

# Calendar No. 560

113TH CONGRESS  
2D 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, Mr. WHITEHOUSE, Mr. FLAKE, Mr. LEE, Mr. CRUZ, Mr. GRASSLEY, Mr. FRANKEN, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 15, 2014

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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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”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

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

3 (1) International terrorism is a serious and  
4 deadly problem that threatens the vital interests of  
5 the United States.

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

15 (3) International terrorism affects the inter-  
16 state and foreign commerce of the United States by  
17 harming international trade and market stability,  
18 and limiting international travel by United States  
19 citizens as well as foreign visitors to the United  
20 States.

21 (4) Some foreign terrorist organizations, acting  
22 through affiliated groups or individuals, raise signifi-  
23 cant funds outside of the United States for conduct  
24 directed and targeted at the United States.

25 (5) Foreign organizations that engage in ter-  
26 rorist activity are so tainted by their criminal con-

1       duct that any contribution to such an organization  
2       facilitates that conduct.

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

14          (7) It is necessary to explicitly recognize the  
15      substantive causes of action for aiding and abetting  
16      and conspiracy liability under the Anti-Terrorism  
17      Act of 1987 (22 U.S.C. 5201 et seq.), especially  
18      given that the United States Courts of Appeals for  
19      the 2d and 7th Circuits have held that such theories  
20      of liability currently are not available. See *Rothstein*  
21      *v. UBS AG*, 708 F.3d 82 (2d Cir. 2013); *Boim v.*  
22      *Holy Land Foundation for Relief and Development*,  
23      549 F.3d 685 (7th Cir. 2008) (en banc).

24          (8) The decision of the United States Court of  
25      Appeals for the District of Columbia in *Halberstam*

1 v. Welch, 705 F.2d 472 (D.C. Cir. 1983), which has  
2 been widely recognized as the leading case regarding  
3 Federal civil aiding and abetting and conspiracy li-  
4 ability, including by the Supreme Court of the  
5 United States, provides the proper legal framework  
6 for how such liability should function in the context  
7 of the Anti-Terrorism Act of 1987 (22 U.S.C. 5201  
8 et seq.).

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

18 (10) Consistent with these declarations, no  
19 country has the discretion to engage knowingly in  
20 the financing or sponsorship of terrorism, whether  
21 directly or indirectly.

22 (11) Persons, entities, or countries that know-  
23 ingly or recklessly contribute material support or re-  
24 sources, directly or indirectly, to persons or organi-  
25 zations that pose a significant risk of committing

1 acts of terrorism that threaten the security of na-  
2 tionals of the United States or the national security,  
3 foreign policy, or economy of the United States, nec-  
4 essarily direct their conduct at the United States,  
5 and should reasonably anticipate being brought to  
6 court in the United States to answer for such activi-  
7 ties.

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

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

1 **SEC. 3. FOREIGN SOVEREIGN IMMUNITY.**

2 Section 1605(a) of title 28, United States Code, is  
3 amended—

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

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

23 “(A) any claim based upon the exercise or  
24 performance of, or the failure to exercise or  
25 perform, a discretionary function, regardless of  
26 whether the discretion is abused; or

1           “(B) any claim arising out of malicious  
 2           prosecution, abuse of process, libel, slander,  
 3           misrepresentation, deceit, interference with con-  
 4           tract rights, or any claim for emotional distress  
 5           or derivative injury suffered as a result of an  
 6           event or injury to another person that occurs  
 7           outside of the United States; or”;

8           (2) by inserting after subsection (d) the fol-  
 9           lowing:

10          “(e) DEFINITIONS.—For purposes of subsection  
 11 (a)(5)—

12           “(1) the terms ‘aircraft sabotage’, ‘extrajudicial  
 13           killing’, ‘hostage taking’, and ‘material support or  
 14           resources’ have the meanings given those terms in  
 15           section 1605A(h); and

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

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

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

24          “(d) LIABILITY.—In an action arising under sub-  
 25 section (a), liability may be asserted as to the person or

1 persons who committed such act of international terrorism  
 2 or any person or entity that aided, abetted, or conspired  
 3 with the person or persons who committed such an act  
 4 of international terrorism.

