

ANTI-TERRORISM CLARIFICATION ACT OF 2018

JULY 23, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 5954]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5954) to amend title 18, United States Code, to clarify the meaning of the terms “act of war” and “blocked asset”, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Anti-Terrorism Clarification Act of 2018”.

SEC. 2. CLARIFICATION OF THE TERM “ACT OF WAR”.

- (a) IN GENERAL.—Section 2331 of title 18, United States Code, is amended—
- (1) in paragraph (4), by striking “and” at the end;
 - (2) in paragraph (5), by striking the period at the end and inserting “; and”;
- and
- (3) by adding at the end the following:
- “(6) the term ‘military force’ does not include any person that—
- “(A) has been designated as a—
 - “(i) foreign terrorist organization by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189); or
 - “(ii) Specially Designated Global Terrorist (as such term is defined in section 594.310 of the Code of Federal Regulations) by the Secretary of State or the Secretary of the Treasury; or
 - “(B) has been determined by the court to not be a ‘military force’.”
- (b) APPLICATION.—The amendments made by this section shall apply to any civil action pending on or commenced after the date of the enactment of this Act.

SEC. 3. SATISFACTION OF JUDGMENTS AGAINST TERRORISTS.

- (a) IN GENERAL.—Section 2333 of title 18, United States Code, is amended by inserting at the end following:
- “(e) USE OF BLOCKED ASSETS TO SATISFY JUDGMENTS OF U.S. NATIONALS.—For purposes of section 201 of the Terrorism Risk Insurance Act of 2002 (28 U.S.C. 1610 note), in any action in which a national of the United States has obtained a judgment against a terrorist party pursuant to this section, the term ‘blocked asset’ shall include any asset of that terrorist party (including the blocked assets of any agency or instrumentality of that party) seized or frozen by the United States under section 805(b) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1904(b)).”
- (b) APPLICABILITY.—The amendments made by this section shall apply to any judgment entered before, on, or after the date of enactment of this Act.

SEC. 4. CONSENT OF CERTAIN PARTIES TO PERSONAL JURISDICTION.

- (a) IN GENERAL.—Section 2334 of title 18, United States Code, is amended by adding at the end the following:
- “(e) CONSENT OF CERTAIN PARTIES TO PERSONAL JURISDICTION.—
- “(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of any civil action under section 2333 of this title, a defendant shall be deemed to have consented to personal jurisdiction in such civil action if, regardless of the date of the occurrence of the act of international terrorism upon which such civil action was filed, the defendant—
 - “(A) after the date that is 120 days after the date of enactment of this subsection, accepts—
 - “(i) any form of assistance, however provided, under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.); or
 - “(ii) any form of assistance, however provided, under section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291) for international narcotics control and law enforcement; or
 - “(B) in the case of a defendant benefiting from a waiver or suspension of section 1003 of the Anti-Terrorism Act of 1987 (22 U.S.C. 5202) after the date that is 120 days after the date of enactment of this subsection—
 - “(i) continues to maintain any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States; or
 - “(ii) establishes or procures any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States.
 - “(2) APPLICABILITY.—Paragraph (1) shall not apply to any defendant who ceases to engage in the conduct described in paragraphs (1)(A) and (1)(B) for 5 consecutive calendar years.”
- (b) APPLICABILITY.—The amendments made by this section shall take effect on the date of enactment of this Act.

Purpose and Summary

The Anti-Terrorism Clarification Act of 2018 makes three needed improvements to the Antiterrorism Act of 1992 (ATA) to better ensure that victims of international terrorism can obtain justice in United States courts against those who commit, or conspire to commit, an act of international terrorism or who aid and abet inter-

national terrorist activity. The legislation: (1) clarifies ambiguities in the ATA's "act of war" exception that currently allows designated foreign terrorists and their supporters to avoid liability; (2) closes a loophole that currently prevents victims of narco-terrorism from enforcing their judgments against terrorist assets that have been blocked by the Treasury Department; and (3) addresses lower court decisions that have allowed entities that sponsor terrorist activity against U.S. nationals overseas to avoid the jurisdiction of U.S. courts.

