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Written Testimony of
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Hearing Before the House Judiciary Committee
Subcommittee on the Constitution and Civil Justice
Washington, D.C.

July 14, 2016

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Chairman Franks, Ranking Member Cohen, and other distinguished members of the House Judiciary Committee, Subcommittee on the Constitution and Civil Justice:

I would like to thank you for holding this important hearing on the Justice Against Sponsors of Terrorism Act (JASTA) and inviting me to testify on the value of this legislation in combating the threat of global terrorism.

As we approach the fifteen-year anniversary of the 9/11 terrorist attacks that tragically took the lives of approximately 3,000 innocent civilians, it is imperative that the U.S. government continue to strengthen the effectiveness of its counter-terrorism efforts, including depriving terrorists of funding, as well as deterring and punishing their financial sponsors. The enactment of the JASTA is critical to achieving that objective.

(A) Statutory Overview

On May 17, 2016, the U.S. Senate unanimously passed the JASTA in an effort to enhance civil terrorism causes of action and deter acts of terrorism.¹ This legislation ensures that those who aid and abet terrorist attacks on U.S. soil are held accountable for their conduct, even if such offenders are foreign sovereigns or their agencies or instrumentalities. The JASTA does so through modest amendments to the Foreign Sovereign Immunities Act (FSIA)² and the Anti-Terrorism Act (ATA).³ The JASTA is a narrowly drawn statute that will deter international terrorism, guarantee the victims of terrorist attacks their day in court, and grant the executive new powers to resolve civil terrorism cases through diplomatic means. More specifically, the JASTA ensures that U.S. courts will have jurisdiction over cases involving injury or death of U.S. nationals caused by an act international terrorism on U.S. soil that is committed or substantially aided and abetted by a foreign state.

The bill's new sovereign immunity exception amends chapter 97 of Title 28 of the U.S. Code by inserting § 1605B, which provides in relevant part:

¹ Justice Against Sponsors of Terrorism Act, S. 2040, 114th Cong., § 3(a) (as passed by Senate, May 17, 2016). [hereinafter "JASTA"].

² 28 U.S.C. §§ 1602-1611 (1976). Section 1604 provides:

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

³ 18 U.S.C. § 2333 is the civil remedies provision of the ATA, added Oct. 29, 1992, Pub. L. No. 102-572, Title X, § 1003(a)(4), 106 Stat. 4506, codified as amended.

A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which money damages are sought against a foreign state for physical injury to person or property or death occurring in the United States and caused by (1) an act of international terrorism in the United States; and (2) a tortious act or acts of the foreign state, or of any official, employee, or ... agency, regardless where the tortious act or acts of the foreign state occurred.⁴

Under the JASTA, foreign states that knowingly aid and abet foreign terrorist organizations (FTOs) that commit terrorist attacks in the United States which kill or seriously injure Americans will be held accountable for their conduct.

The JASTA provides that, where the jurisdictional criteria against a foreign state are satisfied, a U.S. national may bring a tort claim against that foreign state pursuant to the ATA. The ATA, 18 U.S.C. § 2333, created a private right of action for any U.S. national injured or killed by reason of an act of international terrorism. Federal courts are currently divided on whether § 2333 allows claims based on a theory of aiding and abetting an act of international terrorism.⁵ Disagreement on the scope of the ATA is untenable and could lead to inconsistent verdicts across circuits depending on whether a plaintiff must prove that the defendant committed the act of international terrorism, or merely aided and abetted some other actor in doing so. The JASTA eliminates this confusion by expressly recognizing a cause of action against a foreign state for aiding and abetting an FTO in the very narrow circumstance of committing international terrorism on U.S. soil.⁶

Sponsors of the JASTA recognize that terror victims' demands for justice may complicate international diplomacy in certain circumstances. To address this concern, § 5 of the JASTA gives the President the power to intervene in any civil litigation against a foreign state alleging support for international terrorism, and obtain a stay of the proceedings while government-to-government discussions proceed between the United States and that foreign state. Ultimately, the JASTA will allow families victimized by terrorism to proceed in court against the terrorists and their sponsors, and hold them accountable for their actions. For all of the above reasons, this proposed legislation is critical to preventing terrorist attacks and saving innocent lives, and should be enacted into law.