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

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

17 **SEC. 5. JURISDICTION FOR CIVIL ACTIONS REGARDING**  
 18 **TERRORIST ACTS.**

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

21       “(e) ~~JURISDICTION.~~—The district courts shall have  
 22 personal jurisdiction, to the maximum extent permissible  
 23 under the 5th Amendment to the Constitution of the  
 24 United States, over any person who commits, aids and  
 25 abets an act of international terrorism, or provides mate-



1 rial support or resources as set forth in sections 2339A,  
 2 2339B, or 2339C, for acts of international terrorism in  
 3 which any national of the United States suffers injury in  
 4 his or her person, property, or business by reason of such  
 5 an act in violation of section 2333.”.

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

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

10 **“§ 2337. Suits against Government officials**

11 “No action may be maintained under section 2333  
 12 against—

13 “(a) the United States;

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

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

19 **SEC. 7. SEVERABILITY.**

20 If any provision of this Act or any amendment made  
 21 by this Act, or the application of a provision or amend-  
 22 ment to any person or circumstance, is held to be invalid,  
 23 the remainder of this Act and the amendments made by  
 24 this Act, and the application of the provisions and amend-

1 ments to any other person not similarly situated or to  
2 other circumstances, shall not be affected by the holding.

3 **SEC. 8. EFFECTIVE DATE.**

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

7 **SECTION 1. SHORT TITLE.**

8 *This Act may be cited as the “Justice Against Spon-*  
9 *sors of Terrorism Act”.*

10 **SEC. 2. FINDINGS AND PURPOSE.**

11 *(a) FINDINGS.—Congress finds the following:*

12 *(1) International terrorism is a serious and*  
13 *deadly problem that threatens the vital interests of the*  
14 *United States.*

15 *(2) The Constitution confers upon Congress the*  
16 *power to punish crimes against the law of nations*  
17 *and therefore Congress may by law impose penalties*  
18 *on those who provide material support to foreign or-*  
19 *ganizations engaged in terrorist activity, and allow*  
20 *for victims of international terrorism to recover dam-*  
21 *ages from those who have harmed them.*

22 *(3) International terrorism affects the interstate*  
23 *and foreign commerce of the United States by harm-*  
24 *ing international trade and market stability, and*

1 *limiting international travel by United States citi-*  
2 *zens as well as foreign visitors to the United States.*

3 (4) *Some foreign terrorist organizations, acting*  
4 *through affiliated groups or individuals, raise signifi-*  
5 *cant funds outside of the United States for conduct*  
6 *directed and targeted at the United States.*

7 (5) *It is necessary to recognize the substantive*  
8 *causes of action for aiding and abetting and con-*  
9 *spiracy liability under the Anti-Terrorism Act of*  
10 *1987 (22 U.S.C. 5201 et seq.).*

11 (6) *The decision of the United States Court of*  
12 *Appeals for the District of Columbia in Halberstam*  
13 *v. Welch, 705 F.2d 472 (D.C. Cir. 1983), which has*  
14 *been widely recognized as the leading case regarding*  
15 *Federal civil aiding and abetting and conspiracy li-*  
16 *ability, including by the Supreme Court of the United*  
17 *States, provides the proper legal framework for how*  
18 *such liability should function in the context of the*  
19 *Anti-Terrorism Act of 1987 (22 U.S.C. 5201 et seq.).*

20 (7) *The United Nations Security Council de-*  
21 *clared in Resolution 1373, adopted on September 28,*  
22 *2001, that all countries have an affirmative obliga-*  
23 *tion to “[r]efrain from providing any form of sup-*  
24 *port, active or passive, to entities or persons involved*  
25 *in terrorist acts,” and to “[e]nsure that any person*