Background and Need for the Legislation

I. Background

In 1992, Congress enacted the Antiterrorism Act's civil cause of action provision to help address international terrorist attacks that harm U.S. persons abroad by "provid[ing] the framework in our legal system for Americans to seek justice against those who defy all notions of morality and justice."¹ The ATA's civil liability provision is aimed at deterring support for terrorism, buttressing the country's counter-terrorism initiatives, and providing justice for victims of terrorist attacks. The provision grants U.S. nationals injured by acts of international terrorism a civil action for damages. Specifically, it provides that:

[a]ny national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.²

In passing the ATA's civil remedy, Congress recognized that "reluctant courts and . . . jurisdictional hurdles" had often stymied the ability of victims of international terrorism to obtain redress for their injuries.³ Thus, the civil remedy was designed to "remove the jurisdictional hurdles in the courts confronting victims" of international terrorism⁴ and "fill the gap by providing the civil counterpart to" the ATA's criminal penalties.⁵ In addition, the civil remedy provision was designed to "put[] terrorists' assets at risk and deter[] them from using the U.S. financial system to hide and augment their wealth."⁶ In short, by cutting terrorists' financial lifelines, the provision furthers the United States' longstanding efforts

¹ 137 Cong. Rec. S1771-01 (1991) (statement of Sen. Grassley).

² 18 U.S.C. § 2333(a). The Antiterrorism Act (ATA) defines "international terrorism" to include activities that: (A) "involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State"; (B) "appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping"; and (C) "occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum." 18 U.S.C. § 2331(1).

³ See 136 Cong. Rec. S4568-01 (1990).

⁴ *Hearing Before the Subcomm. on Intellectual Property & Judicial Administration of the H. Comm. On the Judiciary*, 102d Cong. 10 (1992) ("1992 Hearing") (letter from Sen. Grassley).

⁵ 136 Cong. Rec. at S14283 (statement of Sen. Grassley).

⁶ 1992 Hearing at 13.

to reduce global terrorism and thus protect Americans here and abroad.

The Department of Justice has recognized that the civil liability provision is “an effective weapon in the battle against international terrorism” because it “discourage[s] those who would provide financing for this activity.”⁷ And the State Department has explained that the provision “discourage[s] sources of terrorist funding and hold[s] sponsors of terrorism accountable for their actions.”

II. The Anti-Terrorism Clarification Act

The Anti-Terrorism Clarification Act addresses three discrete problems that currently exist in the ATA: (1) ambiguities in the ATA’s “act of war” exception that allow designated foreign terrorists and their supporters to avoid liability; (2) a loophole that prevents victims of narco-terrorism from enforcing their judgments against terrorist assets that have been blocked by the Treasury Department under the Foreign Narcotics Kingpin Designation Act; and (3) lower court decisions that have allowed entities that sponsor terrorist activity against U.S. nationals overseas to avoid the jurisdiction of U.S. courts.

A. “Act of War” Exception

Defendants accused of aiding and abetting acts of international terrorism have been attempting to use the ATA’s “act of war” exception⁸ as a means of avoiding civil liability, even in cases in which the plaintiffs’ injuries were caused by the actions of designated terrorist groups. For example, in *Kaplan v. Central Bank of the Islamic Republic of Iran*, the defendant banks successfully argued that rocket attacks carried out by Hezbollah—a designated foreign terrorist organization—were acts of war and thus outside the scope of the ATA’s civil liability provisions.⁹ The court agreed and dismissed the plaintiffs’ claims, finding that the attacks, carried out by a terrorist group against civilians, were acts of war. The ATA’s “act of war” exception should not be a liability shield for those who aid or abet attacks carried out by designated terrorist organizations.

This legislation effectively amends the definition of “act of war” in the ATA¹⁰ to clarify that the act of war exception does not apply to any person that has been designated as a foreign terrorist organization by the State Department or a Specially Designated Global Terrorist by the Treasury or State Departments, or any person that has been determined by the court to not be a “military force.” Simply put, this definitional change means that a defendant would not be able to use the ATA’s “act of war” defense if the terrorist act was carried out by a designated terrorist organization or by any other person the court determines is not a military force.¹¹

⁷Brief for the United States as Amicus Curiae Supporting Affirmance at 2, *Boim v. Quranic Literacy Inst. & Holy Land Found. For Relief & Dev.*, No. 01–1969 (7th Cir. Nov. 14, 2001).

⁸18 U.S.C. § 2336(a).

⁹961 F. Supp. 2d 185 (D.D.C. 2013).

¹⁰18 U.S.C. § 2331(4). This amendment to the ATA is carried out by adding a definition of “military force” to 18 U.S.C. § 2331.

¹¹This third category—any person that has been determined by the court to not be a military force—is intended to preserve the courts’ ability to make a determination as to whether a person in addition to an FTO or an SDGT is not a military force of any origin. In other words, this language was included to make clear a person in addition to an FTO or an SDGT may be found not to be a military force.

