

Iran: State Sponsor of Terror

Selected Materials

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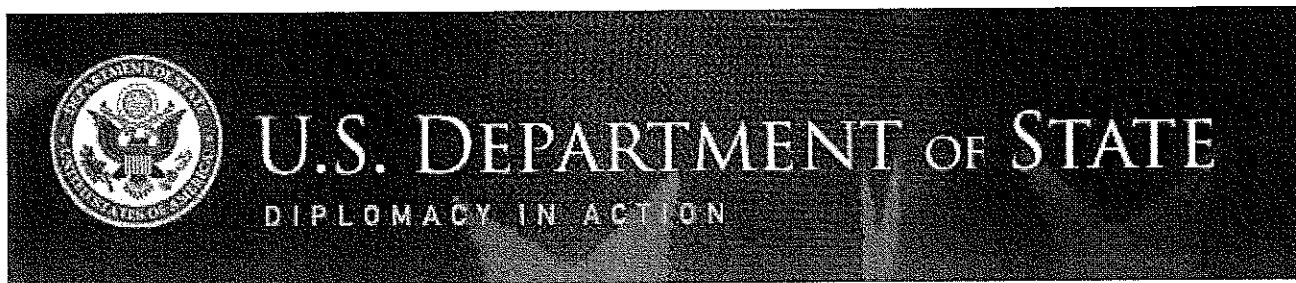
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Iran: State Sponsor of Terror
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SELECTED MATERIALS

1. U.S. Department of State- Fact Sheet “State Sponsors of Terrorism.”
2. U.S. Department of State- 2009 Country Report on Terrorism (Selections).
3. U.S. Central Intelligence Agency- 2010 World FactBook, Iran (Selections).
4. U.S. Department of the Treasury, Office of Foreign Assets Control- Fact Sheet “What You Need to Know About U.S. Economic Sanctions.”
5. U.S. General Accounting Office- Fact Sheet “Laws Cited Imposing Sanctions on Nations Supporting Terrorism” April 1987.
6. Iran and Libya Sanctions Act of 1996- Public Law 104-172. August 6, 1996.
7. Reuters Article “Factbox: Sanctions Against Iran” October 13, 2009.
8. *In re Islamic Republic of Iran Terrorism Litigation*, 659 F.Supp.2d 31 (D.D.C. 2009). (Selections).
9. *Valore v. Islamic Republic of Iran*, 700 F.Supp.2d 52 (D.D.C. 2010).
10. Richard D. Heideman, Esq. “Iran: An Escalating Threat” Long Island Jewish World January 8-14, 2010.



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State Sponsors of Terrorism

Countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are designated pursuant to three laws: section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act. Taken together, the four main categories of sanctions resulting from designation under these authorities include restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual use items; and miscellaneous financial and other restrictions.

Designation under the above-referenced authorities also implicates other sanctions laws that penalize persons and countries engaging in certain trade with state sponsors. Currently there are four countries designated under these authorities: Cuba, Iran, Sudan and Syria.

Country	Designation Date
Cuba	March 1, 1982
Iran	January 19, 1984
Sudan	August 12, 1993
Syria	December 29, 1979

For more details about State Sponsors of Terrorism, see "Overview of State Sponsored Terrorism" in [Country Reports on Terrorism](#).

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Chapter 3: State Sponsors of Terrorism

OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM

Country Reports on Terrorism 2009

August 5, 2010

State sponsors of terrorism provide critical support to many non-state terrorist groups. Without state sponsors, these groups would have greater difficulty obtaining the funds, weapons, materials, and secure areas they require to plan and conduct operations. The United States will continue to insist that these countries end the support they give to terrorist groups.

State Sponsor: Implications

The designation of countries that repeatedly provide support for acts of international terrorism as state sponsors of terrorism carries with it four main sets of U.S. Government sanctions:

1. A ban on arms-related exports and sales.
2. Controls over exports of dual-use items, requiring 30-day Congressional notification for goods or services that could significantly enhance the terrorist-list country's military capability or ability to support terrorism.
3. Prohibitions on economic assistance.
4. Imposition of miscellaneous financial and other restrictions, including:
 - Requiring the United States to oppose loans by the World Bank and other international financial institutions;
 - Exception from the jurisdictional immunity in U.S. courts of state sponsor countries, and all former state sponsor countries (with the exception of Iraq), with respect to claims for money damages for personal injury or death caused by certain acts of terrorism, torture, or extrajudicial killing, or the provision of material support or resources for such acts;
 - Denial to companies and individuals tax credits for income earned in terrorist-list countries;
 - Denial of duty-free treatment of goods exported to the United States;
 - Authority to prohibit any U.S. citizen from engaging in a financial transaction with a terrorist-list government without a Treasury Department license; and

- Prohibition of Defense Department contracts above US\$ 100,000 with companies in which a state sponsor government owns or controls a significant interest.

Designated State Sponsors of Terrorism

CUBA

The Cuban government and official media publicly condemned acts of terrorism by al-Qa'ida and affiliates, while at the same time remaining critical of the U.S. approach to combating international terrorism. Although Cuba no longer supports armed struggle in Latin America and other parts of the world, the Government of Cuba continued to provide physical safe haven and ideological support to members of three terrorist organizations that are designated as Foreign Terrorist Organizations by the United States.

The Government of Cuba has long assisted members of the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army of Colombia (ELN), and Spain's Basque Homeland and Freedom Organization (ETA), some having arrived in Cuba in connection with peace negotiations with the governments of Colombia and Spain. There was no evidence of direct financial support for terrorist organizations by Cuba in 2009, though it continued to provide safe haven to members of the FARC, ELN, and ETA, providing them with living, logistical, and medical support.

Cuba cooperated with the United States on a limited number of law enforcement matters. However, the Cuban government continued to permit U.S. fugitives to live legally in Cuba. These U.S. fugitives include convicted murderers as well as numerous hijackers. Cuba permitted one such fugitive, hijacker Luis Armando Peña Soltren, to voluntarily depart Cuba; Peña Soltren was arrested upon his arrival in the United States in October.

Cuba's Immigration Department refurbished the passenger inspection area at Jose Marti International Airport and provided new software and biometric readers to its Border Guards.

IRAN

Iran remained the most active state sponsor of terrorism. Iran's financial, material, and logistic support for terrorist and militant groups throughout the Middle East and Central Asia had a direct impact on international efforts to promote peace, threatened economic stability in the Gulf and undermined the growth of democracy.

Iran remained the principal supporter of groups that are implacably opposed to the Middle East Peace Process. The Qods Force, the external operations branch of the Islamic Revolutionary Guard Corps (IRGC), is the regime's primary mechanism for cultivating and supporting terrorists abroad. Iran provided weapons, training, and funding to HAMAS and other Palestinian terrorist groups, including Palestine Islamic Jihad (PIJ) and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Iran has provided hundreds of millions of dollars in support to Lebanese Hizballah and has trained thousands of Hizballah fighters at camps in Iran. Since the end of the 2006 Israeli-Hizballah conflict, Iran has assisted Hizballah in rearming, in violation of UN Security Council Resolution 1701.

Iran's Qods Force provided training to the Taliban in Afghanistan on small unit tactics, small arms, explosives, and indirect fire weapons. Since at least 2006, Iran has arranged arms shipments to select Taliban members, including small arms and associated ammunition, rocket propelled grenades, mortar rounds, 107mm rockets, and plastic explosives.

Despite its pledge to support the stabilization of Iraq, Iranian authorities continued to provide lethal support, including weapons, training, funding, and guidance, to Iraqi Shia militant groups that targeted U.S. and Iraqi forces. The Qods Force continued to supply Iraqi militants with Iranian-produced advanced rockets, sniper rifles, automatic weapons, and mortars that have killed Iraqi and Coalition Forces, as well as civilians. Iran was responsible for the increased lethality of some

attacks on U.S. forces by providing militants with the capability to assemble explosively formed penetrators that were designed to defeat armored vehicles. The Qods Force, in concert with Lebanese Hizballah, provided training outside of Iraq and advisors inside Iraq for Shia militants in the construction and use of sophisticated improvised explosive device technology and other advanced weaponry.

Iran remained unwilling to bring to justice senior al-Qa'ida (AQ) members it continued to detain, and refused to publicly identify those senior members in its custody. Iran has repeatedly resisted numerous calls to transfer custody of its AQ detainees to their countries of origin or third countries for trial; it is reportedly holding Usama bin Ladin's family members under house arrest.

Senior IRGC, IRGC Qods Force, and Iranian government officials were indicted by the Government of Argentina for their alleged roles in the 1994 terrorist bombing of the Argentine-Jewish Mutual Association (AMIA); according to the Argentine State Prosecutor's report, the attack was initially proposed by the Qods Force. In 2007, INTERPOL issued a "red notice" for six individuals wanted in connection to the bombing. One of the individuals, Ahmad Vahidi, was named as Iran's Defense Minister in August 2009.

SUDAN

The Sudanese government continued to pursue counterterrorism operations directly involving threats to U.S. interests and personnel in Sudan. Sudanese officials have indicated that they view their continued cooperation with the U.S. government as important and recognize the potential benefits of U.S. training and information-sharing. While the bilateral counterterrorism relationship remains solid, hard-line Sudanese officials continued to express resentment and distrust over actions by the United States and questioned the benefits of continued counterterrorism cooperation. Their assessment reflected disappointment that Sudan's cooperation has not resulted in its removal from the list of State Sponsors of Terrorism. Despite this, there was no indication that the Sudanese government will curtail its current level of counterterrorism cooperation despite bumps in the overall bilateral relationship.

Al-Qa'ida-inspired terrorist elements as well as elements of the Palestinian Islamic Jihad, and HAMAS, remained in Sudan in 2009. In the early hours of January 1, 2008, attackers in Khartoum sympathetic to al-Qa'ida, calling themselves al-Qa'ida in the Land Between the Two Niles, shot and fatally wounded two U.S. Embassy staff members -- one American and one Sudanese employee, both of whom worked for the U.S. Agency for International Development. Sudanese authorities cooperated closely with agencies of the U.S. government in the investigation. The five alleged conspirators were arrested in February 2008 and put on trial for murder on August 31, 2008. On June 24, 2009 four men were sentenced to death by hanging for the killings. A fifth man received a two-year prison term for providing the weapons used in the attack. At least three other men allegedly involved in planning the attack were detained but have not been charged.

With the exception of HAMAS, whose members the Sudanese government considers "freedom fighters," the government does not openly support the presence of extremist elements in this country. For example, Sudanese officials have welcomed HAMAS members as representatives of the Palestinian Authority, but have limited their activities to fundraising. The Sudanese government has also worked hard to disrupt foreign fighters from using Sudan as a logistics base and transit point for terrorists going to Iraq. However, gaps remain in the Sudanese government's knowledge of these individuals and its ability to identify and capture them. There was some evidence to suggest that individuals who were active participants in the Iraqi insurgency have returned to Sudan and are in a position to use their expertise to conduct attacks within Sudan or to pass on their knowledge to local Sudanese extremists. There was also evidence that Sudanese extremists participated in terrorist activities in Somalia.

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The Lord's Resistance Army (LRA) led by Joseph Kony continued to operate in southern Sudan. Following Kony's repeated failure to sign a draft of the Final Peace Agreement, on December 14, 2008, the Ugandan People's Defense Force (UPDF), with cooperation from the Government of Southern Sudan and the Democratic Republic of Congo (DRC), launched Operation Lighting Thunder, attacking LRA bases along the border of Southern Sudan and the DRC. This operation destroyed the main LRA base camp and forcing LRA members to relocate elsewhere in the DRC, Southern Sudan, and the Central African Republic. The UPDF started withdrawing from the operation in mid-March, handing control over operations in DRC to the Armed Forces of the DRC. The operation was declared a success and was said to have significantly weakened the LRA's command structure. However, the official objectives – to make Kony sign the Final Peace Agreement, or to destroy the LRA – were only partially achieved, and it is unclear how much the LRA's central command has been hurt. Few senior LRA figures were captured and Kony's whereabouts were unknown at year's end. The UPDF continued to pursue the LRA in Central African Republic, and in southern Sudan, it received assistance from the Sudan Peoples Liberation Army. There was no reliable information to corroborate long-standing allegations that the Government of Sudan was supporting the LRA in 2009.

SYRIA

Syria is a signatory to nine of the 13 international conventions and protocols relating to terrorism. While Syrian officials have publicly condemned international terrorism, they continue to insist there is a distinction between terrorist attacks and attacks undertaken by "national liberation movements" engaged in legitimate armed resistance, including Palestinian groups, Lebanese Hizballah, and members of the Iraqi opposition. The United States does not agree with this characterization and has designated a number of these groups as Foreign Terrorist Organizations. During the reporting period, the United States raised concerns about Syria's support of these groups directly with the Syrian government.

Designated in 1979 as a State Sponsor of Terrorism, Syria continued to provide safe-haven as well as political and other support to a number of designated Palestinian terrorist groups, including HAMAS, Palestinian Islamic Jihad (PIJ), and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Several of these terrorist groups have claimed responsibility for terrorist acts in the past, but none over the past year. The operational leadership of many of these groups is headquartered or sheltered in Damascus, including Khaled Meshaal of HAMAS, Ramadan Shallah of PIJ, and Ahmed Jibril of PFLP-GC. The Syrian government provided Meshaal with security escorts for his motorcades and allowed him to travel freely around Damascus, attending numerous public events such as national day celebrations for Arab states. Though the Syrian government claimed periodically that it used its influence to restrain the activities of Palestinian groups, it allowed conferences organized by HAMAS to take place over the course of the year. In addition, the Syrian government has made no attempt to restrict the operation, travel, or movement of these groups' leaders or members. Syria allows terrorist groups resident in its territory to receive and ship goods, including weapons, in and out of the country.

Additionally, the Syrian government provided diplomatic, political and material support to Hizballah in Lebanon and allowed Iran to supply this organization with weapons. Weapons flow from Iran through Syria, and directly from Syria, to Hizballah despite UN Security Council resolution 1701 of 2006, which imposes an arms embargo on Lebanon except with the consent of the Lebanese government. Indeed, Hizballah claims to have a larger arsenal today than it did in 2006. Underscoring links between the Syrian government and Hizballah, Israeli naval commandos intercepted a large cache of arms on November 3 on its way from Iran to Hizballah by way of the Syrian port of Latakia. The arms shipment, which was found amidst civilian cargo on the Antigua- flagged ship MV Francop, weighed over 500 tons. While the Syrian government denied involvement in the shipment, Israeli officials stressed that the incident illustrates Syria's continued efforts to fight a proxy war with Israel through terrorist groups like Hizballah. The last attack across the internationally-

recognized Israeli line of withdrawal (a.k.a. the Blue Line) occurred in 2006. In the same year, a terrorist attack on the U.S. Embassy in Damascus was defeated by Syrian security forces.

Syria has maintained its ties with its strategic ally, and fellow state sponsor of terrorism, Iran. In August, President al-Asad visited Tehran. On December 3, the Syrian president met the Iranian National Security Advisor Said Jalili in Damascus. On December 8, Iranian Defense Minister Ahmed Vahidi began a three-day visit to Syria, where he met with political and military leaders. Vahidi and his Syrian counterpart announced a Syrian-Iranian defense cooperation agreement on December 11. Frequent working-level visits between Iranian and Syrian officials took place regularly throughout 2009. Syria also allowed leaders of HAMAS and other Palestinian groups to visit Tehran. Al-Asad continued to be a staunch defender of Iran's policies, including Iran's nuclear ambitions.

The number of foreign fighters from extremist groups, including those affiliated with Al Qaeda in Iraq (AQI), transiting through Syrian territory into Iraq has decreased significantly from its peak flows in 2005-2007. The existence of foreign fighter facilitation networks in Syria, however, remains troubling. Bombings in Iraq in 2009 underscore the threat these networks continue to pose, but the United States recognizes Syrian efforts to decrease foreign fighter travel into Iraq during the reporting period. In 2009, Syria increased border monitoring activities, instituted fighter screening practices on military-age Arab males entering its borders, and agreed to participate with the U.S. and Iraqi governments in a trilateral border security assessment of the Syrian side of the Syrian-Iraqi border. Although preparatory meetings were held, the actual border assessment did not occur after the Iraqi government withdrew its support in August 2009. The Syrians have indicated a willingness to establish a border security mechanism if future Iraqi governments are supportive.

While Syria has long provided sanctuary and political support for certain former Iraqi regime elements (FRE), Damascus denied supporting terrorist attacks and urged Baghdad to include the FRE in the Iraqi political process. In 2008, the United States designated several Iraqis and Iraqi-owned entities residing in Syria under Executive Order 13438 for providing financial, material, and technical support for acts of violence that threatened the peace and stability of Iraq, including Mish'an Al-Jaburi and his satellite television channel al-Rai. Iraqi government officials criticized al-Rai for serving as a "platform for terrorists." Additionally, the United States designated one Syria-based individual in 2007 under E.O. 13224 for providing financial and material support to AQI and six others under E.O. 13315 as FRE or family members of FRE, some of whom had provided financial assistance to the Iraqi insurgency.

Syria's financial sector remains vulnerable to terrorist financing. An estimated 70 percent of all business transactions are conducted in cash and as many as 80 percent of all Syrians do not use formal banking services. Despite Syrian legislation requiring money-changers to be licensed by the end of 2007, many continued to operate illegally in Syria's vast black market, which is believed to be as large as Syria's formal economy. Regional "hawala" networks remained intertwined with smuggling and trade-based money laundering – facilitated by corrupt customs and immigration officials – raising significant concerns that the Syrian government and business elites could be complicit in terrorist financing schemes.

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THE WORLD FACTBOOK IRAN- 2010

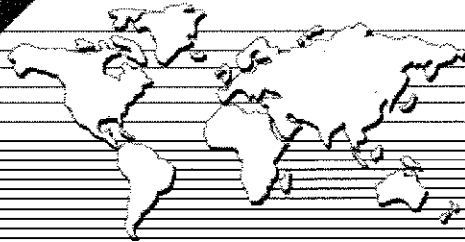
Background:

Known as Persia until 1935, Iran became an Islamic republic in 1979 after the ruling monarchy was overthrown and Shah Mohammad Reza PAHLAVI was forced into exile. Conservative clerical forces established a theocratic system of government with ultimate political authority vested in a learned religious scholar referred to commonly as the Supreme Leader who, according to the constitution, is accountable only to the Assembly of Experts - a popularly elected 86-member body of clerics. US-Iranian relations have been strained since a group of Iranian students seized the US Embassy in Tehran on 4 November 1979 and held it until 20 January 1981. During 1980-88, Iran fought a bloody, indecisive war with Iraq that eventually expanded into the Persian Gulf and led to clashes between US Navy and Iranian military forces between 1987 and 1988. **Iran has been designated a state sponsor of terrorism for its activities in Lebanon and elsewhere in the world and remains subject to US, UN, and EU economic sanctions and export controls because of its continued involvement in terrorism and its nuclear weapons ambitions.** Following the election of reformer Hojjat ol-Eslam Mohammad KHATAMI as president in 1997 and a reformist Majles (legislature) in 2000, a campaign to foster political reform in response to popular dissatisfaction was initiated. The movement floundered as conservative politicians, through the control of unelected institutions, prevented reform measures from being enacted and increased repressive measures. Starting with nationwide municipal elections in 2003 and continuing through Majles elections in 2004, conservatives reestablished control over Iran's elected government institutions, which culminated with the August 2005 inauguration of hardliner Mahmud AHMADI-NEJAD as president. His controversial reelection in June 2009 sparked nationwide protests over allegations of electoral fraud. **The UN Security Council has passed a number of resolutions (1696 in July 2006, 1737 in December 2006, 1747 in March 2007, 1803 in March 2008, and 1835 in September 2008) calling for Iran to suspend its uranium enrichment and reprocessing activities and comply with its IAEA obligations and responsibilities. Resolutions 1737, 1477, and 1803 subject a number of Iranian individuals and entities involved in Iran's nuclear and ballistic missile programs to sanctions. Additionally, several Iranian entities are subject to US sanctions under Executive Order 13382 designations for proliferation activities and EO 13224 designations for support of terrorism.**

<https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html>



U.S. Department of the Treasury
Office of Foreign Assets Control



IRAN

What You Need To Know About U.S. Economic Sanctions

An overview of O.F.A.C. Regulations involving Sanctions against Iran

This fact sheet provides general information about the Iranian sanctions programs under the Iranian Transactions Regulations, 31 C.F.R. Part 560, and the Iranian Assets Control Regulations, 31 C.F.R. Part 535. These sanctions are administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

Iranian Transactions Regulations - 31 C.F.R. Part 560

As a result of Iran's support for international terrorism and its aggressive actions against non-belligerent shipping in the Persian Gulf, President Reagan, on October 29, 1987, issued Executive Order 12613 imposing a new import embargo on Iranian-origin goods and services. Section 505 of the International Security and Development Cooperation Act of 1985 ("ISDCA") was utilized as the statutory authority for the embargo, which gave rise to the Iranian Transactions Regulations, Title 31, Part 560 of the U.S. Code of Federal Regulations (the "ITR").

Effective March 16, 1995, as a result of Iranian support of international terrorism and Iran's active pursuit of weapons of mass destruction, President Clinton issued Executive Order 12957 prohibiting U.S. involvement with petroleum development in Iran. On May 6, 1995, he signed Executive Order 12959, pursuant to the International Emergency Economic Powers Act ("IEEPA") as well as the ISDCA, substantially tightening sanctions against Iran.

On August 19, 1997, the President signed Executive Order 13059 clarifying Executive Orders 12957 and 12959 and confirming that virtually all trade and investment activities with Iran by U.S. persons, wherever located, are prohibited.

Effective November 10, 2008, the authorization for "U-turn" transfers involving Iran was revoked. As of that date, U.S. depository institutions are no longer authorized to process transfers involving Iran that originate and end with non-Iranian foreign banks. Details concerning the revocation of the U-turn authorization and a description of currently permissible funds transfers can be found in the Financial Dealings with Iran section of this document.

Effective September 29, 2010, the authorization to import into the United States, and deal in, certain foodstuffs and carpets of Iranian origin was revoked pursuant to section 103 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. The exceptions to the prohibition on importing goods and services are listed in the **IMPORTS FROM IRAN** section of this document.

Criminal penalties for violations of the Iranian Transactions Regulations may result in a fine up to \$1,000,000, and natural persons may be imprisoned for up to 20 years. Civil penalties, which are not to exceed the greater of \$250,000 or an amount that is twice the amount

of the transaction that is the basis of the violation with respect to which the penalty is imposed may also be imposed administratively.

OFAC will provide additional guidance on the implementation of sections 104 and 105 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 soon.

• **IMPORTS FROM IRAN** - Goods or services of Iranian origin may not be imported into the United States, either directly or through third countries, with the following exceptions:

- a) Gifts valued at \$100 or less;
- b) Information and informational materials;
- c) Household and personal effects, of persons arriving in the United States, that were actually used abroad by the importer or by other family members arriving from the same foreign household, that are not intended for any other person or for sale, and that are not otherwise prohibited from importation; and
- d) Accompanied baggage for personal use normally incident to travel.

U.S. persons are prohibited from providing financing for prohibited import transactions. There are restrictions on letter of credit transactions involving the Government of Iran (see **FINANCIAL DEALINGS WITH IRAN** below).

• **EXPORTS TO IRAN** - In general, unless licensed by OFAC, goods, technology, or services may not be exported, reexported, sold or supplied, directly or indirectly, from the United States or by a U.S. person, wherever located, to Iran or the Government of Iran. The ban on providing services includes any brokering function from the United States or by U.S. persons, wherever located. For example, a U.S. person, wherever located, or any person acting within the United States, may not broker offshore transactions that benefit Iran or the Government of Iran, including sales of foreign goods or arranging for third-country financing or guarantees.

In general, a person may not export from the U.S. any goods, technology or services, if that person knows or has reason to know such items are intended specifically for supply, transshipment or reexportation to Iran. Further, such exportation is prohibited if the exporter knows or has reason to know the U.S. items are intended specifically for use in the production of, for commingling with, or for incorporation into goods, technology or services to be directly or indirectly supplied, transshipped or reexported exclusively or predominately to Iran or the Government of Iran. A narrow exception is

created for the exportation from the United States or by U.S. persons wherever located of low-level goods or technology to third countries for incorporation or substantial transformation into foreign-made end products, provided the U.S. content is insubstantial, as defined in the regulations, and certain other conditions are met.

Donations of articles intended to relieve human suffering (such as food, clothing, and medicine), gifts valued at \$100 or less, licensed exports of agricultural commodities, medicine, and medical devices, and trade in "information and informational materials" are permitted. "Information and informational materials" are defined to include publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds, although certain Commerce Department restrictions still apply to some of those materials. To be considered informational material, artworks must be classified under chapter subheadings 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

With certain exceptions, foreign persons who are not U.S. persons are prohibited from reexporting sensitive U.S.-origin goods, technology or services to Iran or the Government of Iran. Foreign persons involved in such reexports may be placed on the U.S. Commerce Department's "Export Denial Orders" list.

U.S. persons may not approve, finance, facilitate or guarantee any transaction by a foreign person where that transaction by a foreign person would be prohibited if performed by a U.S. person or from the United States.

• DEALING IN IRANIAN-ORIGIN GOODS OR SERVICES - U.S. persons, including foreign branches of U.S. depository institutions and trading companies, are prohibited from engaging in any transactions, including purchase, sale, transportation, swap, financing, or brokering transactions related to goods or services of Iranian origin or goods or services owned or controlled by the Government of Iran.

Services provided in the United States by an Iranian national already resident in the United States are not considered services of Iranian origin.

These prohibitions apply to transactions by United States persons in locations outside the United States with respect to goods or services which are of Iranian origin or are owned or controlled by the Government of Iran. U.S. persons may not import such goods or services into or export them from foreign locations. A U.S. person may, however, engage in transactions in third countries necessary to sell, dispose of, store, or maintain goods located in a third country which were legally acquired by that U.S. person prior to May 7, 1995 on the condition that the transactions do not result in an importation into the United States of goods of Iranian origin.

• FINANCIAL DEALINGS WITH IRAN - New investments by U.S. persons, including commitments of funds or other assets, loans or any other extensions of credit, in Iran or in property (including entities) owned or controlled by the Government of Iran are prohibited. For your information, Appendix A contains a list of banks or entities owned or controlled by the Government of Iran. While U.S. persons may continue to charge fees and accrue interest on existing Iranian loans, a specific license must be obtained to reschedule or otherwise extend the maturities of existing loans.

Payments for licensed sales of agricultural commodities, medicine and medical devices must reference an appropriate OFAC license and may not involve a debit or credit to an account of a person in Iran or the Government of Iran maintained on the books of either a U.S. depository institution or a U.S. registered broker or dealer in securities. Payments for and financing of such licensed sales may be accomplished by cash in advance, sales on open account (provided the account receivable is not transferred by the person extending the credit), or by third-country financial institutions that are neither U.S. persons nor government of Iran entities. Any other arrangements must be specifically authorized by OFAC. U.S. depository institutions may advise and confirm letters of credit issued by third-country banks covering licensed sales of agricultural commodities, medicine and medical devices.

Effective November 10, 2008, the authorization for "U-turn" transfers involving Iran was revoked. As of that date, U.S. depository institutions are no longer authorized to process such transfers, thereby precluding transfers designed to dollarize transactions through the U.S. financial system for the direct or indirect benefit of Iranian banks or other persons in Iran or the Government of Iran. However, U.S. depository institutions are permitted to handle funds transfers, through intermediary third-country banks, to or from Iran or for the direct or indirect benefit of the Government of Iran or a person in Iran, arising from several types of underlying transactions, including:

- a) a noncommercial family remittance;
- b) an exportation to Iran or importation from Iran of information and informational materials;
- c) a travel-related remittance;
- d) a payment for the shipment of a donation of articles to relieve human suffering; or
- e) a transaction authorized by OFAC through a specific or general license.

While the Iranian Transactions Regulations do not contain any blocking provisions, several Iranian banks have been separately designated under the Nonproliferation of Weapons of Mass Destruction ("NPWMD") or Specially Designated Global Terrorist ("SDGT") programs for their involvement in the financing of either WMD or ballistic missile proliferation or of terrorism, respectively. Such banks' property and interests in property that are in the United States or in the possession or control of U.S. persons, wherever located, are blocked. U.S. persons are prohibited from engaging in any transaction or dealing in property or interests in property of these designated Iranian banks. Please see the brochures on Nonproliferation and Terrorism for further information on these programs.

• "PRE-ZERO CONTRACTS" - Letters of credit and other financing arrangements with respect to trade contracts in force as of May 6, 1995, may be performed pursuant to their terms provided that the underlying trade transaction was completed prior to June 6, 1995 (February 2, 1996 for "agricultural commodities"), or as specifically licensed by OFAC. Standby letters of credit that serve as performance guarantees for services to be rendered after June 6, 1995, cannot be renewed and payment may not be made after that date without authorization by OFAC.

• OTHER BANKING SERVICES - U.S. depository institutions, including foreign branches, are prohibited from servicing accounts of the Government of Iran, including banks owned or controlled by the Government of Iran (as in Appendix A) or persons in Iran. However, they are authorized to pay interest, deduct reasonable and customary service charges, process transfers related to exempt transactions, such as the exportation of information or informational material, a travel-related remittance, or a payment for the shipment of a donation of articles to relieve human suffering or, at the request of an account holder, effect a lump sum closure of an account by payment to its owner. They may not otherwise directly credit or debit Iranian accounts.

U.S. depository institutions and U.S. registered brokers or dealers in securities initiating or receiving payment orders involving Iran on behalf of customers must determine prior to processing such payments that they do not involve transactions prohibited by the Iranian Transactions Regulations.

• TRAVEL - All transactions ordinarily incident to travel to or from Iran, including the importation of accompanied baggage for personal use, payment of maintenance and living expenses and acquisition of goods or services for personal use are permitted.

• INTERNATIONAL ORGANIZATIONS - Under a general license issued by OFAC, effective August 22, 2006, U.S. persons that are employees or contractors for the following international organizations - the United Nations, the World Bank, the International Monetary Fund, the International Atomic Energy Agency, the International Labor Organization or the World Health Organization - are authorized to

engage in transactions for the conduct of official business in or involving Iran. Authorized transactions may include leasing office space or purchasing Iranian-origin goods necessary to carry out official business, provided that the funds transfers to and from Iran do not involve a debit or credit on the books of a U.S. financial institution. The exportation or the re-exportation of US-origin or non- U.S.-origin goods or technology listed on the Commerce Control List in the Export Administration Regulations is not authorized.

• **OVERFLIGHT PAYMENTS** - Payments to Iran for services rendered by the Government of Iran in connection with the overflight of Iran or emergency landing in Iran of aircraft owned by United States persons or registered in the U.S. are authorized.

• **PERSONAL COMMUNICATIONS, INFORMATION AND INFORMATIONAL MATERIALS** - The receipt or transmission of postal, telegraphic, telephonic or other personal communications that does not involve the transfer of anything of value between the United States and Iran is permitted. The importation into the United States from Iran and the exportation from the United States to Iran of information and informational materials, whether commercial or otherwise, regardless of format or medium of transmission, and any transaction incident to such importation or exportation is permitted.

• **TRANSACTIONS INVOLVING U.S. AFFILIATES** - No U.S. person may approve or facilitate the entry into or performance of transactions or contracts with Iran by a foreign subsidiary of a U.S. firm that the U.S. person is precluded from performing directly. Similarly, no U.S. person may facilitate such transactions by unaffiliated foreign persons.

• **IRANIAN PETROLEUM INDUSTRY** - U.S. persons may not trade in Iranian oil or petroleum products refined in Iran, nor may they finance such trading. Similarly, U.S. persons may not perform services, including financing services, or supply goods or technology that would benefit the Iranian oil industry.

PERSONS DETERMINED TO BE THE GOVERNMENT OF IRAN, AS DEFINED IN § 560.304 OF THIS PART

AGRICULTURAL COOPERATIVE BANK OF IRAN (a.k.a. BANK TAAVON KESHAVARZI IRAN), No. 129 Patrice Lumumba Street, Jala-Ahmad Expressway, P.O. Box 14155/5895, Tehran, Iran [IRAN]
ASCOTEC HOLDING GMBH (a.k.a. AHWAZ STEEL COMMERCIAL & TECHNICAL SERVICE GMBH ASCOTEC, a.k.a. ASCOTEC GMBH), Tersteegenstrasse 10, Dusseldorf 40474, Germany, Registration ID HRB 26136 (Germany); all offices worldwide [IRAN]
ASCOTEC JAPAN K.K., 8th Floor, Shiba East Building, 2-3-9 Shiba, Minato-ku, Tokyo 105-0014, Japan; all offices worldwide [IRAN]
ASCOTEC MINERAL & MACHINERY GMBH (f.k.a. BREYELLER KALTBAND GMBH), Tersteegenstr. 10, Dusseldorf 40474, Germany, Registration ID HRB 55068 (Germany); all offices worldwide [IRAN]
ASCOTEC SCIENCE & TECHNOLOGY GMBH, Tersteegenstrasse 10, Dusseldorf D 40474, Germany, Registration ID HRB 58745 (Germany); all offices worldwide [IRAN]
ASCOTEC STEEL TRADING GMBH (a.k.a. ASCOTEC STEEL), Tersteegenstr. 10, Dusseldorf 40474, Germany; Georg-Glock-Str. 3, Dusseldorf 40474, Germany, Registration ID HRB 48319 (Germany); all offices worldwide [IRAN]
BANK KESHAVARZI IRAN (a.k.a. AGRICULTURAL BANK OF IRAN; a.k.a. BANK KESHAVARZI), PO Box 14155-5895, 129 Patrice Lumumba St, Jala-Ahmad Expressway, Tehran 14454, Iran; all offices worldwide [IRAN]
BANK MARKAZI JOMHOURI ISLAMI IRAN (a.k.a. BANK MARKAZI IRAN; a.k.a. CENTRAL BANK OF IRAN; a.k.a. CENTRAL BANK OF THE ISLAMIC REPUBLIC OF IRAN), 213 Ferdowsi Avenue, Tehran 11365, Iran; PO Box 15875/7177, 144 Mirdamad Blvd, Tehran, Iran [IRAN]
BANK MANSKAN (a.k.a. HOUSING BANK (OF IRAN)), PO Box 11365/5699, No 247 3rd Floor Fedowsi Ave, Cross Sarhang Sakhaei St., Tehran, Iran; all offices worldwide [IRAN]
BANK MELLAT, Head Office Bldg, 27 Taleghani Ave, Tehran 15817, Iran; 327 Forsat and Taleghani Avenue, Tehran 15817, Iran; PO Box 57010, Amiryan Str #6, P.N.24, Yerevan, Armenia; Kaumkang Tower - 13th & 14th Floor, 889-13 Daedeh-Dong, Gangnam-Ku, Seoul 135-280, Korea, South; PO Box 79105425, Ziya Gokalp Bulvarl No 12, Kizilay, Ankara, Ankara, Turkey; Cumhuriyet Bulvarl No 8/A, PK 1710521, Konak, Izmir, Turkey; Buyukdere Cad, Cicek Sokak No 1-1 Levent, Levent, Istanbul, Turkey; all offices worldwide [IRAN] [IPSW]
BANK MELLI IRAN (a.k.a. BANK MELLİ); a.k.a. NATIONAL BANK OF IRAN), PO Box 11365-171, Ferdowsi Avenue, Tehran, Iran; 43 Avenue Montaigne, Paris 75008, France; Room 704-6, Wheelock Hse, 20 Pedder St, Central, Hong Kong; Bank Melli Iran Bldg, 111 St 24, 929 Arasat, Baghdad, Iraq; PO Box 26443, Ruwi, Muscat 112, Oman; PO Box 26556, Liva Street, Abu Dhabi, United Arab Emirates; PO Box 248, Hamad Bin Abdullah St, Fujairah, United Arab Emirates; PO Box 1888, Clock Tower, Industrial Rd, Al Ain Club Bldg, Al Ain, Abu Dhabi, United Arab Emirates; PO Box 1894, Banyias St, Deira, Dubai City, United Arab Emirates; PO Box 5270, Orman Street Al Nakheel, Ras Al-Khaima, United Arab Emirates; PO Box 458, Al Borj St, Sharjah, United Arab Emirates; PO Box 3083, Ahmad Seddiqui Bldg, Khalid Bin Al Waleed St, Bur Dubai, United Arab Emirates; PO Box 1954, Al Wasal St, Jumeirah, Dubai, United Arab Emirates; Postfach 112 128, Holzbrucken 2, D-20059, Hamburg, Germany; Nobel Ave 14, Baku, Azerbaijan; Unit 1703-A, 17th Floor, Hong Kong Club Building, 3 C Chester Road Central, Hong Kong; all offices worldwide [IRAN] [NPWMD] [IPSW]
BANK OF INDUSTRY AND MINE (OF IRAN), a.k.a. BANK SANAD VA MADAN; a.k.a. "BIM"), PO Box 15875-4456, Frouzeh Tower, No 1655 Vali-Ar Ave after Charran Crossroads, Tehran 156543511, Iran; No 1655, Frouzeh Building, Mahmoudiye Street, Valiasr Ave, Tehran, Iran; all offices worldwide [IRAN]
BANK REFAH KARGARAN (a.k.a. BANK REFAH; a.k.a. WORKERS' WELFARE BANK (OF IRAN)), No 40 North Shiraz Street, Mollasadat Ave, Vanak Sq, Tehran 19917, Iran; all offices worldwide [IRAN]
BANK SADERAT IRAN (a.k.a. IRAN EXPORT BANK), Ground Floor Business Room, Building Banke Khoon Road, Harat, Afghanistan; No. 56, Opposite of Security Department, Toraboz Khan Str., Kabul, Afghanistan; 5 Lothbury, London EC2R 7HD, United Kingdom; Postfach 11, 20458, Hamburg, Germany; PO Box 4308, 25-29 Venizelou St, Athens, Attica GR 105 84, Greece; PO Box 15745-631, Bank Saderat Tower, 43 Somayeh Avenue, Tehran, Iran; 16 rue de la Paix, Paris 75002, France, Postfach 160151, Friedenstr. 4, D-80311, Frankfurt am Main, Germany; 3rd Floor, Akhmed Bldg, Ras El Ein Street Basbak, Basbak, Lebanon; Saideh Branch, Side Pld Ebeleh St, Martyrs Sq, Saideh, Lebanon; Borj Albarsajneh Branch, 20 Alhohm Bldg, Sahat Mrojiq, Kafat St, Beirut, Lebanon; 1st Floor, Alross Bldg, Verdun - Rashid Karame St, Beirut, Lebanon; PO Box 5126, Beirut, Lebanon; 3rd Floor, Meteo Centre, Mar Elias, Facing Al Helw Barrak, P.O.B 5128, Beirut, Lebanon; Alghobeiri Branch - Aljawhara Bldg, Ghobeiri Bldg, Beirut, Lebanon; PO Box 1269, Muscat 112, Oman; PO Box 4425, Salwa Rd, Doha, Qatar; PO Box 2256, Doha, Qatar; 2nd Floor, No 181 Maktoomgolfi Ave, Ashgabat, Turkmenistan; PO Box 700, Abu Dhabi, United Arab Emirates; PO Box 16, Liwara Street, Ajman, United Arab Emirates; PO Box 1140, Al-Am Road, Al-Ein, Al Ain, Abu Dhabi, United Arab Emirates; Bor Dubai, Khalid Bin Al Waleed St, Dubai City, United Arab Emirates; Sheikh Zayed Rd, Dubai City, United Arab Emirates; PO Box 4182, Almarkoum Rd, Dubai City, United Arab Emirates; PO Box 4182, Murshid Bazar Branch, Dubai City, United Arab Emirates; PO Box 316, Bank Saderat Bldg, Alaroda St, Borj Ave, Sharjah, United Arab Emirates; all offices worldwide [IRAN] [SDGT] [IPSW]