(B) Important Goals Advanced by the JASTA

“[C]ivil tort actions that seek large monetary damages provide an invaluable supplement to the criminal justice process and administrative blocking orders.”⁷ These civil terrorism tort claims advance five important goals. First, private lawsuits brought by the victims of terrorism

⁴ JASTA, § 3(a).

⁵ See Jimmy Gurulé, *Holding Banks Liable Under the Anti-Terrorism Act for Providing Financial Services to Terrorists: An Ineffective Remedy in Need of Reform*, 41 N.D. J. LEG. 184, 206-09 (2015) [hereinafter “*Holding Banks Liable Under the Anti-Terrorism Act*”].

⁶ See JASTA, § 4. Section 4 also authorizes tort liability for conspiring to commit an act of international terrorism.

⁷ Jimmy Gurulé, UNFUNDING TERROR: THE LEGAL RESPONSE TO THE FINANCING OF GLOBAL TERRORISM, at 324 (2008) (discussing the important role of civil suits in bankrupting terrorist organizations); see also Halberstam v. Welch, 705 F.2d 472, 489 (D.C. Cir. 1983)

can have a deterrent effect against donors, corrupt charities, financial institutions, and foreign governments that provide funding and logistical support to terrorist organizations.⁸ While the threat of large civil monetary judgments may have little or no deterrent effect against the terrorists themselves, the same may not be true for foreign governments that lend financial support and direction to FTOs. These foreign states are likely to have substantial assets in the United States that may be attached to enforce a civil terrorism judgment. Furthermore, civil terrorism judgments can be extremely large, totaling hundreds of millions or even billions of dollars in damages.⁹ As such, the threat of large civil terrorism judgments can have a deterrent effect and influence the behavior of terrorist sympathizers.

Second, civil actions targeting the assets of foreign states that support terrorism can reduce the ability of international terrorists to carry out their deadly attacks.¹⁰ Money is the “lifeblood” of terrorists.¹¹ While “[t]errorists seldom kill for money . . . they always need money to kill.”¹² Depriving terrorists of funding, especially from foreign state supporters of terrorism, is critical to preventing terrorist attacks and saving innocent lives.

Third, foreign states that sponsor terrorism, including through government “charities,” should be held accountable for their actions. Foreign states should not be permitted to conduct business in the United States and use the profits generated from their commercial ventures to support acts of terrorism. Depriving state sponsors of terrorism of their assets located in the United States punishes them for their unlawful conduct. The JASTA conveys an important message to foreign states that might support terrorism or allow their employees or institutions to do so: If you support acts of terrorism, you run the risk of being sued, held liable for your unlawful conduct, and having your assets attached to enforce a civil terrorism judgment. Furthermore, the financial losses in these lawsuits can be substantial.

Fourth, victims of international terrorism should be compensated for their unimaginable loss, pain, and suffering, and the foreign states responsible for these physical and emotional injuries should be responsible for such compensation.

Finally, the JASTA strengthens the statutory framework of the FSIA and ATA and confirms the importance of civil litigation as an important tool in combating terrorism. The FSIA,

⁸ *Id.*; see also Antiterrorism Act of 1990: Hearing Before the Subcomm. on Courts and Administrative Practice of Comm. on the Judiciary, 101st Cong., 2d Sess. 79 (1990) (“[A]nything that could be done to deter . . . money laundering in the United States, the repose of assets in the United States . . . would not only help benefit victims, but would also help deter terrorism.”).

⁹ See, e.g., *Bank Markazi v. Peterson*, No. 14-770, Slip Op. (Apr. 20, 2016) (authorizing the attachment of approximately \$1.7 billion in assets belonging to Bank Markazi, the Central Bank of Iran, to enforce terrorism judgments against Iran for aiding and abetting several attacks, including the 1983 terrorist bombing of the Marine barracks in Beirut, Lebanon that killed over 200 American servicemen).