1       *who participates in the financing, planning, prepara-*  
2       *tion or perpetration of terrorist acts or in supporting*  
3       *terrorist acts is brought to justice”.*

4               (8) *Consistent with these declarations, no coun-*  
5       *try has the discretion to engage knowingly in the fi-*  
6       *nancing or sponsorship of terrorism, whether directly*  
7       *or indirectly.*

8               (9) *Persons, entities, or countries that knowingly*  
9       *or recklessly contribute material support or resources,*  
10       *directly or indirectly, to persons or organizations that*  
11       *pose a significant risk of committing acts of terrorism*  
12       *that threaten the security of nationals of the United*  
13       *States or the national security, foreign policy, or*  
14       *economy of the United States, necessarily direct their*  
15       *conduct at the United States, and should reasonably*  
16       *anticipate being brought to court in the United States*  
17       *to answer for such activities.*

18              (10) *The United States has a vital interest in*  
19       *providing persons and entities injured as a result of*  
20       *terrorist attacks committed within the United States*  
21       *with full access to the court system in order to pursue*  
22       *civil claims against persons, entities, or countries*  
23       *that have knowingly or recklessly provided material*  
24       *support or resources, directly or indirectly, to the per-*  
25       *sons or organizations responsible for their injuries.*

1       (b) *PURPOSE.*—*The purpose of this Act is to provide*  
2 *civil litigants with the broadest possible basis, consistent*  
3 *with the Constitution of the United States, to seek relief*  
4 *against persons, entities, and foreign countries, wherever*  
5 *acting and wherever they may be found, that have provided*  
6 *material support, directly or indirectly, to foreign organi-*  
7 *zations or persons that engage in terrorist activities against*  
8 *the United States.*

9 **SEC. 3. FOREIGN SOVEREIGN IMMUNITY.**

10       *Section 1605(a) of title 28, United States Code, is*  
11 *amended—*

12               (1) *by amending paragraph (5) to read as fol-*  
13 *lows:*

14               “(5) *not otherwise encompassed in paragraph*  
15 *(2), in which money damages are sought against a*  
16 *foreign state arising out of physical injury or death,*  
17 *or damage to or loss of property, occurring in the*  
18 *United States and caused by the tortious act or omis-*  
19 *sion of that foreign state or of any official or em-*  
20 *ployee of that foreign state while acting within the*  
21 *scope of the office or employment of the official or em-*  
22 *ployee (regardless of where the underlying tortious act*  
23 *or omission occurs), including any statutory or com-*  
24 *mon law tort claim arising out of an act of*  
25 *extrajudicial killing, aircraft sabotage, hostage taking,*

1 *terrorism, or the provision of material support or re-*  
 2 *sources for such an act, or any claim for contribution*  
 3 *or indemnity relating to a claim arising out of such*  
 4 *an act, except this paragraph shall not apply to—*

5 *“(A) any claim based upon the exercise or*  
 6 *performance of, or the failure to exercise or per-*  
 7 *form, a discretionary function, regardless of*  
 8 *whether the discretion is abused; or*

9 *“(B) any claim arising out of malicious*  
 10 *prosecution, abuse of process, libel, slander, mis-*  
 11 *representation, deceit, interference with contract*  
 12 *rights, or any claim for emotional distress or de-*  
 13 *rivative injury suffered as a result of an event*  
 14 *or injury to another person that occurs outside*  
 15 *of the United States; or”;* and

16 *(2) by inserting after subsection (d) the fol-*  
 17 *lowing:*

18 *“(e) DEFINITIONS.—For purposes of subsection*  
 19 *(a)(5)—*

20 *“(1) the terms ‘aircraft sabotage’, ‘extrajudicial*  
 21 *killing’, ‘hostage taking’, and ‘material support or re-*  
 22 *sources’ have the meanings given those terms in sec-*  
 23 *tion 1605A(h); and*