BANK SADERAT PLC (f.k.a. IRAN OVERSEAS INVESTMENT BANK LIMITED; f.k.a. IRAN OVERSEAS INVESTMENT BANK PLC; f.k.a. IRAN OVERSEAS INVESTMENT CORPORATION LIMITED), 5 Lothbury, London EC2R 7HD, United Kingdom; PO Box 15175/584, 8th Floor, Sadaf Bldg, 1137 Vali Asr Ave, Tehran 15119-43885, Iran; UK Company Number 01126618 (United Kingdom); all offices worldwide [IRAN] [SDGT]
BANK SEPAAH, Iran; Khomeini Square, Tehran 1136953412, Iran; 84 Rue de Miromesnil, Paris 75008, France; Hafnerstrasse 54, D-60327, Frankfurt am Main, Germany; Via Barberini 50, Roma, RM 00187, Italy; 17 Place Vendôme, Paris 75008, France; all offices worldwide [IRAN] [NPWMD] [IPSW]
BANK TEJARAT, PO Box 11385-5416, 162 Taleghani Avenue, Tehran 15994, Iran; 130, Zandi Alley, Taleghani Avenue, No 152, Ostad Najat Cillahi Cross, Tehran 14587, Iran; 124-128 Rue de Provence, Anglo 75 bis boulevard, Paris 75008, France; PO Box 734001, Rudaki Ave 88, Dushanbe 734001, Tajikistan; Office C208, Beijing Lufftansa Center No 50, Liangniaguo Rd, Chaoyang District, Beijing 100016, China; c/o Euroatlantirische Handelsbank AG, Dspenau 2, D-20085, Hamburg, Germany; PO Box 119871, 4th Floor, c/o Persia International Bank PLC, The Gate Bldg, Dubai City, United Arab Emirates; c/o Persia International Bank, 6 Lothbury, London EC2R 7HD, United Kingdom; all offices worldwide [IRAN]
BANK TORGVOVY KAPITAL ZAO (a.k.a. TC BANK; a.k.a. TK BANK; a.k.a. TK BANK ZAO; a.k.a. TORGVOVY KAPITAL (TC BANK); a.k.a. TRADE CAPITAL BANK; a.k.a. TRADE CAPITAL BANK (TC BANK); a.k.a. ZAO BANK TORGVOVY KAPITAL), 3 Kozlova Street, Minsk 220005, Belarus; Registration ID 30 (Belarus); all offices worldwide [IRAN]
BIMEH IRAN INSURANCE COMPANY (U.K) LIMITED (a.k.a. BIUK), 4/5 Fenchurch Buildings, London EC3M 5HN, United Kingdom; UK Company Number 01223433 (United Kingdom); all offices worldwide [IRAN]
BREYELLER STAHL TECHNOLOGY GMBH & CO KG (f.k.a. HOEZEL-STAHL GMBH & CO KG), Josefstrasse 22, Nettetal 41384, Germany; Registration ID HFA 4528 (Germany); all offices worldwide [IRAN]
EUROPÄISCH-IRANISCHES HANDELSBANK AG (f.k.a. DELTASCH-IRANISCHES HANDELSBANK AG; a.k.a. EUROPÄISCH-IRANISCHES HANDELSBANK; a.k.a. EUROPÄISCH-IRANISCHES HANDELSBANK AKTIENGESELLSCHAFT; a.k.a. GERMAN-IRANIAN TRADE BANK), Hamburg Head Office, Dspenau 2, D-20085 Hamburg, P.O. Box 101304 D-20008 Hamburg, Hamburg, Germany; Tehran Branch, 16551, Valiasr Avenue, P.O. Box 18656 43 511, Tehran, Iran; Kish Branch, Sanasee Avenue, P.O. Box 79415/148, Kish Island 79415, Iran [IRAN] [NPWMD]
EXPORT DEVELOPMENT BANK OF IRAN (a.k.a. BANK TOSEH SADERAT IRAN; a.k.a. BANK TOWSEEH SADERAT IRAN; a.k.a. BANK TOWSEH SADERAT IRAN; a.k.a. EDBI), Export Development Building, Next to the 15th Alley, Bokharest Street, Argentina Square, Tehran, Iran; Toseh Tower, Corner of 15th St., Ahmad Casir Ave., Argentine Square, Tehran, Iran, No. 129, 21's Khaled Estambolli, No. 1 Building, Tehran, Iran, No. 26, Toseh Tower, Azharhane Square, P.O. Box 15875-5984, Tehran 15139, Iran, No. 4, Gandi Ave., Tehran 1516747913, Iran, C.R. No. 88836 (Iran) issued 10 Jul 1991; all offices worldwide [IRAN] [NPWMD] [IPSW]
IFIC HOLDING AG (a.k.a. IHAG), Koenigsallee 60 D, Dusseldorf 40212, Germany; Registration ID HRB 48032 (Germany); all offices worldwide [IRAN]
IHAG TRADING GMBH, Koenigsallee 60 D, Dusseldorf 40212, Germany; Registration ID HRB 37918 (Germany); all offices worldwide [IRAN]
INDUSTRIAL DEVELOPMENT AND RENOVATION ORGANIZATION OF IRAN (a.k.a. IDRO; a.k.a. IRAN DEVELOPMENT & RENOVATION ORGANIZATION COMPANY; a.k.a. SAWZEMANE GOSTARESH VA NOWSAZI SANAYE IRAN), Vali Asr Building, Jam-e-Jam Street, Vali Asr Avenue, Tehran 15615-3377, Iran; all offices worldwide [IRAN]
INTRA-CHEM TRADING GMBH (a.k.a. INTRA-CHEM TRADING CO. (GMBH)), Schottweg 3, Hamburg 22087, Germany; Registration ID HRB48418 (Germany); all offices worldwide [IRAN]
IRAN FOREIGN INVESTMENT COMPANY (a.k.a. IFIC), No. 4, Saba Blvd., Africa Blvd., Tehran 19177, Iran; P.O. Box 19395-6947, Tehran, Iran; all offices worldwide [IRAN]
IRAN INSURANCE COMPANY (a.k.a. BIMEH IRAN), Abdolaziz-Al-Masaeed Building, Sheikh Maktoum St., Deira, P.O. Box 2004, Dubai, United Arab Emirates; P.O. Box 1867, Al Ain, Abu Dhabi, United Arab Emirates; 107 Dr Fatemi Avenue, Tehran 14155/8363, Iran; P.O. Box 3281, Abu Dhabi, United Arab Emirates; P.O. Box 1686, Sharjah, United Arab Emirates; P.O. Box 849, Ras-Al-Khaima, United Arab Emirates; P.O. Box 417, Muscat 113, Oman; P.O. Box 878, Salalah 211, Oman; P.O. Box 895, Manama, Bahrain; Al-Hamri Center, Al-Ein-Abi Taleb St, Sharafia, P.O. Box 11210, Jeddah 21463, Saudi Arabia; Al Aila Center, Salaheddine Rd, Al Malaz, P.O. Box 21944, Riyadh 11485, Saudi Arabia; Al Rajhi Bldg, 3rd Floor, Suite 23, Dhahran St., P.O. Box 1305, Dammam 31431, Saudi Arabia; all offices worldwide [IRAN]
IRAN PETROCHEMICAL COMMERCIAL COMPANY (a.k.a. PETROCHEMICAL COMMERCIAL COMPANY; a.k.a. SHERKATE BASARGANI PETROCHEMIE (SAHAMI KHASS); a.k.a. SHERKATE BAZARGANI PETROCHEMIE; a.k.a. "PCC"; a.k.a. "PCT"), INCU CAD. SUMER Sok., Zilas Blokari C.2 Bloc D.H, Kozyatag, Kadifoy, Istanbul, Turkey; Topcu Ibrahim Sokak No 13 D 7 Iserenky-Kadifoy, Istanbul, Turkey; No. 1339, Vali Nejad Alley, Vali-e-Ar St, Vanak Sq., Tehran, Iran; 99-A, Moker Tower F, 9th Floor, Cufie Parade, Colaba, Mumbai 400 005, India; No. 1014, Doosan We've Pavilion, 58, Soosong-Dong, Jongno-Gu, Seoul, Korea, South; Office No. 707, No. 10, Chao Waidajie, Chao Tang District, Beijing 100020, China; all offices worldwide [IRAN]
IRANIAN MINES AND MINING INDUSTRIES DEVELOPMENT AND RENOVATION ORGANIZATION (a.k.a. MIDRO; a.k.a. IRAN MINING INDUSTRIES DEVELOPMENT AND RENOVATION ORGANIZATION; a.k.a. IRANIAN MINES AND MINERAL INDUSTRIES DEVELOPMENT AND RENOVATION), No. 39, Sepahbod Gharani Avenue, Ferdowsi Square, Tehran, Iran; all offices worldwide [IRAN]
IRANIAN OIL COMPANY (UK) LIMITED (a.k.a. IOC UK LTD), Riverside House, Riverside Drive, Aberdeen AB11 7LH, United Kingdom; UK Company Number 01019769 (United Kingdom); all offices worldwide [IRAN]
IRASCO S.R.L. (a.k.a. IRASCO ITALY), Via Di Francia 3, Genoa 16148, Italy; Registration ID GE 348075 (Italy); all offices worldwide [IRAN]
KALA LIMITED (a.k.a. KALA NAFT LONDON LTD), NIOC House, 4 Victoria Street, Westminster, London SW1H 0NE, United Kingdom; UK Company Number 01517853 (United Kingdom); all offices worldwide [IRAN]
KALA PENSION TRUST LIMITED, C/O Kala Limited, N.I.O.C. House, 4 Victoria Street, London SW1H 0NE, United Kingdom; UK Company Number 01573317 (United Kingdom); all offices worldwide [IRAN]
MACHINE SAZI ARAK CO. LTD. (a.k.a. MACHINE SAZI ARAK COMPANY P J S C; a.k.a. MACHINE SAZI ARAK SSA; a.k.a. MASHIN SAZI ARAK; a.k.a. "MSA"), Arak, Km 4 Tehran Road, Arak, Markazi Province, Iran; No. 1, Northern Kargar Street, Tehran 14138, Iran; P.O. Box 148, Arak 351138, Iran; all offices worldwide [IRAN]
MAHAB GHODSS CONSULTING ENGINEERING COMPANY (a.k.a. MAHAB GHODSS CONSULTING ENGINEERING CO. a.k.a. MAHAB GHODSS CONSULTING ENGINEERS SSK; a.k.a. MAHAB GHODS ENGINEERING CONSULTING CO.), 16 Takhtestan Alley, Dastgerdy Avenue, P.O. Box 19395-6975, Tehran 19187 8185, Iran; No. 17, Dastgerdy Avenue, Takhtestan Alley, 19395-6975, Tehran 1918781185, Iran; Registration ID 48982 (Iran) issued 1983; all offices worldwide [IRAN]
METAL & MINERAL TRADE S.A.R.L. (a.k.a. METAL & MINERAL TRADE (MMT); a.k.a. MMT LUXEMBURG; a.k.a. MMT SARL), 11b, Boulevard Joseph II L-1840, Luxembourg; Registration ID B 59411 (Luxembourg); all offices worldwide [IRAN]
MINES AND METALS ENGINEERING GMBH (M.M.E.), Georg-Glock-Str. 3, Dusseldorf 40474, Germany, Registration ID HRB 34095 (Germany); all offices worldwide [IRAN]
MSP KALA NAFT CO. TEHRAN (a.k.a. KALA NAFT CO SSK; a.k.a. KALA NAFT COMPANY LTD; a.k.a. KALA NAFT TEHRAN; a.k.a. KALA NAFT TEHRAN COMPANY; a.k.a. KALAYE NAFT CO; a.k.a. M.S.P.-KALA; a.k.a. MANUFACTURING SUPPORT & PROCUREMENT CO.-KALA NAFT; a.k.a. MANUFACTURING SUPPORT AND PROCUREMENT (M.S.P.) KALA NAFT CO. TEHRAN; a.k.a. MANUFACTURING SUPPORT AND PROCUREMENT KALA NAFT COMPANY; a.k.a. MSP KALA NAFT TEHRAN COMPANY; a.k.a. MSP KALANAFT; a.k.a. MSP-KALANAFT; a.k.a. MSP-KALANAFT; a.k.a. SHERKAT SAHAMI KHASS KALA NAFT; a.k.a. SHERKAT SAHAMI KHASS POSHTIBANI VA TEHYEH KALAYE NAFT TEHRAN; a.k.a. SHERKATE POSHTIBANI SAKHT VA TAHEIH KALAE NAFFE TEHRAN), 242 Sepahbod Gharani Street, Karim Khan Zand Bridge, Corner Kalantari Street, 8th Floor, P.O. Box 15815-1775/15815-3446, Tehran 15988, Iran; Building No. 226, Corner of Shahid Kalantari Street, Sepahbod Gharani Avenue, Karimkhan Avenue, Tehran 1598844815, Iran; No. 242, Shheid Kalantari St., Near Karimkhan Bridge, Sepahbod Gharani Avenue, Tehran, Iran; Head Office Tehran, Sepahbod Gharani Ave., P.O. Box 15815/1775 15815/3446, Tehran, Iran; P.O. Box 2965, Sharjah, United Arab Emirates; 333 7th Ave SW #1102, Calgary, AB T2P 2Z1, Canada; Chekhov St., 24.2, 25, Moscow, Russia; Room No. 704 - 10 Chao Waidajie Chao Yang District, Beijing 10020, China; Sanasee Avenue, P.O. Box 79417-76349, N.I.O.C., Kish, Iran; 10th Floor, Sadaf Tower, Kish Island, Iran; all offices worldwide [IRAN]
NAFTIRAN INTERTRADE CO. (NICO) LIMITED (a.k.a. NAFT IRAN INTERTRADE COMPANY LTD; a.k.a. NAFTIRAN INTERTRADE COMPANY (NICO); a.k.a. NAFTIRAN INTERTRADE COMPANY LTD; a.k.a. NICO), 8th Floor, Windward House, La Route De La Liberation, St Helier JE2 9BQ, Jersey; Petro Pars Building, Saadat Abad Ave, No 35, Farhang Blvd, Tehran, Iran; all offices worldwide [IRAN]
NAFTIRAN INTERTRADE CO. (NICO) SARL (a.k.a. NICO), 6, Avenue de la Tour-Haldimand, Pully, VD 1009, Switzerland; all offices worldwide [IRAN]
NAFTIRAN TRADING SERVICES CO. (NTS) LIMITED, 47 Queen Anne Street, London W1G 9JG, United Kingdom; 8th Floor NIOC Ho, 4 Victoria St, London SW1H 0NE, United Kingdom; UK Company Number 02600121 (United Kingdom); all offices worldwide [IRAN]
NATIONAL IRANIAN OIL COMPANY (a.k.a. NIOC), Hafez Crossing, Taleghani Avenue, P.O. Box 1863 and 2501, Tehran, Iran; all offices worldwide [IRAN]
NATIONAL IRANIAN OIL COMPANY PTE LTD, 7 Temasek Boulevard #07-02, Suntec Tower One 038887, Singapore; Registration ID 1890043880 (Singapore); all offices worldwide [IRAN]
NATIONAL PETROCHEMICAL COMPANY (a.k.a. "NPC"), No. 104, North Sheikh Bahaei Blvd., Moila Sadra Ave., Tehran, Iran; all offices worldwide [IRAN]
NICO ENGINEERING LIMITED, 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; Registration ID 78787 (Jersey); all offices worldwide [IRAN]
NIOC INTERNATIONAL AFFAIRS (LONDON) LIMITED, NIOC House, 4 Victoria Street, London SW1H 0NE, United Kingdom; UK Company Number 02772297 (United Kingdom); all offices worldwide [IRAN]

NFC INTERNATIONAL LIMITED (a.k.a. N P C INTERNATIONAL LTD; a.k.a. NPC INTERNATIONAL COMPANY), 5th Floor NIOC House, 4 Victoria Street, London SW1H 0NE, United Kingdom; UK Company Number 02666754 (United Kingdom); all offices worldwide [IRAN]
ONERBANK ZAO (a.k.a. EFTEKHAR BANK; a.k.a. HONOR BANK; a.k.a. HONORBANK; a.k.a. HONORBANK ZAO, a.k.a. ONER BANK; a.k.a. ONERBANK; a.k.a. ONER-BANK), Ulitsa Klary Tselkin 51, Minsk 220004, Belarus; Registration ID B07000227 (Belarus) issued 16 Oct 2009; SWIFT/BIC HNRBBY2X (Belarus); all offices worldwide [IRAN]
P. C. C. (SINGAPORE) PRIVATE LIMITED (a.k.a. P. C. C. SINGAPORE BRANCH; a.k.a. PCC SINGAPORE PTE LTD), 78 Shenton Way, #09-02, 079120, Singapore; 78 Shenton Way, 26-02A Lippo Centre 079120, Singapore; Registration ID 189708410K (Singapore); all offices worldwide [IRAN]
PETROCHEMICAL COMMERCIAL COMPANY (U.K.) LIMITED (a.k.a. PCC UK); a.k.a. PCC UK; a.k.a. PCC UK LTD), 4 Victoria Street, London SW1H 0NE, United Kingdom; UK Company Number 02647333 (United Kingdom); all offices worldwide [IRAN]
PETROCHEMICAL COMMERCIAL COMPANY FZE (a.k.a. PCC FZE), 1703, 17th Floor, Dubai World Trade Center Tower, Sheikh Zayed Road, Dubai, United Arab Emirates; Office No. 99-A, Maker Tower "F" 9th Floor Cutte Pavade, Colaba, Bumbai 700005, India; all offices worldwide [IRAN]
PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL LIMITED (a.k.a. PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL LTD; a.k.a. PCCI); P.O. Box 261539, Jebel Ali, Dubai, United Arab Emirates; 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; Ave. 54, Yimpaash Business Center, No. 506, 507, Ashkhabad 744036, Turkmenistan; No. 21, End of 9th St, Gandi Ave, Tehran, Iran; 21, Africa Boulevard, Tehran, Iran; Registration ID 77285 (Jersey); all offices worldwide [IRAN]
PETROIRAN DEVELOPMENT COMPANY (PEDECO) LIMITED (a.k.a. PETRO IRAN DEVELOPMENT COMPANY; a.k.a. "PEDECO", National Iranian Oil Company - PEDECO, P.O. Box 2865, Al Bathaa Tower, 9th Floor, Apt. 905, Al Buhaira Corniche, Sharjah, United Arab Emirates; P.O. Box 15875-6731, Tehran, Iran; 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; No. 22, 7th Lane, Khalid Eslamboli Street, Shahid Beheshti Avenue, Tehran, Iran; No. 102, Next to Shahid Amir Soheil Tabrizian Alley, Shahid Dastgerdi (Ex Zafar) Street, Shariati Street, Tehran 19159/45111, Iran; Kish Harbour, Bazargan Ferdos Warehouses, Kish Island, Iran; Registration ID 67493 (Jersey); all offices worldwide [IRAN]
PETROPARS INTERNATIONAL FZE (a.k.a. PPI FZE), P.O. Box 72146, Dubai, United Arab Emirates; all offices worldwide [IRAN]
PETROPARS LTD. (a.k.a. PETROPARS LIMITED; a.k.a. "PPL"), Calle La Guairita, Centro Profesional Eurobuilding, Piso 8, Oficina 8E, Chuao, Caracas 1060, Venezuela; No. 35, Farhang Blvd., Saadat Abad, Tehran, Iran; P.O. Box 3136, Road Town, Tortola, Virgin Islands, British; all offices worldwide [IRAN]
PETROPARS UK LIMITED, 47 Queen Anne Street, London W1G 3JG, United Kingdom; UK Company Number 03503060 (United Kingdom); all offices worldwide [IRAN]
SINA BANK (f.k.a. BFCG, f.k.a. BONYAD FINANCE AND CREDIT COMPANY; f.k.a. SINA FINANCE AND CREDIT COMPANY), 187 Meshkini Avenue, P.O. Box 1587998477, Tehran, Iran, Iran; Kish Financial Center, Kish Island, Iran; SWIFT/BIC SINAIRTH (Iran); alt. SWIFT/BIC SINAIRTH418 (Iran); all offices worldwide [IRAN]
WEST SUN TRADE GMSH (a.k.a. WEST SUN TRADE), Winterhuder Weg 8, Hamburg 22085, Germany; Arak Machine Mfg. Bldg., 2nd Floor, opp. of College Economy, Northern Kargar Ave., Tehran 14136, Iran; Mundsburger Damm 18, Hamburg 22087, Germany; Registration ID HRB 45757 (Germany); all offices worldwide [IRAN]

Iranian Assets Control Regulations - 31 C.F.R Part 535

Separate Iranian sanctions regulations appear at 31 C.F.R. Part 535. On November 14, 1979, the assets of the Government of Iran in the United States were blocked in accordance with IEEPA following the seizure of the American Embassy in Teheran and the taking of U.S. diplomats as hostages. Under the Iranian Assets Control Regulations (Title 31, Part 535 of the U.S. Code of Federal Regulations), some US\$12 billion in Iranian Government bank deposits, gold, and other properties were frozen, including \$5.6 billion in deposits and securities held by overseas branches of U.S. banks. The assets freeze was eventually expanded to a full trade embargo, which remained in effect until the Algiers Accords were signed with Iran on January 19, 1981. Pursuant to the Accords, most Iranian assets in the United States were unblocked and the trade embargo was lifted. The U.S. Government also canceled any attachments that U.S. parties had secured against Iranian assets in the United States, so that the assets could be returned to Iran or transferred to escrow accounts in third countries pursuant to the Accords. This action was upheld by the Supreme Court in 1981 in *Dames & Moore v. Regan*. Although greatly modified in scope, the old Iranian Assets Control Regulations remain in effect. Many U.S. nationals have claims against Iran or Iranian entities for products shipped or services rendered before the onset of the 1979 embargo or for losses sustained in Iran due to expropriation during that time. These claims are still being litigated in the Iran-United States Claims Tribunal at The Hague established under the Algiers Accords. Certain assets related to these claims remain blocked in the United States and consist mainly of military and dual-use property.

This document is explanatory only and does not have the force of law. The Executive Orders and implementing regulations dealing with Iran contain the legally binding provisions governing the sanctions. This document does not supplement or modify those Executive Orders or regulations.

The Treasury Department's Office of Foreign Assets Control also administers sanctions programs involving the Balkans, Burma (Myanmar), Cuba, Diamond Trading, Iran, Iraq, Lebanon, Liberia, North Korea, Somalia, Sudan, Syria, Zimbabwe as well as highly enriched uranium, designated Terrorists and international Narcotics Traffickers, Foreign Terrorist Organizations and designated foreign persons who have engaged in activities relating to the proliferation of weapons of mass destruction. For additional information about these programs or about sanctions involving Iran, please contact the:

OFFICE OF FOREIGN ASSETS CONTROL
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W. - Annex
Washington, D.C. 20220
<http://www.treas.gov/ofac>
202/622-2490

GAO

United States General Accounting Office 133073

Fact Sheet for the Honorable
Frank R. Lautenberg,
United States Senate

April 1987

TERRORISM

Laws Cited Imposing Sanctions on Nations Supporting Terrorism



133073

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538641



United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-226205

April 17, 1987

The Honorable Frank R. Lautenberg
United States Senate

Dear Senator Lautenberg:

This report responds to your January 12, 1987, request that we determine how often and under what circumstances laws imposing sanctions on nations supporting terrorism have been invoked.

The Export Administration Act of 1979 requires the Secretary of State to compile annually a listing of countries that support or participate in terrorist acts. Currently Iran, Libya, Syria, the People's Democratic Republic of Yemen, and Cuba comprise the list. Iraq, formerly on the list, was removed in 1982.

Federal agencies--primarily State, Treasury, Commerce, and Transportation--have identified 13 laws that authorize the President to invoke sanctions against nations supporting terrorism. No central source identifies individual sanctions with specific laws. However, through research and discussions with agency officials, we were able to identify sanctions since 1979 associated with 11 of the laws. The sanctions included such things as import embargoes, export license controls, freezing assets, terminating new loans and credit extensions, restricting arms sales and foreign assistance, terminating air services, and curtailing other activities between the United States and the nations designated as supporting terrorism. Details regarding the sanctions and the laws are included in appendices I through III.

In conducting this review, we obtained executive orders and other documents relating to U.S. policies on terrorism; interviewed officials of the Departments of State, Treasury, Commerce, and Transportation; and identified specific sanctions imposed in response to terrorist incidents occurring from 1979 through 1986. Our work was performed from February through April 1987 in accordance with generally accepted government audit standards.

B-226205

Unless you publicly announce its contents earlier, we plan no further distribution of this fact sheet until 30 days from the date of issue. At that time we will send copies to the Departments of State, Transportation, Commerce, and Treasury, and make it available to other interested parties. If we can be of further assistance, please call me on 275-4128.

Sincerely yours,

A handwritten signature in cursive script that reads "Joan M. McCabe". The signature is fluid and connected, with a large initial "J" and "M".

Joan M. McCabe
Associate Director

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ABBREVIATIONS

IEEPA	International Emergency Economic Powers Act
PDR	People's Democratic Republic

CHRONOLOGY OF SANCTIONS BY COUNTRY
IN RESPONSE TO TERRORIST INCIDENTS

This appendix contains profiles of the 6 countries against which U.S. sanctions have been imposed and describes the sanctions and the authority cited by federal agencies for those sanctions in response to terrorist incidents. We did not independently review each of the sanctions to determine whether the cited authority was appropriate.

IRAN

The Iranian students' seizure of more than 100 hostages, including 63 Americans, at the U.S. embassy compound in Teheran on November 4, 1979, marked the beginning of the U.S.-Iran hostage crisis that lasted more than 14 months. The following actions were taken as a result of the crisis.

<u>Date</u>	<u>Sanction</u>
November 8, 1979	Halted the shipment of U.S. military spare parts to Iran. -- Authority cited: Arms Export Control Act.
November 10, 1979	Required all post-secondary students who were Iranian citizens to report on residence and non-immigration status. -- Authority cited: Immigration and Nationality Act.
November 12, 1979	Restricted the import of crude oil produced in Iran and unfinished oil or finished products made from Iranian crude oil. -- Authority cited: Trade Expansion Act of 1962.
November 14, 1979	Declared state of emergency against Iran. Blocked all Iranian government property and interests in property and froze Iranian deposits in U.S. banks and subsidiaries of U.S. banks. -- Authority cited: National Emergencies Act and International Emergency Economic Powers Act.
April 7, 1980	Broke diplomatic relations with Iran; closed Iranian embassy and consulates in the United

DateSanction

States; expelled diplomats and consular officials.

-- Authority cited: Authority of the Secretary of State in matters respecting foreign affairs 22 U.S.C. § 2656 (1982).

Invalidated all visas issued to Iranian citizens for future entry into the United States; refused to reissue visas or issue new visas.

-- Authority cited: Immigration and Nationality Act.

Embargoed all U.S. exports to Iran, except food and medicine; ordered an inventory of \$8 billion in frozen Iranian assets and an inventory of U.S. financial claims against Iran to be paid out of these assets.

-- Authority cited: International Emergency Economic Powers Act.

April 17, 1980

Prohibited all financial transactions between U.S. and Iranian citizens; imposed an import embargo; banned travel to Iran of all U.S. citizens except journalists; released for U.S. purchase impounded military equipment intended for Iran.

-- Authority cited: International Emergency Economic Powers Act.

April 20, 1980

Prohibited travel to, in, or through Iran by permanent resident aliens.

-- Authority cited: Executive Order 12211-- Further Prohibitions on Transactions with Iran, April 17, 1980.

Restricted the use of U.S. passports to, in, and through Iran and regulated departures from and entry into the United States in connection with travel to Iran by citizens and permanent residents of the United States.

-- Authority cited: Executive Order 11295-- Rules Governing the Granting, Issuing and Verifying of U.S. Passports, August 5, 1966; Executive Order 12211--Further

<u>Date</u>	<u>Sanction</u>
	Prohibitions on Transactions with Iran, April 17, 1980.
January 19, 1981	Transferred Iranian frozen assets from the United States to the Bank of England in preparation for the release and exchange of U.S. hostages. Iranian Assets Control Regulations revoked and withdrawn. -- Authority cited: International Emergency Economic Powers Act.
January 20, 1981	Hostages released in exchange for a partial transfer of \$2.9 billion of Iranian assets.
Relations deteriorated further with the bombing of U.S. Marine barracks in Beirut in October 1983. Iranian involvement was alleged, and as a result, the following actions were taken.	

<u>Date</u>	<u>Sanction</u>
January 19, 1984	Secretary of State designated Iran as a country that supports terrorism. This automatically placed foreign policy export controls on goods and technologies that could enhance Iran's military or terrorist capabilities. For example, export licenses were required for aircraft valued at \$3 million or more, helicopters over 10,000 pounds, and national security controlled items valued at \$7 million or more destined for military end use. Policy of denial of munitions control list items was set; and foreign military sales were prohibited. -- Authority cited: Export Administration Act of 1979, and Arms Export Control Act.
May 21, 1984	Prohibited any transfer of blocked property in which Iran has interest except under license from the Department of Treasury. -- Authority cited: International Emergency Economic Powers Act.
September 28, 1984	President directed stricter export controls on all aircraft, helicopters, related parts, components and avionics. Applications for

<u>Date</u>	<u>Sanction</u>
	export of national security controlled items were to be generally denied, with some exceptions.
	-- Authority cited: Export Administration Act of 1979.
January 25, 1985 to January 20, 1986	Export licenses valued at \$25.8 million denied.
	-- Authority cited: Export Administration Act of 1979.

Relations with the government of Iran have not returned to normal since November 14, 1979, when President Carter declared a national emergency to deal with the threat to national security, foreign policy, and the economy of the United States. Notices of the continuation of this national emergency were transmitted by the President to the Congress and published in the Federal Register on November 12, 1980, November 12, 1981, November 8, 1982, November 4, 1983, November 7, 1984, November 1, 1985, and November 10, 1986, in accordance with the National Emergencies Act.

LIBYA

Libyan-U.S. relations declined after Colonel Qadhafi's rise to power in 1969. At that time Libya closed British and American bases, acquired large quantities of arms, and supported anti-Israel and revolutionary causes worldwide. Terrorist activities included providing sanctuary to the perpetrators of the attack on Israeli athletes at the 1972 Munich Olympics and military support in 1979 to Uganda. The United States responded to Libya by removing the U.S. ambassador and disapproving the sale of military weapons and related items in 1973; denying the sale of Boeing 747 commercial aircraft and imposing antiterrorism export controls in 1979; and finally closing the U.S. embassy in February 1980.

<u>Date</u>	<u>Sanction</u>
December 29, 1979	State Department designated Libya as a country that supports terrorism. This automatically placed foreign policy export controls on goods and technologies that could enhance Libya's military or terrorist capabilities. For example, export licenses were required for aircraft valued at \$3 million or more, helicopters over 10,000 pounds, and national security controlled items valued at \$7 million or

<u>Date</u>	<u>Sanction</u>
	more destined for military end use. Policy of denial of munitions control list items and foreign military sales were prohibited.
	-- Authority cited: Export Administration Act of 1979, and Arms Export Control Act.
October 1, 1979 to September 30, 1980	Export licenses denied for aircraft valued at \$235.4 million.
	-- Authority cited: Export Administration Act of 1979.

A mob attacked and burned the U.S. embassy in Tripoli in December 1979 and subsequent attacks were made on Libyan citizens in Europe and the United States by the Qadhafi regime. The following U.S. actions resulted.

<u>Date</u>	<u>Sanction</u>
February 15, 1980	Closed U.S. embassy in Tripoli.
	-- Authority cited: Authority of the Secretary of State in matters respecting foreign affairs 22 U.S.C. § 2656 (1982).
May 6, 1981	Libyan People's Bureau in Washington is ordered closed; personnel to leave the United States in 5 working days. New travel advisory issued to American citizens warning against any travel to or residence in Libya.
	-- Authority cited: Authority of the Secretary of State in matters respecting foreign affairs 22 U.S.C. § 2656 (1982).

On August 19, 1981, two U.S. Navy F-14 aircraft were attacked by Libyan fighter aircraft.

<u>Date</u>	<u>Sanction</u>
October 1, 1981 to September 30, 1982	Expanded U.S. controls on exports of certain aircraft, helicopters, aircraft parts, avionics, and off-highway wheel tractors of carrying capacity of 10 tons or more. Denied export licenses for off-highway vehicles valued at \$.9 million; four licenses denied for aircraft and parts valued at \$11.2 million; 16 licenses denied for other

<u>Date</u>	<u>Sanction</u>
	<p>commodities and technical data valued at \$13.8 million.</p> <p>-- Authority cited: Export Administration Act of 1979.</p>
December 11, 1981	<p>Declared U.S. passports invalid for travel to, through, or in Libya. Administration calls on Americans residing in Libya to leave "as soon as possible," citing "the danger which the Libyan regime poses to American citizens." This sanction has been continued annually.</p> <p>-- Authority cited: Executive Order 11295-- Rules Governing Granting, Issuing, and Verifying U.S. Passports, August 5, 1966.</p> <p>Presidential Proclamation 49072 of March 10, 1982, states: "Libyan policy and action supported by revenues from the sale of oil imported into the United States are inimical to United States national security." The following actions were taken as a result.</p>
	<p style="text-align: center;"><u>Sanction</u></p>
March 10, 1982	<p>President embargoed crude oil imports from Libya.</p> <p>-- Authority cited: Trade Expansion Act of 1962.</p>
March 12, 1982	<p>President required validated licenses for all U.S. exports to Libya, except food and agricultural products, medicine, and medical supplies. General policy of denying licenses for export to Libya of dual-use, high-technology items and U.S.-origin oil and gas technology and equipment not readily available from sources outside the United States.</p> <p>-- Authority cited: Export Administration Act of 1979.</p>
October 1, 1982 to September 30, 1984	<p>Denied 126 export licenses valued at \$349.5 million, including \$33.6 million in aircraft.</p> <p>-- Authority cited: Export Administration Act of 1979.</p>

<u>Date</u>	<u>Sanction</u>
March 11, 1983	Terminated non-immigration visa status of Libyans engaged in aviation or nuclear studies. -- Authority cited: Immigration and Nationality Act.
March 20, 1984	General denial of licenses to export goods or technical data which would directly contribute to the development or construction of Ras Lanuf petrochemical complex. -- Authority cited: Export Administration Act of 1979.
January 25, 1985 to January 20, 1986	Denied export licenses for aircraft and parts valued at \$3.2 million. -- Authority cited: Export Administration Act of 1979.
April 10, 1985	Terminated availability of bank programs and credits. -- Authority cited: Export-Import Bank Act of 1945.

On November 15, 1985, the United States determined that the Libyan government had continued to actively pursue terrorism as state policy and that Libya had developed significant capability to export petroleum products to other nations, thereby circumventing the March 1982 prohibition on U.S. imports of Libyan crude oil. As a result, the following action was taken.

<u>Date</u>	<u>Sanction</u>
November 15, 1985	President embargoed imports of petroleum products refined in Libya. -- Authority cited: International Security and Development Cooperation Act of 1985.

The United States determined that the Libyan government had supported the attacks on civilians at the Rome and Vienna airports on December 27, 1985. As a result, the President took the following actions.

<u>Date</u>	<u>Sanction</u>
January 7-8, 1986	Declared state of emergency against Libya.

DateSanction

-- Authority cited: National Emergencies Act.

Restricted all commercial transactions in Libya by U.S. citizens and companies; prohibited all contract performance and all new loans or extensions of credit to the Libyan government; and blocked all property and interests in property of the Libyan government and its agencies that were in or that may later come into the United States. Banned exports to Libya, except for humanitarian donations such as food and clothing; and the purchase of goods exported from Libya to a third country; banned all travel transactions to or from Libya by U.S. persons.

-- Authority cited: International Emergency Economic Powers Act.

Banned imports from Libya, except for publications and news materials.

-- Authority cited: International Security and Development Cooperation Act of 1985.

President banned sales in the United States of air transportation which included any stop in Libya.

-- Authority cited: Federal Aviation Act.

July 7, 1986

Prohibited exports to third countries where exported goods or technologies are intended for transformation, manufacture or incorporation into products to be used in Libyan petroleum or petrochemical industry.

-- Authority cited: International Emergency Economic Power Act.

SYRIA

The pattern of Syrian activity in support of international terrorism has been long-standing and varied. From the mid-1970s to the present, Syrians have been directly involved in terrorist activities. These operations have been primarily directed at other Arabs, such as Syrian dissidents, moderate Arab states such as Jordan, and pro-Arafat Palestinians, as well as Israeli targets.

<u>Date</u>	<u>Sanction</u>
December 29, 1979	<p>The Secretary of State designated Syria as a country that supports terrorism. This automatically placed foreign policy export controls on certain goods and technologies that could enhance Syria's military or terrorist capabilities. For example, export licenses were required for aircraft valued at \$3 million or more, helicopters over 10,000 pounds, and national security controlled items valued at \$7 million or more destined for military end use. Policy to deny munitions control list items was set, and foreign military sales were prohibited.</p> <p>-- Authority cited: Export Administration Act of 1979; Arms Export Control Act.</p>
November 14, 1983	<p>Congress terminated economic assistance program to Syria.</p> <p>-- Authority cited: Foreign Assistance Act, 1961.</p>

By late 1983 Syria began to rely more heavily on terrorist groups made up of non-Syrians who had bases and training facilities in Syria.

<u>Date</u>	<u>Sanction</u>
November 22, 1983	<p>State Department closed the AID mission.</p> <p>-- Authority cited: Authority of the Secretary of State in matters respecting foreign affairs 22 U.S.C. § 2656 (1982).</p>
June 5, 1986	<p>Expanded controls on all helicopters regardless of weight.</p> <p>-- Authority cited: Export Administration Act of 1979.</p>

In 1986, a Jordanian attempted to place a bomb aboard an El Al aircraft in London. During the November 1986 trial, Syrian officials were implicated in the conspiracy and the aftermath. In particular, Syrian officials provided a passport, money, the bomb, and sanctuary. The following actions were taken as a result:

DateSanction

November 14, 1986

Expanded controls to prohibit export of all national security controlled goods and technical data as well as aircraft and aircraft parts and components. The controls applied regardless of value or end-use (regulations pending).

-- Authority cited: Export Administration Act of 1979.

Terminated availability of Export-Import Bank programs.

-- Authority cited: Export-Import Bank Act of 1945.

Prohibited sale of tickets in the United States for transportation on Syrian Arab Airlines.

-- Authority cited: Federal Aviation Act.

Terminated air transport agreement between the United States and Syria after one year, and immediately suspended its operation.

-- Authority cited: Authority of the Secretary of State in matters respecting foreign affairs 22 U.S.C. § 2656 (1982).

Continued withdrawal of U.S. ambassador and reduced embassy staff in Damascus and reduced Syrian embassy staff in Washington. Revised advisory statement on American travel in Syria to alert citizens of the potential for terrorist activity originating there. Advised U.S. oil companies in Syria that continued operations are inappropriate.

-- Authority cited: Authority of the Secretary of State in matters respecting foreign affairs 22 U.S.C. § 2656 (1982).

Placed additional controls on Syrian visa applications--all applications required to be sent to Washington, D.C., for a mandatory security advisory opinion.

-- Authority cited: Immigration and Nationality Act.

PEOPLE'S DEMOCRATIC REPUBLIC OF YEMEN (PDR YEMEN)

In 1969, after a successful coup by Marxist revolutionaries, PDR Yemen severed diplomatic relations with the United States. Because of this action and continued support of international terrorism, human rights violations, aggression, and avowed commitment to Marxist principles, U.S.-PDR Yemen relations have been virtually nonexistent, and the following sanctions were imposed.

<u>Date</u>	<u>Sanction</u>
December 29, 1979	<p>The Secretary of State designated PDR Yemen as a country that repeatedly supports terrorism. This automatically placed foreign policy export controls on goods and technologies that could enhance PDR Yemen's military or terrorist capabilities. For example, export licenses were required for aircraft valued at \$3 million or more, helicopters over 10,000 pounds, and national security controlled items valued at \$7 million or more destined for military end use. Policy of denial for munitions control list items was implemented and foreign military sales were prohibited.</p> <p>-- Authority cited: Export Administration Act of 1979 and Arms Export Control Act.</p>
June 5, 1986	<p>Expanded export controls to include all helicopters, regardless of weight.</p> <p>-- Authority cited: Export Administration Act of 1979.</p>

IRAQ

During 1978 to 1980 the Iraqi government reduced its support to most terrorist groups. By April 1980 a combination of factors, including the hostage crisis in Iran, Soviet invasion of Afghanistan, and Iraq-Iran War, caused a breach in Iraq's relationship with the Soviet Union. This led the United States to work toward a closer association with Iraq. The removal of Iraq from the terrorist-supporting list in 1982 was attributed to the administration's perception of an increasing moderation in Iraq's attitude toward the Arab-Israeli conflict. The following sanctions were applied during 1979 and 1980.

<u>Date</u>	<u>Sanction</u>
December 29, 1979	Secretary of State designated Iraq as a country that supports terrorism. This automatically placed foreign policy export

<u>Date</u>	<u>Sanction</u>
	controls on goods and technologies that could enhance Iraq's military or terrorist capabilities. For example, export licenses were required for aircraft valued at \$3 million or more, helicopters over 10,000 pounds, and national security controlled items valued at \$7 million or more destined for military end use. Policy of denial of munitions control list items was implemented and foreign military sales were prohibited.
	-- Authority cited: Export Administration Act of 1979 and Arms Export Control Act.
February 6, 1980	Department of Commerce suspended the export license for eight turbine engine cores valued at \$11.4 million (the decision was later reversed in April 1980).
	-- Authority cited: Export Administration Act of 1979.

On April 7, 1980, the Arab Liberation Front, supported by Iraq, attacked an Israeli kibbutz, killing three people.

<u>Date</u>	<u>Sanction</u>
August 29, 1980	State Department disapproved a \$208 million sale of commercial jets.
	-- Authority cited: Export Administration Act of 1979.
September 25, 1980	Suspended export license for six turbine engine cores previously approved in April 1980.
	-- Authority cited: Export Administration Act of 1979.

On March 1, 1982, the United States lifted export restraints against Iraq and removed it from the list of nations supporting terrorism.

In May 1982, the House Foreign Affairs Committee voted in favor of a resolution to restore Iraq to the list of countries supporting terrorism. However, the State Department announced in October 1983 that it would not place Iraq on the list because it had no evidence that Iraq had supported international terrorism since publicly denouncing it in 1982.

CUBA

The United States has a long history of sanctions against Castro's Cuba. In the 1960s, under authority of the Trading With the Enemy Act, a total embargo on exports, ban on all imports, and freeze on all Cuban assets in the United States were imposed. Under the Foreign Assistance Act of 1961, foreign aid was denied to countries that allowed their flag ships to carry goods to and from Cuba. In the 1970s, Cuba deployed combat troops to Angola and Ethiopia, increasing its influence in those areas. Cuba's training and support of insurgents and terrorists became evident in the 1980s through activities in Nicaragua, El Salvador, and Grenada. For these reasons, Cuba was added to the list of terrorist nations in 1982.

<u>Date</u>	<u>Sanction</u>
March 1, 1982	Secretary of State designated Cuba as a country that supports terrorism; embargo imposed in 1963 under the Trading With Enemy Act continued on all imports and exports. -- Authority cited: Export Administration Act of 1979.
May 15, 1982	Banned business and tourist travel to Cuba. -- Authority cited: Trading with the Enemy Act.
October 4, 1985	Restricted entry into the United States by Cuban government employees and members of the Cuban communist party. -- Authority cited: Immigration and Nationality Act.
August 22, 1986	Denied preference immigration visas to persons who left Cuba for third countries. -- Authority cited: Presidential Proclamation 5517 - Suspension of Cuban Immigration; and the Immigration and Nationality Act.

On August 22, 1986, the Administration announced a crackdown on trading with Cuban front companies that attempted to evade the U.S. trade embargo and increased controls on organizations which organize or promote travel to Cuba. Regulations regarding these new controls have not been developed.

LAWS AND SANCTIONS IMPOSED AGAINST NATIONS
SUPPORTING TERRORIST ACTIVITIES SINCE 1979

This appendix identifies the 11 laws, cited as the authority by federal agencies, and the related sanctions imposed against nations who were identified by the Secretary of State to be repeated supporters of terrorism.

Export Administration Act of 1979

- | | |
|--|--|
| -- Libya, Syria, Iraq,
and PDR Yemen - 12/29/79 | Determined to be terrorist-supporting nations. Foreign policy export controls imposed on goods and technology that would contribute to military potential or enhance terrorist support capabilities. |
| -- Libya - 10/1/79
through 9/30/80 | Denied export licenses for aircraft valued at \$234.5 million. |
| -- Iraq - 2/6/80 | Suspended export licenses for eight turbine engine cores to Italy for use in manufacturing of four frigates with ultimate destination to Iraq (decision reversed in April 1980). |
| -- Iraq - 8/29/80 | Denied license for \$208 million sale of commercial jets. |
| -- Iraq - 9/25/80 | Suspended export of six turbine engine cores. |
| -- Libya - 10/28/81 | Expanded controls on export of certain aircraft, helicopters, aircraft parts, and avionics and off-highway wheel tractors of carriage capacity 10 tons or more. |
| -- Iraq - 3/1/82 | Lifted export restraints; Iraq removed from list of nations supporting terrorism. |
| -- Cuba - 3/1/82 | Added to the list of terrorist-supporting nations; embargo imposed in 1963 under the Trading With the Enemy Act continued on all imports and exports. |

- Libya - 3/12/82
Required validated licenses for all U.S. exports except food, agricultural products, medicine, and medical supplies. General policy of export license denial for dual-use, high-technology items and U.S.-origin oil and gas technology and equipment not available outside the United States.
- Libya - 10/1/81 through 9/30/82
Denied export license for off-highway vehicles valued at \$.9 million; four licenses denied for aircraft and parts valued at \$11.2 million; 16 licenses denied for other commodities and technical data valued at \$13.8 million.
- Libya - 10/1/82 through 9/30/83
Denied 56 export licenses valued at \$14.1 million.
- Iran - 1/19/84
Determined to be terrorist-supporting nation. Imposed export controls on goods and technologies that would contribute to its military potential or enhance its terrorist support capabilities.
- Libya - 3/20/84
General denial of licenses to export goods or technical data which would directly contribute to the development or construction of the Ras Lanuf petrochemical complex.
- Iran - 9/28/84
Expanded export controls on certain commodities; export of all aircraft and helicopters, related parts, components, and avionics were generally denied.
- Libya - 10/1/83 through 9/30/84
Denied 70 export licenses valued at \$335.4 million, including \$33.6 million in aircraft.
- Iran - 1/25/85 through 1/20/86
Denied export licenses valued at over \$25.8 million.

- Libya - 1/25/85
through 1/20/86 Denied export licenses for aircraft and parts valued at \$3.2 million.
- Syria, PDR
Yemen - 6/5/86 Expanded controls on all helicopters, regardless of weight.
- Syria - 11/14/86 Expanded export controls to prohibit all natural security controlled goods and technical data (regulations pending).

International Emergency Economic Powers Act

- Iran - 11/14/79 and 4/80 Blocked all Iranian government property and interests in property and froze all Iranian government assets in the United States; embargoed all U.S. exports to Iran, except food and medicine and all Iranian import; and prohibited all financial transactions between U.S. and Iranian citizens; banned travel to Iran of all U.S. citizens except U.S. journalists.
- Iran - 5/21/84 Prohibited the transfer of blocked property in which Iran has an interest except under license from the Department of Treasury.
- Libya - 1/7-8/86 Blocked all government of Libya interests in U.S. property or under control of U.S. citizens; terminated all new loans or extensions of credit and contracts; prohibited transactions by U.S. citizens with Libyan entities; and restricted travel to and from Libya by U.S. citizens; banned all exports from United States to Libya, except for humanitarian donations; and purchase by U.S. citizens of goods for export from Libya to a third country.

-- Libya - 7/7/86

Prohibited exports to third countries where exported goods or technologies are intended for transformation, manufacture or incorporation into products to be used in Libyan petroleum or petrochemical industry.

National Emergencies Act

-- Iran - 11/14/79

State of emergency declared by the President. Both declarations are still in effect.

-- Libya - 1/7/86

Arms Export Control Act

-- Iran - 11/8/79

Halted shipment of U.S. military spare parts.

-- Libya, Syria, Iraq,
and PDR Yemen - 12/29/79
Iran - 1/19/84

Prohibited U.S. sale or transfer of all defense articles. Denied licenses for export munitions list items that are sold commercially.

Trade Expansion Act of 1962

-- Iran - 11/12/79

Embargoed oil imports.

-- Libya - 3/10/82

Embargoed crude oil imports.

International Security and Development Cooperation Act of 1985

-- Libya - 11/15/85

Embargoed petroleum product imports refined in Libya.

-- Libya - 1/7/86

Banned imports from Libya, except publications and news materials.

Federal Aviation Act

-- Libya - 1/7/86

Banned sales in the United States of air transportation which includes stops in Libya.

APPENDIX II

APPENDIX II

-- Syria - 11/14/86

Prohibited ticket sales in the United States for transportation on Syrian Arab Airlines.

Export-Import Bank Act of 1945

-- Libya - 4/10/85 and
Syria - 11/14/86

Terminated availability of bank programs and credits.

Immigration and Nationality Act

-- Iran - 11/10/79

Ordered all Iranian non-immigrant students to report to the Immigration and Naturalization Service.

-- Iran - 4/7/80

Refused to re-issue new visas and invalidated visas issued for future use to Iranian citizens.

-- Libya - 3/11/83

Terminated non-immigration visa status of Libyans engaged in aviation or nuclear studies.

-- Cuba - 10/4/85

Restricted entry into the United States by Cuban government employees and members of the Cuban communist party.

-- Cuba - 8/22/86

Denied preference immigration visas to persons who left Cuba for third countries.

-- Syria - 11/14/86

Placed vigorous controls on Syrian visa applications--all applications required to be submitted to Washington, D.C., for mandatory security advisory opinion.

Foreign Assistance Act 1961

-- Syria - 11/14/83

Terminated economic assistance.

-- Libya, Syria, Cuba, Iraq,
and PDR Yemen - 10/12/84

Prohibited all foreign assistance.

Trading with the Enemy Act

-- Cuba - 5/15/82

Banned business and tourist
travel by U.S. citizens.

MAJOR STATUTES CITED BY FEDERAL AGENCIES
AUTHORIZING SANCTIONS AGAINST COUNTRIES
SUPPORTING INTERNATIONAL TERRORISM

Export Administration Act of 1979; Pub. L. No. 96-72, 93 Stat. 503 (1979), as amended by Pub. L. No. 99-64, 99 Stat. 123 (1985); 50 U.S.C. App. § 2404(b) (Supp. III 1985).

International Emergency Economic Powers Act; Pub. L. No. 95-223, 91 Stat. 1626 (1977); 50 U.S.C. § 1701 et seq. (1982).

The Federal Aviation Act; Pub. L. No. 85-726, 72 Stat. 731 (1958), as amended by Pub. L. No. 99-83, 99 Stat. 190 (1985); 49 U.S.C. App. § 1515 (Supp. III 1985).

National Emergencies Act; Pub. L. No. 94-412, 90 Stat. 1255 (1976); 50 U.S.C. § 1601 et seq. (1982).

International Security and Development Cooperation Act of 1985; Pub. L. No. 99-83, 99 Stat. 190 (1985); 22 U.S.C. § 2349aa-9 (Supp. III 1985).

Arms Export Control Act; Pub. L. No. 90-629, 82 Stat. 1321 (1968), as amended by Pub. L. No. 99-399, § 509, 100 Stat. 853, 874 (1986); 22 U.S.C. 2753, 2778 (1982).

Export-Import Bank Act of 1945; Act of July 1, 1945, ch. 341, 59 Stat. 526; 12 U.S.C. § 635(b)(1)(B) (1982).

Foreign Assistance Act of 1961; Pub. L. No. 87-195, 75 Stat. 424 (1961) as amended; 22 U.S.C. § 2371 (Supp. III 1985).

Trade Expansion Act of 1962; Pub. L. No. 87-794, 76 Stat. 872 (1962); 19 U.S.C. § 1862 (1982).

