

AFTER SUPREME COURT DECISION, IRAN STILL OWES \$53 BILLION IN UNPAID U.S. COURT JUDGMENTS TO AMERICAN VICTIMS OF IRANIAN TERRORISM

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MAY 2016

The U.S. Supreme Court ruled on April 20 that nearly \$2 billion in frozen Iranian government funds must be turned over to injured survivors and families of Americans killed in the 1983 bombing of the U.S. Marine Corps barracks in Beirut and other attacks for which Iran was found liable by U.S. courts. This is an important, but only partial, step towards compensating American victims of Iranian terrorism.

Even after the nearly \$2 billion is used as compensation, American victims of Iranian terrorism will still hold some \$53 billion in outstanding federal court judgments against Iranian government entities and officials. So long as Iran refuses to settle these little-known but massive judgments, they will continue to cast a shadow over Iranian relations with the United States and over expanding Iranian trade with European and other countries that could seize Iranian assets in implementation of the U.S. court judgments. In contrast, if Iran agrees or is forced to settle these claims, as Libya did with the Pan Am 103 and similar claims against it by U.S. terrorism victims, it will be an important step towards deterring similar Iranian-sponsored atrocities in the future.

Tehran is the world's leading state sponsor of terrorism – including numerous attacks that have killed and injured U.S. citizens. Iran has typically acted through Hezbollah, Hamas, or other terrorist proxies. According to Jennifer Elsea of the Congressional Research Service, U.S. federal courts have, over the last two decades, issued some 92 judgments finding the Iranian government and its officials liable for acts of terrorism that claimed American victims.¹ These judgments have resulted in over \$26 billion in compensatory damages and over \$30 billion in punitive damages against Iranian government entities and officials.² Iran has never willingly paid a penny.

Victims and their families have instead received less than \$100 million in compensation from Iranian government assets blocked by the U.S. government.³ The April 20 Supreme Court judgment – ensuring that nearly \$2 billion in Iranian government assets are used to pay U.S. victims of Iranian terrorism – will increase Tehran's price at least twenty-fold for its history of attacks against Americans.

1. Jennifer K. Elsea, "Terrorism Judgments Against Iran," *Congressional Research Service Memorandum to the House Financial Services Committee*, July 20, 2015 (unpublished); "Terrorism Judgments Against Iran: U.S. Court Cases Under the Terrorism Exception to the FSIA (as of August 11, 2015)," accessed April 29, 2016. (<http://www.kirk.senate.gov/pdfs/AmericanIranianJudgments.pdf>); Email to author from Jennifer K. Elsea, *Congressional Research Service*, April 28, 2016.

2. *Id.*

3. *Id.*

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Still, over \$53 billion in U.S. federal court judgments against Iranian government entities and officials remain outstanding.⁴ This includes over \$1 billion in damages that were awarded against Supreme Leader Ali Khamenei himself. The list of judgments against Iranian government entities and officials, and the cases underlying them, makes for remarkable reading. They include, but are not limited to, U.S. courts having held Iran liable for the following:

- A Hezbollah truck bomb that killed 63 people in April 1983 at the U.S. Embassy in Beirut, including 17 Americans.⁵
- A second Hezbollah truck bomb that destroyed a U.S. Marines barracks in Beirut in October 1983, killing 241 U.S. service members.⁶
- Hezbollah's abduction and torture in Lebanon throughout the 1980s of U.S. citizens working in Beirut, including two journalists,⁷ a priest,⁸ and three administrators of educational institutions.⁹
- The April 1995 and February 1996 murders of five U.S. citizens in two terrorist bombings of Israeli buses. Judge Royce Lamberth, the U.S. District Court judge who decided these cases, found Khamenei personally responsible.¹⁰
- The June 1996 killing of 19 U.S. servicemen by a truck bombing at Khobar Towers, a residence on a U.S. military base in Saudi Arabia. Judge Lamberth singled out Khamenei for responsibility, stating that the attack was "approved by Ayatollah Khamenei, the Supreme Leader of Iran at the time."¹¹
- The July 1997 Hamas bombing of an outdoor market in Jerusalem that killed a U.S. citizen. Judge Lamberth found the Iranian government, its Ministry of Information and Security, and Khamenei himself liable for the killing.¹²

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4. *Id.*

5. *Anne Dammarell et al. v. Islamic Republic of Iran et al.*, Memorandum Opinion (Findings and Conclusions), 281 F. Supp. 2d 105 (District of Columbia, September 8, 2003). (https://scholar.google.com/scholar_case?case=1687772493978619338&hl=en&as_sdt=6&as_vis=1&oi=scholar)

6. *Deborah D. Peterson et al. v. Islamic Republic of Iran et al.*, Memorandum Opinion, 264 F. Supp. 2d 46 (District of Columbia, May 30, 2003). (https://scholar.google.com/scholar_case?case=5626948655542537488&hl=en&as_sdt=6&as_vis=1&oi=scholar)

