk to mail the service package, if the papers are directed to the minister of foreign affairs, to the embassy of the foreign state in the United States, or whether Section 1608(a)(3) requires that process be mailed to the ministry of foreign affairs in the country concerned.

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In the Supreme Court of the United States

No. 16-1094

REPUBLIC OF SUDAN, PETITIONER

v.

RICK HARRISON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be held pending the Court's disposition of the petition for a writ of certiorari in *Kumar* v. *Republic of Sudan*, No. 17-1269 (filed Mar. 9, 2018), and then be disposed of as appropriate. In the alternative, if the Court grants the petition in *Kumar*, the Court may wish to grant certiorari in this case and consolidate it with *Kumar* for consideration of the merits.

STATEMENT

1. The Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1441(d), 1602 *et seq.*, provides the sole basis for civil suits against foreign states and their agencies or instrumentalities in United States

courts. See, *e.g.*, *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 434-435 & n.3 (1989). The FSIA establishes that "a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided" by the Act. 28 U.S.C. 1604. If a suit comes within a statutory exception to foreign sovereign immunity, the FSIA provides for subject-matter jurisdiction in district courts, 28 U.S.C. 1330(a), as well as for personal jurisdiction over the foreign state "where service has been made under section 1608." 28 U.S.C. 1330(b).

Section 1608(a) provides the exclusive means for serving "a foreign state or political subdivision of a foreign state" in civil litigation. 28 U.S.C. 1608(a); see Fed. R. Civ. P. 4(j)(1). The provision specifies four exclusive methods of service, in hierarchical order. See, *e.g.*, Pet. App. 8a; *Magness* v. *Russian Fed'n*, 247 F.3d 609, 613 (5th Cir.), cert. denied, 534 U.S. 892 (2001). First, service must be effected on a foreign state "in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision." 28 U.S.C. 1608(a)(1). Second, if no such special arrangement exists, service must be provided "in accordance with an applicable international convention on service of judicial documents." 28 U.S.C. 1608(a)(2). Third, if no such international convention applies, service shall be made

> by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned.

28 U.S.C. 1608(a)(3). Fourth, if service cannot be made within thirty days under Section 1608(a)(3), the litigant must deliver process to the State Department for service "through diplomatic channels to the foreign state." 28 U.S.C. 1608(a)(4).

2. On October 12, 2000, terrorists bombed the USS *Cole* in the Port of Aden, Yemen. Pet. App. 24a. Seventeen U.S. service members were killed and forty-two others were injured. *Ibid.* In 2010, the individual respondents, who are sailors and spouses of sailors injured in the bombing, sued petitioner, the Republic of Sudan, in the District Court for the District of Columbia. Pet. 8. Relying on the cause of action set forth in 28 U.S.C. 1605A, which is available in actions against designated state sponsors of terrorism such as the Republic of Sudan, respondents alleged that petitioner provided material support to the al Qaeda operatives who carried out the bombing. Pet. 8; Pet. App. 3a.

Because service under 28 U.S.C. 1608(a)(1)-(2) was not possible, respondents attempted to serve petitioner under Section 1608(a)(3). Pet. App. 4a, 9a. They requested that the Clerk of Court mail a copy of the summons and complaint via registered mail, return receipt requested, to:

> Republic of Sudan
> Deng Alor Koul
> Minister of Foreign Affairs
> Embassy of the Republic of Sudan
> 2210 Massachusetts Avenue NW
> Washington, DC 20008

Id. at 132a.

Petitioner did not respond within sixty days, see 28 U.S.C. 1608(d), and following a hearing, the district court entered a default judgment against petitioner.

Pet. App. 22a-23a. The court determined that service on petitioner was proper, *id.* at 27a-28a, and that it had jurisdiction under 28 U.S.C. 1605A(a). Pet. App. 29a-64a. The court then concluded that respondents had established petitioner's liability under 28 U.S.C. 1605A and 1606, and awarded respondents $314.7 million in damages. Pet. App. 22a-23a, 64a-75a. Respondents attempted to serve the default judgment on petitioner by the same delivery method—through the clerk's mailing of the papers to the Embassy of the Republic of Sudan in Washington, D.C. *Id.* at 5a; see 28 U.S.C. 1608(e) (requiring service of any default judgment).

3. Respondents registered the default judgment in the District Court for the Southern District of New York. Pet. App. 5a. Both that court and the District Court for the District of Columbia determined that respondents had effected service of the default judgment and that respondents could seek attachment and execution of the judgment. *Id.* at 6a; see 28 U.S.C. 1610(c).

Respondents filed three petitions in the Southern District of New York seeking turnover of assets of petitioner's agencies and instrumentalities held by respondent banks Mashreqbank PSC, BNP Paribas, and Credit Agricole Corporate and Investment Bank—assets which had been frozen pursuant to the Sudanese Sanctions Regulations, 31 C.F.R. Part 538. Pet. App. 6a; see Fed. R. Civ. P. 69(a). Respondents again attempted to serve the relevant papers on Sudan by mailing them to the Embassy of the Republic of Sudan in Washington, D.C., in a package directed to the Minister of Foreign Affairs. Pet. App. 6a. The district court granted respondents' petitions and issued three turnover orders against the banks in partial satisfaction of the default judgment. *Id.* at 76a-91a.

Petitioner then entered an appearance in the Southern District of New York and timely appealed the issuance of the turnover orders. Pet. App. 6a-7a.*

4. The court of appeals affirmed. Pet. App. 1a-21a. It concluded that respondents had properly effected service under Section 1608(a)(3) in the original action. *Id.* at 8a-15a. The court held that service under Section 1608(a)(3), which requires that process be "addressed and dispatched * * * to the head of the ministry of foreign affairs of the foreign state concerned," 28 U.S.C. 1608(a)(3), could be accomplished by providing for delivery to the "minister of foreign affairs via an embassy address." Pet. App. 11a. According to the court, Section 1608(a)(3) did not require that service be made on the Minister of Foreign Affairs of Sudan at the Ministry of Foreign Affairs in Khartoum, Sudan, because the statute does not expressly state that process must "be mailed to a location in the foreign state," and respondents' method of service "could reasonably be expected to result in delivery to the intended person." *Ibid.*

The court of appeals recognized that the FSIA's legislative history "seemed to contemplate—and reject—service on an embassy," in order to "prevent any inconsistency with the Vienna Convention on Diplomatic Relations," which provides that "'[t]he premises of the [diplomatic] mission shall be inviolable.'" Pet. App. 13a-14a (citation omitted; brackets in original). But the court distinguished "'service *on* an embassy'" from "service on a minister of foreign affairs *via* or *care of* an

---

* While that appeal was pending, petitioner entered an appearance in the litigation in the District Court for the District of Columbia and moved to vacate the default judgment under Federal Rule of Civil Procedure 60(b). The district court has not ruled on that motion. Pet. App. 96a n.1.

embassy," which the court held was permissible and did not implicate "principles of mission inviolability and diplomatic immunity." *Ibid.* (brackets and citation omitted). Having concluded that respondents' initial service was proper, the court determined that service of the default judgment and all post-judgment motions was proper as well. *Id.* at 15a.

5. Following additional briefing and argument in which the United States participated, see Pet. App. 135a-147a, the court of appeals denied petitioner's motion for panel rehearing. *Id.* at 97a. Although "acknowledg[ing]" that the issue "presents a close call," *ibid.*, the court adhered to its prior conclusion that Section 1608(a)(3) permitted respondents to serve petitioner by a "mailing addressed to the minister of foreign affairs via Sudan's embassy in Washington, D.C.," *id.* at 98a, because the statute "does not specify that the mailing be sent to the head of the ministry of foreign affairs *in* the foreign country," *id.* at 99a. The court reiterated its view that respondents' method of service "could reasonably be expected to result in delivery to the intended person." *Id.* at 98a. And it again stated that although Section 1608(a)(3) does not permit service "'*on*'" an embassy, "[t]he legislative history does not address * * * whether Congress intended to permit the mailing of service to a foreign minister via an embassy." *Id.* at 102a (citation omitted). For that reason, the court rejected, "with some reluctance," the United States' argument that the court's interpretation of Section 1608(a)(3) contravenes the Vienna Convention on Diplomatic Relations (VCDR), *done* Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95. Pet. App. 109a; see *id.* at 105a-109a. In the court's view, "service on an embassy or consular official would be improper" under the VCDR,

but service with papers "addressed to the Minister of Foreign Affairs via the embassy" conforms to the Convention's requirements. *Id.* at 106a. And while the United States had noted that it "consistently rejects attempted service via direct delivery to a U.S. embassy abroad" because it believes such service to be inconsistent with international law, the court stated that its rule would "not preclude the United States (or any other country) from enforcing a policy of refusing to accept service via its embassies." *Ibid.* (citation omitted). Finally, the court opined that "the Sudanese Embassy's acceptance of the service package surely constituted 'consent'" for purposes of the VCDR. *Id.* at 107.

The court of appeals denied rehearing en banc. Pet. App. 114a-115a.

DISCUSSION

The United States deeply sympathizes with the extraordinary injuries suffered by respondents, and it condemns in the strongest possible terms the terrorist acts that caused those injuries. The United States also has a strong interest in opposing and deterring state sponsored terrorism and supporting appropriate recoveries for U.S. victims.

Nevertheless, as the United States has long maintained, the court of appeals erred by holding that the FSIA, 28 U.S.C. 1608(a)(3), permits service on a foreign state "via" or in "care of" the foreign state's diplomatic mission in the United States. Pet. App. 13a. That decision contravenes the most natural reading of the statutory text, treaty obligations, and the FSIA's legislative history, and it threatens harm to the United States' foreign relations and its treatment in courts abroad. The decision below also squarely conflicts with a recent de-

cision of the Fourth Circuit, *Kumar* v. *Republic of Sudan*, 880 F.3d 144, 158 (2018), petition for cert. pending, No. 17-1269 (filed Mar. 9, 2018), and is in significant tension with decisions of the Seventh and D.C. Circuits. As the parties in both this case and *Kumar* now recognize, the question presented warrants this Court's review. See Resps. Supp. Br. 1-2; Resp. to Pet. at 1-2, *Kumar*, *supra* (No. 17-1269).

This case, however, has potential vehicle problems that could complicate the Court's consideration. Because *Kumar* appears to present a more suitable vehicle for addressing the question presented, the petition for a writ of certiorari in this case should be held pending the Court's consideration of the petition in *Kumar*, and then disposed of as appropriate. In the alternative, this Court may wish to grant certiorari in both cases and consolidate them for review.

A. The Foreign Sovereign Immunities Act Does Not Permit A Litigant To Serve A Foreign State By Requesting That Process Directed To The Foreign Minister Be Mailed To The State's Embassy In The United States

The FSIA's text, the United States' treaty obligations, and the statute's legislative history all demonstrate that Section 1608(a)(3) does not permit a litigant to serve a foreign state by requesting that process directed to the state's minister of foreign affairs be mailed to the state's embassy in the United States.

1. a. Section 1608(a) provides four exclusive, hierarchical means for serving "a foreign state or political subdivision of a foreign state" in civil litigation. 28 U.S.C. 1608(a). The provision at issue here, Section 1608(a)(3), permits a litigant to serve a foreign state "by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the

head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. 1608(a)(3).

Although Section 1608(a)(3) does not expressly identify the location of service, the most natural understanding of the text is that it requires delivery to the ministry of foreign affairs at the foreign state's seat of government. The statute mandates that service be "addressed and dispatched * * * to the head of the ministry of foreign affairs." 28 U.S.C. 1608(a)(3). It is logical to conclude that delivery should be made to that official's principal place of business, *i.e.*, the ministry of foreign affairs in the foreign state's seat of government. See *Kumar*, 880 F.3d at 155 (Section 1608(a)(3) "reinforce[s] that the location must be related to the intended recipient."). A state's foreign minister does not work in the state's embassies throughout the world, and nothing in the statute suggests that Congress expected foreign ministers to be served at locations removed from their principal place of performance of their official duties. See *ibid.*

If Congress had intended to permit service "via" a foreign embassy in the United States, *e.g.*, Pet. App. 101a, it would have provided that service be addressed to the foreign state's ambassador, or to an agent, rather than "addressed and dispatched * * * to the head of the ministry of foreign affairs." 28 U.S.C. 1608(a)(3). Indeed, the neighboring provision, Section 1608(b), which governs service on a foreign state agency or instrumentality, expressly provides for service by "delivery * * * to an officer, a managing or general agent, or to any other [authorized] agent." 28 U.S.C. 1608(b)(2). Congress's failure to include similar language in Section 1608(a) underscores that it did not envision that service

would be sent to a foreign state's embassy, with embassy personnel effectively functioning as agents for forwarding service to the head of the ministry of foreign affairs. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (brackets and citation omitted).

b. The court of appeals drew different inferences from the statutory text. It noted that in contrast to Section 1608(a)(3), Section 1608(a)(4) specifies that papers may be mailed "to the Secretary of State *in Washington, District of Columbia*." Pet. App. 99a. As the Fourth Circuit explained, however, reliance on Section 1608(a)(4) is unpersuasive: Unlike Section 1608(a)(3), Section 1608(a)(4) "directs attention to one known location for one country—the United States—and so can be easily identified." *Kumar*, 880 F.3d at 159.

The court of appeals also was of the view that "[a] mailing addressed to the minister of foreign affairs via Sudan's embassy in Washington, D.C. * * * could reasonably be expected to result in delivery to the intended person." Pet. App. 98a. But Section 1608(a)'s exclusive methods of service require "strict compliance." *Kumar*, 880 F.3d at 154; *Magness* v. *Russian Fed'n*, 247 F.3d 609, 615 (5th Cir.), cert. denied, 534 U.S. 892 (2001); *Transaero, Inc.* v. *La Fuerza Aerea Boliviana*, 30 F.3d 148, 154 (D.C. Cir. 1994), cert. denied, 513 U.S. 1150 (1995). But see *Peterson* v. *Islamic Republic Of Iran*, 627 F.3d 1117, 1129 (9th Cir. 2010) (upholding defective service based on substantial compliance with Section 1608(a)). By contrast, where Congress envisioned an actual-notice standard, it said so expressly: Section

1608(b) contains a "catchall * * * expressly allowing service by any method 'reasonably calculated to give actual notice.'" *Kumar*, 880 F.3d at 154 (quoting 28 U.S.C. 1608(b)(3)); see also, *e.g.*, *Transaero*, 30 F.3d at 154.

2. The United States' treaty obligations further demonstrate that Section 1608(a)(3) does not permit a litigant to serve a foreign state by having process mailed to the foreign state's embassy in the United States.

a. The VCDR, which the United States signed in 1961 and ratified in 1972, and which "codified longstanding principles of customary international law with respect to diplomatic relations," *767 Third Ave. Assocs.* v. *Permanent Mission of The Republic of Zaire to the United Nations*, 988 F.2d 295, 300 (2d Cir.), cert. denied, 510 U.S. 819 (1993), establishes certain obligations of the United States with respect to foreign diplomats and diplomatic premises in this country. See *Boos* v. *Barry*, 485 U.S. 312, 322 (1988). Article 22, Section 1 of the VCDR provides that "[t]he premises of" a foreign state's "mission shall be inviolable," and "[t]he agents of the receiving State may not enter them, except with the consent of the head of the mission." VCDR, art. 22, sec. 1, 23 U.S.T. 3237, 500 U.N.T.S. 106. Mission inviolability means, among other things, that "the receiving State * * * is under a duty to abstain from exercising any sovereign rights, in particular law enforcement rights, in respect of inviolable premises." Eileen Denza, *Diplomatic Law* 110 (4th ed. 2016) (Denza).

Section 1608(a)(3) should be interpreted in a manner that is consistent with the United States' treaty obligations. See, *e.g.*, *Cook* v. *United States*, 288 U.S. 102, 120 (1933); 1 Restatement (Third) of the Foreign Relations Law of the United States § 114 (1987) ("Where fairly

possible, a United States statute is to be construed so as not to conflict * * * with an international agreement of the United States."). Construing Section 1608(a)(3) to require that process be mailed to the ministry of foreign affairs in the foreign state ensures that the inviolability of foreign embassies within the United States is maintained.

By contrast, the court of appeals' determination that a litigant may serve a foreign state by directing process to be mailed to the foreign state's embassy in the United States is inconsistent with the inviolability of mission premises recognized by the VCDR. The Executive Branch has long interpreted Article 22 and the customary international law it codifies to preclude a litigant from serving a foreign state with process by mail or personal delivery to the state's embassy. See *Hellenic Lines, Ltd.* v. *Moore*, 345 F.2d 978, 982 (D.C. Cir. 1965) (Washington, J., concurring) ("The establishment by one country of a diplomatic mission in the territory of another does not * * * empower that mission to act as agent of the sending state for the purpose of accepting service of process.") (quoting Letter from Leonard C. Meeker, Acting Legal Adviser, U.S. Dep't of State, to John W. Douglas, Assistant Att'y Gen., U.S. Dep't of Justice (Aug. 10, 1964)). This interpretation of the VCDR "is entitled to great weight," *Abbott* v. *Abbott*, 560 U.S. 1, 15 (2010) (citation omitted), in light of "the Constitution's grant to the Executive Branch * * * of broad oversight over foreign affairs," *Kumar*, 880 F.3d at 157. See *id.* at 158 (the Executive Branch's "long-standing policy and interpretation" of Article 22 is "authoritative, reasoned, and entitled to great weight").

The Executive Branch's interpretation also reflects the prevailing understanding of Article 22. As a leading

treatise explains, it is "generally accepted" that "service by post on mission premises is prohibited." Denza 124. Other treatises are in accord. See James Crawford, *Brownlie's Principles of Public International Law* 403 (8th ed. 2012) ("It follows from Article 22 that writs cannot be served, even by post, within the premises of a mission but only through the Ministry for Foreign Affairs."); Ludwik Dembinski, *The Modern Law of Diplomacy* 193 (1988) (Article 22 "protects the mission from receiving by messenger or by mail any notification from the judicial or other authorities of the receiving State."). Other countries also share this understanding. See, *e.g.*, Pet. Supp. Br. App. 2a (Note Verbale from the Republic of Austria to the State Department); Kingdom of Saudi Arabia Amicus Br. 12-14. And domestically, the Fourth and Seventh Circuits have recognized that attempting to serve a party in a foreign country "through an embassy [in the United States] is expressly banned * * * by [the VCDR]." *Autotech Techs. LP* v. *Integral Research & Dev. Corp.*, 499 F.3d 737, 748 (7th Cir. 2007), cert. denied, 552 U.S. 1231 (2008); see *Kumar*, 880 F.3d at 157.

The Convention's drafting history is to the same effect. See *Water Splash, Inc.* v. *Menon*, 137 S. Ct. 1504, 1511 (2017) (considering treaty drafting history); *Medellin* v. *Texas*, 552 U.S. 491, 507-508 (2008) (same). In a report accompanying a preliminary draft of the VCDR, the United Nations International Law Commission explained:

> [N]o writ shall be served within the premises of the mission, nor shall any summons to appear before a court be served in the premises by a process server. Even if process servers do not enter the premises but carry out their duty at the door, such an act

> would constitute an infringement of the respect due to the mission. All judicial notices of this nature must be delivered through the Ministry for Foreign Affairs of the receiving State.

U.N. Int'l L. Comm'n, *Report of the Commission to the General Assembly, Doc. A/3623*, 2 Y.B. Int'l L. Comm'n 131, 137 (1957).

b. In light of this prevailing understanding, this Office is informed that the United States routinely refuses to recognize the propriety of service through mail or personal delivery by a private party or foreign court to a United States embassy. When a foreign litigant or court officer purports to serve the United States through an embassy, the embassy sends a diplomatic note to the foreign ministry in the forum state, explaining that the United States does not consider itself to have been served consistent with international law and thus will not appear in the litigation or honor any judgment that may be entered against it. See 2 U.S. Dep't of State, *Foreign Affairs Manual* § 284.3(c) (2013). The United States has a strong interest in ensuring that its courts afford foreign states the same treatment to which the United States believes it is entitled under customary international law and the VCDR. See, *e.g.*, *Kumar*, 880 F.3d at 158 (recognizing importance of reciprocity interest); *Persinger* v. *Islamic Republic of Iran*, 729 F.2d 835, 841 (D.C. Cir.), cert. denied, 469 U.S. 881 (1984) (United States' interest in reciprocal treatment "throw[s] light on congressional intent").

c. Although the court of appeals acknowledged that the Executive Branch's treaty interpretation "is to be afforded 'great weight,' it summarily rejected [the government's] position." *Kumar*, 880 F.3d at 159 n.11 (ci-

tation omitted); see Pet. App. 109a. The court acknowledged that "service on an embassy or consular official would be improper" under the VCDR, Pet. App. 106a, but it believed "[t]here is a significant difference between *serving process* on an embassy, and mailing papers to a country's foreign ministry *via* the embassy," *id.* at 101a; see *id.* at 14a. But as the Fourth Circuit stated, that is an "artificial" and "non-textual" distinction. *Kumar*, 880 F.3d at 159 n.11; see *id.* at 157 (distinction arises from "meaningless semantic[s]"). In either case, the suit is against the foreign state. See 28 U.S.C. 1603(a); *El-Hadad* v. *United Arab Emirates*, 216 F.3d 29, 31-32 (D.C. Cir. 2000) (treating suit against foreign embassy as suit against the state); *Gray* v. *Permanent Mission of the People's Republic of the Congo to the United Nations*, 443 F. Supp. 816, 820 (S.D.N.Y.) (holding that permanent mission of foreign country to the United Nations is a "foreign state" under the FSIA), aff'd, 580 F.3d 1044 (2d Cir. 1978). And in either case, mailing service to the embassy treats it as the state's "de facto agent for service of process," in violation of the VCDR's principle of mission inviolability. *Kumar*, 880 F.3d at 159 n.11.

The court below also suggested that service "via" petitioner's embassy complied with the VCDR because the embassy consented to service by "accept[ing]" the papers. Pet. App. 107a. But the VCDR provides that "agents of [a] receiving State may not enter [a mission], *except with the consent of the head of the mission*." Art. 22, sec. 1, 23 U.S.T. 3237, 500 U.N.T.S. 106 (emphasis added). "Simple acceptance of the certified mailing from the clerk of court [by an embassy employee] does not demonstrate a waiver [of the VCDR]." *Kumar*, 880 F.3d at 157 n.9. And no record evidence suggests that

petitioner's Ambassador to the United States—the head of the mission—was aware of, much less consented to receive, respondents' service of process.

3. The FSIA's legislative history confirms that Congress intended the statute to bar service by mail to a foreign state's embassy.

a. An early draft of the FSIA permitted service on a foreign state by "registered or certified mail * * * to the ambassador or chief of mission of the foreign state" in the United States. S. 566, Sec. 1(1) [§ 1608], 93d Cong., 1st Sess. (1973). The State Department recommended removing that method based on its view that it would violate Article 22 of the VCDR. See H.R. Rep. No. 1487, 94th Cong., 2d Sess. 26 (1976) (House Report); *Service of Legal Process by Mail on Foreign Governments in the U.S.*, 71 Dep't St. Bull., No. 1840, at 458, 458-459 (Sept. 30, 1974). A subsequent version of the bill eliminated that method of service. H.R. 11315, Sec. 4(a) [§ 1608], 94th Cong., 1st Sess. (1975).

In addition, the House Report accompanying the bill that became the FSIA explained that some litigants had previously attempted to serve foreign states by "mailing of a copy of the summons and complaint to a diplomatic mission of the foreign state." House Report 26. The Report described this practice as having "questionable validity" and stated that "Section 1608 precludes this method so as to avoid questions of inconsistency with section 1 of article 22 of the [VCDR]." *Ibid.* Thus, "[s]ervice on an embassy by mail would be precluded under th[e] bill." *Ibid.*; see *Kumar*, 880 F.3d at 156 (relying on this legislative history); *Alberti* v. *Empresa Nicaraguense De La Carne*, 705 F.2d 250, 253 (7th Cir. 1983) (same).

b. The court of appeals disregarded this legislative history because the House Report "fail[ed] to" distinguish "between '[s]ervice on an embassy by mail,' and service on a minister [of] foreign affairs via or care of an embassy." Pet. App. 102a (citation and emphases omitted). But as discussed above, see p. 15, *supra*, that distinction is merely "semantic." *Kumar*, 880 F.3d at 157.

In any event, the court of appeals misread the legislative history. The House Report disapproved of "attempting to commence litigation against a foreign state" by "mailing * * * a copy of the summons and complaint *to* a diplomatic mission of the foreign state." House Report 26 (emphasis added). Congress thus sought to prevent parties from completing service by mailing process papers to an embassy, regardless of whether the papers are directed to the ambassador—which the court of appeals agreed would violate the statute and the VCDR, see Pet. App. 106a—or to the foreign minister, as occurred here.

B. Certiorari Is Warranted, But *Kumar* Presents A Better Vehicle For The Court's Review

1. As all parties now recognize, the question presented warrants this Court's review.

a. The decision below squarely conflicts with the Fourth Circuit's decision in *Kumar*, *supra*. In both cases, a group of victims of the USS *Cole* bombing allege that petitioner provided material support for the attack. And in both cases, the victims attempted to effect service by requesting that the clerk send documents, directed to the Minister of Foreign Affairs, to the Embassy of the Republic of Sudan in Washington, D.C. The Second Circuit upheld that method of service, while the Fourth Circuit determined that it fails to satisfy

28 U.S.C. 1608(a)(3). See *Kumar*, 880 F.3d at 159 (acknowledging split). Such disparate results on similar facts warrant this Court's review. See Resp. to Pet. at 4, *Kumar*, *supra* (No. 17-1269).

Moreover, the court of appeals' decision is in significant tension with decisions of the Seventh and D.C. Circuits. Although those courts have not directly addressed the method of service respondents attempted here, they have considered closely related questions.

In *Barot* v. *Embassy of The Republic of Zambia*, 785 F.3d 26 (2015), the D.C. Circuit recounted that the plaintiff's first effort to serve her former employer, the Zambian Embassy, had failed to comply with the FSIA because service was "attempted * * * at the Embassy in Washington, D.C., rather than at the Ministry of Foreign Affairs in Lusaka, Zambia, as the Act required." *Id.* at 28. After describing the plaintiff's further failed attempts at service, the court determined that she should be "afford[ed] * * * the opportunity to effect service pursuant to 28 U.S.C. 1608(a)(3)," which "requires serving a summons, complaint, and notice of suit, * * * that are 'dispatched by the clerk of the court,' and sent to the 'head of the ministry of foreign affairs' in Lusaka, Zambia, whether identified by name or title, and not to any other official or agency." 785 F.3d at 29-30 (citation omitted); see *Gates* v. *Syrian Arab Republic*, 646 F.3d 1, 4 (D.C. Cir.) (litigant complied with Section 1608(a)(3) by addressing service to the Syrian Ministry of Foreign Affairs), cert. denied, 565 U.S. 945 (2011); *Transaero*, 30 F.3d at 154 (Section 1608(a)(3) "mandates service of the Ministry of Foreign Affairs.").

The Seventh Circuit has similarly rejected the idea that service through an embassy comports with the

FSIA. In considering attempted service of a motion on a foreign instrumentality, the court explained that "service through an embassy is expressly banned both by an international treaty to which the United States is a party and by U.S. statutory law." *Autotech*, 499 F.3d at 748; see *Alberti*, 705 F.2d at 253 (service on the ambassador is "simply inadequate" under Section 1608(a)(3)).

b. The decision below also threatens harm to the United States' foreign relations. The United States has substantial interests in ensuring that foreign states are served properly before they are required to appear in U.S. courts, and in preserving the inviolability of diplomatic missions under the VCDR. Moreover, the United States routinely objects to attempts by foreign courts and litigants to serve the United States by delivery to U.S. embassies, and thus has a significant reciprocity interest in the treatment of U.S. missions abroad. At the same time, if this Court grants certiorari and holds that respondents' method of service was improper, respondents may be able to correct the deficient service by requesting that the clerk of court send "a copy of the summons and complaint and a notice of suit * * * to the head of the ministry of foreign affairs" of the Republic of Sudan in Khartoum, Sudan. 28 U.S.C. 1608(a)(3); cf. *Kumar*, 880 F.3d at 160 (remanding to the district court "with instructions to allow Kumar to perfect service of process in a manner consistent with this opinion").

2. Although the question presented warrants this Court's review, this case could prove to be a problematic vehicle for resolving it.

Petitioner first challenged respondents' method of service on appeal from the entry of turnover orders filed in the District Court for the Southern District of New York to execute on the default judgment issued by the

District Court for the District of Columbia. Petitioner has filed a motion to vacate the underlying default judgment, which remains pending. See 10-cv-1689 D. Ct. Doc. 55 (June 14, 2015); Pet. 11; Pet. App. 96a n.1; Fed. R. Civ. P. 60(b). Petitioner has not asked the district court to hold its proceedings in abeyance pending this Court's review of the petition for a writ of certiorari. Thus, the district court could vacate or amend its judgment at any time, calling into question the continued validity of the turnover orders at issue here and perhaps mooting this case. See *Walker* v. *Turner*, 22 U.S. (9 Wheat.) 541, 549 (1824).

For example, petitioner's motion to vacate argues, *inter alia*, that the award of punitive damages—which comprise 75% of the judgment, see Pet. App. 22a—is impermissibly retroactive. See 10-cv-1689 D. Ct. Doc. 55-1, at 33-34. The bombing of the USS *Cole* occurred in October 2000, but the statutory provision authorizing punitive damages, 28 U.S.C. 1605A, was enacted in 2008, see National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, Div. A, Tit. X, § 1083(a)(1), 122 Stat. 338. Petitioner's motion to vacate therefore contends that the award of punitive damages was improper because Congress did not clearly indicate its intent for the punitive-damages provision to apply retroactively. 10-cv-1689 D. Ct. Doc. 55-1, at 31-34; see generally *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 266 (1994).

In *Owens* v. *Republic of Sudan*, 864 F.3d 751 (2017), petitions for cert. pending, No. 17-1236 and No. 17-1268 (filed Mar. 2, 2018), the D.C. Circuit accepted petitioner's argument (which in that case supported petitioner's challenge to damages arising from another incident, see *id.* at 762). The court held that Section

1605A operates retroactively, but that Congress did not make "a clear statement authorizing punitive damages for past conduct," and it therefore vacated the punitive damages award under the FSIA. *Id.* at 816; see *id.* at 815-817. In light of the change in controlling circuit precedent, the district court may amend the underlying judgment in this case, which could in turn raise questions about the turnover orders' continued validity.

3. The petition for a writ of certiorari in *Kumar* presents the same question as does this case. See Pet. at i, *Kumar* v. *Republic of Sudan*, No. 17-1269 (filed Mar. 9, 2018). *Kumar*, which arises on direct review of a motion to vacate a default judgment, appears to present a better vehicle for this Court's consideration. *Id.* at 16-17.

The Republic of Sudan, petitioner here and respondent in *Kumar*, states that it is "indifferent" as to which petition this Court grants, but it suggests that *Kumar* presents its own vehicle problems. Resp. to Pet. at 4, 7, *Kumar*, *supra* (No. 17-1269); see generally *id.* at 4-7. Those issues do not appear to present significant vehicle problems. For example, respondent in *Kumar* notes, *id.* at 5, that petitioners there have been granted time to effect proper service on remand from the Fourth Circuit's decision, and that respondent in *Kumar* will then move to dismiss the complaint on other bases. But no such motion has been filed. And even if litigation of such a motion proceeds in the district court, that would not foreclose this Court from deciding the question presented, which would determine whether the default judgment in that case should have been set aside and thus whether the proceedings on remand should have occurred in the first place.

Because the question presented warrants review, and because *Kumar* provides a better vehicle for this

Court's consideration, this Court should grant the petition for a writ of certiorari in *Kumar*, and hold this petition pending its disposition of that case. In the alternative, to ensure that the Court may decide the question presented, the Court may wish to grant certiorari in both cases and consolidate them for review.

CONCLUSION

The petition for a writ of certiorari should be held pending the Court's consideration of the petition for a writ of certiorari in *Kumar* v. *Republic of Sudan*, No. 17-1269 (filed Mar. 9, 2018), and then be disposed of as appropriate. In the alternative, if the Court grants the petition in *Kumar*, the Court may wish to grant certiorari in this case and consolidate it with *Kumar* for consideration of the merits.

Respectfully submitted.

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MAY 2018

No. 16-1094

In the Supreme Court of the United States

REPUBLIC OF SUDAN, PETITIONER

v.

RICK HARRISON, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The Foreign Sovereign Immunities Act of 1976, 28 U.S.C. 1330, 1441(d), 1602 *et seq.*, provides four hierarchical and exclusive means for a litigant in the courts of the United States to serve a foreign state. 28 U.S.C. 1608(a)(1)-(4). The third means, in Section 1608(a)(3), provides for "a copy of the summons and complaint and a notice of suit * * * to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. 1608(a)(3).

The question presented is whether service under Section 1608(a)(3) may be accomplished by requesting that the clerk mail the service package to the embassy of the foreign state in the United States, if the papers are directed to the minister of foreign affairs, or whether Section 1608(a)(3) requires that process be mailed to the ministry of foreign affairs in the country concerned.

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INTEREST OF THE UNITED STATES

This case concerns the proper means of effecting service in an action against a foreign state under the Foreign Sovereign Immunities Act of 1976 (FSIA or Act), 28 U.S.C. 1330, 1441(d), 1602 *et seq.* See 28 U.S.C. 1608(a)(3). Litigation against foreign states in U.S. courts can have significant foreign affairs implications for the United States, and can affect the reciprocal treatment of the United States in the courts of other nations. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

Although the United States agrees with petitioner that the court of appeals incorrectly resolved the question presented in this case, the United States deeply sympathizes with the extraordinary injuries suffered by respondents, and it condemns in the strongest possible terms the terrorist acts that caused those injuries. The

United States remains committed to opposing and deterring state-sponsored terrorism and to supporting appropriate recoveries for U.S. victims.

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-6a.

STATEMENT

1. The FSIA provides the sole basis for civil suits against foreign states and their agencies or instrumentalities in United States courts. See, *e.g.*, *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 434-435 & n.3 (1989). The FSIA establishes that "a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided" by the Act and "existing international agreements to which the United States [was] a party at the time of [its] enactment." 28 U.S.C. 1604; see *Saudi Arabia* v. *Nelson*, 507 U.S. 349, 355 (1993); *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 488-489 (1983). If a suit comes within a statutory exception to foreign sovereign immunity, the FSIA provides for subject-matter jurisdiction in district courts, 28 U.S.C. 1330(a), as well as for personal jurisdiction over the foreign state "where service has been made under section 1608," 28 U.S.C. 1330(b).

Section 1608(a) provides the exclusive means for serving "a foreign state or political subdivision of a foreign state" in civil litigation. 28 U.S.C. 1608(a); see Fed. R. Civ. P. 4(j)(1). The provision specifies four exclusive methods of service, in hierarchical order. See, *e.g.*, J.A. 176; *Magness* v. *Russian Fed'n*, 247 F.3d 609, 613 (5th Cir.), cert. denied, 534 U.S. 892 (2001). First, service shall be made on a foreign state "in accordance with any special arrangement for service between the plaintiff

and the foreign state or political subdivision." 28 U.S.C. 1608(a)(1). Second, if no such special arrangement exists, service shall be made "in accordance with an applicable international convention on service of judicial documents." 28 U.S.C. 1608(a)(2). Third, if no such international convention applies, service shall be made

> by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned.

28 U.S.C. 1608(a)(3). Fourth, if service cannot be made within thirty days under Section 1608(a)(3), service shall be made by mailing by the clerk of the court to the State Department for service "through diplomatic channels to the foreign state." 28 U.S.C. 1608(a)(4).

2. On October 12, 2000, terrorists bombed the USS *Cole* in the Port of Aden, Yemen. J.A. 84. Seventeen U.S. service members were killed and 42 others were injured. *Ibid.* In 2010, the individual respondents, who are sailors and spouses of sailors injured in the bombing, sued petitioner, the Republic of Sudan, in the District Court for the District of Columbia. Pet. 8. Respondents relied on the cause of action set forth in 28 U.S.C. 1605A, which is available in certain actions against designated state sponsors of terrorism such as the Republic of Sudan. Respondents alleged that petitioner provided material support to the al Qaeda operatives who carried out the bombing. Pet. 8; J.A. 170.

Respondents could not serve petitioner under Section 1608(a)'s first two methods of service. Respondents had no "special arrangement" with petitioner for service,

see 28 U.S.C. 1608(a)(1), and petitioner is not a party to the Convention on Service Abroad of Judicial and Extrajudicial Documents, *done* Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638; see *Kumar* v. *Republic of Sudan*, 880 F.3d 144, 153 n.4 (4th Cir. 2018), petition for cert. pending, No. 17-1269 (filed Mar. 9, 2018); 28 U.S.C. 1608(a)(2). Respondents therefore attempted to serve petitioner under Section 1608(a)(3). J.A. 171-172, 177. They requested that the clerk of the court mail a copy of the summons and complaint via registered mail, return receipt requested, to:

> Republic of Sudan
> Deng Alor Koul
> Minister of Foreign Affairs
> Embassy of the Republic of Sudan
> 2210 Massachusetts Avenue NW
> Washington, DC 20008

J.A. 172 (citation omitted). The clerk did so on November 17, 2010, and the court received a signed receipt on November 23, 2010. J.A. 73-74.

Petitioner did not respond within 60 days of the signed receipt, as required by 28 U.S.C. 1608(c) and (d). Following a hearing, the district court entered a default judgment against petitioner. J.A. 81-83. The court determined that service on petitioner was proper, J.A. 88, and that it had jurisdiction under Section 1605A(a), J.A. 89-127. The court then concluded that respondents had established petitioner's liability under Sections 1605A and 1606, and it awarded respondents $314.7 million in damages. J.A. 81-83, 127-139. Respondents attempted to serve the default judgment on petitioner by the same delivery method—through the clerk's mailing of the papers to the Embassy of the Republic of Sudan in Washington, D.C., in a package directed to the minister of

foreign affairs. J.A. 173; see 28 U.S.C. 1608(e) (requiring service of any default judgment in the manner prescribed for service of the summons and complaint).

3. Respondents registered the default judgment in the District Court for the Southern District of New York. J.A. 173. Both that court and the District Court for the District of Columbia determined that respondents had effected service of the default judgment and that respondents could seek attachment and execution of the judgment. J.A. 173-174; see 28 U.S.C. 1610(c).

Respondents then filed three petitions in the Southern District of New York seeking turnover of assets of petitioner's agencies and instrumentalities held by respondent banks Mashreqbank PSC, BNP Paribas, and Credit Agricole Corporate and Investment Bank—assets that had been frozen pursuant to the Sudanese Sanctions Regulations, 31 C.F.R. Pt. 538. J.A. 174; see Fed. R. Civ. P. 69(a). Respondents again attempted to serve the relevant papers on Sudan by mailing them to the Embassy of the Republic of Sudan in Washington, D.C., in a package directed to the Minister of Foreign Affairs. J.A. 174. The district court granted respondents' petitions and issued three turnover orders against the banks in partial satisfaction of the default judgment. J.A. 149-164.

Petitioner then entered an appearance in the Southern District of New York and timely appealed the issuance of the turnover orders. J.A. 174.[1]

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[1] While that appeal was pending, petitioner entered an appearance in the litigation in the District Court for the District of Columbia and moved to vacate the default judgment under Federal Rule of Civil Procedure 60(b). That motion remains pending. Pet. 11; J.A. 211 n.1; see 10-cv-1689 D. Ct. Doc. 55 (June 14, 2015).

4. The court of appeals affirmed. J.A. 168-189. It concluded that respondents had properly effected service under Section 1608(a)(3) in the original action. J.A. 175-184. The court held that service under Section 1608(a)(3), which requires that process be "addressed and dispatched * * * to the head of the ministry of foreign affairs of the foreign state concerned," 28 U.S.C. 1608(a)(3), could be accomplished by providing for delivery to the "minister of foreign affairs via an embassy address." J.A. 179. According to the court, Section 1608(a)(3) did not require that service be made on the Minister of Foreign Affairs of Sudan at the Ministry of Foreign Affairs in Khartoum, Sudan, because the statute does not expressly state that process must "be mailed to a location in the foreign state," and respondents' method of service "could reasonably be expected to result in delivery to the intended person." *Ibid.*; see J.A. 182 (stating that mailing process to the embassy "makes * * * sense from a reliability perspective and as a matter of policy").

The court of appeals recognized that the FSIA's legislative history "seemed to contemplate—and reject—service on an embassy," in order to "prevent any inconsistency with the Vienna Convention on Diplomatic Relations," which provides that "'[t]he premises of the [diplomatic] mission shall be inviolable.'" J.A. 181-182 (citation omitted; brackets in original). But the court distinguished "'service *on* an embassy'" from "service on a minister of foreign affairs *via* or *care of* an embassy," which the court concluded was permissible and did not implicate "principles of mission inviolability and diplomatic immunity." J.A. 181-183 (brackets and citation omitted). Having concluded that respondents' initial service was proper, the court determined that respondents'

service of the default judgment and all post-judgment motions was proper as well. J.A. 183-184.

5. Following additional briefing and argument in which the United States participated, see J.A. 192-206, the court of appeals denied petitioner's motion for panel rehearing. J.A. 212. Although the court "acknowledge[d]" that the issue "presents a close call," J.A. 213, it adhered to its prior conclusion that Section 1608(a)(3) permitted respondents to serve petitioner by requesting that the clerk mail papers "to the minister of foreign affairs via Sudan's embassy in Washington, D.C.," because the statute "does not specify that the mailing be sent to the head of the ministry of foreign affairs *in* the foreign country," J.A. 214. The court reiterated its view that respondents' method of service "could reasonably be expected to result in delivery to the intended person." *Ibid.* And it again stated that although Section 1608(a)(3) does not permit service "'*on*'" an embassy, "[t]he legislative history does not address * * * whether Congress intended to permit the mailing of service to a foreign minister via an embassy." J.A. 218 (citation omitted).

For similar reasons, the court rejected, "with some reluctance," the United States' argument that the court's interpretation of Section 1608(a)(3) contravenes the Vienna Convention on Diplomatic Relations (VCDR), *done* Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95. J.A. 225; see J.A. 220-225. In the court's view, "service on an embassy or consular official would be improper" under the VCDR, but service with papers "addressed to the Minister of Foreign Affairs via the embassy," conforms to the Convention's requirements. J.A. 222. In addition, while the United States had noted that it "consistently rejects attempted service via direct delivery to a U.S.

embassy abroad" because it believes such service to be inconsistent with international law, the court stated that its rule would "not preclude the United States (or any other country) from enforcing a policy of refusing to accept service via its embassies." *Ibid.* (citation omitted). Finally, the court opined that "the Sudanese Embassy's acceptance of the service package surely constituted 'consent'" for purposes of the VCDR. J.A. 223.

The court of appeals denied rehearing en banc. J.A. 231-232.

SUMMARY OF ARGUMENT

The court of appeals held that the Foreign Sovereign Immunities Act (FSIA or Act), 28 U.S.C. 1330, 1441(d), 1602 *et seq.*, permits service on a foreign state to be effected by sending service papers, directed to the head of the ministry of foreign affairs, to the foreign state's embassy in the United States. J.A. 178-183, 213-225; see 28 U.S.C. 1608(a)(3). That holding contravenes the most natural reading of the statutory text, the United States' treaty obligations, and the FSIA's legislative history. It also threatens harm to the United States' foreign relations and reciprocal treatment in courts abroad. When properly construed, Section 1608(a)(3) requires that the clerk of court send service documents to the ministry of foreign affairs at the foreign state's seat of government.

A. 1. Section 1608(a) provides four exclusive, hierarchical methods for serving a foreign state in litigation in the United States. The third method of service, at issue here, provides for "sending a copy" of the relevant documents "by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. 1608(a)(3). The most

natural understanding of that text is that it requires the clerk both to mark the foreign minister's name or title on the package, and to send it to that individual at his principal place of performing his official duties—the foreign ministry at the foreign state's seat of government.

By contrast, had Congress intended to permit service to be made "via" or in "care of" the foreign state's embassy in the United States, as the court of appeals held, it would have provided for service on the ambassador, or through an agent. Indeed, a neighboring provision, Section 1608(b)(2), expressly provides for service on an agent. Congress's failure to include similar language in Section 1608(a) confirms that it did not intend for embassy personnel to function as de facto agents for forwarding service of process to the head of the ministry of foreign affairs.

2. The court of appeals erred in construing Section 1608(a)(3) to be satisfied by mailing the service package to an embassy. The court stated that such a mailing complied with Section 1608(a)(3) because it "could reasonably be expected to result in delivery to the intended person" and the embassy was a "logical" location for service. J.A. 214 & n.3. But the statutory text refutes the court's imposition of an actual-notice or reasonable-likelihood standard. Unlike Section 1608(a)(3), Section 1608(b)(3) expressly permits service by certain methods "if reasonably calculated to give actual notice." 28 U.S.C. 1608(b)(3). Moreover, the court of appeals' reasoning incorrectly assumes—contrary to Section 1608(a)'s four hierarchical methods of service—that service under Section 1608(a)(3) should be available in most circumstances.

B. The best reading of the statutory text is reinforced by the United States' treaty obligations and diplomatic interests.

1. Article 22(1) of the Vienna Convention on Diplomatic Relations (VCDR), *done* Apr. 18, 1961, 23 U.S.T. 3227, 3237, 500 U.N.T.S. 95, 106, to which the United States is a party, provides that "[t]he premises of" a foreign state's "mission shall be inviolable," and "[t]he agents of the receiving State may not enter them, except with the consent of the head of the mission." The Executive Branch has long interpreted Article 22 and the principle of mission inviolability it codifies to prohibit service on an embassy by mail. That interpretation is shared by other countries and leading commentators, and it is supported by the Convention's drafting history.

2. Failing to protect mission inviolability within the United States would risk harm to the United States' foreign relations. The United States has substantial diplomatic interests in ensuring that foreign states need not appear in domestic courts unless and until they are properly served under the FSIA, in a manner consistent with the United States' treaty obligations. The United States also has a significant interest in receiving reciprocal treatment in courts abroad. At present, the United States routinely refuses to recognize the propriety of service through mail or personal delivery by a private party or foreign court to a United States embassy, even if a mail clerk at the embassy has signed for the package. The rule adopted by the court of appeals threatens the United States' continued ability to successfully assert that it has not been properly served in these instances.

3. The court of appeals agreed that the VCDR prohibits service "on" an embassy, but it concluded that service "via" the embassy does not contravene the Convention. That distinction does not withstand scrutiny. In either case, sending service documents to the

embassy violates mission inviolability as recognized by Article 22 of the VCDR. Nor was the court of appeals correct that the embassy here "consented" to service consistent with the VCDR, for the VCDR provides that only the head of the mission can consent to an intrusion upon inviolability. Nor was the onus on embassy personnel to reject service.

C. Finally, the legislative history of the FSIA confirms that service under Section 1608(a)(3) requires sending the service package to the head of the foreign ministry in the country concerned. Congress considered and rejected statutory language that would have permitted service on ambassadors because of concerns that such service would violate the VCDR. The House Report accompanying the bill that became the FSIA likewise criticized attempts at service by mailing documents "to" an embassy and stated that such service would not be permitted under the Act. And the Federal Rule of Civil Procedure on which Section 1608(a)(3) was patterned, as well as statements at congressional hearings, confirm that Congress expected for service under that provision to occur abroad.

ARGUMENT

SECTION 1608(a)(3) DOES NOT PERMIT SERVICE ON A FOREIGN STATE BY MAILING PROCESS DIRECTED TO THE FOREIGN MINISTER TO THE FOREIGN STATE'S EMBASSY IN THE UNITED STATES

A. The Text Of Section 1608(a)(3) Is Best Read To Require That Service Be Mailed To The Ministry Of Foreign Affairs In The Country Concerned

1. a. Prior to 1976, there was "no statutory procedure for service of process by which [a litigant could]

obtain personal jurisdiction over foreign states." *Immunities of Foreign States: Hearing on H.R. 3493 Before the Subcomm. on Claims and Governmental Relations of the House Comm. on the Judiciary*, 93d Cong., 1st Sess. 14 (1973) (Statement of Hon. Charles N. Brower, Legal Advisor, Dep't of State). That changed in 1976, when Congress enacted the Foreign Sovereign Immunities Act.

The FSIA is a "comprehensive statute containing a 'set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies, or instrumentalities.'" *Republic of Austria* v. *Altmann*, 541 U.S. 677, 691 (2004) (quoting *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 488 (1983)). Under the FSIA, "a foreign state is presumptively immune from the jurisdiction of United States courts." *Saudi Arabia* v. *Nelson*, 507 U.S. 349, 355 (1993); see H.R. Rep. No. 1487, 94th Cong., 2d Sess. 17 (1976) (House Report). "[A] federal court lacks subject-matter jurisdiction over a claim against a foreign state" unless "a specified exception applies." *Nelson*, 507 U.S. at 355; see 28 U.S.C. 1330(a), 1604. And personal jurisdiction over the foreign state exists only where the requirements for subject matter jurisdiction are met and "service has been made under section 1608." 28 U.S.C. 1330(b); see *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 435 n.3 (1989); *Texas Trading & Milling Corp.* v. *Federal Republic of Nigeria*, 647 F.2d 300, 308 (2d Cir. 1981) (the FSIA "makes the statutory aspect of personal jurisdiction simple: subject matter jurisdiction plus service of process equals personal jurisdiction"), cert. denied, 454 U.S. 1148 (1982).

b. Section 1608(a) provides four exclusive, hierarchical means for serving "a foreign state or political subdivision of a foreign state" in civil litigation. 28 U.S.C. 1608(a). The provision at issue here, Section 1608(a)(3), permits a litigant to serve a foreign state

> by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned.

28 U.S.C. 1608(a)(3).

The most natural understanding of the text of Section 1608(a)(3) is that it requires that the service package be mailed to the ministry of foreign affairs at the foreign state's seat of government. The statute mandates that service be "addressed and dispatched * * * to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. 1608(a)(3). The clerk of court therefore must both "address" the service papers to the head of the ministry of foreign affairs *and* "dispatch" the service package to that individual by sending it to him. See *Webster's Third New International Dictionary* 24, 653 (1966) (defining "address" as "to write or otherwise mark directions for delivery on," and "dispatch" as "to send off or away * * * with promptness or speed often as a matter of official business"); see also *Kumar* v. *Republic of Sudan*, 880 F.3d 144, 155 (4th Cir. 2018), petition for cert. pending, No. 17-1269 (filed Mar. 9, 2018) (statutory language "reinforce[s] that the location [for delivery of service] must be related to the intended recipient," *i.e.*, the minister of foreign affairs). A state's foreign minister does not

work in the state's embassies throughout the world and "is rarely—if ever—present" in those locations. *Kumar*, 880 F.3d at 155. Thus, one would not naturally say that service papers mailed to the foreign state's embassy in the United States have been "addressed and dispatched * * * to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. 1608(a)(3). And no other statutory language suggests that Congress expected foreign ministers to be served at locations removed from their principal place of performance of their official duties.

The best reading of the statutory text is therefore that delivery must be made to the minister of foreign affairs at his principal place of business—the ministry of foreign affairs in the foreign state's seat of government. And indeed, that is precisely how courts have interpreted the statute, albeit in cases that did not involve respondents' particular method of service. See *Barot* v. *Embassy of The Republic of Zambia*, 785 F.3d 26, 30 (D.C. Cir. 2015) (Section 1608(a)(3) "requires" "sen[ding]" the papers "to the 'head of the ministry of foreign affairs' in Lusaka, Zambia, whether identified by name or title, and not to any other official or agency."); *Transaero, Inc.* v. *La Fuerza Aerea Boliviana*, 30 F.3d 148, 154 (D.C. Cir. 1994) (Section 1608(a)(3) "mandates service of the Ministry of Foreign Affairs."), cert. denied, 513 U.S. 1150 (1995); see also *Gates* v. *Syrian Arab Republic*, 646 F.3d 1, 4 (D.C. Cir.) (no dispute that litigants complied with Section 1608(a)(3) by addressing service to the Syrian Ministry of Foreign Affairs), cert. denied, 565 U.S. 945 (2011). Cf. *Kumar*, 880 F.3d at 155 ("Serving the foreign minister at a location removed from where he or she actually works is at least in tension with Congress' objective, even if it is not strictly prohibited

by the statutory language"). The State Department also has long interpreted Section 1608(a)(3) to require the clerk of court to send service documents "directly to the ministry of foreign affairs of the defendant sovereign state." *Sovereign Immunity: Foreign Sovereign Immunities Act: Service of Process upon a Foreign State*, 1979 Digest ch. 6, § 7, at 894 (quoting State Department message to "all diplomatic and consular posts, sent May 15, 1979").

c. If Congress had intended to permit service on a foreign state "via" its embassy in the United States, as the court of appeals held, *e.g.*, J.A. 216, it would have provided that service be dispatched to the foreign state's ambassador, or to an agent, rather than "addressed and dispatched * * * to the head of the ministry of foreign affairs." 28 U.S.C. 1608(a)(3). As the court below agreed, however, and as other courts have held, service on an embassy or an ambassador is improper under the statute. See J.A. 222; *Autotech Techs. LP* v. *Integral Research & Dev. Corp.*, 499 F.3d 737, 748 (7th Cir. 2007) ("[S]ervice through an embassy is expressly banned * * * by U.S. statutory law."), cert. denied, 552 U.S. 1231 (2008); *Alberti* v. *Empresa Nicaraguense De La Carne*, 705 F.2d 250, 253 (7th Cir. 1983) (service on ambassador is "simply inadequate" under Section 1608(a)(3)).

Nor does the statutory text suggest that Congress intended for embassy personnel to function as "de facto agent[s]" for forwarding "service of process" under Section 1608(a)(3). *Kumar*, 880 F.3d at 159 n.11. The neighboring provision of the FSIA, Section 1608(b)—which governs service on an agency or instrumentality of a foreign state—expressly provides for service by delivery to an "officer, a managing or general agent, or to any other agent authorized by appointment or by law

to receive service of process in the United States." 28 U.S.C. 1608(b)(2). Congress's failure to include similar language in Section 1608(a) underscores that Congress did not envision that service would be sent to a foreign state's embassy for forwarding to the head of the ministry of foreign affairs. See, *e.g.*, *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (brackets and citation omitted); see also *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'") (quoting *Davis* v. *Michigan Dep't of the Treasury*, 489 U.S. 803, 809 (1989)).[2]

2. The court of appeals was thus wrong to suggest that Section 1608(a)(3) "is silent as to a specific location

[2] Section 1608(c), which governs the time when service shall be deemed to have been made, further supports the conclusion that Congress did not intend for service to be made "via" the foreign state's embassy in the United States. Section 1608(c)(2) deems service to have been made under Section 1608(a)(3) on the date of receipt of the signed and returned postal receipt. 28 U.S.C. 1608(c)(2). By contrast, where Congress expected for service to be transmitted via an intermediary—the Secretary of State under Section 1608(a)(4)—it provided for service to be deemed complete when actually transmitted to the minister of foreign affairs. 28 U.S.C. 1608(c)(1). Had Congress intended to allow service under Section 1608(a)(3) to be made "via" the foreign state's embassy in the United States, it likely would have similarly provided that service under that provision be deemed complete when transmitted by the embassy to the foreign minister.

where the mailing is to be addressed." J.A. 178; see J.A. 213. Instead, the text of Section 1608(a)(3) and surrounding provisions indicate that service must be sent to the ministry of foreign affairs in the country concerned. In any event, the court of appeals drew incorrect inferences from what it interpreted to be statutory silence.

a. The court of appeals first contrasted Section 1608(a)(3) with Section 1608(a)(4), which requires the clerk of court to mail papers "to the Secretary of State *in Washington, District of Columbia*." J.A. 215; see J.A. 175-177. As the Fourth Circuit explained in rejecting respondents' method of service in *Kumar*, however, reliance on Section 1608(a)(4) to interpret Section 1608(a)(3) is unpersuasive. Section 1608(a)(3) directs attention to locations in many countries—"to the head of the ministry of foreign affairs of the foreign state concerned." Section 1608(a)(4), by contrast, "directs attention to one known location for one country—the United States—and so can be easily identified." *Kumar*, 880 F.3d at 159.

b. The court of appeals also expressed the view that "[a] mailing addressed to the minister of foreign affairs via Sudan's embassy in Washington, D.C." complied with Section 1608(a)(3) because it "could reasonably be expected to result in delivery to the intended person," J.A. 214, and "makes * * * sense from a reliability perspective and as a matter of policy," J.A. 182. The court thus construed Section 1608(a)(3) to effectively include an actual-notice standard that it believed was satisfied because "[a]n embassy is a logical place to direct a communication intended to reach a foreign country." J.A. 214 n.3.

The court of appeals' rationale is unpersuasive. Where Congress envisioned a reasonable-efforts or actual-notice

standard for service under the FSIA, it said so expressly. Section 1608(b), governing service on an agency or instrumentality, contains a "catchall provision," *Kumar*, 880 F.3d at 154, that permits service by certain methods "if reasonably calculated to give actual notice," 28 U.S.C. 1608(b)(3). Section 1608(b) is therefore "concerned with substance rather than form," *Transaero*, 30 F.3d at 154, and the courts of appeals have "generally h[e]ld" that it "may be satisfied by technically faulty service that gives adequate notice to the foreign state." *Id.* at 153; see, *e.g.*, *First City, Texas-Houston, N.A.* v. *Rafidain Bank*, 281 F.3d 48, 54 (2d Cir.), cert. denied, 537 U.S. 813 (2002); *Magness* v. *Russian Fed'n*, 247 F.3d 609, 616 (5th Cir.), cert. denied, 534 U.S. 892 (2001); *Straub* v. *A P Green, Inc.*, 38 F.3d 448, 453 (9th Cir. 1994); *Sherer* v. *Construcciones Aeronauticas*, 987 F.2d 1246, 1250 (6th Cir.), cert. denied, 510 U.S. 818 (1993); *Harris Corp.* v. *National Iranian Radio & Television*, 691 F.2d 1344, 1352 (11th Cir. 1982); *Velidor* v. *L/P/G Benghazi*, 653 F.2d 812, 821 (3d Cir. 1981), cert. dismissed, 455 U.S. 929 (1982). But Section 1608(a) contains no similar "catchall," *Kumar*, 880 F.3d at 154, and courts generally have interpreted it to require "strict compliance," *ibid.*; *Magness*, 247 F.3d at 615; *Transaero,* 30 F.3d at 154. But see *Peterson* v. *Islamic Republic of Iran*, 627 F.3d 1117, 1129 (9th Cir. 2010) (upholding defective service based on substantial compliance with Section 1608(a)(3) where plaintiffs' counsel, rather than the clerk of court, mailed a copy of the default judgment to the minister of foreign affairs). Thus, while service reasonably calculated to provide actual notice might suffice under Section 1608(b), it is plainly insufficient under Section 1608(a), unless it specifically complies

with one of the enumerated methods of service. See, *e.g.*, *Russello*, 464 U.S. at 23.

The standard applied by the court of appeals also is at odds with Section 1608(a)'s hierarchical structure. The court stated that service by "mail addressed to an embassy" would reliably be transmitted to a foreign state's foreign minister because it could be "forwarded to the minister by diplomatic pouch." J.A. 182. As an initial matter, one sovereign cannot dictate the internal procedures of the embassy of another sovereign. Moreover, the court of appeals' reasoning incorrectly assumes that service under Section 1608(a)(3) should be available in most circumstances. In fact, the statute "specifically contemplates that service via [S]ubsection (a)(3) may not be possible in every foreign state." *Kumar*, 880 F.3d at 160. To that end, it provides that if service under that subsection cannot be made within 30 days, a plaintiff may attempt service under Section 1608(a)(4), which provides for the State Department to transmit service "through diplomatic channels to the foreign state." 28 U.S.C. 1608(a)(4). As the Fourth Circuit correctly observed, "[*t*]*hat* is the subsection that Congress intended plaintiffs to use to take advantage of the reliability and security of the diplomatic pouch." *Kumar*, 880 F.3d at 160.[3]

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[3] The court of appeals' standard is also inconsistent with Congress's delineation in Section 1608(a) of four exclusive methods of service. While the court stated that its opinion did "not suggest" that service under Section 1608(a)(3) could be made "via other offices in the United States * * * , such as, *e.g.*, a consular office, the country's mission to the United Nations, or a tourism office," J.A. 214 n.3, the court provided no reason why its reasonable-efforts or actual-notice standard would not be satisfied by mailing documents to those locations (or others) for forwarding to the minister of foreign affairs. Cf. *Kumar*, 880 F.3d at 155 ("[T]he view that subsection (a)(3) only

B. The United States' Treaty Obligations And Diplomatic Interests Further Demonstrate That The FSIA Does Not Permit Service On A Foreign State By Mailing Process To The Foreign State's Embassy In The United States

1. a. Interpreting Section 1608(a)(3) to require that service materials be sent to the ministry of foreign affairs in the country concerned, not the foreign state's embassy in the United States, also ensures compliance with the Vienna Convention on Diplomatic Relations, which the United States signed in 1961 and ratified in 1972. See 23 U.S.T. 3227. The VCDR "codified long-standing principles of customary international law with respect to diplomatic relations." *767 Third Ave. Assocs.* v. *Permanent Mission of The Republic of Zaire to the United Nations*, 988 F.2d 295, 300 (2d Cir.), cert. denied, 510 U.S. 819 (1993). Article 22 of the VCDR sets out certain obligations of the United States with respect to foreign diplomats and diplomatic missions in this country. *Boos* v. *Barry*, 485 U.S. 312, 322 (1988). Article 22(1) provides that "[t]he premises of" a foreign state's "mission shall be inviolable," and "[t]he agents of the receiving State may not enter them, except with the consent of the head of the mission." VCDR art. 22(1), 23 U.S.T. 3237, 500 U.N.T.S. 106; see also *id.* art. 22(2), 23 U.S.T. 3237, 500 U.N.T.S. 108 ("The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity."). Mission inviolability means, among other things, that

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requires a particular recipient, and not a particular location, would allow the clerk of court to send service to *any* geographic location so long as the head of the ministry of foreign affairs of the defendant foreign state is identified as the intended recipient.").

"the receiving State * * * is under a duty to abstain from exercising any sovereign rights, in particular law enforcement rights, in respect of inviolable premises." Eileen Denza, *Diplomatic Law* 110 (4th ed. 2016) (Denza); see *767 Third Ave. Assocs.*, 988 F.2d at 300 (The VCDR "recognize[s] no exceptions to mission inviolability.").

Section 1608(a)(3) should be interpreted in a manner that is consistent with the United States' obligations under the VCDR. See, *e.g.*, *Cook* v. *United States*, 288 U.S. 102, 120 (1933) ("A treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed."); 1 Restatement (Third) of the Foreign Relations Law of the United States § 114 (1987) ("Where fairly possible, a United States statute is to be construed so as not to conflict * * * with an international agreement of the United States."). Construing Section 1608(a)(3) to require that process be mailed to the ministry of foreign affairs in the foreign state protects the inviolability of foreign embassies within the United States.

b. The Executive Branch has long interpreted Article 22 and the customary international law it codifies to preclude serving a foreign state with process by mail or personal delivery to the state's embassy. In 1964, the State Department took the view that "[t]he establishment by one country of a diplomatic mission in the territory of another does not * * * empower that mission to act as agent of the sending state for the purpose of accepting service of process." *Hellenic Lines, Ltd.* v. *Moore*, 345 F.2d 978, 982 (D.C. Cir. 1965) (Washington, J., concurring) (quoting Letter from Leonard C. Meeker, Acting Legal Adviser, U.S. Dep't of State, to John W. Douglas, Assistant Att'y Gen., U.S.

Dep't of Justice (Aug. 10, 1964)). The United States has consistently adhered to that position, including in the court of appeals in this case. See Gov't C.A. Amicus Br. 5-6; Gov't C.A. Amicus Br. at 10-13, *Kumar*, *supra* (No. 16-2267).

As the Fourth Circuit recognized, that "longstanding policy and interpretation" of Article 22 is "authoritative, reasoned, and entitled to great weight." *Kumar*, 880 F.3d at 158; see *Abbott* v. *Abbott*, 560 U.S. 1, 15 (2010) ("It is well settled that the Executive Branch's interpretation of a treaty 'is entitled to great weight.'") (citation omitted); *Sumitomo Shoji Am., Inc.* v. *Avagliano*, 457 U.S. 176, 184-185 (1982); *Kolovrat* v. *Oregon*, 366 U.S. 187, 194 (1961); see generally U.S. Const. Art. II, § 2, Cl. 2, and § 3 (reserving to the Executive Branch the ability to "make Treaties" and "receive Ambassadors and other public Ministers"). The Executive Branch's interpretation is consistent with the prevailing understanding of Article 22. As a leading treatise explains, it is "generally accepted" that "service by post on mission premises is prohibited." Denza 124. Other treatises are in accord. See James Crawford, *Brownlie's Principles of Public International Law* 403 (8th ed. 2012) ("It follows from Article 22 that writs cannot be served, even by post, within the premises of a mission."); Ludwik Dembinski, *The Modern Law of Diplomacy* 193 (1988) (Article 22 "protects the mission from receiving by messenger or by mail any notification from the judicial or other authorities of the receiving State."). And other countries also share this understanding. See, *e.g.*, Pet. Supp. Cert. Br. App. 2a (Note Verbale from the Republic of Austria to the State Department (Apr. 11, 2017)); Kingdom of Saudi Arabia Cert. Amicus Br. 12-14.

Moreover, domestically, the Fourth and Seventh Circuits have recognized that attempting to serve a foreign state or its instrumentality "through an embassy [in the United States] is expressly banned * * * by [the VCDR]." *Autotech Techs. LP*, 499 F.3d at 748; see *Kumar*, 880 F.3d at 156 ("[T]he Vienna Convention's inviolability provision prohibits * * * service delivered to the foreign nation's embassy in the United States.").

The Convention's drafting history also supports the United States' view. See *Water Splash, Inc.* v. *Menon*, 137 S. Ct. 1504, 1511 (2017) (considering treaty drafting history); *Medellin* v. *Texas*, 552 U.S. 491, 507-508 (2008) (same). "[T]he drafters of the Vienna Convention considered and rejected exceptions" to mission inviolability, "opting instead for broad mission inviolability." *767 Third Avenue Assocs.*, 988 F.2d at 298. In a report accompanying a preliminary draft of the VCDR, the United Nations International Law Commission stated that "the receiving State is obliged to prevent its agents from entering the premises for any official act whatsoever." *Report of the International Law Commission Covering the Work of Its Ninth Session, 23 Apr.-28 June 1957*, 12 U.N. GAOR Supp. No. 9, at 6, U.N. Doc. A/3623 (1957), *reprinted in* [1957] 2 Y.B. Int'l L. Comm'n 131, 137, U.N. Doc. A/CN.4/SER.A/1957/Add.1. With respect to service of process specifically, the report explained:

> [N]o writ shall be served within the premises of the mission, nor shall any summons to appear before a court be served in the premises by a process server. Even if process servers do not enter the premises but carry out their duty at the door, such an act would constitute an infringement of the respect due to the mission.

Ibid.

2. This Court has afforded "'great weight'" to the Executive Branch's interpretation of treaties in part because "[t]he Executive is well informed concerning the diplomatic consequences resulting from" judicial interpretations of such agreements. *Abbott*, 560 U.S. at 15 (citation omitted); see also *Verlinden*, 461 U.S. at 493 ("Actions against foreign sovereigns in our courts raise sensitive issues concerning the foreign relations of the United States."); *Kumar*, 880 F.3d at 157 ("[T]he Court properly considers the diplomatic interests of the United States when construing the Vienna Convention and the FSIA."). Here, the United States has substantial diplomatic interests in ensuring that foreign states are served properly before they are required to appear in U.S. courts, as well as in preserving the inviolability of diplomatic missions under the VCDR. See *Boos*, 485 U.S. at 323 (recognizing the United States' "vital national interest in complying with international law."). By departing from the prevailing understanding of Article 22, the rule adopted by the court of appeals threatens harm to the United States' foreign relations.[4]

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[4] As discussed above, see pp. 1-2, *supra*, the United States also has substantial interests in ensuring that U.S. victims of state-sponsored terrorism receive appropriate recoveries. In light of those interests, on remand, respondents should be permitted to correct the deficient service by requesting that the clerk of court send "a copy of the summons and complaint and a notice of suit * * * to the head of the ministry of foreign affairs" of the Republic of Sudan in Khartoum, Sudan. 28 U.S.C. 1608(a)(3). Cf. *Kumar*, 880 F.3d at 160 (remanding to the district court "with instructions to allow Kumar to perfect service of process in a manner consistent with this opinion"); *Barot*, 785 F.3d at 29-30 (noting that "there is no statutory deadline for service under the Foreign Sovereign Immunities Act" and instructing the district court to "afford" the plaintiff "the opportunity to effect service pursuant to" Section

The decision below also threatens the United States' treatment as a litigant in courts abroad. "[T]he concept of reciprocity * * * governs much of international law," *Boos*, 485 U.S. at 323; and "some foreign states base their sovereign immunity decisions on reciprocity," *Persinger* v. *Islamic Republic of Iran*, 729 F.2d 835, 841 (D.C. Cir.), cert. denied, 469 U.S. 881 (1984). See *National City Bank* v. *Republic of China*, 348 U.S. 356, 362 (1955) (noting that foreign sovereign immunity "deriv[es]" in part from "reciprocal self-interest"). It is therefore appropriate to construe the FSIA in light of the United States' interest in reciprocal treatment in foreign courts. *Persinger*, 729 F.2d at 841 (the United States' interest in reciprocity "throw[s] light on congressional intent"); see also *Boos*, 485 U.S. at 323 (respecting the diplomatic immunity of foreign states "ensures that similar protections will be accorded" to the United States); *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21 (1963) (construing statute to avoid "invit[ing] retaliatory action from other nations").