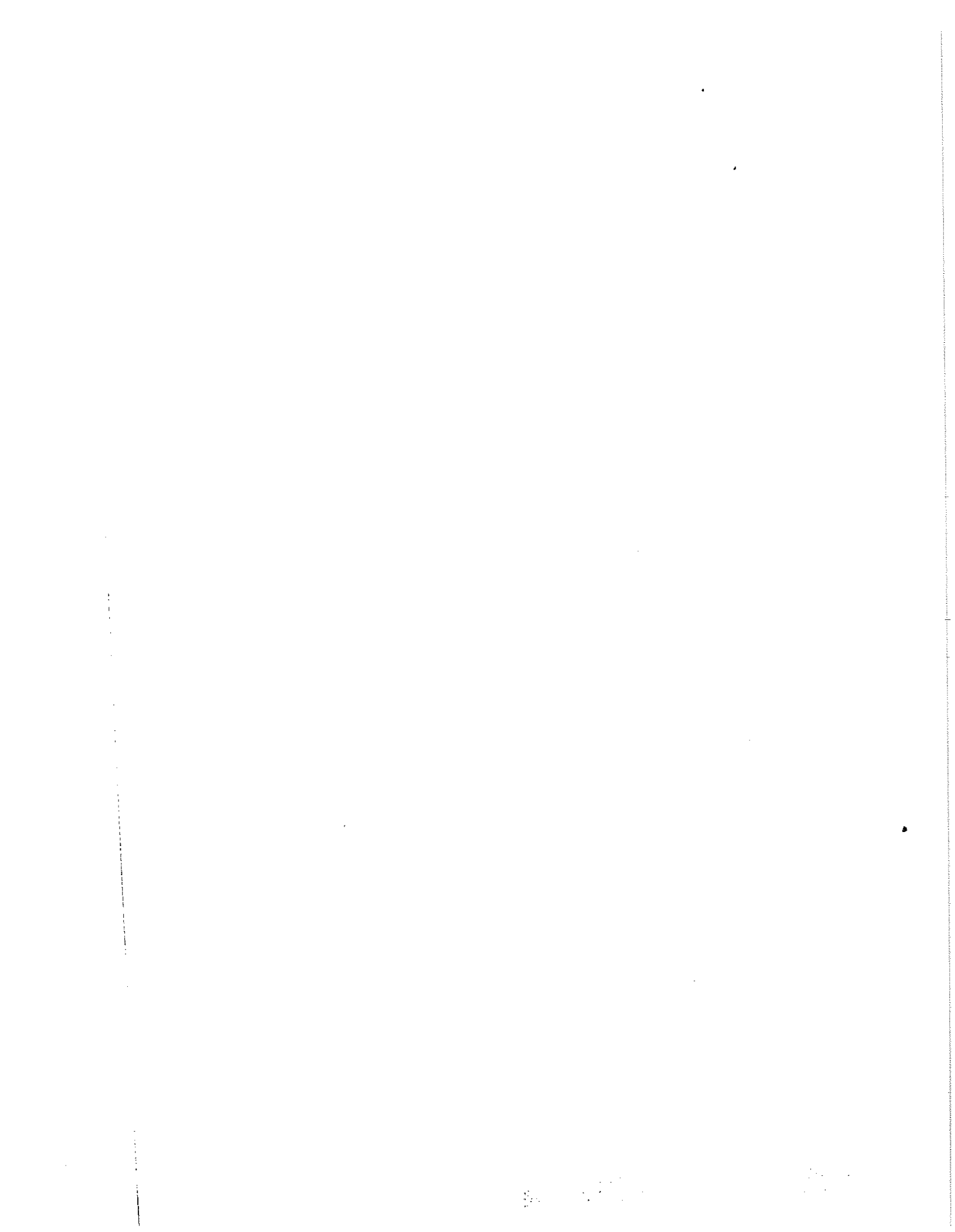
Immigration and Nationality Act; Act of June 27, 1952, ch. 477, 66 Stat. 166; 8 U.S.C. § 1182 (1982).

Omnibus Diplomatic Security and Antiterrorism Act of 1986; Pub. L. No. 99-399, 100 Stat. 853 (1986).

Trade Act of 1974; Pub. L. No. 93-618, 88 Stat. 1978 (1974) as amended; 19 U.S.C. § 2462(b)(7) (1982).

Trading with the Enemy Act; Act of October 6, 1917, ch. 106, 40 Stat. 411 as amended by Pub. L. No. 95-223, 91 Stat. 1625 (1977); 50 U.S.C. App. § 1 et seq. (1982).

(464121)



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Public Law 104-172
104th Congress

An Act

To impose sanctions on persons making certain investments directly and significantly contributing to the enhancement of the ability of Iran or Libya to develop its petroleum resources, and on persons exporting certain items that enhance Libya's weapons or aviation capabilities or enhance Libya's ability to develop its petroleum resources, and for other purposes.

Aug. 5, 1996
[H.R. 3107]

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Iran and Libya Sanctions Act of 1996".

Iran and Libya
Sanctions Act of
1996.
50 USC 1701
note.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The efforts of the Government of Iran to acquire weapons of mass destruction and the means to deliver them and its support of acts of international terrorism endanger the national security and foreign policy interests of the United States and those countries with which the United States shares common strategic and foreign policy objectives.

(2) The objective of preventing the proliferation of weapons of mass destruction and acts of international terrorism through existing multilateral and bilateral initiatives requires additional efforts to deny Iran the financial means to sustain its nuclear, chemical, biological, and missile weapons programs.

(3) The Government of Iran uses its diplomatic facilities and quasi-governmental institutions outside of Iran to promote acts of international terrorism and assist its nuclear, chemical, biological, and missile weapons programs.

(4) The failure of the Government of Libya to comply with Resolutions 731, 748, and 883 of the Security Council of the United Nations, its support of international terrorism, and its efforts to acquire weapons of mass destruction constitute a threat to international peace and security that endangers the national security and foreign policy interests of the United States and those countries with which it shares common strategic and foreign policy objectives.

50 USC 1701
note.

SEC. 3. DECLARATION OF POLICY.

(a) **POLICY WITH RESPECT TO IRAN.**—The Congress declares that it is the policy of the United States to deny Iran the ability to support acts of international terrorism and to fund the development and acquisition of weapons of mass destruction and the means to deliver them by limiting the development of Iran's ability to

50 USC 1701
note.

explore for, extract, refine, or transport by pipeline petroleum resources of Iran.

(b) **POLICY WITH RESPECT TO LIBYA.**—The Congress further declares that it is the policy of the United States to seek full compliance by Libya with its obligations under Resolutions 731, 748, and 883 of the Security Council of the United Nations, including ending all support for acts of international terrorism and efforts to develop or acquire weapons of mass destruction.

President.
50 USC 1701
note.

SEC. 4. MULTILATERAL REGIME.

(a) **MULTILATERAL NEGOTIATIONS.**—In order to further the objectives of section 3, the Congress urges the President to commence immediately diplomatic efforts, both in appropriate international fora such as the United Nations, and bilaterally with allies of the United States, to establish a multilateral sanctions regime against Iran, including provisions limiting the development of petroleum resources, that will inhibit Iran's efforts to carry out activities described in section 2.

(b) **REPORTS TO CONGRESS.**—The President shall report to the appropriate congressional committees, not later than 1 year after the date of the enactment of this Act, and periodically thereafter, on the extent that diplomatic efforts described in subsection (a) have been successful. Each report shall include—

(1) the countries that have agreed to undertake measures to further the objectives of section 3 with respect to Iran, and a description of those measures; and

(2) the countries that have not agreed to measures described in paragraph (1), and, with respect to those countries, other measures (in addition to that provided in subsection (d)) the President recommends that the United States take to further the objectives of section 3 with respect to Iran.

(c) **WAIVER.**—The President may waive the application of section 5(a) with respect to nationals of a country if—

(1) that country has agreed to undertake substantial measures, including economic sanctions, that will inhibit Iran's efforts to carry out activities described in section 2 and information required by subsection (b)(1) has been included in a report submitted under subsection (b); and

(2) the President, at least 30 days before the waiver takes effect, notifies the appropriate congressional committees of his intention to exercise the waiver.

Notification.

(d) **ENHANCED SANCTION.**—

(1) **SANCTION.**—With respect to nationals of countries except those with respect to which the President has exercised the waiver authority of subsection (c), at any time after the first report is required to be submitted under subsection (b), section 5(a) shall be applied by substituting "\$20,000,000" for "\$40,000,000" each place it appears, and by substituting "\$5,000,000" for "\$10,000,000".

(2) **REPORT TO CONGRESS.**—The President shall report to the appropriate congressional committees any country with respect to which paragraph (1) applies.

(e) **INTERIM REPORT ON MULTILATERAL SANCTIONS; MONITORING.**—The President, not later than 90 days after the date of the enactment of this Act, shall report to the appropriate congressional committees on—

(1) whether the member states of the European Union, the Republic of Korea, Australia, Israel, or Japan have legislative or administrative standards providing for the imposition of trade sanctions on persons or their affiliates doing business or having investments in Iran or Libya;

(2) the extent and duration of each instance of the application of such sanctions; and

(3) the disposition of any decision with respect to such sanctions by the World Trade Organization or its predecessor organization.

SEC. 5. IMPOSITION OF SANCTIONS.

(a) **SANCTIONS WITH RESPECT TO IRAN.**—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, made an investment of \$40,000,000 or more (or any combination of investments of at least \$10,000,000 each, which in the aggregate equals or exceeds \$40,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Iran's ability to develop petroleum resources of Iran.

(b) **MANDATORY SANCTIONS WITH RESPECT TO LIBYA.**—

(1) **VIOLATIONS OF PROHIBITED TRANSACTIONS.**—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, exported, transferred, or otherwise provided to Libya any goods, services, technology, or other items the provision of which is prohibited under paragraph 4(b) or 5 of Resolution 748 of the Security Council of the United Nations, adopted March 31, 1992, or under paragraph 5 or 6 of Resolution 883 of the Security Council of the United Nations, adopted November 11, 1993, if the provision of such items significantly and materially—

(A) contributed to Libya's ability to acquire chemical, biological, or nuclear weapons or destabilizing numbers and types of advanced conventional weapons or enhanced Libya's military or paramilitary capabilities;

(B) contributed to Libya's ability to develop its petroleum resources; or

(C) contributed to Libya's ability to maintain its aviation capabilities.

(2) **INVESTMENTS THAT CONTRIBUTE TO THE DEVELOPMENT OF PETROLEUM RESOURCES.**—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, made an investment of \$40,000,000 or more (or any combination of investments of at least \$10,000,000 each, which in the aggregate equals or exceeds \$40,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Libya's ability to develop its petroleum resources.

President.
50 USC 1701
note.

(c) PERSONS AGAINST WHICH THE SANCTIONS ARE TO BE IMPOSED.—The sanctions described in subsections (a) and (b) shall be imposed on—

(1) any person the President determines has carried out the activities described in subsection (a) or (b); and

(2) any person the President determines—

(A) is a successor entity to the person referred to in paragraph (1);

(B) is a parent or subsidiary of the person referred to in paragraph (1) if that parent or subsidiary, with actual knowledge, engaged in the activities referred to in paragraph (1); or

(C) is an affiliate of the person referred to in paragraph (1) if that affiliate, with actual knowledge, engaged in the activities referred to in paragraph (1) and if that affiliate is controlled in fact by the person referred to in paragraph (1).

For purposes of this Act, any person or entity described in this subsection shall be referred to as a “sanctioned person”.

(d) PUBLICATION IN FEDERAL REGISTER.—The President shall cause to be published in the Federal Register a current list of persons and entities on whom sanctions have been imposed under this Act. The removal of persons or entities from, and the addition of persons and entities to, the list, shall also be so published.

(e) PUBLICATION OF PROJECTS.—The President shall cause to be published in the Federal Register a list of all significant projects which have been publicly tendered in the oil and gas sector in Iran.

(f) EXCEPTIONS.—The President shall not be required to apply or maintain the sanctions under subsection (a) or (b)—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(B) if the President determines in writing that the person to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(C) if the President determines in writing that such articles or services are essential to the national security under defense coproduction agreements;

(2) in the case of procurement, to eligible products, as defined in section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b)(1) of that Act (19 U.S.C. 2511(b)(1));

(3) to products, technology, or services provided under contracts entered into before the date on which the President publishes in the Federal Register the name of the person on whom the sanctions are to be imposed;

(4) to—

(A) spare parts which are essential to United States products or production;

(B) component parts, but not finished products, essential to United States products or production; or

(C) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(6) to information and technology essential to United States products or production; or

(7) to medicines, medical supplies, or other humanitarian items.

SEC. 6. DESCRIPTION OF SANCTIONS.

50 USC 1701
note.

The sanctions to be imposed on a sanctioned person under section 5 are as follows:

(1) EXPORT-IMPORT BANK ASSISTANCE FOR EXPORTS TO SANCTIONED PERSONS.—The President may direct the Export-Import Bank of the United States not to give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to any sanctioned person.

(2) EXPORT SANCTION.—The President may order the United States Government not to issue any specific license and not to grant any other specific permission or authority to export any goods or technology to a sanctioned person under—

(i) the Export Administration Act of 1979;

(ii) the Arms Export Control Act;

(iii) the Atomic Energy Act of 1954; or

(iv) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

(3) LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS.—The United States Government may prohibit any United States financial institution from making loans or providing credits to any sanctioned person totaling more than \$10,000,000 in any 12-month period unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

(4) PROHIBITIONS ON FINANCIAL INSTITUTIONS.—The following prohibitions may be imposed against a sanctioned person that is a financial institution:

(A) PROHIBITION ON DESIGNATION AS PRIMARY DEALER.—Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, such financial institution as a primary dealer in United States Government debt instruments.

(B) PROHIBITION ON SERVICE AS A REPOSITORY OF GOVERNMENT FUNDS.—Such financial institution may not serve as agent of the United States Government or serve as repository for United States Government funds.

The imposition of either sanction under subparagraph (A) or (B) shall be treated as 1 sanction for purposes of section 5, and the imposition of both such sanctions shall be treated as 2 sanctions for purposes of section 5.

(5) PROCUREMENT SANCTION.—The United States Government may not procure, or enter into any contract for the procurement of, any goods or services from a sanctioned person.

(6) **ADDITIONAL SANCTIONS.**—The President may impose sanctions, as appropriate, to restrict imports with respect to a sanctioned person, in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 and following).

50 USC 1701
note.

SEC. 7. ADVISORY OPINIONS.

The Secretary of State may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this Act. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, will not be made subject to such sanctions on account of such activity.

50 USC 1701
note.

SEC. 8. TERMINATION OF SANCTIONS.

(a) **IRAN.**—The requirement under section 5(a) to impose sanctions shall no longer have force or effect with respect to Iran if the President determines and certifies to the appropriate congressional committees that Iran—

(1) has ceased its efforts to design, develop, manufacture, or acquire—

(A) a nuclear explosive device or related materials and technology;

(B) chemical and biological weapons; and

(C) ballistic missiles and ballistic missile launch technology; and

(2) has been removed from the list of countries the governments of which have been determined, for purposes of section 6(j) of the Export Administration Act of 1979, to have repeatedly provided support for acts of international terrorism.

(b) **LIBYA.**—The requirement under section 5(b) to impose sanctions shall no longer have force or effect with respect to Libya if the President determines and certifies to the appropriate congressional committees that Libya has fulfilled the requirements of United Nations Security Council Resolution 731, adopted January 21, 1992, United Nations Security Council Resolution 748, adopted March 31, 1992, and United Nations Security Council Resolution 883, adopted November 11, 1993.

50 USC 1701
note.

SEC. 9. DURATION OF SANCTIONS; PRESIDENTIAL WAIVER.

(a) **DELAY OF SANCTIONS.**—

(1) **CONSULTATIONS.**—If the President makes a determination described in section 5(a) or 5(b) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions under this Act.

(2) **ACTIONS BY GOVERNMENT OF JURISDICTION.**—In order to pursue consultations under paragraph (1) with the government concerned, the President may delay imposition of sanctions under this Act for up to 90 days. Following such consultations, the President shall immediately impose sanctions unless the President determines and certifies to the Congress that the government has taken specific and effective actions, including, as appropriate, the imposition of appropriate penalties, to terminate the involvement of the foreign person in the activi-

ties that resulted in the determination by the President under section 5(a) or 5(b) concerning such person.

(3) **ADDITIONAL DELAY IN IMPOSITION OF SANCTIONS.**—The President may delay the imposition of sanctions for up to an additional 90 days if the President determines and certifies to the Congress that the government with primary jurisdiction over the person concerned is in the process of taking the actions described in paragraph (2).

(4) **REPORT TO CONGRESS.**—Not later than 90 days after making a determination under section 5(a) or 5(b), the President shall submit to the appropriate congressional committees a report on the status of consultations with the appropriate foreign government under this subsection, and the basis for any determination under paragraph (3).

(b) **DURATION OF SANCTIONS.**—A sanction imposed under section 5 shall remain in effect—

(1) for a period of not less than 2 years from the date on which it is imposed; or

(2) until such time as the President determines and certifies to the Congress that the person whose activities were the basis for imposing the sanction is no longer engaging in such activities and that the President has received reliable assurances that such person will not knowingly engage in such activities in the future, except that such sanction shall remain in effect for a period of at least 1 year.

(c) **PRESIDENTIAL WAIVER.**—

(1) **AUTHORITY.**—The President may waive the requirement in section 5 to impose a sanction or sanctions on a person described in section 5(c), and may waive the continued imposition of a sanction or sanctions under subsection (b) of this section, 30 days or more after the President determines and so reports to the appropriate congressional committees that it is important to the national interest of the United States to exercise such waiver authority. Reports.

(2) **CONTENTS OF REPORT.**—Any report under paragraph (1) shall provide a specific and detailed rationale for the determination under paragraph (1), including—

(A) a description of the conduct that resulted in the determination under section 5(a) or (b), as the case may be;

(B) in the case of a foreign person, an explanation of the efforts to secure the cooperation of the government with primary jurisdiction over the sanctioned person to terminate or, as appropriate, penalize the activities that resulted in the determination under section 5(a) or (b), as the case may be;

(C) an estimate as to the significance—

(i) of the provision of the items described in section 5(a) to Iran's ability to develop its petroleum resources, or

(ii) of the provision of the items described in section 5(b)(1) to the abilities of Libya described in subparagraph (A), (B), or (C) of section 5(b)(1), or of the investment described in section 5(b)(2) on Libya's ability to develop its petroleum resources,

as the case may be; and

(D) a statement as to the response of the United States in the event that the person concerned engages in other activities that would be subject to section 5(a) or (b).

(3) **EFFECT OF REPORT ON WAIVER.**—If the President makes a report under paragraph (1) with respect to a waiver of sanctions on a person described in section 5(c), sanctions need not be imposed under section 5(a) or (b) on that person during the 30-day period referred to in paragraph (1).

President.
50 USC 1701
note.

SEC. 10. REPORTS REQUIRED.

(a) **REPORT ON CERTAIN INTERNATIONAL INITIATIVES.**—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the President shall transmit a report to the appropriate congressional committees describing—

(1) the efforts of the President to mount a multilateral campaign to persuade all countries to pressure Iran to cease its nuclear, chemical, biological, and missile weapons programs and its support of acts of international terrorism;

(2) the efforts of the President to persuade other governments to ask Iran to reduce the presence of Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran and to withdraw any such diplomats or representatives who participated in the takeover of the United States embassy in Tehran on November 4, 1979, or the subsequent holding of United States hostages for 444 days;

(3) the extent to which the International Atomic Energy Agency has established regular inspections of all nuclear facilities in Iran, including those presently under construction; and

(4) Iran's use of Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran to promote acts of international terrorism or to develop or sustain Iran's nuclear, chemical, biological, and missile weapons programs.

(b) **OTHER REPORTS.**—The President shall ensure the continued transmittal to the Congress of reports describing—

(1) the nuclear and other military capabilities of Iran, as required by section 601(a) of the Nuclear Non-Proliferation Act of 1978 and section 1607 of the National Defense Authorization Act for Fiscal Year 1993; and

(2) the support provided by Iran for acts of international terrorism, as part of the Department of State's annual report on international terrorism.

50 USC 1701
note.

SEC. 11. DETERMINATIONS NOT REVIEWABLE.

A determination to impose sanctions under this Act shall not be reviewable in any court.

50 USC 1701
note.

SEC. 12. EXCLUSION OF CERTAIN ACTIVITIES.

Nothing in this Act shall apply to any activities subject to the reporting requirements of title V of the National Security Act of 1947.

50 USC 1701
note.

SEC. 13. EFFECTIVE DATE; SUNSET.

(a) **EFFECTIVE DATE.**—This Act shall take effect on the date of the enactment of this Act.

(b) **SUNSET.**—This Act shall cease to be effective on the date that is 5 years after the date of the enactment of this Act.

SEC. 14. DEFINITIONS.

50 USC 1701
note.

As used in this Act:

(1) ACT OF INTERNATIONAL TERRORISM.—The term “act of international terrorism” means an act—

(A) which is violent or dangerous to human life and that is a violation of the criminal laws of the United States or of any State or that would be a criminal violation if committed within the jurisdiction of the United States or any State; and

(B) which appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Foreign Relations of the Senate and the Committee on Ways and Means, the Committee on Banking and Financial Services, and the Committee on International Relations of the House of Representatives.

(3) COMPONENT PART.—The term “component part” has the meaning given that term in section 11A(e)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2410a(e)(1)).

(4) DEVELOP AND DEVELOPMENT.—To “develop”, or the “development” of, petroleum resources means the exploration for, or the extraction, refining, or transportation by pipeline of, petroleum resources.

(5) FINANCIAL INSTITUTION.—The term “financial institution” includes—

(A) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

(B) a credit union;

(C) a securities firm, including a broker or dealer;

(D) an insurance company, including an agency or underwriter; and

(E) any other company that provides financial services.

(6) FINISHED PRODUCT.—The term “finished product” has the meaning given that term in section 11A(e)(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2410a(e)(2)).

(7) FOREIGN PERSON.—The term “foreign person” means—

(A) an individual who is not a United States person or an alien lawfully admitted for permanent residence into the United States; or

(B) a corporation, partnership, or other nongovernmental entity which is not a United States person.

(8) GOODS AND TECHNOLOGY.—The terms “goods” and “technology” have the meanings given those terms in section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415).

(9) INVESTMENT.—The term “investment” means any of the following activities if such activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Iran or a nongovernmental entity in Iran, or with the Govern-

ment of Libya or a nongovernmental entity in Libya, on or after the date of the enactment of this Act:

(A) The entry into a contract that includes responsibility for the development of petroleum resources located in Iran or Libya (as the case may be), or the entry into a contract providing for the general supervision and guarantee of another person's performance of such a contract.

(B) The purchase of a share of ownership, including an equity interest, in that development.

(C) The entry into a contract providing for the participation in royalties, earnings, or profits in that development, without regard to the form of the participation.

The term "investment" does not include the entry into, performance, or financing of a contract to sell or purchase goods, services, or technology.

(10) IRAN.—The term "Iran" includes any agency or instrumentality of Iran.

(11) IRANIAN DIPLOMATS AND REPRESENTATIVES OF OTHER GOVERNMENT AND MILITARY OR QUASI-GOVERNMENTAL INSTITUTIONS OF IRAN.—The term "Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran" includes employees, representatives, or affiliates of Iran's—

- (A) Foreign Ministry;
- (B) Ministry of Intelligence and Security;
- (C) Revolutionary Guard Corps;
- (D) Crusade for Reconstruction;
- (E) Qods (Jerusalem) Forces;
- (F) Interior Ministry;
- (G) Foundation for the Oppressed and Disabled;
- (H) Prophet's Foundation;
- (I) June 5th Foundation;
- (J) Martyr's Foundation;
- (K) Islamic Propagation Organization; and
- (L) Ministry of Islamic Guidance.

(12) LIBYA.—The term "Libya" includes any agency or instrumentality of Libya.

(13) NUCLEAR EXPLOSIVE DEVICE.—The term "nuclear explosive device" means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material (as defined in section 11(aa) of the Atomic Energy Act of 1954) that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT).

(14) PERSON.—The term "person" means—

- (A) a natural person;
- (B) a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and
- (C) any successor to any entity described in subparagraph (B).

(15) PETROLEUM RESOURCES.—The term "petroleum resources" includes petroleum and natural gas resources.

(16) UNITED STATES OR STATE.—The term “United States” or “State” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

(17) UNITED STATES PERSON.—The term “United States person” means—

(A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States; and

(B) a corporation or other legal entity which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia, if natural persons described in subparagraph (A) own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity.

Approved August 5, 1996.

LEGISLATIVE HISTORY—H.R. 3107 (S. 1228):

HOUSE REPORTS: No. 104-523, Pt. 1 (Comm. on International Relations) and Pt. 2 (Comm. on Ways and Means).

SENATE REPORTS: No. 104-187 accompanying S. 1228 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 142 (1996):

June 18, 19, considered and passed House.

July 16, considered and passed Senate, amended.

July 23, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):

Aug. 5, Presidential remarks.



FACTBOX: Sanctions against Iran

Tue, Oct 13 2009

(Reuters) - Iran's second-largest bank, Bank Mellat, said on Tuesday its operations would not suffer because of Britain's move to halt dealings with it and another Iranian state company, Islamic Republic of Iran Shipping Lines.

On Monday, Britain ordered financial firms to end business relations with the two Iranian companies. Following are some details of the sanctions already imposed by the United States, European Union and United Nations:

*** EXISTING U.N. SANCTIONS:**

-- The Security Council has imposed three sets of sanctions on Iran, in December 2006, March 2007 and March 2008.

-- The first covered sensitive nuclear materials and froze the assets of Iranian individuals and companies linked with the nuclear program. It gave Iran 60 days to suspend uranium enrichment, a deadline Iran ignored.

-- The second included new arms and financial sanctions. It extended an asset freeze to 28 more groups, companies and individuals engaged in or supporting sensitive nuclear work or development of ballistic missiles, including the state-run Bank Sepah and firms controlled by the Revolutionary Guards.

-- The resolution invoked Chapter 7, Article 41 of the U.N. Charter, making most of its provisions mandatory but excluding military action. Iran again ignored an order to halt enrichment.

-- The third measure increased travel and financial curbs on individuals and companies and made some of them mandatory. It expanded a partial ban on trade in items with both civilian and military uses to cover sales of all such technology to Iran, and added 13 individuals and 12 companies to the list of those suspected of aiding Iran's nuclear and missile programs. In September 2008, the Security Council unanimously adopted a resolution again ordering Iran to halt enrichment, but imposed no more sanctions, due to opposition from Russia and China.

*** EXISTING U.S. SANCTIONS:**

-- Sanctions imposed after Iranian students stormed the U.S. embassy and took diplomats hostage in 1979 included a ban on most U.S.-Iran trade.

-- In 1995, president Bill Clinton issued executive orders preventing U.S. companies from investing in Iranian oil and gas and trading with Iran. Tehran has found other willing customers.

-- Also in 1995, Congress passed the Iran-Libya Sanctions Act requiring the U.S. government to impose sanctions on foreign firms investing more than \$20 million a year in Iran's energy sector. It was extended for five years in September 2006. No foreign firms have been penalized. The U.S. terminated the applicability of the Iran-Libya Sanctions Act to Libya in 2004.

-- In October 2007 Washington imposed sanctions on Bank Melli, Bank Mellat and Bank Saderat and branded the Revolutionary Guards a proliferator of weapons of mass destruction.

-- In January 2008 sanctions were imposed on Brigadier-General Ahmed Foruzandeh of the Qods force for fomenting violence in Iraq.

*** EXISTING EU SANCTIONS:**

-- The EU has imposed visa bans on senior officials such as Revolutionary Guards head Mohammad Ali Jafari, the then Defense Minister Mostafa Mohammad Najjar and former atomic energy chief Gholamreza Aghazadeh, and on top nuclear and ballistic experts.

-- Britain said on June 18 that Iranian assets frozen in Britain under EU and U.N. sanctions totaled 976 million pounds (\$1.59 billion).

-- Britain announced on October 12 that it was freezing business ties with Bank Mellat and Islamic Republic of Iran Shipping Lines, both of which have previously faced sanctions from the United States. Britain cited fears they were involved in helping Iran develop nuclear weapons.

-- The European Union said last month Iran had to choose between EU assistance for peaceful development of nuclear power or tougher sanctions if it failed to abandon its suspected atomic weapons program.

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▶

United States District Court,
District of Columbia.

In re ISLAMIC REPUBLIC OF IRAN TERRORISM
LITIGATION.

Civil Action Nos. 01-CV-2094, 01-CV-2684, 02-CV-1811, 03-CV-1486, 03-CV-1708, 03-CV-1959, 05-CV-2124, 06-CV-473, 06-CV-516, 06-CV-596, 06-CV-690, 06-CV-750, 06-CV-1116, 07-CV-1302, 08-CV-520, 08-CV-531, 08-CV-1273, 08-CV-1615, 08 CV-1807, 08-CV-1814.

Sept. 30, 2009.

Background: Following judgment in separate actions brought by more than one thousand individual plaintiffs against Islamic Republic of Iran and its Ministry of Information and Security under earlier version of terrorism exception to Foreign Sovereign Immunities Act (FSIA), plaintiffs moved for new actions under exception's newly enacted version and for retroactive treatment of their prior actions under that version. Actions were consolidated.

Holdings: The District Court, Royce C. Lamberth, Chief Judge, held that:

- (1) as matter of first impression, provision in terrorism exception to FSIA authorizing individuals who received final judgments under prior version of exception to file new actions under exception's newly enacted version did not violate constitutional separation of powers principals;
- (2) victim of suicide bombing in Israel could pursue new action for punitive damages against Iran under newly enacted version; but
- (3) newly enacted version was not automatically retroactive to prior judgments obtained by victims of suicide bombing in Lebanon.

Ordered accordingly.

West Headnotes

[1] International Law 221 ↪ 10.31

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.31 k. Immunity. Most Cited Cases

Foreign Sovereign Immunities Act (FSIA) is the sole basis of jurisdiction over foreign states in United States courts. 28 U.S.C.A. § 1602 et seq.

[2] International Law 221 ↪ 10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity. Most Cited Cases

The victim or claimant in an action against a foreign state under the terrorism exception to the Foreign Sovereign Immunities Act (FSIA) must have been a United States citizen or national at the time of the incident that gave rise to his claim. 28 U.S.C.A. § 1605A(a)(1).

[3] International Law 221 ↪ 10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity. Most Cited Cases

There is no but-for causation requirement with respect to cases that rely on the material support component of the terrorism exception to the Foreign Sovereign Immunities Act (FSIA); rather, sponsorship of a terrorist group that causes the personal injury or death of a United States national alone is sufficient to invoke jurisdiction. 28 U.S.C.A. § 1605A(h)(3).

[4] Statutes 361 ↪ 206

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k206 k. Giving effect to entire statute.

Most Cited Cases

It is the duty of courts to give effect, if possible, to every clause and word of a statute.

[5] Constitutional Law 92 ↪ 994

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92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional Questions

92VI(C)3 Presumptions and Construction as to Constitutionality

92k994 k. Avoidance of constitutional questions. Most Cited Cases

Courts are obligated to construe legislative enactments in a manner that avoids constitutional questions whenever there is a saving construction that is not plainly contrary to the intent of Congress.

[6] Federal Courts 170B ↪12.1

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(A) In General

170Bk12 Case or Controversy Requirement

170Bk12.1 k. In general. Most Cited Cases

The federal judiciary has sole responsibility for deciding cases and controversies arising under federal law. U.S.C.A. Const. Art. 3, § 1 et seq.

[7] Constitutional Law 92 ↪2384

92 Constitutional Law

92XX Separation of Powers

92XX(B) Legislative Powers and Functions

92XX(B)2 Encroachment on Judiciary

92k2381 Imposition of Legislative Preference in Particular Proceedings

92k2384 k. Overturning judgment. Most Cited Cases

International Law 221 ↪10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity. Most Cited Cases

Provision in terrorism exception to Foreign Sovereign Immunities Act (FSIA) authorizing individuals who received final judgments against foreign states in prior suits brought under earlier version of exception to file new actions under exception's newly enacted version did not violate constitutional separation of powers principles; exception's newly enacted version did not direct federal courts to reopen final judgments, but rather caused fun-

damental change in federal substantive law by creating federal cause of action against foreign states. U.S.C.A. Const. Art. 3, § 1 et seq.; 28 U.S.C.A. § 1605A.

[8] States 360 ↪18.43

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.43 k. International relations; aliens.

Most Cited Cases

Generally, individual state laws that touch on foreign relations must yield to the national government's policy, given the concern for uniformity in the United States' dealings with foreign nations that animated the Constitution's allocation of foreign relations power to the national government in the first place.

[9] Constitutional Law 92 ↪2384

92 Constitutional Law

92XX Separation of Powers

92XX(B) Legislative Powers and Functions

92XX(B)2 Encroachment on Judiciary

92k2381 Imposition of Legislative Preference in Particular Proceedings

92k2384 k. Overturning judgment. Most Cited Cases

International Law 221 ↪10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity. Most Cited Cases

Waiver of collateral estoppel and res judicata effect of prior judgments entered under earlier version of terrorism exception to Foreign Sovereign Immunities Act (FSIA) for purposes of new actions brought under exception's newly enacted version by individuals who received those prior judgments did not violate constitutional separation of powers principles; exception's newly enacted version did not direct federal courts to reopen final judgments, but rather caused fundamental change in federal substantive law by creating federal cause of action against foreign states. U.S.C.A. Const. Art. 3, § 1 et seq.; 28 U.S.C.A. § 1605A.

[10] Judgment 228 ↪540

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228 Judgment

228XIII Merger and Bar of Causes of Action and Defenses

228XIII(A) Judgments Operative as Bar

228k540 k. Nature and requisites of former recovery as bar in general. Most Cited Cases

Generally, the doctrine of res judicata precludes the parties from relitigating claims only when the parties previously litigated the claims or could have litigated them in a prior civil action that reached a final judgment on the merits.

[11] Judgment 228 ↪713(1)

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(C) Matters Concluded

228k713 Scope and Extent of Estoppel in General

228k713(1) k. In general. Most Cited Cases

The doctrine of collateral estoppel provides that parties may be precluded from litigating any issue of fact or law that was previously resolved by a court in the course of reaching a final judgment in another action between those parties.

[12] Judgment 228 ↪540

228 Judgment

228XIII Merger and Bar of Causes of Action and Defenses

228XIII(A) Judgments Operative as Bar

228k540 k. Nature and requisites of former recovery as bar in general. Most Cited Cases

Judgment 228 ↪634

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(A) Judgments Conclusive in General

228k634 k. Nature and requisites of former adjudication as ground of estoppel in general. Most Cited Cases

The res judicata and collateral estoppel doctrines relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources and, by preventing inconsistent decisions, encourage reliance on adjudication.

[13] Judgment 228 ↪540

228 Judgment

228XIII Merger and Bar of Causes of Action and Defenses

228XIII(A) Judgments Operative as Bar

228k540 k. Nature and requisites of former recovery as bar in general. Most Cited Cases

Judgment 228 ↪634

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(A) Judgments Conclusive in General

228k634 k. Nature and requisites of former adjudication as ground of estoppel in general. Most Cited Cases

The primary purpose served by the res judicata and collateral estoppel doctrines is the preservation of the finality of judgments.

[14] International Law 221 ↪10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity. Most Cited Cases

Victim of suicide bombing in Israel was not entitled to reconsideration of his prior judgment against Islamic Republic of Iran for providing material support to terrorist organization that committed bombing, which was entered under prior version of terrorism exception to Foreign Sovereign Immunities Act (FSIA), to add punitive damages award under exception's newly enacted version; victim's motion for reconsideration under exception's newly enacted version, which permitted retroactive treatment of final judgments entered under earlier version, was untimely under exception's 60-day filing period. 28 U.S.C.A. § 1605A; Fed.Rules Civ.Proc.Rule 59(e), 28 U.S.C.A.

[15] Damages 115 ↪87(1)

115 Damages

115V Exemplary Damages

115k87 Nature and Theory of Damages Additional to Compensation

115k87(1) k. In general. Most Cited Cases

Punitive damages are dependent entirely on the underlying cause of action and cannot exist independently of an

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underlying claim.

[16] International Law 221 ↪10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity. Most Cited Cases

Victim of suicide bombing in Israel could pursue new action for punitive damages under newly enacted version of terrorist exception to Foreign Sovereign Immunities Act (FSIA) against Islamic Republic of Iran for providing material support to terrorist organization that committed bombing, since victim's new action was related to his prior action against Iran, for which he received final judgment under exception's earlier version, and was filed within exception's 60-day filing period. 28 U.S.C.A. § 1605A.

[17] International Law 221 ↪10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity. Most Cited Cases

Father of serviceman killed in suicide bombing of United States Air Force complex in Saudi Arabia could pursue new action for punitive damages under newly enacted version of terrorist exception to Foreign Sovereign Immunities Act (FSIA) against Islamic Republic of Iran for providing material support to terrorist organization that committed bombing, since father's new action was related to his prior action against Iran, for which he was entitled to judgment under exception's earlier version, and was filed within exception's 60-day filing period. 28 U.S.C.A. § 1605A.

[18] International Law 221 ↪10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity. Most Cited Cases

Newly enacted version of terrorism exception to Foreign Sovereign Immunities Act (FSIA), which created federal cause of action against foreign states, was not automatically retroactive to prior judgments obtained by victims of

suicide bombing in Lebanon against Islamic Republic of Iran for providing material support to terrorist organization that committed bombing; rather, victims were required to either file motion for retroactive treatment of their prior judgments under newly-enacted exception or file amended complaint seeking retroactive treatment. 28 U.S.C.A. § 1605A.

[19] International Law 221 ↪10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity. Most Cited Cases

Actions that were initially brought under earlier version of terrorism exception to Foreign Sovereign Immunities Act (FSIA) against Islamic Republic of Iran for providing material support to terrorist organizations but were subsequently converted into new actions under exception's newly enacted version did not need to be re-served on Iran following conversion, although actions under newly enacted exception were based on federal law whereas actions under earlier version were based on state law; converted actions did not present new claims for purposes of FSIA's pleading requirements. 28 U.S.C.A. §§ 1605A, 1608.

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I.

*35 II.

INTRODUCTION

For more than a decade now, this Court has presided over what has been a twisting and turning course of litigation against the Islamic Republic of Iran under the state sponsor of terrorism exception of the Foreign Sovereign Immunities Act (FSIA). Despite the best intentions of Congress and moral statements of support from the Executive Branch, the stark reality is that *36 the plaintiffs in these actions face continuous road blocks and setbacks in what has been an increasingly futile exercise to hold Iran accountable for unspeakable acts of terrorist violence.^{FN1}

^{FN1}. The Islamic Republic of Iran was designated by the Secretary of State as a state sponsor of terrorism on January 19, 1984. The State Department maintains a list of countries that have been designated as state sponsors of terrorism on the Department's website. See U.S. Dep't of State, State Sponsors of Terrorism, www.state.gov/s/ct/c14151.htm (last visited Sept. 29, 2009). As noted at the website, countries designated as state sponsors of terrorism are those countries that the Secretary of State has determined "have repeatedly provided support for acts of international terrorism." *Id.* The Secretary of State makes that determination and designates state sponsors of terrorism pursuant to three statutory authorities: § 6(j) of the Export Administration Act of 1979, 50 U.S.C. app. § 2405(j); § 620A of the Foreign Assistance Act, 22 U.S.C. § 2371; and § 40(d) of the Arms Export Control Act, 22 U.S.C. § 2780(d). Three other countries are designated as State Sponsors of Terrorism: Cuba, Sudan, and Syria. U.S. Dep't of State, *supra* note 1. In April 2009, the State Department published its annual Country Reports on Terrorism, reporting that "Iran remained the most active state sponsor of terrorism" in 2008. U.S. Dep't of State, Country Reports on Terrorism 2008, at 182, *available at* <http://www.state.gov/documents/organization/122599.pdf>. "Iran's involvement in the planning of finan-

ROYCE C. LAMBERTH, Chief Judge.

cial support of terrorist attacks throughout the Middle East, Europe, and Central Asia has had a direct impact on international efforts to promote peace, threatened economic stability in the Gulf, and undermined the growth of democracy." *Id.*

The cases against Iran that will be addressed by the Court today involve more than one thousand individual plaintiffs. Like countless others before them, the plaintiffs in these actions have demonstrated through competent evidence—including the testimony of several prominent experts in the field of national security—that Iran has provided material support to terrorist organizations, like Hezbollah and Hamas, that have orchestrated unconscionable acts of violence that have killed or injured hundreds of Americans. As a result of these civil actions, Iran faces more than nine billion dollars in liability in the form of court judgments for money damages. Despite plaintiffs' best efforts to execute these court judgments, virtually all have gone unsatisfied.

This consolidated opinion focuses on recent legislative changes in this extraordinary area of the law, as implemented by Congress last term in § 1083 of the 2008 National Defense Appropriations Act for Fiscal Year 2008 (2008 NDAA). See Pub.L. No. 110-181, § 1083, 122 Stat. 3, 338-44. Section 1083 completely repeals the original state sponsor of terrorism exception—28 U.S.C. § 1605(a)(7)—which was originally enacted in 1996, and enacts in its place a new exception—28 U.S.C. § 1605A—that is in many ways more favorable to plaintiffs. This new statute provides, among other reforms, a new federal cause of action against state sponsors of terrorism and allows for awards of punitive damages in these cases. Even more significantly, however, the reforms implemented through § 1083 last year add a number of measures that are intended to help plaintiffs succeed in enforcing court judgments against state sponsors of terrorism, such as Iran.

The primary purpose of this opinion is to consider whether and to what extent these recent changes in the law should apply retroactively to a number of civil actions against Iran that were filed, and, in many instances, litigated to a final judgment prior to the enactment of the 2008 NDAA. In this particular instance, Congress has provided express guidance in § 1083(c) with respect to

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how § 1605A may be applied retroactively to reach a host of cases that were filed under the original terrorism *37 exception, § 1605(a)(7). In considering this retroactivity question, the Court will address a variety of other legal and procedural issues relating to what may be another lengthy course of litigation against Iran.

As is often the case in this area of the law that the Supreme Court has called *sui generis*, see *Austria v. Altmann*, 541 U.S. 677, 698, 124 S.Ct. 2240, 159 L.Ed.2d 1 (2004), this Court must sometimes confront novel legal questions, including constitutional issues of first impression. Today's decision is no different. This Court must address whether § 1083(c) impermissibly directs the reopening of final judgments in violation of Article III of the Constitution. See *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 241, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995). The Court's attentiveness to this potentially unconstitutional application of § 1083(c) was heightened significantly by provisions of § 1083(c) that direct courts to essentially disregard the firmly established judicial doctrines of *res judicata* and collateral estoppel with respect to any matters litigated in a prior FSIA terrorism case.

To the extent that § 1083(c) might be construed as directing the reopening of final judgments entered under the former version of the terrorism exception, § 1605(a)(7), it would usurp the prerogative of the judiciary to decide cases under Article III and thereby offend the principle of separation of powers enshrined within our Constitution. In light of this issue's significance with respect to ongoing litigation against Iran, this Court addresses the Article III question in Part E of this opinion. After careful analysis as set forth below, this Court holds that the statute withstands constitutional scrutiny.

Today, the Court also reaches an even more fundamental conclusion: Civil litigation against Iran under the FSIA state sponsor of terrorism exception represents a failed policy. After more than a decade spent presiding over these difficult cases, this Court now sees that these cases do not achieve justice for victims, are not sustainable, and threaten to undermine the President's foreign policy initiatives during a particularly critical time in our Nation's history. The truth is that the prospects for recovery upon judgments entered in these cases are extremely remote. The amount of Iranian assets currently known to exist with the United States is approximately 45 million dollars, which is infinitesimal in comparison to the 10 billion dollars in currently outstanding court judgments.^{FN2} Beyond the lack of assets available for execution of judg-

ments, however, these civil actions inevitably must confront deeply entrenched and fundamental understandings of foreign state sovereignty, conflicting multinational treaties and executive agreements, and the exercise of presidential executive power in an ever-changing and increasingly complex world of international affairs.

FN2. See OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEPT OF THE TREASURY, TERRORIST ASSETS REPORT 14-15, tbls. 1, 3 (2007) [hereinafter TERRORIST ASSETS REPORT], available at <http://www.treas.gov/offices/enforcement/ofac/reports/tar2007.pdf>.

Unfortunately, the enactment of § 1083 of the 2008 NDAA continues and expands the terrorism exception and its failed policy of civil litigation as the means of redress in these horrific cases. The availability of new federal claims under § 1605A with punitive damages, when combined with the broad retroactive reach accorded to this new statute, means that liability in the form of billions of dollars more in court judgments will continue to mount and mount quickly.

As a result of these latest reforms, the victims in these cases will now continue in *38 their long struggle in pursuit of justice through costly and time-consuming civil litigation against Iran. They will do this at a time in our Nation's history when the President has taken bold and unprecedented steps in an attempt to improve relations with that foreign power while pressing forward on crucial issues, such as the grave threat of nuclear proliferation posed by Iran. Regrettably, the continuation in § 1083 of the same flawed policy that has failed plaintiffs in these actions for over a decade may only stoke the flames of unrealistic and unmanageable expectations in these terrorism victims who so rightly deserve justice, which may in turn serve only to expose the Administration to an unprecedented burden in its management of United States foreign policy towards Iran.

In view of these considerations, the Court will respectfully urge the President and Congress to seek meaningful reforms in this area of law in the form of a viable alternative to private litigation as the means of redress for the countless deaths and injuries caused by acts of terrorism. In Part K of the opinion and in the Conclusion, this Court will speak candidly about the challenges, complexities, and frustrations borne out by these civil actions over the past decade in an effort to urge our political leaders to act. If the decade-long history of these FSIA terrorism actions

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has revealed anything, it is that the Judiciary cannot resolve the intractable political dilemmas that frustrate these lawsuits; only Congress and the President can. Today, at the start of a new presidential administration—one that has sought engagement with Iran on a host of critical issues—it may be time for our political leaders here in Washington to seek a fresh approach.^{FN3}

^{FN3}. Reaching out to the people of Iran and their leaders, President Obama recently stated: “I would like to speak clearly to Iran’s leaders: We have serious differences that have grown over time. My administration is now committed to diplomacy that addresses the full range of issues before us and to pursuing constructive ties among the United States, Iran, and the international community.” Videotaped Remarks on the Observance of Nowruz, DAILY COMP. PRES. DOC., Mar. 20, 2009.

To assist this Court in these matters going forward, the Court will invite the United States to participate in these actions by filing a brief in response to the many issues addressed in this opinion. The Court encourages the United States to express its views regarding this litigation, but, more importantly, the Court hopes the Government might take this opportunity to give due consideration to whether there might be a more viable system of redress for these tragic and difficult cases. With the daunting national security challenges that confront the President with respect to Iran, our political leaders should candidly acknowledge the challenges and pitfalls of these terrorism lawsuits. The Court fears that if reforms are not achieved in the near future, these civil suits against Iran may undermine the President’s ability to act at a time when it matters most.

Today’s omnibus opinion consists of twelve parts and is intended to serve a case management function in light of the significant changes in the law relating to these civil suits against Iran. Thus, today’s ruling is consistent with this Court’s inherent authority to manage the docket. See, e.g., *In re Fannie Mae Sec. Litig.*, 552 F.3d 814, 822 (D.C.Cir.2009) (“District judges must have authority to manage their dockets, especially during massive litigation....”). A separate order consistent with this opinion will issue this date.

III.

DISCUSSION

[1] The Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. §§ 1330, *39 1602-1611, is the sole basis of jurisdiction over foreign states in our courts. E.g., *Argentine Republic v. Amerasia Shipping Corp.*, 488 U.S. 428, 434, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989); *Prevatt v. Islamic Republic of Iran*, 421 F.Supp.2d 152, 157-58 (D.D.C.2006) (Lamberth, J.). Enacted in 1976, the FSIA codifies a restrictive theory of foreign state sovereign immunity by which states are generally immune from the jurisdiction of courts of the United States, subject to a few carefully delineated exceptions. See, e.g., *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488-89, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983); *Price v. Socialist People’s Libyan Arab Jamahiriya*, 294 F.3d 82, 87 (D.C.Cir.2002). In the original FSIA enactment, exceptions to foreign sovereign immunity included cases in which a foreign state had either expressly or implicitly waived its immunity and cases relating to the commercial activities of a foreign sovereign within the United States. See Act of Oct. 21, 1976, Pub.L. No. 94-583, 90 Stat. 2891; see also §§ 1605(a), 1605A (codification of current FSIA exceptions); *Verlinden*, 461 U.S. at 488, 103 S.Ct. 1962 (discussing key exceptions under the FSIA).