¹⁰ UNFUNDING TERROR, note 7 at 325.

¹¹ See NATIONAL COMMISSION ON TERRORIST ATTACKS, THE 9/11 COMMISSION REPORT, FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 382 (W.W. Norton & Company 2004), <http://www.9-11commission.gov/report/911Report.pdf> (“The government has recognized that information about terrorist money helps us to understand their networks, search them out, and disrupt their operations.”).

¹² Terry Davis, Secretary General of the Council of Europe, Plenary of MONEYVAL and Financial Action Task Force, Feb. 21, 2007.

28 U.S.C. § 1605A, waives the sovereign immunity of foreign states and their agents by creating a “terrorism exception” for injury or death caused by acts of “torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources.”¹³ The terrorism exception only waives the immunity of a foreign state “designated as a state sponsor of terrorism at the time the [terrorist] act . . . occurred, or was so designated as a result of such act.”¹⁴ There are currently three states that have been designated by the Secretary of State as state sponsors of terrorism: Iran, Sudan, and Syria.¹⁵ Other states, such as Saudi Arabia¹⁶ and North Korea, retain foreign sovereign immunity from litigation under the FSIA.

In civil actions brought under § 1605A of the FSIA, plaintiffs are entitled to “economic damages, solatium, pain and suffering, and punitive damages.”¹⁷ Furthermore, under the FSIA, a “foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances.”¹⁸

The ATA, 18 U.S.C. § 2333, authorizes a civil cause of action for U.S. nationals victimized by acts of international terrorism against terrorists and their supporters. In enacting the ATA, Congress intended to deter and punish acts of international terrorism by “remov[ing] the jurisdictional hurdles . . . and . . . empower[ing] victims with all the weapons available in civil litigation.”¹⁹ However, the ATA does not authorize suits against foreign states.

The JASTA fills an important gap in the law by permitting U.S. nationals to bring suit against foreign states, even those states not formally designated by the State Department as a state sponsor of terrorism, that aid and abet terrorists that commit acts of international terrorism in the United States and kill and injure Americans. The enactment of the FSIA terrorism exception and the ATA demonstrates the vital importance of civil actions in deterring and punishing acts of international terrorism.²⁰ The JASTA is further recognition of the value of civil actions to combat the threat of terrorism.²¹

¹³ 28 U.S.C. § 1605A(a)(2).

¹⁴ *Id.*

¹⁵ See U.S. Dep’t of State, State Sponsors of Terrorism, www.state.gov/j/ct/list/c14151.html (last visited July 7, 2016).

¹⁶ See *In re Terrorist Attacks on Sept. 11, 2001*, 538 F.3d 71, 89 (2d Cir. 2008) (“The State Department has never designated the Kingdom a state sponsor of terrorism. As a consequence, the Terrorism Exception is inapplicable here.”).

¹⁷ 28 U.S.C. § 1605A.

¹⁸ *Id.* § 1606.

¹⁹ 137 Cong. Rec. S4511-04, S4511 (1991) (statement of Sen. Grassley). The Alien Tort Claims Act, 28 U.S.C. § 1350, has also been used to hold defendants civilly liable for acts of international terrorism. See, e.g., *Almog v. Arab Bank, PLC*, 471 F. Supp. 2d 257, 279 (E.D.N.Y. 2007) (holding that terrorist bombing is a violation of the law of nations).

²⁰ See *Estates of Ungar ex rel. Strachman v. Palestinian Authority*, 304 F. Supp. 2d 232, 238-39 (D.R.I. 2004); see also 136 Cong. Rec. S4568-01, S4593 (1990) (statement of Sen. Grassley) (“With the enactment of this legislation [the ATA], we set an example to the world of how the United States legal system deals with terrorists. If terrorists have assets within our jurisdictional reach, American citizens will have the power to seize them.”).