The United States' reciprocal interests strongly support interpreting the FSIA not to permit service by mail to a foreign state's embassy in the United States. The United States engages in extensive activities overseas in support of its worldwide diplomatic, security, and law enforcement missions, and it is not infrequently sued in foreign courts. See generally Civil Div., U.S. Dep't of Justice, *Office of Foreign Litigation* [(OFL)] (Aug. 1, 2017), https://www.justice.gov/civil/office-foreign-litigation ("At any given time, foreign lawyers

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1608(a)(3) by requesting that the clerk of court send papers "to the 'head of the ministry of foreign affairs' in Lusaka, Zambia") (citation omitted).

under OFL's direct supervision represent the United States in approximately 1,000 lawsuits pending in the courts of over 100 countries."). The State Department and OFL have informed this Office that the United States routinely refuses to recognize the propriety of service through mail or personal delivery by a private party or foreign court to a United States embassy, even if a mail clerk has signed for the package. Instead, when a foreign litigant or court officer purports to serve a complaint against the United States by delivery to an embassy, the United States' practice is that the embassy sends a diplomatic note to the foreign ministry in the forum state, explaining that the United States does not consider itself to have been served consistent with international law and thus will not appear in the litigation or honor any judgment that may be entered against it. See 2 U.S. Dep't of State, *Foreign Affairs Manual* § 284.3(c) (2013). The United States has a strong interest in ensuring that its courts afford foreign states the same treatment that the United States contends it is entitled to under the VCDR. See *Kumar*, 880 F.3d at 158.

3. The court of appeals acknowledged that in light of the Executive Branch's expertise, potential implications for the United States' foreign relations, and reciprocity concerns, the Executive Branch's treaty interpretation is to be afforded "great weight." J.A. 225 (citation omitted). In reality, however, the court "summarily rejected [the government's] position." *Kumar*, 880 F.3d at 159 n.11 (citation omitted); see J.A. 225.

a. The court of appeals again distinguished between "service on an embassy or consular official," which it agreed "would be improper" under the VCDR, J.A. 222, and "mailing papers to a country's foreign ministry *via*

the embassy," which it decided did not violate the Convention, J.A. 216. In particular, the court stated, "where the suit is not against the embassy or diplomatic agent, but against the foreign state with service on the foreign minister *via* the embassy address, we do not see how principles of mission inviolability and diplomatic immunity are implicated." J.A. 182.

As the Fourth Circuit explained, that is an "artificial, non-textual" distinction. *Kumar*, 880 F.3d at 159 n.11; see *id.* at 157 (distinction arises from "meaningless semantic[s]"). Contrary to the court of appeals' suggestion, see J.A. 182-183, a suit against an embassy *is* a suit against the foreign state. See 28 U.S.C. 1603(a); *El-Hadad* v. *United Arab Emirates*, 216 F.3d 29, 31-32 (D.C. Cir. 2000) (treating suit against foreign embassy as suit against the state); *Gray* v. *Permanent Mission of the People's Republic of the Congo to the United Nations*, 443 F. Supp. 816, 820 (S.D.N.Y.) (holding that permanent mission of foreign country to the United Nations is a "foreign state" under the FSIA), aff'd, 580 F.3d 1044 (2d Cir. 1978). Thus, regardless of whether service is made "on" or "via" an embassy, mailing service to the embassy treats it as the state's "de facto agent for service of process," in violation of the VCDR's principle of mission inviolability. *Kumar*, 880 F.3d at 159 n.11. Indeed, the court of appeals' decisions in this case demonstrate that it treated service on an embassy and service "via" an embassy as functionally equivalent: It considered service to have been completed when a return receipt was purportedly received *from petitioner's embassy*, rather than when the package ultimately made its way "to the head of the ministry of foreign affairs of the country concerned," 28 U.S.C. 1608(a)(3). See J.A.

88, 177 & n.5, 210-211, 216-217; but see J.A. 225-226 (declining to consider Sudan's argument that "the evidence does not support a finding that the mailing was accepted by Sudan or delivered to the Sudanese Minister of Foreign Affairs" because it was made "too late").

b. The court of appeals also suggested that service "via" petitioner's embassy was permissible under the VCDR because the embassy "consent[ed]" to service by "accept[ing]" the papers. J.A. 223. That is incorrect. The VCDR provides that "agents of [a] receiving State may not enter [a mission], *except with the consent of the head of the mission*." VCDR art. 22(1), 23 U.S.T. 3237, 500 U.N.T.S. 106 (emphasis added). "Simple acceptance of the certified mailing from the clerk of court [by an embassy employee] does not demonstrate a waiver [of the VCDR's protections]." *Kumar*, 880 F.3d at 157 n.9; cf. VCDR art. 1(a), 23 U.S.T. 3230, 500 U.N.T.S. 96 (defining "head of the mission"); *id.* art. 1(b)-(h), 23 U.S.T. 3230-3231, 500 U.N.T.S. 96, 98 (defining roles of other employees at a diplomatic mission). And no record evidence suggests that petitioner's ambassador to the United States—the head of the mission—was aware of, much less consented to receive, respondents' service of process. See VCDR art. 22(1), 23 U.S.T. 3237, 500 U.N.T.S. 106.

c. For similar reasons, the court of appeals was incorrect to minimize the United States' foreign-relations and reciprocal-treatment concerns on the ground that "the United States (or any other country)" could "enforc[e] a policy of refusing to accept service via its embassies." J.A. 222-223. The VCDR recognizes that foreign states have a legal right to the inviolability of their missions; the burden is not on those states to affirmatively adopt policies to protect that right. The VCDR addresses this

issue by permitting only the "head of the mission" to make exceptions to the default rule of mission inviolability. Art. 22(1), 23 U.S.T. 3237, 500 U.N.T.S. 106. The FSIA should not be read to adopt a different framework.

C. The FSIA's Legislative History Confirms That Congress Intended The Act To Bar Service By Mail To A Foreign State's Embassy In The United States

1. The FSIA's legislative history underscores that Section 1608(a)(3) cannot be satisfied by mailing service papers to a foreign state's embassy. In particular, the legislative history demonstrates that Congress intended for service under the FSIA not to violate Article 22 of the VCDR, and for such service to be delivered abroad.

a. This Court has recognized that "one of the FSIA's basic objectives, as shown by its history," was to "embod[y] basic principles of international law long followed both in the United States and elsewhere." *Bolivarian Republic of Venezuela* v. *Helmerich & Payne Int'l Drilling Co.*, 137 S. Ct. 1312, 1319 (2017); see also, *e.g.*, *Permanent Mission of India to the United Nations* v. *City of New York*, 551 U.S. 193, 199 (2007) (one of the "well-recognized * * * purposes of the FSIA" is the "codification of international law at the time of the FSIA's enactment"). Consistent with that purpose, the legislative history demonstrates that Congress rejected proposed provisions that would have conflicted with the VCDR. An early draft of the FSIA permitted service on a foreign state by "registered or certified mail * * * to the ambassador or chief of mission of the foreign state" in the United States. S. 566, 93d Cong. 1st Sess. sec. 1(1) [§ 1608] (1973). The State Department and Department of Justice recommended removing that method based on their view that it would violate Article 22 of the

VCDR, and a subsequent version of the bill eliminated that method of service. H.R. 11315, 94th Cong., 1st Sess. sec. 4(a) [§ 1608] (1975); see House Report 6, 26; 122 Cong. Rec. 17,465, 17,469 (1976); *Service of Legal Process by Mail on Foreign Governments in the U.S.*, 71 Dep't St. Bull., No. 1840, at 458 (Sept. 30, 1974); see also, *e.g.*, *Helmerich*, 137 S. Ct. at 1320 (noting the State Department's role in drafting the FSIA); *Samantar* v. *Yousuf*, 560 U.S. 305, 323 n.19 (2010) (same). Congress's decision to remove service by mail to a foreign state's ambassador to the United States strongly supports the conclusion that Congress did not intend for the FSIA to permit service "via" or in "care of" an embassy, which is functionally equivalent. See pp. 26-28, *supra*; *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 442-443 (1987) ("Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.") (citation omitted).

The House Report accompanying the bill that became the FSIA further supports the view that service under Section 1608(a)(3) must be sent to the ministry of foreign affairs in the country concerned. The House Report explains that some litigants had attempted to serve foreign states by "mailing * * * a copy of the summons and complaint to a diplomatic mission of the foreign state." House Report 26. The Report describes that practice as being of "questionable validity" and states that "Section 1608 precludes this method so as to avoid questions of inconsistency with section 1 of article 22 of the [VCDR]." *Ibid.* Thus, "[s]ervice on an embassy by mail would be precluded under th[e] bill." *Ibid.*

b. The House Report also confirms that Congress intended for service under Section 1608(a)(3) to occur

abroad. The House Report states that the "procedure" set forth in Section 1608(a)(3) "is based on rule 4(i)(1)(D), F.R. Civ. P." House Report 24. At the time of the FSIA's enactment, Rule 4(i) was entitled "Alternative Provisions for Service *in a Foreign Country*," and Subsection (1)(D) provided for service upon a party in a foreign country "by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served." Fed. R. Civ. P. 4(i) (1976) (emphasis added; capitalization altered). Statements at congressional hearings on the FSIA likewise reflect the understanding that service on a foreign state under Section 1608(a)(3) would occur abroad. Witnesses described Section 1608(a)(3) as providing for service by "mail to the foreign minister *at the foreign state's seat of government*," and as not being complete "unless a signed receipt is received *from abroad*" within a specified period. *Jurisdiction of U.S. Courts in Suits Against Foreign States: Hearings on H.R. 11315 Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary*, 94th Cong., 2d Sess. 75, 96 (1976) (emphases added) (testimony of Michael Marks Cohen, Chairman of the Committee on Maritime Legislation of the Maritime Law Association of the United States, and statement of the Committee on International Law of the Association of the Bar of the City of New York).

2. The court of appeals disregarded the legislative history because the House Report "fail[ed] to" recognize what the court viewed as a distinction "between '[s]ervice on an embassy by mail,' and service on a minister [of] foreign affairs via or care of an embassy." J.A. 218 (citation and emphases omitted). But as discussed

above, see pp. 26-28, *supra*, that distinction is merely "semantic[]." *Kumar*, 880 F.3d at 157.

In any event, the court of appeals misread the legislative history. The House Report explicitly disapproved of "attempting to commence litigation against a foreign state" by "mailing * * * a copy of the summons and complaint *to* a diplomatic mission of the foreign state." House Report 26 (emphasis added); see *ibid.* ("Section 1608 precludes th[at] method."). And it makes clear that Congress instead intended for service on a foreign state to occur abroad. See pp. 30-31, *supra*. Congress thus sought to prevent parties from effecting service by mailing process papers to a foreign state's embassy within the United States, regardless of whether the papers are directed to the ambassador—which the court of appeals agreed would violate the FSIA and the VCDR, see J.A. 222—or to the foreign minister, as occurred here.

CONCLUSION

The judgment of the court of appeals should be reversed and the case should be remanded for further proceedings.

Respectfully submitted.

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APPENDIX

1. 28 U.S.C. 1602 provides:

Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under 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. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

2. 28 U.S.C. 1603 provides:

Definitions

For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

3. 28 U.S.C. 1604 provides:

Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

4. 28 U.S.C. 1608 provides:

Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall

send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

5. Fed. R. Civ. P. 4 provides in pertinent part:

Summons

* * * * *

(j) Serving a Foreign, State, or Local Government.

(1) ***Foreign State.*** A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608.

(2) ***State or Local Government.*** A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

* * * * *

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

* * * * *

IN THE SUPREME COURT OF THE UNITED STATES

No. 16-1094

REPUBLIC OF SUDAN, PETITIONER

v.

RICK HARRISON ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. Petitioner has consented to the allocation of ten minutes of its argument time to the United States.

This case concerns the proper interpretation of Subsection (a)(3) of 28 U.S.C. 1608, which is part of the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1441(d), 1602 et

seq. Section 1608 provides four hierarchical and exclusive means for a litigant in the courts of the United States to serve a foreign state. 28 U.S.C. 1608(a)(1)-(4). Subsection (a)(3) provides for "a copy of the summons and complaint and a notice of suit * * * to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. 1608(a)(3). The question presented in this case is whether service under Section 1608(a)(3) may be accomplished by requesting that the clerk of court mail the service package to the embassy of the foreign state in the United States, if the papers are directed to the minister of foreign affairs, or whether Section 1608(a)(3) requires that process be mailed to the ministry of foreign affairs in the country concerned.

The United States has filed a brief as amicus curiae supporting petitioner, arguing that Section 1608(a)(3) requires that process be mailed to the ministry of foreign affairs in the country concerned. In particular, the United States argues that permitting service to be mailed to the foreign state's embassy in the United States, if the papers are directed to the minister of foreign affairs, would violate the best reading of the statute's text and would be inconsistent with the United States' obligations under the Vienna Convention on Diplomatic Relations, done Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95, the United States' diplomatic interests, and the legislative history of the FSIA.

The United States has a substantial interest in the resolution of this case. Litigation against foreign states in U.S. courts can have significant foreign affairs implications for the United States, and can affect the reciprocal treatment of the United States in the courts of other nations. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

The United States has participated in oral argument as amicus curiae in prior cases involving interpretation of the FSIA. E.g., Rubin v. Islamic Republic of Iran, 138 S. Ct. 816 (2018); Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co., 137 S. Ct. 1312 (2017); OBB Personenverkehr AG v. Sachs, 136 S. Ct. 390 (2015); Republic of Argentina v. NML Capital, Ltd., 134 S. Ct. 2250 (2014); Samantar v. Yousuf, 560 U.S. 305 (2010). The United States' participation in oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

SEPTEMBER 2018

ANNEX 361

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. Petitioner has consented to the allocation of ten minutes of its argument time to the United States.

This case concerns the proper interpretation of Subsection (a)(3) of 28 U.S.C. 1608, which is part of the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1441(d), 1602 et

seq. Section 1608 provides four hierarchical and exclusive means for a litigant in the courts of the United States to serve a foreign state. 28 U.S.C. 1608(a)(1)-(4). Subsection (a)(3) provides for "a copy of the summons and complaint and a notice of suit * * * to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. 1608(a)(3). The question presented in this case is whether service under Section 1608(a)(3) may be accomplished by requesting that the clerk of court mail the service package to the embassy of the foreign state in the United States, if the papers are directed to the minister of foreign affairs, or whether Section 1608(a)(3) requires that process be mailed to the ministry of foreign affairs in the country concerned.

The United States has filed a brief as amicus curiae supporting petitioner, arguing that Section 1608(a)(3) requires that process be mailed to the ministry of foreign affairs in the country concerned. In particular, the United States argues that permitting service to be mailed to the foreign state's embassy in the United States, if the papers are directed to the minister of foreign affairs, would violate the best reading of the statute's text and would be inconsistent with the United States' obligations under the Vienna Convention on Diplomatic Relations, done Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95, the United States' diplomatic interests, and the legislative history of the FSIA.

The United States has a substantial interest in the resolution of this case. Litigation against foreign states in U.S. courts can have significant foreign affairs implications for the United States, and can affect the reciprocal treatment of the United States in the courts of other nations. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

The United States has participated in oral argument as amicus curiae in prior cases involving interpretation of the FSIA. E.g., Rubin v. Islamic Republic of Iran, 138 S. Ct. 816 (2018); Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co., 137 S. Ct. 1312 (2017); OBB Personenverkehr AG v. Sachs, 136 S. Ct. 390 (2015); Republic of Argentina v. NML Capital, Ltd., 134 S. Ct. 2250 (2014); Samantar v. Yousuf, 560 U.S. 305 (2010). The United States' participation in oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

SEPTEMBER 2018

ANNEX 362

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001

Civil Action No. 03 MDL 1570 (RCC)

FIONA HAVLISH, in her own right and as Executrix of the **ESTATE OF DONALD G. HAVLISH, JR.**, Deceased,

RUSSA STEINER in her own right and as Executrix of the **ESTATE OF WILLIAM R. STEINER**, Deceased,

CLARA CHIRCHIRILLO, in her own right and as Executrix of the **ESTATE OF PETER CHIRCHIRILLO**, Deceased,

TARA BANE in her own right and as Executrix of the **ESTATE OF MICHAEL A. BANE**, Deceased,

GRACE M. PARKINSON-GODSHALK in her own right and as Administratrix of of the **ESTATE OF WILLIAM R. GODSHALK**, Deceased

ELLEN L. SARACINI, in her own right and as Executrix of the **ESTATE OF VICTOR J. SARACINI**, Deceased

THERESANN LOSTRANGIO, in her own right and as Executrix of the **ESTATE OF JOSEPH LOSTRANGIO**, Deceased

JUDITH REISS, in her own right and as Administratrix of the **ESTATE OF JOSHUA SCOTT REISS**, Deceased

WILLIAM COALE, in his own right and as Administrator of the **ESTATE OF JEFFREY ALAN COALE**, Deceased

PATRICIA J. PERRY in her own right

CIVIL ACTION NO. 03-CV-9848 - RCC

Case Transferred from the United States District Court for the District of Columbia Case Number 1:02CV00305

and as Administratrix of the **ESTATE OF JOHN WILLIAM PERRY,** Deceased :
:
RALPH MAERZ, Jr., as the parent and on behalf of the family of **NOELL MAERZ**, Deceased :
:
LINDA and MARTIN PANIK, as the parents and on behalf of the family of **LT. JONAS MARTIN PANIK**, Deceased :
:
MARTINA LYNE-ANNA PANIK, as the sister of **LT. JONAS MARTIN PANIK**, Deceased :
:
STEPHEN L. CARTLEDGE, as husband of **SANDRA WRIGHT CARTLEDGE,** Deceased :
:
LOISANNE DIEHL, in her own right and as Executrix of the **ESTATE OF MICHAEL DIEHL**, Deceased :
:
TINA GRAZIOSO, in her own right and as Executrix of the **ESTATE OF JOHN GRAZIOSO**, Deceased :
:
JOANNE LOVETT, in her own right and as Executrix of the **ESTATE OF BRIAN NUNEZ**, Deceased :
:
GRACE KNESKI, in her own right and as Administratrix of the **ESTATE OF STEVEN CAFIERO**, Deceased :
:
JANET CALIA, in her own right and as Executrix of the **ESTATE OF DOMINICK E. CALIA**, Deceased :
:
CHRISTINE PAPASSO, in her own right and as Executrix of the **ESTATE OF SALVATORE T. PAPASSO**, Deceased :
:
PATRICIA MILANO, in her own right :

and as Executrix of the **ESTATE OF PETER T. MILANO**, Deceased :
:
DIANE ROMERO, in her own right and as Administratrix of the **ESTATE OF ELVIN ROMERO**, Deceased :
:
JOANNE M. RENZI, as the sibling of **VICTOR J. SARACINI**, Deceased :
:
ANNE C. SARACINI, as the parent of **VICTOR J. SARACINI**, Deceased :
:
CHRISTINA BANE-HAYES, as the Sibling of **MICHAEL A. BANE**, Deceased :
:
DONALD BANE, as the parent of **MICHAEL A. BANE**, Deceased :
:
DONALD G. HAVLISH, SR., as the parent of **DONALD G. HAVLISH, JR.**, Deceased :
:
WILLIAM HAVLISH and **SUSAN CONKLIN** as the siblings of **DONALD G. HAVLISH, JR.**, Deceased :
:
EXPEDITO C. SANTILLAN, in his Own right and as Administrator of the **ESTATE OF MARIA THERESA SANTILLAN**, Deceased :
:
ESTHER SANTILLAN, as the parent of **MARIA THERESA SANTILLAN,** Deceased :
:
LIVIA CHIRCHIRILLO and **CATHERINE DEBLIECK**, as the siblings of **PETER CHIRCHIRILLO,** Deceased :

MICHELLE WRIGHT, as the daughter of **SANDRA WRIGHT**, Deceased :

ED and GLORIA RUSSIN, as the parents of **STEVEN RUSSIN**, Deceased :

BARRY RUSSIN, as the brother of **STEVEN RUSSIN**, Deceased :

LOREN ROSENTHAL, in her own right And as Executrix of the **ESTATE OF RICHARD ROSENTHAL**, Deceased :

SANDRA STRAUB, in her own right And as Executrix of the **ESTATE OF EDWARD W. STRAUB**, Deceased :

MARGARET MAURO, in her own right As sister of **DOROTHY MAURO**, Deceased and as Administratrix of the **ESTATE OF DOROTHY MAURO**, Deceased :

ALEX ROWE, as the father of **NICHOLAS ROWE**, Deceased :

VINCENT A. OGNIBENE, in his own Right as father of **PHILIP PAUL OGNIBENE**, Deceased, and as the Co-Executor of the **ESTATE OF PHILIP PAUL OGNIBENE**, Deceased :

LEONARD and LEONA ZEPLIN, As the parents of **MARC SCOTT ZEPLIN**, Deceased :

JOSLIN ZEPLIN, as sister of **MARC SCOTT ZEPLIN**, Deceased :

IVY MORENO, in her own right as mother Of **YVETTE NICOLE MORENO**, Deceased, and as Administratrix of the **ESTATE OF YVETTE NICOLE MORENO**, Deceased :

MORRIS DORF, in his own right as :

Father of **STEPHEN SCOTT DORF**, :
Deceased, and as Executrix of the **ESTATE** :
OF STEPHEN SCOTT DORF, Deceased :
:
MICHELLE DORF, ANN MARIE DORF:
ROBERT DORF, JOSEPH DORF, and :
LINDA SAMMUT as siblings of :
STEPHEN SCOTT DORF, Deceased :
:
PAUL SCHERTZER, in his own right as :
Father of **SCOTT SCHERTZER**, Deceased:
And as Executor of the **ESTATE OF** :
SCOTT SCHERTZER, Deceased :
:
KRYSTYNA BORYCZEWSKI, in her :
Own right as mother of **MARTIN** :
BORYCZEWSKI, Deceased, and as the :
Executrix of the **ESTATE OF MARTIN** :
BORYCZEWSKI, Deceased :
:
MICHAEL BORYCZEWSKI as father of :
MARTIN BORYCZEWSKI, Deceased :
:
JULIA BORYCZEWSKI and MICHELE:
BORYCZEWSKI as sisters of **MARTIN** :
BORYCZEWSKI, Deceased :
:
MARIE ANN PAPROCKI, in her own :
Right as sister of **DENIS LAVELLE**, :
Deceased, and as the Executrix of the :
ESTATE OF DENIS LAVELLE Deceased:
:
CHRISLAN FULLER MANUEL, as :
Executrix of the **ESTATE OF META** :
L. WALKER, Deceased :
:
RONI LEVINE, in her own right, and as :
Executrix of the **ESTATE OF ROBERT** :
LEVINE, Deceased :
:
MARIA REGINA MERWIN, in her own :
Right, and as Executrix of the **ESTATE** :
OF RONALD GAMBOA, Deceased :
:
GERALD W. BINGHAM, as father of :

GERALD KENDALL BINGHAM a/k/a MARK K. BINGHAM, Deceased :
:
GEORGE N. AND ANGELA STERGIOPOULOS, in their own right as Parents, and as Co-Executors of the **ESTATE OF ANDREW STERGIOPOULOS**, Deceased :
:
MAUREEN R. HALVORSON, in her own Right, and as Executrix of the **ESTATE OF JAMES D. HALVORSON**, Deceased :
:
MAUREEN R. HALVORSON As sister of **WILLIAM WILSON** deceased :
:
DOYLE RAYMOND WARD, in his own Right, and as Administrator of the **ESTATE OF TIMOTHY RAYMOND WARD**, Deceased :
:
RAMON MELENDEZ, in his own right, And as Administrator of the **ESTATE OF MARY MELENDEZ**, Deceased :
:
FRANCES M. COFFEY, in her own right, And as Executrix of the **ESTATE OF DANIEL M. COFFEY**, Deceased :
:
DANIEL D. COFFEY, M.D. and KEVIN M. COFFEY, as sons of **DANIEL M. COFFEY**, Deceased :
:
FRANCES M. COFFEY, in her own right, And as Administratrix of the **ESTATE OF JASON M. COFFEY**, Deceased :
:
DANIEL D. COFFEY, M.D. and KEVIN M. COFFEY, as brothers of **JASON M. COFFEY**, Deceased :
:

JOYCE ANN RODAK, in her own right, And as parent and natural guardian of minor children **CHELSEA NICOLE RODAK and**:

DEVON MARIE RODAK, and as the Executrix of the **ESTATE OF JOHN M. RODAK**, Deceased :

JOANNE RODAK GORI, as sister of **JOHN M. RODAK**, Deceased :

JOHN and REGINA RODAK, as parents Of **JOHN M. RODAK**, Deceased :

RICHARD A. CAPRONI, in his own right And as Administrator of the **ESTATE OF RICHARD A. CAPRONI**, Deceased :

DOLORES CAPRONI, as mother of **RICHARD A. CAPRONI**, Deceased :

CHRISTOPHER CAPRONI, MICHAEL CAPRONI and LISA CAPRONI, as Siblings of **RICHARD A. CAPRONI**, Deceased :

JOAN E. TINO, in her own right and as Executrix of the **ESTATE OF JENNIFER M. TINO**, Deceased :

PAMELA SCHIELE, as sister of **JENNIFER M. TINO**, Deceased :

CHRISTINE BARTON, in her own right And as Administratrix of the **ESTATE OF JEANMARIE WALLENDORF**, Deceased :

HELEN ROSENTHAL, as sister of **JOSH ROSENTHAL**, Deceased :

ALICE CARPENETO, in her own right as Mother of **JOYCE ANN CARPENETO**, Deceased :

RONALD S. SLOAN, in his own right and As Executor of the **ESTATE OF PAUL K. SLOAN**, Deceased :

FU MEI CHIEN HUANG, as mother of :
HWEIDAR JIAN, Deceased :
:
HUI CHIEN CHEN, HUICHUN JIAN :
HUI-CHIAN JIAN, HUI-ZON JIAN, as :
Siblings of **HWEIDAR JIAN**, Deceased :
:
HAOMIN JIAN, as son of **HWEIDAR** :
JIAN, Deceased :
:
MICHAEL LOGUIDICE, as brother of :
CATHERINE LISA LOGUIDICE, :
Deceased :
:
RODNEY RATCHFORD, in his own right :
And as parent and natural guardian of :
RODENY M. RATCHFORD, a minor :
MARSHEE R. RATHCFORD, a minor :
MIRANDA C. RATCHFORD, a minor :
And as Executor of the **ESTATE OF** :
MARSHA DIANAH RATCHFORD, :
Deceased :
:
JIN LIU, in her own right :
And as parent and natural guardian of :
ALAN GU, a minor :
And as Executor of the **ESTATE OF** :
LIMING GU :
:
KATHERINE SOULAS, in her own :
Right, and as Executrix of the **ESTATE OF** :
TIMOTHY P. SOULAS :
:
RAYMOND ANTHONY SMITH, in his :
Own right, and as Administrator of the :
ESTATE OF GEORGE ERIC SMITH :
:
KEITH A. BRADKOWSKI, :
as Administrator of the :
ESTATE OF JEFFREY D. COLLMAN :

DWAYNE COLLMAN, as father of
JEFFREY D. COLLMAN, Deceased

and

BRIAN COLLMAN,
CHARLES COLLMAN, and
BRENDA SORENSON, siblings of
JEFFREY D. COLLMAN, Deceased

Plaintiffs

v.

SHEIKH USAMAH BIN-MUHAMMAD BIN-LADEN, a.k.a. OSAMA BIN-LADEN
Last known location
Afghanistan

THE TALIBAN, a.k.a. the Islamic Emirate of Afghanistan
an unincorporated association
Last known location
Afghanistan

MUHAMMAD OMAR, individually
Last known location
Afghanistan

AL QAEDA/ISLAMIC ARMY,
an unincorporated association
Last known location
Afghanistan

FOREIGN STATE DEFENDANTS:

THE ISLAMIC REPUBLIC OF IRAN,
c/o Permanent Mission of Iran
to the United Nations
622 Third Avenue
New York, NY 10017

THE REPUBLIC OF IRAQ,
c/o The Permanent Representative
of Iraq to the United Nations

14 East 79th Street :
New York, NY 10021 :
or :
The Iraqi Interest Section :
c/o The Algerian Embassy :
1801 P Street, N.W. :
Washington, DC 20036 :
:
AGENCIES AND ISTRUMENTALITIES :
OF THE ISLAMIC REPUBLIC OF IRAN :
:
AYATOLLAH ALI HOSEINI- :
KHAMENEI, Supreme Leader :
c/o Permanent Mission of Iran :
to the United Nations :
622 Third Avenue :
New York, NY 10017 :
:
ALI AKBAR HASHEMI RAFSANJANI :
Previously Identified and Served as Unidentified Terrorist 1
c/o Permanent Mission of Iran :
to the United Nations :
622 Third Avenue :
New York, NY 10017 :
:
IRANIAN MINISTRY OF :
INFORMATION AND SECURITY :
c/o Permanent Mission of Iran :
to the United Nations :
622 Third Avenue :
New York, NY 10017 :
:
THE ISLAMIC REVOLUTIONARY :
GUARD CORPS :
c/o Permanent Mission of Iran :
to the United Nations :
622 Third Avenue :
New York, NY 10017 :
Washington, DC 20007 :
:
HEZBOLLAH, :
an unincorporated association :
c/o Permanent Mission of Iran :
to the United Nations :
622 Third Avenue :

New York, NY 10017 :
:
THE IRANIAN MINISTRY :
OF PETROLEUM :
c/o Bijan Namdar-Zanganeh :
Hafez Crossing, Taleghani Avenue :
Before Hafez Bridge :
Tehran, Iran :
:
THE NATIONAL IRANIAN :
TANKER CORPORATION :
Previously identified as Unidentified Terrorist 2
c/o Mohammed Souri, Chairman :
#67 and 88; Atefi Street; Africa Ave. :
Tehran, Iran :
:
THE NATIONAL IRANIAN :
OIL CORPORATION :
Previously Identified as Unidentified Terrorist 3
c/o Madhi Mir Maezzei :
Chief Managing Director :
Hafez Crossing, Taleghani Avenue :
P.O. Box 1863 :
Tehran, Iran :
:
THE NATIONAL IRANIAN :
GAS COMPANY :
Previously Identified as Unidentified Terrorist 4
#410, Mafatteh Crossing, :
Taleghani Avenue :
P.O. Box 6394,4533 :
Tehran, Iran :
:
IRAN AIRLINES :
Previously Identified as Unidentified Terrorist 5
c/o Eng. Davoud Keshavarzian :
Chairman and CEO :
Iran Air H.Q. :
Mahrabad Airport :
Tehran, Iran :
:
THE NATIONAL IRANIAN :
PETROCHEMICAL COMPANY :
Previously Identified as Unidentified Terrorist 6
#46 Haft Tir Square :

Karimkhan Zand Boulevard :
P.O. Box 11365-3484 :
Tehran, Iran :
:

IRANIAN MINISTRY OF :
ECONOMIC AFFAIRS AND FINANCE :
c/o Safdar Hoseini :
Sour Esrafil Street, :
Bab Homayoun Avenue :
Tehran, Iran :
:

IRANIAN MINISTRY OF :
COMMERCE :
c/o Mohammad Shariat-Madari :
492 Valy-e Asr Avenue :
Between Taleghani Crossroad and :
Valy-e Asr Square :
Tehran, Iran :
:

IRANIAN MINISTRY OF DEFENSE :
AND ARMED FORCES LOGISTICS :
Ali Shamkhani Dabestan Street :
Seyyed Khandan Bridge :
Resalat Expressway :
Tehran, Iran :
:

THE CENTRAL BANK OF THE :
ISLAMIC REPUBLIC OF IRAN :
Previously Identified as Unidentified Terrorist 7
c/o Ebrahim Sheibany :
Governor :
Miramad Boulevard, #144 :
Tehran, Iran :
:

AGENCIES AND ISTRUMENTALITIES :
OF THE REPUBLIC OF IRAQ :
:

SADDAM HUSSEIN, President :
c/o The Permanent Representative :
of Iraq to the United Nations :
14 East 79th Street :
New York, NY 10021 :
or :
The Iraqi Interest Section :
c/o The Algerian Embassy :

1801 P Street, N.W. :
Washington, DC 20036 :
:
IRAQ MINISTRY OF DEFENSE :
c/o The Permanent Representative :
of Iraq to the United Nations :
14 East 79th Street :
New York, NY 10021 :
or :
The Iraqi Interest Section :
c/o The Algerian Embassy :
1801 P Street, N.W. :
Washington, DC 20036 :
:
IRAQ MINISTRY OF FINANCE :
c/o The Permanent Representative :
of Iraq to the United Nations :
14 East 79th Street :
New York, NY 10021 :
or :
The Iraqi Interest Section :
c/o The Algerian Embassy :
1801 P Street, N.W. :
Washington, DC 20036 :
:
IRAQ MINISTRY OF OIL :
c/o The Permanent Representative :
of Iraq to the United Nations :
14 East 79th Street :
New York, NY 10021 :
or :
The Iraqi Interest Section :
c/o The Algerian Embassy :
1801 P Street, N.W. :
Washington, DC 20036 :
:
IRAQ INTELLIGENCE SERVICE :
c/o The Permanent Representative :
of Iraq to the United Nations :
14 East 79th Street :
New York, NY 10021 :
or :
The Iraqi Interest Section :
c/o The Algerian Embassy :
1801 P Street, N.W. :

Washington, DC 20036 :
:
QUSAI HUSSEIN :
c/o The Permanent Representative :
of Iraq to the United Nations :
14 East 79th Street :
New York, NY 10021 :
or :
The Iraqi Interest Section :
c/o The Algerian Embassy :
1801 P Street, N.W. :
Washington, DC 20036 :
:
UNIDENTIFIED TERRORIST :
DEFENDANTS 8-500, :
:
Defendants :

SECOND AMENDED COMPLAINT

On September 11, 2001, 3029 individuals were murdered when nineteen terrorists caused four airliners to crash into the World Trade Center Towers in New York, the Pentagon Building in Arlington County, Virginia and a field near the town of Shanksville, Pennsylvania. The nineteen hijackers (hereinafter collectively referred to as the "Al Qaeda Hijackers" or the "Hijackers") were members of a terrorist network known as "Al Qaeda." The Al Qaeda organization, with the aid and assistance of various individuals, organizations and governments, trained, funded and supported the hijackers. The leader of Al Qaeda, Osama Bin Laden, has admitted his participation in and responsibility for the September 11 attacks. Plaintiffs, through their undersigned attorneys, do hereby bring this Second Amended Complaint seeking damages arising out of those terrorist attacks. Plaintiffs demand judgment against defendants Osama Bin Laden, the Taliban,

torture and extrajudicial killing within the meaning of the Torture Victim Protection Act, Pub.L. 102-256, 106 Stat. 73 (reprinted at 28 U.S.C.A. §1350 note (West 1993)).

381. In carrying out the extrajudicial torture and killings of the Decedents, the actions of each defendant were conducted under actual or apparent authority, or under color of law, of the foreign nations of the Islamic Emirate of Afghanistan, Iran and Iraq.

382. As a result of the defendants' violation of the Torture Victim Protection Act, Plaintiffs suffered damages as fully set forth in the paragraphs above which are incorporated herein by reference.

WHEREFORE, Plaintiffs demand judgment in their favor against all defendants, jointly, severally, and/or individually, in an amount in excess of One Billion Dollars ($1,000,000,000) plus interest, costs, and such other monetary and equitable relief as this Honorable Court deems appropriate to prevent the defendants from ever again committing the terrorist acts of September 11, 2001 or similar acts.

COUNT THREE
ALIEN TORT CLAIMS ACT

383. Plaintiffs incorporate herein by reference the averments contained in the preceding paragraphs as though fully set forth at length.

384. As set forth above, the defendants, jointly and severally, caused the deaths of each of the Decedents through and by reason of acts of international terrorism. These terrorist activities constitute violations of the law of nations, including those international legal norms prohibiting torture, genocide, air piracy, terrorism and mass murder.

385. As a result of the defendants' violation of the law of nations, all Plaintiffs

suffered damages as fully set forth in the paragraphs above which are incorporated herein by reference.

386. Pursuant to 28 U.S.C. §1350, the estates, survivors and heirs of Decedents who were aliens at the time of their death are entitled to recover damages they have sustained by reason of the defendants' actions.

WHEREFORE, Plaintiffs who are estates, survivors and heirs of alien Decedents demand judgment in their favor against all defendants, jointly, severally, and/or individually, in excess of One Billion Dollars ($1,000,000,000), plus interest, costs, and such other monetary and equitable relief as this Honorable Court deems appropriate to prevent the defendants from ever again committing the terrorist acts of September 11, 2001 or similar acts.

COUNT FOUR
WRONGFUL DEATH

387. Plaintiffs incorporate by reference the averments in the preceding paragraphs as though fully set forth at length.

388. Decedents are survived by family members entitled to recover damages from all defendants for wrongful death. These family members are among the Plaintiffs who are entitled to damages deemed as a fair and just compensation for the injuries resulting from the deaths of the Decedents.

389. The injuries and damages suffered by the Plaintiffs by virtue of the death the Decedents, and the consequences resulting therefrom, were proximately caused by the

intentional and reckless acts, omissions, and other tortuous conduct of all defendants as described herein.

390. As a direct and proximate result of the deaths of the Decedents, their heirs have been deprived of future aid, assistance, services, comfort, and financial support.

391. As a direct and proximate result of the defendants' cowardly, barbaric and outrageous acts of murder, the heirs of the Decedents will forever grieve their deaths.

392. As a further result of intentional and reckless acts, omissions, and other tortuous conduct of the defendants, the Plaintiffs have been caused to expend various sums to administer the estates of Decedents and have incurred other expenses for which they are entitled to recover.

WHEREFORE, Plaintiffs demand judgment in their favor against all defendants, jointly, severally, and/or individually, in an amount in excess of One Billion Dollars ($1,000,000,000) plus interest, costs, and such other monetary and equitable relief as this Honorable Court deems appropriate to prevent the defendants from ever again committing the terrorist acts of September 11, 2001 or similar acts.

COUNT FIVE
SURVIVAL

393. Plaintiffs incorporate herein by reference the averments contained in the preceding paragraphs as though fully set forth at length.

394. Plaintiffs bring this action for damages suffered by the Decedents and caused by the defendants' conduct. As a result of the intentional and negligent acts of the defendants as described above, the Decedents were placed in apprehension of harmful

and offensive bodily contact (assault), suffered offensive and harmful bodily contact (battery), suffered extreme fear, anxiety, emotional and psychological distress (intentional/negligent infliction of emotional distress), and were mentally and physically harmed, trapped, and falsely imprisoned (false imprisonment) prior to their deaths.

395. As a result of the defendants' murderous conduct, the Decedents suffered damages including pain and suffering, trauma, emotional distress, loss of life and life's pleasures, loss of earnings and earning capacity, loss of accretion to their estates and other items of damages as fully set forth in the paragraphs above which are incorporated herein by reference.

WHEREFORE, Plaintiffs demand judgment in their favor against all defendants, jointly, severally, and/or individually, in an amount in excess of One Billion Dollars ($1,000,000,000) plus interest, costs, and such other monetary and equitable relief as this Honorable Court deems appropriate to prevent the defendants from ever again committing the terrorist acts of September 11, 2001 or similar acts.

COUNT SIX
NEGLIGENT AND/OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

396. Plaintiffs incorporate herein by reference the averments contained in the preceding paragraphs as though fully set forth at length.

397. All defendants knew that the September 11, 2001 intentional hijacking and suicide flights would injure innocent United States citizens at their place of work, leaving family members to grieve for their losses.

398. The actions of the defendants in using the September 11, 2001 intentional hijacking and suicide flights to murder the Decedents were done with a willful disregard for the rights and lives of the Plaintiffs.

399. As a direct and proximate result of defendants' conduct, Plaintiffs have suffered and will forever in the future suffer severe and permanent psychiatric disorders, emotional distress and anxiety, permanent psychological distress and permanent mental impairment causing expenses for medical care and counseling.

400. The conduct of the defendants was undertaken in an intentional manner to kill American citizens. Their efforts culminated in the murder of the Decedents and caused the contemporaneous and permanent emotional suffering of the families and heirs of the Decedents.

401. The defendants, by engaging in this unlawful conduct, negligently and/or intentionally inflicted emotional distress upon the Plaintiffs.

WHEREFORE, Plaintiffs demand judgment in their favor against all defendants, jointly, severally, and/or individually, in an amount in excess of One Billion Dollars ($1,000,000,000) plus interest, costs, and such other monetary and equitable relief as this Honorable Court deems appropriate to prevent the defendants from ever again committing the terrorist acts of September 11, 2001 or similar acts.

COUNT SEVEN
CONSPIRACY

402. Plaintiffs incorporate herein by reference the averments contained in the preceding paragraphs as though fully set forth at length.

403. As set forth more fully above, all defendants, known and unknown, unlawfully, willfully and knowingly combined, conspired, confederated and agreed, tacitly and/or expressly, to kill the Decedents and other persons within the United States.

404. As set forth above, all defendants conspired and agreed to provide material support and resources to Al Qaeda, Bin Laden and the Hijackers in furtherance of defendants' overall goal to kill American citizens and other persons residing in the United States.

405. As set forth above, all defendants engaged in concerted efforts and activities designed to attack the United States and inflict harm on U.S. citizens and property.

406. The defendants' conspiracy resulted in the September 11 terrorist attacks that killed the Decedents.

407. As a result of the defendants' conspiracy, Plaintiffs have suffered damages as fully set forth in the paragraphs above which are incorporated herein by reference.

WHEREFORE, Plaintiffs demand judgment in their favor against all defendants, jointly, severally, and/or individually, in an amount in excess of One Billion Dollars ($1,000,000,000) plus interest, costs, and such other monetary and equitable relief as this Honorable Court deems appropriate to prevent the defendants from ever again committing the terrorist acts of September 11, 2001 or similar acts.

COUNT EIGHT
18 U.S.C. §2333-TREBLE DAMAGES FOR U.S. NATIONALS

408. Plaintiffs incorporate herein by reference the averments contained in the preceding paragraphs as though fully set forth at length.

ANNEX 363

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

In Re:

TERRORIST ATTACKS ON
SEPTEMBER 11, 2001

:

:

REPORT AND RECOMMENDATION TO THE HONORABLE GEORGE B. DANIELS

----------x

03 MDL 1570 (GBD) (FM)

This Document Relates to
Havlish v. bin Laden,
03 Civ. 9848 (GBD) (FM)

FRANK MAAS, United States Magistrate Judge.

The former World Trade Center site is only a few blocks from this Courthouse. At that location, the 9/11 Memorial opened last year, and a new One World Trade Center, known as the "Freedom Tower," is rapidly nearing completion. Sadly, despite these and other reaffirmations of the human spirit, there remains one group of Americans affected by the September 11th tragedy for whom it will always be difficult to achieve closure – those whose immediate relatives lost their lives as a result of the terrorists' acts. The plaintiffs in this multidistrict litigation include many such persons who are seeking to recover monetary compensation from the individuals and entities that carried out, or aided and abetted, the September 11th attacks.

On December 22, 2011, Your Honor entered a default judgment on behalf of the plaintiffs in the Havlish action ("Plaintiffs"), one of the cases comprising this MDL proceeding, against two groups of defendants: (a) certain sovereign defendants, including the Islamic Republic of Iran, Ayatollah Ali Hoseini Khamenei, Hezbollah, and other Iranian individuals and entities ("Sovereign Defendants"); and (b) certain non-sovereign

defendants, including Osama bin Laden, the Taliban, and al Qaeda ("Non-Sovereign Defendants") (collectively, the "Defendants"). (ECF No. 2516). The case subsequently was referred to me to report and recommend with respect to the Plaintiffs' damages. For the reasons set forth below, I find that the Plaintiffs collectively should be awarded damages in the amount of $6,048,513,805, plus prejudgment interest on their non-economic damages.

I. Standard of Review

In light of the Defendants' default, the Plaintiffs' well-pleaded allegations concerning issues other than damages must be accepted as true. See Cotton v. Slone, 4 F.3d 176, 181 (2d Cir. 1993); Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158 (2d Cir. 1992); Time Warner Cable of N.Y.C. v. Barnes, 13 F. Supp. 2d 543, 547 (S.D.N.Y. 1998).

Additionally, although plaintiffs seeking to recover damages against defaulting defendants must prove their claims through the submission of admissible evidence, the Court need not hold a hearing as long as it has (a) determined the proper rule for calculating damages, see Credit Lyonnais Sec. (USA), Inc. v. Alcantara, 183 F.3d 151, 155 (2d Cir. 1999), and (b) the plaintiff's evidence establishes, with reasonable certainty, the basis for the damages specified in the default judgment, see Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997). Here, because both requirements have been met, a hearing is unnecessary.

II. Factual and Procedural Background

The Havlish action concerns fifty-nine victims of the September 11, 2001 terrorist attacks. Seventeen of the victims were killed in the South Tower of the World Trade Center, thirty-two in the North Tower of the World Trade Center, and three in the Pentagon in Washington, D.C. (See ECF No. 2553 (Pls.' Proposed Findings of Fact and Conclusions of Law ("Proposed Findings")) ¶¶ 159-66). Three further victims were inside the airplane that crashed into the South Tower, including the plane's captain, who was murdered by the hijackers; another victim was a passenger on United Airlines Flight 93, which crashed near Shanksville, Pennsylvania; and three victims were killed in the immediate vicinity of the World Trade Center. (Id. ¶¶ 165, 167-70). Forty-seven of the plaintiffs ("Estate Plaintiffs") sue in their capacity as the legal representatives of their decedents. Claims also are brought individually on behalf of 111 family members of the fifty-nine victims of the attacks ("Individual Plaintiffs").

On December 22, 2011, in addition to entering a default judgment, Your Honor issued Findings of Facts and Conclusions of Law regarding the liability of the Sovereign Defendants.[1] (ECF No. 2515). In that document, Your Honor concluded that the "Plaintiffs ha[d] established by evidence satisfactory to the Court that the [Sovereign

[1] To obtain a default judgment in an action under the Foreign Sovereign Immunity Act ("FSIA"), a plaintiff must demonstrate a right to relief "by evidence satisfactory to the court," 28 U.S.C. § 1608(e), a standard that may be met "through uncontroverted factual allegations, which are supported by . . . documentary and affidavit evidence." Valore v. Islamic Republic of Iran, 700 F. Supp. 2d 52, 59 (D.D.C. 2010) (internal quotation marks omitted).

Defendants] provided material support and resources to" the perpetrators of the September 11th terrorist attacks, by, "inter alia, planning funding, [and] facilitat[ing] . . . the hijackers' travel and training," and providing the hijackers with "services, money, lodging, training, expert advice or assistance, safehouses, false documentation or identification, and/or transportation." (Id. at 50-53). By virtue of their defaults, the Non-Sovereign Defendants also have admitted their role in the September 11th terrorist attacks.

Accordingly, because all questions concerning the Havlish defendants' liability have been fully resolved, the only remaining task is the determination of the Plaintiffs' damages.

III. Damages

A. Sovereign Defendants

Among the claims that the Plaintiffs assert against the Sovereign Defendants in their third amended complaint (ECF No. 2259 ("Complaint" or "Compl.")) are survival, wrongful death, and solatium claims under section 1605A of the FSIA, 28 U.S.C. § 1605A ("Section 1605A"). Section 1605A creates an exception to sovereign immunity pursuant to which a United States citizen can sue "[a] foreign state that is or was a state sponsor of terrorism . . . , and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency," for damages arising out of an act of terrorism sponsored by that state. See Section 1605A(c). Although Congress enacted Section 1605A in 2008, it applies retroactively to suits then

pending against foreign states that had been designated as state sponsors of terrorism by the time the suits originally were filed. See Section 1605A(2)(A)(i)(II); Nat'l Defense Auth. Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 3.

Section 1605A effected a "sea change" in suits against state sponsors of terrorism. Read v. Islamic Republic of Iran, ___ F. Supp. 2d ___, ___, 2012 WL 639139, at *8 (D.D.C. Feb. 28, 2012). Previously, to recover damages against such defendants, plaintiffs had to demonstrate their entitlement under state or foreign law. Id. Now, such claims are subject to a "uniform federal standard." Id. (citing In re Terrorism Litig., 659 F. Supp. 2d 31, 85 (D.D.C. 2009)). Courts therefore usually determine damages under Section 1605A by applying the legal principles found in the Restatement of Torts and other leading treatises. Harrison v. Republic of Sudan, ___ F. Supp. 2d ___, ___, 2012 WL 1066683, at *3 (D.D.C. Mar. 30, 2012).

In an action under Section 1605A, "damages may include economic damages, solatium, pain and suffering, and punitive damages." Section 1605A(c)(4). Additionally, "[i]n any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents." Id. Consequently, the "estates of those who [died] can recover economic losses stemming from wrongful death of the decedent; family members can recover solatium for their emotional injury; and all plaintiffs can recover punitive damages." Valore, 700 F. Supp. 2d at 83.

1. Economic Damages

The Estate Plaintiffs seek economic damages for (a) the past and future lost wages and benefits of each decedent; (b) the estate's loss of household services; (c) its loss of advice, counsel, guidance, instruction, and training services; (d) its loss of accompaniment services; and (e) prejudgment interest. (See ECF No. 2554 (Pls.' Am. Damages Inquest Mem. ("Pls.' Mem.")) Ex. H). To support their claims for these damages, the Estate Plaintiffs have submitted extensive analyses by Dr. Stan V. Smith, a forensic economist. (See Pls.' Mem. Ex. F (Dr. Smith's curriculum vitae)). Dr. Smith calculated each decedent's lost wages and benefits by assuming that the decedent would have worked until the age of sixty-seven and adjusting his calculations through the use of growth and discount rates. Dr. Smith also calculated each decedent's estate's non-wage-related losses by determining the replacement cost of those services. Finally, Dr. Smith calculated the prejudgment interest on these damages using the annual average of monthly interest rates for thirty-day Treasury Bills. (See id. Ex. H).

Dr. Smith has provided detailed reports for two decedents and calculated the economic damages for the other forty-five decedents in the same manner. Having reviewed Dr. Smith's reports, I find that his calculations are reasonable, and yield proposed economic damages awards comparable to those in other cases. See, e.g., Dammarell v. Islamic Republic of Iran, 404 F. Supp. 2d 261, 310-24 (D.D.C. 2005); Alejandre v. Republic of Cuba, 996 F. Supp. 1239, 1249 (S.D. Fla. 1997); Ferrarelli v. United States, CV 90-4478 (JMA), 1992 WL 893461, at *19 (E.D.N.Y. Sept. 24, 1992). I

therefore adopt his findings regarding lost wages, benefits, and services, and prejudgment interest thereon, which leads to a finding that the Estate Plaintiffs' economic damages total $394,277,884. The separate award to each individual Estate Plaintiff is set forth in Appendix 1 to this Report and Recommendation.

2. Pain and Suffering

The Estate Plaintiffs also seek damages for their decedents' pain and suffering. "When determining the appropriate damages for pain and suffering, [the Court] is bound by a standard of reasonableness." Mastrantuono v. United States, 163 F. Supp. 2d 244, 258 (S.D.N.Y. 2001) (citing Battista v. United States, 889 F. Supp. 716, 727 (S.D.N.Y. 1995)).

Relying on Pugh v. Socialist People's Libyan Arab Jamahiriya, 530 F. Supp. 2d 216 (D.D.C. 2008), the Estate Plaintiffs seek $18 million for each decedent's pain and suffering. (Pls.' Mem. at 10). In Pugh, a suitcase bomb on an airplane detonated mid-flight, killing everyone on board. The court awarded the estate of each passenger $18 million for the passenger's pain and suffering, but did not explain how it arrived at that number, nor did it cite any cases in which there had been similar awards. See 530 F. Supp. 2d at 266-73. In other FSIA cases, courts have made considerably lower pain and suffering awards to the estates of victims of state-sponsored terrorism. For example, in Stethem v. Islamic Republic of Iran, 201 F. Supp. 2d 78, 89 (D.D.C. 2002), the court awarded $1.5 million to an estate for the pain and suffering of a decedent who was tortured for fifteen hours before being shot to death. Similarly, in Eisenfeld v.

Islamic Republic of Iran, 172 F. Supp. 2d 1, 8 (D.D.C. 2000), the court awarded $1 million in damages for pain and suffering to the estate of a victim of a bus bombing who had survived for several minutes before ultimately dying. See also Weinstein v. Islamic Republic of Iran, 184 F. Supp. 2d 13, 22-23 (D.D.C. 2002) ($10 million award to estate of victim who survived for forty-nine days with limited pain medication after suffering extensive burn and blast injuries during a terrorist bombing of a bus).

Although the specifics of each decedent's demise remain largely unknown, the Plaintiffs have submitted the expert report of Dr. Alberto Diaz, Jr., M.D., a retired Navy Rear Admiral, which provides a chilling account of the horrific conditions that each of the Estate Plaintiffs' decedents likely encountered immediately before his or her death. (See Pls.' Mem. Exs. D, E). As Dr. Diaz's report confirms, there is little doubt that many, if not all, of the decedents in this case experienced unimaginable pain and suffering on September 11, 2001. As Judge Baer noted in a previous case brought by two of the Estate Plaintiffs:

> The effort after a tragedy of this nature to calculate pain and suffering is difficult at best. Unfortunately, there is no way to bring back [the decedents] and no way to even come close to understanding what [they] experienced during their last moments. Under our legal system, compensation can only be through the award of a sum of money. While always difficult and never exact, the devastation and horror accompanying this tragedy makes a realistic appraisal almost impossible.

Smith ex rel. Smith v. Islamic Emirate of Afghanistan, 262 F. Supp. 2d 217, 233 (S.D.N.Y. 2003), amended, 2003 WL 23324214 (S.D.N.Y. May 19, 2003).

Judge Baer awarded the two Smith plaintiffs $1 million and $2.5 million, respectively, for their decedents' pain and suffering. Id. at 234, 239. Judge Baer reasoned that a $1 million award was reasonable for the first victim, who died in the South Tower, because there was no evidence that he survived the plane's impact, and that a $2.5 million award was appropriate for the second victim, because there was evidence that he had survived the initial impact and subsequently was trapped in the North Tower for some time before his death. Id.

As Judge Baer's analysis in Smith suggests, the decedents in this case arguably may have experienced different levels of pain and suffering dependant upon whether they were in the North Tower (the first to be hit but the second to collapse), the South Tower (where they may have had knowledge of the first attack but less notice that a structural collapse was likely), the Pentagon, one of the airplanes, or on the ground. The decedents' precise locations when the attack occured also may have affected their levels of conscious pain and suffering. In these circumstances, calculating a precise award for each decedent's individual pain and suffering obviously would be impossible. Nonetheless, the Estate Plaintiffs are entitled to fair compensation for their injuries; the awards in other FSIA cases – particularly those made by Judge Baer in Smith – suggest that $2 million per decedent is a reasonable figure. Accordingly, I recommend that each of the Estate Plaintiffs be awarded that amount for their decedents' pain and suffering. The total recommended pain and suffering award is therefore $94,000,000.

3. Solatium

Under Section 1605A, family members of the decedents also are entitled to damages for solatium. "A claim for solatium refers to the mental anguish, bereavement, and grief that those with a close relationship to the decedent experience as a result of the decedent's death, as well as the harm caused by the loss of decedent's society and comfort." Dammarell v. Islamic Republic of Iran, 281 F. Supp. 2d 105, 196 (D.D.C. 2003), vacated on other grounds, 404 F. Supp. 2d 261 (D.D.C. 2005). "Acts of terrorism are by their very definition extreme and outrageous and intended to cause the highest degree of emotional distress." Belkin v. Islamic Republic of Iran, 667 F. Supp. 2d 8, 22 (D.D.C. 2009). For that reason, in FSIA cases, courts have recognized that a solatium claim is "'indistinguishable' from the claim of intentional infliction of emotional distress." See, e.g., Surette v. Islamic Republic of Iran, 231 F. Supp. 2d 260, 267 n.5 (D.D.C. 2002) (quoting Wagner v. Islamic Republic of Iran, 172 F. Supp. 2d 128, 135 n.11 (D.D.C. 2001)).

In Estate of Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229 (D.D.C. 2006), District Judge Royce Lamberth articulated a framework for determining solatium damages pursuant to which spouses of deceased victims each received approximately $8 million, parents each received $5 million, and siblings each received $2.5 million. Several courts subsequently have followed the Heiser framework while acknowledging that upward or downward departures are sometimes appropriate. See, e.g., Estate of

Bland v. Islamic Republic of Iran, 831 F. Supp. 2d 150, 156 (D.D.C. 2011); Valore, 700 F. Supp. 2d at 85.

Here, each of the Individual Plaintiffs has submitted a declaration attesting to the traumatic effects of the loss of his or her loved one. (See Pls.' Mem. Ex. B). A review of those submissions makes clear that all of the Individual Plaintiffs have suffered profound agony and grief as a result of the tragic events of September 11th. Worse yet, the Individual Plaintiffs clearly are faced with frequent reminders of the events of that day. (Id.). Considering the extraordinarily tragic circumstances surrounding the September 11th attacks, and their indelible impact on the lives of the victims' families, I find that it is appropriate to grant the upward departures from the Heiser framework that the Individual Plaintiffs collectively have requested. Accordingly, I recommend that with one exception[2] the Individual Plaintiffs be awarded solatium damages as follows:

Relationship to Decedent	**Solatium Award**
Spouse	$12,500,000
Parent	$8,500,000
Child	$8,500,000
Sibling	$4,250,000

[2] The exception relates to Chrislan Fuller Manuel ("Manuel"), the niece of one of the decedents. Typically, solatium damages are available only to the spouses, children, parents, and siblings of decedents. See Smith, 262 F. Supp. 2d at 234. Although courts occasionally have awarded solatium damages to more distant relatives who served functionally as immediate family members, see, e.g., id. at 236 (grandmother who raised decedent from an early age); Surette, 231 F. Supp. 2d at 270 (decedent's unmarried partner of over twenty years), Manuel did not have that sort of relationship with her aunt. (See Pls.' Mem. Ex. B).

If this recommendation is adopted, the 110 Individual Plaintiffs entitled to recover damages for solatium will receive a total of $874,000,000. The separate solatium award for each Individual Plaintiff is set forth in Appendix 2 to this Report and Recommendation.

4. Punitive Damages

Pursuant to the FSIA, the Plaintiffs also are entitled to punitive damages. See Section 1605A(c)(4). The Plaintiffs propose two different ways to calculate their punitive damages. First, the Plaintiffs propose that the Court follow the reasoning articulated in Estate of Bland, 831 F. Supp. 2d at 158. Under that rubric, the Court would calculate punitive damages by multiplying the Plaintiffs' compensatory damages by 3.44. (See Pls.' Mem. at 20). Alternatively, the Plaintiffs propose applying a 5.35 ratio as the court did in Flax v. DaimlerChrysler Corp., 272 S.W.3d 521 (Tenn. 2008). (See Pls.' Mem at 21).

In Estate of Bland, an FSIA case arising out of the bombing of the United States Marine barracks in Beirut, the court, "relying on the Supreme Court's opinion in Philip Morris USA v. Williams, 549 U.S. 346 (2007)," applied a 3.44 ratio, noting that several courts previously had applied that ratio in FSIA cases. Estate of Brand, 831 F. Supp. 2d at 158 (citing Murphy v. Islamic Republic of Iran, 740 F. Supp. 2d 51, 75 (D.D.C. 2010), and Valore, 700 F. Supp. 2d at 52). In Flax, a products liability case arising out of a car accident, the Tennessee Supreme Court upheld a punitive damages award that was 5.35 times the victim's compensatory damages. 272 S.W.3d at 540, cert.

denied, 129 S. Ct. 2433. In the course of approving that higher multiplier, however, the court expressly noted that the victim's compensatory damages were not so substantial as to render such a high ratio unconstitutional. Id. at 539.

As the court explained in Estate of Bland, the 3.44 ratio "has been established as the standard ratio applicable to cases arising out of" terrorist attacks. 831 F. Supp. 2d at 158. Moreover, the Plaintiffs in this case are entitled to substantial compensatory damages. Accordingly, Flax, which was decided several years before Bland and involves dissimilar facts, does not suggest that this Court should deviate from the established standard in FSIA cases. The Plaintiffs' compensatory damages amount to $1,362,277,884. I therefore recommend that they be awarded punitive damages based on a 3.44 multiplier, yielding a punitive damages total of $4,686,235,921.

5. Prejudgment Interest

Recognizing that an award of prejudgment interest is warranted when plaintiffs are delayed in recovering compensation for non-economic injuries caused by acts of terrorism, Magistrate Judge Facciola recently awarded such plaintiffs prejudgment interest at the prime rate. See Baker v. Socialist People's Libyan Arab Jamahirya, 775 F. Supp. 2d 48, 86 (D.D.C. 2011). Dr. Smith similarly has used the average prime rate published by the Federal Reserve Bank for the period from September 11, 2001, through the date of his report and assumed that prejudgment interest would be awarded through January 1, 2013. (See Pls.' Mem. Ex. J). There is, however, no reason to believe that this Report and Recommendation will be reviewed by a particular date. Accordingly, if this

Report and Recommendation is adopted, the Clerk of the Court should simply be directed to award prejudgment interest on the Plaintiffs' damages for solatium and pain and suffering, which total $968,000,000, at the rate of 4.96 percent per annum for the period from September 11, 2001, through the date that judgment is entered.

B. Non-Sovereign Defendants

Although the Plaintiffs' submissions do not discuss their claims against the Non-Sovereign Defendants in great detail, those Defendants are liable for the same damages as the Sovereign Defendants under traditional tort principles.[3] See Valore, 700 F. Supp. 2d at 76-80. The Non-Sovereign Defendants consequently should be held jointly and severally liable for the damages set forth above and in the appendices to this Report and Recommendation.[4]

C. Costs

The Plaintiffs also seek approximately $2 million in costs. (See Pls.' Mem. Ex. M). Pursuant to 28 U.S.C. § 1920 and Local Civil Rule 54.1(c), only certain expenditures may be taxed as costs. The Plaintiffs have requested an award of costs

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[3] The Plaintiffs, however, cannot recover treble damages against the Non-Sovereign Defendants pursuant to the Antiterrorism Act, 18 U.S.C. § 2333, see Smith, 262 F. Supp. 2d at 220-22, because they did not assert such a claim in their Complaint. (See Compl. ¶¶ 401-21).

[4] As discussed above, at least two of the Estate Plaintiffs already have been awarded damages against some of the Non-Sovereign Defendants. See Smith, 262 F. Supp. 2d at 240-41. To the extent that the damages awarded in this action may exceed those awarded in a previous action, the Non-Sovereign Defendants have waived any potential res judicata defense by failing to appear.

primarily for expenses that are not recoverable. In addition, the proffered evidence is insufficient for the Court to calculate any taxable costs that could be allowed. The Plaintiffs' application for costs consequently should be denied without prejudice to a renewed application.

IV. Conclusion

For the reasons set forth above, the Plaintiffs should be awarded damages against the Sovereign and Non-Sovereign Defendants in the amount of $6,048,513,805. Additionally, the Plaintiffs are entitled to prejudgment interest on their non-economic compensatory damages at the rate of 4.96 percent per annum from September 11, 2001, through the date judgment is entered.

V. Notice of Procedure for Filing of Objections to this Report and Recommendation

The parties shall have fourteen days from the service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. See also Fed. R. Civ. P. 6(a) and (d). Any such objections shall be filed with the Clerk of the Court, with courtesy copies delivered to the Chambers of the Honorable George B. Daniels and to the Chambers of the undersigned at the United States Courthouse, 500 Pearl Street, New York, New York 10007, and to any opposing parties. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b). Any requests for an extension of time for filing objections must be directed to

Judge Daniels. The failure to file these timely objections will result in a waiver of those objections for purposes of appeal. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b); Thomas v. Arn, 474 U.S. 140 (1985).

Dated: New York, New York
July 30, 2012

FRANK MAAS
United States Magistrate Judge

Copies to:

Hon. George B. Daniels
United States District Judge

All counsel via ECF

Appendix 1
Economic Damage Awards

ESTATE	ECONOMIC DAMAGES
Bane, Michael	$5,960,665
Boryczewski, Martin	17,363,416
Cafiero, Steven	1,754,202
Caproni, Richard M.	3,551,011
Chirchirillo, Peter	5,440,587
Coale, Jeffrey	5,558,859
Coffey, Daniel M.	5,059,077
Coffey, Jason	4,006,486
Collman, Jeffrey	4,318,172
Diehl, Michael	5,584,103
Dorf, Stephen	3,242,690
Fernandez, Judy	2,852,544
Gamboa, Ronald	2,890,981
Godshalk, William	16,672,472
Grazioso, John	7,376,753
Gu, Liming	11,883,059
Halvorson, James	9,464,745
Havlish, Donald	6,711,879
Lavelle, Dennis	4,039,992
Levine, Robert	4,520,876
Lostrangio, Joseph	5,777,844
Mauro, Dorothy	1,580,579
Melendez, Mary	7,531,551
Milano, Peter T.	22,153,588

Moreno, Yvette	2,360,239
Nunez, Brian	2,499,922
Ognibene, Philip	4,435,087
Papasso, Salvatore T.	6,289,680
Perry, John	4,924,240
Ratchford, Marsha	6,233,977
Reiss, Joshua	7,726,738
Rodak, John M.	24,440,747
Romero, Elvin	14,783,971
Rosenthal, Richard	7,274,204
Santillan, Maria Theresa	3,255,002
Saracini, Victor	9,593,658
Schertzer, Scott	2,792,107
Sloan, Paul K.	5,967,696
Smith, George	2,609,215
Soulas, Timothy	86,796,344
Steiner, William	6,443,814
Stergiopoulos, Andrew	5,716,259
Straub, Edward W.	16,552,703
Tino, Jennifer	2,625,577
Wallendorf, Jeanmarie	1,768,803
Waller, Meta	1,200,501
Ward, Timothy	2,691,269
TOTAL	**$394,277,884**

(See Pls.' Mem. Ex. H).

Appendix 2
Solatium Damages

RELATIONSHIP	NUMBER OF PLAINTIFFS	DAMAGES	TOTAL
Spouse	23	$12,500,000	$287,500,000
Parent	41	8,500,000	348,500,000
Child	10	8,500,000	85,000,000
Sibling	36	4,250,000	153,000,000
Total	**110**		**$874,000,000**

(See Pls.' Mem. Ex. A)

ANNEX 364

462 F.3d 95
United States Court of Appeals,
Second Circuit.

D.H. BLAIR & CO., INC., and Kenton E. Wood, Individually and as Director and Chief Executive Officer of D.H. Blair & Co., Inc., Plaintiffs–Appellees,
v.
Judit GOTTDIENER, Ernest Gottdiener, Ervin Tausky and Suan Investments, Defendants–Appellants,
D.H. Blair Investment Banking Corp., J. Morton Davis and Alfred Palagonia, Defendants.

Docket No. 04–3260.
|
Argued: May 19, 2005.
|
Decided: Sept. 5, 2006.

Synopsis

Background: Broker filed state court petition to confirm in part and vacate in part the award of an arbitration panel on investors' claims that broker violated federal securities and other laws. Investors removed matter to federal court. The United States District Court for the Southern District of New York, Richard Owen, J., 2004 WL 1057626, entered default judgment confirming award in part, but vacating portion adding prejudgment interest to punitive damages. Investors appealed.

Holdings: The Court of Appeals, Winter, Circuit Judge, held that:

investors consented to district court's jurisdiction;

venue was proper in district court;

district court did not abuse its discretion by refusing to transfer the case;

should have been treated as a motion;

after removing petition, investors should have responded in some fashion;

default judgment was inappropriate, and district court should have treated broker's motion to confirm as unopposed summary judgment motion, and the motion to vacate as opposed;

arbitrators' award of prejudgment interest to investors on punitive damages was not manifestly contrary to law; and

confirmation of entire arbitral award was appropriate.

Vacated and remanded.

Attorneys and Law Firms

***99** Jay R. Fialkoff, Moses & Singer LLP, New York, New York (Jayson D. Glassman, of counsel), for Plaintiffs–Appellees.

Mark A. Tepper, Fort Lauderdale, Florida, for Defendants–Appellants.

***100** Before: WINTER and KATZMANN, Circuit Judges, and MURTHA,* District Judge.

Opinion

WINTER, Circuit Judge.

Judit and Ernest Gottdiener, Ervin Tausky, and Suan Investments (collectively "the Investors") appeal from a grant of default judgment to D.H. Blair & Co., Inc. ("D.H.Blair") and Kenton E. Wood (collectively "Broker"). The default judgment granted Broker's motion to confirm in part and vacate in part the award of an arbitration panel.

The Investors argue, *inter alia,* that the Southern District of New York ("S.D.N.Y.") lacked personal jurisdiction over them and was an improper venue. The Investors also argue that the district court abused its discretion by failing to vacate the default judgment. These arguments are directed to restoring the part of the award vacated in the present actions and to breathing life into their own motion to vacate the arbitral award, which was filed in the Southern District of Florida ("S.D.Fla.") and transferred to the S.D.N.Y. after entry of the default judgment. Although personal jurisdiction existed in the S.D.N.Y. and there was proper venue, we vacate so much of the

default judgment as vacated parts of the arbitration award. We confirm the award because it was not manifestly contrary to law, after finding that the Investors waived their arguments regarding Florida law by not raising them in the S.D.N.Y. action.