The state sponsor of terrorism exception of the FSIA was first enacted in 1996 as part of Mandatory Victims Restitution Act of 1996, which was itself part of the larger Antiterrorism and Effective Death Penalty Act of 1996. Pub.L. No. 104-132, § 221(a)(1)(C), 110 Stat. 1214, 1241 (formerly codified at § 1605(a)(7)). As noted, however, the original exception at § 1605(a)(7) was repealed last year by the 2008 NDAA, § 1083(b)(1)(A)(iii), and replaced with a new exception at § 1605A. It is unclear why Congress chose to repeal rather than simply amend the prior statute. See H.R.Rep. No. 110-477, at 1001 (2007) (Conf. Rep.) (discussing § 1605A but omitting discussion of why Congress repealed, instead of amended, § 1605(a)(7)). Perhaps members of Congress wanted to reinforce the significance of their overhaul of the terrorism exception. Whatever the case may be, it is important at the outset for this Court to offer some notes of clarification and historical background information in an effort to avoid any confusion in the ensuing discussion.

The Court’s analysis today must simultaneously consider two separate and distinct versions of the terrorism exception of the FSIA—the now-repealed version of the terrorism exception, § 1605(a)(7), and the new version, § 1605A. While the prior version of the exception, § 1605(a)(7), and the new version, § 1605A, differ in many

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fundamental respects, it is important to keep in mind that the basic grant of subject matter jurisdiction for actions against state sponsors of terrorism remains unchanged. Thus, it makes little difference whether one refers to § 1605(a)(7) or § 1605A when addressing the degree to which foreign sovereign immunity has been removed, subjecting designated state sponsors of terrorism to lawsuits in our courts. Indeed, the language eliminating sovereign immunity in the new exception, § 1605A, is virtually identical to the operative language in § 1605(a)(7). Compare § 1605(a)(7) with § 1605A(a)(1). Accordingly, in those instances in which the Court is merely referring to the grant of subject matter jurisdiction afforded by the virtue of the FSIA's terrorism exception, it will do so broadly, without any additional effort to underscore the two different statutes, as the two provisions are in fact indistinguishable in terms of the basic jurisdiction conferring language.

While the grant of subject matter jurisdiction for suits against state sponsors of terrorism is virtually unchanged, the latest version of the terrorism exception, *40 § 1605A, adds substantive rights and remedies that were not available previously. As noted above, § 1605A is a much more expansive provision, one which provides a federal cause of action, as well as many other statutory entitlements. These new rights and remedies are the central focus of today's decision. The issue is whether the plaintiffs in actions that were filed, at least initially, under the now-repealed § 1605(a)(7), can now avail themselves of the additional entitlements associated with the new exception, § 1605A. Thus, to extent that some of these plaintiffs are unable to claim the benefits of the new terrorism law retroactively, then the prior exception, § 1605(a)(7)—even though now repealed—remains viable and indeed is the controlling source of law in their cases. This is consistent with both the guidance provided by Congress in § 1083(c) of the 2008 NDAA and the general presumption against the retroactive application of laws. See *Landgraf v. USI Film Prods.*, 511 U.S. 244, 286, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994) (“The presumption against statutory retroactivity is founded upon sound considerations of general policy and practice, and accords with long held and widely shared expectations about the usual operation of legislation.”). Thus, when dealing with the nuts and bolts of the retroactivity analysis, especially in Part D below where the Court looks individually at each of the 20 cases in this opinion, it is important to keep the two versions of the exception separate and distinct. As underscored recently by the Court of Appeals for this Circuit, terrorism cases that were filed prior the enactment of the 2008 NDAA, and which do not qualify for retroactive

treatment under the new exception, are governed by the prior statute, § 1605(a)(7). See *Simon v. Republic of Iraq*, 529 F.3d 1187, 1192 (D.C.Cir.2008), *rev'd on other grounds sub nom. Republic of Iraq v. Beatty*, --- U.S. ---, 129 S.Ct. 2183, 173 L.Ed.2d 1193 (2009); accord *Oveissi v. Islamic Republic of Iran*, 573 F.3d 835 (D.C.Cir.2009); *La Reunion Aeriennne v. Socialist People's Libyan Arab Jamahiriyah*, 533 F.3d 837, 845 (D.C.Cir.2008); *Owens v. Republic of Sudan*, 531 F.3d 884, 887 (D.C.Cir.2008).

A.

HISTORICAL OVERVIEW OF THE FSIA STATE SPONSOR OF TERRORISM EXCEPTION AS IT RELATES TO ACTIONS AGAINST THE ISLAMIC REPUBLIC OF IRAN

The new terrorism exception—§ 1605A—clears away a number of legal obstacles, including adverse court rulings, that have stifled plaintiffs' efforts to obtain relief in civil actions against designated state sponsors of terrorism. In fact, these reforms are in part a legislative fix to certain adverse precedent from the D.C. Circuit because “§ 1605A(c) abrogates *Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024 (D.C.Cir.2004), by creating a federal right of action against foreign states, for which punitive damages may be awarded.” *Simon*, 529 F.3d at 1190. Thus, to fully grasp the significance these latest reforms, it is important to have some understanding regarding the manner in which the state sponsor of terrorism exception was shaped over time through the jurisprudence of this Circuit. More fundamentally, however, this historical backdrop is essential to the Court's analysis of the Article III separation-of-powers issue below in Part E, as well as for the Court's conclusion in Part K that even greater reforms in the law are necessary.

Accordingly, the Court will now briefly provide a historical overview of the state sponsor of terrorism exception, as it was originally constituted under § 1605(a)(7) *41 (repealed), and the so-called Flatow Amendment to that exception. This part of the discussion will examine some of the early litigation against Iran before this Court in cases arising out of Iran's provision of material support and resources to terrorist organizations, such as Hamas and Hezbollah. The important historical background that follows breaks down roughly into three parts. The Court will begin with a discussion of *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1 (D.D.C.1998) [hereinafter *Flatow I*] (Lamberth, J.), which was the first case in the country to be decided against Iran under the state sponsor of terror-

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ism exception. After discussing this Court's ruling in *Flatow*, this Court will then review the decision of the D.C. Circuit Court of Appeals in *Cicippio-Puleo*, 353 F.3d 1024, in which the Court found that neither § 1605(a)(7) nor the Flatow Amendment furnish a cause of action against a foreign state. This Court examines the negative consequences and practical implications of that ruling for plaintiffs in these terrorism cases. After examining the fallout from *Cicippio-Puleo*, this Court proceeds to address what has been the greatest problem for these plaintiffs, and that is the fact that there are simply not sufficient Iranian assets that are amenable to attachment or execution in satisfaction of judgments entered against Iran under the FSIA terrorism exception.^{FN4}

FN4. For an excellent summary of the litigation and evolution of the law pertaining to the state sponsor of terrorism exception of the FSIA, see JENNIFER K. ELSEA, CONGRESSIONAL RESEARCH SERV., SUITS AGAINST TERRORIST STATES BY VICTIMS OF TERRORISM (2008) [hereinafter SUITS AGAINST TERRORIST STATES], available at <http://www.fas.org/sgp/crs/terror/RL31258.pdf>. This Congressional Research Service report on terrorism lawsuits is the logical starting point for anyone who is hoping to gain a solid grasp of the development of this area of the law and its many complexities. In addition to chronicling important legislative developments, the report captures and summarizes the civil litigation that has occurred in this Court against Iran under the state sponsor of terrorism exception to the FSIA. This Court is grateful to the Congressional Research Service, and to Ms. Elsea in particular, for their thorough work on this unique and important topic. This Court has examined and relied on many of the original source materials identified in the report for additional insight on these matters beyond the Court's own experience in presiding over dozens of civil actions against Iran.

1. The Original State Sponsor of Terrorism Exception to Foreign Sovereign Immunity, Section 1605(a)(7) and the Flatow Amendment, Section 1605 Note, and Litigation Against Iran for its Provision of Material Support to Terrorist Organizations

The state sponsor of terrorism exception to foreign sovereign immunity applies only to foreign sovereigns officially designated as state sponsors of terrorism by the

State Department. See § 1605A(a)(2)(A)(i)(I); § 1605(a)(7)(a) (repealed). This exception to foreign sovereign immunity is commonly known as the “terrorism exception.” See, e.g., *Kilburn v. Socialist People's Libyan Arab Jamahiriya*, 376 F.3d 1123, 1126 (D.C.Cir.2004). Under the exception, foreign sovereign immunity is eliminated in two different categories of terrorism cases: (1) those in which the designated foreign state is alleged to have committed certain acts of terrorism, i.e., torture, extrajudicial killing, aircraft sabotage, or hostage taking; and (2) those in which the designated state is alleged to have provided “material support or resources” for such terrorist acts. See § 1605A(a)(1); § 1605(a)(7) (repealed). Thus, a designated state sponsor of terrorism might be held to account for its specific acts of terrorism, as well as, more broadly speaking, its “provision of material support or resources” in furtherance*42 of acts of terrorism. See § 1605A(a)(1); § 1605(a)(7) (repealed).

[2] The statute is intended to protect American victims of state-sponsored terrorism, and therefore only United States citizens and nationals may rely on its grant of subject matter jurisdiction. See § 1605A(a)(1); § 1605(a)(7) (repealed); see also *Acosta v. Islamic Republic of Iran*, 574 F.Supp.2d 15, 25-26 (D.D.C.2008) (Lamberth, C.J.) (denying claims of victim, Rabbi Meir Kahane, who had voluntarily renounced his U.S. citizenship years prior to his assassination by Islamic terrorists). Thus, the victim or claimant in an action against a state sponsor of terrorism must have been a United States citizen or national at the time of the incident that gave rise to his claim(s). See *Acosta*, 574 F.Supp.2d at 26.

Most of the actions in this Court against Iran have proceeded under that portion of the terrorism exception relating to “the provision of material support or resources” for terrorist acts. See, e.g., *Flatow I*, 999 F.Supp. 1; *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1 (D.D.C.2000) (Lamberth, J.); *Heiser v. Islamic Republic of Iran*, 466 F.Supp.2d 229 (D.D.C.2006) (Lamberth, J.). The terrorism exception adopts the definition of “material support or resources” set forth in the criminal code at 18 U.S.C § 2339A(b)(1):

[T]he term “material support or resources” means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more

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individuals who may be or include oneself), and transportation, except medicine or religious materials[.]

See § 1605A(h)(3) (incorporating § 2339A(b)(1) by reference); see also § 1605(a)(7) (repealed).

[3] This Court has determined that “the routine provision of financial assistance to a terrorist group in support of its terrorist activities constitutes ‘providing material support and resources’ for a terrorist act within the meaning of the [terrorism exception of the FSIA].” *Flatow I*, 999 F.Supp. 1 at 19. Additionally, this Court has found that “a plaintiff need not establish that the material support or resources provided by a foreign state for a terrorist act contributed directly to the act from which his claim arises in order to satisfy 28 U.S.C. § 1605(a)(7)’s statutory requirements for subject matter jurisdiction.” *Id.* In other words, there is no “but-for” causation requirement with respect to cases that rely on the material support component of the terrorism exception to foreign sovereign immunity; “[s]ponsorship of a terrorist group which causes personal injury or death of United States national alone is sufficient to invoke jurisdiction.” *Id.*; see also *Kilburn*, 376 F.3d at 1129 (holding that Libya’s actions need not be the “but for” causation of an act of terrorism for the purpose of establishing subject matter jurisdiction under the terrorism exception). Once the requirements for jurisdiction over a foreign state are satisfied under the FSIA, then that foreign state can be held liable in a civil action “in the same manner and to the same extent as a private individual under like circumstances.” § 1606.

When the FSIA state sponsor of terrorism exception was first enacted in April of 1996, it was far from clear whether that statute, § 1605(a)(7), in and of itself, served as a basis for an independent federal cause of action against foreign state sponsors of terrorism. While the waiver of foreign sovereign immunity was clear, *43 and hence the provision authorized courts to serve as a forum to adjudicate certain terrorism cases, questions remained regarding whether any civil claims or money damages were available by virtue of that enactment. To clarify matters, Congress created what is commonly referred to as the Flatow Amendment, which was enacted a mere five months after the state sponsor of terrorism exception as part of the Omnibus Consolidated Appropriations Act, 1997. See Pub.L. 104-208, § 589, 110 (1996), 110 Stat. 3009-1, 3009-172 (codified at 28 U.S.C. § 1605 note). The Flatow Amendment provides in pertinent part that:

An official, employee, or agent of a foreign state des-

igned as a state sponsor of terrorism ... while acting within the scope of his office, employment, or agency shall be liable to a United States national or the national’s legal representative for personal injury or death caused by acts of that official, employee, or agent for which courts of the United States may maintain jurisdiction under section 1605(a)(7) of title 28, United States Code [repealed] for money damages which may include economic damages, solatium, pain, and suffering, and punitive damages if the acts were among those described in section 1605(a)(7).

§ 1605 note.

The amendment is named for Alisa Michelle Flatow, a 20-year-old Brandeis University student from New Jersey who was mortally wounded in a suicide bombing attack on the Gaza strip in April of 1995. Alisa Flatow’s father, Stephen Flatow, was one of the prime movers behind the state sponsor of terrorism exception, and he successfully lobbied to have the amendment incorporated as part of § 1605. See, e.g., Neely Tucker, *Pain and Suffering; Relatives of Terrorist Victims Race Each Other to Court, but Justice and Money are Both Hard to Find*, WASH. POST., Apr. 6, 2003, at F1 [hereinafter Tucker, *Pain and Suffering*] (recalling Stephen Flatow’s lobbying efforts on behalf of the anti-terrorism legislation); see also Ruthanne M. Deutsch, *Suing State-Sponsors of Terrorism Under the Foreign Sovereign Immunities Act: Giving Life to the Jurisdictional Grant After Cicippio-Puleo*, 38 INTL. LAW. 891 (2004) (discussing legislative history of the Flatow Amendment and collecting sources); SUITS AGAINST TERRORIST STATES, *supra* note 4, at 5-7 (discussing legislative history of § 1605(a)(7) and Flatow Amendment).

Stephen Flatow filed suit in this Court shortly after the enactment of the Flatow Amendment. As administrator of Alisa Flatow’s estate, plaintiff asserted a wrongful death claim and a claim for Alisa’s conscious pain and suffering prior to her death. See *Flatow I*, 999 F.Supp. at 27-29. Plaintiff also asserted solatium claims for the mental anguish and grief suffered by the decedent’s parents and siblings as a result of her murder by terrorists. See *id.* at 29-32. Plaintiff also sought punitive damages. See *id.* at 32-35. Iran did not enter an appearance in the action and has never appeared in any FSIA terrorism action to date. See *id.* at 6.^{FN5}

FN5. Iran has never appeared in these actions even though it is “an experienced litigant in the

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United States Federal Court System generally and in this Circuit. *See, e.g., Cicippio v. Islamic Republic of Iran*, 30 F.3d 164 (D.C.Cir.1994), cert. denied 513 U.S. 1078, 115 S.Ct. 726, 130 L.Ed.2d 631 (1995); *Foremost-McKesson v. Islamic Republic of Iran*, 905 F.2d 438 (D.C.Cir.1990); *Persinger v. Islamic Republic of Iran*, 729 F.2d 835 (D.C.Cir.1984); *Berkovitz v. Islamic Republic of Iran*, 735 F.2d 329 (9th Cir.1984); *McKeel v. Islamic Republic of Iran*, 722 F.2d 582 (9th Cir.1983).” *Flatow I*, 999 F.Supp. 1 at 6 n. 1. Nevertheless, this Court cannot enter a default judgment against a foreign sovereign unless the plaintiff “establishes his claim or right to relief by evidence satisfactory to the Court.” 28 U.S.C. § 1608(e). Thus, this Court must carefully review the plaintiff’s evidence with respect to both liability and damages.

While Iran has not defended itself in any of the lawsuits under the terrorism exception, Iran has on occasion come to court to prevent plaintiffs from collecting on default judgments entered under that provision. For example, Iran recently prevailed in an action to prevent the attachment of one of its assets here in the United States. *See, e.g., Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Elahi*, --- U.S. ---, 129 S.Ct. 1732, 173 L.Ed.2d 511 (2009).

*44 The *Flatow* case was the first in the country to be decided against Iran under the terrorism exception to the FSIA. *See* 999 F.Supp. at 6 n. 2. In that decision, this Court examined the statutory language of the terrorism exception, § 1605(a)(7), and the *Flatow* Amendment, § 1605 note, *in pari materia* and found that those provisions collectively established both subject matter jurisdiction and federal causes of actions for civil lawsuits against state sponsors of terrorism. *See id.* at 12-13. This Court also ruled that the *Flatow* Amendment was intended to ensure large punitive damage awards against state sponsors of terrorism. *See id.* In this Court’s view, the express provision of punitive damages in the *Flatow* Amendment, in conjunction with the provisions’s legislative history, including statements by the Amendment’s co-sponsors, Representative Jim Saxton and Senator Frank Lautenberg of New Jersey, demonstrated that Congress believed punitive damage awards were absolutely necessary to ensure that civil actions against state sponsors of terrorism would effectively deter those nations from perpetuating interna-

tional terrorism. *See id.* Thus, the *Flatow* Amendment served as an exception to the general rule, as expressed in § 1606 of the FSIA, that foreign sovereigns are not to be held liable for punitive damages.

During a two-day hearing in March of 1998, plaintiff proceeded in the manner of a non-jury trial. *Id.* at 6. The evidence presented to the Court at that time demonstrated by clear and convincing evidence that Iran was the sole source of funding for the Shaqaqi faction of Palestine Islamic Jihad, a small terrorist cell that claimed responsibility for and in fact perpetuated the suicide bombing that gravely wounded Alisa Flatow on April 9, 1995. *Id.* at 8-9. The suicide bomber rammed a van full of explosives into the number 36 Egged bus that Alisa and others were traveling in on their way to a Mediterranean resort in the Gush Katif community in Gaza. *Id.* at 7. The resulting explosion destroyed the bus and sent shrapnel flying in all directions. *Id.* A piece of that shrapnel pierced Alisa’s skull and lodged in her brain. *Id.* Once Stephen Flatow learned that his daughter had been injured in the attack, he immediately flew to Israel, and he rushed to the Soroka Medial Center, where Alisa was being treated. Upon his arrival there, however, the attending physician informed Mr. Flatow that his daughter Alisa “showed no signs of brain activity, that all physical functions relied on life support, and that there was no hope for her recovery.” *Id.* at 8. In emotionally powerful testimony before this Court, Stephen Flatow described the heart-wrenching decision he made to have his daughter’s life support terminated and her organs harvested for transplant. *See id.*

This Court ultimately awarded a total of 22.5 million dollars in compensatory damages. More significantly, however, the Court also awarded 225 million dollars in punitive damages, approximately three times Iran’s annual expenditures on terrorist*45 activities at that time. *See id.* at 34. In providing for such a large award of punitive damages against Iran, this Court stressed the importance of such awards as a means to deter states like Iran from supporting terrorist organizations. The Court stated as follows:

By creating these rights of action, Congress intended that the Courts impose a substantial financial cost on states which sponsor terrorist groups whose activities kill American citizens. *This Cost functions both as a direct deterrent, and also as a disabling mechanism: if several large punitive damage awards issue against a foreign state sponsor of terrorism, the state’s financial capacity to provide funding will be curtailed.*

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Id. at 33 (emphasis added). The Court also recognized that any punitive damage award would have to be substantial enough to have an appreciable impact in light of Iran's significant annual revenues from oil exports. *See id.* at 33-34.

At the time the *Flatow* decision was announced, there was a certain degree of energy and optimism surrounding the action. Senator Frank Lautenberg held a press conference outside this courthouse with Alisa Flatow's parents and their attorneys. They underscored the importance of the Court's decision as a measure of justice for victims of terrorism, and they stressed the importance of holding state sponsors of terrorism accountable for their support of terrorist groups. *See* Bill Miller & Barton Gellman, *Judge Tells Iran to Pay Terrorism Damages; \$247 Million Award for Family of U.S. Victim in Gaza*, WASH. POST, Mar. 12, 1998, at A1. Steven Perles, one of the attorneys for the Flatows, spoke of Iran's wealth and expressed his belief that the Flatows would "collect the entirety of the judgment." *See id.* At the time, the popular sentiment was that terrorism victims were going to "sue the terrorists out of business." *See* Tucker, *Pain and Suffering*, *supra*. In the years immediately following the *Flatow* decision, many more plaintiffs relied on the original terrorism exception, § 1605(a)(7), in combination with the Flatow Amendment, to successfully litigate cases against Iran. *See, e.g., Stern v. Islamic Republic of Iran*, 271 F.Supp.2d 286 (D.D.C.2003) (Lamberth, J.); *Hutira v. Islamic Republic of Iran*, 211 F.Supp.2d 115 (D.D.C.2002) (Lamberth, J.); *Eisenfeld*, 172 F.Supp.2d 1. ^{FN6} Large judgments against the state sponsor of terrorism amassed quickly. Unfortunately, in most cases, the victories obtained by plaintiffs in this courthouse merely signaled the beginning of what *46 would become a long, bitter, and often futile quest for justice.

^{FN6}. Although this Judge ruled in *Flatow* that the Flatow Amendment, 1605 note, did furnish a cause of action against a state sponsor of terrorism, this Judge elected to revisit the issue even more thoroughly in *Cronin v. Islamic Republic of Iran*, a case concerning an American Professor who was taken hostage and tortured by Hizbollah in Beirut, Lebanon in 1984. *See* 238 F.Supp.2d 222 (D.D.C.2002) (Lamberth, J.). The Court did so in part because the Court of Appeals had flagged the issue in *Price* by observing that " 'the amendment does not list 'foreign states' among the parties against whom an action

may be brought.' " *Cronin*, 238 F.Supp.2d at 231 (quoting *Price*, 294 F.3d at 87). As this Court revisited what was then a crucial question, this Court observed that a majority of the judges of this Court by that time had ruled that the Flatow Amendment did provide for a cause of action against a foreign state in cases in which that state is not entitled to immunity by virtue of the terrorism exception, § 1605(a)(7). *See id.* at 233 (collecting cases). Nonetheless, § 1605 note is not a model of clarity, and as Judge Sullivan pointed out in *Roeder v. Islamic Republic of Iran*, there are a number of valid reasons why § 1605 note should not be construed as furnishing substantive claims against foreign states. *See* 195 F.Supp.2d 140, 171-175 (holding that Flatow Amendment did not furnish a cause of action).

2. Setbacks for Plaintiffs: The D.C. Circuit's Decision in *Cicippio-Puleo*

Nearly six years following the *Flatow* decision, and contrary to what this Court and others had determined, the D.C. Circuit Court of Appeals held that "[p]lainly neither section § 1605(a)(7) nor the Flatow Amendment, separately or together, establishes a cause of action against foreign state sponsors of terrorism." *Cicippio-Puleo*, 353 F.3d at 1027. According to the Court of Appeals, the original terrorism exception to the FSIA, § 1605(a)(7), was "merely a jurisdiction conferring provision," and therefore it did not create an independent federal cause of action against a foreign state or its agents. *Id.* at 1032. In other words, the prior version of the terrorism exception, § 1605(a)(7), merely waived foreign sovereign immunity for designated terrorist states with respect to actions taken by those states in furtherance of international terrorism, but it did not furnish a legal claim for money damages that a terrorism victim might then assert in a lawsuit against Iran or any other designated state sponsor of terrorism. Instead, plaintiffs in terrorism cases were required to find a cause of action based on some other source of law. *Id.* at 1037.

With respect to the Flatow Amendment, § 1605 note, the Court held that the provision "provides a private right of action only against individual officials, employees, and agents of a foreign state, but not against the foreign state itself." *Id.* at 1027. Thus, the cause of action furnished by the Flatow Amendment is severely restricted because it applies only to claims against foreign state officials, employees, and agents, "in their *individual capacities*, as

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opposed to their official capacities.” *Id.* at 1034 (emphasis in original). In reaching its holding, the Court of Appeals emphasized that a claim against a foreign state official for actions taken within his official capacity on behalf of a foreign government “ ‘is in substance a claim against the government itself’ ” *Id.* (citations omitted). As the Court found that neither the plain language nor the legislative history of the Flatow Amendment suggested that Congress intended to impose liability on foreign governments, plaintiffs were precluded from relying on that provision for either claims against Iran or claims based on acts taken by Iranian officials within the scope of their official duties. *Id.* at 1034-1036. After rendering its ruling the *Cicippio-Puleo*, the Court of Appeals remanded the action back to this Court in order to enable plaintiffs in that case to amend their complaint to state a cause of action against Iran “under some other source of law, including state law.” *Id.* at 1036.D

As a result of the *Cicippio-Puleo* decision, plaintiffs in FSIA terrorism cases under § 1605(a)(7) began to use that provision as a “ ‘pass-through’ ” to causes of actions found in state tort law. *Bodoff v. Islamic Republic of Iran*, 424 F.Supp.2d 74, 83 (D.D.C.2006) (Lamberth, J.); see also *Pescatore v. Pan Am. World Airways, Inc.*, 97 F.3d 1, 12 (2d Cir.1996) (describing how FSIA acts as pass-through to state law by virtue of § 1606) (quoting *Zicherman v. Korean Air Lines Co.*, 516 U.S. 217, 229, 116 S.Ct. 629, 133 L.Ed.2d 596 (1996)). By using the pass-through approach under the earlier version of the terrorism exception, § 1605(a)(7), most terrorism victims who pursued FSIA cases against Iran were in fact able to litigate claims based on the tort law of the state jurisdiction where they were domiciled at the time of the terrorist incident giving rise to the lawsuit.

*47 In the large consolidated case of *Peterson v. Islamic Republic of Iran*, for example, this Court found that Iran furnished money, weapons, training, and guidance to Hezbollah in direct support of a terrorist plot that culminated in large-scale suicide bombing attack on the United States Marine barracks in Beirut, Lebanon on October 23, 1983. See 264 F.Supp.2d at 47-59 (D.D.C.2003) [hereinafter *Peterson I*] (Lamberth, J.).^{FN7} More than 200 American servicemen lost their lives and countless others were injured in the bombing. Prior to September 11, 2001, the attack on the Marines in Beirut was the most deadly terrorist attack ever carried out against American citizens. By examining the claims in that case under a number of sources of state law, this Court awarded to the family members of the deceased servicemen and the injured sur-

vivors of the Beirut attack exceeds 2.6 billion dollars and remains one of the largest judgments ever awarded in a FSIA action pursuant to the state sponsor of terrorism exception. See *Peterson v. Islamic Republic of Iran*, 515 F.Supp.2d 25, 44-45 (D.D.C.2007) [hereinafter *Peterson II*] (Lamberth, J.). Like *Peterson*, the majority cases addressed in today's opinion stem from the 1983 bombing of the Marine barracks facility in Beirut, Lebanon.

^{FN7} *Peterson* is consolidated with *Boulos v. Islamic Republic of Iran*, No. 01-CV-2684-RCL (D.D.C.).

In another action considered today, *Bennett v. Islamic Republic of Iran*, plaintiffs demonstrated how Iran's financial support of Hamas helped to perpetrate terrorist attacks, including a 2002 suicide bombing incident at Hebrew University in Jerusalem that claimed the life of their 24-year-old daughter. See 507 F.Supp.2d 117 (D.D.C.2007) (Lamberth, J.). In *Bennett*, the plaintiffs relied on California law. Similarly, in *Beer v. Islamic Republic of Iran*, family members of an American killed in a suicide bombing of a bus in Jerusalem showed how Iran's material support to Hamas in the form of funding, safe haven, training, and weapons, helped to spur on violent suicide attacks in Israel and elsewhere. 574 F.Supp.2d 1 (D.D.C.2008) (Lamberth, J.).^{FN8} The plaintiffs in *Beer* relied on New York common law.

^{FN8} This Court has also decided FSIA cases arising from Iran-sponsored terrorist attacks that have occurred here in the United States. *Acosta*, for example, arose out of the assassination of Rabbi Meir Kahane, an Israeli political figure and a founder of the Jewish Defense League, who was gunned down by Islamic Jihadists as he was concluding a lecture in New York City on November 5, 1990. See 574 F.Supp.2d 15.

But while larger majority of plaintiffs in actions post-*Cicippio-Puleo* were able to use the pass-through approach to find relief, hundreds of others equally dissevering plaintiffs had their claims denied because they were domiciled in jurisdictions that did not afford them a substantive claim. In the *Peterson* case, for example, some family members of the Marines and other servicemen who were killed in the 1983 terrorist bombing were barred from asserting intentional infliction of emotional distress claims (IIED) because they lacked standing under the applicable state tort law. Consequently, this Court had to dismiss the IIED claims of family members who were

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domiciled in either Pennsylvania or Louisiana at the time of the terrorist attack because those jurisdictions would not permit IIED claims by family members who were not physically present at the site of the incident that gave rise to the emotional distress. See *Peterson II*, 515 F.Supp.2d at 44-45. Thus, the Pennsylvania and Louisiana plaintiffs in the *Peterson* action were effectively denied their day in court, and yet they watched as *48 many other similarly situated plaintiffs (including some of their own family members) from different state jurisdictions advanced and ultimately prevailed with their claims for IIED. For those Pennsylvania and Louisiana plaintiffs who were denied relief as so many others succeeded based on precisely the same kinds of claims, based on the same horrific and unquestionably traumatic incident, the result must have seemed both arbitrary and unfair.

In addition to the unfairness caused by a lack of uniformity in the underlying state sources of law, the pass-through approach proved cumbersome and tedious in practical application. In a given case based on a single terrorist incident, this Court would usually have to resolve choice of law problems and then proceed through a lengthy analysis of tort claims under the laws of numerous different state jurisdictions. For example, in the *Heiser* case, a large consolidated action involving the Khobar towers bombing, this Court issued a 209-page opinion in which it ultimately applied the laws of 11 different state jurisdictions. See 466 F.Supp.2d 229. In *Peterson*, this Court had to apply the laws of nearly 40 different jurisdictions in order to resolve the victims' claims. See *Peterson II*, 515 F.Supp.2d 25. To efficiently manage these terrorism cases under the pass-through regime imposed by *Cicippio-Puleo*, this Court would frequently refer the action to special masters after the Court determined under § 1605(a)(7) that Iran provided material support for a terrorist incident that killed or injured Americans.^{FN9}

^{FN9} The application of diverse sources of substantive law to claims in accordance with the pass-through approach under § 1605(a)(7) may sometimes require courts to look to foreign sources of law. See *Oveissi*, 573 F.3d 835. In *Oveissi*, the Court of Appeals ruled that this Court must apply French law to resolve emotional distress and wrongful death claims brought by an American grandson of General Gholam Oveissi, who was the head of the Iranian armed forces under the Shah's regime. General Oveissi was assassinated in France by Hezbollah operatives in February of 1984.

Another consequence of the *Cicippio-Puleo* decision was that the Flatow Amendment could not serve as independent basis for punitive damages awards against Iran. As the Court of Appeals found that the amendment was not intended to provide for claims against foreign states, the bar on punitive damages in § 1606 of the FSIA remained in tact, even with respect to state sponsors of terrorism. Accordingly, large awards of punitive damages, like that which this Court granted in *Flatow* to deter Iran from sponsorship of terrorist groups, were no longer available in actions against the state of Iran under § 1605(a)(7).^{FN10}

^{FN10} In all of the civil actions against the Islamic Republic of Iran considered here today, Iran's Ministry of Information and Security (MOIS) is also named as a defendant. One of the actions also includes the Iranian Islamic Revolutionary Guard Corps (IRGC) as a defendant. See *Rimkus v. Islamic Republic of Iran*, No. 06-CV-1116-RCL (D.D.C.).

As noted, § 1606 of the FSIA provides that foreign states may not be held liable for punitive damages, and, as a result of *Cicippio-Puleo*, that exemption from punitive damages applies to state sponsors of terrorism in actions under § 1605(a)(7), notwithstanding the Flatow Amendment. Section 1606 also provides, however, that an "agency or instrumentality" of a foreign state, as opposed to the state itself, may be liable for punitive damages. Thus, certain entities of a foreign government may be liable for punitive damages. In terrorism cases against Iran in this Court under § 1605(a)(7), plaintiffs have never identified an appropriate Iranian agency that would qualify as an "agency or instrumentality" of Iran for the purpose of a punitive damages award.

In *Roeder v. Islamic Republic of Iran*, a case that was decided only a few months prior to *Cicippio-Puleo*, the Court of Appeals emphasized that it follows a categorical approach when determining whether a foreign governmental entity should be considered "a foreign state or political subdivision" rather than an "agency or instrumentality of the nation" for purposes of the FSIA. 333 F.3d 228, 234 (D.C.Cir.2003) (quoting *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 149-50

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(D.C.Cir.1994)). Under the categorical approach, “if the core functions of the entity are governmental, it is considered the foreign state itself; if commercial, the entity is an agency or instrumentality of the foreign state.” *Id.* In *Roeder*, the Court determined that Iran's Ministry of Foreign Affairs is part of the foreign state itself, rather than an “agency of instrumentality” because the Ministry of Foreign Affairs, like a nation's armed forces, is governmental in nature. *Id.* Following the *Roeder* decision, this Court found that MOIS must be considered part of the state of Iran itself and is therefore exempt from liability for punitive damages. See, e.g., *Haim v. Islamic Republic of Iran*, 425 F.Supp.2d 56, 71 n. 2 (D.D.C.2006) (Lamberth, J.).

In *Rimkus v. Islamic Republic of Iran*, a case that is addressed in today's consolidated opinion, the plaintiffs asserted claims against IRGC as well as MOIS. In rendering the decision in *Rimkus*, this Court again followed the categorical approach from *Roeder* and determined that IRGC, like MOIS, is part of the state itself and is therefore exempt from punitive damage under the FSIA. See 575 F.Supp.2d 181, 198-200 (D.D.C.2008) (Lamberth, C.J.); see also *Blais v. Islamic Republic of Iran*, 459 F.Supp.2d 40, 60-61 (D.D.C.2006) (Lamberth, J.) (concluding that both MOIS and IRGC must be treated as the state of Iran itself for purposes of liability); *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d 105, 115-16 (D.D.C.2005) (Bates, J.) (same). Consequently, in the years following *Cicippio-Puleo*, plaintiffs in actions under the original terrorism exception, § 1605(a)(7), lacked a basis for claiming punitive damages in actions arising out of Iran-sponsored terrorism.

Because claims against MOIS or IRGC are not legally distinguishable from claims against Iran itself, this opinion refers to Iran as the only defendant.

*49 3. The Never-Ending Struggle to Enforce Judgments Against Iran

In the years since the *Flatow* decision, a number of prac-

tical, legal, and political obstacles have made it all but impossible for plaintiffs in these FSIA terrorism cases to enforce their default judgments against Iran. This Court has examined this fundamental and longstanding problem time and again as plaintiffs before this Court have sought, with very little success, to locate and attach Iranian Government assets in aid of execution of their civil judgments. See, e.g., *Bennett v. Islamic Republic of Iran*, 604 F.Supp.2d 152 (D.D.C.2009) (Lamberth, C.J.); *Peterson v. Islamic Republic of Iran*, 563 F.Supp.2d 268 (D.D.C.2008) [hereinafter *Peterson III*] (Lamberth, C.J.); *Weinstein v. Islamic Republic of Iran*, 274 F.Supp.2d 53 (D.D.C.2003) (Lamberth, J.); *Flatow v. Islamic Republic of Iran*, 76 F.Supp.2d 16 (D.D.C.1999) [hereinafter *Flatow III*] (Lamberth, J.); *Flatow v. Islamic Republic of Iran*, 74 F.Supp.2d 18 (D.D.C.1999) [hereinafter *Flatow II*] (Lamberth, J.). To even begin to appreciate the difficulties plaintiffs face with respect to locating Iranian property in the United States, it is important to first understand the significance of the Iran-Hostage Crisis and its aftermath and, more specifically, the Algiers Accords, the bilateral executive agreement between Iran and the United States that brought about the settlement of the hostage crisis in 1981.

On November 14, 1979, ten days after the start of the Iran hostage crisis in which Iranian revolutionaries seized the United States embassy in Tehran and took most embassy personnel as hostages, President Carter exercised his powers under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-1706, and “blocked all property and interests in property of the Government of Iran ... subject to the jurisdiction of the United States.” Exec. Order No. 12,170, 44 Fed.Reg. 65,729 (Nov. 14, 1979); see Transactions Involving Property in Which Iran or Iranian Entities Have an Interest, *50 31 C.F.R. § 535.201; see also *Dames & Moore v. Regan*, 453 U.S. 654, 662-664, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981) (discussing the Iran Hostage Crisis and President Carter's actions in response to the Iran hostage crisis pursuant to his authority under the IEEPA).

Approximately five months later, as the hostage crisis continued to wane on, President Carter severed diplomatic relations with Iran, and the State Department assumed custody of all Iran's diplomatic and consular property here in the United States. See, e.g., *Bennett*, 604 F.Supp.2d at 162-66 (discussing the termination of diplomatic relations with Iran and the State Department's assumption of custody over Iran's diplomatic and consular properties within the United States). The hostage crisis was finally resolved

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when Iran and the United States executed the Algiers Accords on January 19, 1981, and all hostages were released the following day, just moments after President Regan took office. *See* Iran-United States: Settlement of the Hostage Crisis, Jan. 18-20, 1981, 20 I.L.M. 223 [hereinafter Algiers Accords]; *Dames & Moore*, 453 U.S. at 664-65, 101 S.Ct. 2972 (discussing the release of the hostages and terms of the Algiers Accords).

As part of the Algiers Accords, the United States agreed in principle to restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979." Algiers Accords, 20 I.L.M. at 223, 224. Additionally, the United States "commit[ted] itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction." *Id.* at 223-224. Iran and the United States further agreed to settle all litigation between the two governments, to include any outstanding litigation between the nationals of the two countries as of January, 19 1981. *Id.* at 223-224, 230-232. To this end, the Algiers Accords established an Iran-U.S. Claims Tribunal in the Hague to arbitrate any claims not settled within six months. *Id.* at 226, 230-34. Consistent with these commitments to restore Iran's financial position, to facilitate the transfer of Iranian assets, and to have unresolved claims presented to the Iran-Claims Tribunal, the United States agreed to "bring about the transfer" of all Iranian assets held in this country by American banks, with one billion dollars in those assets set aside on account of the Central Bank of Algeria for the payment of any awards entered against Iran by the Claims Tribunal. *Id.* at 225-27. The Claims-Tribunal would also have jurisdiction to resolve disputes between Iran and the United States concerning each other's compliance with the Algiers Accords. *Id.* at 231.

To comply with the terms of the Algiers Accords, President Carter issued, and President Regan subsequently ratified, a series of Executive Orders in which the President unblocked the majority of Iran assets within the jurisdiction of the United States and directed United States banks to transfer all Iranian assets to the Federal Reserve Bank of New York, where they would be held or transferred to Iran as directed by the Secretary of the Treasury. *See Dames & Moore*, 453 U.S. at 665-66, 101 S.Ct. 2972. Subsequent Executive Orders and treasury regulations have controlled the transfer of Iranian Assets consistent with the Algiers Accords. *See, e.g.*, Iranian Assets Control Regulations, 31 C.F.R. pt. 535. Thus, practically speaking, there are simply few assets within the United States that are available for plaintiffs to seize in satisfaction of their judgments under the FSIA terrorism exception.

In *Dames & Moore*, the Supreme Court upheld the validity of actions taken by both President Regan and Carter to settle *51 the Iran Hostage Crisis through the implementation of the Algiers Accords. 453 U.S. 654, 101 S.Ct. 2972. Specifically, the Court examined two issues. First, the Court addressed the validity of Executive Orders that nullified all attachments and similar encumbrances on Iranian property in the United States and directed the transfer of Iranian assets to the Federal Reserve Bank of New York for ultimate transfer back to Iran under the terms of the Algiers Accords. Second, the Court addressed Executive Orders that suspended claims pending against Iran in American courts and provided for those claims to be presented to Iran-United States Claims Tribunal for resolution through binding arbitration.

With respect to the termination of attachments on Iran's property and the transfer of Iran's assets, the Court found that Congress had provided in the IEEPA, 50 U.S.C. §§ 1701-1706, specific authorization for the President to take those actions. *Dames & Moore*, 453 U.S. at 674-75, 101 S.Ct. 2972. Accordingly, the Court relied on the strong presumption of validity traditionally accorded to such Executive action pursuant to a federal statute, as described in Justice Jackson's famous concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952), and held that, in light of this "specific congressional authorization," it could not find that the power exercised by the President had exceeded the bounds of any powers afforded under the Constitution. *Dames & Moore*, 453 U.S. at 675, 101 S.Ct. 2972. The Court observed: "A contrary ruling would mean that the Federal Government as a whole lacked the power exercised by the President, and that we are not prepared to say." *Id.* at 674, 101 S.Ct. 2972 (citation omitted).

With respect to the suspension of claims, the Court ultimately upheld that action as well, but the Court's rationale was a bit more nuanced. While the Court could not identify a specific authorization from Congress, the Court did find that, over more than two centuries, Congress had either acquiesced in or implicitly approved of the settlement of claims of United States nationals through executive agreement. *See id.* at 675-687, 101 S.Ct. 2972. Thus, in light of what the Court deemed as Congress' consent to the President's actions, the Court held that it could not say that the President's actions in suspending claims against Iran exceeded the President's powers. *Id.* at 686, 101 S.Ct. 2972.^{FN11}

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FN11. As a leading case on the scope of Federal Power, particularly Executive Power, as exercised in the realm of foreign affairs and national security, and as a case concerning the Algiers Accords and Iran specifically, *Dames & Moore* remains particularly relevant with respect to many of the issues presented in the terrorism cases considered by this Court today. For example, by reaffirming the strong presumption of validity that should attach to actions expressly authorized by both political branches in the area of foreign affairs, *Dames & Moore* lends supports to this Court's ruling in Part E that § 1083(c) does not offend separation-of-powers principles relating to the independence of the judiciary. Additionally, *Dames & Moore* provides a historical perspective that helps to illustrate some of the unique challenges that plaintiffs in FSIA terrorism cases against Iran face as a consequence of executive actions implementing and honoring the terms of Algiers Accords.

More generally, then-Justice Rehnquist's discussion in *Dames & Moore* concerning our nation's rich history and tradition of the use of Executive authority to settle claims between United States nationals and foreign sovereigns, *see* 453 U.S. at 678-687, 101 S.Ct. 2972, provides an even broader historical perspective that this Court finds highly instructive for the purposes of today's opinion. Indeed, as Justice Rehnquist illustrated in his opinion for the Court, the exercise of Federal Power by the President to settle claims of U.S. nationals against foreign sovereigns—a long-standing practice to which the Congress has acquiesced and occasionally supported by legislation—has often proven to be the most effective way to ensure relief to United States Nationals aggrieved by foreign sovereigns. In Part K of this opinion, this Court relies on the time-honored practice of claims settlement by the Executive, as expressed in *Dames & Moore*, in support of this Court's call for reforms to help victims of Iran-sponsored terrorism find the relief they deserve.

*52 What few assets of Iran that might be found within jurisdiction of the United States courts since the Algiers Accords are a subject to a dizzying array of statutory and

regulatory authorities due in large part to the federal government's obligations under that bilateral executive agreement, but also in part because of the increasing hostility in the relationship between Iran and the United States in the wake of the hostage crisis and the continuous designation of Iran as a state sponsor of terrorism since 1984. In fact, much like the assets of other state sponsors of terrorism, most of Iran's known property or interests in property are blocked, i.e., frozen, or otherwise regulated under any number of United States sanctions programs.^{FN12}

FN12. *See* TERRORIST ASSETS REPORT, *supra* note 2, at 2, 10. The Office of Foreign Assets Control (OFAC) of the Treasury Department administers economic sanction programs relating to terrorists, terrorist organizations, and officially designated state sponsors of terrorism. Each year, OFAC publishes a report to Congress regarding assets in the United States that belong to terrorist nations and other terrorist actors. This annual report discusses both blocked and non-blocked assets of Iran, as well assets attributable to other state sponsors of terrorism. As such, the Terrorist Assets Report is a good reference point for individuals interested in understanding some of the tremendous difficulties terrorism victims face in their efforts to enforce judgments entered against Iran under the FSIA terrorism exception.

According to the CRS, the blocked assets of Iran in the United States “includes property that is blocked under the Iranian Assets Control Regulations, 31 C.F.R. pt. 535, since the hostage crisis was resolved in 1981. The property blocked in 1981 remains blocked in part because of pending claims before the Iran-U.S. Claims Tribunal.” *Id.* at 10. Other blocked assets include Iran's diplomatic and consular properties here in the United States, as well as any proceeds from the leasing of those properties, which are now managed and maintained by the State Department's Office of Foreign Missions. *Id.* “Additionally, other sanction authorities designed to address national emergencies distinct from terrorism have also resulted in the blocking of assets in which the Government of Iran has an interest.” *Id.* The report adds that Iran claims “miscellaneous blocked and non-blocked military property that it asserts was in the possession of private

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entities in the United States when the hostage crisis was resolved in 1981. *Id.* at 12. The United States disputes Iran's claims and the matters are pending before the Claims-Tribunal. *Id.* at 13.

Beyond the imposition of economic sanctions and other regulatory controls, however, the inviolable doctrines of both foreign sovereign immunity and federal sovereign immunity have often precluded the attachment or execution of property that plaintiffs have identified as belonging to Iran. With respect to foreign sovereign immunity specifically, the FSIA itself has long forestalled plaintiffs' efforts to enforce judgments entered under § 1605(a)(7). This is largely because, much like foreign sovereigns are generally immune from civil suit under the FSIA, *see* § 1604, any property belonging to a foreign nation is similarly immune from attachment and execution by judgment creditors. *See* § 1609. The relevant exceptions to the general rule of immunity from the attachment or execution are listed in § 1610. Prior to the enactment of last year's reforms in the 2008 NDAA, however, these exceptions to the general rule of immunity for foreign government property were limited almost exclusively to property relating to the commercial activities of the foreign sovereign *53 within the United States. *See* § 1610(a) and (b). Given the lack of formal relations between the United States and Iran, these provisions have been of little utility to the judgment creditors of Iran in FSIA terrorism cases. Thus, the FSIA facilitated a somewhat ironic and perverse outcome because on the one hand, in § 1605(a)(7), it created an opportunity for terrorism victims to sue Iran for money damages, while on the other hand, in §§ 1609 and 1610, it denied these victims the legal means to enforce their court judgments.^{FN13}

^{FN13}. Another challenge for plaintiffs looking to collect on their judgments in this context is that many of the world's leading financial institutions are agencies or instrumentalities of foreign nations and are therefore immune from jurisdiction of the United States Courts under the FSIA. *See* §§ 1603-1604. In *Peterson*, for example, this Court recently quashed writs of attachment issued upon Japan Bank for International Cooperation, Bank of Japan, and the Export Import Bank of Korea. *See Peterson III*, 563 F.Supp.2d 268. Plaintiffs alleged that these three foreign banks possess Iranian assets, but this Court found that all three banks are foreign state entities that qualify for immunity from jurisdiction under the

FSIA. For the same reasons, this Court quashed numerous subpoenas that plaintiffs had issued to those financial institutions and denied plaintiffs' request for the appointment of a receivership for any and all assets of Iran held by those foreign banks.