7. *Terry A. Anderson et al. v. Islamic Republic of Iran et al.*, Decision and Order, 90 F. Supp. 2d 107 (U.S. District of Columbia, March 24, 2000). (https://scholar.google.com/scholar_case?case=8117176096588978870&hl=en&as_sdt=6&as_vis=1&oi=scholar); *Jeremy Levin and Dr. Lucille Levin v. Islamic Republic of Iran et al.*, Findings of Fact and Conclusions of Law, 529 F. Supp. 2d 1 (District of Columbia, December 31, 2007). (https://scholar.google.com/scholar_case?case=13892869352111391746&q=Levin+v.+Islamic+Republic+of+Iran&hl=en&as_sdt=20006&as_vis=1)

8. *Joseph M. Jenco et al. v. Islamic Republic of Iran, and the Iranian Ministry of Information and Finance*, Memorandum Opinion, 154 F. Supp. 2d 27 (District of Columbia, August 2, 2001). (https://scholar.google.com/scholar_case?case=13843161726035085053&hl=en&as_sdt=6&as_vis=1&oi=scholar)

9. *Joseph J. Cicippio et al. v. Islamic Republic of Iran*, Decision and Order, 18 F. Supp. 2d 62 (District of Columbia, August, 27, 1998). (https://scholar.google.com/scholar_case?case=15882321793261812850&hl=en&as_sdt=6&as_vis=1&oi=scholar)

10. *Stephen M. Flatow v. Islamic Republic of Iran et al.*, Order and Judgment, 999 F. Supp. 1 (District of Columbia, March 11, 1998). (https://scholar.google.com/scholar_case?case=8444917537420315305&hl=en&as_sdt=6&as_vis=1&oi=scholar); *Leonard I. Eisenfeld et al. v. Islamic Republic of Iran et al.*, Findings of Fact and Conclusions of Law, 172 F. Supp. 2d 1 (District of Columbia, July 11, 2000). (https://scholar.google.com/scholar_case?case=668987634193055673&hl=en&as_sdt=6&as_vis=1&oi=scholar)

11. *Joseph J. Rimkus v. Islamic Republic of Iran et al.*, Findings of Fact and Conclusions of Law, 575 F. Supp. 2d 181 (District of Columbia, August 26, 2008). (https://scholar.google.com/scholar_case?case=4873345775662140399&hl=en&as_sdt=6&as_vis=1&oi=scholar); *Paul Alexander Blais et al. v. Islamic Republic of Iran et al.*, Memorandum Opinion, 459 F. Supp. 2d 40 (District of Columbia, September 29, 2006). (https://scholar.google.com/scholar_case?case=490305537258273847&hl=en&as_sdt=6&as_vis=1&oi=scholar); *Estate of Heiser et al. v. Islamic Republic of Iran et al.*, Memorandum Opinion, 466 F. Supp. 2d 229 (District of Columbia, December 22, 2006). (https://scholar.google.com/scholar_case?case=15536061137756545437&hl=en&as_sdt=6&as_vis=1&oi=scholar)

12. *Shaul Stern v. Islamic Republic of Iran et al.*, Findings of Fact and Conclusions of Law, 271 F. Supp. 2d 286 (District of Columbia, July 17, 2003). (https://scholar.google.com/scholar_case?case=8591262961629913289&hl=en&as_sdt=6&as_vis=1&oi=scholar)

- The August 1998 truck bombings that destroyed the U.S. embassies in Kenya and Tanzania, killing more than 300 and wounding over 5,000.¹³
- The October 2000 bombing of the USS Cole in Yemen, which resulted in the deaths of 17 American sailors.¹⁴
- The September 11, 2001 attacks that killed some 3,000 people. In December 2011, a U.S. District Court found the Iranian government and Khamenei himself among those responsible.¹⁵ The court’s lengthy opinion included extensive evidence that the Islamic Revolutionary Guard Corps had provided “funding and/or training for terrorism operations targeting American citizens, including support for Hizballah and al Qaeda” and evidence that IRGC activities were controlled by Khamenei. The opinion also quoted from the 9/11 Commission report that “Iran furnished material and direct support” for travel for at least eight of the hijackers. The Iranian government, Khamenei, and the other defendants have thus far been ordered to pay over \$16 billion in compensatory and punitive damages to the victims.¹⁶

When the U.S. government negotiated the nuclear deal with Iran, it left Iranian terrorism off the table. Iran was required neither to halt its state sponsorship of terrorism nor to compensate victims. This is in contrast to the successful U.S. effort to pressure Libyan strongman Moammar Qaddafi to verifiably dismantle his nuclear program, halt sponsorship of terrorism, and compensate families of victims of the Pan Am 103 bombing and other acts of Libyan state-sponsored terrorism. As a result, Libya paid some \$4 billion to U.S. victims of those attacks.