BACKGROUND

a) *The Arbitration*

The Investors maintained securities trading accounts with Broker. Each of the Investors signed separate account agreements and opened trading accounts with D.H. Blair in New York. Each agreement specified that disputes between the Investors and Broker be resolved by arbitration and that:

> The award of the arbitrators, or the majority of them, shall be final, and judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction. I consent to the jurisdiction of the state and federal courts in the City of New York for the purpose of compelling arbitration, staying litigation pending arbitration, and enforcing any award of arbitrators.

On May 22, 2000, Investors filed a statement of claim against Broker with the National Association of Securities Dealers ("NASD") in New York City alleging violations of the federal securities and other laws. When filing their claim, the Investors signed a "NASD Regulation Arbitration Uniform Submission Agreement," which provided that:

> The undersigned parties further agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement and further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the undersigned parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.

On December 19, 2000, the Investors amended their claims to assert violations of the New Jersey Blue Sky Law, contending that they were New Jersey residents. Less than three weeks later, on January 5, ***101** 2001, the Investors, in a collective change of mind, asserted that they were Florida residents during their entire relationship with Broker and requested that the matter be transferred to a NASD office in Florida. The dispute was transferred to Florida, and on June 25, 2002, the Investors amended their claim to assert violations of the Florida Blue Sky Law. The arbitration took place before a panel of three arbitrators in September and October 2002 in the NASD's Boca Raton, Florida offices.

At the commencement of the arbitration, the Investors initially sought "1) compensatory damages ...; 2) interest; 3) return of commissions ...; 4) punitive damages ...; 4)[sic] costs; and 5) attorneys' fees," but in their "post-hearing submissions," which were considered by the arbitrators before rendering a decision, the Investors requested slightly different relief, including "1) compensatory damages ...; 2) punitive damages ...; 4) costs ...; 5) pre-judgment interest; and 6) a finding that each respondent violated Section 517.301, Florida Statutes." The differences in the relief sought are monetarily significant in that the compensatory and punitive damages requested were higher and the request for "prejudgment interest" followed the request for compensatory and punitive damages and costs, implying that prejudgment interest should apply to each.

On January 29, 2003, the arbitrators awarded $255,000 in compensatory damages and $450,000 in punitive damages to the Investors. Both awards included prejudgment interest accruing from May 22, 1995, "until the date the Award is paid in full." The Investors moved to have the arbitrators recalculate the compensatory damages to include damages required under Florida law, and Broker filed a response defending the award. On March 12, 2003, the arbitration panel denied the motion.

b) *Broker's New York Petition*

Broker filed a Notice of Petition and Petition to Confirm in Part and Vacate in Part an Arbitration Award ("New York Petition") in the Supreme Court of New York County. The Petition had a return date of April 29, 2003, and stated that, as allowed by Section 403(b) of the New York C.P.L.R., answering papers had to be served on the movant seven days before that date. The Investors were served with these documents on April 11, 2003. In the New York Petition, Broker argued that the award should be confirmed, except for the portion that awarded prejudgment interest on punitive damages. Broker asserted that this part of the award was in manifest disregard of the law and contrary to public policy. On April 25, 2003, the Investors removed the New York Petition to the S.D.N.Y. with an explicit reservation of all rights and defenses, "including but not limited to all rights and defenses directed to the inadequacy and impropriety

of service of process and personal jurisdiction." The Investors asserted that they had "not submitted to the Jurisdiction of the state court in New York and further believe[d] that neither the state court in New York, nor the [S.D.N.Y. had] personal jurisdiction over them." After removal, the Investors took no further action on the New York Petition until the entry of a default judgment as described *infra*.

On June 4, 2003, Broker sought and received a Clerk's Certificate of default based on the Investors' failure to respond to the New York Petition, relying upon noncompliance with Rule 81(c), which states in relevant part that "[i]n a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under these rules ... within 5 days after the filing of the petition for ***102** removal." Fed.R.Civ.P. 81(c). Broker then moved in the district court for entry of default judgment under Rule 55(b)(2) on June 5, 2003. On June 17, 2003, the Investors filed an Opposition to Entry of Default Judgment, Cross Motion to Vacate Default, and Cross Motion to Dismiss or Transfer. In contesting the entry of default against them, the Investors argued that Broker's New York Petition was a motion, not a complaint or pleading; as such, default was improper because the Rules do not provide for entry of default judgment on a motion. Moreover, the Investors asserted that the New York Petition was incomplete as it lacked a memorandum of law. They also claimed that they had a meritorious defense in that Broker had never called the rule against prejudgment interest on punitive damages to the attention of the arbitrators. Finally, the Investors sought either a dismissal of the New York Petition for lack of personal jurisdiction and improper venue, arguing that the "balance of convenience plainly favors Florida," or a transfer to the S.D.Fla., where there was a pending, related action described below.

c) *Investors' Florida Petition*

While the Investors did not respond directly to the New York Petition after they removed it to the S.D.N.Y., on April 29, 2003, they filed their own Petition to Partially Vacate/Confirm Arbitration Award and to Determine Prejudgment Interest, Attorney's Fees and for Other Relief ("Florida Petition") in a Florida state court. The Florida Petition asked the court to vacate the compensatory damages portion of the arbitration award as being in manifest disregard of the law because the arbitrators specifically found a violation of Fla. Stat. ch. 517.301 but failed to award the full statutory damages as directed by Fla. Stat. ch. 517.211. The Florida Petition requested confirmation of the remainder of the award and the calculation of attorneys' fees, which had been deferred by the arbitrators.

On May 30, 2003, Broker removed the Florida Petition to the S.D. Fla. and filed an answer to it on June 6, 2003. On July 11, 2003, Broker moved to stay the Florida proceedings until the district court in the S.D.N.Y. ruled on the first-filed New York Petition or, in the alternative, to transfer venue of the Florida action to the S.D.N.Y. On August 29, 2003, the district court in the S.D.Fla. transferred the Florida Petition to the S.D.N.Y.

d) *Judgment on the New York Petition*

On August 20, 2003, before the transfer of the Florida Petition, Judge Owen granted a default judgment in the S.D.N.Y., confirming the award in part but vacating the portion adding prejudgment interest to the punitive damages. After holding that it had personal jurisdiction over the Investors, the district court held that the certificate of default was properly entered per Rule 81(c) because the New York Petition complied with state procedural rules, and a federal court takes a removed action in the posture in which it receives it. Therefore, the Investors had a duty to answer the New York Petition and could not ignore it once they removed it to federal court. Moreover, the district court found that there was no good cause to set aside the entry of default under Rule 55(c) because the Investors had not presented a meritorious defense to Broker's claim that the award of prejudgment interest on punitive damages was made in manifest disregard of the law. Finally, the district court denied the motion to transfer venue to Florida because the action was first filed in New York, there were no special circumstances, and many of the events underlying the action occurred in New York.

***103** On September 2, 2003, the Investors filed a Rule 59(e) Motion to Alter or Amend the default judgment. The Investors claimed a due process violation in that the default judgment effectively disposed of the Florida Petition without addressing the merits. They also contended that the district court erred in setting aside the prejudgment interest on punitive damages. The district court denied the motion on May 7, 2004.

DISCUSSION

a) *Personal Jurisdiction*

We first address the Investors' claim that the S.D.N.Y. lacked personal jurisdiction over them. "We review district court decisions on personal jurisdiction for clear error on factual holdings and *de novo* on legal conclusions." *Mario Valente Collezioni, Ltd. v. Confezioni Semeraro Paolo, S.R.L.*, 264 F.3d 32, 36 (2d Cir.2001) (citing *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co.*, 241 F.3d 135, 151 (2d Cir.2001)). We hold that the district court properly exercised personal jurisdiction over the parties for two reasons. First, the Investors consented to personal jurisdiction in New York. Second, even absent consent, the Investors transacted business in and had sufficient contacts with New York to allow New York courts to exercise personal jurisdiction over them.

1. Consent

Parties can consent to personal jurisdiction through forum-selection clauses in contractual agreements. *See Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 315–16, 84 S.Ct. 411, 11 L.Ed.2d 354 (1964) ("And it is settled ... that parties to a contract may agree in advance to submit to the jurisdiction of a given court ...."); 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1064, at 344 (3d ed.2002). Here, the Investors consented to jurisdiction in the S.D.N.Y. when they executed their "Cash Account Agreements" with Broker. These Agreements contained a forum-selection clause explicitly stating that the Investors "consent to the jurisdiction of the state and federal courts in the City of New York for the purpose of ... enforcing any award of arbitrators."

While forum-selection clauses are regularly enforced, *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 111 S.Ct. 1522, 113 L.Ed.2d 622 (1991), several conditions must be met. A court must first determine that the existence of the clause was reasonably communicated to the parties. *See Effron v. Sun Line Cruises, Inc.*, 67 F.3d 7, 9 (2d Cir.1995). The Investors do not claim an unawareness of the jurisdictional consent clause; it was plainly printed on the Cash Account Agreements. Second, a forum-selection clause will be upheld unless "the clause was obtained through fraud or overreaching." *Jones v. Weibrecht*, 901 F.2d 17, 18 (2d Cir.1990) (citing *The Bremen v. Zapata Off–Shore Co.*, 407 U.S. 1, 15, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972)). The Investors make no claim that their consent to the Cash Account Agreements was procured by fraud or overreaching.

Finally, unless it is clearly shown that "enforcement would be unreasonable and unjust," *id.*, forum-selection clauses will be enforced. It is on this ground that the Investors argue the Cash Account Agreement clause should not be enforced. The Investors claim that because the Cash Account Agreements limit New York courts' jurisdiction to "*enforcing* any award of arbitrators" (emphasis supplied), that they did not consent to jurisdiction in New York to *vacate* any part of the award ***104** and that any reading otherwise is unreasonable and unjust.

We disagree. The Cash Account Agreements were an agreement to jurisdiction in the New York courts for *both* confirmation and vacatur proceedings. As such, the enforcement of the jurisdictional consent clause is neither unjust nor unreasonable. The purpose of the clause was to consent to New York jurisdiction for *all* arbitration-related proceedings, including "compelling arbitration, staying litigation pending arbitration, and enforcing any award of arbitrators." The use of the word "enforce" rather than the word "confirm" is significant. To enforce is "[t]o give force or effect to." Black's Law Dictionary (8th ed.2004). Because "[a]rbitration awards are not self-enforcing," they must be given force and effect by being converted to judicial orders by courts; these orders can confirm and/or vacate the award, either in whole or in part. *Hoeft v. MVL Group, Inc.*, 343 F.3d 57, 63 (2d Cir.2003). Here, Broker petitioned the court to confirm in part and vacate in part the arbitration award. That request simply sought to give effect to the arbitration award. The partial vacatur of the award sought by Broker does not alter the nature of the action, which we believe is properly considered to involve "enforcing" the arbitration award.

Furthermore, it is irrational to consent to jurisdiction in a court for purposes of confirming an award but not for purposes of vacating all or part of it. A party opposing confirmation of an award may rightly respond by asserting grounds for partial or whole vacatur; the right to do so cannot rationally be truncated by a personal jurisdiction clause permitting only the enforcement of arbitration awards. If we were to accept the Investors' interpretation, applications to confirm arbitration awards would have to be litigated separately from any application to vacate the award, even if only a partial vacating is sought. We cannot attribute such an irrational and wildly inefficient meaning to the clause.

We hold, therefore, that the Investors consented to the jurisdiction of the state and federal courts of New York.

2. The Investors Transacted Business in New York

Even absent consent, the S.D.N.Y. still had personal jurisdiction over the Investors. The Investors agree that subject matter jurisdiction in the S.D.N.Y. is based on diversity of citizenship. In diversity cases, the issue of personal jurisdiction is governed by the law of the forum state, here, New York's Civil Practice Law and Rules ("N.Y.C.P.L.R.") section 302, New York's long-arm statute, *see Agency Rent A Car Sys., Inc. v. Grand Rent A Car Corp.*, 98 F.3d 25, 29 (2d Cir.1996), so long as the district court's exercise of jurisdiction comports with the requirements of due process. *See Metropolitan Life Ins. Co. v. Robertson–Ceco Corp.*, 84 F.3d 560, 567 (2d Cir.1996).

N.Y. C.P.L.R. § 302(a)(1) permits a court to exercise personal jurisdiction over an out-of-state party if that party "transacts any business within the state" and if the claim arises from these business contacts. *See CutCo Indus., Inc. v. Naughton*, 806 F.2d 361, 365 (2d Cir.1986). To meet the transacting business element under N.Y. C.P.L.R. § 302(a)(1), it must be shown that a party " 'purposely availed [himself] of the privilege of conducting activities within New York and thereby invoked the benefits and protections of its laws ....' " *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 171 F.3d 779, 787 (2d Cir.1999) (quoting ***105** *Parke–Bernet Galleries v. Franklyn*, 26 N.Y.2d 13, 308 N.Y.S.2d 337, 256 N.E.2d 506, 509 (1970)) (alterations in original). "To determine whether a party has 'transacted business' in New York, courts must look at the totality of circumstances concerning the party's interactions with, and activities within, the state." *Id.*

There are sufficient business contacts to support personal jurisdiction over the Investors under New York's long-arm statute. The Investors entered into a brokerage account agreement with Broker and executed numerous stock trades through Broker's New York offices on various New York exchanges. *See, e.g., Credit Lyonnais Sec. (USA), Inc. v. Alcantara*, 183 F.3d 151, 154 (2d Cir.1999) (holding that personal jurisdiction was proper under N.Y. C.P.L.R. § 302(a)(1) based on defendants' active account with plaintiff security broker from which a series of transactions were made that formed the basis of the lawsuit). Furthermore, the Investors' contacts with New York provided fair warning of the possibility of being subject to the jurisdiction of New York. *See Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 527 N.Y.S.2d 195, 522 N.E.2d 40, 43 (1988).

To meet the "arising out of" requirement of N.Y. C.P.L.R. § 302(a), there must be "a substantial nexus" between the transaction of business and the claim. *Agency Rent A Car*, 98 F.3d at 31; *McGowan v. Smith*, 52 N.Y.2d 268, 437 N.Y.S.2d 643, 419 N.E.2d 321, 323 (1981). The action in the S.D.N.Y. arose out of the arbitration award, which resolved the Investors' claims against Broker for fraudulently and negligently handling the Investors' investment accounts. These accounts were located and managed in New York. Thus, there is a sufficient nexus between the transaction of the business and the claim to comply with the requirements of N.Y. C.P.L.R. § 302(a).

Finally, the constitutional requirements of personal jurisdiction are satisfied because application of N.Y. C.P.L.R. § 302(a) meets due process requirements. *See United States v. Montreal Trust Co.*, 358 F.2d 239, 242 (2d Cir.1966).

b) *Venue*

The Investors also argue that the district court erred in denying their motion to transfer venue to the S.D. Fla. We review a denial of a motion to transfer venue for abuse of discretion. *A. Olinick & Sons v. Dempster Bros., Inc.*, 365 F.2d 439, 444 (2d Cir.1966).

We find that venue was proper in the S.D.N.Y. As discussed above, the Cash Account Agreements signed by the Investors specifically designate New York state and federal courts as proper fora to contest or confirm awards. Section 9 of the Federal Arbitration Act ("FAA") states that venue is appropriate in any jurisdiction to which the parties have agreed. 9 U.S.C. § 9. As discussed, the Cash Account Agreements make venue appropriate in the S.D.N.Y.

Even without the forum-selection clauses in the Cash Account Agreements, venue in the S.D.N.Y. would be appropriate. In *Cortez Byrd Chips, Inc. v. Bill Harbert Const. Co.*, the Supreme Court held that the FAA's venue provision must be read permissively to allow a motion to confirm, vacate, or modify an arbitration award either where the award was made or in any district proper under the general venue statute, 28 U.S.C. § 1391. 529 U.S. 193, 195, 204, 120 S.Ct. 1331, 146 L.Ed.2d 171 (2000). As this matter was before the district court based on diversity jurisdiction under 28 U.S.C. § 1332, the applicable venue

statute provides that:

> [a] civil action wherein jurisdiction is founded only on diversity of citizenship ***106** may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C. 1391(a).

For present purposes, Section 1391(a)(2) is dispositive. "[A] substantial part of the events or omissions giving rise to the claim occurred" in the S.D.N.Y. Under *Cortez,* with regard to enforcement of arbitration awards, the "events giving rise to the claim" are those events giving rise to the claim resolved in the arbitration, not just the arbitration proceeding itself. *Cortez,* 529 U.S. at 198, 120 S.Ct. 1331. The fraud and manipulation alleged by the Investors involved conduct by Broker relating to securities traded on the New York exchanges or underwritten by Broker itself ("house stocks"), and the alleged breaches of fiduciary duties and negligent supervision arose out of Broker's conduct in New York. Thus, venue in the S.D.N.Y. was appropriate.

Although venue would also have been proper in Florida, the district court in the S.D.N.Y. did not abuse its discretion by refusing to transfer the case. *See Bates v. C & S Adjusters, Inc.,* 980 F.2d 865, 867 (2d Cir.1992) (noting that the venue statute does not require the district court to determine the *best* venue, only a *suitable* one). Broker filed its New York Petition before the Investors filed their Florida Petition. As such, the first-filed rule weighs in favor of the S.D.N.Y. action. "[W]here there are two competing lawsuits, the first suit should have priority, absent the showing of balance of convenience or special circumstances giving priority to the second." *First City Nat'l Bank & Trust v. Simmons,* 878 F.2d 76, 79 (2d Cir.1989) (internal quotations, citation, and alterations omitted).

The Investors claim that Broker commenced this action through an improper anticipatory filing during settlement talks and that this constitutes special circumstances sufficient to preclude application of the first-filed rule. *See Ontel Prods., Inc. v. Project Strategies Corp.,* 899 F.Supp. 1144, 1150 (S.D.N.Y.1995). However, even assuming that the claimed circumstances are special, the only evidence of settlement discussions—an April 7, 2003, fax rejecting a settlement offer but stating that "there may be some basis to conclude a settlement"—does not show active settlement discussions with the Investors. Moreover, Broker filed its New York Petition in the face of a quickly approaching deadline, after which it would not have had the right to contest the arbitration award at all. *See* 9 U.S.C. § 12 ("Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered."). With the deadline looming, the Investors could not have been surprised by Broker's filing.

Finally, the Investors have not satisfied their burden under 28 U.S.C. § 1404(a) by showing that transfer was warranted "for the convenience of the parties and witnesses, in the interest of justice." District courts have broad discretion in making determinations of convenience under Section 1404(a) and notions of convenience and fairness are considered on a case-by-case basis. *In re Cuyahoga Equip. Corp.,* 980 F.2d 110, 117 (2d Cir.1992). Some of the factors a district court is to consider are, *inter alia:* "(1) the ***107** plaintiff's choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, [and] (7) the relative means of the parties." *Albert Fadem Trust v. Duke Energy Corp.,* 214 F.Supp.2d 341, 343 (S.D.N.Y.2002). Applying these factors, the district court was well within its discretion in denying the Investors' requested venue transfer. First, Broker chose New York as its forum, a decision that is given great weight. *Piper Aircraft Co. v. Reyno,* 454 U.S. 235, 255, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981). Second, New York is a convenient forum for all the parties: the Investors have homes in New Jersey and have at times claimed to be New Jersey residents; Broker is located in New York. Finally, documents and other evidence regarding the arbitral award are freely available in New York. Thus, the Investors cannot convincingly argue that New York is an inconvenient forum.[1]

c) *Default Judgment*

The Investors advance several arguments as to why the district court's entry of default judgment should be set aside. In considering these, we review the district court's decision for abuse of discretion. *Pecarsky v. Galaxiworld.com Ltd.,* 249 F.3d 167, 171 (2d Cir.2001) (quotation marks and citation omitted).

1. The Investors' Obligation to Respond

The Investors argue that a default judgment was inappropriate because they had no obligation to respond to the removed New York Petition. Their position is that the Petition constituted a motion and that Fed.R.Civ.P. 55(a) and 81(c) apply only to removed actions begun by a complaint and not to motions. The Investors also note that the district court never ordered them to respond to the New York Petition and never held a status conference to set a briefing schedule. They further note that Broker failed to comply with Local Rule 7.1 by not including a memorandum of law. We agree that the removed New York Petition should have been treated as a motion but disagree that the Investors had no obligation to respond.

Rule 55(a) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Rule 55 "tracks the ancient common law axiom that a default is an admission of all well-pleaded allegations against the defaulting party." *Vt. Teddy Bear Co. v. 1–800 Beargram Co.*, 373 F.3d 241, 246 (2d Cir.2004). Like all general provisions of the Federal Rules, Rule 55 is meant to apply to "civil actions," Fed.R.Civ.P. 2, where only the first step has been taken—*i.e.*, the filing of a complaint—and the court thus has only allegations and no evidence before it.

We agree with the Investors that Rule 55 does not operate well in the context of a motion to confirm or vacate an arbitration award. *See, e.g., N.Y. Typographical* ***108** *Union No. 6 v. AA Job Printing*, 622 F.Supp. 566, 567 (S.D.N.Y.1985) (citing *Traguth v. Zuck*, 710 F.2d 90, 94 (2d Cir.1983)). As the very name implies, they are motions in an ongoing proceeding rather than a complaint initiating a plenary action. 9 U.S.C. § 6 ("Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided."); *Productos Mercantiles E Industriales, S.A. v. Faberge USA, Inc.*, 23 F.3d 41, 46 (2d Cir.1994) (noting that a district court "properly treated [a petition to the court for modification of an arbitration award] as a motion in accordance with the express provisions of the FAA").

Rule 81(c) also appears to speak only to actions begun by service of a complaint. Moreover, Rule 81(a)(3) recognizes that the Federal Arbitration Act may govern procedures relating to arbitral awards, and the provisions of that Act dictate the treating of the removed New York Petition as a motion.

However, treating the Petition as a motion does not lead to the conclusion that the Investors could simply await some initiative by the Broker or the court.[2] Removed proceedings arrive in federal court in the procedural posture they had in state court. *Sun Forest Corp. v. Shvili*, 152 F.Supp.2d 367, 387 (S.D.N.Y.2001) ("It is well established that the district court 'takes the [removed] action in the posture in which it existed when it is removed from a state's court jurisdiction and must give effect to all actions and procedures accomplished in a state court prior to removal.' ") (quoting *Miller v. Steloff*, 686 F.Supp. 91, 93 (S.D.N.Y.1988)). The New York Petition contained a return date and, as allowed by Section 403(b) of the New York C.P.L.R., a demand for service of the response seven days before the return date. N.Y.C.P.L.R. § 403(b) ("An answer shall be served at least seven days before [the time of hearing specified in the notice of petition] if a notice of petition served at least twelve days before such time so demands...."). The Investors removed the Petition after the due date for the response but before the return date. When the New York Petition arrived in federal court, its posture was unchanged: a motion with a return date. *Sun Forest Corp.*, 152 F.Supp.2d at 387. That, indeed, is the logical outcome of the Investors' insistence that the Petition is a motion and not a complaint implicating Rule 55. The Investors, therefore, should have responded in some fashion, *e.g.*, by seeking an extension, arguing the merits, raising jurisdictional or venue objections, etc. We trust that parties faced with this or similar situations in ***109** the future will take counsel from our remarks.

But, given the prior dearth of caselaw on the treatment of removed petitions to confirm or vacate arbitration awards, the Investors are entitled to some slack. Nevertheless, whatever confusion existed as to the need to address the merits was dispelled by the clerk's entry of default, a concentration-focusing event that calls for a party to lay all its cards on the table. Indeed, a meritorious claim or defense is always relevant to a motion seeking avoidance or vacatur of a default. *See Pecarsky*, 249 F.3d at 171 ("When deciding whether to relieve a party from default or default judgment, we consider the willfulness of the default, the existence of a meritorious defense, and the level of prejudice that the non-defaulting party may suffer should relief be granted."). Therefore, we believe that all arguments going to the merits of confirming or vacating the award should have been raised in the Investors' motion to vacate the clerk's entry of default. However, that motion was accompanied by cross motions to dismiss or transfer and focused almost exclusively on why the

New York Petition should not be decided by the S.D.N.Y. The Investors' memorandum of law did note the relevance of the merits to the default issues and argued, although briefly, that, because Broker had never informed the arbitrators of the impropriety of prejudgment interest on punitive damages, the award of such interest did not taint the award. Although the Investors' papers noted the existence of their Florida Petition to vacate the award, they failed at any time to inform the S.D.N.Y. of their view that Florida law required an increase in the damages. While this issue was briefed in their post-judgment Rule 59(e) motion, we believe that, given the ample notice of the peril of treating the S.D.N.Y. proceeding as one that would soon go away, this was an untimely raising of the issue. A district court facing a motion to vacate the clerk's default in these circumstances is more than justified in believing that it has heard whatever the movant has to say on the merits.

2. Appropriateness of a Default Judgment

We conclude that default judgments in confirmation/vacatur proceedings are generally inappropriate. A motion to confirm or vacate an award is generally accompanied by a record, such as an agreement to arbitrate and the arbitration award decision itself, that may resolve many of the merits or at least command judicial deference. When a court has before it such a record, rather than only the allegations of one party found in complaints, the judgment the court enters should be based on the record. It does not follow, of course, that the non-movant can simply ignore such a motion. If the non-movant does not respond, its failure to contest issues not resolved by the record will weigh against it.

In the present matter, the district court had before it the written contracts between the Investors and Broker, the NASD Uniform Submission Agreements, the award rendered by the NASD arbitration panel, and the order denying recalculation of the award. All were attached to Broker's New York Petition. A default judgment was inappropriate in light of this record. Rather, the petition and accompanying record should have been treated as akin to a motion for summary judgment based on the movant's submissions. To be sure, the Investors failed to respond, but the lack of a response does not justify a default judgment because, even where a non-moving party fails to ***110** respond to a motion for summary judgment, a court

> may not grant the motion without first examining the moving party's submission to determine if it has met its burden of demonstrating that no material issue of fact remains for trial. If the evidence submitted in support of the summary judgment motion does not meet the movant's burden of production, then summary judgment must be denied *even if no opposing evidentiary matter is presented.*

Vt. Teddy Bear Co., 373 F.3d at 244 (internal quotation marks and citations omitted); *see also United States v. One Piece of Property, 5800 S.W. 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1101 (11th Cir.2004) [hereinafter "*One Piece of Property* "] ("[T]he district court cannot base the entry of summary judgment on the mere fact that the motion was unopposed but, rather, must consider the merits of the motion."). Even unopposed motions for summary judgment must "fail where the undisputed facts fail to show that the moving party is entitled to judgment as a matter of law." *Vt. Teddy Bear Co.*, 373 F.3d at 244 (quoting *Champion v. Artuz*, 76 F.3d 483, 486 (2d Cir.1996)) (internal quotation marks omitted).

d) *Merits of the New York Petition*

In sum, we hold that the removed New York Petition was in substance a motion, that the presence of a return date required the Investors to respond and that generally a district court should treat an unanswered removed petition to confirm/vacate as an unopposed motion for summary judgment. However, under the circumstances here, the Investors' argument on the merits in response to the Clerk's default should be considered. Therefore, the motion to confirm should be treated as unopposed, and the motion to vacate should be treated as opposed on the ground that the arbitrators were never informed of the rule against prejudgment interest on punitive damages.

Normally, confirmation of an arbitration award is "a summary proceeding that merely makes what is already a final arbitration award a judgment of the court," *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir.1984), and the court "must grant" the award "unless the award is vacated, modified, or corrected." 9 U.S.C. § 9. The arbitrator's rationale for an award need not be explained, and the award should be confirmed " 'if a ground for the arbitrator's decision can be inferred from the facts of the case,' " *Barbier v. Shearson Lehman Hutton, Inc.*, 948 F.2d 117, 121 (2d Cir.1991) (quoting *Sobel v. Hertz, Warner & Co.*, 469 F.2d 1211, 1216 (2d Cir.1972)). Only "a barely colorable justification for the outcome reached" by the arbitrators is necessary to confirm the award. *Landy Michaels Realty Corp. v. Local 32B–32J, Service Employees Int'l Union*, 954 F.2d 794, 797 (2d Cir.1992). A party moving to vacate an

arbitration award has the burden of proof, and the showing required to avoid confirmation is very high. *Willemijn Houdstermaatschappij, BV v. Standard Microsystems Corp.*, 103 F.3d 9, 12 (2d Cir.1997) [hereinafter "*Willemijn* "].

One of the grounds for which an award may be vacated—and that argued by Broker in its New York Petition with regard to the prejudgment interest award on punitive damages—is manifest disregard of the law. *Wilko v. Swan*, 346 U.S. 427, 436–37, 74 S.Ct. 182, 98 L.Ed. 168 (1953), *rev'd on other grounds, Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 485, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989). A party seeking to vacate an arbitration award on the basis of manifest disregard of the law must satisfy ***111** a two-pronged test, proving that: "(1) the arbitrator knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrator was well defined, explicit, and clearly applicable to the case." *Hoeft v. MVL Group, Inc.*, 343 F.3d 57, 69 (2d Cir.2003) (internal quotation marks and alterations omitted).

Manifest disregard of the law "clearly means more than error or misunderstanding with respect to the law." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930, 933 (2d Cir.1986). The party challenging an award for manifest disregard of the law must demonstrate that the arbitrator actually knew about the relevant rule of law. A showing that the average person qualified to be an arbitrator would know the particular rule is insufficient to that end. *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 821 (2d Cir.1997) ("[T]he term 'disregard' implies that the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or pay no attention to it."). *DiRussa* rejected the argument that manifest disregard could be satisfied by showing that "the controlling legal principle and subsequent error is so obvious to the average qualified arbitrator that any different conclusion is absurd," even though there was "no persuasive evidence that the arbitrators actually knew of—and intentionally disregarded"—the law. *Id.* at 822–23; *see also Wallace v. Buttar*, 378 F.3d 182, 190 (2d Cir.2004) (noting that manifest disregard was shown where arbitrators cited Second Circuit precedent but explicitly declined to apply it); *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 390 (2d Cir.2003) (including in the manifest disregard test "a subjective element, that is, the knowledge actually possessed by the arbitrators.... In determining an arbitrator's awareness of the law, we impute only knowledge of governing law identified by the parties to the arbitration.").

It is true that we have stated that "a court may infer that the arbitrators manifestly disregarded the law if it finds that the error made by the arbitrators is so obvious that it would be instantly perceived by the average person qualified to serve as an arbitrator." *Willemijn*, 103 F.3d at 13. However, the meaning of that phrase in the context of *Willemijn* was that an arbitrator's error in interpreting the legal doctrine relied upon by the parties can constitute manifest disregard if the average person qualified to serve as an arbitrator would not have made such an interpretation. *Id.* at 14 ("We only need decide whether there is any colorable justification for their decision"; if so, there is no manifest disregard.).[3]

The district court vacated that portion of the arbitral award that granted prejudgment interest on punitive damages to the Investors because it found it to be in manifest disregard of the law. We review this decision *de novo*. *Wallace*, 378 F.3d at 189; *Hoeft*, 343 F.3d at 69. The Broker failed to inform the arbitrators that prejudgment interest on punitive damages was unavailable, and there is no other evidence that the arbitrators knew of this rule. Moreover, Broker was on notice that such damages were being sought because, as discussed *supra*, the Investors changed the phrasing of their claim from a claim ***112** for compensatory damages, interest, return of commissions, punitive damages, costs, and attorneys' fees, to a claim for compensatory damages, punitive damages, costs, prejudgment interest, and a finding of a statutory violation. The rephrasing of this claim put the Brokers on notice that prejudgment interest on punitive damages was being sought. As noted, furthermore, Broker responded to the Investors' motion for the arbitrators to recalculate damages, but there is no evidence that Broker informed the arbitrators of the legal error of which they now complain. Because there is no evidence that the arbitrators were aware of the rule against prejudgment interest on punitive damages, their award of such interest was not manifestly contrary to law.

Because the Broker's motion to confirm was unopposed, confirmation of the entire arbitral award is appropriate. The Investors claim a violation of their due process rights in that the S.D.N.Y.'s confirmation of the arbitration award "block[ed]" consideration of their Florida Petition to vacate the damage portion of the award. When the S.D.N.Y. rendered its decision on the New York Petition, the Florida Petition was pending in the S.D. Fla. and is now pending before the S.D.N.Y. This argument is a concession—albeit a necessary one—that the claims raised in the Florida Petition are barred by res judicata in light of the S.D.N.Y. decision, a conclusion fortified by our decision affirming the confirmation.

"Under the doctrine of res judicata, or claim preclusion, '[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.' " *St. Pierre v. Dyer*, 208 F.3d 394, 399 (2d Cir.2000) (quoting *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981)); *see also Legnani v. Alitalia Linee Aeree Italiane, S.p.A.*, 400 F.3d 139, 141 (2d Cir.2005) (" '[T]he first judgment will preclude a second suit only when it involves the same 'transaction' or connected series of transactions as the earlier suit ....' " (quoting *Maharaj v. Bankamerica Corp.*, 128 F.3d 94, 97 (2d Cir.1997))).

However, the Investors took no step in the S.D.N.Y. to seek vacatur of the damage award, and, even when faced with a default judgment confirming the damage award, never brought to the S.D.N.Y.'s attention the pertinent Florida statutes. Because they failed to do so, they cannot, now that a final decision on the merits has been reached, seek to attack that decision by asserting the Florida Petition's claims. We follow *The Hartbridge*, which concluded that:

> Upon a motion to confirm the party opposing confirmation may apparently object upon any ground which constitutes a sufficient cause under the statute to vacate, modify, or correct, although no such formal motion has been made.... As we understand the statute a motion to confirm puts the other party to his objections. He cannot idly stand by, allow the award to be confirmed and judgment thereon entered, and then move to vacate the award just as though no judgment existed.

The Hartbridge, 57 F.2d 672, 673 (2d Cir.1932).

CONCLUSION

For the reasons above, we vacate the district court's grant of default judgment and the district court's order vacating the arbitration award's provision for prejudgment interest on punitive damages. We hold the arbitration award should have been confirmed in full because it was not in manifest disregard of the law. We remand ***113** for dismissal of the pending Florida Petition.

All Citations

462 F.3d 95

Footnotes

* The Honorable J. Garvan Murtha, United States District Judge for the District of Vermont, sitting by designation.

1 We note further that the district court in the S.D. Fla., the venue to which the Investors would like to transfer this action, also found the S.D.N.Y. to be the most appropriate venue for this matter. After considering Broker's motion to transfer the Florida Petition to the S.D.N.Y. and "the pertinent portions of the record," the district court, being "fully advised in the premises" of the matter, found that "Florida is not the best venue for this action."

2 There was no need for the district court to hold a status conference, set a briefing schedule, or hold a hearing. Such acts are appropriate to ongoing proceedings leading to a trial. As the Investors themselves insist, the New York Petition should have been treated as a motion rather than a complaint. The Local Rules of the S.D.N.Y. do not require hearings for motions and allow them only when "directed by the court by order or by individual rule or upon application." S.D.N.Y. R. 6.1(c).
Finally, while S.D.N.Y. Local Rule 7.1 does require "all motions ... [to] be supported by a memorandum of law," Broker's failure to supply such a memorandum does not excuse the Investors from timely responding to the New York Petition. A "district court has broad discretion to determine whether to overlook a party's failure to comply with local rules," *Holtz v. Rockefeller & Co., Inc.*, 258 F.3d 62, 73 (2d Cir.2001), and "[n]othing in ... the Civil Rules of the Southern District requires a court to" punish a party for noncompliance. *Maggette v. Dalsheim*, 709 F.2d 800, 802 (2d Cir.1983). While the Investors' response to the Broker's motion might have sought some relief or sanction for the failure to submit a memorandum, the failure did not obviate the need to respond.

3 The phrase was also quoted in *Duferco*, 333 F.3d at 390; however, in that case the alleged error was an internally inconsistent application of law in the arbitration award, an error that, according to the appellant, would have been obvious to any person qualified to serve as an arbitrator. The issue was not whether the arbitrators were aware of the governing law.

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ANNEX 365

251 F.Supp.3d 196
United States District Court, District of Columbia.

Tomas Lemus AMAYA, Plaintiff,
v.
LOGO ENTERPRISES, LLC, et al., Defendants.

Case No. 1:16–cv–00009 (CRC)
|
Signed 5/04/2017

Synopsis
Background: After restaurant and its owner failed to respond to employee's action, seeking unpaid minimum and overtime wages, under the Fair Labor Standards Act (FLSA) and the District of Columbia Wage Payment Collection Law (DCWPCL), employee moved for default judgment.

Holdings: The District Court, Christopher R. Cooper, J., held that:

entry of default judgment was warranted against restaurant and its owner;

employee was entitled to default judgment damages award of $82,198.89 in unpaid minimum and overtime wages, and $200,261.25 in liquidated damages; and

employee was entitled to attorney fees calculated per the United States Attorney's Office *Laffey* Matrix.

Motion granted.

***198 MEMORANDUM OPINION**

CHRISTOPHER R. COOPER, United States District Judge

Plaintiff Tomas Lemus Amaya worked for six years as a kitchen hand at the Pollo Granjero restaurant in Washington, D.C. In this suit, he seeks to recover from the restaurant and its owner unpaid minimum and overtime wages for a period of approximately two years. Despite having been served, defendants Logo Enterprises, LLC ("Logo Enterprises") and its owner Juan Loyola have not responded to the complaint or the clerk's entry of default. Amaya now petitions the Court to enter a default judgment, seeking a monetary judgment against Defendants in the amount of $300,163.82, which includes unpaid minimum and overtime wages, liquidated damages, attorney fees, expenses, and court costs. Because Amaya has adequately demonstrated Defendants' liability and that he is entitled to monetary relief, the Court will enter default judgments against Logo Enterprises and Loyola.

I. Background

The Fair Labor Standards Act ("FLSA") requires employers to pay a federal minimum wage of $7.25 per hour, and overtime payments at a rate of one-and one-half times the employee's regular hourly wage for hours worked in excess of 40 hours per week. See 29 U.S.C. §§ 206–207. The statute further requires employers to pay state-established minimum wages if they are higher than the federal minimum wage. See id. § 218.

The District of Columbia Wage Payment and Collection Law ("DCWPCL") establishes the minimum wage that employers must pay to persons employed in the District of Columbia. See D.C. Code § 32–1001. During the time periods alleged in Amaya's complaint, the D.C. minimum wage was $8.25 per hour from January 1, 2013 until June 30, 2014; $9.50 from July 1, 2014 until June 30, 2015; and $10.50 from July 1, 2015 until the end of Amaya's employment on October 21, 2015. See D.C. Code § 32–1003. Because the federal minimum wage was lower during all relevant periods, Amaya's minimum hourly wage is established by the DCWPCL.

Logo Enterprises and Loyola are employers as defined by the FLSA and the DCWPCL.[1] Logo Enterprises is a limited ***199** liability company operating under the name Pollo Granjero. Compl. ¶ 6. Pollo Granjero employed Amaya as a kitchen hand, starting in 2009 until approximately October 21, 2015. Compl. ¶¶ 9–11.[2] Amaya filed suit on January 5, 2016 alleging that Defendants violated both the FLSA and DCWPCL by paying him less than the required minimum wage and no

overtime pay despite his working an average of 83 hours per week. Id. ¶¶ 6–7, 17, 40–41. Accordingly, Amaya argues that he is entitled to $313,128.00, which includes unpaid wages from January 1, 2013 until October 21, 2015, liquidated damages, court costs, and attorney fees and expenses.

Loyola and the Company were properly served on January 12, 2016 and February 4, 2016 respectively. Neither Defendant filed a response, and the Clerk of the Court entered a default against both. In September 2016, Amaya filed a Motion for Default Judgment, which has received no response in the past six months.

II. Standard of Review

The standard for default judgment is a two-step procedure. See e.g., Ventura v L.A. Howard Constr. Co., 134 F.Supp.3d 99, 102 (D.D.C. 2015). A plaintiff must request first that the Clerk of the Court enter a default against an opposing party who has "failed to plead or otherwise defend," Fed. R. Civ. P. 55(a), which "establishes the defaulting party's liability for the well-pleaded allegations of the complaint." Boland v. Elite Terrazzo Flooring, Inc., 763 F.Supp.2d 64, 67 (D.D.C. 2011). A plaintiff must then petition the court for a default judgment against the parties. Fed. R. Civ. P. 55(b)(2). The purpose of default judgments is to prevent absentee defendants from escaping liability by refusing to participate in judicial proceedings. See Elite Terrazzo Flooring, 763 F.Supp.2d at 67.

Once liability has been established, courts have considerable latitude in determining the appropriate award through an independent evaluation of the alleged damages. Courts may choose to hold a hearing or can base their assessments on "detailed affidavits or documentary evidence" submitted by plaintiffs in support of their claims. Boland v. Providence Constr. Corp., 304 F.R.D. 31, 36 (D.D.C. 2014) (quoting Fanning v. Permanent Sol. Indus., Inc., 257 F.R.D. 4, 7 (D.D.C. 2009)). However, the Court is not required to hold a hearing " 'as long as it ensures that there is a basis for the damages specified in the default judgment.' " Elite Terrazzo Flooring, Inc., 763 F.Supp.2d at 67.

III. Analysis

The Court will first consider Defendants' liability and then turn to evaluating the relevant damages.

A. Liability

The FLSA requires that an employer pay his employees for hours worked in ***200** excess of forty hours per week "at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a). The DCWPCL likewise requires employer to compensate employees for overtime "at a rate not less than 1 ½ times the regular rate at which the employee is employed." D.C. Code § 32–1003. Under the DCWPCL, if an employer fires an employee, "the employer shall pay the employee's wages earned not later than the working day following such discharge." D.C. Code § 32–1303. If an employee quits or resigns, however, "the employer must pay the employee's wages due upon the next regular payday or within 7 days from the date of quitting or resigning, whichever is earlier." Id.[3]

Amaya has submitted an affidavit, summarizing the hours he worked and attesting that the Company failed to pay him a legally-mandated minimum wage or overtime for work done between January 2013 and October 21, 2015, resulting in approximately $82,198.50 in unpaid wages. See Pl's Mot. Default J. ("MDJ"), Amaya Aff. ¶¶ 10, 19.

For Juan Loyola to be liable in an individual capacity, he must qualify as an employer under the FLSA and the DCWPCL. See Ventura v. Bebo Foods, Inc., 738 F.Supp.2d 1, 5 & n. 2 (D.D.C. 2010) (applying individual liability analysis under the FLSA to individual liability analysis under the DCWPCL). Typically, an individual "who exercises operational control over an employee's wages, hours, and terms of employment qualifies as an 'employer,' and is subject to individual liability." Guevara v. Ischia, Inc., 47 F.Supp.3d 23, 26–27 (D.D.C. 2014) (internal citation omitted); see also Perez v. C.R. Calderon Construction, Inc., 221 F.Supp.3d 115, 143–44, 2016 WL 7410544, at *20 (D.D.C. Dec. 22, 2016) ("[T]he overwhelming weight of authority is that a corporate officer with operational control of a corporation's covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages.") (quoting Ruffin v. New Destination, 800 F.Supp.2d 262, 269 (D.D.C. 2011). To determine individual liability, courts in this district have considered whether the employer was responsible for hiring and firing, controlling work schedules, establishing pay rates, and maintaining employment records. See Ventura, 738 F.Supp.2d at 6. Here, Amaya alleges that Loyola was the owner of Logo Enterprises and

"exercise[d] *exclusive* control over its operations and pay practices." Compl. ¶ 7 (emphasis added). For example, Loyola was physically present at the restaurant every day, and he was responsible for hiring Amaya, assigning him tasks, supervising his work, setting his work schedule, and paying him. See Amaya Aff. ¶¶ 4–12. Such facts sufficiently establish that Loyola is an employer under the FLSA because he had "a significant ownership interest in [Logo Enterprises]" and "operational control" over it. Ventura, 738 F.Supp.2d at 6; see also Martinez v. Asian 328, LLC, 2016 WL 4621068, at *4 (D.D.C. Sep. 6, 2016). With no response from Defendants, the Court accepts Amaya's well-pleaded allegations as true and holds that Logo Enterprise and Juan Loyola are liable to Amaya. See, e.g., Elite Terrazzo Flooring, Inc., 763 F.Supp.2d at 67–68; Fanning, 257 F.R.D. at 7.

***201** B. Damages

"When a defendant has failed to respond, the Court must make an independent determination—by relying on affidavits, documentation, or an evidentiary hearing—of the sum to be awarded as damages." Ventura, 134 F.Supp.3d at 104. In his affidavit, Amaya avows that he typically worked 83 hours per week, for which he was paid $800 twice per month (the equivalent of $369.20 per week or $4.56 per hour) from January 1, 2013 through August 31, 2015, and $900.00 twice per month ($415.35 per week or $5.00 per hour) from September 1, 2015 through October 21, 2015.[4] Amaya Aff. ¶¶ 10–11, 15; see also U.S. Dep't. of Labor Wage and Hour Div. Coefficient Table. Under the DCWPCL, he is owed $82,198.89 in unpaid wages for his 83–hour work weeks. The Court independently confirmed Amaya's calculations and accepts the accuracy of the $82,198.89 figure. See infra App. 1.

In addition to unpaid wages, Amaya seeks liquidated damages. Under the FLSA, liquidated damages equal the amount of unpaid wages. See 29 U.S.C. § 216. Under the current version of the DCWPCL, which came into effect on December 23, 2014, liquidated damages are "an amount equal to treble the unpaid wages." Fiscal Year 2014 Budget Support Emergency Act of 2013, D.C. Code § 32–1303; see, e.g., Martinez v. Asian 328, LLC, 220 F.Supp.3d 117, 122–23, 2016 WL 7167969, at *5 (D.D.C. Dec. 8, 2016).[5] The prior DCWPCL, like the FLSA, defined liquidated damages as the amount of unpaid wages.

Amaya argues that the DCWPCL came into effect on October 1, 2013, so his liquidated damages equal his unpaid wages from January 1, 2013 to September 30, 2013, and treble any unpaid wages after that. He calculates his liquidated damages at $208,148.13. But the "treble damages provision" did not become effective until December 24, 2013. See Ventura, 134 F.Supp.3d at 105 n.3. The source of Amaya's confusion, however, could be due to the fact that the District enacted an emergency act—the Fiscal Year 2014 Budget Support Emergency Act of 2013 ("A20–130")—which authorized treble damage awards between October 1, 2013 and October 28, 2013. See Fiscal Year 2014 Budget Support Emergency Act of 2013, §§ 11001, 11003. The relevant time periods and applicable provisions are therefore as follows: From January 1, 2013 to September 30, 2013, liquidated damages equal unpaid wages under both the FLSA and the DCWPCL; from October 1, 2013 until October 28, 2013, liquidated damages equal treble the unpaid wages under the A20–130; from October 29, 2013 until December 23, 2014, liquidated damages equal unpaid wages under both the FLSA and ***202** DCWPCL; and finally, from December 24, 2014 to October 21, 2015, liquidated damages equal treble the unpaid wages under the DCWPCL. With the damages provisions properly applied to the relevant time periods, Amaya's liquidated damages total $200,261.25. See infra App. 2.

C. Attorney's Fees, Court Costs, and Expenses

Both the FLSA and the DCWPCL authorize reasonable attorney's fees and costs to employees whose rights are violated. See 29 U.S.C. § 216(b); D.C. Code § 32–1012(c). "Under FLSA, an award of attorney's fees to the prevailing party is mandatory." Escamilla v. Nuyen, 2017 WL 23739, at *14 (D.D.C. Jan. 3, 2017) (citing Driscoll v. George Washington Univ., 55 F.Supp.3d 106, 112 (D.D.C. 2014)). Because the Court finds Amaya is entitled to relief under the FLSA and the DCWPCL, he is likewise entitled to reasonable attorney's fees.

"The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." Ventura, 134 F.Supp.3d at 105 (citing Blum v. Stenson, 465 U.S. 886, 888, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984)). "An attorney's usual billing rate is presumptively the reasonable rate, provided that the rate is in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Id. (citing Kattan by Thomas v. District of Columbia, 995 F.2d 274, 278 (D.C. Cir. 1993) (internal quotation marks omitted)). "[A] moving party must affirmatively 'demonstrate that [his]

suggested rates [are] appropriate' by establishing their conformity with rates charged in the community for similar services." Id. (quoting Eley v. District of Columbia, 793 F.3d 97, 104–05 (D.C. Cir. 2015)).

Amaya seeks $9,816.80 in attorney's fees for the 22.2 hours worked by attorneys Jonathan Tucker and Justin Zelikovits and the 4.4 hours worked by their paralegal Tre Holloway. Zelikovitz has provided an affidavit detailing the hours worked, the description of the activity, and the total costs. See MDJ, Ex. C, at 1. The Court is satisfied that Amaya has adequately justified the hours expended on his case. In addition, in support of their $406.00 hourly rate, Amaya's attorneys have submitted the Legal Service Index Laffey Matrix as evidence of the prevailing rates for similar services in the community. Id. at 2–4. "The Laffey Matrix sets out a general guideline for awarding attorneys' fees based on experience." Salazar ex rel. Salazar v. D.C., 809 F.3d 58, 62 (D.C. Cir. 2015) (citing Eley, 793 F.3d at 101–02). There are two predominant versions of the Laffey Matrix: "(i) the Laffey Matrix as updated by the Legal Services Index ("LSI") of the Nationwide Consumer Price Index ("CPI") (the "LSI Laffey Matrix"), and (ii) the All–Items CPI for the Washington, D.C. area (also known as the "USAO *Laffey* Matrix")." Id. Without additional evidence to justify applying the LSI Matrix's higher rates for complex federal litigation, the Court will apply the standard USAO Laffey Matrix to calculate Amaya's legal fees. See USAO Laffey Matrix—2015–2017 ("USAO Laffey Matrix"), available at https://www.justice.gov/usao-dc/file/889176/download. Both Tucker and Zelikovits have at least six years of legal experience, see MDJ 9, and therefore, their Laffey Matrix rate is $332.00 per hour for work performed in 2015 and $339.00 for work performed in 2016, see USAO Laffey Matrix. Paralegal Holloway's Laffey Matrix rate is $157.00 per hour (all of her work occurred in 2016). ***203** Based on these rates, Amaya's attorneys' fees total $8,181.60.

Accordingly, the Court will award Amaya a total of $291,121.74; including $82,198.89 in unpaid wages, $200,261.25 in liquidated damages, $8,181.60 in attorneys' fees, $400.00 in court filing fees, and $80.00 in service expenses.

IV. Conclusion

For the foregoing reasons, the Court will grant Amaya's Motion for Entry of Default Judgment. The Court will issue a separate Order consistent with this Memorandum Opinion.

Appendix 1

Date Range	D.C. Minimum Wage D.C. Overtime Wage	Amount Owed Per Week[6]	Number of Weeks	Wages Owed
1/1/13 – 10/30/13 ($369.20 per week)	$8.25 $12.375	$492.93	39	$19, 224.27
10/1 13 – 10/28/13 ($369.20 per week)	$8.25 $12.375	$492.93	4	$1,971.72
10/29/13 – 12/23/13 ($369.20 per week)	$8.25 $12.375	$492.93	8	$3,943.44
12/24/13 – 6/30/14 ($369.20 per week)	$8.25 $12.375	$492.93	27	$13,309.11
7/1/14 – 6/30/15 ($369.20 per week)	$9.50 $14.25	$623.55	52	$32, 424.60
7/1/15 – 8/31/15 ($369.20 per week)	$10.50 $15.75	$728.05	9	$6,552.45
9/1/15 – 10/21/15 ($415. 35 per week)	$10.50 $15.75	$081.90	7	$4, 773.30
Total				$82.198.89

[**Editor's Note:** The preceding image contains the reference for footnote[6]].

Appendix 2

***204**

Date	Unpaid Wages	Liquidated Damages	Total
1/1/13 – 9/30/13	$19,224.27	$19,224.27	$38,448.54
10/1/13 – 10/28/13	$1,971.72	$5,915.16	$7,886.88
10/28/13 – 12/23/13	$3,943.44	$3,943.44	$7,666.88
12/24/13 – 6/30/14	$13,309.11	$39,927.33	$53,236.44
7/1/14 – 6/30/15	$32, 424.60	$97,273.80	$129,698.40
7/1/15 – 8/31/15	$6,552.45	$19,657.35	$26,209.80
9/1/15 – 10/21/15	$4, 773.30	$14,319.90	$19,093.20
Total:	$82.198.89	$200, 261.25	$282,460.14

All Citations

251 F.Supp.3d 196

Footnotes

1 Logo Enterprise is an employer under the FLSA because it had two or more employees who handled goods that travelled in or were produced for interstate commerce, see Pl.'s Compl. ¶ 23, and the annual gross volume of Logo Enterprises' business exceeded $500,000, see id. at ¶ 22. See 29 U.S.C. § 203(s)(1)(A)(i)–(ii). Logo Enterprises is likewise an employer under the DCWPCL because it is a corporation that "act[s] directly or indirectly in the interest of an employer in relation to an employee." D.C. Code § 32–1002(3). Additionally, because Logo Enterprises is an employer under the FLSA and "the DCWPCL is construed consistently with the FLSA," it is considered an employer under the DCWPCL as well. Ventura v. Bebo Foods, Inc., 738 F.Supp.2d 1, 6 (D.D.C. 2010).

2 The record does not specify when Amaya began his employment.

3 Amaya cites to D.C. Code § 32–1303(2) for the proposition that employers must pay an employee who quits or resigns all wages due upon the next regular pay day, but he does not reference D.C. Code § 32–1303(1), which sets forth a separate timeline for employees who are fired. Regardless of whether Amaya resigned or was fired though, any deadline to pay earned wages has passed.

4 Amaya's original complaint states that from September 1, 2015 through October 21, 2015, his effective hourly rate was $5.13. In Amaya's motion for default judgment, the effective rate for that time period is calculated at $5.00 per hour. Because Amaya has established how he calculated the latter figure, the Court will use the $5.00 hourly rate for its own calculation of damages.

5 More precisely, under the DCWPCL, liquidated damages equal either "10 per centum of the unpaid wages for each working day during which such failure shall continue after the day upon which payment is hereunder required, or an amount equal to treble the unpaid wages, whichever is smaller." D.C. Code § 32–1303. Using the former calculation, if Amaya were owed roughly $82,000 in unpaid wages for over a year, he would be owed at a minimum $2,900,000 in liquidated damages ($82,000 x 10% x 365 days). Because the second calculation would result in a smaller damages award, the Court will treble Amaya's unpaid wages to determine his liquidated damages. See Ventura, 738 F.Supp.2d at 22.

6 Wages owed = (40 hours x applicable minimum wage) + (overtime hours [43 hours] x one and one-half times the minimum wage) - wages paid.

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ANNEX 366

464 F.Supp.3d 323
United States District Court, District of Columbia.

Taylor FORCE, et al., Plaintiff,
v.
The ISLAMIC REPUBLIC OF IRAN, et al., Defendant.

Civil Action No. 16-1468 (RDM)
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Signed 05/31/2020

Synopsis

Background: Victims and family members of victims of terrorist attacks which had taken place in Israel brought action under Foreign Sovereign Immunities Act's (FSIA) terrorism exception against Iran and Syria, alleging that countries' provision of material support to terrorist organizations had caused injuries suffered by victims and family members. Following entry of default, victims and family members moved for entry of default judgment and for appointment of special master to conduct damages proceedings.

Holdings: The District Court, Randolph D. Moss, J., held that:

most victims and family members established waiver of sovereign immunity under FSIA terrorism exception;

victims of terrorist attack which had destroyed their home while they were away failed to establish waiver of sovereign immunity;

victims and family members who had established waiver of sovereign immunity and were United States citizens were entitled to relief under FSIA terrorism exception's private right of action;

the District Court had personal jurisdiction over Iran and Syria;

Israeli law provided substantive law for claims of victims and family members who were not United States citizens;

most such victims and family members were entitled to relief under Israeli negligence law; but

family members of victim of terrorist attack who had been born after attack failed to establish right to relief under Israeli negligence law.

Ordered accordingly.

Attorneys and Law Firms

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MEMORANDUM OPINION AND ORDER

RANDOLPH D. MOSS, United States District Judge

This civil action for compensatory and punitive damages arises under the terrorism exception to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605A. The fifty-seven plaintiffs are the victims of seven separate terrorist attacks that took place in Israel between March 6, 2008 and March 8, 2016, and their family members. Most of the plaintiffs are U.S. citizens (including dual U.S.-Israeli nationals), although some are not. Defendants include the Islamic Republic of Iran, the ***335** Iranian Ministry of Information and Security ("MOIS"), and the Syrian Arab Republic. Plaintiffs assert that their injuries were caused by Iran and Syria's provision of material support to two terrorist organizations—Hamas and Palestinian Islamic Jihad ("PIJ").

To establish subject-matter jurisdiction, Plaintiffs invoke the state-sponsored terrorism exception to the FSIA, 28 U.S.C. § 1605A(a). The forty-four U.S.-citizen plaintiffs, *see* Dkt. 87 at 41, also rely on another provision of the statute to supply a federal cause of action: They argue that Iran and Syria violated § 1605A(c) by providing "material support" to Hamas and PIJ, which, in turn, engaged in the extrajudicial killing (or attempted extrajudicial killing) of U.S. nationals in the seven attacks at issue. Dkt. 1 at 28–31 (Compl. ¶¶ 116–31). Plaintiffs also assert claims for negligence and aiding and abetting under Israeli law. *Id.* at 31–34 (Compl. ¶¶ 132–51). None of the Defendants has answered or otherwise appeared in this action. Consequently, at Plaintiffs' request, the Clerk of the Court

entered defaults against all three Defendants. Dkt. 23; Dkt. 24.

Plaintiffs subsequently moved for the entry of a default judgments against the Islamic Republic of Iran, MOIS, and the Syrian Arab Republic, Dkt. 91, and for the appointment of a special master to conduct damages proceedings, Dkt. 85 at 1, 21–22. As explained below, the U.S. national plaintiffs, with the exception of the Parnases, have established their right to relief against Iran, but not Syria, under 28 U.S.C. § 1605A(a). The Court further concludes that the non-U.S.-citizen plaintiffs—with the exception of M.H.B and Y.A.L.B., who were born after the attack that injured their father—are entitled to recover under the law of Israel for negligence and aiding and abetting. The Court will, accordingly, **DENY** the motion for entry of default judgment as to all claims by the Parnases without prejudice. The Court will also **DENY** the motion for entry of default judgment as to all claims by M.H.B. and Y.A.L.B., who are represented by their parents, Schmuel and Nechama Brauner, without prejudice. As to the remaining fifty-one Plaintiffs, the Court will **GRANT** the motion as to their claims against the Syrian Arab Republic, the Islamic Republic of Iran and MOIS, *see* 28 U.S.C. § 1608(e), and will **APPOINT** a special master to hear their damages claims and to report to the Court recommending the appropriate award as to those plaintiffs.

I. INTRODUCTION

Plaintiffs, forty-four U.S. nationals (or their estates) and thirteen non-U.S. nationals bring this action for damages against the Islamic Republic of Iran, MOIS, and the Syrian Arab Republic. They allege that both countries "gave substantial aid, assistance[,] and encouragement to ... Hamas and PIJ ... with the specific intention of causing and facilitating the commission of acts ... including the terrorist attacks at issue." Dkt. 1 at 14, 18 (Compl. ¶¶ 53, 66). Plaintiffs effected service on the Syrian Arab Republic on November 14, 2016, Dkt. 15, and on the Islamic Republic of Iran and the MOIS on July 19, 2017, Dkt. 20. None of the Defendants has answered, filed a motion under Federal Rule of Civil Procedure 12, or otherwise appeared. *See* Dkt. 21; Dkt. 22. Accordingly, at Plaintiffs' request, the Clerk of the Court declared all Defendants in default on November 14, 2017. *See* Dkt. 23; Dkt. 24.

Plaintiffs now seek entry of a default judgment with respect to liability against all three Defendants pursuant to Federal Rule of Civil Procedure 55. Dkt. 91. Even in a garden variety case, the entry of a default judgment "is not automatic," ***336** *Mwani v. bin Laden*, 417 F.3d 1, 6 (D.C. Cir. 2005), and requires the exercise of "sound discretion," *Boland v. Yoccabel Const. Co., Inc.*, 293 F.R.D. 13, 17 (D.D.C. 2013) (citing *Jackson v. Beech*, 636 F.2d 831, 836 (D.C. Cir. 1980)). Most notably, the Court must—at a minimum—satisfy itself that it has subject-matter jurisdiction over the claims and personal jurisdiction over the defendants. *See Jerez v. Republic of Cuba*, 775 F.3d 419, 422 (D.C. Cir. 2014) ("A default judgment rendered in excess of a court's jurisdiction is void."); *Mwani*, 417 F.3d at 6 (explaining that the Court must "satisfy itself that it has personal jurisdiction before entering judgment against an absent defendant").

In cases brought against a foreign state, however, the Court's discretion to enter a default judgment is more narrowly circumscribed. By statute, no federal or state court may enter a default judgment against a foreign state or instrumentality "unless the claimant establishes his claim or right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e). This is the same standard that applies to default judgments against the United States under Federal Rule of Civil Procedure 55(d). *See Owens v. Republic of Sudan*, 864 F.3d 751, 785 (D.C. Cir. 2017) ("*Owens IV*"), *vacated in part and remanded on other grounds sub nom. Opati v. Republic of Sudan*, —— U.S. ——, 140 S.Ct. 1601, 206 L.Ed.2d 904 (2020); *Hill v. Republic of Iraq*, 328 F.3d 680, 683 (D.C. Cir. 2003). In a case, such as this, alleging that a foreign state materially supported acts of terrorism, the district court must determine "how much and what kinds of evidence the plaintiff must provide." *Han Kim v. Democratic People's Republic of Korea*, 774 F.3d 1044, 1047 (D.C. Cir. 2014). But the Court must do so in light of Congress's purpose in enacting § 1605A—that is, to "compensat[e] the victims of terrorism [so as to] punish foreign states who have committed or sponsored such acts and [to] deter them from doing so in the future," *id.* at 1048 (quoting *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 88–89 (D.C. Cir. 2002)) (first alteration in original)—and the difficulty in obtaining "firsthand evidence and eyewitness testimony ... from an absent and likely hostile sovereign," *Owens IV*, 864 F.3d at 785. This means that, to obtain a default judgment against Iran, MOIS, and Syria, Plaintiffs must (1) carry their burden of producing evidence sufficient to show that their claims fall within the state-sponsored terrorism exception to the FSIA, *see* 28 U.S.C. § 1605A(a); *Owens IV*, 864 F.3d at 784; (2) establish that defendants were served in accordance with the FSIA, *see* 28 U.S.C. § 1608(a); and (3) establish their right to relief under federal, *see* 28 U.S.C. § 1605A(c), or state law, *Owens IV*, 864 F.3d at 809 ("the pass-through

approach remains viable"), by offering evidence "satisfactory to the court," 28 U.S.C. § 1608(e).

Against this backdrop, the Court held a two-day hearing on liability, Dkt. 104; Dkt. 105, and received additional evidentiary submissions, Dkts. 21–84, as well as proposed findings of fact and conclusions of law from plaintiffs, *see* Dkt 87 (Proposed Findings of Fact); Dkt. 85 (Memorandum of Law). In the course of the hearing, the Court applied the Federal Rules of Evidence, but did so on the understanding that, first, it has "the authority—indeed, ... the obligation—to 'adjust [evidentiary requirements] to ... differing situations,' " *Han Kim*, 774 F.3d at 1048 (quoting *Bundy v. Jackson*, 641 F.2d 934, 951 (D.C. Cir. 1981)) (modifications in *Han Kim*), and, second, that the Court need not "step into the shoes of the defaulting party and pursue every possible evidentiary challenge," *Owens IV*, 864 F.3d at 785. Recognizing that expert testimony is not ***337** only entirely proper, but often sufficient, *id.* at 788, and even indispensable in "terrorism cases ... because firsthand evidence of terrorist activities is difficult, if not impossible to obtain," *id.* at 787, the Court also considered the extensive expert testimony Plaintiffs presented.[1] Whether through expert testimony or other competent evidence, the Court must ultimately determine whether the Plaintiffs have "substantiate[d] [the] essential element[s] of jurisdiction" with admissible evidence. *Id.* at 786.

The Court now makes the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

Plaintiffs' evidentiary presentation included testimony from five experts and a dozen exhibits. *See* Dkt. 104, Dkt. 105. The Court heard from Dr. Matt Levitt, an expert on "Iranian sponsorship of terrorism including Hamas and [PIJ]," Dkt. 104 at 10 (Levitt); Colonel Arieh Spitzen, an expert on "Palestinian terror groups that operate within the Palestinian territories," *id.* at 53 (Spitzen); Dr. Benedetta Berti, the head of policy planning for the Secretary General of NATO, Dkt. 105 at 5, 8 (Berti), and an expert on Syrian support for Hamas and PIJ, *id.* at 8 (Berti); Dr. Patrick Clawson, an expert on Iranian support for Hamas, *id.* at 60 (Clawson); and Dr. Marius Deeb, an expert on Syrian support for terrorism, specifically for Hamas and PIJ, *id.* at 96–97 (Deeb).

Based on the testimony of these witnesses, trial exhibits, and declarations submitted by Plaintiffs, the Court finds as follows: First, Iran provided Hamas and PIJ with significant support in the form of arms and financial assistance, as well as training and technical expertise. Second, Syria provided both groups with a safe operational base from which to run their organizations. Third, Hamas carried out six of the seven terror attacks at issue: (1) the March 8, 2016 stabbing of Plaintiff Taylor Force, which resulted in his death; (2) the January 27, 2016 stabbing of Plaintiff Menachem Mendel Rivkin, which resulted in severe physical injuries; (3) the October 13, 2015 bus massacre, which resulted in the death of Plaintiff Richard Lakin; (4) the August 19, 2011 rocket attack, which led to the injury of Schuel Brauner; (5) the November 21, 2012 rocket attack, which resulted in emotional injury to Plaintiffs Daniella Parnas, Noa Parnas, Dana Parnas, and A.P.; (6) the March 6, 2008 Shooting at Merkaz HaRav Yeshiva, which resulted in the death of Plaintiff Avraham David Moses and severe physical injury to Plaintiff Naftali Shitrit. Fourth, the Court concludes that PIJ carried out the October 28, 2014 shooting of Yehudah Glick, resulting in his severe physical injuries.

A. Iran's Material Support to Hamas and PIJ

1. *Overview of Iran's Proxy Strategy*

Since the Islamic Revolution in 1979, the Islamic Republic of Iran, led by its Supreme Leader, has actively opposed Israeli interests in the Middle East. Dkt. 32 at 7–8, 10–14 (Clawson Decl. ¶¶ 19, 27–28, 30). One of the primary means by which Iran conducts this geopolitical strategy is by supporting non-state actors, including Hamas and PIJ, which share Iran's opposition to Israeli interests in the region. *Id.* at 14 (Clawson Decl. ¶¶ 30–31); Dkt. 31 at 10–11 (Levitt Decl. ¶¶ 19, 22) (Hamas's opposition to Israel); *Id.* at 46–47 (Levitt Decl. ***338** ¶¶ 90–91, 93). Iran has also, at times, encouraged individuals sharing Iran's goals of destroying the state of Israel to conduct "lone wol[f]" attacks and has offered money to the families of suicide bombers who terrorize Israeli civilians. *Id.* at 13 (Clawson Decl. ¶ 28). As a result, the United States has, since 1984, continuously designated Iran as a state sponsor of terrorism. *Id.* at 10 (Clawson Decl. ¶ 27).

2. *Iran's Material Support to Hamas*

Hamas is both an acronym for "Harakat al-Muqawama al-Islamiya," which translates to "Islamic Resistance Movement," and is an Arabic word meaning "zeal." Dkt. 31 at 10 (Levitt Decl. ¶ 19) (italics and internal quotation marks omitted). Founded in 1987, Hamas aims to "establish[ ] in [Israel's] place an Islamist state." *Id.* at 10–11 (Levitt Decl. ¶¶ 19, 22). Hamas "employs a three-pronged strategy to achieve this goal: (1) social welfare activity that builds grassroots support for the organization, (2) political activity that competes with the secular Palestinian Authority," and (3) "terrorist attacks that target Israeli soldiers and civilians." *Id.* at 10 (Levitt Decl. ¶ 19).

Hamas deploys a wide variety of types of attacks, "from shooting[s], bombing[s], stabbing[s], and vehicular attacks, to suicide operations and rocket barrages fired at Israeli civilian population centers." *Id.* at 12 (Levitt Decl. ¶ 23). While the intended goal is to terrorize the Israeli population, Hamas's attacks have killed individuals from around the world, including "from the United States, the United Kingdom, Ukraine, Romania, China, the Philippines and Sweden." *See id.* at 11 (Levitt Decl. ¶ 22). "Without the significant funding it needs to carry out its terrorist, political, and social activities—which are interdependent and mutually reinforcing endeavors—Hamas could not function." *Id.* at 21 (Levitt Decl. ¶ 41). "Estimates of Hamas'[s] total annual budget range from $30 million to $90 million a year." *Id.* at 23 (Levitt Decl. ¶ 45)

Although the extent and nature of Iran's support for Hamas has varied over time, there is near-universal agreement that Iran has provided "critical" material support—in the form of cash, weapons, and training—for Hamas's terrorist activities since at least the mid-1990s. *Id.* at 21 (Levitt Decl. ¶ 41); *see also id.* at 29 (Levitt Decl. ¶¶ 58–59); Dkt. 32 at 14 (Clawson Decl. ¶ 30); Dkt. 31 at 38 (Levitt Decl. ¶ 76); *id.* at 37 (Levitt Decl. ¶¶ 73–7) (explaining that, even during a falling out over the Syrian civil war, "Iranian funding for Hamas never completely stopped"). Both Hamas and Iran have repeatedly acknowledged the support that Iran provides. *See, e.g.*, Dkt. 31 at 27 (Levitt Decl. ¶¶ 54–55) (collecting exemplary statements from Hamas leadership); Dkt. 32 at 23–24 (Clawson Decl. ¶ 58) (quoting Supreme Leader Khamenei saying that "Iran ... aids Hamas ... in Palestine"). Beyond finances and weapons, "Iran also provides logistical support to Hamas and military training to its members," and oversees training camps in its own territory and in Lebanon for the purpose of training Hamas members. *Id.* at 29 (Levitt Decl. ¶ 58 (citation omitted)).