In addition to the immunity from attachment or execution that the FSIA has long provided to foreign property, assets held within United States Treasury accounts that might otherwise be attributed to Iran are the property of the United States and are therefore exempt from attachment or execution by virtue of the federal government's sovereign immunity. *See Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 119 S.Ct. 687, 142 L.Ed.2d 718 (1999); *State of Arizona v. Bowsher*, 935 F.2d 332 (D.C.Cir.1991). As the Supreme Court held in the seminal case of *Buchanan v. Alexander*, United States sovereign immunity is an extremely broad bar to jurisdiction that prevents creditors from attaching funds held by the United States treasury or its agents. 45 U.S. 20, 4 How. 20, 11 L.Ed. 857 (1846).

Because the federal government has assumed control over significant portions of what limited Iranian assets remain in the United States, plaintiffs' efforts to enforce judgments under the FSIA have often pitted victims of terrorism against the Executive Branch. Under successive presidential administrations, the Justice Department repeatedly moved to quash writs of attachment issued by judgment creditors of Iran. Two frequently discussed and well-documented examples concern the efforts of Stephen Flatow to enforce his civil judgment, which culminated in litigation against the United States in this Court. *See Flatow II*, 74 F.Supp.2d 18; *Flatow III*, 76 F.Supp.2d 16. In both cases, this Court had to deny plaintiff relief and thereby granted the federal government's motion to quash.

In the first case, plaintiff issued writs that purported to attach credits held by the United States for the benefit of Iran, including more than 5 million dollars in the United States Treasury Judgment Fund, which had been earmarked to pay an award issued in Iran's favor by the Iran-United States Claims Tribunal. *Flatow II*, 74 F.Supp.2d at 20. Plaintiff pointed to the Iranian Assets Control Regulations in support of his argument that money in the Treasury Judgment Fund should be considered Iranian property that is potentially subject to attachment and execution under the FSIA, 1610. *See id.* (citing 31 C.F.R. § 535.311 (1999)). In rejecting plaintiff's argument, this Court relied on *Buchanan* and *Blue Fox*, and held that funds in the

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United States Treasury—regardless of whether those funds have been set aside to *54 pay a debt to Iran—remain immune from attachment by virtue of United States sovereign immunity. *Id.* at 21. “In other words, funds held in the U.S. Treasury—even though set aside or ‘earmarked’ for a specific purpose—remain the property of the United States until the government elects to pay them to who they are owed.” *Id.* Accordingly, as the United States had not waived its sovereign immunity with respect to those funds that had been earmarked to pay a Tribunal Award or other debts to Iran, that money remained exempt from attachment or execution by virtue of federal sovereign immunity. *Id.* at 23; see also *Weinstein*, 274 F.Supp.2d at 58 (holding that funds allegedly owed to Iran in the Treasury’s Foreign Military Sales (FMS) Program are immune from attachment by virtue of federal sovereign immunity).

In the second case, plaintiff issued writs of attachment upon three parcels of real estate owned by Iran that once served as the Iranian Embassy and as residences and offices for Iran’s diplomatic personnel. *Flatow III*, 76 F.Supp.2d at 18. Additionally, plaintiff issued writs of attachment upon two bank accounts that contained funds generated by the State Department’s lease of Iran’s diplomatic properties. *Id.* The first of the two accounts was used to pay for the maintenance and repair of Iran’s properties. *Id.* at 19. The second account contained all the profits generated as a result of the lease of Iran’s foreign mission properties. *Id.*

The United States promptly intervened and moved to quash the writs, arguing that real property and the related banks accounts were immune from attachment under the Foreign Missions Act, the FSIA, the IEEPA, the Vienna Convention on Diplomatic Relations, and Article II of the U.S. Constitution. *Id.* at 19. The plaintiffs countered that because Iran’s former embassy properties were being managed and leased out to tenants by the Department of the State under the auspices of the Foreign Missions Act, 22 U.S.C. §§ 4301-4313, the property was being used for a “commercial activity” and therefore satisfied the requirements for attachment under § 1610(a)(7) of the FSIA. See *Flatow III*, 76 F.Supp.2d at 21.

Without reaching any of the more fundamental arguments raised by the government’s motion to quash, this Court held that the leasing of Iran’s real property by the United States did not qualify as a commercial activity in part because the United States’ action in taking custody of Iran’s property under the authority of the Foreign Mis-

sions Act “was decidedly sovereign in nature.” *Id.* at 23; see also *Bennett*, 604 F.Supp.2d at 169 (relying on *Flatow* to grant United States’ motion to quash writs of attachment recently issued on Iran’s foreign mission properties). For similar reasons, the Court found that the bank account that was used by the State Department’s Office of Foreign Missions (OFM) for the maintenance and repair of Iran’s real property was also immune from attachment because the funds within that account were expended by OFM in exercise of its statutory prerogative to provide for the upkeep properties that once housed Iran’s foreign mission. *Flatow III*, at 24. This Court also found that the other account at issue, which simply contained the profits earned on the lease of Iran’s property, was immune from attachment as a result of federal sovereign immunity. *Id.*

In some frustration, this Court observed in *Flatow* that President Clinton’s Administration, including President Clinton himself, had both publicly and privately expressed support for the victims of terrorism and for the plaintiffs in these terrorism cases specifically, and yet the *55 Clinton Justice Department repeatedly fought efforts by these victims to enforce court judgments under the FSIA. See *Flatow II*, 74 F.Supp.2d at 26; *Flatow III*, 76 F.Supp.2d at 19-20. Moreover, as will be discussed below, President Clinton twice blocked reforms to the FSIA that would have subjected Iran’s blocked assets to attachment and execution. See *infra* pp. 56-57; SUITS AGAINST TERRORIST STATES, *supra* note 4, at 10-12 (discussing President’s exercise of waiver authority with respect to provisions that would have permitted attachment and execution upon frozen assets of state sponsors of terrorism); see also *Flatow III*, 76 F.Supp.2d 16 (noting President’s first exercise of waiver in the interest of national security of provision that would have permitted attachment of blocked assets). In a letter to the *Washington Post* cited by this Court in two of its published decisions, Stephen Flatow documented his meetings with President Clinton, including private meetings and phone calls, as well as his meetings with other high ranking members of the Clinton Administration. See Stephen Flatow, *In This Case, I Can’t Be Diplomatic; I Lost a Child to Terrorism; Now I’m Losing U.S. Support*, WASH. POST., Nov. 7, 1999, at B2. Mr. Flatow explained how he grew tremendously frustrated in his long pursuit of justice in which he received statements of support from the Executive Branch, as well as personal assurances of assistance, only to later find that the administration proved to be the most formidable adversary in his efforts to execute judgment upon the blocked assets of Iran. In reflecting on his experiences some years later, Stephen Flatow referred to his litigation against the United States “as a real cat

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fight.” Tucker, *Pain and Suffering*, *supra*.

As this Court observed how many plaintiffs struggled to enforce their court judgments in FSIA terrorism cases against Iran, this Court began to refer these judgments as “Pyrrhic Victories.” *Eisenfeld*, 172 F.Supp.2d at 9; *Flatow III*, 76 F.Supp.2d at 27. Moreover, this Court expressed dismay over the fact that the rule of law was being frustrated in these actions. *Eisenfeld*, 172 F.Supp.2d at 9. Allowing plaintiffs to go forward with suits under § 1605(a)(7) while not freeing up Iran’s assets to satisfy those judgments under § 1610, or through the release of blocked assets under United States’ control, was a quintessential example of the federal government promising with one hand what it takes away with the other. In fact, it is not uncommon for plaintiffs to receive mixed signals from Congress and the President in this highly-charged political context. *See, e.g., Roeder*, 195 F.Supp.2d at 145 (observing that the political branches of the Government “should not with one hand express support for the plaintiffs and with the other leave it to this Court to play the role of the messenger of bad news”).

In view of the challenges that plaintiffs encountered in their efforts to execute judgments against the assets of state sponsors of terrorism here in the United States, Congress did make a number of efforts on behalf of the victims of terrorism to free up blocked assets for judgments under § 1605(a)(7). The first law enacted as part of this effort to free up assets of state sponsors of terrorism was included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. Pub.L. No. 105-277, div. A, tit. I, § 117(a), 112 Stat. 2681-0, 2681-491 (codified at § 1610(f)(1)(A)). That measure created a new exception- § 1610(f)-which allowed for the first time attachment and execution against blocked assets of *56 state sponsors of terrorism.^{FN14} When Congress passed this measure, however, it also provided that the President could waive the provision “in the interest of national security.” § 1610(f)(3). Upon signing the bill into law, President Clinton exercised that waiver authority. *See* Pres. Determ. No. 99-1, 63 Fed.Reg. 59,201 (Oct. 21, 1998). In doing so, the President stated:

^{FN14}. Section 1610(f)(1)(A) of the FSIA has not changed in substance since its enactment in 1998. It was amended slightly by § 1083 of the 2008 NDAA in order to account for the repeal of § 1605(a)(7) and enactment of § 1605A. The exception now reads as follows:

Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C.App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

Absent my authority to waive section 117’s attachment provision, it would effectively eliminate the use of blocked assets of terrorist States in the national security interests of the United States, including denying an important source of leverage. In addition, section 117 could seriously impair our ability to enter into global claims settlements that are fair to all U.S. claimants, and could result in U.S. taxpayer liability in the event of a contrary claims tribunal judgment. To the extent possible, I shall construe section 117 in a manner consistent with my constitutional authority and with U.S. international legal obligations, and for the above reasons, I have exercised the waiver authority in the in the national security interest of the United States. Statement on Signing the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, 2 Pub. Papers 1843, 1847 (Oct. 23, 1998). Thus, § 1610(f)(1)(A)-which would have broadly subjected Iranian assets to attachment and execution-was rendered a nullity.^{FN15}

^{FN15}. The Supreme Court has long recognized the important role that blocked assets can play in a President’s efforts to manage a foreign policy crisis. *See Dames & Moore v. Regan*, 453 U.S. at 673, 101 S.Ct. 2972 (1981) (relying on *Propper v. Clark*, 337 U.S. 472, 493, 69 S.Ct. 1333, 93 L.Ed. 1480 (1949)). In *Dames & Moore*, the Court emphasized that blocked assets “serve as a

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'bargaining chip' to be used when dealing with a hostile country." 453 U.S. at 673, 101 S.Ct. 2972. Notably, the Court also observed how subjecting frozen assets "to attachments, garnishments, and similar encumbrances" would enable "individual claimants throughout the country to minimize or wholly eliminate this 'bargaining chip.'" *Id.* at 673, 101 S.Ct. 2972. The efforts by Congress to subject the blocked assets of terrorists states to attachment and execution has been one of the most controversial issues pertaining to the FSIA terrorism exception. The tug of war between Congress and the President over this thorny issue serves as a great example of the ways in which the FSIA terrorism exception and its related enactments constitute a "delicate legislative compromise." *Price*, 294 F.3d at 86.

The following term, Congress passed the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), in which Congress again tried to subject blocked assets of state sponsors of terrorism to attachment of execution. Pub.L. No. 106-386, § 2002, 114 Stat. 1464, 1541. Specifically, Congress aimed in the VTVPA to resurrect*57 § 1610(f)(1)(A) of the FSIA and thus repealed the waiver authority that was exercised by President Clinton under § 117(d) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. *See* § 2002(f)(2). Oddly enough, however, Congress replaced that earlier waiver provision with a new, and nearly identical provision, that again granted the President the authority to waive § 1610(f)(1)(A) "in the interest of national security." § 2002(f)(1)(B). Upon signing the VTVPA into law, the President again exercised the waiver authority, as granted by Congress, which again rendered § 1610 a nullity. Thus, § 1610(f) remains inapplicable in cases under the FSIA terrorism exception.

More significantly, the VTVPA also directed the Secretary of Treasury to pay the compensatory damages awarded in court judgments to plaintiffs in a limited number of FSIA terrorism cases against Iran or Cuba. § 2002(a). With respect to the payment of judgments against Iran specifically, the VTVPA directed the Secretary of Treasury to make those payments out of the rental proceeds that had been accrued as a result of the federal government's lease of Iranian diplomatic and consular property and from appropriated funds "not to exceed the total of the amount in the Iran Foreign Military Sales Program account within the Foreign Military Sales Fund." § 2002(b).^{FN16} Once an eligible plaintiff accepts a payment

of compensatory damages from the United States Treasury on a judgment against Iran, the plaintiff's right to pursue that claim is "fully subrogated" to the United States. *Id.* As a result of the VTVPA, precisely ten cases against Iran qualified for payments from the United States Treasury. *See* TERRORIST ASSETS REPORT, *supra* note 2, at 12-15, app. A (discussing VTVPA program for payment of compensatory damage in judgments entered against Iran and Cuba and listing cases). *Flatow* was among the cases that qualified, and Stephen Flatow, along with plaintiffs in all of the nine other qualifying cases, opted to have their compensatory damages paid by United States. *See id.*; *see also* Tucker, *Pain and Suffering*, *supra* (discussing Stephen Flatow's acceptance of payment of compensatory damages from the United States Treasury and his ongoing efforts to enforce the punitive damages portion of his judgment against Iran). Subsequent legal enactments have expanded the number of cases with judgments against Iran that are eligible for payments from the United States Treasury. *See* Foreign Relations Authorization Act, Fiscal Year 2003, Pub.L. No. 107-228, § 686, 116 Stat. 1350, 1411 (2002); Terrorism Risk Insurance Act of 2002 (TIRA), Pub.L. No. 107-297, § 201, 116 Stat. 2322, 2337-39.

^{FN16}. The Foreign Military Sales (FMS) Program account for Iran is a United States Treasury account, subject to federal sovereign immunity, which contains funds relating to military transactions with Iran that pre-date the Iran-hostage crisis and which are currently the subject of ongoing litigation before the Iran-U.S. Claims Tribunal. *See Weinstein*, 274 F.Supp.2d at 58 (discussing the FMS Program account and holding that federal sovereign immunity bars attachment); Terrorist Assets Report, *supra* note 2, at 16-17 (discussing both the VTVPA and the FMS Program account).

In the TRIA, Congress not only expanded the class of plaintiffs eligible for payment from the United States Department of Treasury under the VTVPA, but, even more fundamentally, Congress finally succeeded in subjecting the assets of state sponsors of terrorism to attachment and execution in satisfaction of judgments under § 1605(a)(7). *See* § 201. The TRIA provides that "[n]otwithstanding any other provision of law," the blocked assets of a terrorist state are subject to attachment or *58 execution to the extent of any compensatory damages awarded against that state under the FSIA terrorism exception. *Id.* The TRIA does, however, continue to exempt diplomatic and consu-

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lar property from attachment and execution under § 1610. See § 201(d)(2)(B)(ii). Nonetheless, the TRIA has opened a wide range of blocked assets to attachment and execution by the judgment creditors of state sponsors of terrorism. Thus, the TRIA appears to represent something of a victory for these terrorism victims-whose interests have been most vigorously advanced by members of Congress-over the longstanding objections of the Executive Branch.

In the case of Iran, however, the simple fact remains that very few blocked assets exist. In fact, according to OFAC's latest report, there are only 16.8 million dollars in blocked assets relating to Iran. TERRORIST ASSETS REPORT, *supra* note 2, at 14, tbl. 1. This amount is inconsequential-a mere drop in the bucket-when compared to the staggering 9.6 billion dollars in outstanding judgments entered against Iran in terrorism cases as of August 2008, which is the last time the Congressional Research Service compiled data on this issue. *Id.* at 75, app. B, tbl. B-1. The amount of Iranian non-blocked assets within the United States, as reported to OFAC, is similarly inconsequential in comparison to Iran's liability under the FSIA terrorism exception. According to OFAC, the amount of non-blocked Iranian assets is merely 28 million dollars. *Id.* at 15, tbl. 3.^{FN17}

^{FN17}. In fairness, it is important to emphasize here that "there is no requirement for U.S. persons to report non-blocked assets to OFAC." TERRORIST ASSETS REPORT, *supra* note 2, at 10. Thus, arguably, there could be any number of undisclosed, non-blocked Iranian assets within the jurisdiction of the United States courts. In light of the lack of formal relations between Iran and the United States, however, the prospect of large sums of Iranian assets being located within the jurisdiction of the federal courts seems remote.

The billions of dollars in liability that Iran now faces is likely to increase tremendously as a result of the new federal cause of action under § 1605A, which now includes punitive damages. Thus, Congress has continued to fuel expectations in these actions by broadly subjecting Iran to suit for sponsorship of terrorism while simultaneously ignoring the fact that the prospects for recovery are virtually nonexistent. This fundamental problem is an issue that the Court will explore later in this opinion in Part K below.

B.

SECTION 1083 OF THE 2008 NDAA AND THE CREATION OF A NEW TERRORISM EXCEPTION, SECTION 1605A

In light of the significant setbacks that plaintiffs experienced in actions under § 1605(a)(7), Congress implemented a number of major reforms last year. Section 1083 of National Defense Appropriations Act (NDAA) completely repeals § 1605(a)(7) and replaces that provision with a new statute, § 1605A. As noted above, it is important to keep in mind that the exception to foreign sovereign immunity under the new provision, § 1605A, is identical to that which is contained in § 1605(a)(7), but this new law is more comprehensive and more favorable to plaintiffs because it adds a broad array of substantive rights and remedies that simply were not available in actions under § 1605(a)(7).

As noted above, § 1605A accomplishes four basic objectives. This new terrorism statute (1) furnishes a cause of action against state sponsors of terrorism; (2) makes punitive damages available in those actions; (3) authorizes compensation for *59 special masters; and (4) implements new measures designed to facilitate the enforcement of judgments. Each of these four key aspects of § 1605A will now be discussed in turn.

1. New Federal Cause of Action

With respect to the first objective, the new law now expressly provides that designated state sponsors of terrorism may be subject to a federal cause of action for money damages if those terrorist states cause or otherwise provide material support for an act of terrorism that results in the death or injury of a United States citizen or national. See § 1605A(c). This new federal right of action for money damages abrogates *Cicippio-Puleo*, 353 F.3d 1024, and is a crucial change in the law for hundreds of FSIA terrorism plaintiffs who were not able to rely on state tort law to create a cause of action against Iran previously.

Thanks to the enactment of § 1605A, the inconsistent and varied result that was reached in *Peterson* and in similar cases under § 1605(a)(7) will be avoided in actions going forward under the new law. Courts can now work from a single federal cause of action that will ensure a greater degree of fairness to FSIA terrorism plaintiffs while furnishing a level of consistency and uniformity that is critical in matters of foreign relations.^{FN18}

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FN18. Unlike § 1605(a)(7), the Flatow Amendment, § 1605 note, was not repealed by § 1083 of the 2008 NDAA. Thus, technically speaking, the Flatow Amendment remains on the books even though it was rendered a virtual nullity by the *Cicippio-Puleo* decision. Moreover, to the extent that the Flatow Amendment might have any operative effect, the provision is now largely superfluous in light of the private right of action contained in the new terrorism exception, § 1605A.

The new cause of action included with the new terrorism exception § 1605A has a new and expanded statute of limitations. Specifically, § 1605A(b) provides:

An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or [the Flatow Amendment] not later than the later of-

- (1) 10 years after April 24, 1996; or
- (2) 10 years after the date on which the cause of action arose.

§ 1605A(b) (emphasis added). The prior statute of limitations applicable to actions under § 1605(a)(7) was simply 10 years from the date the cause of action arose (leading to a cut-off date in April 2006), subject, in some instances, to equitable tolling. See § 1605(f) (repealed by § 1083(b)). Accordingly, many new actions that might have been barred by the statute of limitations for § 1605(a)(7) may now move forward under § 1605A.

As § 1605A establishes a new federal cause of action against state sponsors of terrorism, this Court will have to determine what basic principles of law should be applied to resolve claims sounding in tort pursuant to this new private right of action under the FSIA. This is an important issue that many judges of this Court grappled with through the application of the Flatow Amendment in FSIA terrorism cases that reached final judgments prior to the Circuit's ruling in *Cicippio-Puleo*.^{FN19} At that time, judges of this Court frequently referred to "federal common law" as providing⁶⁰ the rule of decision for claims under the FSIA. See, e.g., *Stethem v. Islamic Republic of Iran*, 201 F.Supp.2d 78, 89 (D.D.C.2002) (Jackson, J.); *Wagner v. Islamic Republic of Iran*, 172 F.Supp.2d 128,

134 (D.D.C.2001) (Jackson, J.); *Flatow I*, 999 F.Supp. 1 at 15.

FN19. See, e.g., *Jenco v. Islamic Republic of Iran*, 154 F.Supp.2d 27 (D.D.C.2001) (Lambeth, J.) (relying on tort law treatises, including the Restatement (Second) of Torts, as well as leading state court decisions to resolve claims of battery, assault, false imprisonment, and intentional infliction of emotional distress); *Sutherland v. Islamic Republic of Iran*, 151 F.Supp.2d 27 (D.D.C.2001) (Lambeth, J.) (applying the Restatement (Second) of Torts to resolve claims of battery, assault, false imprisonment, and intentional infliction of emotional distress); *Flatow I*, 999 F.Supp. 1 (applying common law standards for wrongful death, survival pain and suffering, and solatium).

In *Bettis v. Islamic Republic of Iran*, however, which one of the last FSIA terrorism cases decided by the Circuit prior to *Cicippio-Puleo*, the Court of Appeals cautioned trial judges against the use of the term "federal common law." 315 F.3d 325, 333 (D.C.Cir.2003). The appeal in *Bettis* involved claims for intentional infliction of emotional distress. In examining those claims, the Court warned that the Flatow Amendment did not "authorize federal courts to fashion a complete body of federal law" to address the claims of plaintiffs under that statute. *Id.* (quoting *Burks v. Lasker*, 441 U.S. 471, 476, 99 S.Ct. 1831, 60 L.Ed.2d 404 (1979)). Instead of relying on "federal common law," the Court looked to § 46 of the Restatement (Second) of Torts, as well as a number of secondary source compilations, such as legal encyclopedias, law reviews, and survey of leading state tort law cases. See *id.* at 333-338.

Admittedly, *Bettis* was decided under the Flatow Amendment, but this Court finds nonetheless that *Bettis* should still control now that Congress has clearly established a private right of action against a foreign state sponsor of terrorism for "personal injury or death" in those cases in which terrorism exception to foreign sovereign immunity applies. § 1605A(c). The questions confronted relating to sources of common law for claims sounding in tort under the Flatow Amendment, are, in substance, the same as those that will now confront this Court as result of the new private right of action in § 1605A(c). Thus, the question of what substantive tort law norms should control in these actions is an issue this Court will have to continue to explore in actions under §

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1605A, as it once did in actions under the Flatow Amendment prior to Cicippio-Puleo.^{FN20}

FN20. In cautioning against the use of federal common law, the Court of Appeals in *Bettis* relied heavily on § 1606 of the FSIA. That provision provides in relevant part: “As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or section 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances.” The Court reasoned that § 1606 “in effect instructs federal judges to find relevant law, not to make it.” 315 F.3d at 333. At this juncture, however, it is unclear whether § 1606 should even apply in cases that rely on the new federal cause of action in § 1605A. For starters, § 1606 by its plain terms applies only to sections § 1605 and § 1607 of the FSIA. Moreover, § 1606 conflicts with § 1605A because it provides that punitive damages are not available in actions against foreign states, whereas § 1605A expressly authorizes punitive damages in cases against state sponsors of terrorism. Notably, Congress did not make any changes or updates to § 1606 when it repealed § 1605(a)(7) in the 2008 NDAA, and yet Congress did include a lengthy list of “Conforming Amendments” in § 1083(b) to ensure that both § 1605A and other reforms relating to terrorism actions, such as § 1610(g), were properly integrated into the larger statutory scheme of the FSIA. Thus, this Court can reasonably infer that Congress’ failure to update § 1606 to include a reference to § 1605A evinces Congress intent that those standards pertaining to the scope of foreign state liability in § 1606 do not apply in actions against state sponsors of terrorism under § 1605A.

Consistent with the approach this Court initially took in *Flatow*, some commentators have urged courts to fashion federal common law standards as the substantive rules of decision in cases under the FSIA terrorism exception. See *Deutsch, supra*, at 891 (criticizing *Bettis* and urging the adoption of federal common law standards to resolve terrorism claims under the FSIA terrorism exception). Ms. Deutsch argues that federal common law standards are needed in this area largely because of

the unique nature of claims involving acts of international terrorism, the primacy of the federal interest in terrorism cases, and the potential inconsistencies that may result from reliance on state law standards. In the absence of additional guidance from the Court of Appeals on this issue, this Court is bound to follow the admonishment in *Bettis* and will therefore eschew any reliance on “federal common law.”

As this Court views *Bettis* as the as the controlling precedent with respect to application of tort law principles to in cases *61 under the FSIA terrorism exception, this Court will therefore look to that decision as the starting point for the analysis of substantive claims under § 1605A. Consistent with *Bettis*, this Court will rely on well-established principles of law, such as those found in Restatement (Second) of Torts and other leading treatises, as well as those principles that have been adopted by the majority of state jurisdictions. Today, this Court will issue a separate opinion in the consolidated action of *Heiser v. Islamic Republic of Iran*, 659 F.Supp.2d 20 (D.D.C.), a case concerning the Khobar Towers bombing, in which this Court analyzes new claims for compensatory damages under § 1605A. Plaintiffs looking for more guidance regarding the standards that this Court will apply to claims under § 1605A should review that decision in conjunction with this omnibus opinion.

2. Punitive Damages

The second key reform found in § 1605A is the availability of punitive damages. See § 1605A(c). Consequently, the majority of the of the plaintiffs in prior actions under § 1605(a)(7) who were unable to claim punitive damages following the *Cicippio-Puleo* decision will now have an opportunity to do so. The prospect of large punitive damage awards may help to deter Iran and other states sponsors of terrorism from their support of international terrorist organizations.

Through the separate opinion and judgment entered in *Heiser*, this Court awards plaintiffs in that action punitive damages under § 1605A(c). In doing so, the Court reaffirms the principles first articulated in *Flatow* with respect to awards of punitive damages against Iran. Other plaintiffs who now seek punitive damages under § 1605A should review this Court’s discussion of punitive damages in *Flatow* and look to the opinion issued today in *Heiser*.

3. Compensation for Special Masters

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Over the years, a number of attorneys have been appointed by this Court to serve as special masters to assist the Court in determining money damage awards for the many individual plaintiffs and estates represented on this Court's sizable docket of civil actions against Iran. The work completed by these officers of the Court is extraordinarily tedious and time-consuming, and, until recently, the special masters were not entitled to any compensation for their efforts. In last year's NDAA, however, Congress directed that special masters in cases against designated states sponsors of terrorism should receive compensation for their work, and thus the new terrorism exception now provides that special masters should be reimbursed for their work from the Attorney General's Victims of Crime Fund. *See* § 1605A(e).

4. More Robust Provisions for the Execution of Civil Judgments

Like many prior legislative enactments relating to civil suits against designated state sponsors of terrorism, the new terrorism exception in combination with certain other reforms achieved through § 1083 takes aim at what is perhaps the most fundamental problem confronting these actions: the inability of plaintiffs to execute their civil judgments against Iran. As noted above, *supra*, most plaintiffs in FSIA terrorism cases have been thwarted in their efforts to execute civil judgments in part because there are few Iranian Government assets within the jurisdiction of the United States Courts. What little that does exist is generally immune from attachment or execution under § 1609. Additionally, in the past plaintiffs have encountered the problem of United States sovereign immunity because most property or interests in property within the United States that might be attributed to state sponsors of terrorism are subject to federal regulatory control, or are, in a number of instances, within the possession of the federal government. *See, e.g., Weinstein*, 274 F.Supp.2d 53.

In an apparent effort to overcome some of the challenges relating to the execution of judgments, § 1605A entitles plaintiffs to what are in effect automatic pre-judgment liens on property belonging to a designated state sponsor of terrorism.^{FN21} In addition to these new prejudgment attachment procedures, any actions filed or otherwise maintained under § 1605A may benefit from certain reforms to § 1610, which is the section of the FSIA that prescribes the limited circumstances in which the property of a foreign state may be subject to attachment or execu-

tion upon a civil judgment. Specifically, § 1083 of the 2008 NDAA adds to § 1610 new provisions that are plainly intended to limit the application of foreign sovereign immunity or United States sovereign immunity as defenses to attachment or execution with respect to property belonging to designated states sponsors of terrorism. *See* § 1083(b) ("Conforming Amendments") (codified at § 1610(g)). The full implications of § 1610(g) are far from clear. Only time will tell whether § 1610(g) will enable plaintiffs going forward with actions under § 1605A to experience greater success in executing civil judgments against Iranian assets. Given the scarcity of assets and the difficulty of locating what assets might be available-it seems unlikely that this provision will be of great utility to plaintiffs. Suffice it to note, however, these latest additions to the FSIA demonstrate that Congress remains focused on eliminating those barriers that have made it nearly impossible for plaintiffs in these actions to execute civil judgments against Iran or other state sponsors of terrorism.

^{FN21} The procedure in § 1605A(g) entitles plaintiffs to file notices of *lis pendens*. Generally speaking, a notice of *lis pendens* concerns specific property belonging to a party involved in civil litigation. *See generally*, 51 Am.Jur.2d *Lis Pendens* § 2. The *lis pendens* notice serves to alert third parties that any rights concerning the noticed property are subject to the outcome of the civil litigation. *See generally id.* While it is not technically a lien, the legal effect of a properly filed notice of *lis pendens* is that any third-party purchaser who receives title to the noticed property is bound by the outcome of the civil case, without any additional rights to that property. *See generally id.* *Lis pendens* is a creature of state law that has never before been available through the federal courts. Consistent with the new statutory entitlement contained in § 1605A(g), this Court recently approved a form and procedures for plaintiffs to file notices of *lis pendens* in the consolidated action of *Heiser v. the Islamic Republic of Iran*, No. 00-CV-2329-RCL (D.D.C.) and *Campbell v. Islamic Republic of Iran*, 01-CV-2104-RCL (D.D.C.). *See Heiser*, No. 00-CV-2329-RCL (D.D.C.), Dk. 144-145; *Campbell*, 01-CV-2104-RCL (D.D.C.), Dk. 132, 135.

C.

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RETROACTIVE APPLICATION OF SECTION 1605A TO CASES PREVIOUSLY FILED UNDER SECTION 1605(a)(7)

Today the Court must determine whether the new terrorism exception should be *63 applied retroactively to reach cases that were originally filed under § 1605(a)(7) prior to enactment of the new statute, § 1605A. In this instance, Congress has in § 1083(c) of the 2008 NDAA provided guidance with respect to the retroactive reach of this new provision of law, and so the Court's analysis begins with that statutory guidance. *See, e.g., Hamdan v. Rumsfeld*, 548 U.S. 557, 575-584, 126 S.Ct. 2749, 165 L.Ed.2d 723 (2006) (applying "ordinary principles of statutory construction" to determine whether the Detainee Treatment Act should operate retroactively); *Landgraf*, 511 U.S. at 271, 114 S.Ct. 1483 (noting that when "Congress has expressly prescribed the statute's proper reach[,], there is no need to resort to judicial default rules"). Section § 1083 contains a number of subsections, but two are especially critical for purposes of this Court's analysis. These are subsections (c)(2) and (c)(3), which set forth the qualifying conditions and procedures that must be fulfilled before a prior action under § 1605(a)(7) may be eligible to proceed under the new terrorism law, § 1605A.

Subsection (c)(2) refers to "Prior Actions," but this subsection actually concerns a relatively narrow category of prior cases, all of which are probably best characterized as pending cases. Pending in this instance means cases that were awaiting a disposition by a court at the time of the 2008 NDAA's enactment. This includes actions that were on direct appeal and those with unresolved postjudgment motions.

The next subsection, (c)(3), referring to "Related Actions," reaches a far broader category of cases, including many that simply were not pending with the courts in any form at the time the 2008 NDAA became law. This is because the plain terms of the related-actions provisions in subsection (c)(3) specify that if an action was timely commenced under § 1605(a)(7), then "any other action arising out of the same act or incident may be brought under section 1605A" § 1083(c)(3) (emphasis added). Thus, the heading of § 1083(c)-"Application to Pending Cases"-is something of a misnomer because, in reality, § 1083(c) may encompass cases that are not pending at all-meaning prior actions that have since reached final judgment and are no longer before the courts in any form.

Additionally, there are two other aspects of § 1083(c) that

are critical to today's analysis. First, the statute sets up limitation periods or filing deadlines for plaintiffs desiring to take advantage of the newly enacted terrorism statute. *See* § 1083(c)(2)(C), (c)(3). Second, in a section of the statute referred to as "Defense Waived," the enactment provides that the defenses of res judicata and collateral estoppel are waived to the extent that such defenses are based on a claim that was presented in a prior FSIA terrorism case under § 1605(a)(7). *See* § 1083(c)(2)(B).

As each of these provisions within § 1083(c) are central to today's decision, the Court will now review the specifics of each of these statutory mandates in turn.

1. Section 1083(c)(2)-"Prior Actions"

In accordance with the procedures in § 1083(c)(2), a "prior action" that was timely commenced under either § 1605(a)(7) or the Flatow Amendment is eligible to proceed under the new statute, § 1605A, if three straightforward criteria are satisfied. Specifically, the plaintiff must demonstrate the prior action: (1) relied on § 1605(a)(7) or the Flatow Amendment as creating a cause of action, (2) has "been adversely affected on the grounds that either or both of those provisions failed to create a cause of action against the state," and (3) as of the date of *64 the enactment of the 2008 NDAA, the case was "before the court [] in any form, including on appeal or motion under Rule 60(b) of the Federal Rules of Civil Procedure." § 1083(c)(2)(A)(ii)-(iv). If these requirements are met, then "the action shall, on motion made by plaintiffs to the United States district court where the action was initially brought, or judgment in the action was originally entered, be given effect as if the action had originally been filed under section 1605A(c) of title 28, United States Code." § 1083(c)(2)(A)(iv). This subsection also contemplates that the plaintiff may chose to "refile" his action, rather than make a motion. *See* § 1083(c)(2)(C).

In another action before this Court, Syria argued recently that plaintiffs who filed actions under § 1605(a)(7) following the Court of Appeals' decision in *Cicippio-Puleo*, or after June 16, 2004, are precluded from taking advantage of § 1083(c)(2) because, as Syria reads the statute, such plaintiffs could not have reasonably relied on § 1605(a)(7) or the Flatow Amendment, as *Cicippio-Puleo* made plain that those provisions do not furnish a cause of action against a foreign state. *See Gates v. Syrian Arab Republic*, 646 F.Supp.2d 79 (D.D.C.2009) (Collyer, J.). In this Court's view, however, such an interpretation of § 1083(c)(2)(A) is a crabbed reading of the statute, which,

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if accepted, would frustrate the broad remedial purposes Congress sought to achieve through the enactment of § 1083. In fact, the House Conference Report that accompanied § 1083 strongly suggests that Congress envisioned an expansive retroactive reach for § 1605A as a means to overcome the many setbacks plaintiffs encountered under § 1605(a)(7) and the Flatow Amendment. That report states: “The provision would allow any case previously brought under the state sponsor of terrorism exception to the FSIA under the section 1605(a)(7), or under section 101(c) of Public Law 101-208 [the Flatow Amendment], and which is still before a court, to be refiled as if the original claim has been filed under the provisions of this section.” H.R.REP. NO. 110-477, at 1001 (2007) (Conf. Rep.). Accordingly, this Court construes § 1083(c)(2)(A) broadly, consistent with the remedial purposes of the new anti-terrorism enactment, to include actions adversely impacted by *Cicippio-Puleo*, regardless of when those actions were filed. For similar reasons, this Court reads the requirement that the prior actions must be adversely impacted on the grounds that § 1605(a)(7) and the Flatow Amendment failed to establish a cause of action against a foreign state to include those instances in which plaintiffs failed to recover punitive damages, a critical component of these terrorism actions.

2. Section 1083(c)(3)-“Related Actions”

Section 1083(c)(3), the provision concerning “related actions” offers another method by which certain prior actions may be filed with the Court as new actions under § 1605A. Specifically, § 1083(c)(3) provides that “[i]f an action arising out of an act or incident has been timely commenced under section 1605(a)(7) ..., any other action arising out of the same act or incident may be brought under section 1605A.” As this Court has recognized in prior decisions, § 1083(c)(3) enables plaintiffs who achieved final judgments under the former terrorism exception, § 1605(a)(7), to pursue new federal causes of action under § 1605A based on the same prior act or incident. In *Bodoff v. Islamic Republic of Iran*, for example, this Court determined that plaintiff was not entitled to relief under § 1083(c)(2) because the case was not before the court in any form, but in reaching that conclusion, this Court emphasized that plaintiff had the right to *65 file a new action, pursuant to § 1083(c)(3). See 567 F.Supp.2d 141, 142-43 (D.D.C.2008) (Lamberth, C.J.). Thus, § 1083(c)(3) offers an avenue of relief in those cases that reached final judgment some years prior to the enactment of the 2008 NDAA and therefore are less likely to be “before the court[] in any form,” as required for treatment on

motion under § 1083(c)(2).

Additionally, § 1083(c) allows plaintiffs in a prior action under § 1605(a)(7) to file an action under the new law, § 1605A, as a related case to any other pending action that was timely commenced under § 1605(a)(7) and based on the same terrorist act or incident. In other words, plaintiffs' right to proceed under the new section is not tied exclusively to their prior action; plaintiffs may identify other cases that are pending under § 1605(a)(7) that are based on the same act or incident.

3. The 60-Day Rule-Filing Deadline for Cases Based on Prior Actions Under Section 1605(a)(7)

No matter how plaintiffs wish to qualify their prior actions under the new terrorism exception, § 1605A-that is, regardless of whether they seek to do so pursuant to § 1083(c)(2) or whether they opt to file a new action pursuant to § 1083(c)(3)-plaintiffs have only a limited window of opportunity to elect the benefits of the new statute. Plaintiffs who hope to gain the benefits of the new law by filing a motion or by refiling pursuant to § 1083(c)(2), must file their motions “within the 60-day period beginning on the date of the enactment of the [2008 NDAA],” or no later than March 28, 2008. § 1083(c)(2)(c). Plaintiffs who wish to file a new action as a related case-as related to either their own prior action under § 1605(a)(7) or some other case based on the same act or incident-pursuant to § 1083(c)(3), must do so no later than 60 days after the entry of judgment in the original action or within 60 days after the date of the enactment of the 2008 NDAA, whichever is later. § 1083(c)(3).

4. Section 1083(c)(2)(B)-“Defenses Waived”: Res Judicata, Collateral Estoppel, and Statute of Limitations Are Deemed Waived to the Extent that those Defenses Relate to Claims Litigated in a Prior Action Under Section 1605(a)(7)

Subsection § 1083(c)(2)(B), referred to as “Defenses Waived,” purports to limit “[t]he defenses of res judicata, collateral estoppel, and limitation period” in any new action under § 1605A. Specifically, the statute provides that any defense based on either the doctrines of res judicata or collateral estoppel or the limitation period shall be deemed waived to the extent that the new action under § 1605A relies, either in whole or in part, on an earlier terrorism case brought under the prior version of the terrorism exception, § 1605(a)(7). See § 1083(c)(2)(B). This waiver applies to cases that are converted to § 1605A on

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motion, consistent with § 1083(c)(2)(A), as well as to any other prior cases that are “refiled under [§] 1605A(c).” In other words, prior judgments under the state sponsor terrorism exception to the FSIA, § 1605(a)(7) are not to be given any preclusive effect in new actions brought under the current version of the terrorism exception, § 1605A.

D.

EFFORTS TO OBTAIN RETROACTIVE TREATMENT UNDER THE NEW TERRORISM EXCEPTION, SECTION 1605A

[4] In view of the language that Congress has included within § 1083(c)-both with respect to the criteria defining whether*66 a claim is eligible for treatment under the new terrorism section, § 1605A, as well as the time limits for electing treatment under the new statute-this Court is not persuaded by any reading of § 1083 that would have § 1605A apply automatically to prior terrorism cases under § 1605(a)(7). While some counsel before this Court may have glossed over the requirements within § 1083(c), it is the duty of this Court “to give effect, if possible, to every clause and word of a statute.” *United States v. Menasche*, 348 U.S. 528, 538-39, 75 S.Ct. 513, 99 L.Ed. 615 (1955) (quotation and citation omitted). This Court presumes that Congress “says in a statute what it means and means in a statute what it says there.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 252-54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992). These time-honored canons of statutory construction are particularly critical in this context because the FSIA terrorism exception is a “delicate legislative compromise” that balances a host of competing foreign policy considerations. See *Price*, 294 F.3d at 89. More fundamentally, however, this Court never presumes that a law applies retroactively; instead, Congress must clearly instruct courts as to whether and to what extent a new law is to apply to cases that preceded its enactment. See *Plaut*, 514 U.S. at 237, 115 S.Ct. 1447. In this case, Congress has done just that by setting forth specific parameters in § 1083(c).

Thus, the framework established by § 1083(c) is the template that this Court must apply when determining whether prior actions under the old exception for state sponsors of terrorism, § 1605(a)(7), are entitled to go forward as new actions under the recently enacted § 1605A with all the benefits that new section entails. Consistent with § 1083, this Court has held on prior occasions that the latest revision of the state sponsor of terrorism exception to sovereign immunity, § 1605A does not have

automatic, retroactive application to cases filed under the now-repealed § 1605(a)(7). See *Kirschenbaum v. Islamic Republic of Iran*, 572 F.Supp.2d 200, 204 n. 1 (D.D.C.2008) (Lamberth, C.J.); *Beer*, 574 F.Supp.2d at 5 n. 1. Similarly our Court of Appeals observed recently that failure to adhere to those procedures means that the prior action remains under § 1605(a)(7), rather than § 1605A, and thus plaintiffs are not entitled to any of the benefits of the new enactment under those circumstances. See *Simon*, 529 F.3d at 1192; see also *Oveissi*, 573 F.3d 835 (holding that § 1605A provides a federal cause of action for those plaintiffs who meet the statutory criteria).

Notwithstanding the guidance offered in § 1083(c), as well as recent decisions that have applied those provisions to prior terrorism cases, it appears to this Court that there is some degree of confusion among counsel regarding the scope and application of § 1083(c) to FSIA cases that were previously filed against Iran under the former version of the terrorism exception, § 1605(a)(7). In their efforts to avail themselves of the new provision, § 1605A, counsel for plaintiffs in many of these prior actions have taken a variety of different approaches, as § 1083(c) contemplates, but some attorneys have pursued seemingly conflicting tactics. For instance, some attorneys have invoked (c)(2) as well as (c)(3) in their efforts to qualify a single earlier action under § 1605A. Perhaps this sort of move should be viewed by the Court as something of a “belt and suspenders” approach that has been taken out an abundance of caution. Other attorneys have relied on § 1083(c)(3) exclusively, by filing new complaints that assert the right to now pursue a federal cause of action under § 1605A. Many of the new complaints, however, do little more than regurgitate the very same state tort law claims that *67 plaintiffs litigated in prior FSIA terrorism actions in accordance with the *Cicippio-Puleo* precedent under § 1605(a)(7).

Numerous other attorneys have missed the filing deadlines imposed by the 2008 NDAA, and thus it appears that these individuals were laboring under the false assumption that § 1083 of the 2008 NDAA made the new terrorism exception applied automatically to their terrorism cases. As will be discussed in the analysis that follows, at least one attorney claims that his reading of § 1083 led him to conclude that § 1605A applied retroactively to his cases. Other attorneys have not claimed as much, but they have filed motions that appear to rest on the erroneous assumption that § 1083 somehow makes § 1605A retroactive to any cases under § 1605(a)(7) that were pending as of the date § 1605A was enacted. For instance, this Court

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recently denied several motions requesting that this Court provide for payment to the special masters who assisted this Court with the determination of damages in the large consolidated action of *Peterson v. Islamic Republic of Iran*. See No. 01-CV-2094-RCL (D.D.C.), Dk. # 430. While § 1605A now includes a provision enabling special masters in FSIA terrorism cases to receive payment for their services in certain instances, see § 1605A(e), no similar entitlement exists for actions like *Peterson*, which remain under § 1605(a)(7). Counsel in *Peterson* never addressed the retroactivity issues; it appears that they simply presupposed that any relief included in the new law, § 1605A, applied automatically to their case. As counsel failed to follow the procedures in § 1083(c), this Court had to deny those motions seeking payment of the special masters.

In sum, there is in this Court's view, a good deal of confusion regarding how parties should avail themselves of the benefits of the new statute. Having to deny relief to so many plaintiffs is particularly regrettable in light of the fact that the recent reforms to the FSIA, as enacted through § 1083, are plainly intended to help these victims of terrorism. It is therefore the hope of this Court that today's decision and the articulation of the statutory framework of § 1083(c) may lend greater clarity to this area for counsel prosecuting these important actions.^{FN22} It should be noted at the outset that there are both winners and losers in today's omnibus opinion. While a number of cases have not obtained retroactive treatment under the new terrorism statute, many in fact have. At this juncture, however, guidance from this Court across this range of cases should lend the greatest degree of clarity to these matters for the benefit of all plaintiffs, and that in turn should help facilitate litigation going forward. The bottom line is that there should no more confusion, guesswork, or misguided notions regarding the retroactive application of § 1605A. If counsel for plaintiffs in these action have in good faith misunderstood or misapplied § 1083(c) to their respective actions-and are time-barred from taking advantage of the new state sponsor of terrorism exception-then *68 they may consider filing a motion for relief under Rule 60 and consistent with the guidance provided by the Court in Part G of this opinion.

^{FN22}. This is not to say that all counsel with cases pending against Iran in this Court have failed to adhere to procedures set forth in § 1083(c). That is certainly not the case. Some attorneys have managed to get it right, and this Court has recently granted a number of motions

permitting prior actions under § 1605(a)(7) to go forward under § 1605A. See, e.g., *Spencer v. Islamic Republic of Iran*, 06-CV-750-RCL (D.D.C.), Dk. # 20; *Heiser v. Islamic Republic of Iran*, 00-CV-2329-RCL (D.D.C.), Dk. # 143. As noted *supra*, p. 60, this Court issues a separate opinion today in *Heiser* in which this Court analyzes new claims for both compensatory and punitive damages under § 1605A. As the Court has determined that plaintiffs are entitled to relief under the new statute, the Court will also enter a judgment for plaintiffs in *Heiser* pursuant to § 1605A.

...

IV.

CONCLUSION

Nearly thirty years ago, the Hostage Crisis began as Islamic students seized the United States Embassy in Tehran and took more than 50 Americans as hostages. For over four hundred long and painful days, Americans looked on with shock and horror as they followed the nightly news coverage of the events in Tehran. It seemed as if our whole nation was being held hostage. On the eve of Ronald Reagan's Inauguration, the hostage standoff was finally settled peacefully through the *138 conclusion of the Algiers Accords on January 19, 1981. All American hostages were released the following day, only moments after President Reagan took the oath of office. Little did we know at that time that the Hostage Crisis merely signaled the beginning of what would become an increasingly hostile era of relations between the Islamic Republic of Iran and the United States.