Notwithstanding U.S. officials’ hopes that last summer’s nuclear deal would moderate Iranian behavior, Iran has continued its state sponsorship of terrorism, and the nearly \$2 billion was extracted from it over its objections. The good news is that the April 20 Supreme Court verdict will, when implemented, increase from less than \$100 million to some \$2 billion the total compensation paid from Iranian funds to U.S. victims of Iranian terrorism.

However, U.S. victims of Iranian terrorism will still hold some \$53 billion in outstanding U.S. federal court judgments against Iranian government entities and officials. The Supreme Court verdict is thus an important, but unfortunately only partial, step towards compensating American victims of Iranian terrorism and deterring similar Iranian-sponsored atrocities in the future. Justice – and deterrence – will only be achieved when Iran has agreed or been forced to pay to its U.S. terrorism victims a far higher percentage of the U.S. court judgments against Iranian government entities and officials.

Over the decades, tension has persisted regarding these judgments between Congress (which has passed laws facilitating them), the federal judiciary (which has repeatedly found Iran liable), and U.S. administrations of both parties (which typically see these lawsuits as depriving them of control over aspects of foreign policy). Rather than

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 13. *James Owens et al. v. Republic of Sudan et al.*, Memorandum Opinion, 826 F. Supp. 2d 128 (District of Columbia, November 28, 2011). (https://scholar.google.com/scholar_case?case=9030976209827517786&hl=en&as_sdt=6&as_vis=1&oi=scholar) (Both Sudan and Iran were found liable).

14. *Saundra Flanagan et al. v. Islamic Republic of Iran et al.*, Findings of Fact and Conclusions of Law, 87 F. Supp. 3d 93 (District of Columbia, March 31, 2015). (https://scholar.google.com/scholar_case?case=6617176368579092326&hl=en&as_sdt=6&as_vis=1&oi=scholar)

15. *Havlish v. Bin- Laden*, Memorandum Decision and Order, No. 1:2003cv09848 (Southern District of New York, 2011). (<http://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2003cv09848/241306/316/>)

16. *Havlish v. Bin- Laden*, Memorandum Decision and Order, No. 1:2003cv09848 (Southern District of New York, 2011). (<http://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2003cv09848/241306/316/>) (over \$6 billion); *Ashton et al. v. al Qaeda Islamic Army et al.*, Memorandum Opinion and Order, No. 1:2002cv06977 (Southern District of New York, 2016). (<http://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2002cv06977/39284/785/>) (over \$10 billion)

seeing these judgments as a nuisance, the U.S. executive branch ought to start treating them as an opportunity to achieve justice, as well as the foreign policy objective of countering Iranian state sponsorship of terrorism.

Recent developments provide an opportunity. In implementing the nuclear deal with Iran, the U.S. has lifted nuclear-related secondary sanctions that deter European and other foreign companies from doing business with Tehran. As a result, Iranian government assets will be flooding into Europe and other foreign destinations. Meanwhile, most U.S. companies continue to be prohibited from doing business with Iran as a result of remaining primary sanctions for its state sponsorship of terrorism and other illicit activities.

American victims are already working to seize Iranian assets in foreign countries. The U.S. government should maximize their ability to do so. This should include taking appropriate steps to ensure that allied governments' courts do not inappropriately discriminate against U.S. federal court judgments against state sponsors of terrorism. U.S. pressure on Iranian assets overseas can contribute significantly to pushing Iran to settle with victims of Iranian-sponsored terrorism.

The lawsuits filed against Iran by such victims are an example of lawfare, the use of law to achieve national security objectives traditionally achieved by force of arms. Law is becoming an increasingly powerful and prevalent weapon of war. This is driven by the increased number and reach of international laws and tribunals, the information technology revolution, and the advance of globalization – which has vastly increased governments' leverage over other countries and their companies by intensifying global economic interdependence.

When lawyers waging lawfare seize assets from state sponsors of terrorism, or otherwise achieve U.S. objectives traditionally achieved by force of arms, they do so less expensively and without incurring casualties. Lawfare is thus a weapon eminently suitable for the U.S. public's aversion to casualties and the current U.S. focus on reducing government spending. Unfortunately, the U.S. government has only sporadically engaged with the concept of lawfare. It has no lawfare strategy or doctrine, and no office or interagency mechanism that systematically develops or coordinates U.S. offensive or defensive lawfare.

The U.S. executive branch ought to emulate and build upon the creativity with which private lawyers have deployed lawfare to win massive U.S. court judgments against Iran and other state sponsors of terrorism. Establishing a U.S. government lawfare strategy and office would be a good start.

The Foundation for Defense of Democracies' Center on Sanctions and Illicit Finance (CSIF) provides policy and subject matter expertise in areas of illicit finance, financial power, and economic pressure to the global policy community. CSIF seeks to illuminate the critical intersection between the full range of illicit finance and national security, including money laundering, terrorist financing, sanctions evasion, proliferation financing, cyber crime and economic espionage, and corruption and kleptocracy. For more information on CSIF's work, please visit www.defenddemocracy.org/csif.