Iran began providing financial and logistical support for Hamas in the 1990s because of "Hamas'[s] willingness to perpetrate terrorist activities and bus bombings"—attacks that Iran encouraged and praised. Dkt. 32 at 14–15 (Clawson Decl. ¶¶ 35, 37). In these years, "Iran gave Hamas millions of dollars," which supported Hamas's terrorist activities, and "provid[ed] legitimate front activities behind which Hamas could hide its terrorist activities." *Id.* at 15 (Clawson Decl. ¶ 38); *see also* Dkt. 31 at 29–30 (Levitt Decl. ***339** ¶ 59) (summarizing different countries' estimates). During this period, Iran paid Hamas "generously" for successful terrorist attacks. Dkt. 32 at 15 (Clawson Decl. ¶ 38). Iran also began smuggling rockets and weapons to Hamas in Gaza through tunnels between Egypt and Gaza. *Id.* at 19 (Clawson Decl. ¶ 50) (quoting Yoram Cohen & Matthew Levitt, Washington Institute for Near East Policy, *Hamas Arms Smuggling: Egypt's Challenge* (March 2, 2009), available at https://www.washingtoninstitute.org/policy-analysis/view/hamas-arms-smuggling-egypts-challenge); Dkt. 31 at 34 (Levitt Decl. ¶ 66). Iran also specially designed rockets that could fit through these tunnels for the purposes of smuggling them from Egypt into Gaza. Dkt. 32 at 19 (Clawson Decl. ¶ 51).

In 2006, Hamas won a plurality of seats in the Palestinian parliament, prompting "Iranian support, finances, and arms [to] r[i]se exponentially." *Id.* at 16 (Clawson Decl. ¶ 42). Israel's Intelligence and Terrorism Information Center reported that Iran "pledge[d] ... $250 million to Hamas's Prime Minister Ismail Haniya in 2006 and 2007." *Id.* (citing Intelligence and Terrorism Information Center, Iranian Support of Hamas 20–21 (Jan. 2009)). In 2007, the Iran-Hamas relationship grew even closer after ... Hamas took complete control of the Gaza Strip." *Id.* at 17 (Clawson Decl. ¶ 43). Since 2008, "Gaza-based Palestinian groups have fired over 8,500 rockets into Israel," and Hamas has claimed credit for at least some of these attacks. Dkt. 31 at 13 (Levitt Decl. ¶ 25). Iranian officials, in turn, have claimed credit for providing Gaza-based groups with the technical expertise to "produce these missiles by themselves in large quantities." *Id.* at 36 (Levitt Decl. ¶ 72 (citation omitted)); *see also* Dkt. 32 at 20–21 (Clawson Decl. ¶ 53) (detailing multiple intercepted efforts to smuggle arms into Gaza between 2009 and 2011 and those efforts' links to the Iranian government); Dkt. 31 at 34–37 (Levitt Decl. ¶¶ 66, 68, 72) (detailing, from multiple intelligence sources, Iran's provision of weapons to Hamas, specifically, from 2008 to 2012).

Around 2012, relations between Hamas and Iran cooled

for several years as they took opposite sides of the Syrian Civil War, with Iran backing the Syrian regime led by Bashar Al-Assad and Hamas supporting certain rebel groups. Dkt. 31 at 37 (Levitt Decl. ¶ 73). "[Y]et, Iranian funding for Hamas never completely stopped," *id.* (Levitt Decl. ¶ 74), and even as Iran decreased its support for Hamas's political activities, its military activities were "not as badly affected." *Id.* at 37–38 (Levitt Decl. ¶ 74). By 2014, however, relations with Iran improved and Hamas found itself in an escalating conflict with Israel, during which many "of the arms Hamas deployed were the products of the Islamic Republic of Iran." *Id.* at 38 (Levitt Decl. ¶ 76 (quotation marks and citation omitted)). That year, Israel intercepted a cargo ship believed to be headed to the Gaza Strip, carrying "40 M-302 rockets, 180 mortars, and approximately, 400,000 rounds of ammunition," all "hidden inside crates of cement labeled 'Made in Iran.' " *Id.* at 14 (Levitt Decl. ¶ 27) (citing Israeli Ministry of Foreign Affairs, *Missile Shipment from Iran to Gaza Intercepted*, (Mar. 5, 2014), https://mfa.gov.il/MFA/PressRoom/2014/Pages/Missile-shipment-from-Iran-to-Gaza-intercepted-5-Mar-2014.aspx) . And, by 2015, Iran was reported to be sending literal "suitcases of cash ... to Hamas'[s] military wing in Gaza," *id.* at 42 (Levitt Decl. ¶ 84) (citation omitted), and was reportedly continuing to "provid[e] missile technology that Hamas used to construct its own rockets and [to] help[ ] [Hamas] rebuild tunnels destroyed in the ***340** conflict with Israel." Dkt. 31 at 39 (Levitt Decl. ¶ 78) (citation omitted).

Accordingly, based on the unrebutted testimony offered by the Plaintiffs' experts, the Court finds that Iran provided material support in the form of arms, training, funds, and technology to Hamas at least from 2006 to 2016.

3. *Iran's Material Support to PIJ*

PIJ—short for Palestinian Islamic Jihad or Al-Jihad Al-Islami fi Filastin—grew out of a Palestinian student movement in Cairo led, most notably, by Fathi Shiqaqi. Dkt. 31 at 46–47 (Levitt Decl. ¶¶ 90, 93). Shiqaqi, inspired by the 1979 Iranian Revolution, "believed that a campaign of spectacular terrorist attacks against Israel in the name of revolutionary Islam would inspire popular revolt" and lead to the destruction of Israel. *Id.*; *see also id.* at 46 (Levitt Decl. ¶ 91). PIJ began carrying out attacks—financed by "Iran's mullahs"—against Israeli soldiers in the mid-1980s. *Id.* at 47 (Levitt Decl. ¶ 93). By the 1990s, PIJ operatives were training at Iranian-backed Hezbollah camps in Lebanon, under "under the supervision" of Iranian Islamic Revolutionary Guards stationed in that country. *Id.* at 48 (Levitt Decl. ¶ 95). PIJ executed "a deadly string of terrorist attacks" in Israel up until Shiqaqi's assassination in October 1995, which created "a void in the organization so deep that," by 1997, "the group barely function[ed]." *Id.* at 50–51 (Levitt Decl. ¶ 101) (citation omitted). Following the collapse of Israeli-Palestinian peace talks in 2000, PIJ bomb makers and recruiters were released en masse from jail, leading to the group's resurgence. *Id.* at 51 (Levitt Decl. ¶ 102). From September 2002 to October 2003, PIJ "carried out over 440 terrorist attacks, including suicide bombings ..., killing over 130 Israelis and wounding approximately 880 more." *Id.* (Levitt Decl. ¶ 103). The U.S. Department of State has, accordingly, designated PIJ as a foreign terrorist organization each year since 1997. *Id.* at 52–53 (Levitt Decl. ¶ 107).

There is evidence that Iran has been funding PIJ since as early as 1993, *Id.* at 54 (Levitt Decl. ¶ 110), but Iran's support of PIJ increased as PIJ carried out more successful attacks in the early 2000s, *id.* at 53 (Levitt Decl. ¶ 108) (explaining Iran's promise to increase funding for PIJ by 70 percent in 2002 "to cover the expense of recruiting young Palestinians for suicide operations" (citation omitted)); *see also id.* ("Tehran instituted an incentive system in which millions of dollars in cash bonuses are conferred to [PIJ] for successful attacks."). In 2011, as the "wedge" was developing between Hamas and Iran over the Syrian civil war, Iran further increased its support for PIJ. *Id.* at 54–55 (Levitt Decl. ¶ 112).

Iran's support for PIJ has included "weapons, training, and funding." *Id.* at 55 (Levitt Decl. ¶ 112) (quoting U.S. Dep't of State, Bureau of Counterterrorism, Country Reports on Terrorism 2014 (June 2015)). In 2014, Israeli authorities intercepted a ship carrying mortars, bullets, and rockets "destined for Hamas and PIJ in Gaza" that were packed in containers featuring "seals of the Iranian postal company." *Id.* (citations omitted). This is consistent with PIJ's own spokesman's acknowledgment that "[a]ll of the weapons in Gaza are provided by Iran, be they weapons intended for the Hamas movement or for the PIJ." *Id.* (Levitt Decl. ¶ 113) (citation omitted); *see also id.* at 56 (Levitt Decl. ¶ 115) (collecting statements confirming Iran's support for PIJ).

In August 2014, Israel and Hamas brokered a ceasefire in Gaza, increasing PIJ's interest in expanding its activities to the West Bank. Dkt. 32 at 28 (Clawson Decl. ¶ 67). In mid-October 2014, PIJ leader ***341** Ramadan Abdullah Mohammad Shallah traveled to Tehran to meet with a series of high-ranking Iranian officials, including

Supreme Leader Khamenei. *Id.* at 28–29 (Clawson Decl. ¶ 68). These meetings, which took place just two weeks before the shooting of Plaintiff Yehudah Glick in Jerusalem by a PIJ member, focused on the need for PIJ to expand into the West Bank. *Id.* at 28 (Clawson Decl. ¶¶ 67–68).

Accordingly, the Court finds that Iran provided material support to PIJ until at least the end of 2014.

B. Syria's Material Support to Hamas and PIJ

1. *Overview of Syria's Proxy Strategy*

Syria's government has "long held the belief that becoming involved [in] and having a strong influence on the dynamics of the Israeli-Palestinian conflict is an important foreign policy interest for Syria." Dkt. 29 at 11 (Berti Decl. ¶ 21). Syria has, since the 1970s, been ruled by the Al-Assad family and their allies, who are members the minority Alawi (Shia) sect. *Id.* at 10–11 (Berti Decl. ¶¶ 19–21). Accordingly, the Syrian government has had a "constant need to legitimize its power" to both the Sunni majority in Syria and to Sunni regimes in the region. *Id.* (Berti Decl. ¶ 20). To do so, the Syrian government has tried to be "seen as a key champion of Palestinian rights." *Id.*

This geopolitical strategy also aligns with Syria's own interests vis-à-vis Israel. "[T]he two countries have been in a state of latent (and at times open) conflict since 1948." *Id.* During the Six-Day War in 1967, Israel seized portions of the Golan Heights, which had previously been under Syrian control. *Id.* Syria has consistently demanded "the return of the areas of the Golan Heights that have been under Israeli control as a result of ... the Six-[D]ay war." *Id.* Accordingly, while "in principle" Syria is not opposed to "a political settlement" of Israel's conflicts with it or the Palestinians, it has, "in practice ... demonstrated its willingness to criticize and derail any peace process or negotiations" that it finds to be unfavorable. *Id.* at 11 (Berti Decl. ¶ 21). For example, in 1993, "Syria became the de facto political and communication base of all the main factions" opposing the Oslo Accords, *id.* at 12 (Berti Decl. ¶ 24), which were a series of agreements signed between the Palestinian Liberation Organization and Israel that created the Palestinian Authority, Dkt. 30 at 5 (Deeb Decl. ¶ 16). Due in part to Syrian President Hafez Al-Assad's "personal ... antagonism" with PLO and Fatah leader Yassar Arafat, Syria "sponsored the creation of the Alliance of Palestinian Forces," an umbrella group of organizations—including both Hamas and PIJ—that opposed to the Oslo Accords. Dkt. 29 at 12 (Berti Decl. ¶ 24).

2. *Syria's Support to Hamas*

Syria's relationship with Hamas dates back to at least the early 1990s, when Hamas "opened an office in Damascus." *Id.* at 12 (Berti Decl. ¶ 23). That relationship was strengthened by Hamas's participation in Syria's coordinated campaign opposing the Oslo Accords in 1993. *Id.* at 12–13 (Berti Decl. ¶ 24). By the early 2000s, Hamas had moved its political bureau to Damascus, *id.* at 13 (Berti Decl. ¶ 25), and three of the group's top leaders—all of whom were classified as Specially Designated Global Terrorists by United States Department of Treasury—had relocated to Damascus, *id.* at 19–20 (Berti Decl. ¶ 34). In 2002, one Israeli newspaper reported that Syria "offer[ed] aid as an incentive for Hamas ... to resume and intensify suicide attacks against Israel ..., following efforts to diffuse the conflict." *Id.* at 25–26 (Berti Decl. ¶ 45) (citing Ze'ev Schiff, *Sources* ***342** *Say Syria Pushing Hamas to Renew Attacks*, Ha'aretz (May 20, 2002), available at http://www.haaretz.com/sources-say-syria-pushing-hamas-to-renew-attacks-1.44698).

Until 2012, Damascus served as a "safe base," enabling Hamas to "conduct its foreign relations, communicate to the world, host its military leaders ...[, and] plan its violent operations and fundraise." *Id.* at 15 (Berti Decl. ¶ 28); *see* Dkt. 30 at 5–6 (Deeb Decl. ¶ 19) (Damascus was Hamas's "safe haven"). From its operational base in Damascus, Hamas directed attacks in the West Bank and Gaza, Dkt. 29 at 23 (Berti Decl. ¶ 41), conducted foreign relations, *id.* at 15 (Berti Decl. ¶ 28), and trained operatives at a camp near Damascus, *id.* at 31 (Berti Decl. ¶ 55). Hamas's base in Damascus "grew so powerful that it was able to control and direct operational decisions, at times even going against the wishes of Hamas's leaders within Gaza." Dkt. 30 at 6 (Deeb Decl. ¶ 19). The Syrian regime did not "forcefully or systematically crack[ ] down" on these activities but, instead, according to Professor Berti, "remained supportive of Hamas's militant activities." Dkt. 29 at 25 (Berti Decl. ¶ 45).

In addition, Hamas used its operational base in Syria to fundraise in and to smuggle arms through that country, providing operational support for its activities in Gaza. *Id.* at 29–30 (Berti Decl. ¶¶ 52–54). Hamas's military

commander in the West Bank, Jamal Muhammad Farah al-Tawil, for example, received funds from Hamas leaders in Damascus via an "ad-hoc charity set up by al-Tawil." *See id.* at 29 (Berti Decl. ¶ 52). As Professor Berti further explained, Hamas routed "weapons shipments originating from Iran ... through Syria [ ]and from there to Gaza." *Id.* at 29–30 (Berti Decl. ¶ 53). Hamas's arsenal has also grown "through the use of parts 'thought to originate in Syria.' " *Id.* at 30 (Berti Decl. ¶ 53) (citation omitted). More generally, "Syrian sponsorship and support has enabled Hamas ... to at times carry out military training in Syria ... where operatives have acquired essential tactical skills and knowledge enabling them to carry out ever more sophisticated attacks." *Id.* at 31 (Berti Decl. ¶ 55).

Hamas and Syria's relationship has, however, been "strained" since 2012 when Hamas began supporting rebel forces against the Assad regime in the Syrian Civil War. Dkt. 30 at 7 (Deeb Decl. ¶ 22); *see* Dkt. 29 at 32–33 (Berti Decl. ¶ 56) (discussing their gradual distancing from one another). Due to the increasing violence used by the Syrian regime against its Sunni population during the civil war, Hamas eventually left Damascus and relocated its political headquarters outside of Syria. Dkt. 29 at 32–33 (Berti Decl. ¶ 56). In 2016, Hamas even "publicly denounc[ed]" Syria's "tactics and its attacks against the civilian population." *Id.* at 33 (Berti Decl. ¶ 56) (citation omitted).

Despite Hamas's falling out with Syria, the support that Syria provided to Hamas prior to 2012 "solidified Hamas's organizational structure and transformed it into a leading terrorist organization with the sophistication needed to carry out terror attacks." Dkt. 30 at 9 (Deeb Decl. ¶ 30); *see* Dkt. 29 at 34 (Berti Decl. ¶ 59). And, by "hosting [Hamas], Syria offered symbolic validation, political support, legitimacy and freedom of [movement], all of which enabled [Hamas] to grow and develop, to boost regional status and credibility, as well as to increase [its] military capabilities and solidify [itself] as [a] major player[ ] in the Palestinian arena." Dkt. 29 at 21 (Berti Decl. ¶ 37). "The substantial organizational support [that] Syria [once] provided to Hamas ... ultimately enabl[ed] it to rise in status and sophistication." *Id.* at 34 (Berti Decl. ¶ 59–60). Thus, according to Professor Berti, "the effects of Syria's support ***343** ... will continue to be relevant for years to come." *Id.*

The Court therefore finds that Syria provided support, in the form of an undisturbed operational base in that country from which Hamas raised funds, trained operatives, smuggled arms, and conducted its political and foreign relations activities, until at least 2012.

3. *Syria's Support to PIJ*

PIJ similarly benefitted from a safe operating base in Syria and the political legitimacy and regional influence that came with Syria's welcome. *See id.* at 21 (Berti Decl. ¶ 37). PIJ established its Damascus office in 1989 and, "[s]ince then, the group has maintained a permanent base in Syria." *Id.* at 17 (Berti Decl. ¶ 32). PIJ leadership in Damascus "control[led] all PIJ officials, activists and terrorists in the West Bank and Gaza." *Id.* at 25 (Berti Decl. ¶ 44) (quoting U.S. Dep't of Treasury, *Treasury Designates Charity Funneling Money to Palestinian Islamic Jihad* (April 5, 2005), available at https://www.treasury.gov/press-center/press-releases/Pages/js2426.aspx). From Damascus, PIJ leadership also "conducted a vast array of communication, political, fundraising, [and] operational activities." *Id.* PIJ, like Hamas, has also maintained a training facility—which reportedly also contains weapons depots—near Damascus. *Id.* at 31 (Berti Decl. ¶ 55). Beyond merely "open[ing] Damascus" to PIJ, the Syrian regime has, at times, "worried about [PIJ] and [its] leaders' security." *Id.* at 18 (Berti Decl. ¶ 34.1).

Unlike Hamas, PIJ aligned itself with the Syrian government, rather than rebel factions, during the Syrian civil war and thus continues to enjoy Syria's support. *Id.* at 33 (Berti Decl. ¶ 57). Accordingly, the Court finds that Syria has provided support to PIJ in the form of a safe operational base from which it has been able to freely fundraise, train operatives, and direct attacks until at least 2018, when Plaintiffs moved for default judgment.

C. March 8, 2016 Stabbing

1. *Killing of Taylor Force*

At approximately 6:20 p.m. on March 8, 2016, Bashar Muhammad Abd al-Qader Masalha exited a mosque and began stabbing passersby in the Port of Jaffa, just south of Tel Aviv. Dkt. 33 at 49–50 (Spitzen Decl. ¶¶ 128–29). He first stabbed a couple of Russian tourists near the mosque, *id.* at 50 (Spitzen Decl. ¶ 129), before moving "in the direction of the Promeade along the Tel Aviv coast shouting 'Allahu Akbar,' " *id.* Masalha approached a group of American tourists on the boardwalk and repeatedly stabbed Plaintiff Taylor Force (a U.S. Citizen)

in the neck, chest and back. *Id.*; *see also* Dkt. 44 at 2 (S. Force Decl. ¶ 12). At the time of the attack, Taylor, a West Point graduate and U.S. army veteran, was on a trip to Israel with a group of M.B.A. students from Vanderbilt University's Owen Graduate School of Management. Dkt 33 at 49 (Spitzen Decl. ¶ 128); Dkt. 44 at 1–2 (S. Force Decl. ¶¶ 5, 6). He died from his injuries on the way to the hospital. Dkt. 44 at 2 (S. Force Decl. ¶ 12). Before Masalha was stopped and killed by the police, he injured ten others. Dkt. 33 at 47–48; Dkt. 33 at 51 (Spitzen Decl. ¶ 129).

The estate of Taylor Force (a U.S. Citizen) is a plaintiff in this case. Dkt. 1 at 5 (Compl. ¶ 5). His father, Stuart Force, mother, Robbi Force, and sister, Kristen Force—all of whom are U.S. citizens—also seek damages for the "severe psychological, emotional and other personal injuries" they suffered as a result of his death, including loss of consortium and loss of solatium. Dkt. 1 at 5–6, 31 (Compl. ¶¶ 5–7, 128); *see also* Dkt. 42 (K. Force Decl.); ***344** Dkt. 43 (R. Force Decl.); Dkt. 44 (S. Force Decl.).

2. *Attribution to Hamas*

According to Colonel Arieh Dan Spitzen, an expert on Palestinian affairs and society and Palestinian Islamic terrorist groups, including Hamas, there is an "unmistakable connection between the attack and the Hamas organization." Dkt. 33 at 4, 55 (Spitzen Decl. ¶¶ 1, 144). In support of his conclusion, he offers three observations.

First, Spitzen explains that the attack along the Tel Aviv Promenade "b[ore] the hallmarks" of a Palestinian terror attack incited by Hamas, *id.* at 61 (Spitzen Decl. ¶ 160), and was "part of [a] ... wave of Palestinian terror attacks in Israel[ ] which began in September 2015 and continued until the end of 2016," *id.* at 18–24, 51 (Spitzen Decl. ¶¶ 51–69, 130). During this "wave" of attacks, senior Hamas leaders routinely called on "the Palestinian population to mount attacks in the form of stabbings, vehicular ramming attacks, and even gunfire" against Israelis. *Id.* at 20 (Spitzen Decl. ¶ 57). In February 2016, Khaled Mash'al, the leader of Hamas at the time, described these attacks as "heroic operations of the young men and women of the Intifada." *Id.* (citation omitted).

Second, Masalha's background reveals that he was influenced by Hamas's ideology. Masalha was from the village of Hajja. *Id.* at 53–55 (Spitzen Decl. ¶¶ 136, 138–143). Spitzen, who reviewed Masalha's Facebook page, testified that "during the months immediately preceding the terrorist attack" Masalha displayed an "increasing religious fervor." Dkt. 104 at 64 (Spitzen). For instance, "he listened for a long period of time" to the sermons of Sheikh Arifi, a member of the Muslim Brotherhood (of which Hamas is a branch), who espoused "radical Islamic religious" ideology consistent with that of Hamas. *Id.* at 65 (Spitzen); Dkt. 33 at 54–55 (Spitzen Decl. ¶¶ 139, 143). From Masalha's Facebook activity, Spitzen deduced that, "about a month before the attack, Masalha was already publicly acknowledging that he sought to die as a shahid [martyr]." Dkt. 33 at 55 (Spitzen Decl. ¶ 141).

Finally, and most significantly, Hamas took responsibility for the attack. *See id.* at 55–56 (Spitzen Decl. ¶ 144). The day of the attack, photos and messages from Masalha's Facebook account were posted to the PALINFO website, which is identified with Hamas. *Id.* at 56–57 (Spitzen Decl. ¶ 147). Two days later, a banner was posted on the same website, stating: "Hamas announces that its son, the Shahid and holy warrior [Mujahid in Arabic] Bashar Muhammad Masalha, carried out the heroic stabbing operation in Jaffa, in which a Zionist was killed and 10 others injured." *Id.* (Spitzen Decl. ¶¶ 145–147). Masalha's connection to Hamas and the movement was made even clearer at his funeral. *Id.* at 58 (Spitzen Decl. ¶ 150). According to Spitzen, mourners "were seen bearing Hamas flags and enthusiastic cries of support for Ahmad Yassin, founder of Hamas, were heard." *Id.* The funeral included "speeches praising Masalha's operation." *Id.* "Palestinian Authority security forces[ ] also arrested a number of the funeral's participants as part of a series of arrests of open Hamas supporters." *Id.* at 58–59 (Spitzen Decl. ¶ 150).

In light of the above, the Court concludes that Taylor Force was the victim of a Hamas terror attack.

D. January 27, 2016 Stabbing

1. *Stabbing of Menachem Mendel Rivkin*

At around 11:00 p.m. on January 27, 2016, a seventeen-year-old boy named Abada (Ubada) Abu Ras attacked Plaintiff ***345** Menachem Mendel Rivkin ("Menachem")—an American citizen—with a knife in the town of Givat Ze'ev. *See* Dkt. 72 at 1 (M. Rivkin Decl. ¶¶ 1–3); *see also* Dkt. 104 at 69 (Spitzen). Menachem and his wife had parked their car at a gas station and were walking to the restaurant next door. Dkt. 71 at 1 (B.

Rivkin Decl. ¶ 3). Unbeknownst to them, Abu Ras had been following them. *Id.* Abu Ras appeared "[s]uddenly, out of nowhere," and stabbed Menachem two times in the upper left side of his back with a 16 cm knife that he had concealed in his clothing and then fled the scene. Dkt. 72 at 1 (M. Rivkin Decl. ¶ 3); Dkt. 33 at 62–63 (Spitzen Decl. ¶¶ 163, 165). The attack happened so fast that Bracha did not even see Abu Ras before he was running away. Dkt. 71 at 1 (B. Rivkin ¶ 4). Menachem called out that he had been stabbed and collapsed on the ground. *Id.* at 2 (M. Rivkin Decl. ¶ 4). His wife ran to get help and "pounded on the door" of the restaurant. Dkt. 71 at 1–2 (B. Rivkin Decl. ¶ 5). Menachem was eventually "rushed into an ambulance" and taken to Sha'are Tzedek Hospital. Dkt. 72 at 2 (M. Rivkin Decl. ¶¶ 5–6). Abu Ras attempted to flee the scene but was overpowered by other people present and handed over to security forces when they arrived. Dkt. 33 at 63 (Spitzen Decl. ¶ 165).

As a result of his wounds, Menachem lost consciousness for one-and-a-half days. *Id.* at 2 (M. Rivkin Decl. ¶¶ 6–7); *see also* Dkt. 71 at 2 (B. Rivkin Decl. ¶ 10). He suffered "massive internal bleeding." Dkt. 72 at 2–3 (M. Rivkin Decl. ¶¶ 8, 11); *see also* Dkt. 73-1 at 1 (Friedman Medical Report). Menachem was treated in the ICU for four days and was discharged from the hospital after eight days. *Id.* at 2 (M. Rivkin Decl. ¶ 9); *see also* Dkt. 73-1 at 2 (Friedman Medical Report). Afterwards, Menachem remained at home for three months because of his "weak physical and emotional state." Dkt. 72 at 3 (M. Rivkin Decl. ¶ 12). During this time, he continued to experience difficulty breathing and was twice hospitalized for breathing complications arising from the attack. *Id.* at 3 (M. Rivkin Decl. ¶ 12). To this day, Menachem "often experience[s] terrible pain" in the location of his scar from the stabbing. *Id.* at 3 (M. Rivkin Decl. ¶ 14). The attack still "haunts" him psychologically as well. *Id.* at 3 (M. Rivkin Decl. ¶ 15); *see also* Dkt. 35-38 at 7 (Strous Psychiatric Evaluation of M. Rivkin).

The attack also deeply affected Menachem's wife and children, all of whom are also plaintiffs in this action. Bracha Rivkin, Menachem's wife, who is an Israeli citizen, alleges that the attack caused her "severe emotional and psychological injuries." Dkt. 1 at 21 (Compl. ¶ 79). She was six months pregnant at the time. Dkt. 71 at 1 (B. Rivkin ¶ 2). Bracha and Menachem's children—S.S.R., M.M.R., R.M.R., and S.Z.R.—all of whom are American citizens, also seek damages for their mental and emotional anguish. *See* Dkt. 1 at 30–31 (Compl. ¶ 127); Dkt. 71 at 3–4 (B. Rivkin Decl. ¶¶ 15, 17–22) (describing effect of attack on their children); Dkt. 72 at 4–5 (M. Rivkin Decl. ¶¶ 18–22) (same).

2. *Attribution to Hamas*

Based on Abu Ras's background and statements published on Hamas websites after the attack, Colonel Spitzen attests that the stabbing of Menachem Rivkin was linked to Hamas. *See* Dkt. 33 at 61–72 (A. Spitzen Decl. ¶¶ 162–187).

To begin, Spitzen explains that the attack was planned in advance. Spitzen relies, in particular, on two photos that Abu Ras uploaded to his Facebook page before the attack. The first, posted "[s]everal days prior to the attack," showed him "masked and sitting in a car with emojis of ***346** smiley faces and knives." *Id.* at 64 (Spitzen Decl. ¶ 169). The second, posted the night of the attack, was accompanied by the following caption: "I ask Allah to grant me the *Shahada* (death of shahid-martyrdom)." *Id.* at 62 (Spitzen Decl. ¶ 163). According to Spitzen, these posts show that Abu Ras "inten[ded] to execute the attack during which he was hoping to die" as a martyr. *Id.* Abu Ras, moreover, had confided his plan to his cousin. *Id.* He originally intended to stab an Israeli soldier "at an IDF checkpoint (known as Al-Jib Crossing), not far from his village, near Givat Ze'ev." *Id.* (Spitzen Decl. ¶ 164). When Abu Ras arrived at the checkpoint, however, he "noticed that the soldiers ... were inside the guard post which made it more difficult ... to attack them," so "he turned along a side path to a gas station in Givat Ze'ev in order to find a Jew, stab him[,] and kill him." *Id.* at 62–63 (Spitzen Decl. ¶ 164).

Spitzen further opines that Abu Ras carried out the attack because of his Hamas ideology. Abu Ras's father, Aziz Mustafa Abd al-Qader Abu Ras, is a "known Hamas operative," who has been "arrested several times by the Israeli security forces." *Id.* at 66 (Spitzen Decl. ¶ 173). In fact, Aziz Abu Ras was among the "450 Hamas members deported in 1992" to Lebanon who are considered the "fathers of the Hamas organization." Dkt. 104 at 69–70 (Spitzen). At the evidentiary hearing, Spitzen testified, moreover, that it is clear that Hamas's ideology was also deeply ingrained in Abu Ras. *Id.* at 70–71 (Spitzen). Based on the forensic evidence in Abu Ras's police file, Spitzen noted that Abu Ras's Facebook page "looks like a Hamas website." *Id.* Prior to the attack, he had uploaded multiple posts expressing admiration for the perpetrators of terrorist attacks (including stabbings) and his desire to die as a martyr. Dkt. 33 at 67–68 (Spitzen Decl. ¶ 174). He also "posted photographs that indicate[d] support for Hamas, [and] support for the Izz a-Din al-Qassam Brigades," including pictures of "himself carrying the Hamas flags." Dkt. 104 at 71 (Spitzen).

Multiple other sources confirm Abu Ras's connection to Hamas. On the day of the attack, a photo was posted to a Hamas-affiliate website depicting Abu Ras holding a Hamas flag. Dkt. 33 at 68 (Spitzen Decl. ¶ 176). According to Spitzen, "Hamas social media" also made Abu Ras's affiliation "crystal clear," with references such as, "[l]ike father like son." Dkt. 104 at 72 (Spitzen). Finally, on Abu Ras's own website, which was eventually taken down, a "statement appears in which [ ] Hamas took responsibility and called him a son of the movement." *Id.* Although Hamas "wouldn't take official responsibility" during the period of time that these statements of support appeared, Spitzen explains that this was to protect Abu Ras. *Id.* at 73 (Spitzen). Had Hamas claimed responsibility, Abu Ras would have faced an additional count in his indictment for "membership [in] an illegal organization. *Id.* By suspending its claim of responsibility, Hamas enabled Abu Ras to accept a plea bargain in which the "count of membership in a terrorist organization" was not included. *Id.*

In light of the above, Spitzen opines that Abu Ras "identif[ied] with Hamas and its ideology[ ] and committed the [attack] in response to the call of the organization." Dkt. 33 at 69–70 (Spitzen Decl. ¶ 178). The Court credits Spitzen's testimony and concludes that Abu Ras carried out the stabbing in furtherance of Hamas's ideology and terrorist agenda.

E. October 13, 2015 "Bus 78 Massacre"

1. *Killing of Richard Lakin*

On the morning of October 13, 2015, two Hamas operatives, Bilal Omar Mahmoud ***347** Abu Ghanem and Bahaa' Muhammad Khalil Alyan, boarded Egged bus number 78 in the Armon Hanatziv neighborhood of Jerusalem. Dkt. 33 at 24–25 (Spitzen Decl. ¶ 70). Abu Ghanem was armed with a gun, and Alyan carried a knife. *Id.* at 27 (Spitzen Decl. ¶ 74). They hid their weapons under their clothing and waited for the bus to pick up other passengers. *Id.* at 32 (Spitzen Decl. ¶ 83). When the bus became full, Abu Ghanem proceeded to the back, where he shot passengers at close range. *Id.* (Spitzen Decl. ¶ 84). Alyan used his knife to stab passengers near the front of the bus. *Id.* Survivors later reported that the two shouted, "Alluh Akbar" while attacking passengers, an expression "of the superiority of Allah and His ones" that is "frequently used ... by Islamist terrorists." *Id.* at 33 (Spitzen Decl. ¶ 84 & n.41).

When the bus driver realized what was happening, he stopped the bus and opened the doors so that passengers could escape. *Id.* (Spitzen Decl. ¶ 85). Abu Ghanem and Alyan shut the doors, however, and continued to stab and shoot the passengers trapped inside. *Id.* Colonel Spitzen testified that, even after "the bullets in the gun had been depleted and the knife had broken inside one of the passenger's bodies," Abu Ghanem and Alyan "tried to suffocate the passengers with their bare hands." Dkt. 104 at 58 (Spitzen). The massacre ended when Border Police officers and patrol policemen arrived at the scene and shot both men, killing Alyan. Dkt. 33 at 24–25 (Spitzen Decl. ¶ 70).[2]

Nine passengers were injured and two died, including Richard Lakin. *Id.* (Spitzen). Lakin was shot in the head and stabbed in the stomach. *Id.* (Spitzen). He was taken to the hospital unconscious and in critical condition. *Id.* (Spitzen). Two weeks later, on October 27, 2015, Lakin succumbed to his injuries. *Id.* (Spitzen). The estate of Richard Lakin (a U.S. Citizen), is a plaintiff in this case. Dkt. 1 at 7 (Compl. ¶ 16). His son, Micah Lakin Avni, and daughter, Manya Lakin—both of whom are U.S. citizens—also seek damages for the "severe psychological, emotional and other personal injuries" they suffered as a result of his death, including loss of consortium and loss of solatium. *Id.* at 31 (Compl. ¶ 128); *see also* Dkt. 54 (Manya Lakin Aff.); Dkt. 55 (Micah Lakin Aff.).

2. *Attribution to Hamas*

The Bus 78 massacre was part of a wave of terror attacks that began in September 2015, in the midst of the Jewish High Holidays. Dkt. 33 at 25 (Spitzen Decl. ¶ 71). Although Alyan did not have any known Hamas affiliation, Abu Ghanem was a known Hamas operative, who had been imprisoned from September 2013 to October 2014 for his involvement in the Islamic Bloc, the student wing of Hamas. *Id.* at 48 (Spitzen Decl. ¶ 126); *see also id.* at 35–36 (Spitzen Decl. ¶¶ 91, 94–96); Dkt. 104 at 63 (Spitzen). During his 2013 police interrogation, Abu Ghanem also admitted that he had "relations with senior members of the military wing of Hamas," one of whom was his cousin. Dkt. 104 at 59–60 (Spitzen). Hamas, for its part, publicly claimed Abu Ghanem as an operative of the organization on its website and referred to him as a Hamas prisoner. Dkt. 33 at 38 (Spitzen Decl. ¶ 100). After the bus attack, Hamas published that Abu Ghanem was a "commander in the Islamic Bloc at

Al-Quds University in Abu Dis." *Id.*

***348** Abu Ghanem denied principal responsibility for the attack, however, after he was captured. He gave the following account: The night before the attack, Alyan visited him at work and told him that he (Alyan) had 20,000 shekels for purchasing a firearm to carry out a terror attack. *Id.* at 26–27 (Spitzen Decl. ¶ 73). The two were not previously acquainted. *Id.* at 29 (Spitzen Decl. ¶ 78). Abu Ghanem agreed to take part if Alyan obtained the weapon. *Id.* at 27 (Spitzen Decl. ¶ 73). The two men met again the next morning at Abu Ghanem's workplace, where they found a knife to use during the attack. *Id.* (Spitzen Decl. ¶ 74). Later that same morning, Abu Ghanem visited Alyan's work place, where Alyan showed him the firearm that Alyan had purchased the night before and how to operate it. *Id.* Before boarding Egged bus number 78, the men agreed that Alyan would carry the knife and Abu Ghanem would carry the gun. *Id.* Because Alyan was shot and killed by the police, Abu Ghanem's statement is the only source of information regarding the planning and execution of the attack. *Id.* at 28 (Spitzen Decl. ¶ 75).

Colonel Spitzen opines that Abu Ghanem's account is unreliable. In Colonel Spitzen's expert opinion, "Abu Ghanem stood to benefit by placing most of the responsibility for initiating and planning the attack upon his dead partner." *Id.* By pleading ignorance, Abu Ghanem was also able to "conceal details that might harm [Hamas], its modes of operations[,] and its operatives." *Id.* at 29 (Spitzen Decl. ¶ 77). Moreover, Colonel Spitzen testified at the evidentiary hearing that Abu Ghanem's version of events is directly undermined by his conduct during the attack itself.

First, Colonel Spitzen explained that it was implausible that Abu Ghanem "[had seen] the gun for the first time about half an hour prior to the terrorist attack[ ] and received oral instructions ... how to use the gun." Dkt. 104 at 61 (Spitzen). Abu Ghanem "shot 14 bullets without stopping," and "[h]e hit the torsos of the passengers exactly where he directed the bullets." *Id.* (Spitzen). In Colonel Spitzen's expert opinion, Abu Ghanem displayed the skill of a "highly trained" shooter. Dkt. 104 at 61 (Spitzen). Colonel Spitzen further testified that, given "the dynamics of terrorist attacks" and "the socioeconomic status of [Abu Ghanem] and [Alyan]," it is also implausible that Alyan purchased the firearm for 20,000 shekels ($6,000 USD). *Id.* at 62 (Spitzen). That would have been the equivalent of six-months' salary. *Id.* (Spitzen). Instead, Colonel Spitzen concluded that, given the expense and difficulty of procuring a gun and bullets, "it is quite clear and conceivable" that the money "came from a Hamas source," and the weapon was likely "purchased from an accomplice of Hamas." *Id.* (Spitzen).

Second, Colonel Spitzen observes that the sophistication of the attack belied Abu Ghanem's statement that he had met Alyan only the night before and that the men had not previously planned or trained to carry out the attack. As Colonel Spitzen notes in his declaration, the fact that the two men were able quickly to trap passengers inside the bus and attempted to flee the scene by driving the bus demonstrates a high level of planning and forethought. *Id.* at 29–30 (Spitzen Decl. ¶ 78). Abu Ghanem, moreover, "carried out the attack [in the manner] of a person who was highly trained, [and] who had received training and knew how to use the gun." *See* Dkt. 104 at 61 (Spitzen). And given that "[o]ne cannot even go do target practice in the geographical areas where [Abu Ghanem] and [Alyan] reside" because of the presence of Israeli soldiers, Colonel Spitzen concludes that Abu Ghanem must have been "driven to isolated areas" to train, which requires "accomplices" and which ***349** "cost[s] a great deal of money." *Id.* at 63 (Spitzen). Based on the above, Colonel Spitzen draws the following conclusions:

> [T]he acquaintance between Alyan and Abu Ghanem was much deeper than what the latter described in his interrogation[ ]; [t]he planning of the attack was more thorough and extensive than what Abu Ghanem was willing to admit in his interrogation, and it is highly likely that the funding of the attack, the acquisition of the weapons were used during the attack, and the training towards it were all done within the framework of a structured organization, in this case, Abu Ghanem's Organization, Hamas.

Dkt. 33 at 30–31 (Spitzen Decl. ¶ 79).

The Court credits Colonel Spitzen's testimony. Given Abu Ghanem's documented membership in Hamas, the sophistication of the attack (which involved the purchase of a firearm and an escape plan), and the skill with which Abu Ghanem wielded his firearm, the Court finds that, at the very least, Hamas provided Abu Ghanem the necessary training to carry out the attack. That would be consistent with Hamas's practice of recruiting Islamic Bloc operatives to join the ranks of its operational terrorist arm, the Izz al-Dinn al-Qassam Brigades. *Id.* at 38 (Spitzen Decl. ¶ 109). It is likely, moreover, that Abu Ghanem was, in fact, a member of Hamas's operational terrorist arm at the time of the attack and engaged in the attack at its behest. Indeed, shortly after the attack, an official spokesman of Hamas "issued calls to carry out further attacks similar to the Bus 78 massacre." *Id.* at 48 (Spitzen Decl. ¶ 126).

F. October 28, 2014 Shooting

1. *Injury to Yehudah Glick*

At approximately 10:00 p.m. on October 29, 2014, Mu'taz Ibrahim Khalil Hijazi shot Plaintiff Yehudah Glick several times at close range as Glick was leaving the Menachem Begin Heritage Center in Jerusalem. Dkt. 33 at 122 (Spitzen Decl. ¶ 316). Glick is a known public advocate for the right of all people—and those of Jewish faith in particular—to pray at the Temple Mount. *Id.* (Spitzen Decl. ¶ 317). At the time of the attack, Glick was a U.S. citizen, *see* Dkt. 82-7 (Passport), but he has since "renounced his American citizenship" after being elected to the Israeli Knesset, Dkt. 1 at 6 (Compl. ¶ 12). On the day of the attack, Glick was attending a conference that he had organized on behalf of the Temple Mount Heritage Foundation at the Menachem Begin Heritage Center. Dkt. 33 at 122 (Spitzen Decl. ¶ 317). Hijazi, was employed as an assistant chef at the Center. *Id.* at 123 (Spitzen Decl. ¶ 318). That evening, surveillance cameras captured Hijazi leaving the Center by scooter at 9:37 p.m. and returning half an hour later to the courtyard. *Id.* (Spitzen Dec. ¶ 319).

When the conference ended, Glick exited the Center and headed to his car. *Id.* (Spitzen Decl. ¶ 320). Hijazi approached Glick on his scooter and said, "I am shooting you because you are an enemy of Al Aqsa." Dkt. 52 at 4 (Y. Glick Decl. ¶ 20). He then shot Glick four times in the center of his body. *Id.* (Y. Glick Decl. ¶ 21). After the attack, Hijazi fled by scooter. Dkt. 33 at 122 (Spitzen Decl. ¶ 316). He was later identified, apprehended, and killed in a shootout with the police on the morning of October 30, 2014. *Id.* at 124–25 (Spitzen Decl. ¶¶ 323–24).

Glick was brought to the hospital in critical condition. *Id.* at 123 (Spitzen Decl. ¶ 320). The shooting caused "significant injury to [his] liver, spine, and small and large intestines," and the bullets also "punctured a lung, entered [his] throat, and damaged one of [his] hands." Dkt. 52 at 4 (Y. Glick Decl. ¶ 24). He was placed in ***350** a medically induced coma for ten days and stayed at the hospital for twenty-five days. *Id.* at 5 (Y. Glick Decl. ¶¶ 25–26, 32). Glick attests that, to this day, he experiences "continual anxiety" and "constant pain in [his] arm, back and abdomen." *Id.* at 7 (Y. Glick Decl. ¶ 46).

The attack also deeply affected Glick's family members. The estate of his wife, Yaffa Glick, and his children and foster children, Neria David Glick, Shlomo Glick, Hallel Glick, S.G., R.T. and T.T., are also plaintiffs in this action. Dkt. 1 at 6–7 (Compl. ¶¶ 12–15). R.T. and T.T. are Israeli citizens. Dkt. 87 at 41. The rest of the family members are U.S. citizens. They allege that they suffered "severe psychological and emotional injuries" as a result of the attack and, specifically, in coping with its aftermath. Dkt. 1 at 22 (Compl. ¶ 85).

2. *Attribution to PIJ*

Colonel Spitzen opines, based on police reports of the incident and Hijazi's background, that "[t]he assassination attempt on Yehuda[h] Glick was a planned, premediated terrorist attack" by a PIJ operative. Dkt. 33 at 125 (Spitzen Decl. ¶ 325). Colonel Spitzen notes that Hijazi's conduct during the attack was "calculated" and "show[ed]" expertise. *Id.* (Spitzen Decl. ¶ 326). Hijazi "specifically targeted Glick," a Jewish advocate; he purposefully left the Center "before the conference concluded, most likely in order to bring [his] weapon;" he shot Glick multiple times at point blank range; he calmly "escaped the scene of the attack on his scooter;" and he "revealed his combat skills and self-control when the security forces came to arrest him, and "[h]e climbed a tall vantage point—the house roof—from which he tried to shoot the forces." *Id.* at 125–26 (Spitzen Decl. ¶¶ 325–27). According to Colonel Spitzen, Hijazi likely joined PIJ while he was incarcerated. Hijazi served a total of eleven years for setting fire to electrical cabinets in Jerusalem for "nationalist reasons," *id.* at 127 (Spitzen Decl. ¶ 331), and for multiple assaults he committed against prison guards and fellow prisoners while he was incarcerated, *id.* at 127 (Spitzen Decl. ¶ 332). Court documents from his case reveal that, as early as 2004, a prison service officer testified that Hijazi belonged to PIJ. *Id.* at 127–28 (Spitzen Decl. ¶ 333). As Colonel Spitzen explains, "[i]t is extremely common for prisoners to join terror organizations while serving time in Israeli prisons." *Id.* at 128 (Spitzen Decl. ¶ 334).

Colonel Spitzen further attests, based on his review of social media affiliated with PIJ, that PIJ claimed credit for the attack. *See id.* at 128 (Spitzen Decl. ¶ 335) ("Immediately after the assassination attempt ..., media outlets, internet web sites (including web sites identified with the Palestinian Islamic Jihad), and Palestinian Islamic Jihad senior leaders—all referred to [Hijazi] as an operative of the [PIJ] operational arm, known as the Saraya al-Quds (Al-Quds Brigades)."). Notably, after the attack, the Al-Quds Brigades' website published a poster "depicting [Hijazi] with Fathi Shiqaqi, the [PIJ] historic

leader and founder in the background." *Id.* at 129 (Spitzen Decl. ¶ 338). On October 31, 2014, the day after Hijazi was killed, PIJ "organized a march in Gaza in support of ... [Hijazi]," which included the "burning of Israeli and American flags." *Id.* at 130 (Spitzen Decl. ¶ 341). The Al-Quds Brigades' website went so far as to publish the following statement on January 4, 2015: "Our martyr, the mujahid Mu'taz Hijazi, son of Jerusalem, guardian of the will of his teacher, martyr Fathi Shiqaqi, on the 19th anniversary (of his demise), has taken revenge on those who tried to harm and befoul the Al-Aqsa Mosque." *Id.* at 139–40 (Spitzen Decl. ¶ 338).

***351** In light of the above, the Court concludes that the assignation attempt on Yehudah Glick was carried out by a PIJ operative.

G. August 19, 2011 Rocket Attack

1. *Physical Injury to Schmuel Brauner*

Between August 18th and 22nd of 2011, Hamas and other terrorist organizations fired "Grad rockets" from the Gaza Strip into Israel. Dkt. 33 at 106–07 (Spitzen Decl. ¶¶ 278–281); Dkt. 104 at 76 (Spitzen). More than 100 rockets were fired over this four-day period, affecting civilians in "Israeli communities near the border of the Gaza Strip." Dkt. 33 at 107–08 (Spitzen Decl. ¶ 280). The attack was part and parcel of Hamas's strategy to inflict terror on Israeli civilians after Israel imposed restrictions on the flow of goods and persons from the Gaza Strip following Hamas's takeover of Gaza in 2007. *See id.* at 96–97 (Spitzen Decl. ¶¶ 252–53). Colonel Spitzen describes "Hamas's policy with respect to rocket launching" as follows:

> The organization itself fired rockets and allowed other organizations to fire rockets toward communities in Israel when such actions were in line with its objectives at a given time. On the other hand, it forced its operatives and the operatives of other organizations to respect ceasefires when it suited its goals.

Id. at 98 (Spitzen Decl. ¶ 256). This period of rocket attacks, for example, ended when Egypt helped broker a ceasefire. *Id.* (Spitzen Decl. ¶ 257).

On the morning of August 19, 2011, two rockets landed near a synagogue in Ashdod, where Plaintiff Schmuel Brauner was attending services. Dkt. 39 at 2 (S. Brauner Decl. ¶ 7). The first missile landed but did not explode. *Id.* The second missile exploded in the synagogue's courtyard, injuring Schmuel and several others. *Id.*; Dkt. 87 at 56; Dkt. 33 at 107–08 (Spitzen Decl. ¶ 280). According to Schmuel, he and other civilians ran out of the synagogue when the first missile landed. Dkt. 39 at 2 (S. Brauner Decl. ¶ 7). Before he could reach cover, however, the second missile landed and exploded within four meters of him. *Id.* As a result of the explosion, shrapnel entered his back and exited through his stomach. *Id.* Schmuel was immobile and "in excruciating pain," but he never lost consciousness. *Id.* (S. Brauner Decl. ¶¶ 7–8). He was taken to Kaplan Medical Center in Rehovot. *Id.* (S. Brauner Decl. ¶ 10). His physical injuries included "a ruptured kidney, lacerations to his bowel and small intestine," and other shrapnel wounds to his right thigh and knee. Dkt. 87 at 56. Schmuel spent ten days in the hospital, during which he endured several surgeries. *Id.* To this day, he suffers physical discomfort as well as psychological and emotional trauma. *See id.*; Dkt. 35-5 (Dr. Rael Stous Medical Rpt.).

The attack also severely impacted Brauner's family. His wife, Nechama Brauner, and parents, Mordechai and Esther Brauner—all of whom are U.S. citizens—seek solatium damages for their mental and emotional anguish as a result of Shmuel's injuries. Dkt. 87 at 80–81; *see also* Dkt. 35-2 (N. Brauner Psych. Eval.); Dkt. 35-3 (E. Brauner Psych. Eval.), Dkt. 35-4 (M. Brauner Psych. Eval.). Shmuel and Nechama Brauner also bringing claims for solatium damages on behalf of their minor children, C.Y.B., M.H.B., and Y.A.L.B., Dkt. 1 at 9 (Compl. ¶¶ 28–29), all of whom are Israeli citizens,[3] Dkt. 87 at 88. ***352** C.Y.B. was not yet a year old when his father was injured. Dkt. 35-6 at 1. M.H.B. and Y.A.L.B. were born after the attack. *Id.* Nechama attests that, as a result of the attack, Shmuel is mostly absent from his children's lives, and this has "greatly affected their upbringing." Dkt. 38 at 5 (N. Brauner Decl. ¶ 26).

2. *Attribution to Hamas*

Several terrorist organizations based in the Gaza Strip fired rockets towards Israel during the period of time when the rocket attack on the Ashdod Synagogue took place, and the identity of the specific terrorist group that launched the particular missile causing Shmuel Brauner's injuries is unclear. Dkt. 33 at 112 (Spitzen Decl. ¶¶ 292–93). In fact, more than one terrorist organization has claimed responsibility for the attack because it was "considered a success"—"a direct hit on the synagogue[,] ... caus[ing] extensive damage to property and people, and ... receiv[ing] wide coverage in the media." *Id.* (Spitzen

Decl. ¶ 293). The Court credits Colonel Spitzen's conclusion, however, that Hamas was ultimately responsible for the attack, *id.* at 113 (Spitzen Decl. ¶ 295), based on the fact that Hamas "was—and still is—the only authority in sole and effective control of everything that happens within the Gaza strip," *id.* (Spitzen Decl. ¶ 296). According to Colonel Spitzen, Hamas enforced its authority "over the other terrorist organizations strictly, effectively, and aggressively, in such a manner that *any firing began or ended on its orders.*" *Id.* (emphasis added). Spitzen persuasively concludes that, even if another terrorist organization had launched the rocket that injured Schmuel, it must have received authorization from Hamas before doing so. *See* Dkt. 104 at 76 (Spitzen) ("Hamas which controls the Gaza Strip is the only party that enables or facilitates the firing of these missiles."). The Court, accordingly, finds that Hamas was ultimately responsible for the August 19, 2011 rocket attack that injured Schmuel Brauner.

H. November 21, 2012 Rocket Attack

1. *Emotional Injury to Daniella, Noa, Dana, and A. Parnas*

Between November 14, 2012 and November 21, 2012, terrorist groups operating in the Gaza Strip launched approximately 1,500 rockets at civilian targets in Israel during "Operation Pillar of Defense," a military operation carried out by the Israeli Defense Forces in the Gaza Strip. Dkt. 33 at 114–15 (Spitzen Decl. ¶ 301); Dkt. 104 at 76–77 (Spitzen). The onslaught of missile attacks "started as a result of the assassination ... of ... a very senior ranked terrorist, Ahmad Jabari, who was the chief of staff of Hamas." Dkt. 104 at 77 (Spitzen). According to the bomb disposal expert's report and police reports, a 122 mm Grad rocket landed in Timorim, Israel, Dkt. 33 at 114 (Spitzen Decl. ¶ 300–01), a village "approximately 40 kilometers aerially from the Gaza Strip" on November 21, 2012, at 10:18 a.m., Dkt. 140 at 76–77 (Spitzen); Dkt. 33 at 114–15 (Spitzen Decl. ¶ 300). The rocket hit the home of Plaintiff Daniella Schwadron Parnas,[4] where she resided with her three ***353** children, Noa Parnas, Dana Parnas, and A.P. Dkt. 33 at 114 (Spitzen Decl. ¶ 300); Dkt. 69 at 1 (D. Parnas Decl. ¶ 5). Their home sustained "heavy damage." Dkt. 33 at 114 (Spitzen Decl. ¶ 300). The explosion left the home with no roof and broken windows. Dkt. 69 at 4 (Daniella Parnas Decl. ¶ 32).

Plaintiffs Daniella Schwadron Parnas, Noa Parnas, Dana Parnas, and A.P., all of whom are U.S. citizens, Dkt. 82-22; Dkt. 82-23; Dkt. 83-24, seek damages for the "severe psychological and emotional injuries" they suffered as a result of the November 21, 2012 rocket attack on their home, Dkt. 1 at 28 (Comp. ¶ 112). None of the Parnas plaintiffs suffered any physical injuries, *see id.*, nor were they at home when the rocket struck, *see* Dkt. 69 at 1–2 (Daniella Parnas Decl. ¶¶ 7–12). Each has, nevertheless, submitted a declaration and a psychiatric evaluation attesting to his or her psychological harm. *See* Dkt. 67 (Dana Parnas Decl.); Dkt. 69 (Daniella Parnas Decl.); Dkt. 70 (N. Parnas Decl.); Dkt. 35-32 (A.P. Psych. Eval.); Dkt. 35-33 (Dana Parnas Psych. Eval.); Dkt. 35-34 (Daniella Parnas Psych. Eval.); Dkt. 35-35 (N. Parnas Psych. Eval.).

Daniella attested that, at the time of attack, she was running an errand at a nearby supermarket. Dkt. 69 at 1–2 (Daniella Parnas Decl. ¶¶ 8–9). When the rocket siren sounded, and she was "forced to run for cover" at a nearby bomb shelter. Dkt. 1 at 27 (Compl. ¶ 110). She then "heard a very loud 'BANG' " and knew that a rocket had fallen nearby. Dkt. 69 at 2 (Daniella Parnas Decl. ¶ 10). Upon leaving the shelter, she saw a tree burning and "immediately" realized the fire was coming from her house. *Id.* (Daniella Parnas Decl. ¶ 11). Daniella attested that she was "terrified" because her 82-year-old mother was still inside her own home, which "is connected" to Parnas's "house by a door." *Id.* at 1-2 (Daniella Parnas Decl. ¶¶ 5, 13). Parnas's mother was later found "standing in the hallway [of her home] in a state of shock and confusion." *Id.* at 2 (Parnas Decl. ¶ 14). Parnas's psychiatric evaluation revealed that she initially felt "overwhelming anxiety and fright," and now experiences "symptoms of depression, anxiety and PTSD following the shock and stress" of the incident. Dkt. 35-34 at 2, 7 (Daniella Parnas Psych. Eval.).

Daniella's daughters, Noa and Dana were both serving in the army at the time of the attack. Dkt. 69 at 1 (Daniella Parnas Decl. ¶ 7). Dana watched online as her "entire house [went] up in flames." Dkt. 67 at 1 (Dana Parnas Decl. ¶ 5). She then called Noa to tell her about the incident. Dkt. 70 at 2 (Noa Parnas Decl. ¶ 8). Both were "hysterical" after the attack, Dkt. 35-33 at 2 (Dana Parnas Psych. Eval.); Dkt. 70 at 2 (Noa Parnas Decl. ¶ 9), and their psychiatric evaluations reveal that they now suffer from depression and anxiety as a result, Dkt. 35-33 at 2 (Dana Parnas Psych. Eval.); Dkt. 35-5 at 5 (N. Parnas Psych. Eval.).

Finally, A.P. was seven years old at the time of the November 21, 2012 rocket attack. Dkt. 35-32 at 1 (A.P. Psych. Eval.). He was staying with a nearby relative at the

time. Dkt. 69 at 1 (Parnas Decl. ¶ 7). A.P.'s psychological evaluation found that, after the attack, he suffered from anxiety that affected his social and school functioning. Dkt. 35-32 at 4 (A.P. Psych. Eval.). A.P. has "improved considerably," but his anxiety will continue to affect "his social and academic functioning." *Id.* at 4–5.

2. *Attribution to Hamas*

The rocket that blew up the Parnas's home was fired on the last day of "Operation ***354** Pillar of Defense." Dkt. 33 at 114–15 (Spitzen Decl. ¶ 301). Due to the direct hit and the media attention that the attack garnered, multiple organizations came forward to claim credit for the attack, including the Izz a-Din al-Qassam Brigades, the operational wing of Hamas. *Id.* at 116 (Spitzen Decl. ¶¶ 304–05). In Colonel Spitzen's expert opinion, however, "Hamas's responsibility for the attack is not contested." *Id.* at 117 (Spitzen Decl. ¶ 306). To the contrary, Spitzen concludes, based on the timing of the attack and Hamas's control of the Gaza Strip, the the rocket attacks during that period were "the direct result of ... decisions and directives issued by the Hamas leadership." *Id.* As noted above, Hamas initiated the rocket attacks because Israel killed "Ahmad Ja'abri, the head of Hamas's operational terrorist wing." *Id.* at 115 (Spitzen Decl. ¶ 302). The same day that Israel killed Ja'abri, "Hamas gave a greenlight to all of the [terrorist] organizations in the Gaza Strip to start" Operation Pillar of Defense. Dkt. 104 at 77 (Spitzen). The Court credits Colonel Spitzen's expert opinion that Hamas authorized the attack and finds Hamas responsible the rocket launch that destroyed Plaintiffs Daniella Parnas, Noa Parnas, Dana Parnas, and A.P.'s home.

I. March 6, 2008 Shooting at Merkaz HaRav Yeshiva

1. *Attack*

On March 6, 2008, at approximately 8:30 p.m., Ala' Hisham Abu Dheim, a 26-year-old Izz al-Din al-Qassam Brigades operative, entered the Merkaz HaRav Yeshiva in Jerusalem. Dkt. 33 at 72 (Spitzen Decl. ¶ 188). He was armed with a Kalashnikov assault rifle with nine compatible magazines, two guns (a Beretta pistol and an FN pistol) with four compatible magazines, and a commando knife. *Id.* (Spitzen Decl. ¶ 189); *see also* Dkt. 104 at 84 (Spitzen). On his way to the Yeshiva, Abu Dheim concealed his weapons in a cardboard box and exploited the fact that there was no security guard at the entrance at the time. Dkt. 33 at 72-73 (Spitzen Decl. ¶ 189).

Before Abu Dheim even entered the building, he opened fire on Yeshiva students in the front plaza with his Kalashnikov assault rifle, killing one student and injuring several others. *Id.* at 73, 86 (Spitzen Decl. ¶¶ 190, 223). He then shot through the windows of the building at two students standing inside near the entrance and shot them again to ensure that they were dead. *Id.* at 86 (Spitzen Decl. ¶ 224). Upon entering the building, Abu Dheim shot two students descending the stairs. *Id.* He then proceeded toward the library, opening fire on students standing outside. *Id.* at 73 (Spitzen Decl. ¶ 190). The sound of gunshots and shouts of a terrorist attack preceded Abu Dheim's arrival in the library, so students had time to attempt to hide. *Id.* at 86-87 (Spitzen Decl. ¶¶ 225-26).

When Abu Dheim arrived at the library, he launched a "systematic massacre." *Id.* at 73 (Spitzen Decl. ¶ 190); Dkt. 104 at 84–85 (Spitzen). According to eyewitnesses, Abu Dheim sought out students who were hiding behind bookshelves and shot them. Dkt. 33 at 73–74 (Spitzen Decl. ¶ 191). Eyewitnesses also recount that he operated with the "skill and precision of a trained and cold-hearted assassin" and that he "exhibit[ed] control handling his weapons, speedily load[ing] and reload[ing] magazines while shooting and accurately targeting" the victims "at long and close range." *Id.* Captain David Shapira, an officer in the Paratroopers Brigade who lived near the Yeshiva, and Rabbi Yitzhak Dadon, a student at the Yeshiva at the time, both attempted to stop Abu Dheim. *Id.* at 73–74 (Spitzen Decl. ¶ 192). Eventually, Captain Shapira shot and killed Abu Dheim. *Id.* The entire event—from the time he began ***355** killing until when he had been taken out—lasted between ten and fifteen minutes. *Id.* (Spitzen Decl. ¶ 193). Eight boys, mostly high school students, were killed, including Plaintiff Avraham David Moses. *Id.* In addition, ten students were wounded, including Plaintiff Naftali Shitrit. *Id.*

2. *Killing of Avraham David Moses*

Avraham David Moses was studying with his friend, Segev Avihail, when the attack began. *Id.* at 87 (Spitzen Decl. ¶ 227). The boys were alerted to the attack by the shouts and burst of gunfire outside the building and attempted to hide under a "table/shelf" near the library entrance. *Id.* Based on the bullet marks on the floor, the

boys were likely shot and killed from a close range while hiding huddled together in this location. *Id.* According to Rabbi Dadon's timeline, it is "highly probable" that the boys were in their hiding space for seven to eight minutes before they were killed. *Id.* (Spitzen Decl. ¶ 228). Avraham was sixteen years-old. *Id.* at 74 (Spitzen Decl. ¶ 193).

The estate of Avraham David Moses (a U.S. citizen), is a plaintiff in this case. Dkt. 1 at 8 (Compl. ¶ 19). His mother, Rivkah Martha Moses; father, Naftali Andrew Moses; step-father, David Moriah; siblings, Elisha Dan Moses, N.M., C.M., O.D.M., and A.M.; step-brother, Aviad Moriah—all of whom are U.S. citizens—as well as his step-siblings, Z.G.M., Hagit Gibor Moriah, Eitan Yoel Moriah, Yifat Moriah, and Atara Nesia Moriah—all of whom are Israeli citizens—also seek damages for the "severe psychological, emotional and other personal injuries" they suffered as a result of his death, including loss of consortium and loss of solatium. *Id.* at 7–8, 31 (Compl. ¶¶ 18–23, 128).

3. *Injury to Naftali Shitrit*

Plaintiff Naftali Shitrit, a U.S. citizen, Dkt. 84-4 at 1, was a high school student at the time of the attack. Dkt. 76 at 1 (N. Shitrit Decl. ¶ 3). Upon hearing gunshots, Naftali "hid behind one of the stacks in the library"—one of the last in the room. *Id.* at 2 (N. Shitrit Decl. ¶ 6). He realized that "the gunman was systematically going from one stack to the next" when he heard "gunshots, then shouts and screams, then silence from the stacks near [him]." *Id.* (N. Shitrit Decl. ¶ 7). After coming across Naftali's hiding place, Abu Dheim shot Naftali multiple times. *Id.* Naftali was brought to the hospital in critical condition, and he was unconscious for a week. *Id.* at 3 (N. Shitrit Decl. ¶ 24, 26). Five months after the attack, he traveled to the U.S. for additional reconstructive surgery. *Id.* at 5 (N. Shitrit Decl. ¶ 46). To this day, Naftali suffers severe and permanent physical and emotional injuries. *Id.* at 5–7 (N. Shitrit Decl. ¶¶ 48–53).

Naftali is a plaintiff in this case, as are his mother, Gila Rachel Shitrit (a U.S. citizen); father, Yaakov Shitrit (an Israeli citizen); and siblings, Meiri Shitrit, Oshrat Shitrit, N.S., Y.S., A.S., E.S., and H.S. (all of whom are U.S. citizens). Dkt. 1 at 8–9 (Compl. ¶¶ 24–27). His family members seek damages for the mental and emotional anguish they suffered as a result of his injuries. *See id.* at 31 (Compl. ¶ 128).

4. *Attribution to Hamas*

The Court credits Colonel Spitzen's conclusion that Hamas was responsible for the March 6, 2008, shooting at the Yeshiva. Colonel Spitzen identifies two specific reasons for his conclusion. *First*, and foremost, Hamas claimed credit for the attack. *Id.* at 78-82 (Spitzen Decl. ¶¶ 202-13). An anonymous Hamas official immediately contacted Reuters, acknowledging that Hamas was responsible. *Id.* at 78 (Spitzen Decl. ¶ 202). Following that announcement, Abu Ubeida, the spokesman of the Izz al-Din ***356** al-Qassam Brigades, suspended the organization's claim of responsibility, but neither affirmed nor denied responsibility. *Id.* He stated, instead, that "[t]he time has not yet come for claiming responsibility." *Id.* The official claim for responsibility by the Izz al-Din al-Qassam Brigades came two years after the attack, in a December 25, 2010 press conference with Abu Ubeida. *Id.* at 78 (Spitzen Decl. ¶ 203); Dkt. 104 at 88–89 (Spitzen). According to Colonel Spitzen, the delay is consistent with Hamas's policy of delaying a claim of responsibility out of consideration for the security of other Hamas operatives and accomplices. Dkt. 33 at 79 (Spitzen Decl. ¶ 204).

Second, Colonel Spitzen concludes, based on eyewitness accounts of the account and police statements, that Abu Dheim "had been well trained and was not acting alone." Dkt. 33 at 74 (Spitzen Decl. ¶ 194). According to Spitzen, "all stages of the attack were 'meticulously planned' " and "demonstrate characteristics of organized attacks carried out by terrorist organizations, like Hamas." *Id.* The Yeshiva, for example, "was a strategic target that was carefully selected ... because of its prominence as a learning institutes for religious studies and its location, at the main entrance to Jerusalem." *Id.* at 75 (Spitzen Decl. ¶ 196). Moreover, the sophistication of the attack indicates that "[c]areful intelligence and logistic preparations were made prior to the attack, including intelligence gathering, acquisition of a variety of weapons, shooting practice and concealing the weapons on the way to the target." *Id.*

The Court, accordingly, finds that the Merkaz HaRav massacre was conducted by Hamas.

III. CONCLUSIONS OF LAW

Under the Foreign Sovereign Immunity Act, 28 U.S.C. § 1604, a foreign state, including its instrumentalities, is immune from suit in state or federal court unless the case

falls within an express statutory exception. *See Kilburn v. Socialist People's Libyan Arab Jamahiriya*, 376 F.3d 1123, 1126 (D.C. Cir. 2004). For present purposes, the sole relevant exception is found in the "state-sponsored terrorism exception," 28 U.S.C. § 1605A, which both confers subject matter jurisdiction on federal district courts to hear certain terrorism-related claims, *see* 28 U.S.C. § 1330(a), and recognizes a federal cause of action against those foreign states subject to the exception, *see Owens*, 864 F.3d at 764–65. The FSIA also addresses personal jurisdiction and specifies precise procedures that a plaintiff must follow—at times with the assistance of the clerk of the court and the U.S. Department of State—to effect service on a foreign state. *See* 28 U.S.C. § 1608.

The Court must satisfy itself that an FSIA plaintiff has cleared each of these hurdles, even if the defendant fails to appear. First, because the FSIA deprives courts of subject-matter jurisdiction in the absence of a relevant exception, a failure to appear does not waive the defense and the courts are "obligated to consider *sua sponte*" whether they have jurisdiction hear the case and to order any relief. *Gonzalez v. Thaler*, 565 U.S. 134, 141, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012); *see also Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 493 n.20, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983) (even where a defendant foreign state does not appear, the Court "still must determine that immunity is unavailable"). Second, with respect to the substance of a plaintiffs' state or federal law claims, as noted above, the FSIA precludes courts from entering a default judgment against a foreign state unless the court is satisfied that the plaintiff has established her "right to relief by evidence satisfactory to the court." ***357** 28 U.S.C. § 1608(e); *see also Owens*, 864 F.3d at 784–86. And, because "the entry of a default judgment is not automatic," courts must "satisfy [themselves] that [they have] personal jurisdiction before entering judgment against an absent defendant." *Mwani*, 417 F.3d at 6 (footnote omitted).

Each of these inquiries, in turn, implicates a slightly different standard of proof. To establish subject-matter jurisdiction, an FSIA "plaintiff bears an initial burden of production to show [that] an exception to immunity, such as § 1605A, applies." *Owens IV*, 864 F.3d at 784. "Although a court gains jurisdiction over a claim against a defaulting defendant when a plaintiff meets his burden of production, the plaintiff must still prove his case on the merits." *Id.* To do so, the plaintiff must "establish his ... right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e). This provision's "protection against an unfounded default judgment" does not altogether "relieve[ ] the sovereign from the duty to defend" but, nonetheless, requires that the plaintiff offer "admissible evidence" sufficient to "substantiate [the] essential element[s]" of her claim. *Owens IV*, 864 F.3d at 785–86 (quotations omitted). Finally, to establish personal jurisdiction over a defaulting defendant, the plaintiff must make "a prima facie showing of [personal] jurisdiction." *Mwani*, 417 F.3d at 6–7.