Less than three years later, in Beirut, Lebanon, more than two hundred United States Marines and numerous other uniformed service members, most of whom were asleep in their barracks, would die in a tremendously powerful explosion-the result of a highly sophisticated and carefully executed suicide bombing orchestrated by Hezbollah operatives acting with training, guidance, and other material support from Iran's Ministry of Information and Security. By January 1984, Iran was designated as a state sponsor of terrorism by the State Department. In the years that followed, Iran's material support for terrorism would lead to unprecedented suicide bombing attacks throughout the Gaza Strip and Israel. Schools and buses were frequent targets of the terrorist perpetrators of these attacks-

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unjustified killings of innocents in contravention of all the laws of humanity-which have claimed the lives of many bright young American men and women.

Since 1996, the civil cases brought under the FSIA state sponsor of terrorism exception have chronicled the senseless violence and carnage that have dotted the last three decades of hostile relations between the Islamic Republic of Iran and the United States. These terrorism cases are the tragic stories of the many victims-like the more than one thousand victims represented here today-who have suffered dearly as a result of a campaign of terror that has included hostage takings, torture, suicide bombings, and assassinations.

Regrettably, the tragedies represented by these cases under the FSIA terrorism exception have been compounded by what has turned into a long and often futile quest for justice under this novel provision of law. The reality is that the FSIA terrorism exception, as applied by our Article III Courts of limited jurisdiction and powers, has not provided the victims the relief they deserve. Instead of finding justice, most of these plaintiffs have found themselves holding unenforceable judgments. They have faced years of costly, emotionally draining, and time-consuming postjudgment litigation. They have often been opposed by the Executive Branch, and their struggles have rarely produced positive results. Similarly, these victims have fought in the halls of Congress for *ad hoc* and often ineffectual legislative fixes in an effort to give some real teeth to this failed provision of law.

This Court commends Stephen Flatow, Deborah Peterson, and the many others who have bravely pursued justice under the terrorism exception. They have brought to light to an important issue, and their cases in the courts provide an important historical record concerning all those who have been injured or killed as a result of state-sponsored terrorism. Our Nation has been served by their efforts. It is out of respect and appreciation for these victims-and out of observance of the frustrations that experience with this terrorism law has borne out over time in proceedings before this Court-that this Court expresses the view that these FSIA terrorism actions cannot achieve justice as intended. In the long and difficult process that this Court has witnessed over the last decade, these cases have consumed substantial judicial resources while achieving few tangible results for the victims. The *139 problems encountered by the Flatows a decade ago are the same problems experienced by Deborah Peterson today. More fundamentally, the rule of law is being frustrated in what

now seems to be an increasingly counterproductive and largely academic exercise.

For the sake of these terrorism victims, however, and for the sake of our Nation as a whole, these actions should not continue on as academic exercises. The stakes are far too high, both in terms of the losses sustained, and in terms of the larger foreign policy interests of the United States.

To be sure, the current regime in Iran is apparently not going away any time soon and the problem of state-sponsored terrorism will be with us for years to come, and long after the judges of this Court who have presided over this grand experiment have passed from the bench. But these are complicated matters. If anything, the events of the last few months and weeks have underscored the depth of that complexity. There are forces for evil in that country, as there are in any nation, but there are also forces for good, and with that there is a glimmer of hope for a better future.

Meanwhile, here at home, the reforms implemented as part of § 1083 of the 2008 NDAA last year-which are just now being implemented in individual cases here today-will not, in this Court's humble opinion, lend much support to the cause of these victims or their long march toward justice. These most recent reforms, like others before them, are premised on the same failed private-litigation model that has, in effect, doomed these actions from the start. These terrorism cases-whether under § 1605(a)(7) or § 1605A-are likely to face the same obstacles discussed in this opinion, such as the Algiers Accords, limited assets to satisfy judgments, conflicting laws and regulations, and the President's foreign policy prerogative, among others. These are intractable problems that are more often political, rather than jurisprudential, and so it seems that the new § 1605A, although well intentioned, is destined to prolong and perhaps aggravate the ways in which the same intractable issues have continuously foiled plaintiffs in these cases time and again. Today, more than a decade after these suits began-and with the majority of Iran's blocked assets depleted to pay for earlier judgments-the hope for justice under the terrorism exception is growing increasingly distant and unobtainable.

But these difficult realities should not give license to those who would rather ignore the plight of American victims of terrorism. Instead, this Court sincerely hopes that today, on the dawn of a new presidential administra-

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tion-one that remains committed to a policy of engagement with Iran and the Middle East as whole-that the President, the Secretary of State, the Attorney General, the Secretary of the Treasury, and leaders in Congress will look at these matters and look for ways to make real change. The President should be commended for his work to foster a dialogue with the Middle East generally and the Muslim world specifically. In light of this fresh and inspiring approach, perhaps today more than ever there is hope for real reform.

The challenges that confront the President with respect to our relations with Iran are as daunting as ever, and thus this Court must leave it to the experts in the political branches to consider whether a balanced and meaningful political compromise can be reached with respect to these difficult terrorism cases. It seems to this judge that it is time for a new approach, and perhaps it is time to think more systematically about how these cases can work in concert, rather than in conflict, *140 with a broader strategy towards the goals of better relations with the Muslim world, peace in the Middle East, and the eradication of terrorism.

To all the plaintiffs, this Court wishes to stress that it, as always, will endeavor to see to it that plaintiffs in these actions get all the relief to which they are entitled under the law. This Court continues to hope that one day soon justice might be achieved.

D.D.C.,2009.
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H

United States District Court,
District of Columbia.
Terance J. VALORE, et al., Plaintiffs,
v.
ISLAMIC REPUBLIC OF IRAN, et al., Defendants.
Nos. 03-cv-1959 (RCL), 06-cv-516 (RCL),
06-cv-750 (RCL), 08-cv-1273 (RCL).


March 31, 2010.

Background: Survivors of suicide bombing of United States Marine barracks in Beirut, Lebanon, family members, and estates of servicemen killed in the attack brought actions against Islamic Republic of Iran and the Iranian Ministry of Information and Security (MOIS) under Foreign Sovereign Immunities Act (FSIA) and District of Columbia law.

Holdings: Following consolidation, The District Court, Royce C. Lamberth, Chief Judge, held that: (1) defendants were not entitled to sovereign immunity under FSIA for acts of torture and extrajudicial killing and the provision of material resources for the same which caused personal injury and death for which money damages had been sought; (2) defendants committed acts of extrajudicial killing and provided material support and resources for such killing, but did not commit "torture" within meaning of FSIA terrorism exception; (3) survivors could recover for assault, battery, and intentional infliction of emotional distress, but could recover under only one of such theories; and (4) punitive damages of \$1 billion was warranted.

Judgment in accordance with opinion.

West Headnotes

[1] Evidence 157  **43(3)**

157 Evidence
157I Judicial Notice

157k43 Judicial Proceedings and Records

157k43(3) k. Records and decisions in other actions or proceedings. Most Cited Cases Court may take judicial notice of related proceedings and records in cases before the same court. Fed.Rules Evid.Rule 201(b), 28 U.S.C.A.

[2] International Law 221  **10.33****221 International Law**

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity.

Most Cited Cases

Iranian Ministry of Information and Security (MOIS) was a political subdivision of Iran, and therefore was a "foreign state" within meaning of Foreign Sovereign Immunities Act (FSIA). 28 U.S.C.A. § 1330(a).

[3] International Law 221  **10.37****221 International Law**

221k10.29 Actions Against Sovereign or Instrumentality

221k10.37 k. Proceedings to determine immunity. Most Cited Cases

Because subject-matter jurisdiction under Foreign Sovereign Immunities Act (FSIA) turns on the existence of an exception to foreign sovereign immunity, even if the foreign state does not enter an appearance to assert an immunity defense, a district court still must determine that immunity is unavailable under the Act. 28 U.S.C.A. § 1605A(a)(1).

[4] International Law 221  **10.33****221 International Law**

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity.

Most Cited Cases

There is no "but-for" causation requirement for claims made under the Foreign Sovereign Immunities Act (FSIA); causation element requires only a

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showing of proximate cause, which exists so long as there is some reasonable connection between the act or omission of the defendant and the damages which the plaintiff has suffered. 28 U.S.C.A. §§ 1330, 1602-1611.

[5] International Law 221 ↪10.43

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.43 k. Parties, process and pleading.

Most Cited Cases

Causation element of claims under Foreign Sovereign Immunities Act (FSIA) was sufficiently alleged in suits against Iran arising from a suicide bombing of United States Marine barracks in Beirut, Lebanon; American servicemen and their survivors alleged that Iran's high-level technical participation facilitated the construction and deployment of bomb so as to maximize its destructive effect, that Iranian government defendants ordered the attack and oversaw its operation, and that Iran financially supported terrorist organization which constructed, deployed, and exploded the bomb, injuring and killing hundreds. 28 U.S.C.A. § 1605A.

[6] International Law 221 ↪10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity.

Most Cited Cases

Foreign Sovereign Immunities Act (FSIA) does not restrict the personal injury or death element to injury or death suffered directly by the claimant; instead, such injury or death must merely be the bases of a claim for which money damages are sought. 28 U.S.C.A. § 1605A.

[7] International Law 221 ↪10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity.

Most Cited Cases

Islamic Republic of Iran and the Iranian Ministry of Information and Security (MOIS) were not entitled to sovereign immunity under Foreign Sovereign Immunities Act (FSIA) for acts of torture and extrajudicial killing and the provision of material resources for the same which caused personal injury and death for which money damages had been sought. 28 U.S.C.A. § 1605A.

[8] International Law 221 ↪10.43

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.43 k. Parties, process and pleading.

Most Cited Cases

Islamic Republic of Iran and the Iranian Ministry of Information and Security (MOIS) were properly served under Foreign Sovereign Immunities Act (FSIA) where, after refusal of service on head of the Iranian Ministry of Foreign Affairs, clerk dispatched two copies of the summons, complaint, and notice of suit, translated into Farsi, to the Secretary of State, who transmitted one copy of the documents to Iran via a diplomatic note through the Embassy of the Swiss Confederation while returning the other copy to the clerk. 28 U.S.C.A. § 1608(a)(4).

[9] Constitutional Law 92 ↪3931

92 Constitutional Law

92XXVII Due Process

92XXVII(C) Persons and Entities Protected

92k3928 Government Entities

92k3931 k. Foreign governments.

Most Cited Cases

Constitutional Law 92 ↪3965(11)

92 Constitutional Law

92XXVII Due Process

92XXVII(E) Civil Actions and Proceedings

92k3961 Jurisdiction and Venue

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92k3965 Particular Parties or Circumstances

92k3965(11) k. Public entities, employees, and officials. Most Cited Cases

International Law 221 ↪10.43

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.43 k. Parties, process and pleading.

Most Cited Cases

Because foreign states themselves are not persons and thus not entitled to Fifth Amendment Due Process protections, minimum-contacts requirement for personal jurisdiction did not apply to suit against Iran under Foreign Sovereign Immunities Act (FSIA). U.S.C.A. Const.Amend. 5; Fed.Rules Civ.Proc.Rule 4(j)(1), 28 U.S.C.A.; 28 U.S.C.A. § 1608(a).

[10] Constitutional Law 92 ↪3931

92 Constitutional Law

92XXVII Due Process

92XXVII(C) Persons and Entities Protected

92k3928 Government Entities

92k3931 k. Foreign governments.

Most Cited Cases

Constitutional Law 92 ↪3965(11)

92 Constitutional Law

92XXVII Due Process

92XXVII(E) Civil Actions and Proceedings

92k3961 Jurisdiction and Venue

92k3965 Particular Parties or Circumstances

92k3965(11) k. Public entities, employees, and officials. Most Cited Cases

International Law 221 ↪10.43

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.43 k. Parties, process and pleading.

Most Cited Cases

Since Iran had plenary control of Iranian Ministry of Information and Security (MOIS), MOIS was not a person entitled to Fifth Amendment Due Process protections, and therefore minimum-contacts requirement for personal jurisdiction did not apply to suit against MOIS under Foreign Sovereign Immunities Act (FSIA). U.S.C.A. Const.Amend. 5; Fed.Rules Civ.Proc.Rule 4(j)(1), 28 U.S.C.A.; 28 U.S.C.A. § 1608(a).

[11] International Law 221 ↪1

221 International Law

221k1 k. Nature and authority in general. Most Cited Cases

Customary international law comes into play only 'where there is no treaty and no controlling executive or legislative act or judicial decision; never does customary international law prevail over a contrary federal statute.

[12] International Law 221 ↪10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity.

Most Cited Cases

Islamic Republic of Iran and the Iranian Ministry of Information and Security (MOIS), which provided massive material and technical support to terrorist organization in connection with truck bombing of United States Marine barracks in Beirut, Lebanon, committed acts of extrajudicial killing and provided material support and resources for such killing, but did not commit "torture" within meaning of Foreign Sovereign Immunities Act (FSIA) terrorism exception; extrajudicial killing and provision of material support and resources were committed by officials, employees, and agents of Iran and MOIS, but those officials, employees, and agents never had custody or physical control over the victims of the bombing, and terrorist organization did not kidnap or imprison the soldiers killed or injured in the bombing. 28 U.S.C.A. § 1605A(h)(7).

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[13] Federal Courts 170B ↪418

170B Federal Courts

170BVI State Laws as Rules of Decision

170BVI(C) Application to Particular Matters

170Bk418 k. Immunity from suit. Most

Cited Cases

In evaluating common law claims arising from Foreign Sovereign Immunities Act (FSIA), district courts look to Restatements, among other sources, to find and apply what are generally considered to be the well-established standards of state common law. 28 U.S.C.A. § 1606.

[14] Damages 115 ↪15

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k15 k. Nature and theory of compensation. Most Cited Cases

Under Foreign Sovereign Immunities Act (FSIA), survivors of bombing of United States Marine barracks in Beirut, Lebanon could recover from Islamic Republic of Iran and the Iranian Ministry of Information and Security (MOIS) for assault, battery, and intentional infliction of emotional distress, however, survivors could recover under only one of any such theories; Iranian defendants committed extrajudicial killing or provided material support and resources therefor, acted intending to cause a harmful contact with, or an imminent apprehension of such a contact, and committed acts of extreme and outrageous conduct intentionally or recklessly causing severe emotional distress. 28 U.S.C.A. § 1606.

[15] Death 117 ↪10

117 Death

117III Actions for Causing Death

117III(A) Right of Action and Defenses

117k10 k. Survival of right of action of

person injured. Most Cited Cases

A survival action is one that accrued in a decedent's favor before his death that may be brought after his death by his estate; it is a claim that could have been brought by the decedent, had he lived to bring it. Restatement (Second) of Torts § 926.

[16] Death 117 ↪82

117 Death

117III Actions for Causing Death

117III(H) Damages or Compensation

117k80 Elements of Compensation

117k82 k. Suffering of deceased. Most

Cited Cases

If death was instantaneous there can be no recovery for pain and suffering of the decedent.

[17] Death 117 ↪82

117 Death

117III Actions for Causing Death

117III(H) Damages or Compensation

117k80 Elements of Compensation

117k82 k. Suffering of deceased. Most

Cited Cases

Death 117 ↪89

117 Death

117III Actions for Causing Death

117III(H) Damages or Compensation

117k80 Elements of Compensation

117k89 k. Mental suffering or emo-

tional distress of plaintiff or beneficiary. Most Cited Cases

The only type of intentional infliction of emotional distress claim (IIED) an estate can make is one for the decedent himself as a survival action; estates of decedents could not make IIED claims on behalf of beneficiaries thereof.

[18] Damages 115 ↪57.22

115 Damages

115III Grounds and Subjects of Compensatory Damages

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115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)2 Mental Suffering and Emotional Distress

115k57.19 Intentional or Reckless Infliction of Emotional Distress; Outrage

115k57.22 k. Nature of conduct.

Most Cited Cases

Acts of terrorism are "extreme and outrageous conduct" for purposes of maintaining cause of action for intentional infliction of emotional distress.

[19] Death 117 ↪31(5)

117 Death

117III Actions for Causing Death

117III(A) Right of Action and Defenses

117k31 Persons Entitled to Sue

117k31(5) k. Heirs and next of kin.

Most Cited Cases

Nieces, nephews, aunts, and uncles are not members of decedent's "immediate family" for purposes of survival actions to recover for intentional or reckless infliction of emotional distress; neither are non-adoptive stepparents or non-adopted stepchildren. Restatement (Second) of Torts § 46.

[20] Death 117 ↪31(7)

117 Death

117III Actions for Causing Death

117III(A) Right of Action and Defenses

117k31 Persons Entitled to Sue

117k31(7) k. Parent. Most Cited Cases

Because bombing victim grew up with non-adoptive father as though they constituted a natural family, and non-adoptive father considered victim to be his son and vice versa, non-adoptive father was the functional equivalent of a father, and thus could maintain survival action under Foreign Sovereign Immunities Act (FSIA) against foreign states responsible for the bombing for intentional or reckless infliction of emotional distress. 28 U.S.C.A. § 1606.

[21] Damages 115 ↪57.27

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)2 Mental Suffering and Emotional Distress

115k57.26 Injury or Threat to Another; Bystanders

115k57.27 k. In general. Most Cited

Cases

One need not be present at the time of a terrorist attack upon a third person to recover for severe emotional injuries suffered as a result.

[22] Death 117 ↪10

117 Death

117III Actions for Causing Death

117III(A) Right of Action and Defenses

117k10 k. Survival of right of action of person injured. Most Cited Cases

In the District of Columbia, a decedent's estate may pursue after the decedent's death a claim the decedent could have pursued but for his death. D.C. Official Code, 2001 Ed. § 12-101.

[23] Death 117 ↪7

117 Death

117III Actions for Causing Death

117III(A) Right of Action and Defenses

117k7 k. Nature and form of remedy.

Most Cited Cases

Death 117 ↪31(5)

117 Death

117III Actions for Causing Death

117III(A) Right of Action and Defenses

117k31 Persons Entitled to Sue

117k31(5) k. Heirs and next of kin.

Most Cited Cases

In the District of Columbia, a decedent's heirs may pursue claims for economic losses which result from a decedent's premature death. D.C. Official

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Code, 2001 Ed. § 16-2701(a).

[24] International Law 221 ↪ 10.33

221 International Law

221k10.29 Actions Against Sovereign or Instrumentality

221k10.33 k. Extent and effect of immunity.

Most Cited Cases

Because the injuries causing the deaths of American servicemen occurred in a bombing in Beirut, Lebanon, wrongful-death claims against state sponsors of terrorism would be treated as though pled under Foreign Sovereign Immunities Act (FSIA) terrorism exception, not D.C. Wrongful Death Act. 28 U.S.C.A. § 1605A; D.C. Official Code, 2001 Ed. § 16-2701.

[25] Damages 115 ↪ 20

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k20 k. Natural and probable consequences of torts. Most Cited Cases

To obtain damages in an Foreign Sovereign Immunities Act (FSIA) action, the plaintiff must prove that the consequences of the defendants' conduct were reasonably certain (i.e., more likely than not) to occur, and must prove the amount of the damages by a reasonable estimate consistent with application of the American rule on damages. 28 U.S.C.A. § 1605A(c).

[26] Damages 115 ↪ 95

115 Damages

115VI Measure of Damages

115VI(A) Injuries to the Person

115k95 k. Mode of estimating damages in general. Most Cited Cases

Damages for surviving victims are determined based upon an assessment of such factors as the

severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life.

[27] Damages 115 ↪ 127.44

115 Damages

115VII Amount Awarded

115VII(B) Injuries to the Person

115k127.44 k. Multiple injuries. Most Cited Cases

Upward departure from baseline award of \$5 million for injuries sustained in bombing of United States Marine barracks in Beirut, Lebanon was warranted in case of serviceman who regained consciousness to find his skin hanging from his body, severe hole-like wounds passing through his chest, pieces of metal, concrete, and glass embedded in his body, his leg split open, his clothes blown off, all of hair the on his body burned off, and burns covering 90% of his body; number and severity of serviceman's injuries warranted an award of \$7,500,000.00 under Foreign Sovereign Immunities Act (FSIA). 28 U.S.C.A. § 1605A(c).

[28] Damages 115 ↪ 140.7

115 Damages

115VII Amount Awarded

115VII(E) Mental Suffering and Emotional Distress

115k140.7 k. Particular cases. Most Cited Cases

Considering his lack of severe physical injuries, downward departure from baseline award of \$5 million for injuries sustained in bombing of United States Marine barracks in Beirut, Lebanon was warranted in case of serviceman whose injuries were primarily emotional, based on his experience doing what he could to help in the time immediately after the attack. 28 U.S.C.A. § 1605A(c).

[29] Death 117 ↪ 89

117 Death

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117III Actions for Causing Death

117III(H) Damages or Compensation

117k80 Elements of Compensation

117k89 k. Mental suffering or emotional distress of plaintiff or beneficiary. Most Cited Cases

Under the Foreign Sovereign Immunities Act (FSIA), a solatium claim is indistinguishable from an intentional infliction of emotional distress claim; solatium is awarded to compensate the mental anguish, bereavement, and grief that those with a close personal relationship to a decedent experience as the result of the decedent's death, as well as the harm caused by the loss of the decedent's society and comfort. 28 U.S.C.A. § 1605A(c).

[30] Death 117 ↪95(1)

117 Death

117III Actions for Causing Death

117III(H) Damages or Compensation

117k94 Measure and Amount Awarded

117k95 In General

117k95(1) k. In general. Most Cited

Cases

Aggravating circumstances warranted upward departures from framework established for solatium awards under Foreign Sovereign Immunities Act (FSIA) for certain family members of American servicemen killed in a terrorist attack, while downward departures were appropriate where the relationship between the claimant and the victim was more attenuated. 28 U.S.C.A. § 1605A(c).

[31] Damages 115 ↪94.1

115 Damages

115V Exemplary Damages

115k94 Measure and Amount of Exemplary Damages

115k94.1 k. In general. Most Cited Cases

In determining the proper punitive damages award, courts evaluate: (1) the character of the defendants' act, (2) the nature and extent of harm to the plaintiffs that the defendants caused or intended to cause, (3) the need for deterrence, and (4) the

wealth of the defendants.

[32] Death 117 ↪95(1)

117 Death

117III Actions for Causing Death

117III(H) Damages or Compensation

117k94 Measure and Amount Awarded

117k95 In General

117k95(1) k. In general. Most Cited

Cases

Punitive damages in the amount of \$1 billion was warranted under Foreign Sovereign Immunities Act (FSIA) terrorism exception against Islamic Republic of Iran and the Iranian Ministry of Information and Security (MOIS) for extrajudicial killing and provision of material support and resources to terrorist organization which bombed United States Marine barracks in Beirut, Lebanon, causing the death of 241 American military servicemen. 28 U.S.C.A. § 1605A.

*57 Daniel W. Gaskill, Rockville, MD, Joseph Peter Drennan, Joseph Peter Drennan, Attorney-at-Law, Alexandria, VA, Patrick M. Donahue, Donahue Law Firm, Annapolis, MD, Thomas Fortune Fay, Caragh Glenn Fay, Fay Kaplan Law, PA, Richard D. Heideman, Noel Jason Nudelman, Tracy Reichman Kalik, Heideman Nudelman & Kalik, P.C., Steven R. Perles, Perles Law Firm, P.C., Washington, DC, for Plaintiffs.

MEMORANDUM OPINION

ROYCE C. LAMBERTH, Chief Judge.

I. Introduction.

This memorandum opinion accompanies the final judgments in the recently consolidated cases of *Valore v. Islamic Republic of Iran*, No. 03-cv-1959, *Arnold v. Islamic Republic of Iran*, No. 06-cv-516, *Spencer v. Islamic Republic of Iran*, No. 06-cv-750, and *Bonk v. Islamic Republic of Iran*, No. 08-cv-1273. These cases all arise out of the October

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23, 1983, bombing of the United States Marine barracks in Beirut Lebanon (“the Beirut bombing”), where a suicide bomber murdered 241 American military servicemen in the most deadly state-sponsored terrorist attack upon Americans until the tragic attacks on September 11, 2001.

The Court will first discuss the complicated background of these cases: the relationship between these cases and the previously decided consolidated cases of *Peterson v. Islamic Republic of Iran* and *Boulos v. Islamic Republic of Iran* (collectively, “*Peterson*”), recent changes made to the Foreign Sovereign Immunities Act (FSIA), the procedural approach by which recently amended FSIA provisions apply, the judicial notice taken of findings and conclusions made in *Peterson* and the subsequent entry of default judgments in each case, and a summary of the claims made in each case. Second, the Court will make findings of fact for these consolidated cases. Third, the Court will discuss, relative to each previously separate case, the Court’s personal and subject-matter jurisdiction. Fourth, the Court will discuss defendants’ liability under both the federal cause of action created by the Foreign Sovereign Immunities Act and causes of action under District of Columbia law. Finally, the Court will award compensatory and punitive damages as appropriate.

II. Background.

A. Relationship to *Peterson*, Recent Changes to the FSIA, and Plaintiffs’ Procedural Approach.

All plaintiffs in these consolidated cases originally brought their individual actions against defendants under 28 U.S.C. § 1605(a)(7), the former state-sponsor-of-terrorism exception to the general rule of sovereign immunity enumerated in the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1330, 1602-1611. Section 1605(a)(7) “was ‘merely a jurisdiction conferring provision,’ and therefore did not create an independent federal cause of action against a foreign state or its agents.” *In re Is-*

lamic Republic of Iran Terrorism Litig., 659 F.Supp.2d 31 (D.D.C.2009) (quoting *Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024, 1027, 1032 (D.C.Cir.2004)) (Lamberth, J.). It merely opened the door to plaintiffs seeking to bring suit in federal court against foreign sovereigns for terrorism-related claims, *58 which had to be based on state tort law. *See id.* at 40-48 (providing a historical overview of the FSIA terrorism exception) Further, the FSIA did not permit the awarding of punitive damages against foreign states themselves. *Id.* at 48.

These cases come to the Court following final judgment in *Peterson*. *See* 264 F.Supp.2d 46 (D.D.C.2003) (Lamberth, J.) [hereinafter *Peterson I*]. That case established the liability of Iran and MOIS in the terrorist attack out of which these cases also arise, but did so under § 1605(a)(7), thus reaching “inconsistent and varied result[s]” when various states’ tort laws differed. *In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d at 59; *see Peterson v. Islamic Republic of Iran*, 515 F.Supp.2d 25 (D.D.C.2007) (Lamberth, J.) [hereinafter *Peterson II*]. Congress responded to this inconsistency and the unavailability of punitive damages by replacing § 1605(a)(7) with § 1605A, a new terrorism exception that provides an independent federal cause of action and makes punitive damages available to plaintiffs. *See In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d at 58-61 (discussing repeal of § 1605(a)(7) and enactment of § 1605A). Plaintiffs now seek to take advantage of these changes.

Individuals seeking to take advantage of this new cause of action and punitive-damages allowance must proceed under one of three procedural approaches, which are laid out in part in the National Defense Authorization Act for Fiscal Year 2008, Pub.L. No. 110-181, § 1083(2)-(3), 112 Stat. 3, 342-43. *See generally In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d at 62-65 (discussing retroactive application of § 1605A to cases previously filed under § 1605(a)(7)). First,

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potential plaintiffs may pursue a case related to a “prior action”:

With respect to any action that was brought under section 1605(a)(7) of title 28, United States Code ... before [Jan. 28, 2008,] relied upon ... such provision as creating a cause of action, has been adversely affected on the grounds that [such] provision[] fail[ed] to create a cause of action against the state, and as of such date ... is before the courts in any form ..., that action, and any judgment in the action[,] shall ... be given effect as if the action had originally been filed under section 1605A(c) of title 28, United States Code.

§ 1083(c)(2)(A). Second and alternatively, potential plaintiffs may pursue a case related to a “related action”:

If an action arising out of an act or incident has been timely commenced under section 1605(a)(7) of title 28, United States Code, ... any other action arising out of the same act or incident may be brought under section 1605A of title 28, United States Code....

§ 1083(c)(3). Third and finally, potential plaintiffs may pursue a stand-alone action, i.e., one not related to any action previously filed under § 1605(a)(7), such that retroactive application of § 1605A is not necessary.

Plaintiffs in these cases all proceed under the second approach. Actions timely commenced under § 1605(a)(7) in this Court that relate to the Beirut bombing include *Peterson v. Islamic Republic of Iran*, No. 01-cv-2094; *Boulos v. Islamic Republic of Iran*, No. 01-cv-2684; *Valore v. Islamic Republic of Iran*, No. 03-cv-1959; *Bland v. Islamic Republic of Iran*, No. 05-cv-2124; *Arnold v. Islamic Republic of Iran*, No. 06-cv-516; *Murphy v. Islamic Republic of Iran*, No. 06-cv-596; *O'Brien v. Islamic Republic of Iran*, No. 06-cv-690; *Spencer v. Islamic Republic of Iran*, No. 06-cv-750; and *Davis v. Islamic Republic of Iran*, No. 07-cv-1302. The *59 consolidated cases before the Court today, therefore, are related to several related cases. By the plain terms of §

1083(c)(3), the plaintiffs in these consolidated cases may therefore proceed under § 1605A.

B. Default Judgment and Judicial Notice of Findings of Fact and Conclusions of Law from *Peterson*.

In each of the cases now consolidated, this Court took judicial notice of the findings of fact and conclusions of law made in *Peterson*. In the orders taking such notice, the Court also issued default judgments against both defendants. Plaintiffs had established their right to relief “by evidence satisfactory to the court,” 28 U.S.C. § 1608(e), through “uncontroverted factual allegations, which are supported by ... documentary and affidavit evidence,” *Int'l Road Fed'n v. Embassy of the Democratic Republic of the Congo*, 131 F.Supp.2d 248, 252 n. 4 (D.D.C.2001) (quotation omitted).

[1] A court may take judicial notice of any fact “not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” FED.R.EVID. 201(b). Under Rule 201(b), courts generally may take judicial notice of court records. *See* 21B CHARLES ALAN WRIGHT & KENNETH W. GRAHAM, JR., FEDERAL PRACTICE & PROCEDURE § 5106.4; *see also Booth v. Fletcher*, 101 F.2d 676, 679 n. 2 (D.C.Cir.1938) (“A court may take judicial notice of, and give effect to, its own records in another but interrelated proceeding....”). Indeed, as has been noted in several other FSIA cases brought in this District, “this Court ‘may take judicial notice of related proceedings and records in cases before the same court.’ ” *Brewer v. Islamic Republic of Iran*, 664 F.Supp.2d 43, 50-51 (D.D.C.2009) (quoting *Heiser v. Islamic Republic of Iran*, 466 F.Supp.2d 229, 267 (D.D.C.2006) (Lamberth, J.) [hereinafter *Heiser I*]). At issue is the effect of such notice.

Although a court clearly may judicially notice its findings of facts and conclusions of law in related cases, this Circuit has not directly considered

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whether and under what circumstances a court may judicially notice the *truth* of such findings and conclusions. Circuits that have addressed this question have concluded that “courts generally cannot take notice of findings of fact from other proceedings for the truth asserted therein because these are disputable and usually are disputed”; but because “it is conceivable that a finding of fact may satisfy the indisputability requirement,” these courts have not adopted a *per se* rule against such notice. *Taylor v. Charter Med. Corp.*, 162 F.3d 827, 829-30 (5th Cir.1998); *see also Wyatt v. Terhune*, 315 F.3d 1108, 1114 n. 5 (9th Cir.2003); *Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger U.S.A., Inc.*, 146 F.3d 66, 70 (2d Cir.1998); *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 n. 6 (7th Cir.1997); *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir.1994); *Holloway v. Lockhart*, 813 F.2d 874, 878-79 (8th Cir.1987). *See generally* 21B WRIGHT & GRAHAM, *supra*, § 5106.4 (“While judicial findings of fact may be more reliable than other facts found in the file, this does not make them indisputable[.]”).

This District has followed a similar approach in FSIA cases: judicial notice of truth of findings and conclusions is not prohibited *per se*, but is inappropriate absent some particular indicia of indisputability. Here, there are no such indicia. With “defendants having failed to enter an appearance,” *Peterson* was decided without the full benefits of adversarial litigation, and its findings thus lack the absolute certainty with which they might otherwise be afforded. *60 *Peterson I*, 264 F.Supp.2d at 49. Just as “findings of fact made during this type of one-sided hearing should not be given a preclusive effect,” *Weinstein v. Islamic Republic of Iran*, 175 F.Supp.2d 13, 20 (D.D.C.2001) (Lamberth, J.), they also should not be assumed true beyond reasonable dispute. Moreover, because “default judgments under the FSIA require additional findings than in the case of ordinary default judgments,” *id.* at 19-20, the court should endeavor to make such additional findings in each case.

The taking of judicial notice of the *Peterson* opinion, therefore, does not conclusively establish the facts found in *Peterson* for, or the liability of the defendants in, these consolidated cases. But “the FSIA does not require this Court to relitigate issues that have already been settled” in previous decisions. *Brewer*, 664 F.Supp.2d at 54. Instead, the Court may review evidence considered in an opinion that is judicially noticed, without necessitating the re-presentation of such evidence. *Heiser I*, 466 F.Supp.2d at 264 (reconsidering evidence presented in *Blais v. Islamic Republic of Iran*, 459 F.Supp.2d 40 (2006) (Lamberth, J.)). In rendering default judgment against defendants, the Court was therefore required to, and did, find facts and make legal conclusions anew. Below, the Court expounds on those findings and conclusions.

C. Summary of Plaintiffs' Claims.

In these consolidated cases, plaintiffs bring several types of claims, some under the FSIA-created cause of action and some under District of Columbia law. Under the FSIA, servicemen who survived the attack have brought claims of assault, battery, and intentional infliction of emotional distress, seeking damages for pain and suffering and economic losses;^{FN1} the estates of servicemen killed in the attack (“decedents”) have brought survival claims, seeking economic damages for pain and suffering by decedents before death;^{FN2} estates of decedents have brought claims for wrongful death, seeking to recover for decedents' lost wages and earnings they would have earned but for their deaths;^{FN3} and family members of victims have brought claims for intentional infliction of emotional distress, seeking solatium.^{FN4} Under District of Columbia law, estates of decedents have brought survival claims, *61 seeking economic damages for pain and suffering by decedents before death;^{FN5} and estates of decedents have brought wrongful-death claims, seeking to recover for decedents' lost wages and earnings they would have earned but for their deaths.^{FN6} Finally, all plaintiffs have sought punitive damages now available under the FSIA.

FN1. These plaintiffs are: from *Valore*, Dennis Jack Anderson, Pedro Alvarado, Jr., Timothy Brooks, Floyd Carpenter, Michael Harris, Donald R. Pontillo, John E. Selbe, Willy G. Thompson, and Terance J. Valore; and from *Arnold*, Neale Scott Bolen. There are no such plaintiffs in *Spencer* or *Bonk*.

FN2. These plaintiffs are: from *Arnold*, Estate of Moses Arnold, Jr.; and from *Spencer*, Estate of James Silvia. There are no such plaintiffs in *Valore* or *Bonk*.

Although plaintiffs in *Spencer* plead their survival claim under state law and have not amended their complaint to allege such claim under the FSIA-created cause of action, they received leave of Court to proceed under § 1605A without amending their complaint. See *In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d 31, 97 (D.D.C.2009) (Lamberth, C.J.). The Court therefore construes the complaint to bring this survival claim under the FSIA-created cause of action.

FN3. These plaintiffs are: from *Arnold*, Estate of Moses Arnold, Jr.; and from *Spencer*, Estate of James Silva. There are no such plaintiffs in *Valore* or *Bonk*. As noted *supra* note 2, the Court construes plaintiffs' claim in *Spencer* as brought under the FSIA-created cause of action.

FN4. These plaintiffs are: from *Valore*, Estate of David L. Battle, Estate of Matilde Hernandez, Jr., Estate of John Muffler, Estate of John Jay Tishmack, Estate of Leonard Warren Walker, Estate of Walter Emerson Wint, Jr., Estate of James Yarber, Angel Alvarado, Andres Alvarado Tull, Geraldo Alvarado, Grisselle Alvarado, Luis Alvarado, Luisa Alvarado, Maria Alvarado, Marta Alvarado, Minerva Al-

varado, Yolanda Alvarado, Zoraida Alvarado, Cheryl Bass, Edward J. Brooks, Patricia A. Brooks, Wanda Ford, Bennie Harris, Rose Harris, Marcy Lynn Parson, Douglas Pontillo, Leonora Pontillo, Eloise F. Selbe, Don Selbe, James Selbe, Belinda Skarka, Allison Thompson, Isaline Thompson, Johnny Thompson, Deborah True, Janice Valore, Orlando M. Valore, Jr., and Orlando Michael Valore, Sr.; from *Arnold*, Lolita M. Arnold, Estate of Moses Arnold, Jr., Lisa Ann Beck, Betty J. Bolen, Keith Edwin Bolen, Sheldon H. Bolen, and Sharla M. Korz; from *Spencer*, Lynne Michol Spencer; and from *Bonk*, Catherine Bonk, Kevin Bonk, Thomas Bonk, John Bonk, Sr., Danielle DiGiovanni, Lisa DiGiovanni, Marion DiGiovanni, Robert DiGiovanni, Sherry Lynn Fiedler, Robert Fluegel, Thomas A. Fluegel, Marilou Fluegel, Evans Hairston, Felicia Hairston, Julia Bell Hairston, Henry Durban Hukill, Mark Andrew Hukill, Matthew Scott Hukill, Melissa Hukill, Meredith Ann Hukill, Mitchell Charles Hukill, Monte Hukill, Virginia Ellen Hukill, Catherine Bonk Hunt, Storm Jones, Penni Joyce, Jeff Kirkwood, Shirley Kirkwood, Carl Arnold Kirkwood, Jr., Carl Kirkwood, Sr., Patricia Kronenbitter, Kris Laise, Bill Laise, Betty Laise, James Macrogrou, Lorraine Macrogrou, Bill Macrogrou, Kathy McDonald, Edward W. McDonough, Sean McDonough, Edward Joseph McDonough, Deborah Spencer Rhosto, Estate of Rose Rotondo, Estate of Luis Rotondo, Estate of Phyllis Santoserre, Robert Simpson, Renee Eileen Simpson, Anna Marie Simpson, Larry H. Simpson, Sr., and Sally Jo Wirick.

Although plaintiffs in *Bonk* pled that they are "legally entitled to assert a claim under the District of Columbia Wrongful Death Act [and] the District of

Columbia Survival Act,” (*Bonk* Compl. ¶ 1), they do not make any claims under either Act. The Court notes that such claims have already successfully been made in *Peterson* by estates of which these plaintiffs are beneficiaries. See *Peterson II*, 515 F.Supp.2d at 38-39. The Court therefore has not considered any potential claim under either Act in *Bonk*.

FN5. These plaintiffs are: from *Valore*, Estate of David L. Battle, Estate Of Matilde Hernandez, Jr., Estate of John Muffler, Estate of John Jay Tishmack, Estate of Leonard Warren Walker, Estate of Walter Emerson Wint, Jr., and Estate of James Yarber. There are no such plaintiffs in *Arnold*, *Spencer*, or *Bonk*.

Although plaintiffs in *Valore* amended their complaint to bring some claims under the FSIA-created cause of action, they continue to press their survival claims under District of Columbia law. See *In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d at 100 (noting that the amended “complaint is very similar to the original complaint in the sense that it continues to rely on District Columbia law for ... survivorship claims.”).

FN6. These plaintiffs are: from *Valore*, Estate of David L. Battle, Estate Of Matilde Hernandez, Jr., Estate of John Muffler, Estate of John Jay Tishmack, Estate of Leonard Warren Walker, Estate of Walter Emerson Wint, Jr., and Estate of James Yarber. There are no such plaintiffs in *Arnold*, *Spencer*, or *Bonk*.

Although plaintiffs in *Valore* amended their complaint to bring some claims under the FSIA-created cause of action, they continue to press their wrongful-death claims under District of Columbia

law. See *In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d at 100 (noting that the amended “complaint is very similar to the original complaint in the sense that it continues to rely on District Columbia law for wrongful[-]death ... claims.”).

III. Facts.

Based on plaintiffs' uncontroverted factual assertions in their complaints and with due reference to facts found in *Peterson*, the Court finds the following:

A. The Relationship Between Hezbollah and Iran.

In late 1982 [during the Lebanese Civil War], with the concurrence of the United Nations, a multinational peacekeeping coalition consisting of American, British, French, and Italian soldiers arrived in the Lebanese capital of Beirut. In May of 1983, the 24th Marine Amphibious*62 Unit of the U.S. Marines (“the 24th MAU”) joined this coalition.

....

Following the 1979 revolution spearheaded by the Ayatollah Ruhollah Khomeini, the nation of Iran was transformed into an Islamic theocracy.... The post-revolutionary government in Iran ... declared its commitment to spread the goals of the 1979 revolution to other nations. Towards that end, between 1983 and 1988, the government of Iran spent approximately \$50 to \$150 million financing terrorist organizations in the Near East. One of the nations to which the Iranian government directed its attention was the war-torn republic of Lebanon.

“Hezbollah” is an Arabic word meaning “the party of God.” It is also the name of a group of Shi'ite Muslims in Lebanon that was formed under the auspices of the government of Iran.

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Hezbollah began its existence as a faction within a group of moderate Lebanese Shi'ites known as Amal. Following the 1982 Israeli invasion of Lebanon, the Iranian government sought to radicalize the Lebanese Shi'ite community, and encouraged Hezbollah to split from Amal. Having established the existence of Hezbollah as a separate entity, the government of Iran framed the primary objective of Hezbollah: to engage in terrorist activities in furtherance of the transformation of Lebanon into an Islamic theocracy modeled after Iran.

Peterson I, 264 F.Supp.2d at 49-51 (footnotes omitted).

During the *Peterson* trial, several experts testified on Iran's terrorist activities. Patrick Clawson, Ph.D., "a widely-renowned expert on Iranian affairs," testified that in 1983, Hezbollah was "a creature of the Iranian government." *Id.* at 51. According to Dr. Clawson:

Both from the accounts of Hezbollah members and from the accounts of the Iranians and of every academic study that I'm aware of, certainly at this time, Hezbollah is largely under Iranian orders. It's almost entirely acting ... under the order of the Iranians and being financed almost entirely by the Iranians.

Id. Dr. Clawson's testimony was corroborated by that of Michael Ledeen, Ph.D., "a consultant to the Department of Defense at the time of the Marine barracks bombing and an expert on U.S. foreign relations, [who] testified at trial that 'Iran invented, created, funded, trained, and runs to this day Hezbollah, which is arguably the world's most dangerous terrorist organization.'" *Id.* at 51 n. 8. Dr. Clawson's testimony was further corroborated by Reuven Paz, Ph.D., "who has researched Islamic groups for the last 25 years" and who testified at trial that Hezbollah "totally relied upon ... Iranian support" and that at the time of the Beirut bombing, "when Hezbollah was not yet formed as a strong group, it was totally controlled by Iran and actually

served mainly the Iranian interest in Lebanon." *Id.* at 52. Dr. Paz testified further that Hezbollah could not have carried out the Beirut bombing "without Iranian training, without ... Iranian supply of the explosives ..., and without directions from the Iranian forces in Lebanon itself." *Id.*

It is clear that the formation and emergence of Hezbollah as a major terrorist organization is due to the government of Iran. Hezbollah ... receive [d] extensive financial and military technical support from Iran, which funds and supports terrorist activities. The primary agency through which the Iranian government both established and exercised operational control over Hezbollah was the Iranian Ministry of Information and *63 Security ("MOIS"). MOIS had formerly served as the secret police of the Shah of Iran prior to his overthrow in 1979. Despite the revolutionary government's complete break with the old regime, it did not disband MOIS, but instead allowed it to continue its operations as the intelligence organization of the new government.... MOIS acted as a conduit for the Islamic Republic of Iran's provision of funds to Hezbollah, provided explosives to Hezbollah and, at all times relevant to these proceedings, exercised operational control over Hezbollah. [See generally COUNCIL ON FOREIGN RELATIONS, HEZBOLLAH (A.K.A. HIZBOLLAH, HIZBU'LLAH), <http://www.cfr.org/publication/9155> (2009) [hereinafter HEZBOLLAH] ("[Hezbollah] has close links to Iran..."); COUNCIL ON FOREIGN RELATIONS, STATE SPONSORS: IRAN, <http://www.cfr.org/publication/9362> (2007) ("Iran mostly backs Islamist groups, including the Lebanese Shiite militants of Hezbollah....").]

It is clear that MOIS was no rogue agency acting outside of the control and authority of the Iranian government.... [T]he October 23 attack would have been impossible without the express approval of Iranian government leaders at the highest level[.]

The approval of the ayatollah and the prime

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minister was absolutely necessary to carry out the continuing economic commitment of Iran to Hezbollah, and to execute the October 23 attack. Given their positions of authority, any act of these two officials must be deemed an act of the government of Iran.

Id. at 52-53. As Dr. Clawson testified, approval for the attack could only come after “a discussion in the National Security Council which would involve the prime minister, and it would also have required the approval of Iran’s supreme religious leader, Ayatollah Khomeini.” *Id.* at 53; *see also* ANTHONY H. CORDESMAN & MARTIN KLEIBER, *CTR. FOR STRATEGIC & INT’L STUDIES, IRAN’S MILITARY FORCES AND WARFIGHTING CAPABILITIES* 131 (2007) (noting that MOIS is funded by Iran with “a comparatively large budget” and “operates under the broader guidance of Ali Khamenei”).

B. The Beirut Bombing.

The complicity of Iran in the 1983 attack was established conclusively ... [by a] message [that] had been sent from MOIS to [the] Iranian ambassador to Syria.... The message directed the Iranian ambassador to contact ... the leader of the terrorist group Islamic Amal, and to instruct him to have his group instigate attacks against the multinational coalition in Lebanon, and “to take a spectacular action against the United States Marines.”

....

Hezbollah members formed a plan to carry out simultaneous attacks against the American and French barracks in Lebanon.

....

[A] 19-ton truck was disguised so that it would resemble a water[-] delivery truck that routinely arrived at the Beirut International Airport, which was located near the U.S. Marine barracks in

Beirut, and modified the truck so that it could transport an explosive device. On the morning of October 23, 1983, members of Hezbollah ambushed the real water delivery truck before it arrived at the barracks. An observer was placed on a hill near the barracks to monitor the operation. The fake water[-]delivery truck then set out for the barracks....

At approximately 6:25 a.m. Beirut time, the truck drove past the Marine barracks. As the truck circled in the *64 large parking lot behind the barracks, it increased its speed. The truck crashed through a concertina wire barrier and a wall of sandbags, and entered the barracks. When the truck reached the center of the barracks, the bomb in the truck detonated.