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

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

6           (a) *IN GENERAL.*—Section 2333 of title 18, United  
7   States Code, is amended by adding at the end the following:

8           “(d) *LIABILITY.*—In an action under subsection (a) for  
9   an injury arising from an act of international terrorism  
10   committed, planned, or authorized by an organization that  
11   had been designated as a foreign terrorist organization  
12   under section 219 of the Immigration and Nationality Act  
13   (8 U.S.C. 1189), as of the date on which such act of inter-  
14   national terrorism was committed, planned, or authorized,  
15   or that was so designated as a result of such act of inter-  
16   national terrorism, liability may be asserted as to any per-  
17   son or entity that aided, abetted, or conspired with the per-  
18   son who committed such an act of international terrorism.

19           “(e) *NON-APPLICABILITY OF LAW OF PRECLUSION.*—  
20   Any civil action or claim that seeks recovery under this  
21   chapter for conduct that was the basis of a civil action or  
22   claim previously dismissed for lack of subject matter juris-  
23   diction for failure to meet the requirements for an exception  
24   under section 1605(a) of title 28 is not subject to dismissal  
25   under the law of preclusion.”.

1           **(b) EFFECT ON FOREIGN SOVEREIGN IMMUNITIES**  
 2 *ACT.*—*Nothing in the amendments made by this section af-*  
 3 *fects immunity of a foreign state, as that term is defined*  
 4 *in section 1603 of title 28, United States Code, from juris-*  
 5 *isdiction under other law.*

6 **SEC. 5. PERSONAL JURISDICTION FOR CIVIL ACTIONS RE-**  
 7 **GARDING TERRORIST ACTS.**

8           *Section 2334 of title 18, United States Code, is amend-*  
 9 *ed by inserting at the end the following:*

10           “(e) **PERSONAL JURISDICTION.**—*The district courts*  
 11 *shall have personal jurisdiction, to the maximum extent*  
 12 *permissible under the 5th Amendment to the Constitution*  
 13 *of the United States, over any person who commits or aids*  
 14 *and abets an act of international terrorism or otherwise*  
 15 *sponsors such act or the person who committed such act,*  
 16 *for acts of international terrorism in which any national*  
 17 *of the United States suffers injury in his or her person,*  
 18 *property, or business by reason of such an act in violation*  
 19 *of section 2333.”.*

20 **SEC. 6. LIABILITY FOR GOVERNMENT OFFICIALS IN CIVIL**  
 21 **ACTIONS REGARDING TERRORIST ACTS.**

22           *Section 2337 of title 18, United States Code, is amend-*  
 23 *ed to read as follows:*



1 **“§2337. Suits against Government officials**

2 “No action may be maintained under section 2333  
3 against—

4 “(1) the United States;

5 “(2) an agency of the United States; or

6 “(3) an officer or employee of the United States  
7 or any agency of the United States acting within the  
8 official capacity of the officer or employee or under  
9 color of legal authority.”.

10 **SEC. 7. SEVERABILITY.**

11 *If any provision of this Act or any amendment made*  
12 *by this Act, or the application of a provision or amendment*  
13 *to any person or circumstance, is held to be invalid, the*  
14 *remainder of this Act and the amendments made by this*  
15 *Act, and the application of the provisions and amendments*  
16 *to any other person not similarly situated or to other cir-*  
17 *cumstances, shall not be affected by the holding.*

18 **SEC. 8. EFFECTIVE DATE.**

19 *The amendments made by this Act shall apply to any*  
20 *civil action—*

21 *(1) pending on, or commenced on or after, the*  
22 *date of enactment of this Act; and*

23 *(2) arising out of an injury to a person, prop-*  
24 *erty, or business on or after September 11, 2001.*

Calendar No. 560

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 1535**

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**A BILL**

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

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SEPTEMBER 15, 2014

Reported with an amendment