As explained below, the Court concludes that it has subject-matter jurisdiction over Plaintiffs' claim and personal jurisdiction over the Islamic Republic of Iran, MOIS, and the Syrian Arab Republic.[5] The Court also concludes that the U.S. national plaintiffs have carried their burden of establishing a right to relief under the federal cause of action established in § 1605A, and that the Israeli plaintiffs—with the exception of M.H.B. and Y.A.L.B.—have carried their burden of establishing a right to relief under the law of Israel. Finally, the Court will defer until the damages stage the determination whether each of the plaintiffs has established the necessary familial relationship to recover individual damages and, if so, the damages to which each is entitled.

A. Subject-Matter Jurisdiction and Liability for § 1605A(c) Claims

"[T]he [federal] district courts ... have original jurisdiction" over "any nonjury civil action against a foreign state" asserting "any claim for relief in personam with respect to which the foreign state is not entitled to immunity under" the FSIA. 28 U.S.C. § 1330(a). The Court, accordingly, has subject-matter jurisdiction over the present "nonjury civil action" against Iran if, and only if, the conditions for the waiver of immunity found in 28 U.S.C. § 1605A are satisfied. As explained below, Plaintiffs have carried their burden of establishing the Court's subject-matter jurisdiction.

Under the state-sponsored terrorism exception, 28 U.S.C. § 1605A(a)(1), a foreign state is not immune from the jurisdiction of the federal and state courts in cases in which

> [(1)] money damages are sought against a foreign state [(2)] for personal ***358** injury or death [(3)] that was caused by [(4)] an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is [(5)] engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

28 U.S.C. § 1605A(a)(1). The exception, moreover, applies only to suits in which two additional requirements are met. First, the claimant or victim must be a U.S. national, a member of the U.S. armed forces, or a U.S. government employee or contractor at the time the act of terrorism occurred. 28 U.S.C. § 1605A(a)(2)(A)(ii). Second, the foreign state must be designated as a state sponsor of terrorism both at the time the act occurred (or was so designated as a result of the act) and at the time the lawsuit was filed (or was so designated within the six-month period preceding the filing of the suit).[6] *Id.* § 1605A(a)(2)(A)(i)(I); *see also Owens IV*, 864 F.3d at 763–64.

Several of the conditions for subject-matter jurisdiction are easily addressed in this case. First, Plaintiffs expressly seek only monetary relief, costs and expenses, and attorneys' fees. *See* Dkt. 1 at 35 (Compl. Prayer). Second, Iran and Syria were designated as a state sponsors of terrorism in 1984 and 1979, respectively, *see* 49 Fed. Reg. 2836–02 (Jan. 23, 1984) (statement of Secretary of State George P. Shultz) (Iran); *Gates v. Syrian Arab Republic*, 646 F.3d 1, 2 (D.C. Cir. 2011) (Syria), and remain so designated to this day, *see* U.S. Dep't of State, *State Sponsors of Terrorism*, available at https://www.state.gov/j/ct/list/c14151.htm (last visited May 25, 2020). Moreover, because the MOIS is properly considered "an integral part" of the "foreign state[ ]" of Iran's "political structure," *TMR Energy Ltd.*, 411 F.3d at 300 (quoting *Transaero, Inc.*, 30 F.3d at 151), and because § 1605A focuses on whether "the foreign state was designated"—and not whether each named defendant was separately designated—the Court concludes that the designation of Iran as a state sponsor of terrorism is sufficient to satisfy the designation requirement as to both defendants. *See* 28 U.S.C. § 1605A(a)(2)(A)(i)(I). Third, at the time the relevant acts occurred, all eleven of the direct victims and thirty-four of the family members were U.S. nationals (the Court will address the Israeli national plaintiffs below). *See supra* Part II.C-I.

As a result, the only substantial jurisdictional question left for the Court is whether Plaintiffs' claims are for "personal injury or death that [were] caused by ... act[s] of torture, extrajudicial killing ... hostage taking, or the provision of material support or resources" by an "official, employee, or agent of" Iran or Syria. 28 U.S.C. § 1605A(a)(1). For the reasons explained below, the Court concludes as follows: (1) Hamas and PIJ committed acts of "extrajudicial killing" within the meaning of the International Convention Against the Taking of Hostages and the Torture Victim Protection Act; (2) because the Parnases' claims are for emotional harms arising out of an attempted extrajudicial killing in which no one was injured (and none of the Parnases were even placed physical peril), they cannot state a claim for recovery for their injuries; (3) ***359** Iranian and Syrian officials and their agents provided "material support or resources" for the extrajudicial killings that caused Plaintiffs' injuries within the meaning of 18 U.S.C. § 2339A; and (4) Iran and Syria's provision of material support caused the injuries or deaths of the eleven victims. Plaintiffs' claims against Iran and Syria, therefore, fall within the state-sponsored terrorism exception of 28 U.S.C. § 1605A(a)(1).

1. *"Personal Injury or Death ... Caused By" Defendant's Conduct*

The FSIA effects a waiver of sovereign immunity for claims seeking to recover for "personal injury or death that was caused by" certain terrorist acts or the provision of material support for such acts. 28 U.S.C. § 1605A(a)(1). Plaintiffs Taylor Force, Menachem Rivkin, Yehudah Glick, Richard Lakin, Avraham Moses, Naftali Shitrit, and Shmuel Brauner all died or suffered significant physical injuries as a result of terrorist attacks committed by Hamas or PIJ, Dkt. 44 at 2 (S. Force Decl. ¶ 12); Dkt. 39 at 2–3 (S. Brauner Decl. ¶¶ 7–14); Dkt. 52 at 4–5 (Yehudah Glick Decl. ¶¶ 21–26); Dkt. 66 at 4 (N. Moses Decl. ¶ 29); Dkt. 54 at 1 (M. Lakin Decl. ¶ 1); Dkt 72 at 1 (M. Rivkin Decl. ¶ 1); Dkt. 76 at 2–3 (N. Shitrit Decl. ¶¶ 9–10, 21–26), and their claims to recover for those injuries satisfy the personal injury requirement of § 1605A(a)(1). Because the statute is understood to encompass claims by family members of those injured or killed for the distress caused by their relative's injuries, also known as solatium actions, *see* 28 U.S.C. § 1605A(c); *see also Salzman v. Islamic Republic of Iran*, No. 17-1745, 2019 WL 4673761 at *12 (D.D.C. Sept. 25, 2019), the relatives of Taylor Force, Menachem Rivkin, Yehudah Glick, Richard Lakin, Avraham Moses, Naftali Shitrit, and Shmuel Brauner also satisfy the personal injury requirement of § 1605A(a)(1). Family members seeking solatium damages are considered to be bringing a particular variety of an intentional infliction of emotional distress claim, *see Oveissi v. Islamic Republic of Iran*, 879 F. Supp. 2d 44, 54–55 (D.D.C. 2012) ("*Oveissi II*"), and are considered to be bringing "claims for personal injury," *id.* at 55. Thus, the Parnases, who seek to recover for the purely emotional harm they suffered based on an intentional infliction of emotional distress theory of liability, similarly advance a claim for "personal injuries" caused by the Defendants' provision of material support.

2. *Hamas and PIJ's Acts of Extrajudicial Killing*

To fall within the FSIA's waiver of sovereign immunity, Plaintiffs' "personal injur[ies] or death[s]" must also have been "caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act." 28 U.S.C. § 1605A(a)(1). The FSIA looks to the Torture Victims Protection Act of 1991 ("TVPA") to define "extrajudicial killing." 28 U.S.C. § 1605A(h)(7). Under the TVPA, "extrajudicial killing" means

> a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

TVPA, Pub. L. No. 102-256, § 3(a), 106 Stat. 73. As the D.C. Circuit has explained, this definition "contains three elements: (1) a killing; (2) that is deliberated; and (3) is not authorized by a previous judgment pronounced by a regularly constituted court." *Owens IV*, 864 F.3d at 770.

***360** a. Killing or Attempted Killing

To begin, the March 8, 2016 stabbing, October 13, 2015 bus massacre, and March 6, 2008 shooting, which resulted in the deaths of Taylor Force, Richard Lakin, and Avraham David Moses, respectively, indisputably constitute extrajudicial killings. No one, however, was killed in the October 29, 2014 shooting, the January 27, 2016 stabbing, or the 2011 and 2012 rocket attacks. *See supra* Parts II.F, D, G–H. That then poses the question of whether the TVPA's definition of extrajudicial killings reach attacks in which no one died. In other words: does the statute cover attempts? Decisions from this district and from other jurisdictions have held that it does. *See, e.g.*, *Karcher v. Islamic Republic of Iran*, 396 F. Supp. 3d 12, 58 (D.D.C. 2019); *Gill v. Islamic Republic of Iran*, 249 F. Supp. 3d 88, 99 (D.D.C. 2017).

Although the text of § 1605A does not address attempts, courts resolve statutory "ambiguities flexibly and capaciously" in light of the text, history, and remedial purpose of the statute to compensate those injured in terrorist attacks. *Van Beneden v. Al-Sanusi*, 709 F.3d 1165, 1167 & n.4 (D.C. Cir. 2013). The statute permits recovery for "personal injur[ies] or death ... caused by ... an act of ... extrajudicial killing." 28 U.S.C. § 1605A(a)(1). Several decisions from this district have held that individuals who are injured but not killed in an attack that results in the death of others may recover for their injuries under § 1605A. *See, e.g.*, *Karcher*, 396 F. Supp. 3d at 58; *Salzman v. Islamic Republic of Iran*, No. 17-2475, 2019 WL 4673761, at *12 (D.D.C. Sept. 25, 2019); *Estate of Doe v. Islamic Republic of Iran*, 808 F. Supp. 2d 1, 6, 14 (D.D.C. 2011); *Cohen v. Islamic Republic of Iran*, 238 F. Supp. 3d 71, 81 (D.D.C. 2017); *Haim v. Islamic Republic of Iran*, 784 F. Supp. 2d 1, 11 (D.D.C. 2011). Those injuries were, in the ordinary sense, "caused by" the "act of ... extrajudicial killing"—a bombing, for example, might kill some of the victims and maim others. *See Salzman*, 2019 WL 4673761 at *12. In that scenario, both sets of victims would suffer "personal injury or death ... caused by an act of ... extrajudicial killing," 28 U.S.C. § 1605A(a)(1)—that is, to continue the example, the bombing was, in fact, an act of extrajudicial killing and that act caused both the deaths and the injuries. "Congress enacted the terrorism exception expressly to bring state sponsors of terrorism ... to account for their repressive practices," *Han Kim*, 774 F.3d at 1048, and that rationale extends to both injured and killed victims, *see Salzman*, 2019 WL 4673761, at *12.

Although a closer question, the Court is also persuaded that the waiver of sovereign immunity includes attempted extrajudicial killings that result in serious physical injuries, even if no one is killed in the attack. As Judge Kollar-Kotelly explained in *Karcher v. Islamic Republic of Iran*, "[t]he text of Section 1605A(a)(1) does not expressly address attempts to commit acts that are listed in that provision," but it does "strip[ ] immunity" both for "personal injury or death that was caused by an act of ... extrajudicial killing ... *or the provision of material support or resources for such an act.*" 396 F. Supp. 3d at 57–58. "Nothing on the face of Section 1605A(a)(1)," Judge Kollar-Kotelly continued, "requires that the material support or resources for an intended extrajudicial killing actually result in someone's death, as long as the victim represented in the case was injured." *Id.* Finding further support in both the legislative history of the statute and the D.C. Circuit's admonishment that the FSIA be "interpret[ed] ... flexibly and capaciously," Judge Kollar-Kotelly held that "material support for an incomplete act of extrajudicial killing ***361** falls within the scope of Section 1605A(a)(1)." *Id.* at 57 (alteration in original). Several courts others have taken this same approach, "f[inding] that injuries resulting from 'deliberated' attempts to kill fall within the scope of Section 1605A(a)(1)." *Id.* at 58; *see also Schertzman Cohen v. Islamic Republic of Iran*, No. 17-1214, 2019 WL 3037868, at *3 (D.D.C. July 11, 2019); *Gill*, 249 F.

Supp. 3d at 99.

Here, the attacks on Rivkin, Glick, and Brauner were brutal and, in each case, evidenced an intent to kill. Rivkin was stabbed twice in his upper torso with a 16 cm knife, Dkt. 33 at 62 (Spitzen Decl. ¶ 163); Dkt. 72 at 2 (M. Rivkin Decl. ¶¶ 6–7), and he lost consciousness for a day and a half, Dkt. 72 at 2 (M. Rivkin Decl. ¶¶ 6–7). Glick was shot four times and suffered injuries to his liver, spine, intestines, lung, ribs, hand, and throat. Dkt. 52 at 4 (Yehudah Glick Decl. ¶ 24). He was placed in a medically induced coma for 10 days. *Id.* at 5 (Yehudah Glick Decl. ¶¶ 25–26). Brauner survived the rocket attack, but suffered grievous wounds; a piece of shrapnel entered his back and exited through his stomach, rupturing his kidney and requiring its removal along with that of part of his colon. Dkt. 39 at 2–3 (S. Brauner Decl. ¶¶ 7–8, 10–11). Compensating the victims of such brutal attacks, which were designed to cause the victims' deaths, to inflict suffering, and to inspire terror, directly furthers the purpose of the terrorism exception to the FSIA. *Van Beneden*, 709 F.3d at 1167 & n.4 ("Guided by the [FSIA's] text and purpose, we interpret its ambiguities flexibly and capaciously").

At least on the present record and based on the current briefing, however, the Court is not persuaded that the terrorism exception is sufficiently capacious to include the missile attack that struck the Parnases' house and caused them related emotional distress. That missile did not kill or wound anyone. *See* Dkt. 67 at 1–2 (D. Parnas Decl. ¶¶ 5, 8). Nor were any of the Parnas Plaintiffs home—or even in the immediate vicinity—when the missile struck. *See* Dkt. 69 at 1–2 (Daniella Parnas ¶¶ 7–11). Concluding that the terrorism exception permits federal district courts to assert jurisdiction over foreign states in these circumstances would constitute a substantial expansion on the law as applied to date and threatens to open the door to a broad array of claims that Congress never contemplated.

Although courts must, in general, resolve jurisdictional questions before reaching the merits, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101–02, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998), in the present context, the questions of jurisdiction and the merits merge. The jurisdictional test and the federal cause of action are, in relevant respects, the same, *see Foley v. Syrian Arab Republic*, 249 F. Supp. 3d 186, 205 (D.D.C. 2017) (explaining that § 1605A(c) "creates a cause of action for the same conduct that gives rise to jurisdiction under the terrorism exception"), and the identical language found in § 1605A(c) and § 1605A(a)(1) must be given the same effect, *see Erlenbaugh v. United States*, 409 U.S. 239, 243, 93 S.Ct. 477, 34 L.Ed.2d 446 (1972) ("[A] legislative body generally uses a particular word with a consistent meaning in a given context."). Thus, if the Parnases' claims fail under § 1605A(c), they also fail under § 1605A(a)(1).

Section 1605A(c) does not itself provide the "substantive basis" for claims brought under the FSIA private right of action. *Maalouf v. Islamic Republic of Iran*, No. 16-0280, 2020 WL 805726, at *5 (D.D.C. Feb. 18, 2020). Courts must, instead, "rely on well-established principles ***362** of law, such as those found in the Restatement (Second) of Torts and other leading treatises, as well as those principles that have been adopted by the majority of state jurisdictions to outline the boundaries of [plaintiffs'] theories of recovery." *Id.* (quoting *Oveissi II*, 879 F. Supp. 2d at 54) (alteration in original). Here, Plaintiffs allege that the Parnases "suffered severe psychological, emotional and other personal injuries as a result of the 2012 [t]errorist [r]ocket [a]ttack." Dkt. 1 at 30 (Compl. ¶ 127). The closest common-law analogues to that claim that the Court can discern are claims for intentional infliction of emotional distress or for assault, but neither claim is established on the facts present here.

As explained in the Restatement (Second) of Torts, "[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." Restatement (Second) of Torts § 46. "[A]n act of terrorism ... is by its very nature considered extreme and outrageous conduct." *Reed v. Islamic Republic of Iran*, 845 F. Supp. 2d 204, 212 (D.D.C. 2012); *see also Belkin v. Islamic Republic of Iran*, 667 F.Supp.2d 8, 22 (D.D.C. 2009). The Parnases, moreover, have offered evidence of their severe emotional distress. *See, e.g.*, Dkt. 35-32 (Strous Report concerning A.P.); Dkt. 35-33 (Strous Report concerning Dana Parnas); Dkt. 35-34 (Strous Report concerning Daniella Parnass); Dkt. 35-35 (Strous Report concerning Noa Parnas). The problem they face, however, is that § 1605A(c) does not establish a stand-alone federal law tort for intentional infliction of emotional distress; rather, as applicable here, it creates a tort "for personal injury or death that was caused by an act of ... extrajudicial killing." 28 U.S.C. §§ 1605A(a)(1) & (c). "[W]ell-established principles of law," then, fill the interstices of that federal law claim. *Maalouf*, 2020 WL 805726, at *5 (quoting *Oveissi II*, 879 F. Supp. 2d at 54). The Court must, accordingly, look to the tortious conduct at issue—material support for an act of extrajudicial killing—and apply the Restatement to that conduct.

Under the Restatement, "conduct which is tortious

because intended to result in bodily harm"—for present purposes, "intended to result in" the extrajudicial killing of innocent people—"does not make the actor liable for an emotional distress which is the only legal consequence of his conduct." Restatement (Second) of Torts § 47. To be sure, the destruction of the Parnases' home was, in some sense, a "legal consequence of" Hamas's conduct. But the FSIA does not provide a stand-alone claim for injuries to property or emotional distress resulting from such a loss. *See* 28 U.S.C. § 1605A(d) (permitting recovery for "foreseeable property loss" only after a successful claim for personal injury has been brought). As a result, in the absence of some "personal injury or death" resulting from the rocket attack, 28 U.S.C. § 1605A(a), established principles of law do not support a claim for emotional distress alone resulting from that attack.[7] In this important respect, the Parnases' claims differ from those of Rivkin, Glick, and Brauner, who were all the targets of attempted extrajudicial killings and who each suffered grave physical injuries, thus supporting their claims and the claims of ***363** their family members for emotional distress damages.

Victims of failed attempts to inflict bodily harm do have a remedy under tort law (and, at least at times, under the FSIA), but it is under an assault (rather than intentional infliction of emotional distress) theory, and it provides recovery only for "emotional distress [that] consists of an apprehension of the immediate infliction of an intended harmful or offensive contact." Restatement (Second) of Torts § 47 cmt. a (citing Restatement (Second) of Torts § 21–34). To prevail on an assault theory for attempted extrajudicial killing under the FSIA, a plaintiff must show that the "(1) [defendants] acted intending to cause a harmful contact with, or an imminent apprehension of such a contact by, those attacked[,] and (2) those attacked were thereby put in such imminent apprehension." *Schertzman Cohen*, 2019 WL 3037868, at *5 (quoting *Wultz v. Islamic Republic of Iran*, 864 F. Supp. 2d 24, 35 (D.D.C. 2012)) (alterations in original). None of the Parnases, however, were home or even in the immediate vicinity at the time of the attack, nor do they assert that they were put in "imminent apprehension" of physical harm. *See* Dkt. 69 at 1–2 (Daniella Parnas ¶¶ 7–11).

The Court is, therefore, unpersuaded on the current record and briefing that the FSIA's terrorism exception should be construed to encompass attempted extrajudicial killings in which no one suffered physical injuries and no one was even placed in imminent apprehension of physical harm. Permitting recovery under such circumstances would open the door to a cascade of claims for emotional distress that are unmoored to the types of grievous injury, death, or imminent, life-altering peril resulting from the uniquely heinous acts that Congress elected to redress: torture, extrajudicial killing, aircraft sabotage, and hostage taking. 28 U.S.C. 1605A(a)(1). Absent some evidence that Congress intended to open that door—or even briefing on the question—the Court will not do so.

b. Deliberated

With respect to the remainder of the Plaintiffs' claims, they must show that the attacks that caused their injuries were "deliberated," in order to qualify as an "extrajudicial killing." "A 'deliberated' killing is simply one undertaken with careful consideration, not on a sudden impulse." *Owens v. Republic of Sudan*, 174 F. Supp. 3d 242, 263 (D.D.C. 2016) ("*Owens III*") (citing Webster's Third New International Dictionary 596 (1993); 4 The Oxford English Dictionary 414 (2d ed. 1989); Black's Law Dictionary 492 (9th ed. 2009)), *aff'd*, 864 F.3d 751 (D.C. Cir. 2017), *vacated in part and remanded on other grounds sub nom. Opati v. Republic of Sudan*, — U.S. —, 140 S.Ct. 1601, 206 L.Ed.2d 904 (2020). Here, there is ample evidence that the attacks in question were planned. For example, more than one of the perpetrators had expressed their desires to die as martyrs on social media in advance of the attacks, *see, e.g.*, Dkt. 33 at 55 (Spitzen Decl. ¶ 141) (discussing attacker that killed Taylor Force); *id.* at 67 (Spitzen Decl. ¶ 174), and one even posted a photo of himself "masked and sitting in a car with emojis of smiley faces and knives" "[s]everal days prior to the attack" in which he stabbed one of the Plaintiffs, *id.* at 64 (Spitzen Decl. ¶ 169) (discussing Menachem Rivkin's attacker). Similarly, Colonel Spitzen explained that the Bus 78 attack was the product of significant planning, training, and forethought, given the efficiency with which the two attackers were able to trap and kill passengers. *Id.* at 29–30 (Spitzen Decl. ¶ 78); Dkt. 104 at 61 (Hrg. Tr. 61:2–25). With respect to the shooting of Yehudah Glick, Colonel Spitzen explained that the ***364** evidence demonstrated that "[t]he assassination attempt ... was a planned, premeditated terrorist attack." Dkt. 33 at 125 (Spitzen Decl. ¶ 325). Similarly, Colonel Spitzen explained that the attack on the yeshiva was "meticulously planned," "demonstrate[d] characteristics of organized [terrorist] attacks" and showed signs of "careful intelligence and logistic preparations ... made prior to the attack." *Id.* at 74–75 (Spitzen Decl. ¶¶ 194, 196).

The rocket attacks were also "deliberated." According to Colonel Spitzen, Hamas has a "policy with respect to rocket launching" and does so—or permits other Gaza-based groups to do so—only "when such actions

[are] in line with its objectives." *Id.* at 98 (Spitzen Decl. ¶ 256); *see also id.* at 113 (Spitzen Decl. ¶ 296) (explaining that Hamas enforced its authority "over the other terrorist organizations strictly, effectively, and aggressively, in such a manner that *any firing began or ended on its orders*" (emphasis added)). In particular, the 2011 attack on the synagogue was part of coordinated rocket campaign during a particularly active period of conflict with Israel. *See id.* at 106–07 (Spitzen Decl. ¶¶ 278–80).

Finally, there is no evidence whatsoever that any of these attacks were authorized "by a prior judgment affording judicial guarantees o[f] due process," *Foley*, 249 F. Supp. 3d at 202; *see also Owens IV*, 864 F.3d at 770, or that it was "lawfully carried out under the authority of a foreign nation." TVPA § 3(a). To the contrary, for several of the attacks, either Hamas or PIJ, both non-state actors, claimed credit. Dkt. 33 at 55–56 (Spitzen Decl. ¶ 144) (Taylor Force); *id.* at 38 (Spitzen Decl. ¶ 100) (Bus 78 massacre); *id.* at 128 (Spitzen Decl. ¶ 335) (Yehudah Glick); *id.* at 78 (Spitzen Decl. ¶ 202) (March 2008 attack). And, with respect to the remaining attacks, the Court credits Colonel Spitzen's unrebutted conclusion that Hamas was responsible. *See supra* Parts II.D & II.H–I.

* * *

The Court, accordingly, concludes that, with the exception of the destruction of the Parnases' home, all of the attacks at issue qualify as "extrajudicial killing[s]" under 28 U.S.C. § 1605A(a)(1).

3. *Iran's Provision of Material Support for Hamas and PIJ's Acts of Extrajudicial Killing*

The FSIA's terrorism exception applies when a plaintiff seeks money damages for "personal injury or death that was caused by ... the provision of material support or resources for" an "act of torture, extrajudicial killing, aircraft sabotage, [or] hostage taking," so long as that support was provided by "an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency." 28 U.S.C. 1605A(a)(1). Section 1605A(h)(3) defines "material support or resources" by reference to 18 U.S.C. § 2339A, the criminal material support statute. Section 2339A defines "material support or resources" to mean

> 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.

18 U.S.C. § 2339A(b)(1).

The Court has found that, during the years leading up to and surrounding the ***365** attacks at issue, Iran provided tens—if not hundreds—of millions of dollars' worth of currency to Hamas and PIJ. *See supra* Part II.A. Iran also provided substantial operational capacity to both groups, including rockets and other weapons, weapons technology, and training of operatives. *See id.* The Court therefore concludes that Iran provided both Hamas and PIJ "material support" in the form of, *inter alia*, "currency," "training," "expert ... assistance," and "weapons" within the meaning the FSIA. *See* 28 U.S.C. § 1605A(h)(4); 18 U.S.C. § 2339A(b)(1).

4. *Syria's Provision of Material Support for Hamas and PIJ's Acts of Extrajudicial Killing*

Plaintiffs rely on a slightly different theory to establish Syria's provision of material support to Hamas and PIJ. Plaintiffs' evidence establishes that Syria offered both Hamas and PIJ safe bases from which to grow and mature as organizations and to carry out their operations, although Syria withdrew that sanctuary for Hamas in 2012. The provision of this safe haven assisted both the growth and development of the two groups generally and their capacities to carry out the attacks at issue. *See* Dkt. 29 at 28–29 (Berti Decl. ¶ 50). Those courts that have considered the question have held that safe haven can, at least at times, fall within the material support statute's prohibition on the provision of "safehouses" to terrorist organizations. *See Rux v. Republic of Sudan*, 461 F.3d 461, 470–71 (4th Cir. 2006); *Owens v. Republic of Sudan*, 412 F. Supp. 2d 99, 108 (D.D.C. 2006) ("*Owens I*").

In *Rux v. Republic of Sudan*, 461 F.3d 461 (4th Cir. 2006), for example, the Fourth Circuit considered whether Sudan's provision of safe haven to Osama bin Laden and other al Qaeda operatives amounted to "material support" under the FSIA. *Id.* at 470–71. The *Rux* plaintiffs offered evidence that, among other things, the Sudanese government and Osama bin Laden and al Qaeda had jointly owned and operated banks and other companies in that country, "gave [a]l Qaeda special authority to avoid paying taxes and duties ordinarily due to the Republic of the Sudan," permitted the "use of a diplomatic pouch to send explosive materials belonging to Osama bin Lad[e]n

for [a]l Qaeda outside the Republic of Sudan," and allowed al Qaeda to "operate training camps" in Sudan "for the purpose of training terrorists" to "manufacture bombs and [other] explosives." *Id.* at 468–69. Sudan appeared in the case and argued that the term "safehouses" in the material support statute must be construed to include only discrete physical structures, not the more abstract and amorphous harboring that only a sovereign state can provide. *Id.* at 470–71. The Fourth Circuit rejected that "restrictive interpretation" and held that Sudan had provided a "safehouse," relying in part on a decision from this district holding that, "[i]nsofar as the government of the Republic of Sudan affirmatively allowed and/or encouraged al-Qaeda ... to operate [its] terrorist enterprise[ ] within its borders, and thus provided a base of operations for the planning and execution of terrorist attacks ... Sudan provided a 'safehouse' within the meaning of 18 U.S.C. § 2339A, as incorporated in 28 U.S.C. § 1605(a)(7)." *Id.* at 471 (quoting *Owens I*, 412 F. Supp. 2d at 108).

In *Owens I*, the decision relied upon in *Rux*, Judge Bates was presented with allegations of similar conduct by Sudan in support of al Qaeda, as well as additional allegations that the Sudanese government "employed al Qaeda to manufacture chemical weapons," offered military protection for weapons shipments to and from al Qaeda in an out of the country, and provided other special treatment in the form of ***366** preferential immigration treatment and protection from arrest by local law enforcement authorities. 412 F. Supp. 2d at 106–07. Judge Bates found that "many of the[se] alleged acts do in fact fit within several of the section 2339A categories" and rejected Sudan's argument that "safehouses" should be narrowly construed so as not to cover such harboring by a sovereign state. *Id.* at 107–08.

The Court is persuaded by and adopts the conclusion that the term "safehouse," as used in the material support statute, includes foreign governmental encouragement or assent to terrorist organizations setting up shop within their borders. Here, Plaintiffs' experts testified that both Hamas and PIJ conducted significant aspects of their operations from within Syrian territory and that these Syrian bases of operations helped both groups grow in their operations and influence. Whether the Syrian government encouraged any specific activity linked to terrorism within its borders is, at least on the present record, less clear than the link was in *Owens I* and *Rux*. Nevertheless, the Court is satisfied on the present record that the term "safehouses," as used in § 2339A, sweeps in Syria's conduct here.

Plaintiffs rely on declarations and live testimony from Dr. Berti and Dr. Deeb, who this Court qualified as expert witnesses on the topics of "Syrian support for Hamas and [PIJ]." Dkt. 105 at 8–9 (Berti); *see also id.* at 96–97 (Deeb). "The testimony of expert witnesses is of crucial importance in terrorism cases, because firsthand evidence of terrorist activities is difficult, if not impossible, to obtain." *Owens IV*, 864 F.3d at 787 (internal citations omitted). Direct evidence is often unavailable as "[p]erpetrators of terrorism typically lie beyond the reach of the courts" and actively "avoid detection," and "[e]yewitnesses in a state that sponsors terrorism" are both hard to locate and "may be unwilling to testify for fear of retaliation." *Id.* As in this case, "sovereigns themselves often fail to appear and to participate in discovery." *Id.* "[R]eliance upon secondary materials" and the testimony of experts "is often critical" in order to make up for this "dearth of firsthand evidence" in "establish[ing] the factual basis of a claim under the FSIA terrorism exception." *Id.*

Plaintiffs experts testified that Syria is and has been "one of the most authoritarian societies in the world." Dkt. 105 at 45 (Berti). As a result, "[a]ny political organization that wants to operate in Syria needs to have more than the blessing but the open facilitation of the government." *Id.* Both PIJ and Hamas maintained operational bases in Damascus for well over a decade before the first of the attacks the injured plaintiffs. *See* Dkt. 29 at 12–13 (Berti Decl. ¶¶ 23–25) (explaining that Hamas established an office in Damascus in the early 1990s and moved its political bureau there in the early 2000s); *id.* at 17 (Berti Decl. ¶ 32) (explaining that PIJ has "maintained a permanent base in Syria" since 1989). From those bases, both groups were able to facilitate fundraising and arms smuggling through Syria, as well as plan and coordinate terrorist attacks with their members in Gaza. *Id.* at 15, 23, 29–30 (Berti Decl. ¶¶ 28, 41, 52–54); Dkt. 30 at 5–6 (Deeb Decl. ¶ 19). Hamas also set up a camp near Damascus to train its operatives. Dkt. 29 at 31 (Berti Decl. ¶ 55). Because Israel would face greater risks if it sought to encroach on Syrian sovereignty by targeting Hamas and PIJ leaders in Damascus than targeting leaders in Gaza, Hamas and PIJ were able to conduct all of these operations in Damascus with lessened fear of reprisal from Israel or fear of prosecution for "arms dealing, money laundering, terrorism," or similar offenses. *See* Dkt. 105 at 19 (Berti). The benefits of ***367** operating in Syria, rather than Gaza, were a "very important force multiplier for Hamas." *Id.* at 19–20 (Berti)

The evidence also shows that Syria "affirmatively allowed" the two groups to establish themselves in the Syrian capital. Not only did the regime not "forcefully or systematically crack[ ] down" on Hamas's activities, Dkt.

29 at 25 (Berti Decl. ¶ 45), it offered affirmative support for and endorsement of Hamas's activities. Syria and Hamas had, since the 1990s, been political partners in opposing various Israeli-Palestinian peace negotiations, *see* Dkt. 105 at 100–01 (Deeb); *id.* at 16–17 (Berti), and, after coming to power in 2000, Bashar Al-Assad only further increased support for Hamas, just as the organization was relocating its important political bureau to Damascus, *see id.* at 17–18. Moreover, as Dr. Berti explained, the Syrian government, "[o]n many occasions," "made statements with respect to wanting to guarantee Hamas and its leaders['] safety." Dkt. 105 at 19 (Berti). Those leaders that Syria sought to keep safe included three individuals classified as Specially Designated Global Terrorists by United States Department of Treasury and who had relocated to Damascus. Dkt. 29 at 19–20 (Berti Decl. ¶ 34).

The Syrian government also offered important political support to Hamas, and there is some evidence that Syria provided financial support to Hamas. In 1999, Syrian President Hafez al-Assad arranged for Hamas leaders to join a meeting in Damascus between him and Iranian President Mohammad Khatami. Dkt. 29 at 27 (Berti Decl. ¶ 47). Over the following decade, Hamas continued to meet with Iranian officials in Damascus, *id.* as Iran funneled untold millions of dollars to the group, *see* Part II.A. A few years later, in 2002, it was reported that Syria offered Hamas and PIJ aid in exchange for increased attacks against Israel. Dkt. 29 at 25–26 (Berti Decl. ¶ 45). Dr. Berti also testified—although without mentioning dates or quantities—that Syria was not only a thoroughfare for rockets and rocket parts to Gaza from Iran, but it also directly provided rocket parts to Hamas. Dkt. 105 at 50–51 (Berti). Similarly, while there is a "debate" about the "extent" and "consisten[cy]" of Syrian financial support to Hamas, "there[ ] [are] many reports that indicate financial" support. *Id.* at 21–22 (Berti).

PIJ's relationship to Syria is "similar to that of Hamas;" Dkt. 105 at 24–25 (Berti), like Hamas, it had found a safe haven in Damascus by the 1990s, *see* Dkt. 29 at 17 (Berti Decl. ¶ 32), which allowed it to grow and to gain in strength over the decades that followed, Dkt. 105 at 24–25 (Berti). In Syria, PIJ operated a camp where it trained operatives that engaged in suicide attacks. *See id.* at 32, 35 (Berti). Syria also "talked about providing security for [PIJ's] leadership," and, when "confronted or asked about" their support for PIJ, "the answer has not been no." *Id.* at 46 (Berti). Although the Syrian government has claimed that its support was limited to "political and social activities," *id.*, PIJ, unlike Hamas, does not have substantial operations of that sort. *See id.* at 24–25 (Berti).

The evidence of Syria's active encouragement of PIJ and Hamas's operations in Damascus does not rise to the level of support that the courts found in *Rux* or *Owens I* that Sudan provided to al-Qaeda. But given Syria's authoritarian government, the openness and duration of Hamas and PIJ's operations in Damascus, Syria's ability to expel Hamas as soon as it suited the Syrian government to do so, Dkt. 105 at 36 (Berti), and the other evidence of Syrian support, the Court finds that Syria did "affirmatively allow" or "encourage" Hamas and PIJ to operate there and thus ***368** provided a "safehouse" within the meaning of the FSIA. *Owens I*, 412 F. Supp. 2d at 108; *cf. Han Kim*, 774 F.3d at 1049–51 (permitting a finding of liability under the FSIA's terrorism exception without any direct evidence based on expert testimony that North Korea typically tortured and killed individuals in labor camps and the inference that North Korea did the same in plaintiff's particular case).

5. *Causation*

The Court must also consider whether Plaintiffs' injuries were "caused by" provision of material support to Hamas and PIJ. 28 U.S.C. § 1605A(a)(1). Plaintiffs need not show that Iran or Syria "specifically knew of or intended its support to cause" the particular attacks in question, *Owens IV*, 864 F.3d at 798, or even that Iran or Syria's material support was a "but for" cause of their injures, *Kilburn*, 376 F.3d at 1128. Instead, the FSIA requires only a "showing of 'proximate cause,' " which is satisfied where a Plaintiff can show "some reasonable connection between the act or omission of the defendant and the damage which the plaintiff has suffered." *Kilburn*, 376 F.3d at 1128 (quoting Prosser & Keeton on the Law of Torts 263 (5th ed. 1984)). This inquiry thus "contains two similar but distinct elements." *Owens IV*, 864 F.3d at 794. "First, the defendant's actions must be a 'substantial factor' in the sequence of events that led to the plaintiff's injury." *Id.* (quoting *Rothstein v. UBS*, 708 F.3d 82, 91 (2d Cir. 2013)). "Second, the plaintiff's injury must have been 'reasonably foreseeable or anticipated as a natural consequence' of the defendant's conduct." *Id.* (quoting same).

Plaintiffs have not offered evidence that either Iran or Syria's support was tied to each of the attacks that caused their injuries. But such a "nexus" is not necessary because funds—and, in certain instances, arms and other support—are fungible, and the FSIA could hardly be interpreted to condition Plaintiffs' recovery on Hamas and PIJ's "careful bookkeeping." *Kilburn*, 376 F.3d at 1130.

Here, Plaintiffs' have shown that Iran's financial and military aid to the two groups was essential to each group's operating capacity and that, without Iran's backing, both groups would be substantially weakened. *See* Part II.A. Thus, Iran's support to both PIJ and Hamas was a substantial factor in the eight attacks that caused the Plaintiff's injuries.

Similarly, when asked by the Court whether "Hamas would have been in a position to have committed the terrorist attacks that are at issue in this case ... if it were not for Syria's provision of material support," Dr. Berti opined that "without the type of support that Syria has provided to Hamas, Hamas would not be what it is today from a political, social and military perspective" and that "the attacks that [were] perpetrated ... are tightly connected to the role Syria played." Dkt. 105 at 51–52 (Berti); *see also id.* at 53 (Berti) (explaining that "the answer wouldn't be very different" with respect to PIJ, but noting that PIJ is a "smaller, less sophisticated organization"). Although Hamas did leave Syria after it took the side of the Sunni rebels in the Syrian civil war in 2012, *id.* at 36 (Berti), Plaintiffs have shown that "the continuous support which Syria provided to Hamas in the previous years contributed to giving the group the military edge and sophistication it needed to be able to conduct and carry out successful violent operations" for many years thereafter, up to and including the 2016 attacks at issue here. *See* Dkt. 29 at 35–36 (Berti Decl. ¶ 66). Thus, Syria's support was also a substantial factor in the attacks that caused Plaintiffs' injuries.

***369** This, then, leaves the question whether Plaintiffs' injuries resulting from the attacks at issue were "reasonably foreseeable" or "natural consequence[s]" of Defendants' conduct. *Owens IV*, 864 F.3d at 794. On this issue, too, the record is clear. Iran not only supported these groups, they actively encouraged them to carry out attacks on civilians in Israel as part of a broader geopolitical strategy and provided both groups with the weapons and know-how to do so effectively. *See supra* Part II.A. Although Syria's support took a different form, it, too, was part of a broader geopolitical strategy that supported Hamas and PIJ's operations and necessarily understood that Syrian support would enable them to carry out attacks on civilians in Israel. *See, e.g.*, Dkt. 29 at 25–26 (Berti Decl. ¶ 45) The death and injury to innocent people and the suffering of their families was, by any measure, foreseeable. *Owens IV*, 864 F.3d at 797–98 (finding the 1998 embassy bombings by al Qaeda to be a reasonably foreseeable consequence of Sudan's offer in 1991 to shelter Osama Bin Laden); *see also Salzman*, 2019 WL 4673761, at *14. Finally, although Syria's support for Hamas waned in 2012, Dkt. 105 at 36 (Berti), it was entirely foreseeable that Syria's earlier support in making Hamas what it is today would lead to deaths and injuries several years after 2012.

6. *Federal Cause of Action*

Having concluded that the Court possesses subject-matter jurisdiction, little else is required to show that those Plaintiffs who are U.S. nationals are entitled to relief under the federal cause of action the Congress enacted in 2008 as part of the National Defense Authorization Act. *See* Pub. L. No. 110-181, § 1083, 122 Stat. 338–44 (2008) (codified at 28 U.S.C. § 1605A(c)). Although the federal cause of action was added to the FSIA in 2008, "§ 1605A(c) operates retroactively" and "plainly applies ... to the pre-enactment conduct of a foreign sovereign." *Owens IV*, 864 F.3d at 815. There is almost total "overlap between the elements of [§ 1605A(c)'s] cause of action and the terrorism exception to foreign sovereign immunity," *Foley*, 249 F. Supp. 3d at 205, and a plaintiff that offers proof sufficient to establish a waiver of foreign sovereign immunity under § 1605A(a) has also established entitlement to relief as a matter of federal law—with one minor exception: a foreign state is only liable to "a national of the United States," "a member of the armed forces," "an employee [or contractor] of the [U.S.] Government ... acting within the scope of the employee's employment," or "the legal representative of" any such person. 28 U.S.C. § 1605A(c).

This one exception affects the claims of the non-U.S. national (Israeli national) plaintiffs in this case. For jurisdictional purposes, this fact is non-consequential, because the waiver of foreign sovereign immunity applies so long as "the claimant *or* the victim was, at the time of the" terrorist attack, a U.S. national, member of the armed forces, or government employee. 28 U.S.C. § 1605A(a)(2)(A)(ii) (emphasis added). The federal cause of action, however, is more restrictive and limits plaintiffs to those who are themselves U.S. nationals, members of the armed services, or government employees. 28 U.S.C. § 1605A(c). Accordingly, the Court concludes that, subject to a showing that they suffer compensable losses, the U.S.-national plaintiffs have, for the reasons described above, carried their burden of demonstrating that they are entitled to relief under § 1605A(c). The Court will separately analyze whether the Israeli plaintiffs have stated a cause of action.

B. Personal Jurisdiction

The Court also concludes that it has personal jurisdiction over the Islamic ***370** Republic of Iran, MOIS and the Syrian Arab Republic. Under the FSIA, the Court has personal jurisdiction over a foreign state "as to every claim for relief over which the [Court] ha[s] jurisdiction ... where service has been made under section 1608." 28 U.S.C. § 1330(b). Thus, "[i]n order to sue a foreign state or one of its political subdivisions, a plaintiff must effect service in compliance with" 28 U.S.C. § 1608(a). *Barot v. Embassy of the Republic of Zambia*, 785 F.3d 26, 27 (D.C. Cir. 2015).

Section 1608(a) "provides four methods of service in descending order of preference," *id.*:

> (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or
>
> (2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or
>
> (3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or
>
> (4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services--and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

28 U.S.C. § 1608(a).

The first two mechanisms of effecting service—by delivery of the summons and complaint either "in accordance with any special arrangement for service between the plaintiff and the foreign state" under § 1608(a)(1) or "in accordance with an applicable international convention on service of judicial documents" under § 1608(a)(2)—were unavailable to Plaintiffs in this case. *See* Dkt. 17 at 1. No "special arrangement" governs service between the United States and Iran or Syria, and neither country is party to an international convention on service of judicial documents. *See Braun v. Islamic Republic of Iran*, 228 F. Supp. 3d 64, 77–78 (D.D.C. 2017). As a result, Plaintiffs attempted service under the third alternative, which requires service by mail from "the clerk of the court to the head of the ministry of foreign affairs of the foreign state." 28 U.S.C. § 1608(a)(3). On September 13, 2016, Plaintiffs initiated service as to all Defendants under § 1608(a)(3), Dkt. 5; Dkt. 6, and, at Plaintiffs' request, the clerk of court, mailed the relevant documents to Syria, Iran, and MOIS on September 27, 2016. Dkt. 7. On October 12, 2016, Plaintiffs notified the Court that the documents to Iran and MOIS were undelivered. Dkt. ***371** 8. The documents to Syria, however, were delivered on November 14, 2016. Dkt. 14.

Plaintiffs then proceeded to serve Iran and MOIS pursuant to § 1608(a)(4). That provision requires service by mail from the clerk of court to the Secretary of State, who must then transmit the required material "through diplomatic channels to the foreign state." 28 U.S.C. § 1608(a)(4). The Department of State must then send "the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted." *Id.* Plaintiffs provided the clerk with the relevant documents and requested service pursuant to § 1608(a)(4) on October 31, 2016. Dkt. 9. The clerk mailed these materials to the State Department on May 26, 2017. Dkt. 19. On September 14, 2017, the State Department notified the Clerk that the documents had been delivered to the Islamic Republic of Iran and to MOIS. Dkt. 20. As the Department explained, "[b]ecause the United States does not maintain diplomatic relations with the government of Iran," the documents were transmitted to the Embassy of Switzerland in Iran, which then transmitted the materials to the Iranian Ministry of Foreign Affairs on July 18, 2017. *Id.* at 1, 4. The Swiss Embassy reported that the Iranian Ministry of Foreign Affairs "refused" to accept the documents that same day. *Id.* at 4. After the Islamic Republic of Iran failed to respond, the clerk entered a default. Dkt. 23.

Because Plaintiffs accomplished service pursuant to 28 U.S.C. § 1608(a)(3) on the Syrian Arab Republic and pursuant to 28 U.S.C. § 1608(a)(4) on the Islamic Republic of Iran and MOIS, the Court possesses personal jurisdiction over all three defendants. *See* 28 U.S.C. § 1330(b).

¶ 1).

C. Liability for State Law Claims

In addition to suing under federal law, Plaintiffs assert several state law claims. As to most of the plaintiffs, these claims are redundant of their federal law claims and do not provide any additional right to recover. As noted above, however, thirteen of the plaintiffs (including Yehudah Glick, who has renounced his U.S. citizenship) are not U.S. nationals, members of the U.S. armed forces, or U.S. employees or contractors, *see* Dkt. 109 (Yehudah Glick renunciation of U.S. citizenship); Dkt. 57 at 1 (Atara Katz Decl. ¶ 1); Dkt. 61 at 1 (Eytan Moriah Decl. ¶ 1); Dkt. 62 at 1 (Ifat Cohen Decl. ¶ 2); Dkt. 64 at 1 (Tzur Moriah Decl. ¶ 1); Dkt. 59 at 1 (Chagit Gibor ¶ 1); Dkt. 80 at 1 (Yaakov Shitrit Decl. ¶ 1); Dkt. 71 at 1 (B. Rivkin Decl. ¶ 1); Dkt. 52 at 1 (Yehudah Glick Decl. ¶ 1); Dkt. 38 at 1 (N. Brauner ¶ 4) (C.Y.B., M.H.B., and Y.A.L.B.); *see* Dkt. 82 (omitting C.Y.B., M.H.V., and Y.A.L.B. from list of individuals with U.S. passports). These plaintiffs, therefore, are not entitled to recover under the § 1605A(c) private right of action. They can, however, seek to recover damages under state tort law. *See Owens IV*, 864 F.3d at 809. Because the U.S.-national plaintiffs are entitled to relief under the federal law cause of action, the Court will limit its consideration of the state law claims to the thirteen non-U.S.-national plaintiffs.

Historically, the state-sponsored terrorism exception to the FSIA was not understood to create a federal cause of action against foreign states (as opposed to state officials) but, rather, to operate merely as a "pass-through" for state law claims. *Id.* at 764 (quoting *Pescatore v. Pan Am. World Airways, Inc.*, 97 F.3d 1, 12, (2d Cir. 1996)); *see also Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024, 1033 (D.C. Cir. 2004). When Congress amended the law to provide a federal cause of action, *see* National Defense Authorization Act for Fiscal Year 2008 ***372** § 1083, it did not upset the prior law permitting plaintiffs to assert state law claims after clearing the hurdle of foreign sovereign immunity, *see Owens IV*, 864 F.3d at 807–09. Although most plaintiffs proceeding under the state-sponsored terrorism exception to the FSIA need not rely on state tort law, the "pass-through approach remains" a "viable" option for those who are unable to invoke the federal cause of action, *id.* at 809, such those thirteen plaintiffs who are Israeli nationals. Dkt. 38 at 1 (N. Brauner ¶ 4) (C.Y.B., M.H.B., and Y.A.L.B.); Dkt. 57 at 1 (Atara Katz Decl. ¶ 1); Dkt. 61 at 1 (Eytan Moriah Decl. ¶ 1); Dkt. 62 at 1 (Ifat Cohen Decl. ¶ 2); Dkt. 64 at 1 (Tzur Moriah Decl. ¶ 1); Dkt. 59 at 1 (Chagit Gibor ¶ 1); Dkt. 80 at 1 (Yaakov Shitrit Decl. ¶ 1); Dkt. 71 at 1 (B. Rivkin Decl. ¶ 1); Dkt. 52 at 1 (Yehudah Glick Decl.

1. *Choice of Law*

In the absence of a federal cause of action, the Court must first consider what law applies. Because "[t]he FSIA does not contain an express choice-of-law provision" but, rather, specifies that "a foreign state stripped of its immunity 'shall be liable in the same manner and to the same extent as a private individual under like circumstances,' " the Court must apply the choice of law rules of the forum state. *Oveissi v. Islamic Republic of Iran*, 573 F.3d 835, 841 (D.C. Cir. 2009) ("*Oveissi I*") (quoting 28 U.S.C. § 1606). The Court will, accordingly, apply District of Columbia choice of law principles.

The District of Columbia uses a choice-of-law rule that "blend[s] a 'governmental interest analysis' with a 'most significant relationship' test." *Id.* at 842 (quoting *Hercules & Co., Ltd. v. Shama Rest. Corp.*, 566 A.2d 31, 40–41 & n.18 (D.C. 1989)). Under the governmental interest analysis, the Court "must evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be most advanced by having its law applied to the facts of the case under review." *Id.* (quoting *Hercules & Co.*, 566 A.2d at 41). And, under the most significant relationship test, the Court must consider the following four factors taken from the Restatement (Second) of Conflict of Laws: (1) "the place where the injury occurred"; (2) "the place where the conduct causing the injury occurred"; (3) "the domicil[e], residence, nationality, place of incorporation and place of business of the parties"; and (4) "the place where the relationship, if any, between the parties is centered." *Id.* (quoting Restatement (Second) of Conflict of Laws § 145(2) (1971)). Section 145 of the Restatement "also references the factors in Section 6 of the Restatement, which include the needs of the interstate and the international systems, the relevant policies of the forum, the relevant policies of other interested states, certainty, predictability and uniformity of result, and ease in the determination and application of the law to be applied." *Dammarell v. Islamic Republic of Iran*, 01-2224, 2005 WL 756090, at *18 (D.D.C. Mar. 29, 2005) (citing Restatement (Second) of Conflict of Laws § 145 (1971)); *see also Owens v. Republic of Sudan*, 826 F. Supp. 2d 128, 154 (D.D.C. 2011) ("*Owens II*"), *aff'd in part and vacated in part on other grounds*, 864 F.3d. 751 (D.C. Cir. 2017).

Here, there are two potential sources of law that might govern the Israeli-national plaintiffs' claims: the law of

the forum state (the District of Columbia) and the law of the plaintiffs' domicile and the place of the attacks at issue (Israel). Plaintiffs contend that Israeli law should govern the Israeli plaintiffs' claims, and the Court agrees.

***373** This case does not raise a conflict between various domestic jurisdictions; rather, the Court must decide whether to apply D.C. law or the law of a foreign jurisdiction, Israel. In *Dammarell v. Islamic Republic of Iran*, the district court applied the law of the U.S.-plaintiffs' state of domicile—rather than that of Lebanon—to a suit brought by American victims of the 1983 bombing of the United States Embassy in Beirut. 2005 WL 756090 at *20. As the district court explained, "the injuries in [that] case [were] the result of a state-sponsored terrorist attack on a United States embassy and diplomatic personnel[,] [and the] United States has a unique interest in its domestic law ... determining damages in a suit involving such an attack." *Id.*; *see also Oveissi I*, 573 F.3d at 843 ("We have no doubt that the United States has a strong interest in applying its domestic law to terrorist attacks on its nationals, especially when, as was the case in *Dammarell*, the attacks are 'by reason of their nationality.' "). That principle, moreover, is supported by the Restatement (Third) of Foreign Relations Law, which recognizes a country's "jurisdiction to prescribe law with respect to 'certain conduct outside its territory by persons not its national *that is directed against* the security of the state or against a limited class of other interests,' " and notes that "this principle is 'increasingly accepted as applied to terrorist ... attacks *on a state's nationals by reason of their nationality* ....' " *Id.* (quoting Restatement (Third) of Foreign Relations Law § 402(3) & 402 cmt. g) (emphasis in *Oveissi I*) (citation to *Dammarell* omitted).

Although agreeing with this summary of the governing law, the D.C. Circuit declined to apply domestic U.S. law in *Oveissi I*. There, in contrast to *Dammarell*, the victim of the assassination was not a U.S. national, there was no evidence that the assailants knew that the victim's grandchild—the plaintiff in *Oveissi I*—was a U.S. national, and there was no evidence that "the United States or its nationals were in any other way the object of the attack." *Id.* at 843. The evidence, to the contrary, showed that the assassination occurred in France, and was intended "to deter French intervention in Lebanon." *Id.* (emphasis omitted). In short, "if any country was the object of the attack, it was France." *Id.* The D.C. Circuit, therefore, concluded that French law should govern. *Id.*

Although not identical, the present case is closer to *Oveissi I* than it is to *Dammarell*. All seven attacks occurred in Israel. And, as in *Oveissi I*, there is no evidence that "the United States or its nationals were in any ... way *the object*" of any of the attacks, although the direct victims were all U.S. nationals at the time of the attacks. *Id.* (emphasis added). This case is, moreover, on all fours with *Fraenkel v. Islamic Republic of Iran*, 248 F. Supp. 3d 21 (D.D.C. 2017), *rev'd in part on other grounds*, 892 F.3d 348 (D.C. Cir. 2018), where the district court applied the principles discussed above and held that Israeli law, rather than D.C. law, was appropriate. *Id.* at 39. There, the court concluded that "Israel ha[d] the greatest interest in having its laws apply and the most significant relationship to the events" because "the injury occurred in Israel; the conduct causing the injury occurred in Israel, the Palestinian territories, [and] Iran ...; [the plaintiff] is and always has been an Israeli citizen; and there is no legal relationship between [the plaintiff] and any of the defendants or Hamas." *Id.* The same considerations are present here with respect to the non-U.S.-national/Israeli plaintiffs. Not only did all the relevant events occur in Israel and these particular plaintiffs are Israeli citizens, the direct victims on which ***374** their claims are predicated were all U.S. citizens who permanently resided in Israel, including some with dual U.S.-Israeli citizenship. *See* Dkt. 72 at 1 (Menachem Rivkin Decl. ¶ 1) (U.S. citizen residing in Israel); Dkt. 52 at 1 (Yehudah Glick Decl. ¶ 1) (indicating that he was a U.S. citizen at the time of the attack); Dkt. 66 at 1 (Naftali Moses Decl. ¶¶ 1–4) (indicating that Avraham Moses resided in Israel at the time of the attack that killed him); Dkt. 76 at 1 (Naftali Shitrit Decl. ¶ 1) (dual U.S.-Israeli citizen residing in Israel); Dkt. 39 at 1 (Shmuel Brauner Decl. ¶¶ 1, 6) (U.S. citizen born in Israel and residing there at the time of the attack). The Court, accordingly, concludes that Israeli law should govern.

2. *Liability*

Having concluded that Israeli law applies, the Court will turn to whether the Israeli plaintiffs have adequately alleged a claim for (1) negligence or (2) aiding and abetting. Dkt. 1 at 31 (Compl. ¶¶ 132–151). When applying foreign law, "the [C]ourt may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence." *Thuneibat v. Syrian Arab Republic*, 167 F. Supp. 3d 22, 44 (D.D.C. 2016) (quoting Fed. R. Civ. P. 44.1). Although "the [C]ourt is not limited by material presented by the parties," and "may engage in its own research," it is also "free to insist on a complete presentation by counsel." Fed. R. Civ. P. 44.1 advisory committee's note to 1966 amendment. In support of the Israeli plaintiffs' entitlement to relief under Israeli law,

Plaintiffs have submitted the expert declaration of Dr. Boaz Schnoor, who holds L.L.D., L.L.M., and L.L.B. degrees from Hebrew University and has "served as a consulting expert witness on issues related to Israeli tort law and liability for terrorist attacks in a number of cases." Dkt. 34 at 2 (Schnoor Expert Rpt. ¶¶ 3–4).

In Dr. Schnoor's expert opinion, "Defendants would be held liable in tort to the Plaintiffs under the applicable provisions of [Israel's] Civil Wrongs Ordinance [New Version] 5728-1968 ('CWO')." Dkt. 34 at 3 (Schnoor Decl. ¶ 8). Dr. Schnoor's declaration asserts, in particular, that Iran and Syria are directly liable to Plaintiffs under the doctrine of negligence for "[s]upplying aid, support and assistance to terrorist organizations" because "a reasonable defendant would foresee that such actions might result in terrorist attacks," causing harm to direct victims and their family members. *Id.* (Schnoor Decl. ¶ 9c). According to Dr. Schor, "[t]he tort of negligence provided for in the CWO consists of four elements: duty of care; breach of a duty of care[;] ... proximate cause (sometimes divided to cause-in-fact and legal causation); and harm." *Id.* at 5 (Schnoor Decl. ¶ 15) (citations omitted); *see also* CWO § 35, 2 LSI (New Version) 14–15 (1972). And "[i]t is noteworthy ... that Israeli Law holds that the tort of negligence encompasses not only negligent acts, but also intentional acts, as long as they are unreasonable acts that caused foreseeable harm." *Id.* at 4 (Schnoor Decl. ¶ 13). Applying the above standard to the Israeli plaintiffs' claims, the Court concludes that eleven of the thirteen Israeli plaintiffs have adequately alleged a claim for negligence against Iran and Syria.

First, duty of care under Israeli law is "sometimes divided between the conceptual duty of care and concrete duty of care." *Id.* at 5 (Schnoor Decl. ¶ 16). "According to Israeli tort law[,] a duty of care (both conceptual and concrete) is presumed to exist whenever a reasonable person could have foreseen that the conduct at issue could cause harm of the type alleged." *Id.* at 6 (Schnoor Decl. ¶ 17); *see* ***375** *also* CWO, § 36, 2 LSI (New Version) 15 (1972) ("[E]very person owes a duty to all persons whom ... a reasonable person ought in the circumstances to have contemplated as likely in the usual course of things to be affected by an act, or failure to do an act."). The Court finds that the Israeli plaintiffs have demonstrated that Defendants were under a duty of care to Bracha Rivkin, Yehudah Glick, his foster children R.T. and T.T., Avraham Moses's step-siblings, and Shmuel Brauner's children because, as noted above, "their injuries were foreseeable consequences" of Iran and Syria's provision of material support to Hamas and PIJ. *see Fraenkel*, 248 F. Supp. 3d at 39.

Second, "[a] breach of the duty of care occurs when a party with a duty fails to take 'reasonable precautionary measures.' " *Id.* (citation omitted). Far from taking precautionary measures, Iran provided Hamas and PIJ with financing, weapons and training; Syria provided them with a safe haven from which to procure those tools and plan attacks; both actively encouraged terrorist operatives to carry out attacks against the civilian population of Israel. The Court, accordingly, concludes that Defendants breached their duty of care to the Israeli plaintiffs.

Third, the "[c]ause in fact is generally determined in Israel according to the 'but for' test." Dkt. 34 at 7 (Schnoor Decl. ¶ 21) (citations omitted). And legal causation is met "[i]f a reasonable person could have foreseen that a harm of the kind that happened might happen." *Id.* (Schnoor Decl. ¶ 22). Both types of causation are satisfied here. As noted above, Plaintiffs have demonstrated that, but-for the material support of Iran, Hamas and PIJ would not have had the economic resources or the training to carry out the attacks at issue. So, too, with Syria; the safe harbor provided by Syria was necessary for both groups to develop the operational capacity to carry out these attacks. And, it was certainly foreseeable that, by providing Hamas and PIJ material support and encouraging them to carry out terrorist attacks against civilians in Israel, Iran would cause serious injury or death to civilians in Israel and inflict mental and emotional anguish on their families.

Finally, the element of harm is defined by the CWO as "loss of life, or loss of, or detriment to, any property, comfort, bodily welfare, reputation, or other similar loss or detriment." Dkt. 34 at 7 (Schnoor Decl. ¶ 23). As noted above, the Israeli plaintiffs have submitted psychiatric evaluations attesting to the mental and emotional anguish they suffered as a result of their loved ones' injuries. *See* Dkt. 35 (Strous Decl.). The Court, accordingly, finds that they have adequately demonstrated harm.

The Court will, however, deny the motion for default judgment as to Y.A.L.B. and M.H.B., the children of Plaintiff Schmuel Brauner, who were born after the August 19, 2011 rocket attack that injured Schmuel. With respect to these two plaintiffs, the Court is not satisfied—at least on the existing record—that Defendants owed these plaintiffs a duty of care *at the time of the attack*. Courts in this district have, for example, held that after-born children cannot recover for solatium damages in similar cases brought under § 1605A of the FSIA. *See, e.g.*, *Davis v. Islamic Republic of Iran*, 882 F. Supp. 2d 7, 14–15 (D.D.C. 2012). Dr. Schnoor's declaration does not address this wrinkle, nor does he explain whether

after-born children are owed a duty of care under Israeli negligence law. Because it is Plaintiffs' burden to establish their right to relief on a motion for default judgment, the Court concludes that Plaintiffs have failed to present sufficient evidence ***376** that Y.A.L.B. and M.H.B. are entitled to solatium damages.

The Court will, accordingly, grant the motion for entry of a default judgment with respect to the eleven of the thirteen Israeli plaintiffs. With respect to M.H.B and Y.A.L.B., the Court will deny the motion for default judgment without prejudice. Plaintiffs may renew their motion after supplementing Dr. Schnoor's declaration with additional expert testimony on Israeli law to address the Court's concerns.

CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that the motion for default judgment, Dkt. 91, with respect to all a claims by M.H.B. and Y.A.L.B., the minor children of Schmuel and Nechama Brauner, and all claims by Daniella, Noa, and Dana Parnas, and A.P., is **DENIED** without prejudice. It is further **ORDERED** that the motion for default judgment with respect to the remaining fifty-one Plaintiffs is **GRANTED** with respect to their claims against Syria, Iran, and MOIS. The Court will **APPOINT** a special master to hear their damages claims and to report to the Court recommending the appropriate award as to those plaintiffs. A separate order appointing a special master and setting the terms of that appointment will follow.

SO ORDERED.

All Citations

464 F.Supp.3d 323

Footnotes

1 The Court has reviewed the qualifications of Plaintiffs' expert witnesses and concludes that each is qualified to offer the opinions discussed below. Dkt. 104 at 10 (Levitt); *id.* at 53 (Spitzen); Dkt. 105 at 8 (Berti); *id.* at 60 (Clawson); *id.* at 96–97 (Deeb).

2 Colonel Spitzen testified that his account of the terror attack is based upon "the court file of Abu Ghanem, the file of the Israel police, which contained both forensic findings as well as interrogations of ... Abu Ghanem himself, and questioning of passengers and passersby who were on the scene." Dkt. 104 at 58 (Spitzen).

3 The record is ambiguous as to whether the children are also U.S. citizens, as they were born abroad to two married U.S. citizens, but the record does not disclose whether either Schmuel or Nechama ever resided in the United States prior to the children's birth, such that they would be U.S. citizens at birth. *See* 8 U.S.C. § 1401. Because Plaintiffs do not ask the Court to find that the children have U.S. citizenship, *see* Dkt. 87 at 88 (Proposed Findings of Fact ¶ 293), the Court will proceed on the understanding that the children are not U.S. citizens.

4 The Court adopts the spelling of "Parnas" as it appears in the complaint, Dkt. 1 at 4 (Compl.), Daniella Parnas's declaration, Dkt. 69 at 1 (D. Parnas Decl.), and Dr. Strous's psychiatric evaluation, Dkt. 35-34 at 1 (Daniella Parnas Psych. Eval.). Colonel Spitzen's declaration spells the plaintiffs' last name as "Parnass."

5 Because the MOIS is itself a "governmental" entity, it is properly "considered the foreign state itself," and not merely an "instrumentality of the foreign state." *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 234 (D.C. Cir. 2003); *see also TMR Energy Ltd. v. State Prop. Fund of Ukr.*, 411 F.3d 296, 300 (D.C. Cir. 2005) (explaining that "an entity that is an 'integral part of a foreign state's political structure' is to be treated as the foreign state itself" for purposes of "determining the proper method of service under the FSIA" (quoting *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 151 (D.C. Cir. 1994))).

6 Section 1605A(a)(2) also requires that the foreign state have received "a reasonable opportunity to arbitrate the claim," but only if the act of terrorism "occurred in the foreign state against which the claim has been brought." 28 U.S.C. § 1605A(a)(2)(A)(iii). That requirement is inapplicable to the facts of this case because none of the alleged acts of terrorism occurred in Iran or Syria.

7 The Restatement provides the following (unfitting) illustration: "A, who is annoyed by the barking of B's pet dog, shoots at the dog intending to kill it. He misses the dog. B suffers severe emotional distress. A is not liable to B." Restatement (Second) of Torts § 47 cmt. a, ill. 2.

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ANNEX 367

864 F.3d 751
United States Court of Appeals, District of Columbia Circuit.

James OWENS, et al., Appellees
v.
REPUBLIC OF SUDAN, Ministry of External Affairs and Ministry of the Interior of the Republic of the Sudan, Appellants

No. 14-5105
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Consolidated with 14-5106
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Argued October 11, 2016
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Decided July 28, 2017
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Rehearing En Banc Denied October 3, 2017

Synopsis

Background: Victims of United States embassy bombings in Tanzania and Kenya brought action against Republic of Sudan and the Islamic Republic of Iran, pursuant to Foreign Sovereign Immunities Act (FSIA) terrorism exception, alleging that they materially supported terrorist organization responsible for the bombing. Following entry of default judgment against Sudan, the United States District Court for the District of Columbia, John D. Bates, J., 374 F.Supp.2d 1, vacated the default order and dismissed with leave to amend. Following amendment to complaint, the District Court, Bates, J., 412 F.Supp.2d 99, denied Sudan's motion to dismiss. On Sudan's interlocutory appeal, the Court of Appeals, Sentelle, Chief Judge, 531 F.3d 884, affirmed and remanded. After several new groups of plaintiffs filed actions against Sudan and Iran arising from the embassy bombings, and default judgments were entered in their favor, the District Court, Bates, J., 826 F.Supp.2d 128, held both Iran and Sudan liable for materially supporting the embassy bombings, and subsequently, 71 F.Supp.3d 252, entered final judgments in favor of the various plaintiffs, and entered damages award of $10.2 billion. The District Court, Bates, J., 174 F.Supp.3d 242, denied Sudan's motion to vacate. Sudan appealed.

Holdings: The Court of Appeals, Ginsburg, Senior Circuit Judge, held that:

embassy bombings constituted extrajudicial killings within meaning of FSIA terrorism exception;

expert witnesses' opinions were admissible;

sufficient evidence supported finding that district court had jurisdiction under FSIA terrorism exception;

victims were not entitled to punitive damages; and

Sudan was not entitled to relief from default judgment.

Affirmed in part; vacated in part.

***761** Appeals from the United States District Court for the District of Columbia (No. 1:01-cv-02244) (1:08-cv-01377) (1:10-cv-00356) (1:12-cv-01224) (1:08-cv-01349) (1:08-cv-01361) (1:08-cv-01380)

Attorneys and Law Firms

Christopher M. Curran argued the cause for appellants. With him on the briefs were Nicole Erb, Claire A.

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Stuart H. Newberger and Matthew D. McGill argued the causes for appellees James Owens, et al. With them on the brief were Clifton S. Elgarten, Aryeh S. Portnoy, Emily Alban, John L. Murino, Jonathan C. Bond, Michael R. Huston, Steven R. Perles, Edward B. MacAllister, John Vail, Thomas Fortune Fay, Jane Carol Norman, Michael J. Miller, and David J. Dickens. Annie P. Kaplan, John D. Aldock, Washington, DC, and Stephen A. Saltzburg, entered appearances.

Before: Henderson and Rogers, Circuit Judges, and Ginsburg, Senior Circuit Judge.

Ginsburg, Senior Circuit Judge:

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On August 7, 1998 truck bombs exploded outside the United States embassies in Nairobi, Kenya and in Dar es Salaam, Tanzania. The explosions killed more than 200 people and injured more than a thousand. Many of the victims of the attacks were U.S. citizens, government employees, or contractors.

As would later be discovered, the bombings were the work of al Qaeda, and only the first of several successful attacks against U.S. interests culminating in the

September 11, 2001 attack on the United States itself. From 1991 to 1996, al Qaeda and its leader, Usama bin Laden, maintained a base of operations in Sudan. During this time, al Qaeda developed the terrorist cells in Kenya and Tanzania that would later launch the embassy attacks. This appeal considers several default judgments holding Sudan liable for the personal injuries suffered by victims of the al Qaeda embassy bombings and their family members.

I. Background

Starting in 2001 victims of the bombings began to bring suits against the Republic of Sudan and the Islamic Republic of Iran, alleging that Sudan, its Ministry of the Interior, Iran, and its Ministry of Information and Security materially supported al Qaeda during the 1990s. Specifically, the plaintiffs contended Sudan provided a safe harbor to al Qaeda and that Iran, through its proxy Hezbollah, trained al Qaeda militants. In bringing these cases, the plaintiffs relied upon a provision in the Foreign Sovereign Immunity Act (FSIA) that withdraws sovereign immunity and grants courts jurisdiction to hear suits against foreign states designated as sponsors of terrorism. 28 U.S.C. § 1605(a)(7). This provision and its successor are known as the "terrorism exception" to foreign sovereign immunity.