This definitional change furthers Congress' original intent with regard to the act of war exception. Both the House and Senate Judiciary Committees' reports concerning the ATA include section-by-section analyses of the statute. In discussing the "act of war" exception, the House and Senate reports provide:

This section excludes from the scope of any civil action a claim brought on account of "an act of war." The intention of this provision is to bar actions for injuries that result from military action by recognized governments as opposed to terrorists, even though governments also sometimes target civilian populations.¹²

The change is also consistent with the approach taken by several courts that have interpreted the exception.¹³

B. Judgments Against Narco-Terrorists

Under statutes like the civil liability provision in the ATA, U.S. terrorism victims have successfully obtained judgments against terrorist parties that have caused them harm. However, after being awarded such judgments, terrorism victims have often faced practical and legal difficulties at the enforcement stage. Assets of terrorist parties may not be present in the United States and, to the extent they are present, they are often either well concealed or seized or frozen by the federal government.

In 2002, in order to help lessen these enforcement burdens, Congress passed section 201 of the Terrorism Risk Insurance Act (TRIA), which authorizes execution or attachment in aid of execution in order to satisfy a terrorism judgment against a terrorist party from the blocked assets of that terrorist party. By permitting terrorism victims to attach blocked assets in order to satisfy their terrorism-based judgments, TRIA permits victims to bypass the usual requirement that a litigant first obtain a license from the United States Department of the Treasury Office of Foreign Assets Control (OFAC) in order to attach blocked assets.¹⁴ Section 201(a) of TRIA provides:

Notwithstanding any other provision of law . . . , in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008) of title 28, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any com-

¹²H.R. Rep. No. 102-1040 at 7 (1992); S. Rep. 102-342 at 46 (1992) (emphasis added).

¹³*Stansell v. BGP, Inc.*, 2011 WL 1296881, at *11 (M.D.Fla. 2014) ("To find that a terrorist organization can be a military force under the ATA would defeat the purpose of the Act."); *Weiss v. Arab Bank, PLC*, 2007 WL 4565060, at *4-5 (E.D.N.Y. Dec. 21, 2007) ("I find that a designated terrorist organization cannot constitute a 'military force of any origin.'"); *Morris v. Khadr*, 415 F.Supp.2d 1323 (D.Utah 2006).

¹⁴*See, e.g.*, 31 C.F.R. §§ 515.201, 515.310 (CACR) (requiring a license for attachment); *id.* §§ 535.201, 535.310 (Iran Assets Control Regulations) (same); *id.* §§ 594.201, 594.312 (GTSR) (same).

pensatory damages for which such terrorist party has been adjudged liable.¹⁵

TRIA further provides that a “blocked asset” is any asset seized by the Executive Branch pursuant to either the Trading With the Enemy Act (TWEA)¹⁶ or the International Emergency Economic Powers Act (IEEPA).¹⁷

Thus, under current law, victims of terrorism may satisfy a court-awarded judgment against a terrorist party using assets of that terrorist party (or an agency or instrumentality of that terrorist party) that the U.S. government has frozen pursuant to TWEA or IEEPA.¹⁸ However, assets frozen under the Foreign Narcotics Kingpin Designation Act (Kingpin Act) are not currently available to terrorism victims. This leaves victims of narco-terrorism without a meaningful method of satisfying their ATA judgments. It makes little sense for our nation’s counterterrorism laws to reach narco-terrorist organizations, like the Revolutionary Armed Forces of Columbia (FARC), but then prevent victims from executing on such an organization’s blocked assets merely because the U.S. government blocked those assets under the Kingpin Act instead of TWEA or IEEPA.

The Antiterrorism Clarification Act amends the ATA to make clear that assets blocked under the Kingpin Act shall be available to victims of narco-terrorism who have obtained judgments against the responsible terrorist party.

C. Personal Jurisdiction Over Overseas Terrorist Sponsors

Congress passed the ATA to “provide for Federal civil remedies for American victims of international terrorism” and to “remove[] the jurisdictional hurdles in the courts confronting victims. . . .”¹⁹ The ATA, in fact, was designed to “provide[] extraterritorial jurisdiction over terrorist acts abroad against United States nationals.”²⁰ Yet, recent federal court decisions have called into question the ATA’s continued ability to bring terrorists or their abettors to justice in U.S. courts.²¹ Most recently, the Supreme Court denied certiorari in a case concerning American victims of Palestinian terrorism. The Supreme Court’s denial of certiorari in *Sokolow v. Palestine Liberation Organization* leaves in place a flawed Second Circuit decision that extends due process protections to the Palestine Liberation Organization (PLO) and the Palestinian Authority (PA) and severely limits the extraterritorial scope of the ATA.