²¹ See JASTA, § X Findings and Purpose:

The United States has a vital interest in providing persons and entities injured as a result of terrorist attacks committed within the United States with the full access to the court system in order to

(C) JASTA is Narrowly Tailored

The JASTA removes foreign sovereign immunity and authorizes a civil cause of action in extremely limited and extraordinary circumstances. The proposed legislation does not permit U.S. nationals to routinely sue foreign states as some critics of the legislation maintain.²² The JASTA imposes a geographic limitation on civil terrorism actions. Section 3 eliminates sovereign immunity for injury or death caused by an act of international terrorism occurring in the United States.²³ The JASTA does not confer jurisdiction on U.S. courts if the foreign state sponsored a terrorist attack that killed or seriously injured U.S. nationals abroad.

The JASTA permits jurisdiction for injury or death caused by an act of “international terrorism.”²⁴ The term “international terrorism” has the same meaning given the term in 18 U.S.C. § 2331, which requires proof of three essential elements. First, the conduct condemned must involve “violent acts” or “acts dangerous to human life” that are a violation of the criminal laws of the United States or any State.²⁵ Violations of the federal material support statutes, 18 U.S.C. § 2339A, § 2339B, and the terrorism financing statute, 18 U.S.C. § 2339C, have been construed by the courts to involve “acts dangerous to human life” for purposes of § 2331, and therefore constitute acts of “international terrorism” within the meaning of the ATA.²⁶

Second, the definition of “international terrorism” requires that the prohibited conduct “appear to be intended” to intimidate or coerce a civilian population”; “influence the policy of a government by intimidation or coercion”; or “affect the conduct of a government by mass destruction, assassination, or kidnapping.”²⁷ This “appear to be intended” language does not impose a state of mind requirement on the defendant. Instead, whether the subject conduct appears to be intended for any of those prohibited purposes “is a matter of external appearances rather than subjective intent.”²⁸

Third, § 2331’s definition of “international terrorism” requires proof that the prohibited conduct has an extraterritorial nexus. Plaintiffs must prove that the terrorist-related acts occurred “primarily outside the territorial jurisdiction of the United States” or “transcend national boundaries.”²⁹ Under the statute, plaintiffs can satisfy this extraterritorial requirement in three ways: “(1) the terrorist acts were accomplished by transcending national boundaries, (2) the persons the terrorist acts were intended to intimidate or coerce transcended national boundaries, or

pursue civil claims against persons, entities, or countries that have knowingly or recklessly provided material support or resources, directly or indirectly, to the persons or organizations responsible for their injuries.

²² See Sean P. Carter, Jack Quinn & James P. Kreindler, *Saudi Arabia and 9/11: Give the American People the Truth, Mr. Obama*, FOX NEWS (Apr. 20, 2016), <http://www.foxnews.com/pinion/2016/04/20/saudi-arabia-and-911-american-people-truth-mr-obama.print.html>.

²³ See JASTA, § 3.

²⁴ *Id.*

²⁵ 18 U.S.C. § 2331(1)(A).

²⁶ 18 U.S.C. § 2333(a). See also *Holding Banks Liable Under the Anti-Terrorism Act*, *supra* note 5, at 190 n.41.

²⁷ 18 U.S.C. § 2331(B)(i)-(iii).

²⁸ *Boim v. Holy Land Found. for Relief and Dev.*, 549 F.3d 685, 694 (7th Cir. 2008) (en banc).

²⁹ 18 U.S.C. § 2331(1)(C).

(3) the terrorist perpetrators conducted their operations abroad or after perpetrating their attack, they sought asylum or a safe haven in a foreign country.”³⁰ Therefore, the JASTA does not lift sovereign immunity for all violent acts committed by foreign terrorists on U.S. soil, but only those acts that also have an extraterritorial nexus as defined by 18 U.S.C. § 2331.

The term “international terrorism” is further defined in the JASTA to exclude any “act of war” as defined in § 2331.³¹ The JASTA thus affirms the critical distinction between legitimate military actions and acts of international terrorism, and therefore does not eliminate sovereign immunity for alleged war crimes committed against the United States during an armed conflict.