Initially, neither Sudan nor Iran appeared in court to defend against the suits. In 2004 Sudan secured counsel and participated in the litigation. Within a year, its communication with and payment of its attorneys ceased but counsel continued to litigate until allowed to withdraw in 2009. In the years that followed, several new groups of plaintiffs filed suits against Sudan and Iran. The sovereign defendants did not appear in any of these cases, and in 2010 the district court entered defaults in several of the cases now before us. After an evidentiary hearing in 2010 and the filing of still more cases, the court in 2014 entered final judgments in all pending cases. Sudan then reappeared, filing appeals and motions to vacate the judgments. The district court denied Sudan's motions to vacate, and Sudan again appealed.

Today we address several challenges brought by Sudan on direct appeal of the default judgments and collateral appeal from its motions to vacate. Most of Sudan's contentions require interpretation of the ****175*763** FSIA terrorism exception, to which we now turn.

A. The FSIA Terrorism Exception

Enacted in 1976, the FSIA provides the sole means for suing a foreign sovereign in the courts of the United States. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989). A foreign state is presumptively immune from the jurisdiction of the federal and state courts, 28 U.S.C. § 1604, subject to several exceptions codified in §§ 1605, 1605A, 1605B, and 1607.

When first enacted, the FSIA generally codified the "restrictive theory" of sovereign immunity, which had governed sovereign immunity determinations since 1952. Under the restrictive theory, states are immune from actions arising from their public acts but lack immunity for their strictly commercial acts. *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 487-88, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983). Thus, the original exceptions in the FSIA withdrew immunity for a sovereign's commercial activities conducted in or causing a direct effect in the United States, 28 U.S.C. § 1605(a)(2), and for a few other activities not relevant here. *See*28 U.S.C. § 1605(a)(1)-(6).

None of the original exceptions in the FSIA created a substantive cause of action against a foreign state. Rather, the FSIA provided "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances" except that it prohibited the award of punitive damages against a sovereign. 28 U.S.C. § 1606. As a result, a plaintiff suing a foreign sovereign typically relied upon state substantive law to redress his grievances. In this way, the FSIA "operate[d] as a 'pass-through' to state law principles," *Pescatore v. Pan Am. World Airways, Inc.*, 97 F.3d 1, 12 (2d Cir. 1996), granting jurisdiction yet leaving the underlying substantive law unchanged, *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 620, 103 S.Ct. 2591, 77 L.Ed.2d 46 (1983).

Until 1996 the FSIA provided no relief for victims of a terrorist attack. Courts consistently rebuffed plaintiffs' efforts to fit terrorism-related suits into an existing exception to sovereign immunity. *See, e.g.*, *Saudi Arabia v. Nelson*, 507 U.S. 349, 113 S.Ct. 1471, 123 L.Ed.2d 47 (1993); *Cicippio v. Islamic Republic of Iran*, 30 F.3d 164 (D.C. Cir. 1994); *Smith v. Socialist People's Libyan Arab Jamahiriya*, 886 F.Supp. 306 (E.D.N.Y. 1995). This changed with the passage of the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, Pub. L. No. 104-132, 110 Stat. 1214, which added a new exception to the FSIA withdrawing immunity and granting jurisdiction over cases in which

money damages are sought against a foreign state for

> personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources ... for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

Id. at § 221, 110 Stat. at 1241-43 (codified at 28 U.S.C. § 1605(a)(7) (2006) (repealed)).

This new "terrorism exception" applied only to (1) a suit in which the claimant or the victim was a U.S. national, 28 U.S.C. § 1605(a)(7)(B)(ii), and (2) the defendant state was designated a sponsor of terrorism under State Department regulations at or around the time of the act giving rise to ****176*764** the suit, § 1605(a)(7)(A) (referencing 50 U.S.C. App. § 2405(j) and 22 U.S.C. § 2371). The AEDPA also set a filing deadline for suits brought under the new exception at ten years from the date upon which a plaintiff's claim arose. 28 U.S.C. § 1605(f).

Initially, there was some confusion about whether the new exception created a cause of action against foreign sovereigns. *See In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d 31, 42-43 (D.D.C. 2009). Within five months of enacting the AEDPA, the Congress clarified the situation with an amendment, codified as a note to the FSIA, Pub. L. No. 104-208, § 589, 110 Stat. 3009, 3009-172 (1996) (codified at 28 U.S.C. § 1605 note), which provides:

> [A]n official, employee, or agent of a foreign state designated as a state sponsor of terrorism ... while acting within the scope of his or her 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 the courts of the United States may maintain jurisdiction under section 1605(a)(7) of title 28, United States Code, 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).

This amendment was known as the Flatow Amendment after Alisa Flatow, a Brandeis University student mortally wounded in a suicide bombing in the Gaza Strip. The Flatow Amendment, which the Congress intended to deter state support for terrorism, (1) provided a cause of action against officials, employees, or agents of a designated state sponsor of terrorism and (2) authorized the award of punitive damages against such a defendant. These two changes marked a departure from the other FSIA exceptions, none of which provided a cause of action or allowed for punitive damages. *See*28 U.S.C. § 1606.

Although it referred in terms only to state officials, for a time some district courts read the Flatow Amendment and § 1605(a)(7) to create a federal cause of action against foreign states themselves. *See, e.g., Kilburn v. Republic of Iran*, 277 F.Supp.2d 24, 36-37 (D.D.C. 2003). *But see Roeder v. Islamic Republic of Iran*, 195 F.Supp.2d 140, 171 (D.D.C. 2002). In *Cicippio-Puleo v. Islamic Republic of Iran*, we rejected this approach, holding that "neither 28 U.S.C. § 1605(a)(7) nor the Flatow Amendment, nor the two considered in tandem, creates a private right of action against a foreign government." 353 F.3d 1024, 1033 (D.C. Cir. 2004). We based this conclusion upon the plain text of the Flatow Amendment—which applied only to state officials—and upon the function of all the other exceptions to the FSIA, which withdraw immunity but leave the substantive law of liability unchanged. *Id.* at 1033-34 (noting the "settled distinction in federal law between statutory provisions that waive sovereign immunity and those that create a cause of action"). Because there was no federal cause of action, we remanded the case "to allow plaintiffs an opportunity to amend their complaint to state a cause of action under some other source of law, including state law." *Id.* at 1036. Hence, a plaintiff proceeding under the terrorism exception would follow the same pass-through process that governed an action under the original FSIA exceptions.

The pass-through approach, however, produced considerable difficulties. In cases with hundreds or even thousands of claimants, courts faced a "cumbersome and tedious" process of applying choice of law rules and interpreting state law for each claim. *See Iran Terrorism Litig.*, 659 F.Supp.2d at 48. Differences in substantive ****177*765** law among the states caused recoveries to vary among otherwise similarly situated claimants, denying some any recovery whatsoever. *See Peterson v. Islamic Republic of Iran*, 515 F.Supp.2d 25, 44-45 (D.D.C. 2007) (denying recovery for intentional infliction of emotional distress to plaintiffs domiciled in Pennsylvania and Louisiana while permitting recovery for plaintiffs from other states).

The Congress addressed these problems in 2008. Section 1083 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA) repealed § 1605(a)(7) and replaced it with a new "Terrorism exception to the jurisdictional immunity of a foreign state." Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338-44 (2008) (hereinafter NDAA) (codified at 28 U.S.C. § 1605A). The new exception withdrew immunity, granted jurisdiction, and authorized

suits against state sponsors of terrorism for "personal injury or death" arising from the same predicate acts—torture, extrajudicial killing, aircraft sabotage, hostage taking, and the provision of material support—as had the old exception. 28 U.S.C. § 1605A(a)(1). Jurisdiction for suits under the new exception extended to "claimants or victims" who were U.S. nationals, and for the first time, to members of the armed forces and to government employees or contractors acting within the scope of their employment. 28 U.S.C. § 1605A(a)(2)(A)(ii). Most important, the new exception authorized a "[p]rivate right of action" against a state over which a court could maintain jurisdiction under § 1605A(a). 28 U.S.C. § 1605A(c). By doing so, the Congress effectively abrogated *Cicippio-Puleo* and provided a uniform source of federal law through which plaintiffs could seek recovery against a foreign sovereign. *Iran Terrorism Litig.*, 659 F.Supp.2d at 59. A claimant who was a U.S. national, military service member, government employee or contractor acting within the scope of his employment, and the claimant's legal representative could make use of this cause of action. As with the Flatow Amendment but unlike § 1605(a)(7), the NDAA authorized awards of punitive damages under the new federal cause of action. The exception also provided claimants a host of other new benefits not relevant here.

Like its predecessor, the new exception contained a ten-year limitation period on claims brought under § 1605A. Notwithstanding the limitation period, the NDAA provided two means of bridging the gap between the now-repealed § 1605(a)(7) and the new § 1605A. Claimants with claims "before the courts in any form" who had been adversely affected by the lack of a federal cause of action in § 1605(a)(7) could move to convert or refile their cases under § 1605A(c). NDAA § 1083(c)(2). Furthermore, "[i]f an action arising out of an act or incident has been timely commenced under section 1605(a)(7) or [the Flatow Amendment]," then a claimant could bring a "related action" "arising out of the same act or incident" within 60 days of the entry of judgment in the original action or of the enactment of the NDAA, whichever was later. NDAA § 1083(c)(3). Each of these provisions is examined below in greater detail as they relate to Sudan's arguments.

B. History of this Litigation

This appeal follows 15 years of litigation against Sudan arising from the 1998 embassy bombings. In October 2001 plaintiff James Owens filed the first lawsuit against Sudan and Iran for his personal injuries. Other plaintiffs joined the *Owens* action in the following year. These included individuals (or the legal representatives of individuals) killed or injured in the bombings, who sought recovery for their physical injuries (or deaths), and the family members ****178*766** of those killed or injured, who sued for their emotional distress. The *Owens* complaint alleged that the embassy bombings were "extrajudicial killings" under the FSIA and that Sudan provided material support for the bombings by sheltering and protecting al Qaeda during the 1990s.

When Sudan failed to appear, the district court entered an order of default in May 2003. The default was translated into Arabic and sent to Sudan in accordance with 28 U.S.C. § 1608(e). In February 2004 Sudan secured counsel and in March 2004 moved to vacate the default and to dismiss the *Owens* action. Sudan argued, among other things, it remained immune under the FSIA because the plaintiffs had not adequately pleaded facts showing it had materially supported al Qaeda or that its support had caused the bombings. Sudan attached to its motion declarations from a former U.S. Ambassador to Sudan and a former FBI agent stating that it neither assisted al Qaeda nor knew of the group's terrorist aims during the relevant period.

In March 2005 the district court granted, in part, Sudan's motion to dismiss and vacated the order of default. *Owens v. Republic of Sudan*, 374 F.Supp.2d 1, 9-10 (D.D.C. 2005) (*Owens I*). The court, however, allowed the plaintiffs to amend their complaint in order to develop more fully their allegations of material support. *Id.* at 15. The court further noted that although "the Sudan defendants severed ties to al Qaeda two years before the relevant attacks," this timing did not necessarily foreclose the conclusion that Sudan had "provided material support within the meaning of the statute and that this support was a proximate cause of the embassy bombings." *Id.* at 17.

The plaintiffs then amended their complaint, and Sudan again moved to dismiss. Sudan once again argued the complaint had not sufficiently alleged material support and that any support it provided was not a legally sufficient cause of the embassy bombings. Assuming the truth of the plaintiffs' allegations, the district court denied Sudan's motion in its entirety. *Owens v. Republic of Sudan*, 412 F.Supp.2d 99, 108, 115 (D.D.C. 2006) (*Owens II*).

While the motions to dismiss were pending, difficulties arose between Sudan and its counsel. After filing the first motion to dismiss, Sudan's initial counsel withdrew due to a conflict of interest with the Iranian codefendants. Sudan retained new counsel, but their relationship soon

deteriorated. Starting in January 2005 new counsel filed several motions to withdraw, citing Sudan's unresponsiveness and failure to pay for legal services. Sudan's last communication with counsel was in September 2008. The district court eventually granted a final motion to withdraw in January 2009, leaving Sudan without representation.

Despite these difficulties, counsel for Sudan continued to defend their client until the court granted the motion to withdraw in January 2009. Following the denial of its second motion to dismiss, Sudan pursued an interlocutory appeal to this court. Its appeal, in part, challenged the legal sufficiency of the plaintiffs' allegations that Sudan's material support had caused the embassy bombings. In July 2008 we affirmed the district court's decision, holding that "[a]ppellees' factual allegations and the reasonable inferences that can be drawn therefrom show a reasonable enough connection between Sudan's interactions with al Qaeda in the early and mid-1990s and the group's attack on the embassies in 1998" to maintain jurisdiction under the FSIA. *Owens v. Republic of Sudan*, 531 F.3d 884, 895 (D.C. Cir. 2008) (*Owens III*). We then remanded the case to allow the ****179*767** plaintiffs to pursue the merits of their claims.

Shortly after our decision, several new groups of plaintiffs filed actions against Sudan and Iran arising from the embassy bombings. These actions—brought by the Wamai, Amduso, Mwila, and Osongo plaintiffs—were filed after the enactment of the new terrorism exception and before the expiration of its limitation period. This brought the total number of suits against Sudan to six, including the original *Owens* action and a suit filed by the Khaliq plaintiffs under § 1605(a)(7).

From that point on, neither Sudan nor its counsel participated in the litigation again until after the 2014 entry of final judgment in *Owens*. After entering new orders of defaults against Sudan in several of the pending actions, the court held a consolidated evidentiary hearing in order to satisfy a requirement in the FSIA that "the claimant establish[ ] his claim or right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e). Without considering this evidence, the court could not transform the orders of default into enforceable default judgments establishing liability and damages against Sudan.

For three days, the district court heard expert testimony and reviewed exhibits detailing the relationship between both Iran and Sudan and al Qaeda during the 1990s. Shortly after this hearing the district court held both defendants liable for materially supporting the embassy bombings. *Owens v. Republic of Sudan*, 826 F.Supp.2d 128, 157 (D.D.C. 2011) (*Owens IV*). More specifically, the district court found Sudan had provided al Qaeda a safe harbor from which it could establish and direct its terrorist cells in Kenya and Tanzania. *Id.* at 139-43, 146. The court further found Sudan provided financial, military, and intelligence assistance to the terrorist group, which allowed al Qaeda to avoid disruption by hostile governments while it developed its capabilities in the 1990s. *Id.* at 143-46. These findings established both jurisdiction over and substantive liability for claims against Sudan and Iran.

The court also addressed the claims of non-American family members of those killed or injured in the bombings. Although those plaintiffs could not make use of the federal cause of action in § 1605A(c), the court concluded they could pursue claims under state law, as was the practice under the previous terrorism exception. *Id.* at 153. The court's opinion was translated into Arabic and served upon Sudan in September 2012.

The district court then referred the cases to special masters to hear evidence and recommend the amounts of damages to be awarded. While this process was ongoing, two new sets of plaintiffs entered the litigation. In July 2012 the Opati plaintiffs filed suit against Sudan, claiming their suits were timely as a "related action" with respect to the original *Owens* litigation. In May 2012 the Aliganga plaintiffs sought to intervene in the *Owens* suit. Notwithstanding the expiration of the ten-year limitation period starting from the date of the bombings, the district court allowed both groups of plaintiffs to proceed against Sudan and to rely upon the court's factual findings of jurisdiction and liability. The court then referred the Aliganga and *Opati* claims to the special masters.

In 2014 the district court entered final judgments in favor of the various plaintiffs. All told, the damages awarded against Sudan came to more than $10.2 billion. Family members, who outnumbered those physically injured by the bombing, received the bulk of the award—over $7.3 billion. Of the total $10.2 billion, approximately $4.3 billion was punitive damages. *See, e.g.*, *Opati v. Republic of Sudan*, 60 F.Supp.3d 68, 82 (D.D.C. 2014).

****180*768** Within a month of the first judgments, Sudan retained counsel and reappeared in the district court. Sudan appealed each case and in April 2015 filed motions in the district court to vacate the default judgments under Federal Rule of Civil Procedure 60(b). We stayed the appeals pending the district court's ruling on the motions.

In those motions, Sudan raised a number of arguments for

vacatur, most of them challenging the district court's subject matter jurisdiction. As before, Sudan also attacked the plaintiffs' evidence. It argued the judgments were void because they rested solely upon inadmissible evidence to prove jurisdictional facts, which Sudan argued was impermissible under § 1608(e). It also argued the evidence did not show it proximately caused the bombings because al Qaeda did not become a serious terrorist threat until after Sudan had expelled bin Laden in 1996.

Sudan raised a host of new arguments as well. In its most sweeping challenge, Sudan argued it did not provide material support for any predicate act that would deprive it of immunity under the FSIA. In making this argument, Sudan contended the embassy bombings, carried out by al Qaeda, were not "extrajudicial killings" because that term requires the involvement of a state actor in the act of killing. Sudan also contended the claims brought by the Opati, Aliganga, and Khaliq plaintiffs were barred by the statute of limitation in § 1605A(b) which, it argued, deprived the court of jurisdiction to hear their suits.[1]

Sudan's last jurisdictional challenge took aim at the family members of those physically injured or killed by the bombings. Sudan argued that the court could hear claims only from a person who was physically harmed or killed by the bombings or the legal representative of that person. And even if jurisdiction was proper, Sudan contended, foreign (i.e., non-U.S.) family members could not state a claim under either the federal cause of action or state law.

Finally, Sudan raised two nonjurisdictional arguments: First, it urged the district court to vacate its awards of punitive damages to the plaintiffs proceeding under state law, contending § 1605A(c) is the sole means for obtaining punitive damages against a foreign state. Second, Sudan argued the court should vacate the default judgments under Federal Rule of Civil Procedure 60(b) for "extraordinary circumstances" or "excusable neglect" on Sudan's part. In support of the latter argument, Sudan submitted a declaration from the Sudanese Ambassador to the United States detailing the country's troubled history of civil unrest, natural disaster, and disease, which allegedly impeded Sudan's participation in the litigation.

After a consolidated hearing, the district court denied the motions to vacate in all respects. *Owens v. Republic of Sudan*, 174 F.Supp.3d 242 (D.D.C. 2016) (*Owens V*). Sudan appealed and its appeal was consolidated with its earlier appeals from the final judgments. Sudan's briefs before this court are directed primarily to the district court's jurisdiction, and present novel questions of law, which we review de novo. *See Jerez v. Republic of Cuba*, 775 F.3d 419, 422 (D.C. Cir. 2014). Ordinarily, all of Sudan's nonjurisdictional arguments would be forfeited by reason of its having defaulted in the district court. *See Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543, 1547 (D.C. Cir. 1987). In this case, however, due to the size of the judgments against Sudan, their possible effects upon international relations, and the likelihood that the same arguments will arise in ****181*769** future litigation, we exercise our discretion to consider some, but not all, of Sudan's nonjurisdictional objections. *See Acree v. Republic of Iraq*, 370 F.3d 41, 58 (D.C. Cir. 2004) ("while we will ordinarily refrain from reaching non-jurisdictional questions that have not been raised by the parties ... we may do so on our own motion in 'exceptional circumstances' ").

At the end of the day, we affirm the judgments in most respects, holding the FSIA grants jurisdiction over all the claims and claimants present here. We hold also that those plaintiffs ineligible to proceed under the federal cause of action may continue to press their claims under state law. We also vacate all the awards of punitive damages and certify a question of local tort law to the District of Columbia Court of Appeals.

We turn first to Sudan's challenges to the district court's subject matter jurisdiction, starting with those that would dispose of the entire case. In Part II we address Sudan's challenge to the meaning of "extrajudicial killings" under the FSIA. In Part III we review the sufficiency of the evidence supporting the conclusions that Sudan provided material support to al Qaeda and that this support was a jurisdictionally sufficient cause of the embassy bombings.

We then proceed to Sudan's jurisdictional challenges that would eliminate the claims of particular plaintiffs. In Part IV we consider whether some of the plaintiffs' claims are barred by the statute of limitation in the FSIA terrorism exception, which Sudan contends is jurisdictional. In Part V we address both jurisdictional and nonjurisdictional arguments opposing the claims of the family members of victims physically injured or killed by the embassy bombings. Finally, we address Sudan's purely nonjurisdictional arguments in Part VI—whether the new terrorism exception authorizes punitive damages for a sovereign's pre-enactment conduct—and Part VII—addressing Sudan's arguments for vacatur under Rule 60(b)(1) and 60(b)(6).

II. Extrajudicial Killings

Sudan first argues the 1998 embassy bombings were not "extrajudicial killings" within the meaning of the FSIA terrorism exception. As noted above, § 1605A divests a foreign state of immunity and grants courts jurisdiction over cases

> in which money damages are sought against a foreign state for personal injury or death that was caused by ... extrajudicial killing ... or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

Because this argument poses a challenge to the court's subject matter jurisdiction, it was not forfeited by Sudan's failure to appear in the district court. *See Practical Concepts*, 811 F.2d at 1547. This is Sudan's most sweeping challenge, and, if correct, then the claims of all the plaintiffs must fail. The district court rejected Sudan's jurisdictional argument based upon the plain meaning of "extrajudicial killing." *Owens V*, 174 F.Supp.3d at 259-66. Reviewing de novo this question of law relating to our jurisdiction, we agree that "extrajudicial killings" include the terrorist bombings that gave rise to these cases.

Section 1605A(h)(7) of the FSIA provides that the term "extrajudicial killing" has the meaning given to it in § 3(a) of the Torture Victim Protection Act of 1991, which defines an extrajudicial killing as:

> a deliberated killing not authorized by a previous judgment pronounced by a regularly ***770**182** constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

Pub. L. No. 102-256, § 3(a), 106 Stat. 73, 73 (1991) (codified at 28 U.S.C. § 1350 note) (hereinafter TVPA).

On its face, this definition contains three elements: (1) a killing; (2) that is deliberated; and (3) is not authorized by a previous judgment pronounced by a regularly constituted court. The 1998 embassy bombings meet all three requirements and do not fall within the exception for killings carried out under the authority of a foreign nation acting in accord with international law. First, the bombings caused the death of more than 200 people in Kenya and Tanzania. The bombings were "deliberated" in that they involved substantial preparation, meticulous timing, and coordination across multiple countries in the region. *See Mamani v. Berzain*, 654 F.3d 1148, 1155 (11th Cir. 2011) (defining "deliberated" under the TVPA as "being undertaken with studied consideration and purpose"). Finally, the bombings themselves were neither authorized by any court nor by the law of nations. Therefore, on its face, the FSIA would appear to cover the bombings as extrajudicial killings.

Sudan offers a host of reasons we should ignore the plain meaning of "extrajudicial killing" in the TVPA and exclude terrorist bombings like the 1998 embassy attacks from jurisdiction under the FSIA terrorism exception. Sudan's arguments draw upon the text and structure, the purpose, and the legislative history of the TVPA and of the FSIA terrorism exception. Each of Sudan's arguments shares the same basic premise: Only a state actor, not a nonstate terrorist, may commit an "extrajudicial killing."

A. Textual Arguments

We begin, as we must, with the text of the statute. First, Sudan contends the text of the TVPA, and, by extension of the FSIA, defines an "extrajudicial killing" in terms of international law, specifically the Geneva Conventions. According to Sudan, international law generally and the Geneva Conventions specifically prohibit only killings carried out by a state actor. The plaintiffs vigorously contest both propositions.

1. State action requirements under international law

Sudan bases its argument that principles of international law supply the meaning of "extrajudicial killing" in the FSIA upon similarities between the TVPA and the prohibition on "summary executions" in Common Article 3 of the Geneva Conventions of 1949, which condemns "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3(1)(d), Aug. 12, 1949, 6 U.S.T. 3114, 75 U.S.T.S. 85. The similarities between the two definitions, Sudan contends, shows the Congress intended to define an "extrajudicial killing" in the TVPA with reference to principles of international law adopted in the Geneva Conventions.

To Sudan, this is of critical importance because the

Geneva Conventions and international law, it argues, proscribe killings only when committed by a state agent, not when perpetrated by a nonstate actor. Three pieces of evidence are said to demonstrate ***771**183** this limitation. First, Sudan notes, the United Nations adopted a resolution in 1980 condemning as inconsistent with international law "[e]xtra-legal executions" carried out by "armed forces, law enforcement or other governmental agencies." Congress on the Prevention of Crime and the Treatment of Offenders Res., A/Conf.87/L.11 (Sep. 5, 1980). Second, Sudan cites a United Nations annual report, S. Amos Wako (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Summary or Arbitrary Executions*, ¶¶ 74-85, U.N. Doc. E/CN.4/1983/16 (Jan. 31, 1983), which describes "extralegal executions" and "summary executions" in terms suggesting state involvement. And third, Sudan references an online database of the United Nations, which links the term "extrajudicial killing" to the definition of "extralegal execution." U.N. Terminology Database, http://untermportal.un.org/UNTERM/display/Record/UNHQ/extra-legal_execution/c253667 (last visited July 19, 2017).

Each of these references to international law is both inapposite and rebutted by the plaintiffs. If Sudan means to say the TVPA incorporates the prohibition against a "summary execution" in the Geneva Conventions, then it must show what was meant by that term in the Geneva Conventions themselves. In doing so, however, Sudan principally relies upon U.N. documents published more than a quarter century after the ratification of the Geneva Conventions in 1949, rather than the deliberations over the proposed Conventions, which Sudan does not cite at all. Odder still, none of these documents (or the terminology database) actually says the Geneva Conventions proscribe only "summary executions" committed by a state actor. *See Summary or Arbitrary Executions*, *supra* p. 22, ¶¶ 35-36 (noting Article 3 of the Geneva Conventions prohibits "murder" in general and "also specifically prohibits the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court"). Indeed, the plaintiffs present reasons to doubt whether the Geneva Conventions in specific, or international law in general, prohibit only killings by a state actor. As the plaintiffs note, Article 3 of the First Convention prohibits "violence to life and person, in particular murder of all kinds." Geneva Convention, art. 3(1)(a), Aug. 12, 1949, 6 U.S.T. 3114, 75 U.S.T.S. 85. Likewise, the U.N. Terminology Database lists "[k]illings committed by vigilante groups" as an example of an "extrajudicial killing." And finally, a "Handbook" published by the U.N. Special Rapporteur on Summary or Arbitrary Executions contains a full chapter on "killings by non-state actors and affirmative state obligations," which states that "Human rights and humanitarian law clearly apply to killings by non-State actors in certain circumstances." Project on Extrajudicial Executions, *UN Special Rapporteur on Extrajudicial Executions Handbook*, ¶ 45, http://www.extrajudicialexecutions.org/application/media/Handbook%20Chapter%203-Responsibility%20of%20states%20for%20non-state%20killings.pdf (last visited July 19, 2017).

This does not mean Sudan's interpretation of international law as it pertains to summary executions (as opposed to extrajudicial killings) is wrong or that direct state involvement is not needed for certain violations of international law. Rather, the point is that the role of the state in an extrajudicial killing appears less clear under international law than Sudan would have us believe; indeed it appears less clear than the definition of an "extrajudicial killing" in the TVPA itself. Accordingly, we doubt the Congress intended categorically to preclude state liability for killings by nonstate actors by adopting ****184*772** a definition of "extrajudicial killing" similar to that of a "summary execution" in the Geneva Conventions.

2. International law and the TVPA

More important, even if Sudan's interpretation of the Geneva Conventions and international law is correct, its argument would fail because the TVPA does not appear to define an "extrajudicial killing" coextensive with the meaning of a "summary execution" (or any similar prohibition) under international law. For example, the TVPA does not adopt the phrasing of the Geneva Conventions wholesale. Rather, as the plaintiffs point out, the TVPA substitutes the term "deliberated killing" for "the passing of sentences and the carrying out of executions" in the Geneva Conventions. While "the passing of sentences and the carrying out of executions" strongly suggests at least some level of state involvement, a nonstate party may commit a "deliberated killing" as readily as a state actor. Indeed, several other statutes contemplate "deliberate" attacks by nonstate entities, including terrorist groups. *See, e.g.*, 6 U.S.C. § 1169(a) (requiring the Secretary of Transportation to assess vulnerability of hazardous materials in transit to a "deliberate terrorist attack"); 42 U.S.C. § 16276 (mandating research on technologies for increasing "the security of nuclear facilities from deliberate attacks").

Due to the substitution of "deliberated" killings for "the passing of sentences and the carrying out of executions," the inference of direct state involvement is much less strong in the TVPA than in the Geneva Conventions. The difference between the definition in the TVPA and the prohibition in the Geneva Conventions also signals the Congress intended the TVPA to reach a broader range of conduct than just "summary executions." For the court to rely upon the narrower prohibition in the Geneva Conventions would contravene the plain text of the TVPA, which is, after all, the sole "authoritative statement" of the law. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005).

Resisting this conclusion, Sudan points to two phrases that, it contends, impose a state actor requirement upon the definition of an extrajudicial killing in the TVPA. First, Sudan notes that an extrajudicial killing must not be one "authorized by a previous judgment pronounced by a regularly constituted court." As Sudan would have it, the "only killings that can be reasonably be imagined to be authorized by a 'previous judgment' are those by state actors." Regardless whether Sudan is right on this point, the argument does not imply what Sudan intends. If only a state actor may lawfully kill based upon a "previous judgment," then all killings committed by a nonstate actor are, by definition, not "authorized by a previous judgment." Therefore, only a killing committed by a state actor might not be an "extrajudicial killing," that is, if it was "authorized by a previous judgment pronounced by a regularly constituted court." Accepting Sudan's premise, no other outcome can "reasonably be imagined."

Similarly, Sudan argues the second sentence in the definition of an "extrajudicial killing" in the TVPA anchors the meaning of the first sentence in international law which, in Sudan's view, prohibits only summary executions by state actors. Even accepting Sudan's view of international law, we are not persuaded. In the first sentence of § 3(a), the Congress defined the proscribed conduct (i.e., a "deliberated killing") in terms that extended beyond the prohibition on a "summary execution" under international law. The second sentence excludes from the **185*773 definition of "extrajudicial killing" "any ... killing that, under international law, is lawfully carried out under the authority of a foreign nation." This ensured that the more expansive prohibition of the first sentence would not reach the traditional prerogatives of a sovereign nation. Were "extrajudicial killings" no broader than "summary executions," the limitation in international law of what constitutes an "extrajudicial killing" would be unnecessary because, by Sudan's own argument, a "summary execution" always violates international law. Therefore, Sudan's interpretation would make superfluous the reference to killings "lawfully carried out" "under international law," contrary to the "cardinal principle of statutory construction that we must give effect, if possible, to every clause and word of a statute." *See Williams v. Taylor*, 529 U.S. 362, 404, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000) (internal quotation marks and citation omitted).

Moreover, the reference to international law in the second sentence of § 3(a) of the TVPA highlights its omission in the first sentence. Had the Congress intended the definition of an "extrajudicial killing" to track precisely with that of a "summary execution" under international law, § 3(a) could have expressly referenced international law in both the prohibition and its limitation. That approach is found elsewhere in the FSIA, *see*28 U.S.C. § 1605(a)(3) (authorizing jurisdiction where "rights in property [are] taken in violation of international law"), as well as in other statutes, *see*18 U.S.C. § 1651 (proscribing "the crime of piracy as defined by the law of nations"). Indeed, the Congress specifically defined other predicate acts in § 1605A by reference to international treaties, *see*28 U.S.C. § 1605A(h)(1),(2) (defining "aircraft sabotage" and "hostage taking" with reference to international treaties), but referenced only a U.S. statute, the TVPA, in its definition of "extrajudicial killing." That the Congress incorporated international law expressly into other jurisdictional provisions undermines the inference that it intended implicitly to do so here. *See Dep't of Homeland Sec. v. MacLean*, —— U.S. ——, 135 S.Ct. 913, 919, 190 L.Ed.2d 771 (2015) ("Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another").

3. State action requirements in the TVPA and the FSIA terrorism exception

The plaintiffs provide another persuasive reason Sudan's textual arguments are flawed. The TVPA authorizes an action only for harms arising from the conduct of a state actor. *See* TVPA § 2(a) (providing a cause of action against an "individual who, under actual or apparent authority, or color of law, of any foreign nation" engages in torture or extrajudicial killing). Sudan argues the state actor requirement for a suit under the TVPA is "necessarily incorporated" in § 3(a) and therefore applies to those actions arising from "extrajudicial killings" under the FSIA. The limitation of actions to state actors, however, is found not in § 3(a) but in § 2(a) of the TVPA. As the plaintiffs note, when passing the current and prior FSIA terrorism exceptions, the Congress each time

incorporated the section of the TVPA that defined an "extrajudicial killing" but not the section that limited the cause of action under the TVPA to state actors. If the Congress had wanted to limit extrajudicial killings to state actors, then it could have incorporated both sections of the TVPA into the FSIA terrorism exception. That it did not compels us to conclude the state actor limitation in the TVPA does not transfer to the definition of an "extrajudicial killing" ****186*774** in the FSIA. *Cf. Sebelius v. Cloer*, 569 U.S. 369, 133 S.Ct. 1886, 1894, 185 L.Ed.2d 1003 (2013) (declining to apply limitations from one section of a statute when the text of another section does not cross-reference the first section).

Indeed, the reason the Congress declined to incorporate the state-actor limitation in the TVPA is plain on the face of the FSIA terrorism exception. As the plaintiffs observe, the TVPA and the FSIA share a similar structure. Each statute defines the predicate acts that give rise to liability in one section—TVPA § 3 and FSIA § 1605A(h)—and then limits who may be subjected to liability in another—TVPA § 2 and FSIA §§ 1605A(a)(1) and (c). Both statutes also require a plaintiff to show a certain type of nexus to a foreign sovereign. In the TVPA, a state official must act "under actual or apparent authority, or color of law" of a foreign sovereign. In the FSIA, liability arises when the state official, employee, or agent acting within the scope of his authority either directly commits a predicate act or provides "material support or resources" for another to commit that act. If the more stringent state-actor limitation in the TVPA traveled with the definition of an "extrajudicial killing" in that statute, then it would all but eliminate the "material support" provision of § 1605A(a), at least with respect to extrajudicial killings. For example, § 1605A(a) would extend jurisdiction over a sovereign that did not directly commit an extrajudicial killing only if an official of the defendant state materially supported a killing committed by a state actor from a different state. We seriously doubt the Congress intended the exception to immunity for materially supporting an extrajudicial killing to be so narrow.

Sudan attempts to avoid the conclusion that the FSIA does not adopt the state-actor limitation in the TVPA in two ways. First, Sudan contends the introductory clause of § 3(a) implicitly incorporates the state actor limitation of § 2(a). This clause states that an "extrajudicial killing" is defined "[f]or the purposes of this Act." That supposedly indicates the Congress intended to import the state actor limitation of § 2(a) into the definition of an extrajudicial killing in § 3(a). But Sudan's reading of this phrase leads to an illogical conclusion. A statutory definition made expressly "[f]or the purposes of this Act" informs our understanding of the entire statute. In other words, the definitions in TVPA § 3 govern the use of those defined terms elsewhere in the Act. Under Sudan's interpretation, however, the reverse would occur: in order to understand the meaning of a defined term, we would have to look to the remainder of the statute, and not to the definition itself. What then, we wonder, would the definition contribute to the statute? Would it be wholly redundant, a conclusion that conflicts with our usual interpretive presumptions? *See Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 669, 127 S.Ct. 2518, 168 L.Ed.2d 467 (2007). Or, if not redundant, how would a court then apply the definition to terms used in the remainder of the statute if the remainder of the statute, in turn, gave meaning to the definition? Given these paradoxes, the phrase "[f]or the purposes of this Act" cannot mean what Sudan contends. Instead, that phrase simply means that the definition of an "extrajudicial killing" in TVPA § 3(a) informs the remainder of the TVPA (and, by extension, the FSIA), and not the reverse.

Second, Sudan contends the definition of an "extrajudicial killing" in the TVPA implicitly incorporates international law (and the supposed state-actor limitation therein) even without reference to the state-actor limitation in § 2(a). Here Sudan relies principally upon a dictum in a Second Circuit ***775**187** opinion discussing the TVPA in a case arising under the Alien Tort Claims Act (ATCA), which expressly incorporates international law: "torture and summary execution—when not perpetrated in the course of genocide or war crimes—are proscribed by international law only when committed by state officials or under color of law." *Kadić v. Karadžić*, 70 F.3d 232, 243 (2nd Cir.1995). The court further noted that "official torture is prohibited by universally accepted norms of international law, and the Torture Victim Act confirms this holding and extends it to cover summary execution." *Id.* at 244 (citation omitted). This, Sudan contends, shows the TVPA definition of an "extrajudicial killing" (and not just the TVPA in general) draws upon international law. The court's discussion in that case, however, relied not only upon the definition of an "extrajudicial killing" in TVPA § 3(a) but also upon the limitation of the cause of action to state actors in TVPA § 2(a). *Id.* at 243. Indeed, the court later separately summarized the two provisions of the TVPA, distinguishing § 2(a), which "provides a cause of action" against an individual acting under state authority, from § 3, which "defines the terms 'extrajudicial killing' and 'torture.' " *Id.* at 245.

Sudan's argument that the definitions in the TVPA incorporate international law is flawed as a matter of statutory interpretation. If the definition of an "extrajudicial killing" (and "torture") in TVPA § 3(a)

already had a state actor limitation from international law, then the additional state actor limitation in § 2(a) would be surplusage. *See Gustafson v. Alloyd Co.*, 513 U.S. 561, 574, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995) (instructing courts in interpreting a statute to "avoid a reading which renders some words altogether redundant"). That the Congress included § 2(a) in the TVPA therefore implies either that the definition of extrajudicial killing in § 3(a) of the FSIA does not incorporate international law or that international law contains no state actor limitation. Either way, Sudan is out of luck.

In sum, Sudan's textual arguments that an extrajudicial killing requires a state actor all fail. Even if international law contained such a limitation—a proposition we doubt but do not decide—the TVPA does not incorporate international law (or any limitations therein) into its definition of an "extrajudicial killing." Because the FSIA terrorism exception references only the definitions in TVPA § 3, and not the limitation to state actors in TVPA § 2(a), nothing in the text of the FSIA makes a state actor a prerequisite to an extrajudicial killing.

B. Statutory Purpose

Without a viable textual basis for its position, Sudan argues the purpose of the TVPA and the FSIA extend only to an "extrajudicial killing" committed by a state actor. Even if we could ignore the statutory text in pursuit of its supposed purpose, Sudan's arguments from the purpose of the statutes would still not be convincing.

With respect to the purpose of the TVPA, Sudan pursues a line of reasoning parallel to that of its textual arguments: Because the TVPA was intended to "carry out obligations of the United States under the United Nations Charter and other international agreements ... by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing," Pub. L. No. 102-256, 106 Stat. at 73 (preamble), Sudan contends the supposed state-actor requirement for a killing to violate international law also limits the definition of an "extrajudicial killing" in the TVPA and hence the jurisdictional requirements of the FSIA. Even if international law both motivated enactment ***776**188** of the TVPA and limits extrajudicial killing to a killing by state actor, Sudan's argument about the purpose of the TVPA still would fail. The TVPA may well be intended to carry out certain international obligations, but this purpose is reflected in the TVPA as a whole, not in each individual provision viewed in isolation. One would struggle to find a distinct purpose in the definition section of the TVPA, which neither creates rights nor imposes duties, divorced from the broader statute. When one statute, such as the FSIA, incorporates a definition from another statute, here the TVPA, it imports only the specified definition and not the broader purpose of the statute from which it comes.

In any event, the different purposes of the TVPA and the FSIA are plain on the face of those statutes. The TVPA targets individual state officials for their personal misconduct in office, while the terrorism exception to the FSIA targets sovereign nations in an effort to deter them from engaging, either directly or indirectly, in terrorist acts.

Sudan's own arguments tacitly admit the FSIA serves a different purpose than the TVPA, but it again frames this purpose in terms of international law. To Sudan, the FSIA serves to withdraw sovereign immunity only for "certain universally defined and condemned acts" that are "firmly grounded in international law." Once again Sudan contends, this excludes killings committed by nonstate terrorists because international law proscribes killings only when committed by a state actor. Furthermore, § 1605A, Sudan contends, should be read to exclude acts of terrorism because terrorism lacks "universal condemnation, or even [an] accepted definition ... under international law." Other predicate acts included in § 1605A, particularly aircraft sabotage and hostage taking, are inconsistent with this reading of the FSIA. As the plaintiffs and the district court recognized, "[f]or the past fifteen years it has been hard to think of a more quintessential act of terrorism than the purposeful destruction of a passenger aircraft in flight—yet such an act is manifestly covered by § 1605A." *Owens V*, 174 F.Supp.3d at 264. Indeed, both aircraft sabotage and hostage taking are more often committed by a nonstate terrorist than by a state actor, and both often result in extrajudicial killings. Moreover, the definitions of these acts in the FSIA clearly do not require state action. 28 U.S.C. §§ 1605A(h)(1) (referencing the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, art. 1, Sept. 23, 1971, 24 U.S.T. 564, 974 U.N.T.S. 177 (proscribing aircraft sabotage committed by "[a]ny person")); 1605A(h)(2) (referencing the International Convention Against the Taking of Hostages, art. 1, Dec. 17, 1979, 1316 U.N.T.S. 205 (proscribing hostage taking by "[a]ny person")). It would be more than odd if a provision designed to sanction acts "firmly grounded in international law"—but not international terrorism—included only acts synonymous with international terrorism while excluding other violations of international law, such as genocide, not closely associated with terrorist groups. Against this backdrop, it also strains

belief that the Congress would assert jurisdiction over claims against a state that materially supports nonstate terrorists who kill via aircraft sabotage or hostage taking, yet deny jurisdiction for similarly supported killings caused by a truck bombing or a kidnapping. It is far more likely the Congress intended to penalize a state's provision of material support for terrorist killings in general, rather than to codify broad principles of international law or to regulate the specific way state-supported terrorists go about their horrific deeds. Were the law otherwise, designated state sponsors of terrorism could effectively contract ****189*777** out certain terrorist acts and avoid liability under the FSIA.

As the district court correctly recognized, § 1605A strives to hold designated state sponsors of terrorism accountable for their sponsorship of terror, regardless whether they commit atrocities themselves or aid others in doing so. *Owens V*, 174 F.Supp.3d at 262. Therefore, the purpose of the statute clearly embraces liability for the embassy bombings here in question.

C. Statutory History

Sudan next resorts to the legislative history of the FSIA and the TVPA to explain why an "extrajudicial killing" requires state involvement. The short answer to its long and winding argument through the characteristically inconclusive background materials is that when the meaning of a statute is clear enough on its face, "reliance on legislative history is unnecessary." *See Mohamad v. Palestinian Auth.*, 566 U.S. 449, 132 S.Ct. 1702, 1709, 182 L.Ed.2d 720 (2012) (citation omitted).

Subsequent legislation, on the other hand, because it is enacted and not just compiled, may inform our understanding of a prior enactment with which it should be read in harmony. In this instance, the Congress made clear that an extrajudicial killing includes a terrorist bombing when, in 1996, it enacted the Flatow Amendment to the FSIA to provide a federal cause of action against state officials who had committed or materially supported one of the predicate acts listed in § 1605(a)(7), including an extrajudicial killing. *See*Pub. L. No. 104-208, § 589, 110 Stat. at 3009-172. The Flatow Amendment responded to a suicide bombing in Israel, carried out by a nonstate terrorist group supported by Iran; it aimed to deter terrorism by making officials of states that sponsor terrorism liable for punitive damages. We do not believe the Congress would provide a cause of action aimed at killings over which it had not authorized jurisdiction.

Subsequent events in the Flatow saga reinforce this conclusion. Immediately following passage, relatives of the victim sued Iran under the Amendment, and the district court asserted jurisdiction based upon this "extrajudicial killing." *Flatow*, 999 F.Supp. at 18. The plaintiffs won a default judgment but could not collect due to Iran's lack of attachable assets. In 2000 the Congress again responded, passing a compensation scheme to pay individuals who "held a final judgment for a claim or claims brought under section 1605(a)(7) of title 28," including the Flatows. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 2002(a)(2)(A), 114 Stat. 1464, 1541-43 (authorizing payment to claimants with judgments against Iran, which included the Flatows); H.R. Rep. No. 106-939, at 116 (2000). This legislation too would make little sense if the judgments themselves were void because no extrajudicial killing had occurred.

Finally, after courts had applied the FSIA terrorism exception to terrorist bombings for over a decade,[7] the Congress ****190*778** reenacted the same predicate acts in § 1605(a)(7) when authorizing the new FSIA exception under § 1605A. The Congress thereby ratified the *Flatow* court's understanding—and those of every other court since then—that a nonstate actor may commit an extrajudicial killing. *See Lorillard v. Pons*, 434 U.S. 575, 580, 98 S.Ct. 866, 55 L.Ed.2d 40 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change"). Now, after more than two decades of consistent judicial application of the FSIA, narrowing the term "extrajudicial killing" to include only killings committed by a state actor would contravene the Congress's revealed intent in repeatedly authorizing judicial remedies for victims of terrorist bombings.

To summarize, the plain meaning of § 1605A(a) grants the courts jurisdiction over claims against designated state sponsors of terrorism that materially support extrajudicial killings committed by nonstate actors. Contrary to Sudan's contention, the purpose and statutory history of the FSIA terrorism exception confirm this conclusion. Therefore, this court may assert jurisdiction over claims arising from al Qaeda's bombing of the U.S. embassies in 1998 if the plaintiffs have adequately demonstrated Sudan's material support for those bombings.

III. Sufficiency of the Evidence Supporting

Jurisdiction

Sudan's weightiest challenge to jurisdiction relates to the admissibility and sufficiency of the evidence that supported the district court's finding of jurisdiction. As discussed above, § 1605A(a)(1) of the FSIA grants jurisdiction and withdraws immunity for claims "caused by an act of ... extrajudicial killing ... or the provision of material support or resources for such an act."

In order to establish the court's jurisdiction, the plaintiffs in this case must show (1) Sudan provided material support to al Qaeda and (2) its material support was a legally sufficient cause of the embassy bombings. *See Kilburn v. Socialist People's Libyan Arab Jamahiriya*, 376 F.3d 1123, 1127 (D.C. Cir. 2004) (treating causation as a jurisdictional requirement). Sudan challenges the district court's factual findings on both accounts. Because the elements of material support and causation are jurisdictional, Sudan may contest them on appeal even though it forfeited its right to contest the merits of the plaintiffs' claims. *See Practical Concepts*, 811 F.2d at 1547. This does not mean, however, that the plaintiffs on appeal must offer the same quantum of evidence needed to show liability in the first instance. Establishing material support and causation for jurisdictional purposes is a lighter burden than proving a winning case on the merits. *See Agudas Chasidei Chabad of U.S. v. Russian Federation*, 528 F.3d 934, 940 (D.C. Cir. 2008).

In its opinion rejecting Sudan's motion to vacate the default judgments, the district court identified two bases upon which the plaintiffs established material support and causation for the purpose of jurisdiction. For plaintiffs proceeding under the federal cause of action in § 1605A(c), the court—following then-binding Circuit precedent—held the plaintiffs had established jurisdiction by making a "non-frivolous" claim that Sudan materially supported al Qaeda and that such support proximately ****191*779** caused their injuries. *Owens V*, 174 F.Supp.3d at 272-75. Since that decision, the Supreme Court has overruled the precedent upon which the district court relied, requiring a plaintiff to prove the facts supporting the court's jurisdiction under the FSIA, rather than simply to make a "non-frivolous" claim to that effect. *Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, —— U.S. ——, 137 S.Ct. 1312, 1316, 197 L.Ed.2d 663 (2017). The Court's decision eliminates the first basis for the district court's jurisdictional holding.

The decision in *Helmerich*, however, left intact the district court's second basis for concluding the plaintiffs had sufficiently shown material support and causation in this case. For reasons no longer relevant, the district court concluded that plaintiffs who are ineligible to use the federal cause of action in § 1605A(c)—namely, victims or claimants who were not U.S. nationals, military service members, or government employees or contractors—could not establish jurisdiction simply by making a non-frivolous claim of material support and causation. *Owens V*, 174 F.Supp.3d at 275. Consequently, the court required those plaintiffs to offer evidence proving these jurisdictional elements. *Id.* First in its 2011 opinion on liability and again in its 2016 opinion denying vacatur, the district court weighed the plaintiffs' evidence of material support and causation and concluded it satisfied the jurisdictional standard. *Owens V*, 174 F.Supp.3d at 276; *Owens IV*, 826 F.Supp.2d at 150-51. Because the court's finding of Sudan's material support for the 1998 embassy bombings plainly applies to all claimants and all claims before this court, Sudan can prevail in its challenge to material support and causation only if the district court erred in its factual findings of jurisdiction. We conclude it did not.

In each of the cases, the plaintiffs' evidence was received at the three-day evidentiary hearing held by the district court in October 2010. The court held that hearing to satisfy the FSIA requirement that, in order to secure a default judgment, a claimant must "establish[ ] his claim or right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e). At the hearing, the court received evidence of both Iran's and Sudan's support for al Qaeda in advance of the embassy bombings, but we limit our discussion here to the evidence pertaining to Sudan.

In evaluating Sudan's evidentiary arguments, we proceed in three steps. First, we summarize the proceedings at the 2010 evidentiary hearing and the facts presented by the plaintiffs and their expert witnesses. Then we consider Sudan's two challenges to this evidence. In the first, Sudan argues the district court relied upon inadmissible evidence to conclude that it materially supported al Qaeda. In the second, Sudan contends that, even if admissible, the evidence presented could not establish material support and causation as a matter of law.

A. The Evidentiary Hearing

At the October 2010 evidentiary hearing the plaintiffs presented evidence from a variety of sources. Reviewing this evidence as a whole, the district court concluded it sufficed both to establish jurisdiction and to prove Sudan's liability on the merits. We first describe the sources of evidence the court received and then briefly summarize the factual findings the court drew from this evidence.

1. The sources of evidence presented

As is apparent from the opinions of the district court, the testimony of expert witnesses and al Qaeda operatives was of critical importance to its factual findings. ****192*780** For this reason, we discuss the experts' and operatives' testimony first and in greatest detail. The plaintiffs produced three expert witnesses and prior recorded testimony from three former members of al Qaeda.

First, the plaintiffs called terrorism consultant Evan Kohlmann to testify about the relationship between Sudan and al Qaeda in the 1990s. Kohlmann advised government and private clients on terrorist financing, recruitment, and history. He has authored a book and several articles on terrorism and has testified as an expert in multiple criminal trials. Kohlmann based his opinions regarding Sudan's support for al Qaeda upon a review of secondary source materials, including but not limited to the exhibits introduced at the hearing, testimony from criminal trials, and firsthand interviews he conducted with al Qaeda affiliates over the past decade. Kohlmann testified that this information was of the type routinely relied upon by experts in the counterterrorism field.

Next, the court received a written expert report from Dr. Lorenzo Vidino on "Sudan's State Sponsorship of al Qaeda." Dr. Vidino was a fellow at the Belfer Center for Science and International Affairs, Kennedy School of Government, at Harvard University. Like Kohlmann, Vidino has authored books and articles on terrorism and has previously testified in federal court on Sudan's support for al Qaeda. Vidino based his report upon open source materials initially gathered around 2004, which he reviewed and updated for the present case.

The district court also received live testimony and a written report from Steven Simon, a security consultant and Special Advisor for Combatting Terrorism at the Department of State. From 1995 to 1999, during which time al Qaeda bombed the embassies, Simon served on the National Security Council (NSC) as Senior Director for Transnational Threats. His responsibilities at the NSC included directing counterterrorism policy and operations on behalf of the White House. After his government service, Simon published a book and several articles on international terrorism and taught graduate courses on counterterrorism.

The court also heard recorded trial testimony from three former al Qaeda operatives. In particular, the plaintiffs' star witness, Jamal al Fadl, cast a long shadow over the proceedings. al Fadl was a Sudanese national and former senior al Qaeda operative turned FBI informant. Now in the witness protection program, in 2001 he testified at the criminal trial of Usama bin Laden and other terrorists arising from the African embassy bombings. Al Fadl was particularly well-suited to address the relationship between al Qaeda and the government of Sudan in the 1990s because he served then as a principal liaison between the terrorist group and Sudanese intelligence. He had also been instrumental in facilitating al Qaeda's relocation from Afghanistan to Sudan in 1991 and had assisted the group in acquiring properties there. Although al Fadl did not testify at the evidentiary hearing, his prior testimony provided much of the factual basis for the expert witnesses' opinions.

The court also received transcripts of prior testimony from two other al Qaeda operatives: Essam al Ridi and L'Houssaine Kherchtou. Both al Ridi and Kherchtou were members of al Qaeda when the terrorist group was based in Sudan, and both testified at the bin Laden trial. They testified, based upon firsthand knowledge, about the Sudanese government and military facilitating al Qaeda's movement throughout East Africa and protecting al Qaeda leadership. The plaintiffs also submitted ***781**193** a deposition from al Ridi prepared for the instant case.

In addition to this witness testimony, the court viewed videos produced by al Qaeda describing its move to Sudan and its terrorist activities thereafter. And finally, the court considered reports from the U.S. Department of State and the Central Intelligence Agency describing Sudan's relationship with al Qaeda in the 1990s.[3]

2. The district court's findings of fact

From the plaintiffs' evidence, the district court found that Sudan had provided material support to al Qaeda and that such support caused the embassy bombings. This support was provided in several ways, which we recount in a much abbreviated form.

First, the district court found Sudan provided al Qaeda a safe harbor from which it could direct its operations. *Owens IV*, 826 F.Supp.2d at 139-43. This began with the overthrow of the Sudanese government in 1989 by Omar al Bashir, leader of the Sudanese military, and Hassan al Turabi, head of the National Islamic Front (NIF), Sudan's most powerful political party. Kohlmann and Simon

testified that al Turabi initiated contact with al Qaeda and other extremist groups, encouraging them to relocate to Sudan. Al Bashir formalized this initial outreach with a 1991 letter of invitation to Usama bin Laden. According to all three experts, Sudan's outreach to al Qaeda was part of a broader strategy of inviting radical Islamist groups to establish bases of operations in the country, which is confirmed by the State Department Patterns of Global Terrorism reports. *See* U.S. Dep't of State, Patterns of Global Terrorism: 1991, at 3 (1991) ("The government reportedly has allowed terrorist groups to train on its territory and has offered Sudan as a sanctuary to terrorist organizations"). Sudan's extensive ties to terrorist groups prompted the Department of State to designate Sudan as a state sponsor of terrorism in August 1993. U.S. Dep't of State, Patterns of Global Terrorism: 1993, at 25 (1994).

In 1991 al Qaeda accepted Sudan's invitation. According to Kohlmann and Simon, the invitation benefited both bin Laden and the Sudanese government. For bin Laden, it allowed al Qaeda to depart an increasingly unstable Afghanistan and relocate closer to its strategic interests in the Middle East. For Sudan, outreach to terrorist groups provided leverage against the government's enemies at home and ****194*782** abroad and advanced al Turabi's ideological ambition for Sudan to become "the new haven for Islamic revolutionary thought." Sudan also viewed al Qaeda as a source of domestic investment as bin Laden was rumored to be extremely wealthy and was well-known as a financier of the mujahedeen insurgency in Afghanistan.

Once bin Laden had determined Sudan was a trustworthy partner, al Qaeda moved its operations there. All three experts described al Qaeda purchasing several properties in Sudan, including a central office and a guesthouse in Khartoum, and starting terrorist training camps on farms throughout the country. Al Fadl personally participated in some of these transactions. For a time, according to Kohlmann, al Qaeda even shared offices with the al Turabi's NIF party in Khartoum. The close relationship between al Qaeda and the Sudanese government continued throughout the early 1990s, according to Kohlmann and Vidino, even after bin Laden publicized his intent to attack American interests in a series of *fatwas* and after al Qaeda members claimed responsibility for the killing of U.S. soldiers in Mogadishu, Somalia. For example, bin Laden appeared in multiple television broadcasts with al Bashir and al Turabi celebrating the completion of infrastructure projects financed, in part, by bin Laden. Sudanese intelligence officials also worked hand-in-glove with al Qaeda operatives to screen purported al Qaeda volunteers entering the country in order "to ensure that they were not seeking to infiltrate bin Laden's organization on behalf of a foreign intelligence service." Al Fadl personally took part in these efforts.

Sudan also helped al Qaeda develop contacts with other terrorist organizations. In 1991 the NIF organized an unprecedented gathering of terrorist organizations from around the world in Khartoum at the Popular Arab and Islamic Congress. Several of these groups, including the Egyptian Islamic Jihad (EIJ), whose membership would later overlap with that of al Qaeda, and the Iranian-backed Hezbollah, which later provided training to al Qaeda operatives, also established bases in Sudan. According to Kohlmann and Simon, Sudanese intelligence actively assisted al Qaeda in forming contacts with these groups, allowing the nascent organization to acquire skills and to recruit members from the more experienced groups that it would later use with devastating effect.

Although Sudan expelled bin Laden in 1996 under international pressure, Kohlmann, Vidino, and one other expert testified that some al Qaeda operatives remained in the country thereafter. They based this conclusion, in part, upon an unclassified report of the CIA, dated December 1998. A State Department report from 1998, published after the embassy bombings, reinforced the conclusion that "Sudan continued to serve as a meeting place, safe haven, and training hub for a number of international terrorist groups, particularly Usama Bin Ladin's al-Qaida organization." U.S. Dep't of State, Patterns of Global Terrorism: 1998 (1999). Although expelling bin Laden was a "positive step[ ]," the CIA concluded Sudan continued to send "mixed signals about cutting its terrorist ties" after his expulsion but before the embassy bombings. Cent. Intel. Agency, Sudan: a Primer on Bilateral Issues With the United States, at 4 (May 12, 1997). Notably, Sudan remains a designated state sponsor of terrorism today.

The district court also found Sudan had provided financial, governmental, military, and intelligence support to al Qaeda. *Owens IV*, 826 F.Supp.2d at 143-46. During its time in Sudan, al Qaeda operated several business and charities. All three experts ****195*783** explained that these enterprises provided legitimate employment for al Qaeda operatives as well as cover for the group's illicit activities throughout the region. The Sudanese government actively promoted al Qaeda's businesses in several ways. As described by al Fadl, Sudan partnered with al Qaeda-affiliated businesses in major infrastructure projects, allowing al Qaeda to gain access to and experience with explosives. Sudan also granted al Qaeda businesses "customs exemptions" and "tax privileges" which, according to Vidino, enabled al Qaeda nearly to

monopolize the export of several agricultural products. Sudan offered al Qaeda the services of its banking system, which helped the organization in "laundering money and facilitating other financial transactions that stabilized and ultimately enlarged Bin Laden's presence in the Sudan."

From the very beginning Sudan also aided al Qaeda's movement throughout the region. Relying upon al Fadl's testimony, Kohlmann testified that al Qaeda circulated copies of President al Bashir's letter of invitation among its operatives. Al Qaeda agents could present these copies to Sudanese officials in order to "avoid having to go through normal immigration and customs controls" and to head off any "problems with the local police or authorities." According to Kohlmann, Sudanese intelligence also transported weapons and equipment for al Qaeda from Afghanistan to Sudan via the state-owned Sudan Airways. On at least one occasion, Sudan allowed al Qaeda operative Kherchtou to smuggle $10,000 in currency—an amount above that permitted by law—to an al Qaeda cell in Kenya. This Kenyan cell ultimately carried out the bombing of the U.S. embassy in Nairobi in 1998.

In addition to aiding al Qaeda's movements directly, all three experts testified that the government provided al Qaeda members hundreds of passports and Sudanese citizenship. Al Qaeda operatives needed these passports because they were "de facto stateless individuals" who could no longer safely travel on passports from their countries of origin. Upon returning from abroad, Sudanese officials allowed al Qaeda operatives to bypass customs and immigration controls. As al Fadl testified, this allowed militants to avoid having their passport stamped by a nation that had come under increasing scrutiny for its ties to terrorist organizations.

Finally, the district court identified several instances in which Sudan provided security to al Qaeda leadership. *Owens IV*, 826 F.Supp.2d at 145. In his prior testimony, al Fadl recounted an occasion when Sudanese intelligence intervened to prevent the arrest of al Qaeda operatives by local police. Al Ridi also testified that Sudan assigned 15 to 20 uniformed soldiers to act as personal bodyguards for bin Laden and other al Qaeda members. In 1994, according to Kohlmann, Sudanese intelligence even foiled an assassination attempt against bin Laden in Khartoum. On another occasion, Sudanese intelligence thwarted a plot against al Qaeda's second-in-command, Ayman al-Zawahiri. Even as international pressure mounted on Sudan to expel bin Laden, Simon—who covered terrorism matters for the NSC during the events in question—explained that the Sudanese government refused to provide actionable intelligence on al Qaeda's plans throughout the region or to hand bin Laden over to the United States. Simon echoed the State Department's conclusion that bin Laden's eventual expulsion was nothing more than a "symbolic gesture designed to placate the international community" that changed little in the day-to-day reality of Sudan's support for terrorism. *See* U.S. Dep't of State, Patterns of Global Terrorism: 1998.

****196*784** From this evidence, all three experts concluded Sudan provided material support to al Qaeda. Moreover, the experts viewed this support as "indispensable" to the success of the 1998 embassy bombings. Without "a country that not only tolerated, but actually actively assisted ... al Qaeda terrorist activities," Vidino asserted, "al Qaeda could not have achieved its attacks on the US Embassies." Noting that "the vast majority of planning and preparation [for the attacks] took place between the years of 1991 and 1997," Kohlmann opined "without the base that Sudan provided, without the capabilities provided by the Sudanese intelligence service, without the resources provided, none of this would have happened." Simon likewise surmised "it's difficult to see how ... the attacks could have been carried out with equal success" without Sudan's "active support" and safe haven.

From the expert testimony, trial transcripts, and government reports, the district court concluded that the plaintiffs had met their burden of demonstrating "to the satisfaction of the court" that Sudan had provided material support to al Qaeda and that such support was a legally sufficient cause of the embassy bombings. *Owens IV*, 826 F.Supp.2d. at 150. As such, the plaintiffs both established jurisdiction and prevailed on the merits of liability. When faced with Sudan's Rule 60(b)(4) motion to vacate the default judgments as void, the district court reaffirmed that its findings of material support and causation satisfied the standard for jurisdiction under § 1605A(a). *Owens V*, 174 F.Supp.3d at 276.

On this appeal, Sudan contends the record contains insufficient evidence of material support and causation to give the court jurisdiction under the FSIA. Its attack comes in two forms. First, Sudan disputes the admissibility of much of the evidence introduced to support the district court's factual findings. It does so despite having failed to participate in the evidentiary hearing, where such challenges would have been properly raised. Second, even assuming the evidence was admissible, Sudan contends the district court's factual findings on material support and causation were clearly erroneous and insufficient to sustain jurisdiction as a matter of law. As we shall see, neither argument has

merit.

B. Standard of Review

Sudan faces an uphill battle with its evidentiary challenges for two reasons. First is the burden of proof applicable to a FSIA case. The FSIA "begins with a presumption of immunity" for a foreign sovereign. *Bell Helicopter Textron, Inc. v. Islamic Republic of Iran*, 734 F.3d 1175, 1183 (D.C. Cir. 2013). The plaintiff bears an initial burden of production to show an exception to immunity, such as § 1605A, applies. *Id.* Then, "the sovereign bears the ultimate burden of persuasion to show the exception does not apply," *id.*, by a preponderance of the evidence. *See Simon v. Republic of Hungary*, 812 F.3d 127, 147 (D.C. Cir. 2016). Therefore, if a plaintiff satisfies his burden of production and the defendant fails to present any evidence in rebuttal, then jurisdiction attaches.

Although a court gains jurisdiction over a claim against a defaulting defendant when a plaintiff meets his burden of production, the plaintiff must still prove his case on the merits. This later step, however, does not affect the court's jurisdiction over the case, and a defaulting defendant normally forfeits its right to raise nonjurisdictional objections. *See Practical Concepts*, 811 F.2d at 1547. Thus, the only question before this court is whether the plaintiffs have met their rather modest burden of production to establish the court's jurisdiction.

****197*785**This brings us to Sudan's second obstacle on appeal. When assessing whether a plaintiff has met his burden of production, appellate review of the district court's findings of fact and evidentiary rulings is narrowly circumscribed. With respect to a defaulting sovereign, the FSIA requires only that a plaintiff "establish[ ] his claim or right to relief by evidence satisfactory to the court."28 U.S.C. § 1608(e). This standard mirrors a provision in Federal Rule of Civil Procedure 55(d) governing default judgments against the U.S. Government. *Commercial Bank of Kuwait v. Rafidain Bank*, 15 F.3d 238, 242 (2d Cir. 1994). While both § 1608(e) and Rule 55(d) give an unresponsive sovereign some protection against an unfounded default judgment, *see Jerez*, 775 F.3d at 423, neither provision "relieves the sovereign from the duty to defend cases," *Rafidain Bank*, 15 F.3d at 242. Moreover, § 1608(e) does not "require the court to demand more or different evidence than it would ordinarily receive," *cf. Marziliano v. Heckler*, 728 F.2d 151, 158 (2d Cir. 1984) (applying Rule 55(d)); indeed, "the quantum and quality of evidence that might satisfy a court can be less than that normally required." *Alameda v. Sec'y of Health, Ed. & Welfare*, 622 F.2d 1044, 1048 (1st Cir. 1980) (applying Rule 55(d)).

Unlike the court's conclusions of law, which we review de novo, we review for abuse of discretion the district court's satisfaction with the evidence presented. *Hill v. Republic of Iraq*, 328 F.3d 680, 683 (D.C. Cir. 2003). A district court abuses its discretion when it relies upon a clearly erroneous finding of fact. *Amador County v. U.S. Dep't of the Interior*, 772 F.3d 901, 903 (D.C. Cir. 2014). In a FSIA default proceeding, a factual finding is not deemed clearly erroneous if "there is an adequate basis in the record for inferring that the district court ... was satisfied with the evidence submitted." *Rafidain Bank*, 15 F.3d at 242 (quoting *Marziliano*, 728 F.2d at 158). That inference is drawn when the plaintiff shows "her claim has some factual basis," *cf. Giampaoli v. Califano*, 628 F.2d 1190, 1194 (9th Cir. 1980) (applying Rule 55(d)), even if she might not have prevailed in a contested proceeding. Provided "the claimant's district court brief and reference to the record appear[ ] relevant, fair and reasonably comprehensive," we will not set aside a default judgment for insufficient evidence. *Alameda*, 622 F.2d at 1049. This lenient standard is particularly appropriate for a FSIA terrorism case, for which firsthand evidence and eyewitness testimony is difficult or impossible to obtain from an absent and likely hostile sovereign.

The district court also has an unusual degree of discretion over evidentiary rulings in a FSIA case against a defaulting state sponsor of terrorism. For example, we have allowed plaintiffs to prove their claims using evidence that might not be admissible in a trial. *See Han Kim v. Democratic People's Republic of Korea*, 774 F.3d 1044, 1048-51 (D.C. Cir. 2014) (noting "courts have the authority—indeed, we think, the obligation—to adjust evidentiary requirements to differing situations" and admitting affidavits in a FSIA default proceeding) (internal alterations and quotation marks removed). This broad discretion extends to the admission of expert testimony, which, even in the ordinary case, "does not constitute an abuse of discretion merely because the factual bases for an expert's opinion are weak." *Joy v. Bell Helicopter Textron, Inc.*, 999 F.2d 549, 567 (D.C. Cir. 1993). Section 1608(e) does not require a court to step into the shoes of the defaulting party and pursue every possible evidentiary challenge; only where the court relies upon evidence that is both clearly inadmissible and essential ****198*786** to the outcome has it abused its discretion. This is part of the risk a sovereign runs when it does not appear and alert the court to evidentiary problems. *Cf. Bell Helicopter Textron*, 734 F.3d at 1181.

In this case, the district court has already undertaken to weigh the plaintiffs' evidence and determine its admissibility without any assistance from Sudan. Under these circumstances, we accord even more deference to the district court's factual findings and evidentiary rulings in a FSIA case than in reviewing default judgments to which the strictures of § 1608(e) (or Rule 55(d)) do not apply.

Deference is especially appropriate when considering the lengthy history of the proceedings in the district court. The same learned judge has presided over this litigation since 2001. Over that time, the court has gained considerable familiarity with the plaintiffs' evidence and, during the periods when Sudan participated, with its objections to that evidence. The court has issued four lengthy and detailed opinions that directly address many of Sudan's challenges to the evidence of material support and jurisdictional causation. Through its opinions and actions, it is abundantly clear that the district court both appreciated and carried out is obligation under § 1608(e). *Cf. Compania Interamericana Exp.-Imp., S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996) (vacating default judgment when "the record does not reflect that the court considered the differing standard required by § 1608(e)"). Only if we found the record wholly lacking an "adequate basis" for the district court's conclusions would we overturn its jurisdictional findings.

C. Admissibility of the Evidence

Sudan first challenges the admissibility of evidence supporting the district court's findings of material support and jurisdictional causation. In order to issue a default judgment under § 1608(e), a court must base its findings of fact and conclusions of law upon evidence admissible under the Federal Rules of Evidence. *Kim*, 774 F.3d at 1049. If inadmissible evidence alone substantiates an essential element of jurisdiction, then the court abuses its discretion in concluding the claimant has established his case "by evidence satisfactory to the court." 28 U.S.C. § 1608(e).