Carrying out or assisting an act of international terrorism that injures or kills American citizens abroad should be, in and of itself, sufficient to establish personal jurisdiction in U.S. courts. But even more so, the purposeful availment by a defendant of certain benefits under U.S. law should constitute consent to jurisdiction in ATA

¹⁵ Terrorism Risk Insurance Act (TRIA), Pub. L. 107–297 201(a), § 201, 116 Stat. 2337 (28 U.S.C. § 1610 note).

¹⁶ 50 U.S.C. app. 1–44.

¹⁷ 50 U.S.C. § 1701–1708.

¹⁸ See TRIA § 201(d).

¹⁹ 137 Cong. Rec. 6, 8143 (1991) (Statement of Sen. Grassley).

²⁰ See *Antiterrorism Act of 1990: Hearing on S. 2465 Before the Subcomm. on Courts and Admin. Practice of the S. Comm. on the Judiciary*, 101st Cong. 1 (1990) (Statement of Sen. Grassley).

²¹ See, e.g., *Waldman v. Palestine Liberation Organization*, 835 F.3d 317 (2d Cir. 2016); *Livnat v. Palestinian Authority*, 851 F.3d 45 (D.C. Cir. 2017).

claims in U.S. courts. No defendant should be able to accept U.S. foreign assistance while simultaneously dodging responsibility in U.S. courts for aiding or carrying out terrorist attacks that harm Americans.

The Antiterrorism Clarification Act amends the jurisdiction and venue section of the ATA²² to make clear that defendants who take advantage of certain benefits provided by the U.S. government shall be deemed to have consented to personal jurisdiction. Specifically, a defendant will be deemed to have consented to personal jurisdiction in an ATA civil action if, after 120 days after the date of enactment of the bill, the defendant accepts U.S. assistance under certain provisions of the Foreign Assistance Act of 1961. Alternatively, a defendant will be deemed to have consented to personal jurisdiction if such defendant continues to maintain any office, headquarters, premises, or other facilities within the U.S., or establishes or procures any office, headquarters, premises, or other facilities within the United States.²³ If they continue to accept the covered benefits, they will subject themselves to personal jurisdiction in U.S. courts in ATA cases that are already pending or that may be filed in the future.

Accordingly, the consent provision provides affected persons with a reasonable and unambiguous choice: if you accept U.S. foreign assistance and enter our nation's borders, you must do so on the condition not to support or take part in acts of international terrorism and that you compensate your victims if you breach that promise. It is eminently reasonable to condition acceptance of U.S. foreign assistance and continued presence in the United States on consent to jurisdiction in cases in which a person's terrorist acts injure or kill U.S. nationals.²⁴ This is particularly so with regard to the PLO and the PA, as Congress has repeatedly tied their continued receipt of these privileges to their adherence to their commitment to renounce terrorism. Moreover, the conditions the bill imposes, furthers a legitimate governmental purpose: to halt, deter, and disrupt

²² 18 U.S.C. § 2334.

²³ This provision in the bill applies to the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof. See 22 U.S.C. § 5202.

²⁴ The consent provision is clearly constitutional under both long-established precedents permitting deemed consent to personal jurisdiction and on the basis of express language in the statute alerting affected persons that by accepting U.S. foreign assistance or maintain or establishing a physical presence in the United States, they will be agreeing to submit to personal jurisdiction for cases under the ATA. *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 638–39 (2d Cir. 2016) (“state statute lack[ed] explicit reference to any jurisdictional implications”); accord *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 142 (Del. 2016) (“Nothing in the registration statutes explicitly says that a foreign corporation registering thereby consents to the personal jurisdiction of this state.”); *Segregated Account of Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 898 Wis.2d 528, 552 (2017) (pointing to absence of “express statutory language asserting general jurisdiction over a foreign corporation based on its appointment of an agent for service of process”); *Aspen Am. Ins. v. Interstate Warehousing, Inc.*, 90 N.E.3d 440, 447 (Ill. 2017) (pointing to “absence of any language” in the statute).