Additionally, for purposes of JASTA’s substantive cause of action, the terrorist attack must have been committed, planned, or authorized by an organization that has been designated as a “foreign terrorist organization” or “FTO” under § 219 of the Immigration and Nationality Act.³² This limitation further confirms that the JASTA is focused on defending our national security against the most notorious terrorist organizations.

The JASTA imposes another important limitation on civil liability. The death or injury must have been “caused by” an act of international terrorism.³³ To be found liable under the JASTA, the foreign state must have been the proximate cause of the plaintiffs’ injuries. The civil proximate cause standard has two central components. First, the defendant’s conduct must have been a “substantial factor” in the resultant harm.³⁴ Second, the injury must have been “reasonably foreseeable” as a natural consequence of the defendant’s conduct.³⁵ As such, a foreign state that provides material support to an FTO is not strictly liable for every act of international terrorism committed by that FTO. To prevail, plaintiffs must prove that the financial assistance or other support provided by the foreign state to the terrorist organization was a “substantial factor” in causing the plaintiffs’ losses and injuries, and that it was “reasonably foreseeable” that the provision of such support would cause the resultant harm.³⁶

Furthermore, the JASTA does not waive sovereign immunity of a foreign state for “an omission or a tortious act or acts that constitute mere negligence.”³⁷ A foreign state must intentionally, knowingly, or recklessly aid and abet the FTO responsible for causing serious injury or death to U.S. nationals on U.S. soil. Liability cannot be based on mere negligent conduct.

³⁰ Jimmy Gurulé & Geoffrey Corn, *PRINCIPLES OF COUNTER-TERRORISM LAW*, at 373 (2010); *see also* 18 U.S.C. § 2331(1)(C).

³¹ *See* JASTA, § 3.

³² 8 U.S.C. § 1189. Under § 1189(a)(1)(A)-(C), the Secretary of State, in consultation with the Secretary of the Treasury and Attorney General, may designate a foreign organization as a “foreign terrorist organization” upon finding that “(1) the organization is a foreign organization, (2) the organization engages in terrorist activity or retains the capability and intent to engage in terrorist activity, and (3) the terrorist activity threatens the national security or the security of United States nationals.”

³³ *See* JASTA, § 3.

³⁴ *See Holding Banks Liable Under the Anti-Terrorism Act*, *supra* note 5, at 203.

³⁵ *Id.*

³⁶ *Id.*

³⁷ JASTA, § 3.

Therefore, a foreign state that was merely negligent in supervising its officials, employees, or agents that provided such assistance to an FTO could not be sued under the JASTA.

Finally, if plaintiffs are proceeding under a theory of aiding and abetting, they must prove that the foreign state provided “substantial assistance” to the FTO responsible for the terrorist attack.³⁸ The “Findings and Purpose” section of the JASTA makes clear that aiding and abetting liability should be governed by the seminal case of *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), which defines and elaborates on the meaning of “substantial assistance.” Proof of “substantial assistance” requires “more than just a little aid.”³⁹ At a minimum, it requires “knowledge of the illegal activity that is being aided and abetted, a desire to help that activity succeed, and some act to further such activity to make it succeed.”⁴⁰

In sum, the JASTA is a narrowly-tailored and carefully-crafted statute, creating a cause of action for a limited category of claims where plaintiffs have suffered injury or loss of loved ones by reason of an act of international terrorism committed within the United States by a designated FTO. Further, the JASTA removes sovereign immunity and seeks to hold accountable a narrow category of foreign states that intentionally, knowingly, or recklessly provide substantial assistance to an FTO, where the plaintiffs’ injuries or losses were a reasonably foreseeable consequence of the foreign state’s assistance and such assistance was a substantial factor in causing the resultant harm.

