

113TH CONGRESS  
1ST SESSION

# S. 1535

To deter terrorism, provide justice for victims, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2013

Mr. SCHUMER (for himself, Mr. CORNYN, Mr. COONS, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. HATCH, Ms. KLOBUCHAR, Mr. MARKEY, Mr. MENENDEZ, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To deter terrorism, provide justice for victims, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice Against Spon-  
5 sors of Terrorism Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) International terrorism is a serious and  
9 deadly problem that threatens the vital interests of  
10 the United States.

1           (2) The Constitution confers upon Congress the  
2 power to punish crimes against the law of nations  
3 and to carry out the treaty obligations of the United  
4 States, and therefore Congress may by law impose  
5 penalties relating to the provision of material sup-  
6 port to foreign organizations engaged in terrorist ac-  
7 tivity, and allow for victims of international ter-  
8 rorism to recover damages from those who have  
9 harmed them.

10           (3) International terrorism affects the inter-  
11 state and foreign commerce of the United States by  
12 harming international trade and market stability,  
13 and limiting international travel by United States  
14 citizens as well as foreign visitors to the United  
15 States.

16           (4) Some foreign terrorist organizations, acting  
17 through affiliated groups or individuals, raise signifi-  
18 cant funds outside of the United States for conduct  
19 directed and targeted at the United States.

20           (5) Foreign organizations that engage in ter-  
21 rorist activity are so tainted by their criminal con-  
22 duct that any contribution to such an organization  
23 facilitates that conduct.

24           (6) The imposition of civil liability at every  
25 point along the causal chain of terrorism is nec-

1        essary to deter the flow of money, which is the life-  
2        blood of terrorism. As recognized by Judge Richard  
3        Posner in *Boim v. Holy Land Foundation for Relief*  
4        and *Development*, 549 F.3d 685, 690–91 (7th Cir.  
5        2008) (en banc), “[d]amages are a less effective  
6        remedy against terrorists and their organizations  
7        than against their financial angels[,] . . . suits  
8        against financiers of terrorism can cut the terrorists’  
9        lifeline”.

10        (7) It is necessary to explicitly recognize the  
11        substantive causes of action for aiding and abetting  
12        and conspiracy liability under the Anti-Terrorism  
13        Act of 1987 (22 U.S.C. 5201 et seq.), especially  
14        given that the United States Courts of Appeals for  
15        the 2d and 7th Circuits have held that such theories  
16        of liability currently are not available. See *Rothstein*  
17        v. *UBS AG*, 708 F.3d 82 (2d Cir. 2013); *Boim v.*  
18        *Holy Land Foundation for Relief and Development*,  
19        549 F.3d 685 (7th Cir. 2008) (en banc).

20        (8) The decision of the United States Court of  
21        Appeals for the District of Columbia in *Halberstam*  
22        v. *Welch*, 705 F.2d 472 (D.C. Cir. 1983), which has  
23        been widely recognized as the leading case regarding  
24        Federal civil aiding and abetting and conspiracy li-  
25        ability, including by the Supreme Court of the

1 United States, provides the proper legal framework  
2 for how such liability should function in the context  
3 of the Anti-Terrorism Act of 1987 (22 U.S.C. 5201  
4 et seq.).

5 (9) The United Nations Security Council de-  
6 clared in Resolution 1373, adopted on September  
7 28, 2001, that all countries have an affirmative obli-  
8 gation to “[r]efrain from providing any form of sup-  
9 port, active or passive, to entities or persons involved  
10 in terrorist acts,” and to “[e]nsure that any person  
11 who participates in the financing, planning, prepara-  
12 tion or perpetration of terrorist acts or in supporting  
13 terrorist acts is brought to justice”.

14 (10) Consistent with these declarations, no  
15 country has the discretion to engage knowingly in  
16 the financing or sponsorship of terrorism, whether  
17 directly or indirectly.

18 (11) Persons, entities, or countries that know-  
19 ingly or recklessly contribute material support or re-  
20 sources, directly or indirectly, to persons or organi-  
21 zations that pose a significant risk of committing  
22 acts of terrorism that threaten the security of na-  
23 tionals of the United States or the national security,  
24 foreign policy, or economy of the United States, nec-  
25 essarily direct their conduct at the United States,

1 and should reasonably anticipate being brought to  
2 court in the United States to answer for such activi-  
3 ties.

4 (12) The United States has a vital interest in  
5 providing persons and entities injured as a result of  
6 terrorist attacks committed within the United States  
7 with full access to the court system in order to pur-  
8 sue civil claims against persons, entities, or countries  
9 that have knowingly or recklessly provided material  
10 support or resources, directly or indirectly, to the  
11 persons or organizations responsible for their inju-  
12 ries.

13 (b) PURPOSE.—The purpose of this Act is to provide  
14 civil litigants with the broadest possible basis, consistent  
15 with the Constitution of the United States, to seek relief  
16 against persons, entities, and foreign countries, wherever  
17 acting and wherever they may be found, that have pro-  
18 vided material support or resources, directly or indirectly,  
19 to foreign organizations or persons that engage in terrorist  
20 activities against the United States.