The provision also meets the standard for implied consent to the jurisdiction of a particular court. Such consent is implied in cases in which the litigant is aware of the right to refuse to consent and still proceeds voluntarily. See *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1948 (2015); *Roell v. Withrow*, 538 U.S. 580, 590 (2003). Knowledge of our laws may fairly be charged to persons, like the Palestine Liberation Organization (PLO) and the Palestinian Authority (PA) when they “chose to enter” the United States. See *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 (1984). Thus, if a defendant in an ATA case has voluntarily chosen to accept U.S. foreign assistance or voluntarily remain in the United States, they may fairly be deemed to consent to person jurisdiction in ATA cases. The Constitution does not bar giving a person who excludable from the United States fair warning that if it continues to accept U.S. foreign assistance or to maintain a physical presence in the United States on the condition that it refrain from engaging in or supporting international terrorism, it will be liable to U.S. victims in U.S. courts for breaching that condition.

international terrorism and to compensate U.S. victims of international terrorism.

Hearings

The Committee on the Judiciary held no hearings on H.R. 5954.

Committee Consideration

On June 13, 2018, the Committee met in open session and ordered the bill (H.R. 5954) favorably reported by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that no recorded votes occurred during the Committee's consideration of H.R. 5954.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of The House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Committee Cost Estimate

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee estimates that, based on informal discussions with the Congressional Budget Office, implementing this legislation would not affect direct spending or revenues. The Congressional Budget Office did not provide a cost estimate for the bill in time for inclusion in this report.

Duplication of Federal Programs

No provision of H.R. 5954 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee finds that H.R. 5954 contains no directed rule making within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5954 amends the Antiterrorism Act of 1992 to clarify meaning of the terms “act of war” and “blocked asset” and to provide for consent to personal jurisdiction in certain circumstances.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5954 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short title. Section 1 sets forth the short title of the bill as the “Anti-Terrorism Clarification Act of 2018.”

Sec. 2. Clarification of the Term “Act of War.” This section clarifies the meaning of the term “act of war” as it is defined in the ATA. Under current law, the term “act of war” is defined as “any act occurring in the course of: (A) declared war; (B) armed conflict, whether or not war has been declared, between two or more nations; or (C) armed conflict between military forces of any origin.”²⁵ The third category—armed conflict between military forces of any origin—has caused some level of confusion in its application by the courts, allowing designated terrorist entities and their supporters to avoid liability for terrorist attacks in some cases.

Section 2 removes any uncertainty regarding whether designated terrorist organizations can be considered a military force of any origin by clearly stating that the term “military force” does not include any person (as defined by the ATA)²⁶ that has been designated as a foreign terrorist organization (FTO) under 8 U.S.C. § 1189 or as a specially designated global terrorist (SDGT) as such term is defined in section 594.310 of title 31, Code of Federal Regulations. In addition, the section makes clear that persons in addition to FTOs and SDGTs may also not constitute a “military force” if the court determines that such person is not a military force.

Sec. 3. Satisfaction of Judgments Against Terrorists. This section provides that in a civil action brought pursuant to 18 U.S.C. § 2333 for which a U.S. national has received a judgment against a terrorist party, the assets of that terrorist party (including any agency or instrumentality of that party) that have been seized or frozen by the United States under section 805(b) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. § 1904(b)) shall be considered “blocked assets” for purposes of section 201 of the Terrorism Risk Insurance Act (TRIA) (28 U.S.C. § 1610 note).

This means that in ATA civil liability cases for which the plaintiff has received a judgment against a terrorist party, any assets of that terrorist party (including the assets of its agents and instrumentalities) that have been blocked under the Kingpin Act are sub-

²⁵ 18 U.S.C. § 2331.

²⁶ 18 U.S.C. § 2331(3).

ject to execution or attachment in aid of execution in order to satisfy the judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable. This is already the case, under TRIA, for assets blocked pursuant to the Trading With the Enemy Act and the International Emergency Economic Powers Act.

Sec. 4. Consent of Certain Parties to Personal Jurisdiction. Section 4 provides that under certain circumstances defendants in ATA cases shall be deemed to have consented to the personal jurisdiction of U.S. courts. This section amends 18 U.S.C. § 2334 to provide that if an ATA defendant, 120 days after the date of enactment, accepts any form of assistance, however provided, under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. § 2346 et seq.), section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. § 2291) for international narcotics control and law enforcement, or chapter 9 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. §§ 2349bb et seq.) that defendant shall be deemed to have consented to U.S. court jurisdiction in a case brought under 18 U.S.C. § 2333. In addition, consent to U.S. court jurisdiction shall be deemed to have occurred if 120 days after the date of enactment of this Act an ATA civil defendant benefited from a waiver or suspension of section 1003 of the Anti-Terrorism Act of 1987 (22 U.S.C. § 5202) by continuing to maintain any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States or by establishing or procuring any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States.