(D) Debunking the Reciprocity Argument

The Obama Administration opposes the JASTA, claiming that it violates principles of sovereign immunity and will cause harmful, reciprocal effects abroad.⁴¹ According to President Obama, “[if] we open up the possibility that individuals in the United States can routinely start suing other governments, then we are also opening up the United States to being sued by individuals in other countries.”⁴² However, sovereign immunity is not absolute, and does not exempt governments from suits in foreign countries. In fact, governments have long been subject to civil suits in foreign countries for their wrongful acts. Furthermore, as previously discussed, the JASTA is a narrowly-tailored statute and does not permit U.S. citizens to “routinely” sue foreign states, which substantially minimizes the possibility of retaliatory lawsuits.

The immunity of foreign states is governed by the FSIA, which grants foreign states as well as their agencies and instrumentalities immunity from suit in the United States subject to several enumerated exceptions.⁴³ Under the FSIA, a foreign state is presumptively immune from

³⁸ See JASTA, § 4.

³⁹ *Goldberg v. UBS AG*, 660 F. Supp. 2d 410, 429 (E.D.N.Y. 2009) (quoting *Barker v. Henderson, Franklin, Starnes & Holt*, 797 F.2d 490 (7th Cir. 1986)).

⁴⁰ *Goldberg*, 660 F. Supp. 2d at 425 (quoting *United States v. Zafiro*, 945 F.2d 881, 887 (7th Cir. 1991), *aff’d*, 506 U.S. 534 (1993)).

⁴¹ See *Saudi Arabia and 9/11*, *supra* note 22 (White House Press Secretary Josh Earnest claims that the JASTA threatens “the whole notion of sovereign immunity”).

⁴² *Id.*

⁴³ See FSIA, *supra* note 2, at § 1604.

the jurisdiction of U.S. courts and federal courts lack subject-matter jurisdiction over a claim against a foreign state unless a statutory exception applies.

Section 1605(a)(5), the torts exception of the FSIA creates such an exception, and subjects foreign governments to suit in U.S. courts for tortious acts of foreign governments and their agents that cause harm in the United States.⁴⁴ Section 1605(a)(5) provides that a foreign state shall not be immune from the jurisdiction of the courts of the United States in any case --

[I]n which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment.⁴⁵

Thus, U.S. laws already subject foreign states to suit in our courts when they cause injury domestically. However, the fact that foreign governments can be sued in the United States has not triggered retaliatory lawsuits that imperil the interests of the United States or its citizens abroad.

The International Court of Justice has examined international practice in this area and concluded that the international norm for sovereign immunity is that a “State is not entitled to immunity in respect of torts occasioning death, personal injury or damage to property occurring on the territory of the [enacting] State.”⁴⁶ Thus, the U.S. government is already subject to suit abroad when its conduct causes such an injury in a foreign country.

More fundamentally, the risk of foreign lawsuits has existed for forty years. Since its enactment in 1976, the FSIA has contained a broad exception to immunity for tort claims, which includes actions for wrongful death and other serious injuries caused by international terrorism.⁴⁷ Only recently have courts exempted acts of terrorism from the FSIA tort exception.⁴⁸ However, despite the existence of the FSIA tort exception there has not been a flood of foreign lawsuits filed against the United States.

Countries with the greatest potential for such lawsuits against the United States have authoritarian regimes that do not permit their citizens to bring civil suits against foreign governments for acts of international terrorism. In those countries, such actions are the exclusive prerogative of the authoritarian government. For example, the private civil terrorism lawsuit filed against Iran for its complicity in the 1983 terrorist attack in Beirut, Lebanon, killing over 200

⁴⁴ See FSIA, *supra* note 2, at § 1605(a)(5).

⁴⁵ *Id.* Section 1605(a)(5)(A) provides an exception to the tort exception: “[Section (a)(5) shall not apply to] any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused.”

⁴⁶ Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening) Judgment, ICJ Reports 2012, 99, <http://www.icj-cij.org/docket/files/143/16883.pdf>.

⁴⁷ See *Liu v. Republic of China*, 892 F.2d 1419, 1424-25 (9th Cir. 1989) (holding that the FSIA tort exception provides jurisdiction over Taiwan for claims alleging its agents’ complicity in an act of extrajudicial killing on U.S. soil); *Letelier v. Republic of Chile*, 488 F. Supp. 665, 671 (D.D.C. 1980) (holding that the FSIA tort exception provides for jurisdiction over Chile for the extrajudicial killing by one of its agents in the United States).

