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Justice for United States Victims of State Sponsored Terrorism Act: Eligibility and Funding

Beginning in 1996, U.S. courts have had jurisdiction under the Foreign Sovereign Immunities Act (FSIA) to award damages to certain terrorism victims against the responsible designated state sponsor of terrorism—that is, Iran, Sudan, or Syria, and previously Libya, North Korea, Iraq, or Cuba. Courts have since awarded an estimated \$65 billion against these states, largely uncontested at the merits phase (though states have litigated to protect assets). Claims against Libya were ultimately resolved through a bilateral claims settlement agreement, and judgments against Iraq were paid through liquidating frozen assets prior to vesting the remaining Iraqi assets for the Development Fund for Iraq. Some judgment holders against other state sponsors of terrorism received compensation through Section 2002 of the Victims of Trafficking and Violence Protection Act (P.L. 106-386) or by attaching frozen assets pursuant to Section 201 of the Terrorism Risk Insurance Act (28 U.S.C. §1610 note). But due to the scarcity of these states' attachable assets in the United States, the vast majority of terrorism judgments remain outstanding.

Congress has taken steps to enable these judgment creditors to obtain at least some of the damages owed to them. Passed as part of the Consolidate Appropriations Act, 2016 (P.L. 114-113), the “Justice for United States Victims of State Sponsored Terrorism Act” establishes a new fund in the U.S. Treasury to provide a means for creditors with terrorism judgments against designated state sponsors of terrorism to satisfy the compensatory portion of their judgments, up to \$20 million per individual or \$35 million for families. Qualifying victims of the Iran Hostage Crisis will also be eligible for compensation, up to \$4.4 million per former hostage or the amount of \$600,000 each for spouses and children. A claimant who (or whose immediate family member) has been awarded compensation under Section 405 of the Air Transportation Safety and System Stabilization Act (49 U.S.C. §40101 note) will be eligible to receive the amount of that award.

The United States Victims of State Sponsored Terrorism Fund will be administered by a special master to be appointed by the Attorney General. Once appointed, the special master will have 60 days to publish regulations setting forth procedures for claimants to establish eligibility and receive payment from the Fund. The Fund is set to expire on January 2, 2026.

Eligibility

In order to be eligible for compensation from the Fund, a claimant must be a natural person:

- who holds a final judgment, decree, or order on liability and damages:
 - issued by a U.S. federal district court;
 - against a designated state sponsor of terrorism;
 - based on an injury arising from an act of torture, extrajudicial killing, aircraft sabotage, or hostage taking, or the provision of material support such an action;
 - for which foreign sovereign immunity was denied based on the terrorism exception to the FSIA (28 U.S.C. §1605A or previous 28 U.S.C. §1605(a)(7)); and
 - that has not been satisfied, relinquished, espoused by the United States, or resolved pursuant to a bilateral claims agreement;
- or
- who was held hostage by Iran from November 4, 1979, through January 20, 1981, or is the spouse or child of such a person if identified as a member of the proposed class in case number 1:00-CV-03110 (D.D.C.); and
- who is not criminally culpable for an act of international terrorism.

Funding

The Fund is to be established with an initial deposit of \$1,025,000,000 from the amount paid to the United States pursuant to the June 27, 2014, plea agreement and settlement between the United States and BNP Paribas for sanctions violations. The Fund will be further financed:

- prospectively, from all funds and the net proceeds from the sale of property forfeited or paid to the United States as criminal penalty or fine arising from the violation of regulations issued under the International Emergency Economic Powers Act (50 U.S.C. §§1701 *et seq.*) or the Trading with the Enemy Act (50 U.S.C. App. §§1 *et seq.*) or any related civil or criminal conspiracy, scheme, or other federal offense related to doing business or acting on behalf of a state sponsor of terrorism;
- prospectively, from half of all funds and net proceeds from the sale of property forfeited or paid to the United States as a civil penalty or fine arising out of the same types of violations;

- using proceeds from the sale of any Iranian property forfeited in *In re 650 Fifth Avenue and Related Properties*, No. 08 Civ. 10934 (S.D.N.Y. filed Dec. 17, 2008), minus litigation expenses and sales cost, and not including the proceeds attributable to any party identified as a Settling Judgment Creditor in that case who does not elect to participate in the Fund;
- using the assets at issue (about \$1.7 billion) in *Peterson v. Islamic Republic of Iran*, No. 10 Civ. 4518 (S.D.N.Y.) if a final judgment is issued awarding them to the identified judgment creditors, to the extent those creditors elect not to participate in the fund.

Eligible claimants who provide information to the Attorney General that leads to a forfeiture required to be paid into the Fund are eligible to receive a reward amounting to 10 percent of the amount deposited into the Fund—if such information is not previously known to the government—upon a finding by the Attorney General that the information substantially contributed to the forfeiture.

Payments

The initial payments from the Fund to eligible claimants are slated to begin no later than December 2016. Payments will be made on a pro rata basis. Claimants who have received 30 percent or more of the amount of their compensatory damages from sources other than the Fund (including life insurance; pension funds; death benefit programs; payments by federal, state, or local governments, including the September 11 Victim Compensation Fund; and court-awarded compensation) will not receive payment from the

Fund until such time as all other eligible claimants have received 30 percent of their compensatory damages or amount of the claim under the Iran Hostage Crisis provision. Applicants who have received less than 30 percent of compensatory damages from other sources may apply for the difference between the percentage of compensatory damages received from other sources and the percentage of compensatory damages to be awarded to other eligible applicants from the Fund. Additional pro rata payments are to be authorized on January 1 of the second calendar year after the initial payments if sufficient funds are available.

Attorneys representing claimants are prohibited from charging more than 25 percent of any payment made from the Fund.

The United States is to be subrogated to the rights of applicants who receive payment from the Fund. The Act requires the President to pursue subrogation rights as claims or offsets of the United States in appropriate ways, such as through negotiations surrounding the normalization of relations. Judgment holders are permitted to pursue satisfaction of any unpaid portion of their judgments—including punitive damages and pre- or post-judgment interest awarded by the district court—through enforcement actions in court.

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