Reviewing the admissibility of evidence supporting a default judgment presents significant challenges, which color our treatment of Sudan's arguments. The adversarial process gives the parties an incentive to raise evidentiary challenges at the earliest opportunity because failure to do so ordinarily results in their forfeiture. Raising evidentiary challenges early on also provides the proponent of the evidence the opportunity to respond by offering an alternative theory of admissibility or different, admissible evidence on the same point. Thus, the adversarial process properly places the burden of admissibility upon the interested party, allocates the original determination of admissibility to the district court, which is more familiar with the evidence, and preserves evidentiary disputes for appellate review with the aid of a full trial record. Furthermore, allowing a defaulting defendant to benefit from sandbagging the plaintiff with an admissibility objection on appeal would be unfair and would encourage gamesmanship. When the defendant defaults, therefore, we do not consider its evidentiary challenges on appeal.

These principles do not map neatly to a FSIA case because a defaulting defendant may challenge the factual basis for the court's jurisdiction for the first time on appeal. And because a FSIA plaintiff must produce evidence that is both admissible, *Kim*, 774 F.3d at 1049, and ****199*787** "satisfactory to the court," 28 U.S.C. § 1608(e), in order to obtain a default judgment, we presume a defendant may also challenge for the first time on appeal the admissibility of evidence supporting a jurisdictional fact. As previously noted, however, a defendant sovereign that defers its challenge until appealing a default judgment makes the district court's decision less fully informed and deprives the reviewing court of a fully developed record; it also handicaps the non-defaulting plaintiff in filling out the evidentiary record. For these reasons, we will not accept a belated challenge to admissibility raised by a defaulting sovereign unless the contested evidence is clearly inadmissible and we seriously doubt the plaintiff could have provided alternative evidence that would have been admissible. Those circumstances are not present here.

In this case, Sudan principally challenges the admissibility of two types of evidence: (1) the plaintiffs' expert testimony and (2) reports from the Department of State and the CIA. We find no error in the district court's reliance upon either.

1. The expert testimony

In its opinions on liability and on Sudan's Rule 60(b) motion, the district court discussed the experts' testimony in great detail and concluded it sufficed to establish jurisdiction. *Owens V*, 174 F.Supp.3d at 276. Because it may be dispositive, we, too, start with the expert testimony.

The testimony of expert witnesses is of crucial importance

in terrorism cases, *see, e.g.*, *Kilburn*, 376 F.3d at 1132 (jurisdiction satisfied based solely upon the declaration of an expert witness); *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685, 704 (7th Cir. 2008); *United States v. Damrah*, 412 F.3d 618, 625 (6th Cir. 2005), because firsthand evidence of terrorist activities is difficult, if not impossible, to obtain. Victims of terrorist attacks, if not dead, are often incapacitated and unable to testify about their experiences. Perpetrators of terrorism typically lie beyond the reach of the courts and go to great lengths to avoid detection. Eyewitnesses in a state that sponsors terrorism are similarly difficult to locate and may be unwilling to testify for fear of retaliation. The sovereigns themselves often fail to appear and to participate in discovery, as Sudan did here. With a dearth of firsthand evidence, reliance upon secondary materials and the opinions of experts is often critical in order to establish the factual basis of a claim under the FSIA terrorism exception.

Sudan raises three challenges to the expert testimony presented at the evidentiary hearing. First, despite conceding that expert testimony is "doubtless admissible" in a FSIA default proceeding, Sudan contends that experts alone are insufficient to establish jurisdiction in the absence of other direct, admissible evidence. Second, Sudan objects that the plaintiffs' experts merely served as conduits for inadmissible hearsay, upon which the district court relied. Finally, Sudan quarrels with the inferences drawn by the experts and by the district court from the underlying factual background. None of these arguments is persuasive.

a. Need for direct evidence

The recent case of *Han Kim v. Democratic People's Republic of Korea* demonstrates the importance of expert testimony in FSIA proceedings and forecloses Sudan's first argument. In *Kim*, relatives of a pastor who was a U.S. citizen sued the Democratic People's Republic of Korea (DPRK) under the FSIA terrorism exception, alleging the regime abducted, tortured, and killed the cleric for his ministry to DPRK refugees. 774 F.3d at 1046. Because the DPRK refused to participate in the litigation and intimidated potential ****200*788** eyewitnesses, the plaintiffs could offer no direct evidence of their relative's torture and killing by the DPRK. Instead, two experts submitted declarations stating that North Korea invariably tortured and killed its political prisoners. *Id.* The court in *Kim* found these declarations "doubtless admissible" under Federal Rule of Evidence 702 and refused categorically to require eyewitness testimony or direct evidence on both practical and policy grounds:

> In these circumstances, requiring that the Kims prove exactly what happened to the Reverend and when would defeat the Act's very purpose: to give American citizens an important economic and financial weapon to compensate the victims of terrorism, and in so doing to punish foreign states who [sic] have committed or sponsored such acts and deter them from doing so in the future. This is especially true in cases of forced disappearance, like this one, where direct evidence of subsequent torture and execution will, by definition, almost always be unavailable, even though indirect evidence may be overwhelming. Were we to demand more of plaintiffs like the Kims, few suits like this could ever proceed, and state sponsors of terrorism could effectively immunize themselves by killing their victims, intimidating witnesses, and refusing to appear in court.

Id. at 1048-49 (internal citations and quotation marks omitted).

Here, as in *Kim*, the plaintiffs face a state sponsor of terrorism that has refused to participate in the litigation. By skipping discovery and the evidentiary hearing, Sudan made it virtually impossible for the plaintiffs to get eyewitness accounts of its activities in the 1990s. Nor can the plaintiffs ordinarily subpoena members of al Qaeda, many of whom are dead or in hiding, to testify regarding the actions of the regime. The Congress originally enacted the terrorism exception in the FSIA because state sponsors of terrorism "ha[d] become better at hiding their material support" and misdeeds. *Kilburn*, 376 F.3d at 1129 (internal quotation marks omitted). Just as requiring firsthand evidence of the DPRK's covert atrocities in *Kim* would "effectively immunize" the regime from responsibility for its crimes, requiring that a victim of a state-supported bombing offer direct evidence of material support would shield state sponsors of terrorism from liability for the very predicate act—material support—that gives the court jurisdiction.

Nevertheless, Sudan persists that expert testimony alone cannot establish jurisdiction and liability under the FSIA. To wit, Sudan complains that the plaintiffs did not offer "any admissible factual evidence" or "call any percipient witnesses competent to testify about relevant facts in Sudan in the 1990s." In particular, Sudan would have us distinguish *Kim* as having turned solely upon a piece of non-expert evidence.

Sudan's argument is both legally and factually flawed. Neither § 1608(e) nor any other provision of the FSIA requires a court to base its decision upon a particular type

of admissible evidence. As long as the evidence itself is admissible, as expert testimony certainly may be, and the court finds it satisfactory, its form or type is irrelevant. *Cf. Holland v. United States*, 348 U.S. 121, 140, 75 S.Ct. 127, 99 L.Ed. 150 (1954) (refusing to distinguish between different types of evidence in a criminal prosecution). Indeed, cases in this Circuit and in others have repeatedly sustained jurisdiction or liability or both under the terrorism exception to the FSIA and in other terrorism cases based solely upon expert testimony. *Kilburn*, 376 F.3d at 1132; *Boim*, 549 F.3d at 705 ("[W]ith [the plaintiff's expert report] in the record and nothing on the other side the [district] court had no choice but to enter summary ****201*789** judgment for the plaintiffs with respect to Hamas's responsibility for the Boim killing"). Therefore the plaintiffs' "failure" to present eyewitness testimony or other direct evidence is of no moment as to whether they have satisfied their burden of production.

Sudan's attempt to distinguish *Kim* on its facts is similarly unpersuasive. True, in *Kim*, we placed great weight upon a single piece of admissible non-expert evidence: the conviction of a DPRK agent who had kidnapped the victim, of which the district court took judicial notice. *Kim*, 774 F.3d at 1049. This conviction placed the victim at the scene of the crime and allowed the court to conclude he had been subjected to the torture and killing that the DPRK "invariably" inflicts upon its prisoners. *Id.* at 1051. Without this conviction, we noted, "[o]ur conclusion would no doubt differ" because there was no other evidence linking the DPRK to the victim's disappearance. *Id.*

Our conclusion, however, turned upon the specific facts of that case; we did not announce a categorical requirement of direct evidence in FSIA cases. Whereas the conviction in *Kim* linked the defendant sovereign to the plaintiff's disappearance, in the present case there is no missing link between Sudan's actions and the embassy bombings. It is undisputed that al Qaeda came to Sudan in the early 1990s and maintained its headquarters there. It is also beyond question that al Qaeda perpetrated the embassy bombings in 1998. As in *Kim*, expert testimony supplies the predicate act (here material support, in *Kim* torture and extrajudicial killing) linking these two events and conferring jurisdiction upon the court. But here, unlike in *Kim*, we need no further evidence beyond the expert testimony to connect the defendant sovereign to the extrajudicial killings. The expert testimony therefore suffices to meet the plaintiffs' burden of production on jurisdiction.

b. Reliance upon inadmissible hearsay

Sudan next contends the experts recited facts based upon inadmissible hearsay and the district court improperly relied upon those facts to establish jurisdiction and to hold Sudan liable.

Under Federal Rule of Evidence 703, a properly qualified expert may base his opinion upon otherwise inadmissible sources of information as long as those sources are reasonably relied upon in his field of expertise. Further, the expert may disclose to the factfinder otherwise inadmissible "underlying facts or data as a preliminary to the giving of an expert opinion." *See, e.g.*, Fed. R. Evid. 705 advisory committee's note. Indeed, disclosure is often necessary to enable the court to "decid[e] whether, and to what extent, the person should be allowed to testify." *Id.*; 2 McCormick on Evidence § 324.3 (7th ed. 2016) ("otherwise the opinion is left unsupported with little way for evaluation of its correctness"). Nevertheless, "the underlying information" relied upon by a qualified expert "is not admissible simply because the [expert's] opinion or inference is admitted." *See*Fed. R. Evid. 703 advisory committee's note. Thus, as Sudan points out, "a party cannot call an expert simply as a conduit for introducing hearsay under the guise that the testifying expert used the hearsay as the basis of his testimony." *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 136 (2d Cir. 2013) (internal quotation marks omitted).

Applying these standards to the case at hand, we see that the district court properly distinguished the experts' clearly admissible opinions from the potentially inadmissible facts underlying their testimony. Sudan principally objects to the district court's recitation of those underlying ***790**202** facts in its 2011 opinion on liability, which facts it claims are inadmissible even if the experts' opinions were properly admitted. The district court acknowledged this complication in its 2016 opinion on Sudan's motion to vacate: "Sudan may have plausible arguments" that not "every factual proposition in the Court's 2011 opinion can be substantiated by record evidence admissible under the Federal Rules of Evidence." *Owens V*, 174 F.Supp.3d at 275. But even if "particular statements in that opinion may not be adequately supported," the experts' opinions "nonetheless" provided "sufficient evidence in the record of the necessary jurisdictional facts." *Id.* We agree with this conclusion.

At the outset, we note the district court did not err—much less prejudicially err—in reciting potentially inadmissible facts in its 2011 opinion on liability. For their conclusions to be admissible and credible, the plaintiffs' experts needed to disclose the factual basis for their opinions. *See,*

e.g., *Fox v. Taylor Diving & Salvage Co.*, 694 F.2d 1349, 1356 (5th Cir. 1983) ("An expert is permitted to disclose hearsay for the limited purpose of explaining the basis for his expert opinion"). Without that disclosure, the district court would have been at a loss to determine whether the opinions were admissible as reliable expert testimony. *See*Fed. R. Evid. 702 (requiring court to determine whether expert's knowledge "is based on sufficient facts or data," and is "the product of reliable principles and methods" that have been "reliably applied ... to the facts of the case"). Therefore, the court did not err in allowing the plaintiffs' experts to recount potentially inadmissible facts in order to establish the basis for their admissible opinions.

The district court also needed to engage with the underlying facts in order to explain why it admitted and credited the experts' opinions. Without those facts, we too would struggle to evaluate Sudan's evidentiary challenges to the opinion testimony. Hence, some discussion of the potentially inadmissible underlying facts was unavoidable in the 2011 opinion in order to admit, to credit, and to enable our review of the experts' opinions.

More important, the district court properly based its findings upon the experts' "undoubtedly admissible" opinions and not upon any arguably inadmissible facts. The district court's 2011 and 2016 opinions extensively quote the experts' opinions in reaching the conclusion that Sudan's material support caused the embassy bombings. *See Owens V*, 174 F.Supp.3d at 277-79 (quoting the opinions of Kohlmann, Simon, and Vidino); *Owens IV*, 826 F.Supp.2d at 146 (quoting Simon and Kohlmann to conclude "Sudanese government support was critical to the success of the 1998 embassy bombings"). We therefore see no error in the court's conclusion that the expert testimony satisfied the plaintiffs' burden of production on jurisdictional causation.

In a supplemental filing, Sudan compares the experts' opinions in this case to those held inadmissible in *Gilmore v. Palestinian Interim Self-Government Authority*, 843 F.3d 958 (D.C. Cir. 2016), but the gulf between the two cases is wide. In *Gilmore*, the plaintiff's expert neither stated nor applied "a reliable methodology" from which he had derived his opinions. *Id.* at 972-73. Instead, "his analysis consist[ed] entirely of deductions and observations that flow directly from the content of the hearsay statements and would be self-evident to a layperson." *Gilmore v. Palestinian Interim Self-Gov't Auth.*, 53 F.Supp.3d 191, 213 (D.D.C. 2014). Indeed, the *Gilmore* expert's opinion derived solely from materials that had been proffered at trial but excluded as inadmissible hearsay. *Id.* at 212-13. In this case, the plaintiffs' ****203*791** experts relied upon their own extensive research into terrorist organizations to conclude that Sudan provided material support that caused the embassy bombings. In doing so, the experts—unlike the expert in *Gilmore*—drew upon both materials admitted at the evidentiary hearing and sources encountered in their research and professional experience. A "layperson" could not reliably have reached the same conclusions as the experts in this case.

Finally, Sudan belatedly challenges the reliability of the factual bases for the experts' testimony. Of course, "the decision whether to qualify an expert witness is within the broad latitude of the trial court and is reviewed for abuse of discretion." *Haarhuis v. Kunnan Enters.*, 177 F.3d 1007, 1015 (D.C. Cir. 1999) (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999)). As previously stated, experts may rely upon hearsay evidence in forming their admissible, professional opinions. Indeed, it is hard to imagine what other than hearsay an expert on terrorism could use to formulate his opinion. *See Boim*, 549 F.3d at 704 ("Biologists do not study animal behavior by placing animals under oath, and students of terrorism do not arrive at their assessments solely or even primarily by studying the records of judicial proceedings"). All the Federal Rules require is that the "facts or data in the particular case upon which an expert bases an opinion or inference ... [are] of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." Fed. R. Evid. 703 (2010) (amended without substantive change 2011).

Here, the plaintiffs' experts used, among other things, trial testimony of al Qaeda informants, intelligence reports from the U.S. Government, and their exhaustive review of secondary sources to reach their conclusions. Courts have consistently held these sorts of materials provide an adequate basis for expert testimony on terrorism. *See Damrah*, 412 F.3d at 625 & n.4 (approving an expert's reliance upon books, press releases, newspaper articles, and the State Department's *Patterns of Global Terrorism* reports); *Boim*, 549 F.3d at 704-05 (approving reliance upon terrorist websites and observations from prior criminal trials). In light of the general acceptance of the plaintiffs' experts' sources and methodologies, we conclude the district court did not abuse its discretion in qualifying the experts, summarizing their testimony, or crediting their conclusions.

c. Reliability of the experts' conclusions

Sudan's third objection attacks the reliability of the experts' opinions in this case as inconsistent with the underlying facts. In other words, Sudan asks this court to hold the expert opinions are inadmissible because the plaintiffs' witnesses have not "reliably applied [their] principles and methods to the facts of the case." *See*Fed. R. Evid. 702(d). This challenge also implies the district court based its findings of jurisdiction upon clearly erroneous facts. *See Price*, 389 F.3d at 197 (reviewing for clear error jurisdictional findings of fact in a FSIA terrorism case); *see also Duke Power Co. v. Carolina Envtl. Study Grp.*, 438 U.S. 59, 74-77, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978).

The problem with this argument is that Sudan has not explained—either at the evidentiary hearing or on appeal—why these expert opinions are unreliable or clearly erroneous. By refusing to participate in the evidentiary hearing, Sudan gave up its opportunity to challenge the fit between the experts' opinions and the underlying facts. At the hearing, the witnesses described the general bases of their ****204*792** expertise, and the district court found them qualified to give opinions on Sudan's material support for al Qaeda. In doing so, the experts said they had relied upon multiple sources of information, including but not limited to those presented at the hearing. But the experts did not—and did not need to—provide the specific basis for their knowledge for each factual proposition they advanced. *See*Fed. R. Evid. 705 ("an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data"). Therefore, we cannot know with certainty whether the experts' opinions were consistent or in conflict with the underlying facts upon which they relied. Had Sudan participated in the hearing, it could have challenged the experts to substantiate each and every factual proposition they asserted. *Cf. Bryan v. John Bean Div. of FMC Corp.*, 566 F.2d 541, 545 (5th Cir. 1978) (noting "the onus of eliciting the bases of the opinion is placed on the" party opposing admission). That would have allowed this court to determine whether the experts' opinions reliably reflected the more developed factual record. By deferring its attack until this appeal, Sudan has deprived the experts of an opportunity to respond, and instead asks this court to rule on an incomplete record. We decline the invitation. *See Boim*, 549 F.3d at 704-05 (rejecting a challenge to the reliability of an expert's inferences first brought on appeal).

2. The State Department reports

Of course, the district court did not rely solely upon expert testimony to establish jurisdiction and liability. Of particular importance, the plaintiffs marshaled nearly a decade of State Department reports that speak directly to Sudan's support for terrorist groups, including al Qaeda. *See, e.g.*, U.S. Dep't of State, Patterns of Global Terrorism: 1993 ("Despite several warnings to cease supporting radical extremists the Sudanese government continued to harbor international terrorist groups in Sudan"); U.S. Dep't of State, Patterns of Global Terrorism: 1998 ("Sudan provides safe haven to some of the world's most violent terrorist groups, including Usama Bin Ladin's al-Qaida"); U.S. Dep't of State, Patterns of Global Terrorism: 2000 (2001) ("Sudan ... continued to be used as a safe haven by members of various groups, including associates of Osama bin Laden's al-Qaeda organization"). These reports both bolster the experts' conclusions about Sudan's material support for the al Qaeda embassy bombings and independently show the plaintiffs' claims "ha[ve] some factual basis," as required by § 1608(e). *Giampaoli*, 628 F.2d at 1194.

As with the expert testimony, Sudan contends these reports are inadmissible hearsay. The plaintiffs urge the State Department reports were admissible under the hearsay exception for public records. *See*Fed. R. Evid. 803(8). That exception allows the admission of "a record or statement of a public office if" it: (1) contains factual findings (2) from a legally authorized investigation. *Id* at 803(8)(iii). Pursuant to the "broad approach to admissibility" under Rule 803(8), a court may also admit "conclusion[s] or opinion[s]" contained within a public record. *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 170, 109 S.Ct. 439, 102 L.Ed.2d 445 (1988). Once proffered, a public record is presumptively admissible, and the opponent bears the burden of showing it is unreliable. *Bridgeway Corp. v. Citibank*, 201 F.3d 134, 143 (2d Cir. 2000).

The State Department's *Patterns of Global Terrorism* reports fit squarely within the public records exception. First, the reports contain both factual findings and conclusions on Sudan's support for terrorism in general and al Qaeda in particular. Second, the reports were created ****205*793** pursuant to statute, *see*22 U.S.C. § 2656f(a) (requiring annual reports on terrorism), and are therefore the product of a "legally authorized investigation." *See Bridgeway*, 201 F.3d at 143 (holding State Department reports required by statute are public records). Indeed, in contested FSIA proceedings we have previously approved admission of the very reports Sudan challenges, *Simpson*, 470 F.3d at 361; *Kilburn*, 277 F.Supp.2d at 33, *aff'd*376 F.3d at 1131, as have other courts, *Damrah*, 412 F.3d at 625 n.4.

Sudan objects on appeal to the "trustworthiness" of these reports, but that objection should have been made in the district court. *See*Fed. R. Evid. 803(8)(B) (providing for the admission of public records if "the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness"). Even now, Sudan does not present any reason, beyond their reliance upon hearsay, to deem these reports unreliable. *See Kehm v. Procter & Gamble Mfg. Co.*, 724 F.2d 613, 618 (8th Cir. 1983) (holding inclusion of hearsay is not a sufficient ground for excluding a public record as unreliable).[4] Although the reports lack the details that the expert witnesses provided concerning Sudan's material support, they are competent, admissible evidence, which together with the plaintiffs' admissible opinion evidence satisfy the burden of production on material support and jurisdictional causation. Because Sudan, by defaulting in the district court, has not carried its burden of persuasion, the district court properly asserted jurisdiction over the cases.[5]

D. Sufficiency of the Evidence

This brings us to Sudan's second major challenge to the plaintiffs' evidence. In addition to disputing the admissibility of the evidence, Sudan argues the totality of the evidence cannot establish material support and jurisdictional causation as a matter of law. First, Sudan contends the plaintiffs cannot show its actions caused the plaintiffs' injuries because its conduct neither substantially nor foreseeably provided material ***794**206** support for the embassy bombings. Second, Sudan argues the plaintiffs cannot recover because its support, if any, was not intended to cause the bombings.

1. Proximate causation

Sudan's first challenge to the sufficiency of the evidence rests upon the standard for jurisdictional causation, *viz.*, proximate cause. In *Kilburn*, we held a plaintiff must show proximate cause to establish jurisdiction under § 1605(a)(7), the predecessor of the current FSIA terrorism exception. 376 F.3d at 1128. Because § 1605A(a) restates the predicate acts of § 1605(a)(7), it stands to reason that proximate cause remains the jurisdictional standard.

Proximate cause requires "some reasonable connection between the act or omission of the defendant and the damage which the plaintiff has suffered." *Id.* (quoting Prosser & Keeton on the Law of Torts 263 (5th ed. 1984)). It "normally eliminates the bizarre," *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 536, 115 S.Ct. 1043, 130 L.Ed.2d 1024 (1995), "preclud[ing] liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity." *Paroline v. United States*, — U.S. —, 134 S.Ct. 1710, 1719, 188 L.Ed.2d 714 (2014). As Sudan points out, the inquiry into proximate cause contains two similar but distinct elements. First, the defendant's actions must be a "substantial factor" in the sequence of events that led to the plaintiff's injury. *Rothstein v. UBS*, 708 F.3d 82, 91 (2d Cir. 2013). Second, the plaintiff's injury must have been "reasonably foreseeable or anticipated as a natural consequence" of the defendant's conduct. *Id.* Sudan contends that its support satisfies neither element of the inquiry into proximate cause with respect to the 1998 embassy bombings here at issue.

a. Substantial factor

Sudan offers two reasons its actions were not a "substantial factor" in al Qaeda's embassy bombings. Most basically, Sudan contends it did not provide any material support at all to al Qaeda during the 1990s, making proximate causation impossible. Much of this argument reprises Sudan's objections to the inferences drawn by the experts from al Fadl's testimony, which objections we have considered and rejected.

Nevertheless, Sudan points to a number of events as to which it contends the district court erroneously found material support for al Qaeda. For example, Sudan criticizes the district court's discussion of al Qaeda purchasing properties, starting businesses, and establishing terrorist training camps in Sudan. *Owens IV*, 826 F.Supp.2d at 141, 143-44. Viewed in isolation, none of these events necessarily evinces a Sudanese hand in al Qaeda's activities. That view, however, like Nelson at the Battle of Copenhagen, turns a blind eye to the broader picture. The record shows that after al Qaeda started its businesses, Sudan fostered their growth through tax exceptions and customs privileges. This allowed al Qaeda nearly to monopolize the export of several agricultural commodities, plowing its profits back into its broader organization. Again, after al Qaeda opened its training camps, Sudanese intelligence shielded their operations from the local police despite complaints from nearby residents. This preferential treatment certainly qualifies as material support, even if Sudan played no role in creating

the underlying businesses and training camps.

Sudan also disputes the district court's finding that it provided financial support to al Qaeda. To the contrary, Sudan argues, al Qaeda financially supported Sudan by investing in Sudanese infrastructure. Sudan ***795**207** is correct—bin Laden did provide financial assistance to Sudan—but it ignores record evidence of Sudan's reciprocal aid. For example, as the district court noted, bin Laden's $50 million investment in the partially state-owned al Sharmal Islamic Bank gave al Qaeda "access to the formal banking system," which proved useful for "laundering money" and "financing terrorist operations." *Id.* at 144. Al Qaeda operatives, including bin Laden himself, held accounts in their real names in al Sharmal bank, demonstrating the impunity with which the group operated in Sudan. Thus, although Sudan did not directly fund al Qaeda or its business, the court reasonably concluded its in-kind assistance had the same practical effect.

Finally, Sudan invokes the testimony of Simon, the former NSC staffer overseeing counterterrorism activities, that Sudan provided no "useful information on bin Laden's" activities that "might have helped the U.S. unravel the plots to attack the two East African U.S. embassies." *Id.* at 145. The district court's finding of material support, Sudan argues, is unsustainable "without a showing that Sudan had useful intelligence and nonetheless elected not to share it." Although the district court did not say what Sudan knew about al Qaeda or when it knew it, Sudan's claims of ignorance regarding al Qaeda's aims defies both reason and the record. After all, Sudan invited "literally every single jihadist style group," including al Qaeda, to relocate to Sudan in the early 1990s. At the time, bin Laden was known as a wealthy Islamist financier and a leader in the Afghani mujahedeen. As soon as al Qaeda took up residence in Sudan, bin Laden began issuing *fatwas* denouncing the United States and calling for attacks upon U.S. interests. And after the Battle of Mogadishu in 1993, al Qaeda operatives publically boasted about killing U.S. soldiers in Somalia. According to Kohlmann, bin Laden himself took to the Arab press and U.S. cable television to claim responsibility for this attack. Sudanese intelligence officers would have been privy to all this information because they frequented al Qaeda's guesthouses, and al Turabi's NIF shared offices with al Qaeda for a time.

Sudan's own actions also gave it knowledge of al Qaeda's capabilities and aims. For example, Sudanese intelligence must have known that al Qaeda operated training camps where explosives were used because it shielded those camps from interference by the local police. Sudan also knew al Qaeda was transporting large, undeclared sums of money to Kenya because Sudanese agents shepherded operatives with this money past airport inspections. Likewise, Sudan knew something of al Qaeda's arsenal because its own planes transported al Qaeda's weapons from Afghanistan to Sudan. Indeed, on one occasion, a Sudanese official even assisted al Qaeda in an ultimately unsuccessful bid to obtain nuclear weapons from a smuggler in South Africa. Contrary to Sudan's contention, all this information would have aided the United States in appreciating the threat of al Qaeda and attempting to disrupt its operations. Sudan's refusal to divulge any of this information—even after a specific request from the United States in 1996—certainly qualifies as material support. *Cf. Estate of Parsons v. Palestinian Auth.*, 651 F.3d 118, 125-26 (D.C. Cir. 2011) (security officers who, with knowledge, failed to intervene in ongoing bomb plot provided material support).

Sudan's second argument that its actions were not a "substantial factor" causing the plaintiffs' injuries focuses upon the temporal distance between Sudan's support for al Qaeda and the embassy bombings. Principally, Sudan argues that by expelling bin Laden in 1996 it broke the chain of causation leading to the 1998 embassy bombings. We confronted and rejected the ****208*796** same objection in our 2008 opinion affirming the district court's denial of Sudan's motion to dismiss. *Owens III*, 531 F.3d at 895. Although we there recognized the "[p]laintiffs' allegations are somewhat imprecise as to the temporal proximity of Sudan's actions to and their causal connection with the terrorist act," we held "this imprecision [was] not fatal for purposes of jurisdictional causation." *Id.* (quoting *Rux v. Republic of Sudan*, 461 F.3d 461, 474 (4th Cir. 2006)) (internal quotation marks omitted). In order to bridge the gap, we noted the plaintiffs' "allegations, and the reasonable inferences drawn therefrom" need only "demonstrate a reasonable connection between the foreign state's actions and the terrorist act." *Id.* In other words, provided the plaintiffs demonstrated proximate cause, the temporal remoteness between Sudan's material support and the embassy bombings was irrelevant. *See Grubart*, 513 U.S. at 536, 115 S.Ct. 1043 (proximate cause "normally eliminates the bizarre" without "the need for further temporal or spatial limitations"). And at that stage in the litigation, we concluded, the plaintiffs had more than met their burden of pleading facts sufficient to establish proximate causation. *Owens III*, 531 F.3d at 895.

Fast-forwarding to the present day, the plaintiffs have substantiated their allegations of material support and jurisdictional causation with admissible evidence, which

Sudan did not challenge at the evidentiary hearing. Once again, the district court found the evidence established a "reasonable connection" between Sudan's actions and the embassy bombings. As in our 2008 decision, we see nothing erroneous with this conclusion for two reasons.

First, we do not believe Sudan broke the chain of proximate causation by completely disassociating itself from al Qaeda in or after 1996. A declassified CIA President's Daily Brief in December 1998—months after the embassy bombings—reports a "Bin Laden associate in Sudan" sending materials to al Qaeda in Afghanistan. The State Department's 1998 *Patterns of Global Terrorism* further reports that "Sudan *continued* to serve as a meeting place, safehaven, and training hub for a number of international terrorist groups, particularly Usama Bin Ladin's al-Qaida organization" even after the embassy bombings. Although counterterrorism cooperation between the United States and Sudan improved after the bombings, the 2000 *Patterns of Global Terrorism* report reiterates "Sudan *continued* to serve as a safehaven for members of al-Qaida, the Lebanese Hizballah, al-Gama'a al-Islamiyya, Egyptian Islamic Jihad, the PIJ, and HAMAS." In addition, both Kohlmann and Simon testified that al Qaeda operatives remained in Sudan after 1996. Sudan insists that a gap remained between its expulsion of bin Laden and the government reports detailing al Qaeda's presence in Sudan in late 1998, but it strains credulity that Sudan would immediately resume relations with al Qaeda following bombings for which the group claimed credit after completely cutting ties two years earlier. Rather, as the district court inferred, it is far more likely that Sudan, despite having expelled bin Laden in 1996, continued to harbor al Qaeda terrorists until and after the bombings.

Second, even if Sudan were correct on this factual point, severing ties with al Qaeda would not preclude a finding that its material support remained a substantial factor in the embassy bombings. *See Boim*, 549 F.3d at 699-700 (holding a "two year[ ]" interval between the defendant's material support and the plaintiff's injury was far from the point at which "considerations of temporal remoteness might ... cut off liability").

Sudan counters by selectively quoting the 9/11 Commission Report, stating "Bin ****209*797** Ladin left Sudan ... significantly weakened." Perhaps so if viewed in isolation, but bin Laden's expulsion did not undo the support Sudan provided in the previous years. Sudan's invitation, after all, allowed al Qaeda to extricate itself from a war-torn Afghanistan and organize its terrorist enterprise in a stable safe haven. During al Qaeda's stay, Sudan sheltered the group from foreign intelligence and facilitated its movement throughout the region. It also put al Qaeda in contact with other, more experienced terrorist groups residing in Sudan. These actions allowed al Qaeda to grow its membership, to develop its capabilities, and to establish the cells in Kenya and Tanzania, which ultimately launched the 1998 bombings. Indeed, "the vast majority of the planning and preparation [for the embassy attacks] took place between the years of 1991 and 1997" when Bin Laden, for the most part, remained in the Sudan. According to one expert, Sudan's expulsion of bin Laden may have even "accelerated the bomb plot" by allowing al Qaeda to militarize its African cells without fear of reprisal against him by the United States, which had known of his presence in Sudan. *Id.* at 310-11. As Sudan notes, al Qaeda had not committed "any terrorist attacks predating" its arrival in the country, and indeed "the idea that al-Qaeda was capable of anything significant" in the early 1990s "was laughable." Yet in a few short years, al Qaeda progressed from mounting small-scale, often-unsuccessful attacks to orchestrating the near-simultaneous bombings of American embassies in two different countries. Although the expulsion of bin Laden may have marked a temporary setback for Al Qaeda, on balance, the organization benefited greatly from Sudan's aid during the 1990s. Therefore, the district court's conclusion that Sudan's support was a "substantial factor" in the chain of causation leading to the embassy bombings was far from clearly erroneous.

b. Reasonable foreseeability

Sudan contends even if its support was a "significant factor" in the embassy bombings, the attacks were not "reasonably foreseeable or anticipated as a natural consequence" of that support. Principally, Sudan argues it was not foreseeable in 1991—when Sudan invited bin Laden to relocate—that al Qaeda would engage in terrorist activities. As evidence, Sudan points out that bin Laden was not yet infamous for acts of terrorism and the United States had not yet designated al Qaeda a terrorist organization or bin Laden a terrorist and did not do so until after the embassy bombings. Designation of Foreign Terrorist Organizations, 64 Fed. Reg. 55,112, 55,112/1 (Oct. 8, 1999); Exec. Order No. 13099, 63 Fed. Reg. 45,167, 45,167 (Aug. 20, 1998). That bin Laden and al Qaeda "may have abused their opportunities" in the country, Sudan urges, does not mean it should be held accountable when "its residents later turn out to be terrorists."

Once again Sudan ignores the broader context of its actions. In the early 1990s the Sudanese government

reached out to numerous terrorist groups, including the "Palestinian HAMAS movement, the Palestinian Islamic Jihad, Hezbollah, ... al Qaeda, the Egyptian Islamic Jihad, the Libyan Islamic Fighting Group, dissident groups from Algeria, Morocco, the Eritrean Islamic Jihad movement." *Owens IV*, 826 F.Supp.2d at 141 (quoting Kohlmann). "[L]iterally every single jihadist style group, regardless of what sectarian perspective they had, was invited to take a base in Khartoum" during this period. *Id.* That al Qaeda was included in this list of renowned terrorist organizations supports an inference that its terrorist aims were foreseeable—indeed, foreseen—at the time of Sudan's invitation.

****210*798** Sudan's own briefs implicitly concede the foreseeability of al Qaeda's aims in the early 1990s. To wit, Sudan reiterates the district court's finding that "Bin Laden 'was a famous mujahedeen fighter who had successfully fought the Soviet Union' and 'was thought to be fabulously wealthy.' " *SeeOwens IV*, 826 F.Supp.2d at 140-41. Yet it argues "the idea that al-Qaeda was capable of anything significant was laughable." True, al Qaeda was then a fledgling terrorist organization, but one led by a "famous ... fighter" and a "fabulously wealthy" fundamentalist jihadi who had "successfully fought" a world superpower. Any impartial observer could see the group's future potential for mayhem far outstripped its then already substantial capabilities. Sudan cannot bury its head in the sand and contend otherwise.

Furthermore, as its relationship with al Qaeda deepened, Sudan undoubtedly became aware of al Qaeda's hostility to the United States and its intention to launch attacks against American interests. Starting in 1991, bin Laden issued a series of *fatwas* against the United States from Khartoum, and al Qaeda operatives publically boasted about attacking American soldiers in Somalia in 1993. Despite this, Sudan continued to assist the group in moving people and resources throughout the region. Sudan's claimed ignorance of al Qaeda's specific aim to bomb American embassies focuses too narrowly upon those events; Sudan could not help but foresee that al Qaeda would attack American interests wherever it could find them.

In sum, Sudan's actions in the 1990s were undoubtedly a "substantial factor in the sequence of responsible causation" that led to the embassy bombings. *Rothstein*, 708 F.3d at 91. Moreover, the bombings were a "reasonably foreseeable or anticipated as a natural consequence" of its material support. *Id.* Therefore, the district court correctly held that the plaintiffs had demonstrated proximate cause, establishing jurisdiction under the FSIA.

2. Sudan's specific intent

Sudan resists this conclusion by attempting to graft an additional requirement onto the proximate cause analysis. The FSIA terrorism exception, Sudan argues, requires something more than proximate causation: "The foreseeability aspect of proximate causation" it says, "is reinforced by § 1605A(a)(1)'s requirement that material support be provided 'for' the predicate act." Sudan's point is that the use of "for" with reference to "the provision of material support" indicates that the FSIA "requires a showing of intent" on the part of the foreign sovereign to achieve the predicate act, for which it refers us to *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 502, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) (prohibition on selling merchandise "marketed for use" with illegal drugs requires a showing of intent on the defendant's behalf). ***But see*** *Posters 'N' Things, Ltd. v. United States*, 511 U.S. 513, 519, 114 S.Ct. 1747, 128 L.Ed.2d 539 (1994) (prohibition in the same statute on selling a product "intended or designed for use" with illegal drugs looks only to the objective features of the product, not to a defendant's intent). Under this reading, Sudan's material support could not give rise to jurisdiction unless Sudan specifically intended its support to cause the embassy bombings.

Although the record contains much evidence of Sudan's support for al Qaeda and its general awareness of the group's terrorist aims, nothing suggests that Sudan specifically knew of or intended its support to cause the embassy bombings. Nothing in the FSIA, however, requires a greater showing of intent than proximate cause. Indeed, we dispatched a similar argument ****211*799** in *Kilburn*, along with a hypothetical raised by the sovereign defendant:

> A terrorist organization is supported by two foreign states. One specifically instructs the organization to carry out an attack against a U.S. citizen. Can the state which only provides general support, but was not involved with the act giving rise to the suit, also be stripped of its immunity?

376 F.3d at 1128. Yes, we said. Because material support "is difficult to trace," requiring more than proximate cause "could absolve" a state from liability when its actions significantly and foreseeably contributed to the predicate act. *Id.*

Further, we rejected the related argument that the "provision of material support or resources ... *for such an*

act" required that "a state's material support must go directly for the specific act." *Id.* at 1130. That limitation, we explained, "would likely render § 1605(a)(7)'s material support provision ineffectual" because material support "is fungible" and "terrorist organizations can hardly be counted on to keep careful bookkeeping records." *Id.* Indeed, in other situations, courts have required neither specific intent nor direct traceability to establish the liability of material supporters of terrorism. *See Boim*, 549 F.3d at 698 (approving liability for donors to terrorist organizations whose donations were made for non-terrorism purposes). As Judge Posner has aptly said, "[t]o require proof that [a defendant] *intended* that his contribution be used for terrorism ... would as a practical matter eliminate ... liability except in cases in which the [defendant] was foolish enough to admit his true intent." *Id.* at 698-99. The same holds true for a state sponsor of terrorism under the FSIA; it may not avoid liability for supporting known terrorist groups by professing ignorance of their specific plans for attacks. In sum, that the evidence failed to show Sudan either specifically intended or directly advanced the 1998 embassy bombings is irrelevant to proximate cause and jurisdictional causation.

* * * * *

In short, the plaintiffs have offered sufficient admissible evidence that establishes that Sudan's material support of al Qaeda proximately caused the 1998 embassy bombings. The district court, therefore, correctly held the plaintiffs met their burden of production under the FSIA terrorism exception. Because Sudan failed to participate in the litigation, it did not rebut that its material support caused these extrajudicial killings. Therefore, this court has jurisdiction to hear claims against Sudan arising from the 1998 embassy bombings.

IV. Timeliness of Certain Claims

The remainder of Sudan's jurisdictional arguments apply only to certain groups of plaintiffs. Even if we rule for Sudan on all these matters, many of the judgments—and the district court's 2011 holding on liability—will therefore remain intact.

One such argument is that the claims of certain plaintiffs are barred by the statute of limitation in the FSIA, which Sudan views as a jurisdictional limit on the court's power to hear a case. Like its predecessor, the current version of the FSIA terrorism exception contains a limitation period on personal injury claims against a state sponsor of terrorism. Application of the limitation period requires analysis of three components of the 2008 NDAA.

The first is the limitation period itself. Codified at § 1605A(b), the FSIA provides that:

> 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) ... or ****212*800** [the Flatow Amendment] not later than the latter of (1) 10 years after April 24, 1996; or (2) 10 years after the date on which the cause of action arose.

The second component is § 1083(c)(3) of the 2008 NDAA, which defines the contours of a "related action" and imposes an additional time limitation on the filing of related actions:

> (3) RELATED ACTIONS.—If an action arising out of an act or incident has been timely commenced under section 1605(a)(7) ... or [the Flatow Amendment], any other action arising out of the same act or incident may be brought under section 1605A ... if the action is commenced not later than the latter of 60 days after—(A) the date of the entry of judgment in the original action; or (B) the date of the enactment of this Act.

Finally, in addition to filing a new action or a "related action," the NDAA offers a second way to avoid the limitation period if the plaintiff had previously brought a claim under § 1605(a)(7). Section 1083(c)(2) of the NDAA provides, in part:

> (2) PRIOR ACTIONS.—(A) IN GENERAL.—With respect to any action that—(i) was brought under section 1605(a)(7) of title 28, United States Code, or [the Flatow Amendment] before the date of enactment of this act ... and ... is before the courts in any form ... that action, and any judgment in the action shall, on motion made by plaintiffs ... be given effect as if the action had originally been filed under section 1605A(c).

For these "prior actions" the NDAA removes the "defenses of res judicada, collateral estoppel, and [the] limitations period" if the plaintiff moved to convert his prior action or refiled a new action under § 1605A(c). NDAA § 1083(c)(2)(B). A new claim using § 1083(c)(2) is timely if it complies with the limitation period in § 1605A(b) or was filed within 60 days of enactment of the NDAA. *Id.* § 1083(c)(2)(C).

Each provision comes into play in Sudan's challenge to the timeliness of the plaintiffs' actions. In this case, the

plaintiffs' causes of action arose on August 7, 1998, the date of the embassy bombings. *See Vine v. Republic of Iraq*, 459 F.Supp.2d 10, 21 (D.D.C. 2006) (holding a claim under the FSIA "arises on the date that the action in question occurred"), *rev'd in part on another ground sub nom. Simon v. Republic of Iraq*, 529 F.3d 1187, 1194-95 (D.C. Cir. 2008) (describing an argument to the contrary as "rather strained"), *rev'd on another ground sub nom. Republic of Iraq v. Beaty*, 556 U.S. 848, 129 S.Ct. 2183, 173 L.Ed.2d 1193 (2009). Therefore, unless the plaintiffs can identify a "related action ... commenced under section 1605(a)(7)" or had brought a "prior action" that remained "before the courts in any form," the last day to file a new action under § 1605A was August 7, 2008, ten years after the bombings.

Sudan does not dispute that several of the plaintiffs have filed timely actions under § 1605A. The Owens plaintiffs filed their original action under § 1605(a)(7) in October 2001 and after passage of the NDAA timely moved to convert their prior action pursuant to § 1083(c)(2). Days before the statutory deadline, the Amduso and Wamai plaintiffs filed new actions under § 1605A, and the Osongo and Mwila plaintiffs filed suit on the last possible day. Sudan does not challenge the timeliness of these plaintiffs.

The Khaliq, Opati, and Aliganga plaintiffs are another story. The Khaliq plaintiffs filed a complaint in November 2004 but missed the statutory deadline to convert that prior action under § 1083(c)(2) into a new action under § 1605A. *See Khaliq v. Republic of Sudan*, No. 1:04-cv-01536, at *3 (D.D.C. Sept. 9, 2009) (denying ***801**213** motion to convert under § 1083(c)(2)). Six months later, they filed a new case under § 1605A, asserting it was "related" both to their earlier suit and to the *Owens*, *Mwila*, and *Amduso* actions. The district court ordered briefing on whether the new suit was a "related action" within the scope of § 1083(c)(3) and ultimately allowed the case to proceed.

After the court held the evidentiary hearing and made its findings on liability and well past August 2008, the Aliganga plaintiffs moved to intervene in the *Owens* action, which the district court allowed, holding their claims were "related" to the *Owens* action per § 1083(c)(3). The Opati plaintiffs joined last, filing a suit "related" to the *Owens* action under § 1083(c)(3) on July 24, 2012. The court allowed both the Aliganga and Opati plaintiffs the benefit of its earlier findings on liability and jurisdiction.

Sudan challenges the timeliness of the Khaliq, Opati, and Aliganga plaintiffs, which raises two issues, only one of which we need to address on appeal. First, Sudan asserts that the limitation period in § 1605A(b) is jurisdictional and therefore bars a court from hearing any untimely action. Unless the limitation period in § 1605A(b) is jurisdictional, Sudan forfeited this affirmative defense by defaulting in the district court. *See Practical Concepts*, 811 F.2d at 1547. The plaintiffs argue that the time bar, like most statutes of limitation, is not jurisdictional and hence is forfeit. *See Day v. McDonough*, 547 U.S. 198, 202, 126 S.Ct. 1675, 164 L.Ed.2d 376 (2006) ("Ordinarily in civil litigation, a statutory time limitation is forfeited if not raised in a defendant's answer or in an amendment thereto").

Assuming the limitation period is jurisdictional, Sudan contends the Khaliq, Opati, and Aliganga claims are barred because they are not "related actions" under § 1605A(b). A "related action," Sudan urges, must be filed by the same plaintiff who had filed an earlier action under § 1605(a)(7), which the Opati and Aliganga plaintiffs did not do. We need not, however, decide what qualifies as a "related action" because we hold the limitation period in § 1605A(b) is not jurisdictional. As a consequence Sudan forfeited its limitation defense by defaulting in the district court. *See Harris v. Sec'y, U.S. Dep't of Veterans Affairs*, 126 F.3d 339, 343 (D.C. Cir. 1997).

A line of recent Supreme Court cases has defined the circumstances in which a statute of limitation is jurisdictional. These cases uniformly recognize that a limitation period is not jurisdictional "unless it governs a court's adjudicatory capacity, that is, its subject-matter or personal jurisdiction." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435, 131 S.Ct. 1197, 179 L.Ed.2d 159 (2011). To have a jurisdictional effect, a statute of limitation must "speak in jurisdictional terms," that is, restrict "a court's power" to hear a claim. *United States v. Kwai Fun Wong*, — U.S. —, 135 S.Ct. 1625, 1633, 191 L.Ed.2d 533 (2015) (quoting *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 515, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006)). Unless the Congress has "clearly stated" that it "imbued a procedural bar with jurisdictional consequences," the bar does not have them. *Id.* at 1632 (quoting *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153, 133 S.Ct. 817, 184 L.Ed.2d 627 (2013)) (internal quotation marks and alterations omitted). Thus has the Court "made plain that most time bars are nonjurisdictional." *Id.*

Of course, the Congress need not incant "magic words" in order clearly to demonstrate its intent. *Henderson*, 562 U.S. at 436, 131 S.Ct. 1197. We look for the Congress's intent in "the text, context, and relevant historical treatment of the provision at issue."

802214*Musacchio v. United States*, — U.S. —, 136 S.Ct. 709, 717, 193 L.Ed.2d 639 (2016) (quoting *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 166, 130 S.Ct. 1237, 176 L.Ed.2d 18 (2010) (internal quotation marks omitted)). Doing so shows that § 1605A(b) is not a limit on the court's jurisdiction to hear an untimely FSIA claim.

We begin, as we must, with the text of § 1605A(b), which we note does not appear to "speak in jurisdictional terms":

> An action may be brought or maintained under this section ... if commenced ... [within] 10 years after April 24, 1996; or 10 years after the date on which the cause of action arose.

Nothing in the section refers to the "court's power" to hear a case. Nothing in § 1605A(a) "conditions its jurisdictional grant on compliance with [the] statute of limitations" in § 1605A(b). *Musacchio*, 136 S.Ct. at 717 (quoting *Reed Elsevier*, 559 U.S. at 165, 130 S.Ct. 1237). Indeed, § 1605A(b) "is less 'jurisdictional' in tone" than limitation periods held nonjurisdictional in prior cases. *See Auburn Reg'l Med. Ctr.*, 568 U.S. at 154, 133 S.Ct. 817 (comparing the permissive term "may" in one statute with the mandatory term "shall" in another but holding both were nonjurisdictional). The plain text alone is enough to render the limitation period in § 1605A(b) nonjurisdictional.

Sudan nonetheless contends that the reference to "actions" rather than "claims" imbues the provision with jurisdictional import. For this proposition Sudan cites *Spannaus v. U.S. Department of Justice*, 824 F.2d 52 (D.C. Cir. 1987), in which we held a statute that similarly barred untimely "actions" was jurisdictional. *See*28 U.S.C. § 2401(a). Sudan argues that by using the term "action" in § 1605A(b) the Congress made a clear statement replicating the jurisdictional reach of the similarly phrased statute at issue in *Spannaus*.

This analogy has several problems. First, as the plaintiffs point out, *Spannaus* was decided nearly a decade before the Supreme Court erected the presumption against jurisdictional effect, *see Carlisle v. United States*, 517 U.S. 416, 434, 116 S.Ct. 1460, 134 L.Ed.2d 613 (1996) (Ginsburg, J. concurring) (making the first reference to a presumption against jurisdictional effect), and the Congress enacted § 1605A after that presumption had been fully articulated, *see Kontrick v. Ryan*, 540 U.S. 443, 455, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004) (criticizing the "less than meticulous" use of the term "jurisdictional" in earlier decisions). Therefore, *Spannaus* is unpersuasive on the matter. Second, the plaintiffs correctly note we did not rely upon the phrase "every civil action" in *Spannaus* to hold the limitation period in § 2401(a) jurisdictional. Rather, we relied upon longstanding precedent establishing that "§ 2401(a) is a jurisdictional condition attached to the government's waiver of sovereign immunity, and as such must be strictly construed." 824 F.2d at 55 (citing *United States v. Mottaz*, 476 U.S. 834, 106 S.Ct. 2224, 90 L.Ed.2d 841 (1986) and *Soriano v. United States*, 352 U.S. 270, 276, 77 S.Ct. 269, 1 L.Ed.2d 306 (1957)); *cf. John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 139, 128 S.Ct. 750, 169 L.Ed.2d 591 (2008) (holding a statute of limitation as jurisdictional when "[b]asic principles of stare decisis" required that outcome). In this case, precedent does not help Sudan because no court has given § 1605A(b) "a definitive earlier interpretation" that could displace the presumption against jurisdictional reach. *Id.* at 137-38, 128 S.Ct. 750.

Further, Sudan's invocation of the nostrum that identical words in similar statutes demand an identical construction finds little support in the most relevant precedents. *See Wong*, 135 S.Ct. at 1629 (rejecting the argument that use of the **215*803 phrase "shall forever be barred" rendered a limitation period jurisdictional despite the inclusion of the identical phrase in a jurisdictional statute of limitation). Therefore, the use of the term "action" in a provision held jurisdictional in *Spannaus* says little about whether a similarly phrased statute also has jurisdictional reach. Nor have courts attached jurisdictional significance to the word "action" in other statutes. *See, e.g.*, *Reed Elsevier*, 559 U.S. at 166, 130 S.Ct. 1237 (holding nonjurisdictional 17 U.S.C. § 411(a), which bars any "civil action" for infringement without prior registration of the copyright); *Hardin v. City Title & Escrow Co.*, 797 F.2d 1037, 1040 (D.C. Cir. 1986) (stating that 15 U.S.C. § 15b, which bars "[a]ny [untimely] action to enforce any cause of action," is "a good example of a non-jurisdictional time limitation"). Sudan presents no reason we should embrace *Spannaus* yet ignore these other precedents as well as the Supreme Court's most recent guidance on statutory interpretation. Hence, we find no support for Sudan's textual argument that § 1605A(b) is jurisdictional.

Sudan next argues from the structure of the statute in which § 1605A(b) appears: Because the limitation period follows immediately after the grant of jurisdiction in § 1605A(a), it takes on the jurisdictional nature of the prior provision. Again, precedent suggests otherwise. As the plaintiffs note, the Supreme Court has held the "separation" of a time bar "from jurisdictional provisions" implies the limitation period is not jurisdictional. *Gonzalez v. Thaler*, 565 U.S. 134, 132 S.Ct. 641, 651, 181 L.Ed.2d 619 (2012); *cf. Blueport Co., LLC v. United States*, 533 F.3d 1374, 1380 (Fed. Cir. 2008) (holding

limits on patent infringement suits against the Government are jurisdictional because they appear in the same sentence as a general waiver of sovereign immunity). The limitation period in § 1605A(b) and the grant of jurisdiction in § 1605A(a) appear in two different subsections of the terrorism exception, only one of which speaks in jurisdictional terms. The remaining subsections of § 1605A are plainly nonjurisdictional. *See, e.g.*, 28 U.S.C. §§ 1605A(c) (private right of action), 1605A(d) (additional damages), 1605A(e) (use of special masters), 1605A(g) (property disposition). That the limitation period follows immediately after the jurisdictional provisions of § 1605A(a) is of little import. *See Gonzalez*, 565 U.S. at 147, 132 S.Ct. 641 ("Mere proximity will not turn a rule that speaks in nonjurisdictional terms into a jurisdictional hurdle"). If proximity alone were enough, then every subsection in a section containing a jurisdictional provision would, by the transitive property, also abut a jurisdictional subsection and therefore be jurisdictional as well, an absurd proposition. *Auburn Reg'l Med. Ctr.*, 568 U.S. at 155, 133 S.Ct. 817 ("A requirement we would otherwise classify as nonjurisdictional ... does not become jurisdictional simply because it is placed in a section of a statute that also contains jurisdictional provisions").

Sudan also argues the history of § 1605A supports reading the time bar in § 1605A(b) as jurisdictional. Prior to the enactment of the 2008 NDAA, the FSIA terrorism exception under § 1605(a)(7) contained a similar time bar of ten years. *See*28 U.S.C. § 1605(f) (2006). Sudan now contends that § 1605 was "undisputedly a purely jurisdictional statute," rendering both the current and the former limitation periods jurisdictional as well.

This argument mischaracterizes both old § 1605(f) and new § 1605A. The time bar in the former terrorism exception was in a separate subsection of the FSIA, § 1605(f), from the grant of jurisdiction over claims against a state sponsor of terrorism in § 1605(a)(7). Section § 1605 did have several jurisdictional provisions, *see*§§ 1605(a)(1)-(7), (b), (d), but each one expressly ***804**216** proclaimed its jurisdictional reach. *See, e.g.*, 28 U.S.C. §§ 1605(a) ("A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case" falling within one of the seven enumerated exceptions). The other four subsections of § 1605 made no mention of jurisdiction. The difference is telling, but understandable as these provisions—much like those in § 1605A—defined terms (§ 1605(e)), limited discovery (§ 1605(g)), and governed the choice of law and the calculation of damages (§ 1605(c)), among other things, none of which could have jurisdictional effect. As in § 1605A, § 1605 demonstrates that when the Congress intends to make a provision jurisdictional, it normally does so expressly. When words of jurisdictional import are absent, so too, we presume, is jurisdictional effect.

Sudan lastly argues that waivers of sovereign immunity must be strictly construed. *See Spannaus*, 824 F.2d at 55. *But see Scarborough v. Principi*, 541 U.S. 401, 421, 124 S.Ct. 1856, 158 L.Ed.2d 674 (2004) ("[L]imitations principles should generally apply to the Government 'in the same way that' they apply to private parties") (quoting *Franconia Assocs. v. United States*, 536 U.S. 129, 145, 122 S.Ct. 1993, 153 L.Ed.2d 132 (2002)). The Supreme Court has twice addressed this very point and rejected it for time bars that conditioned waivers of the U.S. Government's sovereign immunity. *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 94-96, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990); *Wong*, 135 S.Ct. at 1636. Treating a time bar as nonjurisdictional, the Court has said, "is likely to be a realistic assessment of legislative intent" and "amounts to little, if any, broadening of the congressional waiver" of sovereign immunity. *Irwin*, 498 U.S. at 95, 111 S.Ct. 453. Therefore, Sudan's argument that sovereignty gives jurisdictional import to the limitation period in the FSIA terrorism exception is unpersuasive.

In any event, Sudan misses the distinction between a waiver of sovereign immunity and an exception to the statutory grant of foreign sovereign immunity. The Congress "did not waive [a foreign state's] sovereign immunity in enacting [the FSIA terrorism exception]" because "only the sovereign can forswear the sovereign's legal rights." *Simon*, 529 F.3d at 1196. Rather, "[i]n the terrorism exception the Congress qualified the statutory grant of immunity to [foreign sovereigns]," which is "itself 'a matter of grace and comity.' " *Id.* (quoting *Verlinden*, 461 U.S. at 486, 103 S.Ct. 1962). Because the FSIA exceptions are not waivers of sovereign immunity, the rule of strict construction does not apply.

Having reviewed the text, structure, or history of the FSIA terrorism exception, we see "no authority suggesting the Congress intended courts to read [§ 1605A(b)] any more narrowly than its terms suggest." *Id.* Sudan's arguments to the contrary fail. We therefore hold that the limitation period in § 1605A(b) is not jurisdictional. It follows that Sudan has forfeited its affirmative defense to the *Khaliq*, *Opati*, and Aliganga actions by failing to raise it in the district court. *See Musacchio*, 136 S.Ct. at 717; *Harris*, 126 F.3d at 343. As a consequence, we have no need to consider Sudan's interpretation of a "related action" under NDAA § 1083(c)(3).

V. Jurisdiction and Causes of Action for Claims of Third Parties

Sudan next takes aim at claims brought under state and federal law by the family members of those killed or injured in the embassy bombings. First, Sudan contends § 1605A(a) does not grant the court jurisdiction to hear a claim from a plaintiff (or the legal representative of a plaintiff) who was not physically injured by a terrorist attack. Second, even if jurisdiction is proper, ***805**217** Sudan argues the federal cause of action in § 1605A(c) supplies the exclusive remedy for a FSIA claimant, precluding claims under state law. Finally, Sudan insists a family member who was not present at the scene of the embassy bombings cannot state a claim for intentional infliction of emotional distress (IIED) under District of Columbia law.

A. Jurisdiction

We turn first to Sudan's jurisdictional argument, which we are obliged to address notwithstanding Sudan's default. The plaintiffs in this case have brought two different types of claims under various sources of law. First are the claims of those physically injured by the embassy bombings or by the legal representatives of those now deceased or incapacitated. Second are the claims of family members of those physically injured or killed by the bombings who seek damages for their emotional distress. Sudan contends the FSIA extends jurisdiction only to members of the first group and their legal representatives. The claims of family members for emotional distress, it argues, are outside the jurisdiction conferred upon the court.

Sudan's argument turns upon the meaning of the phrase "the claimant or the victim" in § 1605A(a)(2)(A)(ii). Section 1605A(a) gives the court jurisdiction and withdraws immunity only when "the claimant or the victim" falls within one of four categories: U.S. nationals, members of the armed forces, and employees or contractors of the United States acting within the scope of their employment. A separate subsection of the terrorism exception provides a federal cause of action to the same groups of plaintiffs and their legal representatives. 28 U.S.C. § 1605A(c).

Sudan contends that "the claimant" in § 1605A(a)(2)(A)(ii) refers only to the legal representative of a victim of a terrorist attack. This would effectively align the grant of jurisdiction with the federal cause of action under § 1605A(c). That is, under Sudan's proffered interpretation, a court would have jurisdiction only over claims brought by persons who could invoke the federal cause of action in § 1605A(c). Applied to the case at hand, this might preclude jurisdiction over a claim for emotional distress brought by a relative of someone killed or injured by the embassy bombings because a family member is arguably neither a victim of the attack nor the legal representative of a victim.

Sudan's argument has several problems. First and foremost, Sudan's interpretation is inconsistent with the plain meaning and the structure of the statute, as is clear from the differences between the grant of jurisdiction in § 1605A(a) and the cause of action in § 1605A(c). Section 1605A(a)(2) grants jurisdiction when "the claimant or the victim" is a member of one of the four enumerated groups. In contrast, § 1605A(c) authorizes a cause of action not only for those four groups but also for the legal representative of a member of those groups. If the Congress had intended § 1605A(a)(2) to mirror the scope of § 1605A(c), then it would have used the same term—"legal representative"—in both subsections (i.e., "the legal representative or the victim"), as it did with the verbatim enumeration of the four qualifying groups. That it did not signals its intent to give the term "claimant" in § 1605A(a)(2) a meaning different from and broader than "the legal representative" in § 1605A(c). *See Russello v. United States*, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983).

What, then, does the FSIA mean by the terms "claimant" and "legal representative"? The plain meaning of claimant, the plaintiffs correctly note, is simply someone who brings a claim for ****218*806** relief. Who can be a claimant is typically defined by the substantive law under which a plaintiff states a claim. By contrast, the term "legal representative" contemplates a far narrower universe of persons based upon principles of agency or a special relationship, such as marriage. *See, e.g.*, *Fed. Treasury Enter. Sojuzplodoimport v. SPI Spirits Ltd.*, 726 F.3d 62, 80 (2d Cir. 2013) ("In its broadest usage, the phrase 'legal representative' may refer simply to '[o]ne who stands for or acts on behalf of another' "). Federal and state procedural law, not the substantive law under which a plaintiff states a claim, typically defines who may serve as a legal representative in a given suit. *See*Fed. R. Civ. P. 17(b)(3); *Gurley v. Lindsley*, 459 F.2d 268, 279 (5th Cir. 1972) (applying Texas law in accord with Rule 17(b)). Thus, a legal representative is a special type of claimant who proceeds on behalf of an absent party with a substantive legal right.

Sudan nonetheless offers three reasons we should narrowly interpret "claimant" to mean no more than "legal representative." First, Sudan argues that interpreting "claimant" to mean "legal representative" is necessary to "harmonize[ ]" the scope of jurisdiction under § 1605A(a) with the cause of action under § 1605A(c). If the terms had different meanings, Sudan warns, then "certain plaintiffs [could] establish jurisdiction under § 1605A(a)" but anomalously could not "avail[ ] themselves of the private right of action in § 1605A(c)." Here Sudan is assuming a grant of jurisdiction must be no broader than the causes of action that may be brought under it. But that does not follow. *Cf. FDIC v. Meyer*, 510 U.S. 471, 484, 114 S.Ct. 996, 127 L.Ed.2d 308 (1994) (noting that "whether there has been a waiver of sovereign immunity" and "whether the source of substantive law" "provides an avenue for relief" are "two 'analytically distinct' inquiries"). The other exceptions to sovereign immunity in the FSIA exemplify this distinction because they grant the courts jurisdiction over claims against foreign sovereigns but neither create nor withdraw substantive causes of action for FSIA plaintiffs. *See Helmerich & Payne*, 137 S.Ct. at 1324 ("Indeed, cases in which the jurisdictional inquiry does not overlap with the elements of a plaintiff's claims have been the norm in cases arising under other exceptions to the FSIA").

Furthermore, even under the prior terrorism exception, the Congress authorized a cause of action—in the Flatow Amendment—with a narrower reach than the grant of jurisdiction in § 1605(a)(7). *See Leibovitch v. Islamic Republic of Iran*, 697 F.3d 561, 570-71 (7th Cir. 2012). That the Flatow Amendment applied only to state officials, not foreign states, took "nothing away from" the grant of jurisdiction under § 1605(a)(7) because the broader jurisdictional provision operated independently of the narrower cause of action. *See Cicippio-Puleo*, 353 F.3d at 1035-36. Accordingly, we declined to "harmonize" the broad grant of jurisdiction in the old terrorism exception with the narrower cause of action provided by the Flatow Amendment because doing so would have conflicted with the text of both provisions. *Id.* at 1032-33. So too here. Again the Congress has authorized a narrower cause of action, § 1605A(c), correlative to a broader jurisdictional grant, § 1605A(a), and as before, we see no reason to distort the plain meaning of either provision in order to make them coextensive.

Second, Sudan contends a broad interpretation of "claimant" would "render[ ] the term 'victim' superfluous." Not so; as the plaintiffs note, the use of both terms affords jurisdiction when "either the claimant or the victim is a national of the United States" or is within one of the other three groups identified in the statute. ***807**219***La Reunion Aerienne v. Socialist People's Libyan Arab Jamahiriya*, 533 F.3d 837, 844 (D.C. Cir. 2008).

Third, Sudan argues that reading "claimant" to mean "one who brings a claim" would "greatly expand[ ] the universe of possible plaintiffs, contrary to Congressional intent." The term "claimant," unlike the term "victim," is indeed less bounded by the underlying acts that give the courts jurisdiction: Only a limited set of individuals could properly be considered victims of the 1998 embassy bombings, whereas the term "claimant" may appear to encompass a larger universe of possible plaintiffs. That universe is actually quite limited, however. The FSIA itself limits claimants to those seeking "money damages" "for personal injury or death," 28 U.S.C. § 1605A(a)(1). *See La Reunion Aerienne*, 533 F.3d at 845 (allowing an insurer to recover payments made to survivors and to estates of those killed in an airline bombing because the insureds' claims were "personal injury claim[s] under traditional common-law principles") (internal quotation marks, emphasis, and citation removed).

Substantive law also limits who is a proper claimant under the FSIA. This is clearly the case with the federal cause of action in the FSIA, which limits claimants to the four enumerated groups and their legal representatives. So too with substantive law outside the FSIA: We have held the common-law tort of IIED limits recovery to the immediate family of a victim who is physically injured or killed. *See Bettis v. Islamic Republic of Iran*, 315 F.3d 325, 338 (D.C. Cir. 2003) (rejecting claims for IIED brought by nieces and nephews of a U.S. national taken hostage); Restatement (Second) of Torts § 46 (1965). Therefore, not every person who experiences emotional distress from a major terrorist attack—a universe that could be large indeed—can state a claim for IIED absent some close relationship to a victim who was injured or killed. Therefore, due to the limitations imposed upon potential claimants both by the FSIA and by substantive law, we are not persuaded by Sudan's argument that the plain meaning of "claimant" produces "absurd results" or is "contrary to Congressional intent."

In sum, by its plain text, the FSIA terrorism exception grants a court jurisdiction to hear a claim brought by a third-party claimant who is not the legal representative of a victim physically injured by a terrorist attack. Who in particular may bring a claim against a foreign sovereign is a question of substantive law, wholly separate from the question of our jurisdiction.

B. Causes of Action

Sudan next contends the foreign family members cannot state a claim under any source of substantive law. Starting from first principles, we reiterate that the question whether a statute withdraws sovereign immunity is "analytically distinct" from whether a plaintiff has a cause of action. *See Meyer*, 510 U.S. at 484, 114 S.Ct. 996; *United States v. Mitchell*, 463 U.S. 206, 218, 103 S.Ct. 2961, 77 L.Ed.2d 580 (1983). As the district court correctly recognized, we have never required the Congress, in order to effectuate a grant of jurisdiction, expressly to "define the substantive law that applies." *Owens V*, 174 F.Supp.3d at 286. Indeed, before enactment of the FSIA, the courts—absent objection by the State Department—had jurisdiction to hear suits against a foreign government under state and federal law even though no statute provided rules of decision for such cases. *See, e.g.*, *Victory Transp. Inc. v. Comisaria Gen. de Abastecimientos y Transportes*, 336 F.2d 354 (2d Cir. 1964) (enforcing a state-law arbitration agreement against a foreign sovereign ***808**220** via the Federal Arbitration Act). Hence, unless the enactment of the FSIA or of § 1605A somehow changed this situation, a plaintiff proceeding under the FSIA may rely upon alternative sources of substantive law, including state law.

Sudan would have us find an abrogation of a plaintiff's access to state law in § 1606 of the FSIA, which 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 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; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages.

When the original FSIA terrorism exception was in force, § 1606 governed what a claimant could recover from a foreign sovereign. This was because the original exception was codified as a subsection of § 1605, to which § 1606 expressly applied. After we declined in *Cicippio-Puleo* to infer a federal cause of action against a foreign sovereign arising from § 1605(a)(7) or from the Flatow Amendment, a plaintiff using the old terrorism exception could press a claim under state law, as qualified by § 1606, in the same manner as any other FSIA plaintiff. When the Congress passed the 2008 NDAA, it repealed old § 1605(a)(7) and codified the current terrorism exception in new § 1605A. As a result, § 1606, which references only § 1605 and § 1607, does not apply to the current FSIA terrorism exception. This, Sudan contends, demonstrates the Congress's intent to foreclose a plaintiff from relying upon state law when suing under § 1605A. Essentially, Sudan suggests the Congress struck a deal when it recodified the new terrorism exception in § 1605A: A plaintiff could sue under the new federal cause of action but could no longer press a state-law claim against a foreign sovereign via the pass-through process endorsed by *Cicippio-Puleo*. Therefore, according to Sudan, plaintiffs who are ineligible for the purportedly exclusive remedy of the federal cause of action—including the foreign family members in this case—were left without a "gateway" to any substantive law under which to state a claim. *Contra Leibovitch*, 697 F.3d at 572 ("Although § 1605A created a new cause of action, it did not displace a claimant's ability to pursue claims under applicable state or foreign law upon the waiver of sovereign immunity" (quoting *Estate of Doe v. Islamic Republic of Iran*, 808 F.Supp.2d 1, 20 (D.D.C. 2011))).

One might wonder, as the plaintiffs do, why we need to reach this nonjurisdictional argument, which Sudan forfeited by failing to appear in the district court. *See Practical Concepts*, 811 F.2d at 1547. We do so because we have discretion to reach the question, *see Acree*, 370 F.3d at 58, and this case presents sound reasons for doing so. The question presented is "purely one of law important in the administration of federal justice" because most cases invoking the terrorism exception are filed in this circuit, *see* 28 U.S.C. § 1391(f)(4), and "resolution of the issue does not depend on any additional facts not considered by the district court." *Acree*, 370 F.3d at 58 (quoting *Roosevelt v. E.I. Du Pont de Nemours & Co.*, 958 F.2d 416, 419 n.5 (D.C. Cir. 1992)). Review is particularly appropriate here because the foreign family member plaintiffs have secured billions in damages against a foreign sovereign. *See id.* (finding extraordinary circumstances from a "nearly-billion dollar default judgment against a foreign government"). We therefore exercise our discretion to consider Sudan's nonjurisdictional argument that the pass-through approach recognized in ****221*809***Cicippio-Puleo* did not survive enactment of § 1605A.