⁴⁸ See *e.g.*, *Burnett v. Al Baraka Inv. & Dev. Corp.*, 292 F. Supp. 2d 9, 17-21 (D.D.C. 2003); *In re Terrorist Attacks on Sept. 11, 2001*, 349 F. Supp. 2d 765 (S.D.N.Y. 2005).

American servicemen, did not result in retaliatory lawsuits being filed against the United States by private citizens in Iran.⁴⁹ Furthermore, the civil terrorism case did not undermine the U.S. government's efforts to finalize the Joint Comprehensive Plan of Action with the Islamic Republic of Iran. The civil terrorism lawsuit was pending when the United States and its allies were negotiating and finalizing the terms of the multi-lateral agreement with Iran to limit that country's ability to develop nuclear weapons.

Despite suggestion by some Administration officials to the contrary, the JASTA would not subject U.S. diplomats to suit in foreign countries. Diplomatic immunity is governed by the Vienna Convention on Diplomatic Relations, to which the United States and 189 countries are signatories.⁵⁰ The JASTA does not alter the immunity of diplomats under that Convention. Furthermore, the JASTA has no effect on foreign suits filed against private U.S. citizens abroad. If a U.S. citizen commits a wrongful act that injures someone in a foreign country, that country's domestic laws would determine whether the U.S. citizen could be subject to suit.

The FSIA tort exception could be read to provide jurisdiction in U.S. courts for claims relating to acts of international terrorism on U.S. soil. However, federal courts are currently divided on the issue. Some courts have interpreted the FSIA tort exception as providing for jurisdiction to address acts of terrorism and extrajudicial killings on U.S. soil.⁵¹ Other courts have denied such terrorism-related claims based on the tort exception.⁵² Among other things, the JASTA resolves this conflict, expressly removing sovereign immunity for foreign states that sponsor acts of international terrorism occurring in the United States. The JASTA largely reaffirms the fundamental understanding of U.S. sovereign immunity law, in particular, that foreign states will not be immune for torts causing injury on U.S. soil, including wrongful death and other injuries resulting from acts of international terrorism.

The JASTA is a narrowly drafted statute that removes sovereign immunity in only extraordinary circumstances. Because of the limited scope of application of the JASTA, the fear that U.S. nationals will routinely file suits against foreign governments for acts of international terrorism, resulting in retaliatory lawsuits being filed against the United States is baseless.

(E) Conclusion

The emergence of the Islamic State and the resurgence of al Qaeda present grave threats to our national security. Curtailing the funding of these terrorist organizations is critical to preventing terrorist attacks on the homeland and the deaths of innocent civilians. The risk of being sued under the JASTA and having hundreds of millions of dollars of assets attached to enforce a civil terrorism judgment serves as a powerful deterrent to reckless foreign governments. Civil terrorism lawsuits could cause such foreign governments to stop providing financial support and assistance to FTOs intent on killing Americans, thereby depriving terrorists of funding. The legislation would also

⁴⁹ See *Bank Markazi v. Peterson*, No. 14-770 (U.S.S.C. 2016),

⁵⁰ See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf.

⁵¹ See, e.g., *Liu*, 892 F.2d at 1419; *Letelier*, 488 F. Supp. at 665.

⁵² See, e.g., *Burnett*, 292 F. Supp. 2d at 17-21; *In re Terrorist Attacks on Sept. 11, 2001*, 349 F. Supp. 2d at 765.

provide an incentive for foreign states to adequately regulate and police governmental-religious institutions and charities.

The JASTA eliminates sovereign immunity for foreign states that intentionally, knowingly or recklessly aid and abet terrorist organizations in carrying out deadly attacks on U.S. soil. That is good policy. The JASTA should therefore be enacted into law by Congress.

Thank you for the opportunity to appear before the Subcommittee on the Constitution and Civil Justice on this important topic. At this time, I would be pleased to answer any questions.