The resulting explosion was the largest non-nuclear explosion that had ever been detonated on the face of the Earth. The force of its impact ripped locked doors from their doorjambes at the nearest building, which was 256 feet away. Trees located 370 feet away were shredded and completely exfoliated. At the traffic control tower of the Beirut International Airport, over half a mile away, all of the windows shattered.... The explosion created a crater in the earth over eight feet deep. The four-story Marine barracks was reduced to fifteen feet of rubble.

Peterson I, 264 F.Supp.2d at 54-58 (footnotes omitted).

“As a result of the Marine barracks explosion, 241 servicemen were killed, and many others suffered severe injuries.” *Id.* at 58. In the immediate aftermath of the explosion, those who could “ran to the rubble and started searching for survivors among the loose hands, heads, legs, arms, and torsos that littered the rubble-strewn ground.” ERIC M. HAMMEL, *THE ROOT: THE MARINES IN BEIRUT, AUGUST 1982-FEBRUARY 1984*, at 330 (1985). In the remains of the barracks, “[h]uge blocks of steel-laced concrete angled in all directions” where “twisted corpses dangled from the cracks.” *Id.* at

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352. Many of those who survived “had shredded skin adhering to their lower legs and feet ... caused by the force of the blast.” *Id.* at 351. The Court need not expand further on the gruesome detail of this horrific attack; several historians and eyewitnesses have contributed to a rich historical record of the tragedy.^{FN7}

FN7. For the Marine Corps' official history of the event, see BENIS M. FRANK, U.S. MARINES IN LEBANON: 1982-1984, at 1-5, 94-105 (1987), available at <http://purl.access.gpo.gov/GPO/LPS/98826>. For gripping first-hand accounts, see GLENN E. DOLPHIN, 24 *Mau* 1983: A MARINE LOOKS BACK AT THE PEACEKEEPING MISSION TO BEIRUT, LEBANON 161-90 (2005) and MICHAEL PETIT, PEACEKEEPERS AT WAR: A MARINE'S ACCOUNT OF THE BEIRUT CATASTROPHE 165-98 (1986). For an excellent combination of eyewitness accounting and historical analysis, including the role of Iran and Hezbollah in the attack and a discussion of the *Peterson* litigation, see TIMOTHY J. GERAGHTY, PEACEKEEPERS AT WAR: BEIRUT 1983-THE MARINE COMMANDER TELLS HIS STORY 91-121, 181-201 (2009).

IV. Jurisdiction.

The FSIA “is the sole basis of jurisdiction over foreign states in our courts.” *In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d at 39. The FSIA concerns both subject-matter jurisdiction and personal jurisdiction. The Court has both.

A. Subject-Matter Jurisdiction.

Several sections of the FSIA and related statutes set forth several specific requisites that must be satisfied for the Court to have jurisdiction over the subject matter of this case. These requisites may be broken down into four categories: grant of original

jurisdiction, waiver of sovereign immunity, requirement that a claim be heard, and limitations. Plaintiffs have satisfied all subject-matter jurisdictional requisites.

1. Grant of Original Jurisdiction.

The FSIA grants U.S. district courts “original jurisdiction without regard to amount in controversy of any [(1)] nonjury civil action [(2)] against a foreign state ... [(3)] as to any claim for relief in personam [(4)] with respect to which the *65 foreign state is not entitled to immunity.” § 1330(a). The FSIA defines a foreign state to include any “political subdivision” or “agency or instrumentality” thereof, § 1603(a), and further defines an agency or instrumentality as “any entity (1) which is a separate legal person, corporate or otherwise[,] ... (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 ... nor created under the laws of any third country,” § 1603(b). In interpreting and applying these statutory definitions, this Circuit employs a core-functions test, under which “an entity that is an ‘integral part of a foreign state’s political structure’ is to be treated as the foreign state itself” while an “entity the structure and core function of which are commercial is to be treated as an ‘agency or instrumentality’ of the state.” *TMR Energy Ltd. v. State Property Fund of Ukraine*, 411 F.3d 296, 300 (D.C.Cir.2005) (quoting *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 151 (D.C.Cir.1994)).

First, no party has sought a jury trial, nor are they entitled to one under the Seventh Amendment in this type of case, *Croesus EMTR Master Fund L.P. v. Federative Republic of Brazil*, 212 F.Supp.2d 30, 40 (D.D.C.2002) (“[C]laims under the FSIA are not eligible for resolution by a jury....”). Therefore, this is a nonjury civil action.

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[2] Second, plaintiffs have instituted this action against Iran and MOIS, both of which are considered to be a foreign state. Iran, of course, is the foreign state itself. "MOIS is considered to be a division of state of Iran, and is treated as a member of the state of Iran itself." *Bennett v. Islamic Republic of Iran*, 507 F.Supp.2d 117, 125 (D.D.C.2007) (citing *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 234 (D.C.Cir.2003); *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d 105, 116 (D.D.C.2005)) (Lamberth, J.). In other words, MOIS is a political subdivision of Iran. Therefore, this action is against a foreign state as defined by the FSIA.

Third, as discussed *infra* Part IV.B, the Court has personal jurisdiction over the defendants as legal persons, rather than property. Therefore, this is an action in personam, rather than in rem.

Fourth and finally, as discussed *infra* Part IV.A.2., Iran and MOIS are not entitled to immunity from this suit.

Accordingly, because this is a nonjury civil action against a foreign state for relief in personam to which the defendants are not immune, the Court has original jurisdiction over these cases.

2. Waiver of Sovereign Immunity.

[3] Under the FSIA, "a foreign state is presumptively immune from the jurisdiction of United States courts; unless a specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state." *Saudi Arabia v. Nelson*, 507 U.S. 349, 355, 113 S.Ct. 1471, 123 L.Ed.2d 47 (1993). Because "subject-matter jurisdiction turns on the existence of an exception to foreign sovereign immunity, ... even if the foreign state does not enter an appearance to assert an immunity defense, a District Court still must determine that immunity is unavailable under the Act." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 495 n. 20, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983). (As discussed *supra* Part II.B., defendants

have indeed failed to enter an appearance.) Under the FSIA terrorism exception, sovereign immunity is waived when plaintiffs allege (1) that a foreign state (2) committed "an act of torture, extrajudicial killing, *66 aircraft sabotage, hostage taking, or [provided] 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," (3) which "caused" (4) "personal injury or death" (5) for which "money damages are sought." § 1605A(a)(1).

First, plaintiffs have brought suit against Iran and MOIS, both of which are considered to be a foreign state. *See* discussion *supra* Part IV.A.2.

Second, plaintiffs, in their respective complaints, allege that defendants committed torture, extrajudicial killing, and the provision of material support and resources therefor, providing operational control over and financial and technical assistance to Iranian agents of Hezbollah who constructed, deployed, and exploded the truck bomb, injuring and killing hundreds. Plaintiffs therefore have sufficiently alleged the commission of acts of torture and extrajudicial killing and the provision of material support and resources therefor by defendants.

[4][5] Third, concerning causation, "there is no 'but-for' causation requirement" for claims made under the FSIA. *In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d at 42. In *Kilburn v. Socialist People's Libyan Arab Jamahiriya*, a case which interpreted the substantially similar § 1605(a)(7) that is now § 1605A, this Circuit noted that in the FSIA, "the words 'but for' simply do not appear; only 'caused by' do." 376 F.3d 1123, 1128 (D.C.Cir.2004). Adopting the Supreme Court's approach to a different but similarly worded jurisdictional statute, the Circuit interpreted the causation element "to require only a showing of 'proximate cause.'" *Id.* (citing *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 536-38, 115 S.Ct. 1043, 130 L.Ed.2d 1024 (1995)).

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“Proximate cause exists so long as there is ‘some reasonable connection between the act or omission of the defendant and the damages which the plaintiff has suffered.’ ” *Brewer*, 664 F.Supp.2d at 54 (construing causation element in § 1605A by reference to cases decided under § 1605(a)(7)) (quoting *Kilburn*, 376 F.3d at 1128). Here, there are several reasonable alleged connections between the acts of defendants and the deaths of 241 servicemen and physical and emotional injuries suffered by military servicemen and plaintiffs: plaintiffs allege that Iran’s high-level technical participation facilitated the construction and deployment of the bomb so as to maximize its destructive effect, that defendants ordered the attack and oversaw its operation, and that Iran financially supported Hezbollah. Plaintiffs therefore have sufficiently alleged causation.

[6] Fourth and fifth, plaintiffs allege several instances of personal injury and death for which money damages have been sought. The FSIA does not restrict the personal injury or death element to injury or death suffered directly by the claimant; instead, such injury or death must merely be the bases of a claim for which money damages are sought. § 1605A(a)(1). In these cases, plaintiffs alleged, of course, the deaths of 241 servicemen and numerous other physical injuries suffered by those who survived the attack, but also emotional and financial injury to survivors, decedents, decedent’s estates, and decedent’s family members, for which plaintiffs seek millions of dollars in money damages. Plaintiffs have therefore alleged personal injury or death for which money damages have been sought.

Accordingly, because plaintiffs have brought suit against a foreign state for acts of torture and extrajudicial killing and *67 the provision of material resources for the same which caused personal injury and death for which money damages have been sought, defendants are not entitled to sovereign immunity.

3. Requirement That a Claim Be Heard.

A federal district court “shall hear a claim” under the FSIA terrorism exception when certain conditions are met. § 1605A(2). One such set of conditions applies where (1) “the foreign state was designated as a state sponsor of terrorism at the time the act” giving rise to the claim occurred “or was so designated as a result of such act,” § 1605A(a)(2)(A)(i)(I), and, in a case related to a related action, “was designated as a state sponsor of terrorism when the ... related action under section 1605(a)(7) ... was filed,” § 1605A(a)(2)(A)(i)(II) FN8; (2) “the claimant or the victim was, at the time the act” giving rise to the claim, “a national of the United States[,] a member of the armed forces[,] or otherwise an employee of the Government of the United States[] or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee’s employment,” § 1605A(a)(2)(A)(ii); and (3) “in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration,” § 1605A(a)(2)(A)(iii). The FSIA elaborates on the first element by defining “state sponsor of terrorism” to mean “a country the government of which the Secretary of State has determined ... is a government that has repeatedly provided support for acts of international terrorism,” § 1605A(h)(6), and the second by defining “national of the United States” to mean “a citizen of the United States[] or ... a person who, though not a citizen of the United States, owes permanent allegiance to the United States,” 8 U.S.C. § 1101(22); § 1605A(h)(5).^{FN9}

FN8. This element applies only to cases related to related actions. For different requirements for cases related to prior actions, see § 1605A(a)(2)(A)(i)(II). For stand-alone cases, see § 1605A(a)(2)(A)(i)(I).

FN9. For the other condition under which a court must hear a FSIA claim, but which

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does not apply to this case, see § 1605A(a)(2)(B).

First, concerning designation as a state sponsor of terrorism, Iran was so designated by the Secretary of State in partial response to the Beirut bombing. U.S. Dep't of State, Determination Pursuant to Section 6(i) of the Export Administration Act of 1979-Iran, 49 FED.REG. 2836, Jan. 23, 1984 (designating Iran as a state sponsor of terrorism for the first time upon concluding that "Iran is a country which has repeatedly provided support for acts of international terrorism"). Iran also remained so designated when several original actions to which these cases are related were filed. The related actions identified by the Court *supra* Part II.A. were filed in 2001, 2003, 2005, 2006, and 2007. In each year, Iran remained a designated state sponsor of terrorism. See U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2007, at 172 (2008), available at <http://www.state.gov/documents/organization/105904.pdf> (noting that "Iran remained the most active state sponsor of terrorism" in the year of the report's title); U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2006, at 147 (2007), available at <http://www.state.gov/documents/organization/83383.pdf> (same); U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2005, at 173 (2006), available at <http://www.state.gov/documents/organization/65462.pdf> (same); U.S. DEP'T OF STATE, PATTERNS OF *68 GLOBAL TERRORISM 2003, at 86 (2004), available at <http://www.state.gov/documents/organization/31912.pdf> (same); U.S. DEP'T OF STATE, PATTERNS OF GLOBAL TERRORISM 2001, at 64 (2002), available at <http://www.state.gov/documents/organization/10319.pdf> (same). The requirements of § 1605A(a)(2)(A)(i) are therefore satisfied.

Second, concerning claimants and victims, the Court identifies victims as those who suffered injury or died as a result of the attack and claimants as those whose claims arise out of those injuries or deaths but who might not be victims themselves. In

this case, victims include the 241 members of the U.S. armed forces who were killed, the many more who were physically and emotionally injured, and the family members alleging injury suffered from intentional infliction of emotional distress, all of whom are nationals of the United States. Claimants include the same groups or the estates thereof. See discussion *infra* Part V.B. The requirements of § 1605A(a)(2)(A)(ii) are therefore satisfied.

Third and finally, because the Beirut bombing occurred in Lebanon, not the defendant-state, the arbitration requirements of § 1605A(a)(2)(A)(iii) do not apply.

Accordingly, because Iran was designated a state sponsor of terror by the U.S. State Department as a partial result of the Beirut bombing and remained so designated when a case related to this one was filed; all victims and claimants were or are members of the U.S. armed forces, U.S. nationals, or the estates thereof; and arbitration need not be attempted, the Court is required by the FSIA to hear plaintiffs' claims.

4. Limitations.

All cases brought under § 1605A—whether stand-alone or related to a related or prior action—face a 10-year limitations period. For cases related to a related action, the related action must have been "commenced under section 1605(a)(7) ... not later than the latter of 10 years after April 24, 1996, or 10 years after the date on which the cause of action arose." § 1605A(b).^{FN10} The related action to which *Valore*, *Arnold*, *Spencer*, and *Bonk* are most closely related is *Peterson*, which was commenced in 2001, well within the 10-year period after April 24, 1996.

FN10. See § 1605A(b) for language applying to stand-alone cases and cases related to prior actions.

Cases related to related or prior actions also face additional 60-day limitations periods. Cases related

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to related actions must commence “not later than the latter of 60 days after the date of the entry of judgment in the original action or” January 28, 2008. § 1083(c)(3).^{FN11} *Valore* was commenced in 2003, *Arnold* and *Spencer* in 2006, and *Bonk* in 2008. Judgment was entered in *Peterson* on September 7, 2007. *See Peterson II*, 515 F.Supp.2d 25. *Valore*, *Arnold*, and *Spencer* were all filed, therefore, well before 60 days after September 7, 2007. *Bonk* is also related to *Valore*, *Arnold*, and *Spencer*, in which final judgment is being entered today. *Bonk* was filed, therefore, well before 60 days after today.

FN11. See § 1083(c)(2)(C)(i) for language applying to cases related to prior actions.

Accordingly, because plaintiffs satisfy both the 10-year and 60-day limitations periods, Plaintiffs are not time-barred from raising their claims.

5. Conclusions Concerning Subject-Matter Jurisdiction.

[7] First, these cases are nonjury civil actions against a foreign state for relief in personam to which the defendants are not *69 immune. The Court therefore has original jurisdiction over these cases. Second, plaintiffs have brought suit against a foreign state for acts of torture and extrajudicial killing and the provision of material resources for the same which caused personal injury and death for which money damages have been sought. Defendants are therefore not entitled to sovereign immunity. Third, Iran was designated a state sponsor of terror by the U.S. State Department as a partial result of the Beirut bombing and remained so designated when cases related to this one were filed; all victims and claimants were or are members of the U.S. armed forces, U.S. nationals, or the estates thereof; and arbitration need not be attempted. The Court is therefore required to hear plaintiffs' claims. Fourth and finally, plaintiffs satisfied both the 10-year and 60-day limitations periods. Plaintiffs are therefore not time-barred from bringing suit.

The Court therefore has subject-matter jurisdiction over these cases.

B. Personal Jurisdiction.

The FSIA provides specific statutory rules controlling when a federal district court shall have personal jurisdiction over a foreign state, *see* § 1608, but ordinary minimum-contacts requirements of the Fifth Amendment may continue to apply, depending on the form in which a foreign state is named a defendant, *see TMR Energy*, 411 F.3d at 299-302. Under both the statutory rules and the minimum-contacts test, the definition of foreign state otherwise applicable to provisions of the FSIA does not apply; Congress and the courts distinguish between a foreign state itself and a political subdivision, agency, or instrumentality (“entities”) thereof. § 1603(a) (defining “foreign state” for all FSIA sections except § 1608); § 1608 (setting forth statutory distinctions between foreign states and entities thereof); *TMR Energy*, 411 F.3d at 299-302 (discussing jurisprudential distinctions between foreign states and entities thereof). Applying these distinctions, the Court has personal jurisdiction under the FSIA over Iran—a foreign state itself—and MOIS—a political subdivision thereof—and the minimum-contacts test does not apply.

1. FSIA-Specific Rules.

The FSIA establishes the requirements for proper service upon a foreign state or a political subdivision of a foreign state. *See* FED.R.CIV.P. 4(j)(1). The FSIA prescribes four methods of service, in descending order of preference. Plaintiffs must attempt service by the first method (or determine that it is unavailable) before proceeding to the second method, and so on. *See* 28 U.S.C. § 1608(a).

The preferred method of service is delivery of the summons and complaint “in accordance with any special arrangement for service between the plaintiff and the foreign state.” 28 U.S.C. §

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1608(a)(1). If no such arrangement exists, then delivery is to be made “in accordance with an applicable international convention on service of judicial documents.” *Id.* § 1608(a)(2). If neither of the first two methods is available, plaintiffs may send the summons, 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.” *Id.* § 1608(a)(3). Finally, if mailed service cannot be accomplished within thirty days, then the statute permits plaintiffs to request that the clerk of the court dispatch two copies of the summons, complaint, and notice of suit (together with a translation of each *70 into the foreign state’s official language) to the Secretary of State, who then “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.” *Id.* § 1608(a)(4).

Ben-Rafael v. Islamic Republic of Iran, 540 F.Supp.2d 39, 52 (D.D.C.2008).^{FN12}

FN12. See § 1608(b) for language applying to service of agencies and instrumentalities of foreign states.

[8] In these cases, no special arrangements for service exist between Iran and the plaintiffs, nor is Iran a party to any applicable international convention on service of judicial documents. See U.S. Dept’t of State, Bureau of Consular Affairs, Service Of Legal Documents Abroad, [http:// travel. state. gov/ law/ info/ judicial/ judicial_ 680. html](http://travel.state.gov/law/info/judicial/judicial_680.html) (last visited March 31, 2010) (discussing international conventions on service of process); Hague Conf. on Private Int’l Law, Status Table, [http:// hcch. e- vision. nl/ index_ en. php? act= conventions. status& cid= 17](http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=17) (last visited March 31, 2010) (showing that Iran is not a signatory to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial

Documents in Civil or Commercial Matters). The first two methods of service are therefore inapplicable. Concerning the third method, plaintiffs in each case attempted to serve the summons, complaint, and notice of suit, translated into Farsi, the official language of Iran, to the head of the Iranian Ministry of Foreign Affairs, but to no avail; service was refused.

Plaintiffs therefore requested that the clerk dispatch two copies of the summons, complaint, and notice of suit, translated into Farsi, to the Secretary of State. The Court granted plaintiffs’ requests, the clerk dispatched the documents, and the Secretary of State transmitted one copy of the documents to Iran via a diplomatic note through the Embassy of the Swiss Confederation while returning the other copy to the clerk. Plaintiffs therefore properly served defendants under § 1608(a)(4).

2. Fifth-Amendment Requirements.

The Due Process Clause of the Fifth Amendment to the U.S. Constitution mandates that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.” In civil cases against persons, then, the Due Process Clause “requires that if the defendant ‘be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’ ” *Price v. Socialist People’s Libyan Arab Jamahiriya*, 294 F.3d 82, 95 (D.C.Cir.2002) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945) (internal quotation omitted)). “In the absence of such contacts, the liberty interest protected by the Due Process Clause shields the defendant from the burden of litigating in that forum.” *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)). Whether this minimum-contacts requirement applies to defendants sued under the FSIA depends on whether such defendants are persons under the Due Process Clause.

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[9] Concerning foreign states themselves, this Circuit has squarely held that “foreign states are not ‘persons’ protected by the Fifth Amendment.” *Id.* at 96. As the Circuit later put it, “as a constitutional matter, there is no constitutional matter.” *I.T. Consultants, Inc. v. Republic of Pakistan*, 351 F.3d 1184, 1191 (D.C.Cir.2003). *71 The Circuit reasoned that “in common usage, the term ‘person’ does not include the sovereign.” *Price*, 294 F.3d at 96 (quoting *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) (internal quotation omitted)). Moreover, because states of the United States are not persons entitled to the Fifth Amendment Due Process protections, *South Carolina v. Katzenbach*, 383 U.S. 301, 323-24, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966), “absent some compelling reason to treat foreign sovereigns more favorably than ‘States of the Union,’ it would make no sense to view foreign states as ‘persons’ under the Due Process Clause,” *Price*, 294 F.3d at 96. Because foreign states themselves are not persons and thus not entitled to Fifth Amendment Due Process Protections, plaintiffs need not show any contacts threshold between Iran and the District of Columbia.

[10] Concerning entities of a foreign state, the issue is whether a state “exerted sufficient control over” the entity “to make it an agent of the [s]tate.” *TMR Energy*, 411 F.3d at 301. If such control is exerted, “then there is no reason to extend to” such entity “a constitutional right that is denied to the sovereign itself.” *Id.*^{FN13} This Circuit has held that “plenary control” by a state over an entity thereof is sufficient to conclude that the entity is not a person under the Fifth Amendment. *Id.* For example, in *TMR Energy* the State of Ukraine had plenary control over the State Property Fund of Ukraine because the Fund’s operations were funded and regulated by, and its leaders were chosen by, the State. *Id.* at 301-02. MOIS, which operates as the foreign and domestic intelligence agency of Iran, is funded by Iran and operates under the guidance of Iranian Supreme Leader Ayatollah Ali Khamenei. It is clear, then, that Iran has plenary control of MOIS, which

is therefore not a person entitled to Fifth Amendment Due Process protections. Plaintiffs need not show any contacts threshold between MOIS and the District of Columbia.

FN13. *Price*, which was limited to the issue of personhood of foreign states themselves, “express[ed] no view as to whether other entities that fall within the FSIA’s definition of ‘foreign state’”—political subdivisions, agencies, and instrumentalities thereof—“could yet be considered persons under the Due Process Clause.” 294 F.3d at 99-100. The later case of *TMR Energy* took on the issue expressly avoided by *Price*, but did so only for agencies and instrumentalities of foreign states. 411 F.3d at 300-02. The logic of *TMR Energy*, however, applies with equal force to political subdivisions of foreign states: if a foreign state exercises sufficient control over a political subdivision thereof such that the political subdivision may be considered an agent of the state itself, the subdivision-agent is no more a person entitled to Fifth Amendment Due Process than the state-principal.

3. Customary International Law.

[11] In previous cases, this Circuit has also considered the effect of customary international law and whether it requires a minimum-contacts-like test. *TMR Energy*, 411 F.3d at 302. According to the Court of Appeals, “[c]ustomary international law comes into play only ‘where there is no treaty [] and no controlling executive or legislative act or judicial decision.’ ” *Id.* (quoting *The Paquete Habana*, 175 U.S. 677, 700, 20 S.Ct. 290, 44 L.Ed. 320 (1900)). “Never does customary international law prevail over a contrary federal statute.” *Id.* (citing *Comm. of U.S. Citizens Living in Nicaragua v. Reagan*, 859 F.2d 929, 939 (D.C.Cir.1988)). Here, the FSIA and Fifth Amendment jurisprudence control. The Court therefore need not decide wheth-

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er customary international law would require some contacts threshold between defendants and the District of Columbia; even if it did, it would not apply.

***72 4. Conclusions Concerning Personal Jurisdiction.**

First, plaintiffs properly served defendants under FSIA-specific rules. Second, defendants are not persons entitled to Fifth Amendment Due Process, making unnecessary any consideration of their contacts with this forum. Third, customary international law, regardless of the extent to which it may call for a minimum-contacts-like test, does not apply. The Court therefore has personal jurisdiction over defendants in these cases.

V. Liability Under the FSIA-Created Cause of Action.

The FSIA prescribes which individuals or entities are subject to liability under the FSIA-created cause of action, to whom such individuals or entities may be liable, and for what actions such liability may attach. In these cases, both defendants are liable to plaintiffs for acts of extrajudicial killing and the provision of material support and resources for such killing, but are not liable for acts of torture because no such acts were committed.

A. Entities Subject to Liability.

The FSIA restricts entities subject to liability under its federal cause of action to (1) a “foreign state [(2)] that is or was a state sponsor of terrorism as described” in the elements concerning the requirement to hear a claim, and (3) “any official, employee, or agent of that foreign state [(4)] while acting within the scope of his or her office, employment, or agency.” § 1605A(c). The FSIA also makes clear that “a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.” *Id.*

In these cases, the named defendants are Iran and

MOIS, both of which are considered a “foreign state,” *see* discussion *supra* Part IV.A.2., and both of which were designated state sponsors of terrorism at all times and for reasons giving rise to liability under the FSIA, *see* discussion *supra* Part IV.A.3. Additionally, the bases for the alleged liability of these defendants are actions of their officials, employees, and agents; officials and employees of MOIS funded, technically assisted, and operationally controlled its agents of Hezbollah in planning and carrying out the Beirut bombing. Defendants are therefore subject to liability under the FSIA.

B. Individuals to Whom an Entity May Be Liable.

The FSIA prescribes which individuals qualify as those to whom entities subject to liability may be liable. Such individuals include “(1) a national of the United States[;] (2) a member of the armed forces[;] (3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment[;] or (4) the legal representative of [any such] person.” § 1605A(c). The FSIA Elaborates on the first class of individuals by defining “national of the United States” to mean “a citizen of the United States[] or ... a person who, though not a citizen of the United States, owes permanent allegiance to the United States,” 8 U.S.C. § 1101(22); § 1605A(h)(5), and the second by defining “armed forces” to mean “the Army, Navy, Air Force, Marine Corps, and Coast Guard,” 10 U.S.C. § 101(a)(4); § 1605A(h)(4).

In these consolidated cases, there are three sorts of plaintiffs: survivors of the attack, estates of victims who died in the attack, and family members (or estates thereof) of victims of the attack, some of whom died, some of whom survived. Survivors of the attack were members of the armed forces at the time of the attack. *73 Estates of those who died in the attack are represented by legal representatives

of such individuals. The Court is satisfied, based on evidence from special master reports, that the following family-member plaintiffs are U.S. nationals: from *Valore*, Bennie Harris, Rose Harris, Allison Thompson, Isaline Thompson, and Johnny Thompson; and from *Spencer*, Lynne Michol Spencer. The Court presumes that all other family-member plaintiffs are U.S. nationals (or that estate-plaintiffs of deceased family members are legal representatives of deceased U.S. nationals), but will require that these plaintiffs provide evidence satisfactory to the Court to corroborate that presumption. All plaintiffs are, therefore, individuals to whom defendants may be liable under the FSIA-created cause of action.

C. Defendant's Liability in These Cases.

Under the FSIA terrorism exception, foreign states are liable for (1) any "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 ... 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"; (2) where such act is committed or provision provided by "that foreign state, or of an official, employee, or agent of that foreign state"; (3) which "caused [(4)] personal injury or death"; and (5) "for which Courts of the United States may main jurisdiction for money damages." § 1605A(a)(1), (c). When viewed together, the third and fourth elements of this FSIA-created general cause of action require plaintiffs to prove a theory of liability under which defendants cause the requisite injury or death.

1. Acts for Which Defendants Are Liable.

[12] First, concerning acts for which defendants may be liable, plaintiffs plead three: torture, extrajudicial killing, and the provision of material support and resources therefor. The FSIA provides definitions of these acts, which guide the analysis

of whether such acts occurred with respect to the Beirut bombing. As discussed below, defendants committed acts of extrajudicial killing and provided material support and resources for such killing, but defendants did not commit torture.

"[T]orture" means [(1)] any act, [(2)] directed against an individual in the offender's custody or physical control, [(3)] by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, [(4)] is intentionally inflicted on that individual [(5)] for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind.

Torture Victim Protection Act of 1991, Pub.L. No. 102-256, § 3(b), 106 Stat. 73, 73 (1992); § 1605A(h)(7). See generally 44B AM.JUR.2D *International Law* § 152. For example, the six-year imprisonment of; beating of; and deprivation of food, light, toilet facilities, and medical care to an American professor at a Lebanese university constituted torture. *Sutherland v. Islamic Republic of Iran*, 151 F.Supp.2d 27 (D.D.C.2001) (Lamberth, J.). Similarly, depriving a hostage "of adequate food, light, toilet facilities, and medical care for 564 days amounts to torture." *74 *Jenco v. Islamic Republic of Iran*, 154 F.Supp.2d 27 (D.D.C.2001) (Lamberth, J.). The facts of these cases, however, do not support a similar conclusion. Unlike in *Sutherland* and *Jenco*, the defendants here never had custody or physical control over the victims of the Beirut bombing. Hezbollah did not kidnap or imprison the soldiers of the 24th MAU; indeed, the contact between Iranian agents and the victims in these cases was fleeting-only the time it took to drive an explosives-laden truck into a building. The Beirut bombing, therefore, does not constitute torture under the FSIA.

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“[E]xtrajudicial killing” means a [(1)] deliberated killing [(2)] not authorized by a previous judgment pronounced by a regularly constituted court [(3)] affording all the judicial guarantees which are recognized as indispensable by civilized peoples. [(4)] Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

Torture Victim Protection Act of 1991, Pub.L. No. 102-256, § 3(a), 106 Stat. 73, 73 (1992); § 1605A(h)(7). As this Court has previously found, and now reconfirms, Hezbollah, Iran, and MOIS deliberately killed 241 American military servicemen in the Beirut bombing. *Peterson I*, 264 F.Supp.2d at 61. They in no way acted as a regularly constituted court and had no authority to authorize such killings. *Id.* Indeed, through their use of terroristic violence defendants acted contrary to, not in conformity with, those guarantees recognized as indispensable by civilized people. The Beirut bombing, therefore, constitutes extrajudicial killing.

“[M]aterial support or resources” means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel ..., and transportation, except medicine or religious materials.

18 U.S.C. § 2339A(b)(1); § 1605A(h)(3). Regarding financing, “[t]his Court has determined that ‘the routine provision of financial assistance to a terrorist group in support of its terrorist activities constitutes providing material support and resources for a terrorist act within the meaning of the [terrorism exception of the FSIA].’ ” *In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d at 42 (quoting *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 19 (D.D.C.1998) (internal quotation omitted) (Lamberth, J.)). Additionally, this Court has found that “a plaintiff need not establish that the material

support or resources provided by a foreign state for a terrorist act contributed directly to the act from which his claim arises.” *Id.* (quoting *Flatow*, 999 F.Supp. at 19). As this Court has previously found, and now reconfirms, Iran and MOIS, through their officials and employees, provided financial support and technical expertise to Hezbollah, which, acting at the behest and under the operational control of defendants, was an agent of defendants. *Peterson I*, 264 F.Supp.2d at 60-61. Further, such provision was done within the scope of the officers’ office, employees’ employment, and Hezbollah’s agency: the goal of all involved was to support the execution of terrorist violence against the United States. Defendants, therefore, provided material support and resources for the Beirut bombing.

2. Entities Liable.

Second, concerning the entity that committed the act or provided the provision of material support and resources therefor, *75 the wording of the FSIA is, at times, repetitive. Here, the section setting forth the elements of the federal cause of action specifies that liability for “acts described in subsection (a)(1)” of the FSIA terrorism exception shall apply only where such acts are committed by “that foreign state, or of an official, employee, or agent of that foreign state.” § 1605A(c) One of the acts in subsection (a)(1) is the provision of material support or resources for another act, such as extrajudicial killing, but only where such provision is made “by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.” § 1605A(a)(1). The result is that, in the analysis of liability for the provision of material support for extrajudicial killing, the lines are blurred. The definition of such provision includes not only the provision itself, but requires that the provision be made by a foreign state or an official, employee, of agent thereof. The second element then again requires that the act for which liability attaches—here, provision—be committed by a foreign state or an official, employee, or agent thereof. But in the analysis of liability for ex-

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trajudicial killing, the first element-the act-and the second element-the actor-are not repetitive. The definition of extrajudicial killing does not specify that the killer be a foreign state or an official, employee, or agent thereof; that part is left to the second element.

Thus, in the paragraphs above concerning the first element of liability for provision, the court has already concluded that officials, employees, and agents of defendants provided material support and resources to Hezbollah, and did so within the scope of their office, employment, and agency. As to the second element, then, the Court concludes once more that such provision was made by officials, employees, and agents of defendants. Concerning extrajudicial killing, the Court similarly concludes that Hezbollah, because it acted at the behest and under the operational control of defendants, acted as agents of defendants. Defendants are therefore liable because the extrajudicial killing and provision of material support and resources were committed by officials, employees, and agents of Iran and MOIS. *Peterson I*, 264 F.Supp.2d at 60-61. Or, as one keen eyewitness to the attack put it the day after the bombing: “The Iranians have blood on their hands. The terrorists were too well equipped. You don’t go to a local drug store and buy a couple of tons of TNT. That takes the support of a government.” PETIT, *supra* note 7, at 202.

3. Causation and Injury Generally.

As discussed above, there is no but-for causation requirement under the FSIA; proximate causation is sufficient. See discussion *supra* Part IV.A.2. The Court then noted that plaintiffs had alleged several connections between defendants and the attack: Iran’s high level technical participation facilitated the construction and deployment of the bomb so as to maximize its destructive effect, defendants ordered the attack and oversaw its operation, and Iran financially supported Hezbollah. See *id.*

Above, the court only considered these connections

as allegations; now, it finds once again that these allegations are true. See *Peterson I*, 264 F.Supp.2d at 58. “[I]t is beyond question that Hezbollah and its agents received massive material and technical support from the Iranian government.” *Id.* “The sophistication demonstrated in the placement of an explosive charge in the center of the Marine barracks building and the devastating effect of the detonation of the charge indicates that it is highly unlikely that this attack could have resulted in such loss of life without the assistance of regular military *76 forces, such as those of Iran.” *Id.* The Court therefore concludes that these connections constitute proximate causation of plaintiffs’ injuries, to the extent that they actually suffered such injuries under a theory of recovery advanced by plaintiffs.

[13] In these cases, servicemen who survived the attack advance theories of liability of assault, battery, and intentional infliction of emotional distress; estates of servicemen who did not survive advance similar theories in a survival action; estates of such servicemen also advance wrongful-death theories of recovery; and family members of such servicemen advance theories of intentional infliction of emotional distress. The Court is presented with the difficulty of evaluating these claims under the FSIA-created cause of action, which does not spell out the elements of these claims that the Court should apply. Thus, the Court “is forced ... to apply general principles of tort law-an approach that in effect looks no different from one that explicitly applies federal common law”-but “because these actions arise solely from statutory rights, they are not in theory matters of federal common law.” *Heiser v. Islamic Republic of Iran*, 659 F.Supp.2d 20, 24 (D.D.C.2009) (Lamberth, C.J.) [hereinafter *Heiser II*]. The Court of Appeals addressed this difficulty in *Bettis v. Islamic Republic of Iran*:

The term “federal common law” seems to us to be a misnomer. Indeed, it is a mistake, we think, to label actions under the FSIA and Flatow Amendment for solatium damages as “federal common law” cases, for these actions are based

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on statutory rights.... Rather, ... because the FSIA instructs that “the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances,” 28 U.S.C. § 1606, it in effect instructs federal judges to find the relevant law, not to make it.

315 F.3d 325, 333 (D.C.Cir.2003). District courts thus look to Restatements, among other sources, “to find and apply what are generally considered to be the well-established standards of state common law.” *Heiser II*, 659 F.Supp.2d at 24. The Court will therefore now “turn to the Restatement (Second) of Torts ‘as a proxy for state common law.’ ” *Id.* (quoting *Bettis*, 315 F.3d at 333; citing *Sutherland*, 151 F.Supp.2d at 48-50 (applying the Restatement to several tort claims)).

4 Claims Brought by Survivors of the Attack: Assault, Battery, and IIED.

[14] Survivors of the Beirut bombing have alleged assault, battery, and IIED in *Valore* and *Spencer*. Defendants are liable under all three theories to these plaintiffs, except Floyd Carpenter, who the Court must dismiss without prejudice for want of prosecution.

Iran is liable for assault in these cases if, when it committed extrajudicial killing or provided material support and resources therefor, (1) it 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.” RESTATEMENT (SECOND) OF TORTS § 21(1). It is clear that defendants acted with intent to cause harmful contact and the immediate apprehension thereof: acts of terrorism are, by their very nature, intended to harm and to terrify by instilling fear of further harm. Accepting these plaintiffs’ uncontroverted assertions that they did, in fact, fear such harm because of the attack, the Court concludes that defendants are liable for assault.

Survivors have also alleged battery in *Valore* and *Spencer*. Iran is liable for *77 battery in these cases if, when it committed extrajudicial killing or provided material support and resources therefor, it acted “intending to cause a harmful or offensive contact with ..., or an imminent apprehension of such a contact” by, those attacked and (2) “a harmful contact with” those attacked “directly or indirectly result[ed].” RESTATEMENT (SECOND) OF TORTS § 13. Harmful contact is that which results in “any physical impairment of the condition of another’s body, or physical pain or illness.” *Id.* § 15. Again, it is clear that defendants acted with intent to cause harmful contact and the immediate apprehension thereof: acts of terrorism are, by their very nature, intended to harm and to terrify by instilling fear of such harm. Accepting these plaintiffs’ uncontroverted assertions that they did, in fact, suffer severe physical injury from the blast, the Court concludes that defendants are liable for battery.

Finally, survivors have also alleged IIED in *Valore* and *Spencer*. “One 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(1). “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 (D.D.C.2009) (citing *Stethem v. Islamic Republic of Iran*, 201 F.Supp.2d 78, 89 (D.D.C.2002)). Accepting these plaintiffs’ uncontroverted assertions that they did, in fact, suffer severe emotional and physical injury, the Court concludes that defendants are liable for IIED.

The Court notes that these plaintiffs who have claimed assault, battery, and IIED may recover under only one of any such theories, as multiple recovery is prohibited. *See, e.g., Beer v. Islamic Republic of Iran*, 574 F.Supp.2d 1, 13 (D.D.C.2008)

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(prohibiting double recovery for both IIED and wrongful death) (Lamberth, C.J.). The Court considers the amount of recovery to which these plaintiffs are entitled in the section on damages below.

5. Claims Brought by Estates of Decedents as Survival Actions.

[15] A survival action is one that accrued in a decedent's favor before his death that may be brought after his death by his estate; in other words, it is a claim that could have been brought by the decedent, had he lived to bring it. See RESTATEMENT (SECOND) OF TORTS § 926; see, e.g., *Peterson II*, 515 F.Supp.2d at 53 (evaluating claims brought by decedents' estates "for pain and suffering incurred during the time at which they were alive after the attack and the time at which they died"). Only two estate-plaintiffs have brought such claims under the FSIA-created cause of action, one in *Arnold* and one in *Spencer*, alleging pain and suffering stemming from assault, battery, and IIED. These plaintiffs are the Estate of Moses Arnold, Jr., and the Estate of James Silvia.

[16] For both of these plaintiffs, special masters who took evidence in these cases were unable to conclude that decedents' deaths were anything but instantaneous. The Court is thus constrained by the rule that "[i]f death was instantaneous there can be no recovery ... for pain and suffering" of the decedent. *Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97, 112 (D.D.C.2000) (citation omitted). Cf. *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1 (D.D.C.2000) (awarding damages to estates of decedents who endured several minutes of pain and suffering prior to death) (Lamberth, J.); *Flatow*, 999 F.Supp. 1 (awarding damages to estates of *78 decedents who endured several hours of pain and suffering prior to death). The Court must therefore dismiss these plaintiffs' survival claims with prejudice.

6. Claims Brought by Estates of Decedents for Wrongful Death.

A wrongful-death action is one brought by a decedent's heirs at law, and may be brought through the estate of the decedent, "for economic losses which result from a decedent's premature death." *Flatow*, 999 F.Supp. at 27. Only two estate-plaintiffs have brought such claims under the FSIA-created cause of action, one in *Arnold* and one in *Spencer*. These plaintiffs are the Estate of Moses Arnold, Jr., and the Estate of James Silvia. Because defendants are liable for the deaths of the decedents, defendants are also liable for the economic damages caused to decedents' estates. The Court considers the amount of recovery to which these plaintiffs are entitled in the section on damages below.

7. Claims Brought by Family Members of Victims for IIED.

[17] Several family members of and estates of decedents have brought IIED claims, alleging that extreme and outrageous conduct directed at third-person relatives caused these plaintiffs severe emotional distress. The Court notes at the outset that these claims are invalid where made by estates on behalf of beneficiaries thereof. Several estate-plaintiffs have alleged that defendants are liable for intentional infliction of emotional distress to various decedents' heirs at law, but these heirs are not named plaintiffs-only the estates are. The only type of IIED claim an estate can make is one for the decedent himself as a survival action. (Two estate-plaintiffs from *Bonk*-Estate of Rose Rotondo and Estate of Luis Rotondo-make valid IIED claims as survival actions.) Solatium, the sort of damages sought for IIED, "is traditionally a compensatory damage which belongs to the individual heir personally." *Flatow*, 999 F.Supp. at 29. The Court cannot award damages to non-party heirs for IIED alleged by such heirs. Accordingly, the Court must dismiss claims brought by estates for IIED allegedly suffered by estates' beneficiaries.^{FN14}

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FN14. The Court notes that these beneficiaries could pursue IIED claims as individually named plaintiffs in another suit, so long as any such suit would satisfy the relatedness requirements of § 1083(c), discussed *supra* Part II.A., and the temporal limitations of § 1605A(b) and § 1083(c), discussed *supra* Part IV.A.4.

As for other individually named family-member plaintiffs and estate-plaintiffs pursuing survival actions, according to the Restatement, Iran is liable in these cases under such claims if it (1) engaged in extreme and outrageous conduct (2) which was directed at persons other than plaintiffs (3) which intentionally or recklessly caused severe emotional distress, but not necessarily bodily harm, (4) to such persons' immediate family members-the immediate-family requirement-who were present at the time such conduct occurred-the presence requirement. RESTATEMENT (SECOND) OF TORTS § 46(1)-(2)(a). Although this fourth element appears to prohibit recovery for emotional injury by those not in the immediate family of the person to whom extreme and outrageous conduct is directed or by those who are not present at the time such conduct occurs, the drafters of the Restatement include a caveat: "The [American Law] Institute expresses no opinion as to whether there may not be other circumstances under which the actor may be subject to liability *79 for the intentional or reckless infliction of emotional distress." RESTATEMENT (SECOND) OF TORTS § 46 Caveat. In other words, there may be instances where it is appropriate to permit recovery by individuals not satisfying the immediate-family or presence requirements.

[18] Plaintiffs have easily proven the first three elements. "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 (D.D.C.2009) (citing *Stethem v. Islamic Republic of Iran*, 201 F.Supp.2d 78, 89 (D.D.C.2002)), and the

conduct was directed at decedents, not plaintiffs. The immediate-family and presence requirements, however, require more discussion.

This Court has previously "adopted the strict meaning of 'immediately family,' defined as one's spouse, parents, siblings, and children." *Heiser II*, 659 F.Supp.2d at 28 (citing *Jenco*, 154 F.Supp.2d at 36 n. 8). This definition, which is "consistent with the traditional understanding of one's immediate family," *id.*, does not include "'family members,' 'near relatives,' 'close associates,' or persons with whom the victim has 'close emotional ties,'" *Bettis*, 315 F.3d at 336. It does include, however, immediate family members of the half blood, as "[s]iblings of half-blood to the servicemen in this case are presumed to recover as a full-blood sibling would." *Peterson II*, 515 F.Supp.2d at 52.

[19] Nieces, nephews, aunts, and uncles, therefore, are not members of one's immediate family. *Heiser II*, 659 F.Supp.2d at 28; *Peterson II*, 515 F.Supp.2d at 52. Neither are non-adoptive stepparents or non-adopted stepchildren. *Heiser II*, 659 F.Supp.2d at 29; *Peterson II*, 515 F.Supp.2d at 47, 49. But, in accordance with the Restatement's caveat, and as this Circuit has noted, "some courts have allowed relatives who either *resided in the same household* with the victim or were *legal guardians* to recover for negligent infliction of emotional distress" where such relatives did not satisfy the immediate-family requirement. *Bettis*, 315 F.3d at 337 (emphasis in original) (citing *Sullivan v. Ford Motor Co.*, No. 97-cv-593, 2000 WL 343777 (S.D.N.Y. Mar. 31, 2000); *Garcia v. San Antonio Housing Auth.*, 859 S.W.2d 78, 81 (Tex.Ct.App.1993); *Kriventsov v. San Rafael Taxicabs, Inc.*, 186 Cal.App.3d 1445, 229 Cal.Rptr. 768 (Cal.Ct.App.1986)). The Court of Appeals reasoned that where claimants "were members of the victim's household" such that they were "viewed as the functional equivalents of family members," the immediate-family requirement could potentially be stretched to include nieces and nephews, aunts and uncles, non-adoptive stepparents, non-adopted stepchildren, and stepsiblings. *Id.* The

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mere existence of a “close relationship” between a claimant who is a non-immediate family member and the victim, however, falls “far short of what § 46(2)(a) requires.” *Id.* Several plaintiffs in *Bonk* do not fall within the traditional definition of immediate family. The Court will now evaluate whether such plaintiffs are functional equivalents of immediate family members.

[20] Concerning Carl Kirkwood, Sr., it is unclear from the special-master report whether Mr. Kirkwood, Sr., was the adoptive or non-adoptive stepfather of decedent James E. McDonough. In either case, Mr. Kirkwood, Sr., satisfies the immediate-family requirement. If an adoptive stepfather, he is treated as though the natural father. If a non-adoptive stepfather, the special master in this case who recommended damages relating to Mr. McDonough's death reported that Mr. Kirkwood, Sr., considered Mr. McDonough to be his son and vice versa. Mr. Kirkwood, Sr., *80 would hunt and fish with Mr. McDonough, who he treated as his own son. Because Mr. McDonough grew up with Mr. Kirkwood, Sr., as though they constituted a natural family, the Court concludes that Mr. Kirkwood, Sr., if non-adoptive, was the functional equivalent of a father.

Concerning Carl Kirkwood, Jr., it is unclear from the special-master report whether Mr. Kirkwood, Jr., was the half-brother or stepbrother of Mr. McDonough. In either case, Mr. Kirkwood, Jr., satisfies the immediate-family requirement. If a half-brother, he is treated as though a full-blood relative. If a stepbrother, Mr. Kirkwood, Jr., who remembers fishing and swimming with and was treated like a brother by Mr. McDonough, is the functional equivalent of a brother.