Because Section 4 is purely procedural and affects no substantive entitlement to relief, it takes effect on the date of enactment and will begin to apply in cases (including cases that are pending in the courts of the United States on the date of enactment) in which a defendant more than 120 days after the date of enactment receives the types of assistance, or takes advantage of a waiver, listed in that section.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 113B—TERRORISM

* * * * *

§ 2331. Definitions

As used in this chapter—

- (1) the term “international terrorism” means activities that—
 - (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
 - (B) appear to be intended—
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
 - (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;
- (2) the term “national of the United States” has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;
- (3) the term “person” means any individual or entity capable of holding a legal or beneficial interest in property;
- (4) the term “act of war” means any act occurring in the course of—
 - (A) declared war;
 - (B) armed conflict, whether or not war has been declared, between two or more nations; or
 - (C) armed conflict between military forces of any origin;

[and]
- (5) the term “domestic terrorism” means activities that—
 - (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
 - (B) appear to be intended—
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
 - (C) occur primarily within the territorial jurisdiction of the United States**[.]**; and
- (6) the term “military force” does not include any person that—
 - (A) has been designated as a—
 - (i) foreign terrorist organization by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189); or
 - (ii) Specially Designated Global Terrorist (as such term is defined in section 594.310 of the Code of Federal Regulations) by the Secretary of State or the Secretary of the Treasury; or

(B) has been determined by the court to not be a “military force”.

* * * * *

§ 2333. Civil remedies

(a) **ACTION AND JURISDICTION.**—Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney’s fees.

(b) **ESTOPPEL UNDER UNITED STATES LAW.**—A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 1116, 1201, 1203, or 2332 of this title or section 46314, 46502, 46505, or 46506 of title 49 shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(c) **ESTOPPEL UNDER FOREIGN LAW.**—A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(d) **LIABILITY.**—

(1) **DEFINITION.**—In this subsection, the term “person” has the meaning given the term in section 1 of title 1.

(2) **LIABILITY.**—In an action under subsection (a) for an injury arising from an act of international terrorism committed, planned, or authorized by an organization that had been designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), as of the date on which such act of international terrorism was committed, planned, or authorized, liability may be asserted as to any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism.

(e) **USE OF BLOCKED ASSETS TO SATISFY JUDGMENTS OF U.S. NATIONALS.**—*For purposes of section 201 of the Terrorism Risk Insurance Act of 2002 (28 U.S.C. 1610 note), in any action in which a national of the United States has obtained a judgment against a terrorist party pursuant to this section, the term “blocked asset” shall include any asset of that terrorist party (including the blocked assets of any agency or instrumentality of that party) seized or frozen by the United States under section 805(b) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1904(b)).*

§ 2334. Jurisdiction and venue

(a) **GENERAL VENUE.**—Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

(b) SPECIAL MARITIME OR TERRITORIAL JURISDICTION.—If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

(c) SERVICE ON WITNESSES.—A witness in a civil action brought under section 2333 of this title may be served in any other district where the defendant resides, is found, or has an agent.

(d) CONVENIENCE OF THE FORUM.—The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless—

(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

(2) that foreign court is significantly more convenient and appropriate; and

(3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

(e) CONSENT OF CERTAIN PARTIES TO PERSONAL JURISDICTION.—

(1) IN GENERAL.—*Except as provided in paragraph (2), for purposes of any civil action under section 2333 of this title, a defendant shall be deemed to have consented to personal jurisdiction in such civil action if, regardless of the date of the occurrence of the act of international terrorism upon which such civil action was filed, the defendant—*

(A) *after the date that is 120 days after the date of enactment of this subsection, accepts—*

(i) *any form of assistance, however provided, under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.); or*

(ii) *any form of assistance, however provided, under section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291) for international narcotics control and law enforcement; or*

(B) *in the case of a defendant benefiting from a waiver or suspension of section 1003 of the Anti-Terrorism Act of 1987 (22 U.S.C. 5202) after the date that is 120 days after the date of enactment of this subsection—*

(i) *continues to maintain any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States; or*

(ii) *establishes or procures any office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States.*

(2) APPLICABILITY.—*Paragraph (1) shall not apply to any defendant who ceases to engage in the conduct described in paragraphs (1)(A) and (1)(B) for 5 consecutive calendar years.*

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