21 **SEC. 3. FOREIGN SOVEREIGN IMMUNITY.**

22 Section 1605(a) of title 28, United States Code, is  
23 amended—

24 (1) by amending paragraph (5) to read as fol-  
25 lows:

1           “(5) not otherwise encompassed in paragraph  
2           (2), in which money damages are sought against a  
3           foreign state arising out of physical injury or death,  
4           or damage to or loss of property, occurring in the  
5           United States and caused by the tortious act or  
6           omission of that foreign state or of any official or  
7           employee of that foreign state while acting within  
8           the scope of the office or employment of the official  
9           or employee (regardless of where the underlying  
10          tortious act or omission occurs), including any statu-  
11          tory or common law tort claim arising out of an act  
12          of extrajudicial killing, aircraft sabotage, hostage  
13          taking, terrorism, or the provision of material sup-  
14          port or resources for such an act, or any claim for  
15          contribution or indemnity relating to a claim arising  
16          out of such an act, except this paragraph shall not  
17          apply to—

18                   “(A) any claim based upon the exercise or  
19                   performance of, or the failure to exercise or  
20                   perform, a discretionary function, regardless of  
21                   whether the discretion is abused; or

22                   “(B) any claim arising out of malicious  
23                   prosecution, abuse of process, libel, slander,  
24                   misrepresentation, deceit, interference with con-  
25                   tract rights, or any claim for emotional distress

1 or derivative injury suffered as a result of an  
2 event or injury to another person that occurs  
3 outside of the United States; or”]; and

4 (2) by inserting after subsection (d) the fol-  
5 lowing:

6 “(e) DEFINITIONS.—For purposes of subsection  
7 (a)(5)—

8 “(1) the terms ‘aircraft sabotage’, ‘extrajudicial  
9 killing’, ‘hostage taking’, and ‘material support or  
10 resources’ have the meanings given those terms in  
11 section 1605A(h); and

12 “(2) the term ‘terrorism’ means international  
13 terrorism and domestic terrorism, as those terms are  
14 defined in section 2331 of title 18.”.

15 **SEC. 4. AIDING AND ABETTING LIABILITY FOR CIVIL AC-**  
16 **TIONS REGARDING TERRORIST ACTS.**

17 (a) IN GENERAL.—Section 2333 of title 18, United  
18 States Code, is amended by adding at the end the fol-  
19 lowing:

20 “(d) LIABILITY.—In an action arising under sub-  
21 section (a), liability may be asserted as to the person or  
22 persons who committed such act of international terrorism  
23 or any person or entity that aided, abetted, or conspired  
24 with the person or persons who committed such an act  
25 of international terrorism.

1       “(e) NON-APPLICABILITY OF LAW OF PRE-  
 2 CLUSION.—Any civil action or claim that seeks recovery  
 3 under this chapter for conduct that was the basis of a  
 4 civil action or claim previously dismissed for lack of sub-  
 5 ject matter jurisdiction for failure to meet the require-  
 6 ments for an exception under section 1605(a) of title 28  
 7 is not subject to dismissal under the law of preclusion.”.

8       (b) EFFECT ON FOREIGN SOVEREIGN IMMUNITIES  
 9 ACT.—Nothing in the amendments made by this section  
 10 affects immunity of a foreign state, as that term is defined  
 11 in section 1603 of title 28, United States Code, from juris-  
 12 diction under other law.

13 **SEC. 5. JURISDICTION FOR CIVIL ACTIONS REGARDING**  
 14 **TERRORIST ACTS.**

15       Section 2334 of title 18, United States Code, is  
 16 amended by inserting at the end the following:

17       “(e) JURISDICTION.—The district courts shall have  
 18 personal jurisdiction, to the maximum extent permissible  
 19 under the 5th Amendment to the Constitution of the  
 20 United States, over any person who commits, aids and  
 21 abets an act of international terrorism, or provides mate-  
 22 rial support or resources as set forth in sections 2339A,  
 23 2339B, or 2339C, for acts of international terrorism in  
 24 which any national of the United States suffers injury in



1 his or her person, property, or business by reason of such  
2 an act in violation of section 2333.”.

3 **SEC. 6. LIABILITY FOR GOVERNMENT OFFICIALS IN CIVIL**  
4 **ACTIONS REGARDING TERRORIST ACTS.**

5 Section 2337 of title 18, United States Code, is  
6 amended to read as follows:

7 **“§ 2337. Suits against Government officials**

8 “No action may be maintained under section 2333  
9 against—

10 “(a) the United States;

11 “(b) an agency of the United States; or

12 “(c) an officer or employee of the United States or  
13 any agency of the United States acting within the official  
14 capacity of the officer or employee or under color of legal  
15 authority.”.

16 **SEC. 7. SEVERABILITY.**

17 If any provision of this Act or any amendment made  
18 by this Act, or the application of a provision or amend-  
19 ment to any person or circumstance, is held to be invalid,  
20 the remainder of this Act and the amendments made by  
21 this Act, and the application of the provisions and amend-  
22 ments to any other person not similarly situated or to  
23 other circumstances, shall not be affected by the holding.

1 **SEC. 8. EFFECTIVE DATE.**

2       The amendments made by this Act shall apply to any  
3 civil action pending on, or commenced on or after, the date  
4 of enactment of this Act.

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