Danielle DiGiovanni, Lisa DiGiovanni, and Robert DiGiovanni were the nieces and uncle, respectively, of decedent Luis J. Rotondo. The special master has not reported any evidence that these non-immediate family members were members of Mr. Rotondo's household such that they were the functional equivalent of immediate family members of Mr. Ro-

tondo. These three plaintiffs therefore lack standing to bring a claim for IED under the FSIA and their claims must be dismissed.

All other plaintiffs bringing this claim suffered a legally cognizable injury under the FSIA. The relationships of each of these plaintiffs to their family members who were victims of the attack are identified in the tables in the separate Order and Judgment issued this date.

[21] Concerning the presence requirement, the Restatement's caveat “suggests that ... ‘[i]f the defendants' conduct is sufficiently outrageous and intended to inflict severe emotional harm upon a person which is not present, no essential reason of logic or policy prevents liability.’ ” *Heiser II*, 659 F.Supp.2d at 27 (quoting DAN B. DOBBS, *THE LAW OF TORTS* § 307, at 834 (2000)). As this Court recently noted, “[t]errorism, unique among the types of tortious activities in both its extreme methods and aims, passes this test easily.” *Id.* One therefore need not be present at the time of a terrorist attack upon a third person to recover for severe emotional injuries suffered as a result. These plaintiffs, although not present at the Beirut bombing, may therefore recover for the emotional injuries they suffered as a result of that attack.

D. Jurisdiction.

In satisfaction of the final element of the FSIA-created cause of action, the Court has jurisdiction over these cases, *see* discussion *supra* Part IV., for money damages, *see* discussion *infra* Part VII.

E. Conclusions Concerning Liability Under the FSIA-Created Cause of Action.

In these cases, both defendants are considered a foreign state and were and are designated state sponsors of terrorism at all times and for reasons giving rise to liability under the FSIA. Additionally, the bases for the alleged liability of these defendants are actions of their officials, employees,

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and agents. Defendants are therefore subject to liability under the FSIA-created cause of action. Further, plaintiffs are or were members of the armed forces, nationals of the United States, or legal representatives of such persons. Plaintiffs therefore fall into a class of individuals to whom defendants may be liable. Finally, though not liable for torture, defendants are liable for extrajudicial killing and the provision of material support and resources for such killing, which was committed by officials, employees, and agents of defendants; which caused injury under several theories of *81 liability; and for which the Court has jurisdiction for money damages. Therefore, those plaintiffs who have made claims under the FSIA-created cause of action may recover the appropriate amount of damages as determined by the Court *infra* Part VII.

VI. Liability Under District of Columbia Law.

Plaintiffs in *Valore* continue to pursue survival actions and wrongful-death claims under District of Columbia law, despite the availability of similar actions and claims under the FSIA-created cause of action. The Court, therefore, now evaluates these claims under D.C. law.^{FN15}

FN15. Although the FSIA terrorism exception now includes an independent federal cause of action, § 1605A(c), plaintiffs may still pursue claims based on law of states of the United States or foreign nations in federal court under the FSIA terrorism exception's jurisdiction-conferring provisions, § 1605A(a)-(b). For example, another Court of this District recently evaluated a wrongful-death claim brought under the FSIA-created cause of action, but noted that plaintiffs in that case also alleged wrongful death under law of the District of Columbia and the State of Israel. *Belkin v. Islamic Republic of Iran*, 667 F.Supp.2d 8, 22-23 (D.D.C.2009). The Court in *Belkin* proceeded under only the FSIA-created cause of action merely because concern for

multiple recovery prevented the Court from proceeding under all three, not because the existence of the FSIA-created cause of action prevents plaintiffs from proceeding under state or foreign law. *Id.*

A. Survivor Actions.

[22] According to D.C. law: “On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to his death, the right of action, for all such cases, survives in favor of or against the legal representative of the deceased.” D.C.CODE § 12-101. In other words, in the District of Columbia, a decedent's estate may pursue after the decedent's death a claim the decedent could have pursued but for his death. *See, e.g., Peterson II*, 515 F.Supp.2d at 53 (evaluating claims brought by decedents' estates “for pain and suffering incurred during the time at which they were alive after the attack and the time at which they died”).

For all of these plaintiffs, special masters who took evidence in this case were unable to conclude that decedents' deaths were anything but instantaneous. The Court is thus constrained by the rule that “[i]f death was instantaneous there can be no recovery ... for pain and suffering” of the decedent. *Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97, 112 (D.D.C.2000) (citation omitted). *Cf. Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1 (D.D.C.2000) (awarding damages to estates of decedents who endured several minutes of pain and suffering prior to death) (Lamberth, J.); *Flatow*, 999 F.Supp. 1 (awarding damages to estates of decedents who endured several hours of pain and suffering prior to death). The Court must therefore dismiss these plaintiffs' survival claims with prejudice.

B. Wrongful-death Claims.

[23] According to D.C. law:

When, by an injury done or happening within the

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limits of the District, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect, or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is married or domestic partner, entitle the spouse or domestic partner, either separately or by joining with the injured person, to maintain an action and recover damages, the person who or corporation that is liable if death does not ensue *82 is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony.

D.C.CODE § 16-2701(a). In other words, a decedent's heirs may pursue claims for “for economic losses which result from a decedent's premature death.” *Flatow*, 999 F.Supp. at 27. However, the D.C. Wrongful Death Act contains an explicit geographic limitation to “injury done or happening within the limits of the District” causing death for which a wrongful-death action may be pursued. § 16-2701(a).

The Court recognizes that it has, along with other courts of this District, previously permitted recovery under § 16-2701 in cases brought under the FSIA terrorism exception for deaths resulting from injuries inflicted beyond the borders of the District. *See, e.g., Ben-Rafael*, 540 F.Supp.2d at 58-59; *Bodoff v. Islamic Republic of Iran*, 424 F.Supp.2d 74, 85 (2006) (D.D.C.2006) (Lamberth, J.); *Wagner v. Islamic Republic of Iran*, 172 F.Supp.2d 128, 135 n. 11 (2001). Prior to the creation of an independent federal cause of action under § 1605A, it may have been permissible for courts to give effect to Congress' intent that foreign nations be held liable for the terrorist activities in which they engage by permitting recovery under state tort law “even though a literal reading of the text may arguably bar recovery.” *Ben-Rafael*, 540 F.Supp.2d at 58. In the wake of the enactment of the independent federal cause of action in § 1605A, however, such a construction must be avoided.

[24] Because the injuries causing the deaths underpinning these plaintiffs' wrongful-death claims occurred in Beirut, Lebanon, which is well beyond the boundaries of the District of Columbia, the Court must conclude that consideration of plaintiffs' claims solely under § 16-2701 would deny these plaintiffs recovery. But plaintiffs are in luck: as this Court recently noted, “[t]o the extent that the complaint continues to assert District of Columbia law, this Court has in the past recognized that the laws of this District are an appropriate model for the development of a federal standard with respect to liability in actions against state sponsors of terrorism.” *In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d at 100 (citing *Flatow*, 999 F.Supp. at 15 n. 6). The Court therefore concluded that *Valore* “may now proceed under § 1605A.” Accordingly, the Court construes plaintiffs' wrongful-death claims as though pled under § 1605A, not § 16-2701. Because defendants are liable for the deaths of decedents, defendants are also liable for the economic damages caused to decedents' estates.

C. Conclusions Concerning Liability Under District of Columbia Law.

Estate-plaintiffs in *Valore* pursued survival actions and wrongful-death claims under District of Columbia law. Concerning survival actions, because there is no evidence of pain and suffering to decedents between their injuries and deaths, claims seeking damages for such pain and suffering must be dismissed. Concerning wrongful-death claims, although plaintiffs are not eligible to recover under D.C. law due to the geographic limitations thereof, the Court construes plaintiffs' claims under § 1605A, permitting recovery for economic damages caused to decedents' estates by decedents' wrongful deaths. Therefore, those plaintiffs in *Valore* who have made wrongful-death claims may recover the appropriate amount of damages as determined by the Court *infra* Part VII

VII. Damages.

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The Court hereby adopts, just as it did in *Peterson*, all facts found and recommendations*83 made by the special masters relating to all plaintiffs in these cases,^{FN16} except “to the extent that the special masters have awarded a plaintiff more or less than the aforementioned respective award amounts based upon the plaintiff’s relation to the service-man.” *Peterson II*, 515 F.Supp.2d at 52-53. Where recommendations deviate from the Court’s damages framework, “those amounts shall be altered so as to conform with the respective award amounts set forth” in the framework, unless otherwise noted. *Id.* at 53.

FN16. Note that in *Bonk*, the reports were originally filed in *Peterson*, the case from which several plaintiffs in *Bonk* were dismissed; they have not been filed by special masters appointed in *Bonk*. The Court, therefore, hereby takes judicial notice of these reports. In so doing, the Court “look[s] at the contents of the [m]asters’ [r]eport[s] in an evidentiary fashion.” *In re A.H. Robins Co.*, 107 F.R.D. 2, 10 (D.Kan.1985).

Note also that several reports in these consolidated cases contain findings and recommendations concerning individuals who, for whatever reasons, are not plaintiffs currently before the Court. The Court thus restricts its adoption of facts found and recommendations made to only those found and made about plaintiffs in these cases.

Most plaintiffs alleged in their complaints claims under the FSIA-created cause of action. Those that did not so allege either petitioned the Court to construe claims initially brought under state law as though they had been brought under § 1605A, *see supra* notes 2-3 (all claims in *Spencer*), or were given a saving construction to their claims brought under D.C. law as though they had been brought under § 1605A, *see* discussion *supra* Part VI.B. (wrongful-death claims in *Valore*). Therefore, all

damages awarded in these consolidated cases are awarded under the FSIA-created cause of action.

A. Damages Available Under the FSIA-Created Cause of Action.

Damages available under the FSIA-created cause of action “include economic damages, solatium, pain and suffering, and punitive damages.” § 1605A(c). Accordingly, those who survived the attack can recover damages for their pain and suffering, as well as any other economic losses caused by their injuries; estates of those who did not survive 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.

[25] “To obtain damages against defendants in an FSIA action, the plaintiff must prove that the consequences of the defendants’ conduct were ‘reasonably certain (i.e., more likely than not) to occur, and must prove the amount of the damages by a reasonable estimate consistent with this [Circuit’s] application of the American rule on damages.’ ” *Salazar*, 370 F.Supp.2d at 115-16 (quoting *Hill v. Republic of Iraq*, 328 F.3d 680, 681 (D.C.Cir.2003) (internal quotations omitted)). As discussed above, plaintiffs have proven that the defendants’ commission of acts of extrajudicial killing and provision of material support and resources for such killing was reasonably certain to-and indeed intended to-cause injury to plaintiffs. The Court now discusses reasonable estimates of the different damages sought under the FSIA-created cause of action. The damages awarded are laid out in the tables in the separate Order and Judgment issued this date.

B. Damages Awarded in These Consolidated Cases.

1. Pain and Suffering of Survivors.

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[26] Damages for surviving victims are determined based upon an assessment of such factors as “the severity of the pain *84 immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life.” *Peterson II*, 515 F.Supp.2d at 52 n. 26 (quotation omitted). “In awarding pain and suffering damages, the Court must take pains to ensure that individuals with similar injuries receive similar awards.” *Peterson II*, 515 F.Supp.2d at 54. Thus in *Peterson*, the Court granted a baseline award of \$5 million to individuals suffering such physical injuries as compound fractures, severe flesh wounds, and wounds and scars from shrapnel, as well as “lasting and severe psychological pain.” *Id.* The Court was willing to depart upward from this baseline to \$7.5-\$12 million in more severe instances of physical and psychological pain, such as where victims suffered relatively more numerous and severe injuries, were rendered quadriplegic, partially lost vision and hearing, or were mistaken for dead, as was one soldier who “was placed in a body bag [and] buried alive in a morgue for four days until someone heard him moaning in pain.” *Id.* Similarly, the Court was willing to depart downward to \$2-\$3 million where victims suffered only minor shrapnel injuries or minor injury from small-arms fire. *Id.* With these considerations in mind, the Court now considers whether departures recommended by the special masters are warranted.

a. Upward Departures.

[27] Only one upward departure is warranted among these claims, for Terance J. Valore in *Valore*. Mr. Valore suffered particularly horrendous physical injuries, in both number and severity. Immediately after the blast, Mr. Valore lost consciousness for about 30 seconds. He regained consciousness to find his skin hanging from his body; severe hole-like wounds passing through his chest; pieces of metal, concrete, and glass embedded in his body; and his leg split open. Mr. Valore had been in the middle of the fireball. His clothes had been blown

off, all of hair the on his body had been burned off, and burns covered 90% of his body. The special master recommended a significant departure from \$5 million to \$10 million for Mr. Valore. Although the Court finds that the number and severity of Mr. Valore's injuries warrant an upward departure, the Court also finds that a doubling of the award would be excessive. Accordingly, and in conformity with similar awards made in *Peterson*, the Court will depart up from \$5,000,000.00 to \$7,500,000.00.

b. Downward Departures.

[28] Only one downward departure is warranted among these claims, for Donald R. Pontillo in *Valore*. The force of the explosion knocked Mr. Pontillo to the ground, but because he was about 150-200 feet from the explosion, he was fortunate to not have been seriously physically injured. His injuries were instead primarily emotional, based on his experience doing what he could to help in the time immediately after the attack. Mr. Pontillo helped pull about 100 men from the debris of the exploded building. One of these men begged him not to leave the man's side. Mr. Pontillo assured the man he would return, but when he did, the man was dead. Mr. Pontillo later visited the hanger that had been turned into a makeshift morgue to search for survivors he hoped had been mistaken for dead. He found one individual who appeared to be smiling, but quickly realized the man was dead; the entire back of the man's head was gone. He broke down crying. Some days later, Mr. Pontillo tried to free a dead body from the rubble by pulling it from the legs. Upon hearing and feeling a suctioning*85 sound, Mr. Pontillo realized the leg had come off in his hands. He vomited. The Court concludes that Mr. Pontillo's suffered severe emotional injuries, but considering his lack of severe physical injuries, the Court will heed the special master's recommendation to depart down from \$5,000,000.00 to \$1,500,000.00.

c. Unwarranted Departures.

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The recommendations made by special master for Michael Harris in *Valore* did not conform to the Court's damages framework, but there the master has presented no evidence of aggravating circumstances warranting a departure from that framework. Accordingly, the Court will award Mr. Harris damages in conformity with that framework.

2. Economic Loss to Survivors.

In addition to pain and suffering, several plaintiffs who survived the attack, all in *Valore*, proved to the satisfaction of the special master, and thus to the satisfaction of the Court, lost wages resulting from permanent and debilitating injuries suffered in the attack.

3. Economic Loss to Estates.

Several estates, including those from *Valore* the claims of which have been construed under § 1605A, have proven to the satisfaction of the special master, and thus to the satisfaction of the Court, loss of accretions to the estate resulting from the wrongful death of decedents in the attack.

4. Solatium to Family Members.

[29] Under the FSIA, a solatium claim is indistinguishable from an IIED claim. *Heiser II*, 659 F.Supp.2d at 27 n. 4. Solatium is awarded to compensate the “the mental anguish, bereavement[,] and grief that those with a close personal relationship to a decedent experience as the result of the decedent's death, as well as the harm caused by the loss of the decedent[s] society and comfort.” *Belkin*, 667 F.Supp.2d at 22 (citing *Dammarell v. Islamic Republic of Iran*, 281 F.Supp.2d 105, 196-97 (D.D.C.2003); *Elahi*, 124 F.Supp.2d at 110). “In determining the appropriate award of damages for solatium, the Court may look to prior decisions awarding damages for intentional infliction of emotional distress as well as to decisions regarding solatium.” *Acosta v. Islamic Republic of Ir-*

an, 574 F.Supp.2d 15, 29 (D.D.C.2008) (citing *Haim v. Islamic Republic of Iran*, 425 F.Supp.2d 56, 71 (D.D.C.2006) (Lamberth, J.)) (Lamberth, C.J.).

In *Peterson*, the action to which these cases is most closely related, this Court adopted the framework set forth in *Heiser* as “an appropriate measure of damages for the family members of victims who died” in the Beirut bombing. *Peterson II*, 515 F.Supp.2d at 51 (citing *Heiser I*, 466 F.Supp.2d at 271-356). That framework awarded valid claims brought by spouses, parents, and siblings of deceased servicemen \$8 million, \$5 million, and \$2.5 million each, respectively. Relatives of surviving servicemen received awards valued at half of the awards to family members of the deceased: \$4 million for spouses, \$2.5 million for parents, and \$1.25 million for siblings. Although “the loss suffered” by family members of victims “is undeniably difficult to quantify,” *Heiser I*, 466 F.Supp.2d at 269, a review of similar cases shows that the damages framework as laid out in *Peterson* has strong precedential support, *see, e.g., Brewer*, 664 F.Supp.2d at 57-58; *Heiser II*, 659 F.Supp.2d at 27 n. 4; *Anderson v. Islamic Republic of Iran*, 90 F.Supp.2d 107, 113 (D.D.C.2000); *Eisenfeld*, 172 F.Supp.2d at 10-11; *Flatow*, 999 F.Supp. at 29-32.

[30] These numbers, however, are not set in stone. The Court may award greater amounts in cases “with aggravating circumstances,”*⁸⁶ *Greenbaum v. Islamic Republic of Iran*, 451 F.Supp.2d 90, 108 (D.D.C.2006) (Lamberth, J.), indicated by such things as “[t]estimony which describes a general feeling of permanent loss or change caused by decedent's absence” or “[m]edical treatment for depression and related affective disorders,” *Flatow*, 999 F.Supp. at 31. Such departures are usually relatively small, absent “circumstances that appreciably worsen” a claimant's “pain and suffering, such as cases involving torture or kidnapping” of the party to whom extreme and outrageous conduct was directed. *Greenbaum*, 451 F.Supp.2d at 108 (departing a widower's award upward from \$8 mil-

lion to \$9 million upon consideration of “the severity of his pain and suffering due to the loss of his wife and unborn first child”). Conversely, the Court may depart downward in amount where the relationship between the claimant and the decedent is more attenuated. *See, e.g., Smith ex rel. Smith v. Islamic Emirate of Afghanistan*, 262 F.Supp.2d 217, 236 (S.D.N.Y.2003). With these considerations in mind, the Court now considers whether departures recommended by the special masters are warranted.

a. Upward Departures.

Two plaintiffs' IIED claims warrant upward departure from the damages set forth in the Court's damages framework. The first such plaintiff, from *Valore*, is Luisa Alvarado. Ms. Alvarado, sister of surviving victim Pedro Alvarado, Jr., is one of 11 immediate family members of Mr. Alvarado, Jr., who today bring valid IIED claims, but her emotional suffering stands out as particularly devastating. As the special master reported, Ms. Alvarado has suffered several nervous breakdowns, at least one of which required hospitalization, from which she has never fully recovered. The special master recommended that Ms. Alvarado be awarded twice the amount ordinarily awarded to sisters of survivors. Although the Court finds that Ms. Alvarado's uniquely acute suffering warrants an upward departure, the Court also finds that a doubling of the award would be excessive. Accordingly, the Court will depart up by 25% from \$1,250,000.00 to \$1,562,500.00.

The second such plaintiff, from *Spencer*, is Lynne Michol Spencer. Ms. Spencer lost both her husband, Stephen Eugene Spencer, and her brother, James Silvia—the two family members to whom she had the closest personal relationship—in the Beirut bombing. The tragic double loss has destroyed Ms. Spencer; she became self-destructive, turning to alcohol and drugs in an unfortunate attempt to dull her emotional pain. The special master recommended that Mr. Spencer be awarded \$1 million more than the \$2.5 million ordinarily awarded to siblings

of decedents, but also be awarded the \$8 million ordinarily awarded to spouses of decedents. Although the Court finds that Ms. Spencer's uniquely acute suffering qua her brother warrants an upward departure, the Court also finds that a departure amount of \$1 million would be excessive. The Court also concludes, like the special master, that although Ms. Spencer's suffering is particularly profound in light of the loss of both her brother and husband, the fact that her marriage was brief—the Spencers had been married for only six months when Mr. Spencer was killed—counsels against any upward departure in the award relating to her husband. Accordingly, the Court will depart up by 25% from \$2,500,000.00 to \$3,125,000.00 in the award relating to Mr. Silvia, but will not depart in the award relating to Mr. Spencer.

b. Downward Departures.

Two plaintiffs' IIED claims warrant downward departure from the damages set forth in the Court's damages framework. The first such plaintiff, from *Valore*, is Johnny Thompson, brother of Willie G. Thompson, who survived the attack. Johnny did not visit his injured brother for two years after the attack. He explained that he was too busy raising a family of his own and with his own military service to travel from Fort Hood, TX, to Willie's home in South Carolina. During this time, Johnny learned of the progress of Willie's recovery, but he did so from his mother, not Willie himself. It is not clear why, even with family and military obligations, Johnny did not visit or even talk with his brother Willie for some two years after the Beirut bombing. The Court is constrained to conclude, as was the special master, that the relationship between Johnny and Willie was attenuated, warranting a downward departure. The special master recommended a departure from the \$1.25 million ordinarily awarded to siblings of survivors to a mere \$300,000.00. Despite the attenuation of the brothers' relationship, the Court cannot accept such a drastic departure. Johnny did testify that the bombing severely upset him, so much so that he

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was given several days of compassionate leave because he was unable to perform his military duties. Accordingly, the Court will depart down by 50% from \$1,250,000.00 to \$625,000.00.

The second such plaintiff, from *Bonk*, is Evans Hairston, brother of decedent Thomas Hairston. There was a significant age difference between Evans and Thomas; Evans did not attend his brother's wedding and the two lost touch over the years. The Court thus concludes that the brothers' relationship was fairly attenuated. The special master recommended a downward departure from the \$2.5 million ordinarily awarded to siblings of decedents to a mere \$1 million. Despite the attenuation of the brothers' relationship, the Court cannot accept such a drastic departure. Evans did testify that he misses "Tommy" and thinks of him often. Accordingly, the Court will depart down by 50% from \$2,500,000.00 to \$1,250,000.00.

c. Unwarranted Departures.

The recommendations made by special masters for the following plaintiffs did not conform to the Court's damages framework, but there the masters have presented no evidence of aggravating circumstances warranting departures from that framework. Accordingly, the Court will award these plaintiffs damages in conformity with the respective award amounts set forth in the Court's damages framework. These plaintiffs are: from *Arnold*, Lolita M. Arnold, Betty J. Bolen, and Sheldon H. Bolen; and from *Bonk*, Kevin Bonk, Thomas Bonk, Marion Di-Giovanni, Thomas A. Fluegel, Marilou Fluegel, Catherine Bonk Hunt, Carl Kirkwood, Sr., Patricia Kronenbitter, Estate of Rose Rotondo, and Estate of Luis Rotondo.

5. Punitive Damages.

[31][32] Punitive damages, only recently made available under the revised FSIA terrorism exception, serve to punish and deter the actions for which they awarded. *In re Islamic Republic of Iran Ter-*

rorism Litig., 659 F.Supp.2d at 61; *Heiser II*, 659 F.Supp.2d at 29-30; *Acosta*, 574 F.Supp.2d at 30 (citing RESTATEMENT (SECOND) OF TORTS § 908(1)). In determining the proper punitive damages award, courts evaluate four factors: "(1) the character of the defendants' act, (2) the nature and extent of harm to the plaintiffs that the defendants caused or intended to cause, (3) the need for deterrence, and (4) the wealth of the defendants." *Acosta*, 574 F.Supp.2d at 30 (citing *Flatow*, 999 F.Supp. at 32 (citing RESTATEMENT (SECOND) OF TORTS § 908)). The nature of the defendants' acts and the nature and extent of the harm defendants intentionally caused are among *88 the most heinous the Court can fathom. *See Bodoff*, 424 F.Supp.2d at 88 (determining a bus bombing, for which Iran was held liable, to be "extremely heinous"). "The defendants' demonstrated policy of encouraging, supporting and directing a campaign of deadly terrorism is evidence of the monstrous character of the bombing that inflicted maximum pain and suffering on innocent people." *Campuzano v. Islamic Republic of Iran*, 281 F.Supp.2d 258, 278 (D.D.C.2003) (concerning a separate bus bombing for which Iran and MOIS were held liable). As to deterrence and wealth, Dr. Patrick Clawson, an expert on Iranian terrorism activities, has testified in several cases on the amounts of punitive damages that would serve to deter Iran from supporting terrorist activities against nationals of the United States. *See, e.g., Flatow*, 999 F.Supp. at 32; *Heiser II*, 659 F.Supp.2d at 30. Two numbers are at issue: the multiplicand—the amount of Iran's annual expenditures on terrorist activities—and the multiplier—the factor by which the multiplicand should be multiplied to yield the desired deterrent effect.

As to the multiplicand, Dr. Clawson has previously testified that Iran spends between \$50 million and \$150 million annually on terrorism activities. *Heiser II*, 659 F.Supp.2d at 30.

This range, according to Dr. Clawson, reflects not only a degree of uncertainty regarding the precise dollar amount earmarked yearly for ter-

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rorists, but more significantly, disagreement among experts over what activities constitute terrorism in the first place. Though some of the money goes directly to terrorist operations, most of it ultimately funds “arms” of the terrorist groups, such as hospitals and political organizations, through which the terrorists are able to recruit.

Id. But Dr. Clawson recently amended his estimate in an affidavit filed in these consolidated cases: “[T]he financial material support provided by Iran in support of terrorism is in the range of \$300 million to \$500 million a year.” (Clawson Aff. ¶ 4, Mar. 31, 2010.) Dr. Clawson declared that in 2008, Iran provided approximately \$200 million in direct cash assistance to Hezbollah. (*Id.* ¶ 3.a. (citing U.S. DEPT OF STATE, COUNTRY REPORTS ON TERRORISM 2008, at 183 (2009), available at <http://www.state.gov/documents/organization/122599.pdf> (“In 2008, Iran provided more than \$200 million in funding to Lebanese Hizballah...”). Additionally, Dr. Clawson declared that since 2006, Iran has also provided Hezbollah with “many tens of millions of dollars” worth of sophisticated weaponry, including some 40,000 rockets.

In the past, “[i]n the interest of remaining neutral in the debate on the complicated topic of terrorism financing,” the Court has adopted the mean of the range of Dr. Clawson’s estimates. *See, e.g., Heiser II*, 659 F.Supp.2d at 30 (adopting \$100 million—the mean of \$50 million and \$150 million—as the multiplicand). Because the subject of these consolidated cases is terrorism by Iran through Hezbollah, the Court does not simply adopt the mean of Dr. Clawson’s estimated range of Iran’s funding of terrorism generally. Instead, the Court adopts \$200 million as the multiplicand. This value is based on the known amount of Iran’s annual cash assistance specifically to Hezbollah and does not require the Court to waver from its neutrality concerning terrorism financing by hazarding a guess as to the value of any non-cash assistance also provided to Hezbollah.

As to the multiplier, Dr. Clawson testified in *Flatow* that a factor of three times Iran’s annual expenditures on terrorism “would be the minimum amount in punitive damages that would affect the conduct of *89 the Islamic Republic of Iran, and that a factor of up to ten times its annual expenditure for terrorism must be considered to constitute a serious deterrent to future terrorist activities aimed at United States nationals.” 999 F.Supp. at 32. In *Heiser*, however, he recommended a factor between three and five, as opposed to three and ten. 659 F.Supp.2d at 30. In both cases, the Court conservatively adopted the lower multiplier of each range: three. Today, however, the Court adopts five as the multiplier.

This higher number is based on the suggestion by Dr. Clawson that Iran has recently begun to more actively participate in litigation in the United States and elsewhere. (*See* Clawson Aff. ¶ 6.) For example, in *Rubin v. Islamic Republic of Iran*, Iran intervened to assert sovereign immunity in a case it had previously ignored after the Court ruled that plaintiffs could attach Iranian archeological artifacts on loan to the University of Chicago. No. 03-cv-9370, 2006 WL 2024247, at *1 (N.D.Ill. July 14, 2006); (*see* Clawson Aff. ¶ 6). Additionally, in the Canadian case of *Estate of Kazemi v. Islamic Republic of Iran*, Iran has actively contested the jurisdiction of the Montreal Superior Court, where the case has been filed. Irwin Block, *Quash Lawsuit: Tehran; Iran Has Immunity, Superior Court Told*, GAZETTE (Montreal), Dec. 3, 2009, at A6; (*see* Clawson Aff. ¶ 6). In the hopes that Iran is paying more attention to the cases that have been brought against it, the Court seeks to send the strongest possible message that Iran’s support of terrorism against citizens of the United States absolutely will not be tolerated by the courts of this nation. By adopting five as a multiplier, this Court will hold Iran to account.

Multiplying \$200 million by five, the Court therefore awards punitive damages in the amount of \$1 billion.^{FN17} This award, like previous awards

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made under similar methodology, “seems likely to have a deterrent effect.” *Id.* at 31 (multiplying \$100 million by three); *Brewer*, 664 F.Supp.2d at 59 (same). Although this level of punitive damages is significantly higher than any previously rendered against Iran, the award is justified by the continuing need to punish and deter Iran from its increasing support of terrorism, and is further justified as the product of well settled case law on the methodology by which punitive-damages awards in FSIA cases are calculated. Accordingly, this \$1 billion punitive-damages award shall be apportioned among the plaintiffs in proportion to their relative compensatory-damages awards.

FN17. In *Exxon Shipping Co. v. Baker*, the Supreme Court recently limited a punitive damages award to a maximum of a 1:1 ratio with compensatory damages awarded. — U.S. —, 128 S.Ct. 2605, 171 L.Ed.2d 570 (2008). To the extent that some plaintiffs may share in a punitive damages award higher than their compensatory award, and thus with a ratio of punitive to compensatory damages higher than 1:1, *Exxon* is distinguishable from this case. First, *Exxon* concerned punitive damages awarded under maritime law, not the FSIA; the Supreme Court explicitly limited its holding, noting that “a 1:1 ratio ... is a fair upper limit in such maritime cases.” *Id.* at 2633 (emphasis added). But more importantly, the Supreme Court decided a case “with no earmarks of exceptional blameworthiness in the punishable spectrum.” *Id.* When “the supertanker Exxon Valdez grounded on Bligh Reef off the Alaskan coast, fracturing its hull and spilling millions of gallons of crude oil into Prince William Sound,” the defendants acted recklessly but “without intentional or malicious conduct.” *Id.* at 2612, 2631 n. 23, 2633. The Supreme Court left open the possibility that defendants who do act with intent or malice might be subject to higher

ratios of punitive to compensatory damages. See *id.* at 2633.

This is a case where higher ratios are clearly warranted. Those harboring a deep-seeded and malicious hatred of the United States who intentionally commit terroristic murder of American military servicemen deserve to be punished at a ratio significantly higher than 1:1 with the compensatory damages for which they are otherwise liable. Moreover, even after *Exxon*, this District has repeatedly awarded punitive-damages awards in FSIA cases without concern that such damages may have been awarded at a higher ratio than 1:1 with compensatory damages. See, e.g., *Heiser II*, 659 F.Supp.2d at 30-31; *Acosta*, 574 F.Supp.2d at 30-31; *Brewer*, 664 F.Supp.2d at 59 (“There is no reason to depart from settled case law regarding the amount of punitive damages in terrorism cases.”).

VIII. Conclusion.

Iran and MOIS are responsible for the deaths and injuries of hundreds of American servicemen, are liable for the emotional injuries their family members have suffered as a result, and deserve to be punished to the fullest legal extent possible. World-renowned Iranian poet Simin Behbahani, in her “Stop Throwing my Country to the Wind,” recently implored her nation to “Stop this screaming, mayhem, and bloodshed. Stop doing what makes God's creatures mourn with tears.” Posting of Mark Memmott to The Two-Way: NPR's News Blog, <http://www.npr.org/blogs/thetwo-way> (June 26, 2009, 16:30 EST). The Court sincerely hopes that the compensatory damages awarded today help to alleviate plaintiffs' physical, emotional, and financial injury and that the punitive damages also awarded inspire Iran to heed Ms. Behbahani's words.

A separate Order and Judgment consistent with

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these findings shall issue this date.

D.D.C.,2010.
Valore v. Islamic Republic of Iran
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Friday, Jan. 8
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Shabbat ends 5:36 p.m.

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Candles 4:35 p.m.
Shabbat ends 5:44 p.m.

Iran: An Escalating Threat

We must do more than speak against this sponsor of terror

By **RICHARD D. HEIDEMAN**
Iran, a designated State
Sponsor of Terrorism since
1984, remains the world's
"most active state sponsor of ter-
rorism," according to the U.S.

CALL TO ACTION

Department of State's most recent
Country Reports on Terrorism. Yet
the world continues to turn a blind
eye to Iran's sponsorship of terror,
ignoring the suffering of terror
victims and the instability sown by
terrorist groups, including subver-
sion of neighbor states and disrup-
tion of U.S. efforts to bring stabil-
ity to the region.

The U.S., Russia, Britain,
France, Germany and China have
negotiated with Iran to suspend its
nuclear enrichment program.
Despite these efforts, Iranian
President Mahmoud Ahmadinejad
has disregarded the international
community's New Year's deadline
for Iran to agree to transport its
enriched uranium to another coun-
try for conversion to fuel rods.
"Who are they to set us a dead-
line?" said Ahmadinejad. "We set
them a deadline that if they do not
correct their attitude and behavior

and literature we will demand
from them the Iranian nation's his-
toric rights." The U.S. and its
allies are quite appropriately con-
sidering U.N. and other sanctions.
In that regard, Congress has been

Ansar al-Islam. Malta and Israel
recently stopped Iranian ships
laden with weapons believed to
have been bound for Syria. Iran,
truly a continuing and dangerous
rogue state, provides more than

defense minister further illustrates
a regime hell-bent on defying the
world.

In addition to these despicable
acts, Iran on Dec. 16, 2009 test-
fired a long-range ballistic Sejil-2
missile capable of hitting Israel
and U.S. bases in the region.
These actions further endanger an
already unstable region. Mike
Hammer, the U.S. National
Security Council spokesman,
noted in response to the test-firing
that "at a time when the interna-
tional community has offered Iran
opportunities to begin to build
trust and confidence, Iran's missile
tests only undermine Iran's claims
of peaceful intentions. Such
actions will increase the serious-
ness and resolve of the interna-
tional community to hold Iran
accountable for its continued defi-
ance of its international obliga-
tions on its nuclear program." Iran's
provocative actions should not
be allowed to continue to threaten
those in the region.

Iran's outrageous deeds are
accompanied by its outrageous
rantings. While Tehran supports
those who threaten the very basis
of our open and dynamic civil
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**'At a time when the international
community has offered Iran
opportunities to begin to build trust
and confidence, Iran's missile tests
only undermine Iran's claims of
peaceful intentions.'**

rapidly moving forward with
gasoline sanctions against Iran.
Yet, separate from the focus on
Iran's weapons of mass destruc-
tion (WMD) threat, the time is ripe
for the U.S. and the world to take
concerted steps to stop Iranian-
sponsored terrorism.

Iran's historical support of ter-
rorist groups is incontrovertible;
according to the U.S. State
Department, Iran provides money,
weapons, training and other mater-
ial support to numerous foreign
terrorist groups including Hamas,
Hezbollah, al Qaeda, Arab
Palestinian rejectionist groups and

\$200 million per year to
Hezbollah and Palestinian Islamic
Jihad and \$20 million to \$30 mil-
lion per year to Hamas. Khaled
Mashal, Hamas' political leader,
publicly confirmed Iran has finan-
cially supported Hamas since it
won elections in 2006. Moreover,
Iran continues to provide safe
haven to terrorists wanted by the
U.S. for murdering U.S. citizens.
The Iranian Congress' recent rat-
ification of a wanted terrorist,
Ahmad Vahidi, accused by
Argentina of direct involvement in
the horrific AMIA Jewish center
bombing in 1994, as Iranian

The End Is Not Nigh

Iranian regime faces a drawn-out struggle with protesters

By **JONATHAN SPYER**

The ongoing demon-
strations in Iran are testimony
to the continued strength
and resilience of Iranian civil
society. They make a mockery of

ANALYSIS

the Islamic Republic's ambition
of offering a model for successful
Muslim governance to the world.
The next major manifestation of
the protests is likely to be Feb. 11
— the 31st anniversary of the
Islamic revolution. The seventh
and 40th days following the
deaths of those killed last week
are also likely to witness dram-
atic scenes.

Still, the overheated punditry
predicting the imminent demise
of the regime, claiming that this
is the beginning of the end for
the Islamists in Tehran and that a
"tipping point" has been passed,
is misleading and should be
questioned.

Two parallel movements exist
in Iran, each of which seeks to
change the nature of the Islamic
Republic as it has existed since
1979. The first of these has been
much in evidence recently, in the

**The Iranian people are not about to
enter the stage like a deus ex machina,
with one stroke destroying the Islamist
regime and solving the agonizing
problem of the Iranian nuclear program.**

protests and demonstrations that
have rocked Tehran and other
cities. This is the so-called
"Green movement." It has no
clear ideology beyond a deep dis-
satisfaction with the current state
of affairs. Within its ranks one
may find supporters of the
reformist wing of the current
regime, including former presi-
dential candidates Mir-Hossein
Moussavi and Mehdi Karubi,

and reformist ex-president
Mohammad Khatami. The
protest movement also undoubt-
edly includes individuals and
groups with a far more deter-
mined and radical agenda, who
would like to see the end of the
regime established in 1979. But
no credible, organized revolu-
tionary leadership with a clear
program for toppling the regime
can yet be identified from within
the broad mass of this movement.
The second "movement"
exists within the regime itself.
This is the trend whose most vis-
ible representative is President
Mahmoud Ahmadinejad. The

coalition of hard-line conserva-
tive political associations that
produced Ahmadinejad, along
with the Iranian Revolutionary
Guards Corps, have been steady-
ly advancing in the institutions
of the Islamic Republic over the
last half-decade. Unlike their
opponents in the Green move-
ment, this group has a clear and
unifying set of ideas and goals.
Their aim is a "second Islamic
revolution," which will revive
the original fire of 1979. What
they are aiming at is the replace-
ment of clerical rule with a
streamlined, brutal police-secur-
ity state, under the banner of
Islam. This state will be commit-
ted to a goal of building regional
hegemony — through posses-
sion of a nuclear option and the
backing of radical and terrorist
movements.

This past year has been mixed
for the Iranian hard-line conser-
vatives. On the one hand, the
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society, Ahmadinejad declares the Holocaust a mere myth and continuously calls for Israel to be wiped

off of the map. The Iranian leader and his regime must be taken at their word and held accountable for their hate mongering and for their sponsorship of terror.

Clearly, Iran's words are not just noise, as evidenced by its ongoing support of terrorism that destroys

lives. Ahmadinejad's threats and actions continue, although some countries are seemingly rejecting the Iranian leader's line of hate speech. Numerous countries walked out of Ahmadinejad's General Assembly speech in September. Additionally, in April

2009 European countries participating in the U.N. Durban Review Conference on Racism, held in Geneva, walked out during the Iranian leader's diatribe against Israel.

During my own address to the U.N. Durban Review Conference

delegates later in the conference, I stated in retort: "This Review Conference will forever be remembered — and blemished — by the hate speech that we witnessed not outside, but on the very podium of this Conference by the man who had been afforded the honor of first place among the high-level speakers. ... He saw fit again to violate the General Assembly resolution forbidding the negation or minimization of the Holocaust, the worst racist crime of the past century, at a conference supposedly convened to combat racism."

Although these walkouts send a signal to Iran, other nations continue to wrongly welcome Ahmadinejad with pomp. A stronger message must be sent to this international demon. The Obama administration appears ready to come down hard on the Iranian regime, notwithstanding the administration's outstretched arm to the Iranian people. During his U.N. address in September, President Obama called for Iranian accountability for its pursuit of nuclear weapons, a threat made especially salient by revelations of an Iranian covert uranium-enrichment facility and its missile firings. Obama's declaration during his U.N. address in September that "We must insist that the future not belong to fear" equally should be applied to Iran's sponsorship of terrorism. Secretary of State Hillary Clinton recently stated that, "I think the international community really still wants to engage with Iran, but people are going to now turn to other routes like more pressure, like sanctions to try to change their mind and their behavior." Iran has rebuked the president, his outstretched hand and his longstanding New Year's deadline. Accordingly, talk of sanctions should be followed by appropriate and decisive immediate action.

As Israeli Prime Minister Netanyahu eloquently and strongly stated before the U.N.: "Will the international community thwart the world's most pernicious sponsors and practitioners of terrorism?" The answer is clear: Indeed, the world must confront Iran's relentless, murderous support and funding of terrorism. Any analysis of Iran's threat to the world is otherwise incomplete.

The blueprint for success against Iran's obnoxious, offensive and illegal conduct is perhaps already written. The case study is Libya, as imposition of sanctions by both the U.S. and the U.N. against Libya, which had been on

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Screeds

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accent. He spoke of the Israeli-Zionist contradiction that is "so clear today" — so clear, in fact, he felt no compulsion to say what it is.

Far easier to understand was Sivan's partner for part of the debate, Mor Loushy, who directed *Israel Ltd.* The film tracks a group of North American teens on a four-week Israel trip sponsored by the Jewish Agency for Israel.

Loushy was clearly outraged by what she found: impressionable youngsters being taught that Israel is surrounded by enemies who seek to destroy her; the vicarious thrill of a week of mock army training, during which some of the boys took to the shooting range with alarming enthusiasm; the veneration of Israel's fallen in a visit to a military cemetery; and an introduction to the Jewish state in which, as far as the film tells us, Palestinians were scarcely mentioned at all.

Depending on one's outlook, this image of Israel's booming teen tour industry is either an effective means of Jewish identity-building or an exercise in state-sponsored indoctrination. The fact that audience members at an afternoon screening reacted with both outrage and shrugged shoulders indicated that Loushy — her personal views notwithstanding — treated a potentially explosive issue with fair-minded objectivity.

Defamation

Another Israeli film screening was *Defamation* by Yoav Shamir, who explains at the start that as an Israeli, he has never experienced anti-Semitism. So he set out to figure out what this demonic force is all about.

He starts in a logical enough spot: the New York offices of Abraham Foxman at the Anti-Defamation League (ADL). Shamir wanted examples of anti-Semitism cases he could film and follow; the League presented mostly instances of people unable to take time off for Jewish holidays or overhearing someone using an anti-Jewish slur (or what appears to be one). He also follows the story of a group of Israeli teens on a death camp tour of Poland, where they are taught to see the world as an invariably hostile place.

The film, which opened in November in the U.S., encourages us to consider the costs of the Jewish fixation with fighting anti-Semitism. To

Shamir's credit, he doesn't deny that anti-Semitism exists, though he arguably downplays it.

Shamir ably depicts how for some Jews, fighting anti-Semitism is a secular religion, their means of expressing Jewish identity, and how the ADL can be seen as catering to such people.

But he falls into the "silencing" trap with his discussion of Finkelstein, Wait and Mearsheimer, and the whole Israel lobby thing. Also, at a conference in Israel about the new anti-Semitism, no one mentions Israel's occupation of the West Bank except for one British guy, and he gets a lecture from some fellow participants about how awful he is.

Shamir then has a eureka moment — the ADL and the lobby are silencing Israel's critics.

The problem is that the people he mentions are tenured professors, authors of books and articles, and invited to speak around the world. Even Finkelstein, who failed in his tenure bid at DePaul, gives hundreds of lectures each year.

Asked about this disconnect, Shamir replies that what he means is that these men are considered radicals who aren't given the time of day by the establishment, which prefers not to hear them. Hence, he says, they are "silenced."

American Radical: The Trials of Norman Finkelstein

The first thing to be said about the documentary *American Radical: The Trials of Norman Finkelstein* is that it is not as bad as it could have been. Given the politics of festivals like the one in Amsterdam, one could understandably have expected a fawning look at a man reviled by the American Jewish establishment and venerated by the left.

But Finkelstein's critics, most notably Harvard professor Alan Dershowitz, get plenty of face time. That's not to say the film isn't sympathetic to its subject — Finkelstein generally has the last word — but there is much to make any fair-minded observer stop and think.

The filmmakers achieve this by largely sidestepping the content of Finkelstein's views and focusing on the man — why is he the way he is, what costs he has paid for his beliefs. These are actually the most interesting questions about Finkelstein; nothing would be more plodding than a film that seeks to figure out which narrative of the Israeli-Palestinian conflict is actually right.

Appropriately enough, the filmmakers look deeply at Finkelstein's

family, whose history as Holocaust survivors he regularly invokes both to deflect criticism that his views are anti-Semitic and as justification for his intense concern with the plight of the Palestinians.

Finkelstein acknowledges that his was a "very peculiar household," and even his friends talk about his obsession with his parents and their Holocaust experience. One childhood acquaintance, who says Finkelstein was influenced by his mother "to an unhealthy extent," says he's intent on effecting his own destruction and wonders aloud whether he's a self-hating Jew.

Finkelstein remains resolute in speaking his mind on the Middle East despite the ever mounting personal costs. Nearing 60, he has no job and lives alone in the small Brooklyn apartment that once belonged to his father. Either he has tremendous courage and conviction, or a pathological and destructive fixation.

All of which results in a portrait more sad than indignant.

In the end, Finkelstein comes off as sad, disturbed, strange and pathetic — more worthy as an object of compassion than of anger. That's not a bad thing to keep in mind the next time he publishes something inflammatory, which given the modicum of pressures on his time these days is surely right around the corner. —JTA

Threat

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the U.S. Department of State List of State Sponsors of Terrorism, produced a dramatic although long-delayed response. This included, but was not limited to, the appearance of acceptance of responsibility for certain terrorist attacks sponsored by the Libyan government and/or its officials, notwithstanding Libya's recent warm reception of the convicted Lockerbie terrorist's return to Tripoli; Libya's declaration that it would abandon its WMD programs and comply with the same Nuclear Non-Proliferation Treaty which Iran is currently disregarding; and Libya's entry into the U.S.-Libya Comprehensive Claims Settlement Agreement that settled claims on behalf of American victims of Libyan terrorism. Although elements of Libya's recent conduct are wrong, such as her words against Israel at the U.N. and conduct at the U.N. Human Rights Council, there is no clear evidence that Libya has resumed sponsorship of terrorism itself.

While some disagree with the terms of Libya's comprehensive

settlement of victims' claims with the U.S. government, it is clear that the example of Libya was a successful accomplishment for the Bush administration and for former British Prime Minister Tony Blair, and the policy is now being implemented by the Obama administration. But to merely hope that Iran will follow this path will not get the job done.

Today, it is most critical that world leaders not only speak up and make their voices heard; they must take strong action against Iran designed to hold Iran fully accountable for its terrorist conduct. Iran, a state which takes a callous view of human life, should not and cannot threaten our global community or the very foundations upon which our free, open and dynamic society is based. The international community must deal with Iran now, before the recalcitrant state develops its weapons and has no incentive to stop sponsoring terror or threatening the free world.

Richard D. Heideman is senior counsel of Heideman Nudelman & Kalik, PC, a trial law firm in Washington, D.C., which represents American Victims of Terrorism in litigation against Iran.

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