In our view, Sudan assigns undue significance to § 1606. On its face, that section does not authorize a plaintiff to resort to state (or federal or foreign) law in a suit against a foreign sovereign. Nor does it create a substantive body of law for such an action. *See First Nat'l City Bank*, 462 U.S. at 620-21, 103 S.Ct. 2591. Rather, as the plaintiffs argue and the district court recognized, § 1606 simply

limits the liability of a foreign state to "the same manner and to the same extent as a private individual under like circumstances" regardless of what substantive law is being applied. The exclusion of punitive damages from the pass-through approach reinforces our confidence that § 1606 operates only to limit, not to create, the liability of a foreign state. As the Supreme Court has said, the Congress made clear that the FSIA, including § 1606, was not "intended to affect the substantive law of liability" applicable to a foreign sovereign. *Id.* at 620, 103 S.Ct. 2591 (quoting H.R. Rep. No. 94-1487, at 12 (1976)). In keeping with this straightforward reading, we have recognized that § 1606 does not authorize a court to craft federal common law, but rather requires it to apply state law to suits under the FSIA. *See Bettis*, 315 F.3d at 333 (noting that § 1606 "instructs federal judges to find the relevant law, not to make it").

One might wonder, then, why the Congress moved the FSIA terrorism exception from § 1605, where it was covered by § 1606, to § 1605A, where it is not. Contrary to Sudan's convoluted argument about an implied withdrawal of remedies under state law, the new exception itself provides a ready answer. If the Congress had reenacted the new terrorism exception in the same section as the old one, then it would have created an irreconcilable conflict between the new federal cause of action, which allows the award of punitive damages, and § 1606, which prohibits them. In order to avoid this conflict, a court would have either to disregard a central element of the federal cause of action or to hold the new exception implicitly repealed § 1606 as applied to state sponsors of terror. *See Morton v. Mancari*, 417 U.S. 535, 549, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974) (noting the "cardinal rule ... that repeals by implication are not favored") (internal quotation marks removed). Avoiding a conflict between § 1605 and § 1606, rather than Sudan's strained "gateway" argument, more likely explains the Congress's purpose in moving the terrorism exception out of § 1605.

Of course, in most cases brought under the new terrorism exception, the plaintiff need not rely upon state tort law. This does not, however, imply that the Congress intended to foreclose access to state law by those who need it, as do foreign family members. U.S. nationals will continue to sue under § 1605A(c) and benefit from its consistent application. But the pass-through approach remains viable to effectuate the intent of the Congress to secure recoveries for other plaintiffs harmed by a terrorist attack.

C. Intentional Infliction of Emotional Distress

We turn now to Sudan's third and final argument respecting family members who have brought state-law claims for IIED. The district court held that District of Columbia law controls these actions, *Owens IV*, 826 F.Supp.2d at 157, which Sudan does not contest. Judgments under D.C. law in favor of the foreign family member plaintiffs total more than $7 billion. Sudan contends these awards are invalid because D.C. tort law requires a plaintiff to be present at the scene of a defendant's outrageous and extreme conduct in order to ****222*810** recover for IIED. In particular, Sudan points to *Pitt v. District of Columbia*, in which this court applied the "presence" requirement to bar a claim for IIED under D.C. law. 491 F.3d 494, 507 (D.C. Cir. 2007).

That case does not extend as far as Sudan contends. In *Pitt*, we noted "[t]he District of Columbia has adopted the standard for intentional infliction of emotional distress from the Restatement (Second) of Torts." *Id.* (citing *Sere v. Grp. Hospitalization, Inc.*, 443 A.2d 33, 37 (D.C. 1982)). As Sudan points out, the Second Restatement contains a presence requirement:

> Where such [extreme and outrageous] conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress (a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or (b) to any other person who is present at the time, if such distress results in bodily harm."

The Restatement, however, also provides that "there may ... be other circumstances under which the actor may be subject to liability for the intentional or reckless infliction of emotional distress." Restatement (Second) of Torts § 46 (1965) (caveat). A comment to the Restatement expressly applies this caveat to the presence requirement, "leav[ing] open the possibility of situations in which presence at the time may not be required." *Id.* cmt. l.[6]

Although we did apply the presence requirement in *Pitt*, the factual situation there was quite different than in the present case. The plaintiff in *Pitt* alleged emotional distress from the "filing of a false and misleading affidavit and possible evidence tampering." 491 F.3d at 507. Allowing a claim for IIED stemming from a procedural irregularity in law enforcement, we reasoned, would "substantially expand[ ] the scope of the third-party IIED tort under District of Columbia law," *id.*, without any principled limitation on future actions. In contrast, a massive terrorist attack resulting in widespread casualties and worldwide attention would appear so exceptional that recognizing an appropriate plaintiff's claim for IIED

would not broaden the scope of liability to innumerable similar incidents. Therefore, nothing in *Pitt* suggests D.C. law would apply the presence requirement to an act of international terrorism.

At the same time, we proceed with caution when applying D.C. tort law to this novel situation. The District of Columbia has yet to decide whether it would apply the presence requirement or the exception in the Restatement to an act of international terrorism. Neither has Maryland, the common law of which is authoritative when D.C. law is silent. *Clark v. Route*, 951 A.2d 757, 763 n.5 (D.C. 2008). Although there are convincing reasons to do so, there are also good reasons to draw back. Some of the first cases applying the caveat in the Restatement dealt with hostage taking. *See, e.g.*, *Stethem*, 201 F.Supp.2d at 89-91; *Sutherland v. Islamic Republic of Iran*, 151 F.Supp.2d 27, 50 (D.D.C. 2001). Hostage takers often target the family members of the victim, demanding they pay a ransom for the release of the hostage. The emotional distress of the family ****223*811** member is intended to advance the hostage taker's aims. Therefore, hostage taking seems to be the type of case in which the defendant's extreme and outrageous conduct is "directed at a third person" but is intended also to cause severe emotional distress to the absent plaintiff. *See*Dan B. Dobbs, The Law of Torts § 307, at 384 (2000) ("If the defendants' conduct is sufficiently outrageous and intended to inflict severe emotional harm upon a person which [sic] is not present, no essential reason of logic or policy prevents liability"). If so, the plaintiff's contemporaneous physical presence is not required because the plaintiff is the direct target of the tortious conduct, rather than a mere bystander, as the latest version of the Restatement recognizes. *See*Restatement (Third) of Torts: Phys. & Emot. Harm § 46 (2012) (cmt. m) ("If an actor harms someone for the purpose of inflicting mental distress on another person, the [presence] limitations ... do not apply").

In contrast, a terrorist bombing is not so precisely targeted at certain absent individuals. Rather than leveraging distress inflicted upon specific third parties to achieve their aims, terrorist bombings typically target the public at large in order to create a general environment of fear and insecurity. Widespread distress, rather than distress "directed at" or confined to particular persons, provides a considerably weaker basis for IIED liability. Indeed, the Second Restatement would preclude an individual's recovery for an event causing widespread emotional distress, absent some unique, foreseeable, and intended harm to the plaintiff. Restatement (Second) of Torts § 46 cmt. l. For this reason too, the drafters of the Third Restatement of Torts have criticized several district court decisions for abandoning the presence requirement in FSIA terrorism cases. *See*Restatement (Third) of Torts: Phys. & Emot. Harm § 46 (2012) reporter's note cmt. m (criticizing the "questionable determination that the terrorists acts were directed not only to the victims of the attack but also at their family members"). Although we have not decided the matter, we too have expressed skepticism that the sensational nature of a terrorist attack warrants an exception to the limitations of IIED in the Restatement. *See Bettis*, 315 F.3d at 334 ("If any person that Iran hoped to distress ... could recover under section 46(1) as a direct victim of Iran's conduct, virtually anyone claiming he or she was affected could recover").

We believe a court may reasonably characterize a terrorist bombing as falling either within the caveat in the Second Restatement or beyond the scope of a sovereign's liability to third parties. The plaintiffs once again urge us not to reach this nonjurisdictional question forfeited by Sudan's default, but as with the availability of state law claims, we see sound reasons for exercising our discretion to consider the matter. *See Acree*, 370 F.3d at 58. Billions of dollars have been awarded to foreign family members as damages for IIED. Furthermore, how to apply the Restatement to terrorist bombings is a question, unfortunately, almost certain to recur in this Circuit. Finally, this is a pure question of law that "does not depend on any additional facts not considered by the district court," *Roosevelt*, 958 F.2d at 419 & n.5, and potentially may bear upon sensitive matters of international relations. *Cf. Acree*, 370 F.3d at 58. The situation therefore presents "exceptional circumstances" sufficient to overcome our ordinary reluctance to hear nonjurisdictional arguments not raised before the district court. *Id.*

That said, the choice is not ours to make. District of Columbia law controls the scope of IIED liability, and the D.C. Court of Appeals has yet to render a decision on the matter. Therefore, we shall certify the question to that court pursuant to D.C. Code Ann. § 11-723. ****224*812** Whether to certify a question "rests in the sound discretion of the federal court." *Lehman Bros. v. Schein*, 416 U.S. 386, 390-91, 94 S.Ct. 1741, 40 L.Ed.2d 215 (1974). "The most important consideration guiding the exercise of this discretion ... is whether the reviewing court finds itself genuinely uncertain about a question of state law that is vital to a correct disposition of the case before it." *Tidler v. Eli Lilly & Co.*, 851 F.2d 418, 426 (D.C. Cir. 1988).

This case presents such a question. We are genuinely uncertain whether the D.C. Court of Appeals would apply the presence requirement in the Second Restatement of

Torts to preclude recovery for IIED by family members absent from the scene of a terrorist bombing. Other states have reached different conclusions on this question. *See Peterson*, 515 F.Supp.2d at 43-44 & n.19 (identifying Florida, California, and Vermont as states that apply the presence requirement and Louisiana, and Pennsylvania as states that do not).

Furthermore, the question is one of significant public interest in the District of Columbia. *See Eli Lilly & Co. v. Home Ins. Co.*, 764 F.2d 876, 884 (D.C. Cir. 1985). Because the great majority of claims under the FSIA terrorist exception are brought in the federal district court in D.C. pursuant to the FSIA venue provision in 28 U.S.C. 1391(f)(4), this question of D.C. tort law will likely arise in future cases before our district court. And the District, as the home of thousands of government employees, military service members, and contractors, and as itself a potential target of terrorist attacks, has a substantial interest in determining who may recover for the emotional distress caused by a terrorist attack.

We therefore certify the following question to the D.C. Court of Appeals:

> Must a claimant alleging emotional distress arising from a terrorist attack that killed or injured a family member have been present at the scene of the attack in order to state a claim for intentional infliction of emotional distress?

VI. Punitive Damages

Having affirmed that the district court properly asserted jurisdiction over the plaintiffs' claims and held Sudan liable for their injuries, we now review the amount in damages it awarded to the plaintiffs. The court awarded $10.2 billion in damages, including more than $4.3 billion in punitive damages under both state and federal law. *See, e.g.*, *Opati*, 60 F.Supp.3d at 81-82. In post-judgment motions under Rule 60(b)(6), Sudan asked the district court to vacate the awards of punitive damages. The court declined, reasoning that any nonjurisdictional legal error in assessing punitive damages against Sudan did not present an "extraordinary circumstance" that would justify vacatur. *Owens V*, 174 F.Supp.3d at 288; *see Gonzalez v. Crosby*, 545 U.S. 524, 536, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005) ("[R]elief under Rule 60(b)(6) ... requires a showing of 'extraordinary circumstances' ").

Sudan's renewed request to vacate these awards is now before us both on appeal from the denial of Sudan's Rule 60(b) motions and on direct appeal from the final judgments. Sudan principally contends the FSIA terrorism exception does not retroactively authorize the imposition of punitive damages against a sovereign for conduct occurring before the passage of § 1605A. As explained below, we agree. But before reaching the merits, we first explain why we are addressing the matter despite Sudan's default in the district court.

A. Whether to Review the Awards of Punitive Damages

The plaintiffs contend, and the district court agreed, we need not consider Sudan's argument against the awards of punitive damages because it forfeited this ****225*813** nonjurisdictional challenge by failing to appear in the district court. While this is true, *see Practical Concepts*, 811 F.2d at 1547, there are sound reasons to exercise our discretion to hear Sudan's argument, whether under Rule 60(b) or on direct appeal.

First, Supreme Court precedent generally favors more searching appellate review of punitive damages than of other nonjurisdictional matters. *See Pac. Mut. Life Ins. v. Haslip*, 499 U.S. 1, 18, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991) (warning against "unlimited judicial discretion" in fixing punitive damages). Heightened scrutiny is appropriate because punitive damages are in the nature of criminal punishment. *Id.* at 19, 111 S.Ct. 1032. Accordingly, the Court has closely reviewed the size of punitive damage awards relative to compensatory damages, *State Farm Mut. Auto. Ins. v. Campbell*, 538 U.S. 408, 426, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), the availability of punitive damages for conduct occurring outside a court's territorial jurisdiction, *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), and the factors a court may consider in imposing punitive damages, *Haslip*, 499 U.S. at 21-22, 111 S.Ct. 1032. In particular, the Court has emphasized the importance of judicial review to ensure awards of punitive damages comport with the Constitution. *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432, 114 S.Ct. 2331, 129 L.Ed.2d 336 (1994). Consistent with these concerns, the scope of appellate review for a timely challenge to an award of punitive damages is broad. *See Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 436, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001) (reviewing de novo constitutional challenges to punitive damages). We think the same concerns call for a similarly exacting standard for review of an untimely challenge to an award of punitive damages. Our view is reinforced by the Court's warning that the "[r]etroactive imposition of

punitive damages would raise a serious constitutional question." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 281, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994).[7]

In order to avoid possible constitutional infirmities, other Circuits too have reviewed denials of Rule 60(b)(6) motions to vacate punitive damages awarded in default judgments. *See Watkins v. Lundell*, 169 F.3d 540, 545 (8th Cir. 1999); *Merrill Lynch Mortg. Corp. v. Narayan*, 908 F.2d 246, 253 (7th Cir. 1990). Although review of punitive damages entered upon default is not always warranted, we think the circumstances of this case merit appellate review. Of particular note are the size of the awards (totaling $4.3 billion), the presentation of a novel question of constitutional law (retroactivity), and the potential effect on U.S. diplomacy and foreign relations. We believe these factors present the "extraordinary circumstances" needed for review under Rule 60(b)(6).[8]

****226*814**This issue also comes before the court on direct appeal from the default judgments. As previously mentioned, we may consider nonjurisdictional questions not raised by the parties on direct appeal in "exceptional circumstances." *Acree*, 370 F.3d at 58. Our discretion is properly exercised over pure questions of law—such as the retroactivity of punitive damages—that need no further factual development. *Roosevelt*, 958 F.2d at 419 & n. 5. Direct review of forfeited arguments is also warranted for questions that bear upon sensitive matters of international relations. *Acree*, 370 F.3d at 58 (finding exceptional circumstances from a "nearly-billion dollar default judgment against a foreign government"). Furthermore, because most cases invoking the FSIA exception for terrorism are brought in this district, our decision on retroactivity will provide useful guidance to the district court. *Compare Owens V*, 174 F.Supp.3d at 291 (doubting whether punitive damages apply retroactively but declining to vacate award) *with Flanagan v. Islamic Republic of Iran*, 190 F.Supp.3d 138, 182 (D.D.C. 2016) (vacating punitive damages despite the defendant's default) *and Kumar v. Republic of Sudan*, No. 2:10-cv-171, at 39 n.17 (E.D. Va. Oct. 25, 2016) (approving retroactive assessment of punitive damages); *see also Leatherman*, 532 U.S. at 436, 121 S.Ct. 1678 (noting that "[i]ndependent review [of punitive damages] is ... necessary if appellate courts are to maintain control of, and to clarify, the legal principles"). Given the size of the awards, the strength of Sudan's contentions, and the likelihood of this question recurring, we believe reviewing the award of punitive damages both promotes "the interests of justice" and "advance[s] efficient judicial administration." *City of Newport*, 453 U.S. at 257, 101 S.Ct. 2748. We therefore exercise our discretion to consider Sudan's belated objections.

B. Retroactivity of Punitive Damages Under § 1605A(c)

In challenging the punitive damage awards, Sudan raises the "presumption against retroactive legislation" explicated in *Landgraf v. USI Film Products*, 511 U.S. 244, 265, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994). Courts "have declined to give retroactive effect to statutes burdening private rights unless Congress had made clear its intent." *Id.* at 270, 114 S.Ct. 1483. This presumption avoids "the unfairness of imposing new burdens on persons after the fact," absent a clear signal of congressional intent to do so. *Id.* The Court in *Landgraf* noted the retroactive authorization of punitive damages, in particular, "would raise a serious constitutional question." *Id.* at 281, 114 S.Ct. 1483.

An analysis of retroactivity entails two steps. First, the court must determine "whether Congress has expressly prescribed the statute's proper reach." *Id.* at 280, 114 S.Ct. 1483. If the Congress has clearly spoken, then "there is no need to resort to judicial default rules," and the court must apply the statute as written. *Id.* When "the statute contains no such express command," the court must then evaluate whether the legislation "operate[s] retroactively," as it does if it "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Id.* If the ****227*815** statute operates retroactively but lacks a clear statement of congressional intent to give it retroactive effect, then the *Landgraf* presumption controls and the court will not apply the statute to pre-enactment conduct. Sudan argues both that the new FSIA terrorism exception does not contain a clear statement of retroactive effect and that it operates retroactively.

1. Section 1605A operates retroactively

As for the latter point, it is obvious that the imposition of punitive damages under the new federal cause of action in § 1605A(c) operates retroactively because it increases Sudan's liability for past conduct. Under § 1605(a)(7), the predecessor to the current terrorism exception, and the pass-through approach recognized in *Cicippio-Puleo*, § 1606 expressly barred courts from awarding punitive damages against a foreign sovereign. The 2008 NDAA plainly applies the new cause of action in § 1605A(c) to the pre-enactment conduct of a foreign sovereign. Further,

recall that, pursuant to NDAA § 1083(c), a plaintiff may convert a pending, prior action under § 1605(a)(7) into a new action under § 1605A(c) or file a new suit arising from the same act or incident as an action "related" to an original suit timely filed under § 1605(a)(7). In both cases, the new actions under § 1605A(c) necessarily are based upon the sovereign defendant's conduct before enactment of § 1605A.

The plaintiffs dispute this, relying upon *Republic of Austria v. Altmann*, 541 U.S. 677, 124 S.Ct. 2240, 159 L.Ed.2d 1 (2004), in which the Supreme Court held the jurisdictional provisions of the FSIA apply to conduct occurring prior to its enactment notwithstanding the absence of a clear statement to that effect in the statute. *Id.* at 692-96, 700, 124 S.Ct. 2240. That jurisdiction under the FSIA applies retroactively, however, has no bearing upon the question whether the authorization of punitive damages does as well.

Unlike the grant of jurisdiction held retroactive in *Altmann*, the authorization of punitive damages "adheres to the cause of action" under § 1605A(c), making it "essentially substantive" and thereby triggering retroactive operation. *Id.* at 695 n.15, 124 S.Ct. 2240; *cf. Landgraf*, 511 U.S. at 274, 114 S.Ct. 1483 ("Application of a new jurisdictional rule usually takes away no substantive right," causing it not to operate retroactively) (internal quotation marks omitted). Furthermore, while the original FSIA codified only the preexisting "restrictive theory" of foreign sovereign immunity, leaving the scope of a sovereign's potential liability unchanged, *see Altmann*, 541 U.S. at 694, 124 S.Ct. 2240, the new terrorism exception authorizes a quantum of liability—punitive damages—to which foreign sovereigns were previously immune.

Having failed to distinguish the FSIA terrorism exception from the Supreme Court's core concerns in *Landgraf*, the plaintiffs advance a policy argument transplanted from *Altmann*. There the Court explained the "aim of the presumption [against retroactivity] is to avoid unnecessary *post hoc* changes to legal rules on which parties relied in shaping their primary conduct."541 U.S. at 696, 124 S.Ct. 2240. In contrast, the plaintiffs urge "the principal purpose of foreign sovereign immunity ... reflects current political realities and relationships, and aims to give foreign states and their instrumentalities some *present* 'protection from the inconvenience of suit as a gesture of comity.' " *Id.* (quoting *Dole Food Co. v. Patrickson*, 538 U.S. 468, 479, 123 S.Ct. 1655, 155 L.Ed.2d 643 (2003)). Because the Congress was motivated by these "*sui generis*" concerns of comity in initially passing the FSIA, *id.*, the plaintiffs contend the presumption in *Landgraf* should not apply to a subsequent FSIA amendment, even if it appears to operate retroactively.

****228*816**That argument misses the central point of authorizing punitive damages against a state sponsor of terrorism, *viz.*, to deter terrorism. By its nature, deterrence attempts to influence foreign sovereigns in "shaping their primary conduct." *Id.* And when the law affects a defendant's past actions, "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." *Landgraf*, 511 U.S. at 265, 114 S.Ct. 1483.

This principle applies equally to state sponsors of terrorism. As the Supreme Court has said, "[e]ven when the conduct in question is morally reprehensible or illegal, a degree of unfairness is inherent whenever the law imposes additional burdens based on conduct that occurred in the past." *Id.* at 282 n.35, 114 S.Ct. 1483. Therefore, without a clear statement of retroactivity, courts have properly declined to apply statutes authorizing an award of punitive damages, even for outrageous conduct. *See, e.g.*, *Ditullio v. Boehm*, 662 F.3d 1091, 1100 (9th Cir. 2011) (holding that punitive damages under the Trafficking Victims Protection Act are unavailable to punish child sex trafficking that occurred before enactment); *Gross v. Weber*, 186 F.3d 1089, 1091 (8th Cir. 1999) (holding the same for the Violence Against Women Act as applied to pre-enactment sexual abuse). Hence, unlike the grant of jurisdiction in *Altmann*, the authorization of punitive damages in § 1605A(c) cannot be dismissed as a reflection of "current political realities and relationships" but rather goes to the heart of the concern in *Landgraf* about retroactively penalizing past conduct.

2. Clear statement of retroactive effect

Having concluded that § 1605A(c) operates retroactively, the next question is whether the Congress has made a clear statement authorizing punitive damages for past conduct. We will find that authorization only if the statute is "so clear that it could sustain only one interpretation." *See Lindh v. Murphy*, 521 U.S. 320, 328 n.4, 117 S.Ct. 2059, 138 L.Ed.2d 481 (1997). With this in mind, we agree with the district court that the FSIA contains no such statement. *Owens V*, 174 F.Supp.3d at 289.

As a starting point, we look for a clear statement in § 1605A(c), which provides that a designated state sponsor

of terrorism:

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

On its face, nothing in the text of § 1605A(c) speaks to whether punitive damages are available under the federal cause of action for pre-enactment conduct. Nor does precedent provide support for retroactivity. Although *Altmann* held the grant of jurisdiction in § 1605(a) applies retroactively (despite lack of a clear statement to that effect), the authorization of punitive damages under the current terrorism exception lies in the cause of action under § 1605A(c), not in the grant of jurisdiction under § 1605A(a).

The plaintiffs contend that § 1083(c) of the 2008 NDAA, when combined with the authorization of punitive damages in § 1605A(c), provides a clear statement of retroactive effect. As we have seen, *supra* part IV, both a converted prior action under ***817**229** § 1083(c)(2) and a related action under § 1083(c)(3) necessarily arise out of conduct that occurred before the enactment of the 2008 NDAA, and both provisions allow a plaintiff to proceed under the federal cause of action in § 1605A(c), which authorizes punitive damages. Accordingly, the plaintiffs contend, both § 1083(c)(2) and (c)(3), when read in conjunction with § 1605A(c), clearly allow a court to award punitive damages under the federal cause of action for pre-enactment conduct.

This argument takes one too many a logical leap. Yes, by allowing a plaintiff to convert an action brought under § 1605(a)(7), § 1083(c)(2) clearly authorizes the federal cause of action to apply retroactively. This, however, does not mean that § 1083(c) authorizes the punitive damages in § 1605A(c) to apply retroactively as well. *Cf. Roeder v. Islamic Republic of Iran*, 646 F.3d 56, 61-62 (D.C. Cir. 2011) (finding no clear statement that § 1083(c)(3) abrogated the Algiers Accords simply by allowing plaintiffs to bring actions under § 1605A related to those formerly dismissed by reason of the Accords). Instead, § 1083(c) operates as a conduit for a plaintiff to access the cause of action under § 1605A(c). If punitive damages under § 1605A(c) were not available retroactively to any plaintiff (including those who did not make use of § 1083(c)), then nothing in § 1083(c) would change that. Inversely, if § 1083(c) did not exist, then one plaintiff's inability to convert his pending case or to bring a related action under § 1083(c) would not detract from the retroactive availability of punitive damages for another plaintiff if such relief were clearly authorized by the Congress. At most, Sudan has identified § 1083(c) as a plausible mechanism through which the Congress could have authorized punitive damages for past conduct. But *Landgraf* demands more, and no clear statement emerges from the union of § 1083(c) and § 1605A(c).

There being no clear textual command, the plaintiffs urge that the purpose of § 1083(c) supplies the necessary clear statement of congressional intent. An argument based solely upon the purpose of a statute can hardly supply a "clear statement" of any sort. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208, 109 S.Ct. 468, 102 L.Ed.2d 493 (1988) ("congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result"). Because an expansion of punitive damages would operate retroactively by "increas[ing] [Sudan's] liability for past conduct," the presumption in *Landgraf* applies and bars an award of punitive damages for the embassy bombings, which occurred before the enactment of the 2008 NDAA. Therefore, we vacate the award of punitive damages to plaintiffs proceeding under the federal cause of action.

C. Retroactivity of Punitive Damages Under State Law

The same principle applies to the awards of punitive damages to plaintiffs proceeding under state law. Sudan makes two arguments against the availability of punitive damages for them. Sudan first contends that § 1605A(c) provides the sole source for seeking punitive damages against a foreign sovereign. Sudan rests this view upon § 1606 of the FSIA, which precludes punitive damages against a sovereign defendant. As we have recognized, *supra* p. 808, § 1606, by its terms, applies only to claims brought under § 1605 and § 1607 of the FSIA. *Owens V*, 174 F.Supp.3d at 290. Section 1606 therefore has no bearing upon state law claims brought under the jurisdictional grant in § 1605A.

If this were the end of the analysis, however, a puzzling outcome would arise from our holding that punitive damages ****230*818** are not available retroactively to plaintiffs proceeding under the federal cause of action in § 1605A(c). As we have said, in creating a federal cause of action, the Congress sought to end the inconsistencies in

the "patchwork" pass-through approach of *Cicippio-Puleo*. *See Leibovitch*, 697 F.3d at 567. Allowing punitive damages for pre-enactment conduct under state but not federal law would frustrate this intent: Plaintiffs otherwise eligible for the federal cause of action, for which punitive damages are unavailable, would instead press state law claims for punitive damages, which would effectively perpetuate the inconsistent outcomes based upon differences in state law that the Congress sought to end by passing § 1605A.

As it happens, the retroactive authorization of punitive damages under state law fails for the same reason it does under the federal cause of action: The authorization of § 1605A, read together with § 1606, lacks a clear statement of retroactive effect. Without the *Landgraf* presumption, the enactment of § 1605A would have lifted the restriction on punitive damages in § 1606 from state law claims. If the express authorization of punitive damages under § 1605A(c) lacks a clear statement of retroactive effect, then the implicit, backdoor lifting of the prohibition against punitive damages in § 1606 for state law claims fares no better. *Cf. Landgraf*, 511 U.S. at 259-60, 114 S.Ct. 1483 (finding that cross-references between several sections of the Civil Rights Act did not impliedly make a clear statement of retroactive effect). As a result, a plaintiff proceeding under either state or federal law cannot recover punitive damages for conduct occurring prior to the enactment of § 1605A. Accordingly we vacate all the awards of punitive damages.

VII. Vacatur Under Rule 60(b)

Finally, Sudan argues the district court abused its discretion in denying its motions to vacate the default judgments, invoking three sections of the Rule 60(b): the judgments are void for lack of subject matter jurisdiction per § (b)(4); default was due to "excusable neglect" per § (b)(1); and relief may be justified for "any other reason" per § (b)(6). The first jurisdictional ground is nondiscretionary, *Bell Helicopter*, 734 F.3d at 1179, and has been rejected already in the sections on extrajudicial killing, jurisdictional causation, and the ability of family members of a victim physically injured by the bombings to press a claim under § 1605A.

We review the district court's decision to deny vacatur on the other two grounds for abuse of discretion. *Gonzalez*, 545 U.S. at 535, 125 S.Ct. 2641 ("Rule 60(b) proceedings are subject to only limited and deferential appellate review"). In doing so, we recognize "the 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." *Twelve John Does v. District of Columbia*, 841 F.2d 1133, 1138 (D.C. Cir. 1988). Deferential review preserves the "delicate balance between the sanctity of final judgments ... and the incessant command of a court's conscience that justice be done in light of all the facts." *Good Luck Nursing Home, Inc. v. Harris*, 636 F.2d 572, 577 (D.C. Cir. 1980) (emphasis and internal quotation marks removed). With respect to Rule 60(b)(1), relief for excusable neglect "is rare" as "such motions allow district courts to correct only limited types of substantive errors," *Hall v. CIA*, 437 F.3d 94, 99 (D.C. Cir. 2006), and relief for "any other reason" under Rule 60(b)(6) is even more rare, being available only in "extraordinary circumstances," *Ackermann v. United States*, 340 U.S. 193, 199, 71 S.Ct. 209, 95 L.Ed. 207 (1950). Factual determinations supporting the district court's decision ***819**231** are, of course, reviewed only for clear error. *Gates v. Syrian Arab Republic*, 646 F.3d 1, 4 (D.C. Cir. 2011).

Sudan, as "the party seeking to invoke Rule 60(b)," bears "the burden of establishing that its prerequisites are satisfied." *Id.* at 5 (internal alterations and quotation marks removed). As we have said before, "no principle of sovereign immunity law upsets the parties' respective burdens under Rule 60(b); nor do oft cited ephemeral principles of fairness" demand a different result for a foreign sovereign than for a private litigant. *Id.* In order to secure vacatur, therefore, Sudan must show the district court, in denying its motion for relief, relied upon an incorrect understanding of the law or a clearly erroneous fact. Sudan has not met this burden.

A. Excusable Neglect Under Rule 60(b)(1)

We begin with Sudan's claim of excusable neglect, which the district court addressed in detail. In evaluating a claim of excusable neglect, a court makes an equitable determination based upon "the danger of prejudice to the [non-moving party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993). Additionally, a party seeking vacatur must "assert a potentially meritorious defense." *FG Hemisphere Assocs., LLC v. Democratic Republic of Congo*, 447 F.3d 835, 842 (D.C. Cir. 2006).

In its motion, Sudan submitted a three-page declaration from Maowia Khalid, the Ambassador of Sudan to the

United States, explaining its failure to participate in much of the litigation. First, the Ambassador asserted Sudan's ongoing domestic problems, including natural disasters and civil war, rendered it unable to appear. Khalid Decl. ¶ 4. Second, the Ambassador said a "fundamental lack of understanding in Sudan about the litigation process in the United States" accounted its prolonged absence from the litigation. *Id.* ¶ 5. The district court soundly rejected both reasons. On Sudan's domestic troubles, the district court noted that "[s]ome of that turmoil ... has been of the Sudanese government's own making," but, regardless of blame, Sudan could not excuse at least six years of nonparticipation without sending a single communication to the court. *Owens V*, 174 F.Supp.3d at 255. The court further doubted the credibility of Sudan's alleged ignorance of U.S. legal procedure. After all, Sudan had used this excuse to escape an earlier default in the same litigation, and the "fundamental-ignorance card cannot convincingly be played a second time." *Id.* at 256.

Although the district court, in denying Sudan's Rule 60(b) motion, addressed all the elements of "excusable neglect" mentioned in *Pioneer*, on appeal Sudan challenges only the "reason for the delay" and the "length of the delay." The district court's unchallenged finding that "vacatur would pose a real risk of prejudice to the plaintiffs," *Owens V*, 174 F.Supp.3d at 257, makes it difficult to imagine Sudan could prevail even if it were to succeed on the two elements it does raise, *Pioneer*, 507 U.S. at 397, 113 S.Ct. 1489 (affirming a holding of excusable neglect when the "petitioner does not challenge the findings made below concerning ... the absence of any danger of prejudice" to him), but we consider its arguments nonetheless.

Preliminarily, Sudan also contends the district court "ignored" the "policy favoring vacatur under Rule 60(b)" as it applies to a foreign sovereign. Sudan then claims error in the district court purportedly blaming Sudan for the circumstances that **232*820 prompted its default. Finally, Sudan faults the district court's comparison of the instant case to *FG Hemisphere*, in which this court vacated a default judgment against the Democratic Republic of Congo (DRC).

On the first point, Sudan correctly notes that precedent in this Circuit supports a liberal application of Rule 60(b)(1) to default judgments. *See Jackson v. Beech*, 636 F.2d 831, 836 (D.C. Cir. 1980). This stems from the general policy favoring adjudication on the merits. *Id.*; *Foman v. Davis*, 371 U.S. 178, 181-82, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). The policy has particular force with respect to a defaulting sovereign because "[i]ntolerant adherence to default judgments against foreign states could adversely affect this nation's relations with other nations and undermine the State Department's continuing efforts to encourage foreign sovereigns generally to resolve disputes within the United States' legal framework." *FG Hemisphere*, 447 F.3d at 838-39 (quoting *Practical Concepts*, 811 F.2d at 1551 n.19). Further, we have noted, "[w]hen a defendant foreign state has appeared and asserts legal defenses, albeit after a default judgment has been entered, it is important ..., if possible, that the dispute be resolved on the basis of [ ] all relevant legal arguments." *Practical Concepts*, 811 F.2d at 1552.

For these reasons, the U.S. Government on many occasions has submitted an amicus brief urging vacatur of a default judgment against a foreign sovereign. *See, e.g.*, *id.*; *FG Hemisphere*, 447 F.3d at 838; *Gregorian v. Izvestia*, 871 F.2d 1515, 1518 (9th Cir. 1989); *Jackson v. People's Republic of China*, 794 F.2d 1490, 1495 (11th Cir. 1986). In this case, however, we think it significant that the Government has not taken a position on Sudan's motion to vacate. Indeed, with only two factually unique exceptions, *see Beaty*, 556 U.S. at 855, 129 S.Ct. 2183 and *Roeder*, 646 F.3d at 56, the Government has not weighed in on behalf of a defendant state sponsor of terrorism. *Cf. Doe v. Exxon Mobil Corp.*, 473 F.3d 345, 360 (D.C. Cir. 2007) (noting that "courts give deference ... when the Executive reasonably explains that adjudication of a particular civil lawsuit would adversely affect the foreign policy interests of the United States").

Absent an expressed governmental concern with the liability of a foreign sovereign, the general policy favoring vacatur, by itself, cannot control the resolution of Sudan's Rule 60(b) motion. After all, the FSIA expressly authorizes default judgments against absent sovereigns. *See*28 U.S.C. § 1608(e). If policy considerations alone made vacatur of judgments against foreign sovereigns under Rule 60(b) near-automatic, then the general policy favoring vacatur would render the specific authorization of default judgments in the FSIA a nullity. A district court would abuse its discretion if it were simply to apply the general policy, as Sudan asks us to do now, without considering the specific facts at hand. *See FG Hemisphere*, 447 F.3d at 838-42 (noting the general policy opposing vacatur but considering the *Pioneer* factors). Considering those facts, we see why the district court said that "shouldering [Sudan's] burden is a Herculean task." *Owens V*, 174 F.Supp.3d at 254. Indeed, if we were to vacate the default judgment in this case, then we could not expect any sovereign to participate in litigation rather than wait for a default judgment, move to vacate it under Rule 60(b), appeal if necessary, and then reenter the litigation to contest the merits, having long delayed its day of reckoning. *Cf. H. F. Livermore Corp. v.*

Aktiengesellschaft Gebruder Loepfe, 432 F.2d 689, 691 (D.C. Cir. 1970) (approving of default judgments "when the adversary process has been halted because of an essentially unresponsive party" in which case "the diligent party must be ****233*821** protected lest he be faced with interminable delay and continued uncertainty as to his rights").

Sudan's own actions place it well outside the general policy favoring vacatur. In the cases it cites, relief was justified because the defendant had no notice of the default and promptly responded once made aware of the judgment. *See Bridoux v. E. Air Lines*, 214 F.2d 207, 209 (D.C. Cir. 1954); *FG Hemisphere*, 447 F.3d at 839. In contrast, Sudan knew of the *Owens* action, twice obtained sophisticated legal counsel in 2004, and fully participated in the litigation before absenting itself in 2005. In another case involving a foreign sovereign, there was no abuse of discretion in denying vacatur because the defendant had "received actual or constructive notice of the filing of the action and failed to answer" or to provide a good-faith reason for its unresponsiveness. *See Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987). Moreover, unlike the foreign sovereigns in some cases vacating default judgments, *see, e.g.*, *Gregorian*, 871 F.2d at 1525; *Jackson*, 794 F.2d at 1495-96, Sudan cannot claim to have defaulted in the reasonable belief that it enjoyed sovereign immunity. Several decisions of the district court and this court served on Sudan suggested the evidence proffered by the *Owens* plaintiffs could meet or met their burden of production to establish the jurisdiction of the court.[9] Even when served with the district court's 2011 opinion on liability, which definitively established Sudan's lack of immunity, Sudan let three years pass before filing its motion to vacate. For these reasons, Sudan's lack of diligence in pursuing its Rule 60(b) motion weighs heavily against vacatur. *Cf. Reinsurance Co. of Am. v. Administratia Asigurarilor de Stat*, 902 F.2d 1275, 1276, 1278 (7th Cir. 1990) (affirming denial of Rule 60(b) motion made by a state-owned insurance company for failure to "demonstrate the diligence necessary" to vacate a default judgment).

Furthermore, this is not the first time Sudan has sought to vacate its default or default judgment. In May 2003 the district court entered a default against Sudan for failure to appear. Ten months later, Sudan secured counsel and moved for vacatur under Rule 55(c), which the court granted based upon the very "presumption against an entry of default judgment against a foreign state" that Sudan claims the court ignored in 2016. *Owens I*, 374 F.Supp.2d at 9, 10 n.5. But the presumption against a default judgment is just that—a presumption. The rationale for leniency is necessarily weaker when a defendant seeks to excuse its second default. *See Flanagan*, 190 F.Supp.3d at 158 (noting, as well, Sudan's prior default in *Rux v. Republic of Sudan*, No. 2:04-cv-0428, 2005 WL 2086202, at *2-3, *12-13 (E.D. Va. Aug. 26, 2005)). A double-defaulting sovereign also loses the ability to assert certain "reasons for the delay," including ignorance of the law and a reasonable belief in its own immunity. It is still more difficult to show "good faith" by a defendant that has walked away a second time without so much as a fare thee well. Hence, the general policy favoring relief from default judgments is not enough to overcome Sudan's double default in this case.[10]

****234*822** Finally, it bears mentioning that the district court and now this court have afforded Sudan, as a foreign sovereign, substantial protection against the harsh consequences of a default judgment. Notwithstanding Sudan's failure to participate, the district court assessed whether the plaintiffs' evidence was satisfactory, once to prevail on the merits and twice to establish jurisdiction. *See Owens IV*, 826 F.Supp.2d at 139-46 (applying 28 U.S.C. § 1608(e)); *Owens V*, 174 F.Supp.3d at 275-80. Furthermore, the district court (and now this court de novo) reviewed Sudan's jurisdictional arguments pursuant to its Rule 60(b)(4) motion. We have also exercised our discretion to consider several of Sudan's nonjurisdictional objections, even though Sudan forfeited these arguments by defaulting. We even granted Sudan relief from punitive damages despite its failure timely to object to these awards in the district court. Therefore, Sudan cannot complain "the dispute [has not been] resolved on the basis of ... all relevant legal arguments." *See Practical Concepts*, 811 F.2d at 1552.

Beyond relying upon the general policy in favor of vacatur, Sudan challenges the reasoning behind the district court's decision. In particular, Sudan faults the district court for holding it responsible for its domestic troubles, contending a court may not consider "the question of blame" in analyzing excusable neglect. Sudan is twice wrong. Not only have courts consistently recognized that a defendant's "culpable conduct" may justify denying it relief under Rule 60(b)(1), *see Mfrs.' Indus. Relations Ass'n v. E. Akron Casting Co.*, 58 F.3d 204, 206 (6th Cir. 1995) (inquiring "[w]hether culpable conduct of the defendant led to the default"); *Gregorian*, 871 F.2d at 1523; *Info. Sys. & Networks Corp. v. United States*, 994 F.2d 792, 795 (Fed. Cir. 1993), but the district court expressly based its decision upon Sudan's unresponsiveness, not its blameworthiness; "setting aside the question of blame," it said:

> Domestic turmoil would surely have justified requests by Sudan for extensions of time in which to respond to the plaintiffs' filings. It would have also probably led

> the Court to forgive late filings. And perhaps it would have even justified a blanket stay of these cases. But Sudan was not merely a haphazard, inconsistent, or sluggish litigant during the years in question—it was a complete and utter nonlitigant. Sudan never sought additional time or to pause any of these cases in light of troubles at home. Sudan never even advised the Court of those troubles at the time they were allegedly preventing Sudan's participation—not through formal filings, and not through any letters or other mode of communication with the Court. The idea that the relevant Sudanese officials could not find the opportunity over a period of years to send so much as a single letter or email communicating Sudan's desire but inability to participate in these cases is, quite literally, incredible.

Owens V, 174 F.Supp.3d at 256. Therefore, we find no abuse of discretion in the district court's brief reference to the Sudan's ****235*823** possible responsibility for its domestic turmoil.

Sudan also objects to the district court's discussion of its unresponsiveness, arguing the court demonstrated "a lack of appreciation of the operational realities of a least developed nation in turmoil." But the one conclusory paragraph in the three-page declaration of its Ambassador to the United States that Sudan cites as evidence for this proposition does not show it was incapable of maintaining any communication with the district court. Indeed, Sudan participated in the litigation during its civil war and while negotiating a peace treaty bringing that war to a close. *See UNMIS Background*, United Nations Mission in the Sudan, http://www.un.org/en/peacekeeping/missions/past/unmis/background.shtml (last visited July 19, 2017). This shows Sudan could participate in legal proceedings despite difficult domestic circumstances. Without record evidence supporting Sudan's complete inability to participate, the district court did not abuse its discretion in holding Sudan failed to carry its burden of proving excusable neglect.

As a final argument under Rule 60(b)(1), Sudan faults the district court's comparison of this case to *FG Hemisphere*. In *FG Hemisphere* we vacated a default judgment against the Democratic Republic of Congo (DRC) rendered under the FSIA exception for commercial activity, § 1605(a)(2). 447 F.3d at 843. Sudan's reliance upon *FG Hemisphere* is unsurprising as there we noted the DRC "was plainly hampered by its devastating civil war" which justified, in part, its delayed response. *Id.* at 841. But the outcome in *FG Hemisphere* did not turn solely, or even primarily, upon the domestic turmoil in the DRC. Problems with notice and service, not internal strife, principally excused the DRC's default. In that case, the defendant sovereign was first notified that its diplomatic properties were in jeopardy when it was served with a motion to execute a default judgment a mere six days before a response was due. *Id.* at 839-40. The plaintiffs' failure to translate the motion from English into French, the official language of the DRC, "virtually guaranteed the DRC's inability to file a timely response." *Id.* That the DRC was then engaged in a "devastating civil war" merely diminished its "capacity ... for [the] swift and efficient handling of ... English-language materials"; it did not ultimately prevent the DRC from responding to the motion, which it did shortly after receipt. *Id.* at 840-41.

Unlike the DRC in *FG Hemisphere*, Sudan had notice of the litigation from the time it was first sued. The district court's 2011 opinion on liability was translated into Arabic, Sudan's national language, and delivered through diplomatic channels. Sudan cannot, and does not, complain about defects in notice or service of process. *See Owens V*, 174 F.Supp.3d at 255 (noting that "Sudan's council conceded, 'there's no dispute about service being proper' ").

Nor can Sudan claim to be surprised by the suits, as was the defendant in *FG Hemisphere*. Sudan actively participated in the litigation from February 2004 until January 2005. Even after disengaging from the case, Sudan contacted its counsel for a status update in September 2008. If Sudan indeed needed to divert "all [its] meager legal and diplomatic personnel" to the "cession of south Sudan," as its Ambassador now suggests, then it could have communicated this affirmative decision to the court, along with a request to stay the proceedings. In light of this history, it was not unreasonable for the district court to demand something more than a conclusory assertion without virtually any record evidence of Sudan's inability to participate in the litigation.

****236*824** Also, as the district court noted, the length of delay in *FG Hemisphere* pales in comparison to Sudan's absence in this case. The DRC initiated efforts to secure counsel within one day of receiving notice of the motion to execute. 447 F.3d at 838. Within two months, its counsel filed motions to vacate the default judgment and to stay its execution. *Id.* In contrast, Sudan filed its motions to vacate the judgments 17 months after service of the complaint in *Opati*, the last of the consolidated cases, 40 months after the district court's 2011 opinion on liability, and 53 months after the evidentiary hearing that Sudan did not attend. Indeed, Sudan ceased regular communication with counsel in the *Owens* action nearly eight years before filing its present motions. *Cf. Smith v. District of Columbia*, 430 F.3d 450, 456 n.5 (D.C. Cir.

2005) (noting that delay of "well over a year" militated against excusable neglect). By defaulting, then appearing, then defaulting again, Sudan delayed this case for years beyond its likely end had it simply failed to appear at all. These affirmative actions extended the delay and make Sudan's second default even less excusable than its first. We therefore find no error in the district court's unfavorable comparison of Sudan's default to that of the DRC in *FG Hemisphere*. In sum, none of Sudan's arguments shows the district court abused its discretion in failing to vacate the default judgments for "excusable neglect."

B. Extraordinary Circumstances Under Rule 60(b)(6)

Sudan also challenges the district court's denial of its motion under Rule 60(b)(6), claiming its failure to appear was justified by "extraordinary circumstances."[1] Because Rule 60(b)(1) contains a one-year filing deadline for claims of "excusable neglect," which Sudan missed with respect to the *Mwila* and *Khaliq* judgments, Sudan's Rule 60(b)(6) motions are the only way it may obtain vacatur of those default judgments.

Perhaps recognizing this, Sudan rephrased its earlier arguments asserting "excusable neglect" as requests for relief from those default judgments under Rule 60(b)(6). As with the other cases, the declaration of Ambassador Khalid figures prominently in Sudan's *Mwila* and *Khaliq* motions. This gets Sudan nowhere. In order ****237*825** to receive relief under Rule 60(b)(6), a party must show "extraordinary circumstances" justifying vacatur. *Gonzalez*, 545 U.S. at 534, 125 S.Ct. 2641. As the Supreme Court has explained, the grounds for vacatur under Rule 60(b)(1) and(b)(6) are "mutually exclusive." *Pioneer*, 507 U.S. at 393, 113 S.Ct. 1489. Therefore, "a party who failed to take timely action due to 'excusable neglect' may not seek relief more than a year after the judgment by resorting to subsection (6)." *Id.*

The district court acknowledged this distinction and denied Sudan's motion under Rule 60(b)(6) as merely a "rehash of Sudan's Rule 60(b)(1) argument for excusable neglect." *Owens V*, 174 F.Supp.3d at 258. Instead of grappling with the district court's actual decision, Sudan takes issue with the court's reference to *Ungar v. Palestine Liberation Organization*, 599 F.3d 79 (1st Cir. 2010), in which the First Circuit held that a sovereign's willful default did not *per se* preclude vacatur. *Id.* at 86-87. The district court was understandably puzzled by Sudan's fleeting reference to *Ungar* in light of its assertions that its default was involuntary. If Sudan's default was intentional, as in *Ungar*, the court noted, then relief under Rule 60(b)(1) would be unavailable. *Owens V*, 174 F.Supp.3d at 258. But these musings were not the basis of the district court's decision and therefore cannot be an abuse of discretion.

Undeterred, Sudan now argues *Ungar* demands vacatur when there would be "political ramifications[ ] and [a] potential effect on international relations" from a default judgment, as Sudan claims there would be in this case. *Ungar*, 599 F.3d at 86-87. In its view, these political considerations supply the "extraordinary circumstances" needed to vacate a default judgment under Rule 60(b)(6). Sudan failed to raise this argument before the district court, and it is therefore forfeit on appeal. Accordingly, we affirm the district court's denial of vacatur under Rule 60(b).

* * * * *

To conclude, we (1) affirm the district court's findings of jurisdiction with respect to all plaintiffs and all claims; (2) affirm the district court's denial of vacatur; (3) vacate all awards of punitive damages; and (4) certify a question of state law—whether a plaintiff must be present at the scene of a terrorist bombing in order to recover for IIED—to the District of Columbia Court of Appeals.

So ordered.

All Citations

864 F.3d 751, 431 U.S.App.D.C. 163

Footnotes

1 As we discuss *infra*, the Khaliq plaintiffs later asserted claims under § 1605A.

2 *See, e.g.*, *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d 105, 113 (D.D.C. 2005) (applying the terrorism exception to the U.S. embassy bombing in Beirut); *Peterson v. Islamic Republic of Iran*, 264 F.Supp.2d 46, 61 (D.D.C. 2003) (U.S. Marine barracks in Beirut), *approved of by*627 F.3d 1117, 1122-23 (9th Cir. 2010); *Wagner v. Islamic Republic of Iran*, 172 F.Supp.2d 128, 133 (D.D.C. 2001) (U.S. embassy annex in East Beirut); *Ben-Rafael v. Islamic Republic of*

Iran, 540 F.Supp.2d 39, 53 (D.D.C. 2008) (Israeli embassy in Buenos Aires); *Blais v. Islamic Republic of Iran*, 459 F.Supp.2d 40, 53 (D.D.C. 2006) (Khobar Towers military residence in Saudi Arabia); *Rux v. Republic of Sudan*, No. 2:04-cv-428, 2005 WL 2086202, at *13 (E.D. Va. Aug. 26, 2005) (USS Cole), *aff'd in relevant part*, 461 F.3d 461 (4th Cir. 2006); *see also Owens II*, 412 F.Supp.2d at 106 n.11 ("[T]he Sudan defendants do not dispute that the embassy bombings constitute an act of extrajudicial killing"), *aff'd*, 531 F.3d 884.

3 Sudan did put some evidence into the record before absenting itself from the litigation. For its 2004 motion to dismiss, Sudan obtained statements disputing its support for the 1998 embassy bombings from Timothy Carney, the U.S. Ambassador to Sudan from 1995 to 1997, and from John Cloonan, a FBI Special Agent charged with building the conspiracy case against Bin Laden during the 1990s. The plaintiffs moved for leave to depose Carney and Cloonan, but the FBI and the Department of State successfully opposed the motion, arguing the request did not comply with each agency's so-called *Touhy* regulations for obtaining permission to solicit testimony from former government officials, *see*22 C.F.R. §§ 172.1-172.9; 28 C.F.R. §§ 16.21-16.29. The agencies also noted that Sudan had not properly sought approval to take the declarations.
Sudan then ceased participating in the litigation. Although Sudan does not now contend the declarations were admissible, *see Owens V*, 174 F.Supp.3d at 276 n.16, at oral argument it complained the court unfairly considered the plaintiffs' supposedly inadmissible evidence but not the Carney and Cloonan declarations. The matter stands precisely as the district court left it in 2005. Sudan likely violated the agencies' *Touhy* regulations in obtaining the declarations in 2004. Allowing it to use the declarations on appeal, without affording the plaintiffs an opportunity to seek depositions from Carney and Cloonan in compliance with the regulations, would work a substantial injustice.

4 In a supplemental filing, Sudan compares these reports to excerpts on an Israeli governmental website in *Gilmore* that we excluded as inadmissible hearsay outside the exception for public records. But *Gilmore* turned upon the plaintiffs' failure to establish a foundation for admissibility; they "rested on a bare, one-sentence assertion that the web pages were admissible under Rule 803(8)" and gave no "further explication of how the pages conveyed 'factual findings from a legally authorized investigation.' " 843 F.3d at 969-70. The webpages themselves "offer[ed] no information explaining who made the findings or how they were made." *Id.* at 969.

5 Sudan also objects to the admission of the recorded testimony of Jamal al Fadl at the Bin Laden criminal trial, contending it is inadmissible hearsay. We agree to the extent that al Fadl's prior testimony is not admissible as "former testimony" under the hearsay exception in Rule 804(b)(1) because it was not "offered against a party who had ... an opportunity and similar motive to develop it by" cross-examination in the prior criminal case.
The district court held, and the plaintiffs argue on appeal, that Sudan's inability to cross-examine al Fadl was irrelevant in a non-adversarial evidentiary hearing. After all, they note, courts have admitted sworn affidavits in § 1608(e) hearings in previous FSIA cases. *Owens V*, 174 F.Supp.3d at 280-81 & n.18 (citing *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 111 (6th Cir. 1995) and *Kim*, 774 F.3d at 1049-51). But in each case cited, the out-of-court declarant was at least potentially available to testify in court, should the need arise. Plaintiffs here have made no such showing regarding al Fadl, who is in the witness protection program. For this reason, we hesitate to equate affidavits prepared for a FSIA hearing with former trial testimony recorded for a wholly separate purpose. We, however, need not decide whether al Fadl's prior trial testimony is otherwise admissible because sufficient, admissible evidence sustains the district court's findings of jurisdiction in this case.

6 Several district courts have applied this exception to claims for emotional distress under the federal cause of action in the new FSIA terrorism exception. *See, e.g.*, *Estate of Heiser v. Islamic Republic of Iran*, 659 F.Supp.2d 20, 26-27 (D.D.C. 2009) ("All acts of terrorism are by their very definition extreme and outrageous and intended to cause the highest degree of emotional distress, literally, terror, in their targeted audience") (quoting *Stethem v. Islamic Republic of Iran*, 201 F.Supp.2d 78, 89 (D.D.C. 2002)).

7 These circumstances distinguish the review of retroactive punitive damages from the review of Sudan's forfeited limitations defense. *See Musacchio*, 136 S.Ct. at 717 ("[A] limitations bar ... is a defense that becomes part of a case only if the defendant presses it in the district court"); *Day*, 547 U.S. at 202, 126 S.Ct. 1675 ("Ordinarily in civil litigation, a statutory time limitation is forfeited if not raised in a defendant's answer or in an amendment thereto").

8 The circumstances of this case also distinguish it from *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 108 S.Ct. 1645, 100 L.Ed.2d 62 (1988) in which the Supreme Court declined to hear a challenge to a state court's award of punitive damages that the appellant had not raised in the state court. Here, although Sudan did not object to punitive damages before the entry of final judgment, it raised the matter in its post-trial motions for vacatur. Unlike in *Crenshaw*, the district court considered these untimely objections and considered their merits before denying vacatur. For this reason, we have a "properly developed record on appeal" and "a reasoned opinion on the merits" with which to evaluate this pure question of law. *Id.* at 79-80, 108 S.Ct. 1645. Also unlike *Crenshaw*, this case does not involve considerations of "comity to the States" as it arises under federal law, *id.* at 79, 108 S.Ct. 1645, and any concern about

relations between nations cuts in favor of, rather than against, exercising discretionary review.

9 *See Owens IV*, 826 F.Supp.2d at 150 ("Plaintiffs have satisfied their burden under 28 U.S.C. § 1608(e) to show ... Sudan ... provided material support and resources ... for acts of terrorism"); *Owens I*, 374 F.Supp.2d at 17-18 (noting the plaintiffs "will have no trouble in making [the] allegation[s]" necessary to "survive a motion to dismiss") (quoting *Price*, 294 F.3d at 93); *Owens II*, 412 F.Supp.2d at 108-09, 115 (holding the plaintiffs' claims, accepted as true, satisfied the pleading standards of the FSIA).

10 In a supplemental filing, Sudan points to our recent decision in *Gilmore*, in which we held the district court did not abuse its discretion by vacating two defaults entered against the Palestinian Authority in light of the defendant's willingness to participate in subsequent discovery and litigation. 843 F.3d at 995-96. In doing so, Sudan notes, we referenced "the federal policy favoring trial over default judgment." *Id.* at 995 (quoting *Whelan v. Abell*, 48 F.3d 1247, 1258 (D.C. Cir. 1995)). But *Gilmore* dealt with vacatur of a default under Rule 55(c); the less-demanding "good cause" standard for vacating a default under that rule "frees a court from the restraints of Rule 60(b)" and "entrusts the determination to the discretion of the court." *Id.* at 996 (quoting 10A Charles A. Wright, Arthur R. Miller & Mary K. Kane, Federal Practice and Procedure § 2694 (3d ed. 2016)).

11 In addition, Sudan moves to vacate the judgments in favor of foreign family members and the awards of punitive damages under Rule 60(b)(6), claiming the district court's errors of law on these questions also provide "extraordinary circumstances" supporting vacatur. We have addressed these nonjurisdictional matters separately in the preceding sections. Although a "dispute over the proper interpretation of a statute," by itself, does not likely justify relief under Rule 60(b)(6), *Carter v. Watkins*, 995 F.2d 305 (D.C. Cir. 1993) (per curiam) (table); *cf. Ctr. for Nuclear Responsibility, Inc. v. U.S. Nuclear Regulatory Comm'n*, 781 F.2d 935, 939-40 (D.C. Cir. 1986) (discussing a Circuit split on the matter and expressing doubt on whether Rule 60(b) should be used to correct legal errors), we have reviewed and rejected each of Sudan's contentions on direct appeal from the default judgments due to the size of the awards in question, underlying constitutional concerns about retroactive liability for punitive damages, and the likelihood of the purely legal issues here recurring in our district court. Hence, there is no need to evaluate whether these claims present "extraordinary circumstances" under Rule 60(b)(6). In contrast to these purely legal arguments, which require no further factual development, *see Roosevelt*, 958 F.2d at 419 & n.5, we see far less reason to give Sudan an opportunity to relitigate the factual record by vacating the default judgments, especially considering its failure to participate in the district court and our independent review of the evidence showing material support and jurisdictional causation. *See Practical Concepts*, 811 F.2d at 1552 ("When a defendant foreign state has appeared and asserts *legal* defenses, albeit after a default judgment has been entered, it is important ... that the dispute be resolved on the basis of ... all relevant *legal* arguments") (emphases added).

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ANNEX 368

LIST OF EXHIBITS
PLAINTIFFS' FIRST MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR ENTRY OF JUDGMENT BY DEFAULT AGAINST SOVEREIGN DEFENDANTS

Ex. No.	Date	Description
1	July 2004	Excerpts from the FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES ("9/11 REPORT"), pp. 240-41; 10-16; 47-48; 57; 60-61; 65-69; 109; 145; 147; 149-150; 153-56; 160-69; 214; 225; 242-46; 248; 252; 254-77; 384; 476; 494; 522
2	5/10/10	2nd Affidavit of Kenneth R. Timmerman, investigative journalist (redacted)
3	6/8/10	Affidavit of Daniel L. Byman, former 9/11 Commission staff member
4	6/7/10	Affidavit of Janice L. Kephart, former 9/11 Commission staff member
5	7/29/10	Affidavit of Dietrich L. Snell, former 9/11 Commission staff member and team leader
6	3/26/10	Affidavit of Clare M. Lopez and Dr. Bruce D. Tefft, former CIA case officers (redacted)
7	4/8/10	Affidavit of Dr. Ronen Bergman, Israeli military and intelligence analyst (redacted)
8	6/25/10	Affidavit of Dr. Patrick L. Clawson, PhD, noted Iran scholar (redacted)
9	3/16/10	Declaration of Jean-Louis Bruguière, French former investigative Jurist
10	11/1/10	Affidavit of Edgar A. Adamson, former chief of U.S. national bureau of INTERPOL
11	6/3/10	Testimony of Abolhassan Banisadr, former president of Iran
12	~	U.S. Department of State, State Sponsors of Terrorism, www.state.gov/s/ct/c14151.htm
13	1980-2009	U.S. Department of State Reports, *Patterns of Global Terrorism* / *Country Reports on Terrorism*, 1980-2009 (excerpts *re*: Iran)
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ANNEX 369

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001

MEMORANDUM DECISION
AND ORDER
03 MDL 1570 (GBD)(FM)

This Document Relates to
Havlish v. bin Laden,
03 Civ. 9848 (GBD) (FM)

GEORGE B. DANIELS, District Judge:

The plaintiffs in this multi-district litigation ("MDL") seek monetary damages from defendants who are liable for the physical destruction, death, and injuries suffered as a result of the terrorist attacks of September 11, 2001 ("September 11th Attacks"). On December 22, 2011, default judgment was entered on behalf of the plaintiffs in the Havlish action ("Plaintiffs"), against (a) certain sovereign defendants, including the Islamic Republic of Iran, Ayatollah Ali Hoseini Khamenei, Hezbollah, and other Iranian individuals and entities ("Sovereign Defendants"); and (b) certain non-sovereign defendants, including Osama bin laden, the Taliban, and al Qaeda ("Non-Sovereign Defendants") (collectively, the "Defendants"). See Docket Entry No. 2516. This Court referred the matter to Magistrate Judge Frank Maas for an inquest on damages.

Magistrate Judge Maas issued a Report and Recommendation ("Report") recommending that Plaintiffs collectively be awarded damages in the amount of $6,048,513,805, plus prejudgment interest.

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections to the Report, the Court must make a *de novo* determination of those portions of the Report to which objections are made. Id.; see also Rivera v. Barnhart, 432 F.Supp. 2d 271, 273 (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(c). It is not required, however, that the Court conduct a *de novo* hearing on the matter. See United States v. Raddatz, 447 U.S. 667, 676 (1980). Rather, it is sufficient that the Court "arrive at its own, independent conclusions" regarding those portions to which objections were made. Nelson v. Smith, 618 F. Supp. 1186, 1189-90 (S.D.N.Y.1985) (quoting Hernandez v. Estelle, 711 F.2d 619, 620 (5th Cir.1983)). When no objections to a Report are made, the Court may adopt the Report if "there is no clear error on the face of the record." Adee Motor Cars, LLC v. Amato, 388 F.Supp. 2d 250, 253 (S.D.N.Y.2005) (citation omitted). In his report, Magistrate Judge Maas advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). No party objected to the Report. As there is no clear error on the face of the record, this Court adopts the Report in its entirety.

Sovereign Defendants

Magistrate Judge Maas properly determined that Plaintiffs may recover for "economic damages, solatium, pain and suffering, and punitive damages" in an action under Section 1605A. 28 U.S.C. § 1605A(c)(4). In such an action, the "estates of those who [died] can recover economic losses stemming from the wrongful death of the decedent; family members can

recover solatium for their emotional injury; and all plaintiffs can recover punitive damages." Valore v. Islamic Republic of Iran, 700 F. Supp. 2d 52, 83 (D.D.C. 2010).

Magistrate Judge Maas properly determined that economic damages totaling $394,277,884, as broken down in Appendix 1 of this opinion, are appropriate. Plaintiffs submitted extensive analyses from a forensic economist with detailed calculations for two decedents, as well as damage calculations for the remaining forty-five decedents done in the same manner. These analyses yield proposed economic damages comparable to those in other cases. See, e.g., Dammarell v. Islamic Republic of Iran, 404 F. Supp. 2d 261, 310-24 (D.D.C. 2005); Alejandre v. Republic of Cuba, 996 F. Supp. 2d 261, 310-24 (D.D.C. 2005). Plaintiffs have thus provided a sufficient basis to determine damages and are entitled to economic damages as outlined in the Report. See Transatl. Marine Claims Agency, Inc. v. ACE Shipping Corp., 109 F. 3d 105, 111 (2d Cir. 1997) (noting that the Court "should take the necessary steps to establish damages with reasonable certainty").

Magistrate Judge Maas also properly determined that $2,000,000 per decedent, for a total of $94,000,000, is an appropriate measure of damages which meets the standard of reasonableness for pain and suffering awards. See Mastrantuono v. United States, 163 F. Supp. 2d 244, 258 (S.D.N.Y. 2001). Calculating a precise award for each decedent's individual pain and suffering would be impossible because the decedents in this case may have experienced different levels of pain and suffering dependent on their precise locations at the time of the September 11th attacks. However, Plaintiff's expert report confirms that many, if not all of the decedents in this case experienced horrific pain and suffering on September 11, 2001. Awards in other FSIA cases, particularly those determined by Judge Baer in Smith ex rel. Smith v. Islamic Emirate of Afghanistan, suggest that $2 million per decedent is a reasonable figure. See Smith

ex rel. Smith v. Islamic Emirate of Afghanistan, 262 F. Supp. 2d 217, 233 (S.D.N.Y. 2003), amended, 2003 WL 23324214 (S.D.N.Y. May 19, 2003); see also Pugh v. Socialist People's Libyan Arab Jamahiriya, 530 F. Supp. 2d 216 (D.D.C. 2008); Stethem v. Islamic Republic of Iran, 201 F. Supp. 2d 87, 89 (D.D.C. 2002).

Magistrate Judge Maas properly determined that the following solatium[1] awards are appropriate[2], as an upward departure from the framework in Estate of Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229 (D.D.C. 2006):

Relationship to Decedent	**Solatium Award**
Spouse	$12,500,000
Parent	$8,500,000
Child	$8,500,000
Sibling	$4,250,000

A review of Plaintiff's submissions makes clear that all of the Individual Plaintiffs have suffered profound agony and grief as a result of the tragic events of September 11th. Considering the extraordinarily tragic circumstances surrounding the September 11th attacks, the indelible impact on the lives of the victims' families, and the frequent reminders that each of the individual Plaintiffs face daily, upward departures from the Heiser framework are warranted.

[1] "A claim for solatium refers to the mental anguish, bereavement, and grief that those with a close relationship to the decedent experience as a result of the decedent's death, as well as the harm caused by the loss of decedent's society and comfort." Dammarell v. Islamic Republic of Iran, 281 F. Supp. 2d 105, 196 (D.D.C. 2003), vacated on other grounds, 404 F. Supp. 2d 261 (D.D.C. 2005).

[2] Magistrate Judge Maas properly determined that one individual Plaintiff is not entitled to a solatium award because he is not a spouse, child, parent, or sibling of a decedent. Although that plaintiff is the niece of one of the decedents, she has not demonstrated that she is entitled to a solatium award because she does not serve functionally as an immediate family member. See Smith, 262 F. Supp. 2d at 234.

Magistrate Judge Maas also properly determined that Plaintiffs are entitled to punitive damages pursuant to the FSIA in an amount of 3.44 multiplied by their compensatory damages, for a total of $4,686,235,921. See Section 1605(c)(4); Estate of Bland v. Islamic Republic of Iran, 831 F. Supp. 2d 150, 158 (D.D.C. 2011). The 3.44 ratio has been used as the standard ratio applicable to a number of cases arising out of terrorist attacks. See id.; Valore, 700 F. Supp. 2d at 52; Murphy v. Islamic Republic of Iran, 740 F. Supp. 2d 51, 76 (D.D.C. 2011).

Magistrate Judge Maas also properly determined that prejudgment interest is appropriate on Plaintiffs' damages for solatium and pain and suffering. The decision to award prejudgment interest, as well as how to compute that interest, rests within the discretion of the court, subject to equitable considerations. Baker v. Socialist People's Libyan Arab Jamahirya, 775 F. Supp. 2d 48, 86 (D.D.C. 2011). Courts "have awarded prejudgment interest in cases where plaintiffs were delayed in recovering compensation for their injuries—including, specifically, where such injuries were the result of targeted attacks perpetrated by foreign defendants." Id. (internal quotations omitted). An appropriate measure of what rate to use when calculating prejudgment interest is the prime rate. Id. Magistrate Judge Maas properly accepted testimony from Plaintiffs' expert that the average prime rate from September 11, 2001 through the date of his report was 4.96%. Thus, Plaintiffs should be awarded prejudgment interest at the rate of 4.96% per annum on their damages of solatium and pain and suffering damages, which total $968,000,000, from the period from September 11, 2001, through the date that judgment is entered.

Non-Sovereign Defendants

Magistrate Judge Maas properly determined that the Non-Sovereign Defendants are jointly and severally liable for the damages against the Sovereign Defendants. The Non-

Sovereign Defendants are liable for the same damages as the Sovereign Defendants under traditional tort principles. See Valore, 700 F. Supp. 2d at 76-80.

Costs

Magistrate Judge Maas properly determined that Plaintiffs are not entitled to the $2 million they seek in costs. Plaintiffs' requested costs are primarily for expenses that are not recoverable pursuant to 28 U.S.C. § 1920 and Local Rule 54.1(c). For expenses that are recoverable, Plaintiffs have not provided sufficient evidence to establish these amounts with reasonable certainty. Transatl. Marine Claims Agency, Inc. v. ACE Shipping Corp., 109 F. 3d 105, 111 (2d Cir. 1997; See N.Y. State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1148 (2d Cir. 1983). Thus Plaintiffs' application for costs is denied without prejudice.

Conclusion

This Court adopts the Report and Recommendation in its entirety. Judgment should be entered against the Sovereign Defendants for (1) economic damages totaling $394,277,884 as broken down in Appendix 1 of this Opinion; (2) damages for pain and suffering of $2,000,000 per decedent totaling $94,000,000; (3) punitive damages totaling $4,686,235,921; and (4) damages for solatium totaling $874,000,000. The Non-Sovereign Defendants are joint and severally liable for these damages. Plaintiffs' additional claims for costs are denied without prejudice.

Dated: New York, New York
October 3, 2012

SO ORDERED:

George B. Daniels

GEORGE B. DANIELS
United States District Judge