

111TH CONGRESS
1ST SESSION

H. R. 4237

To ensure that the courts of the United States may provide an impartial forum for claims brought by United States citizens and others against any railroad organized as a separate legal entity, arising from the deportation of United States citizens and others to Nazi concentration camps on trains owned or operated by such railroad, and by the heirs and survivors of such persons.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2009

Mrs. MALONEY (for herself, Ms. ROS-LEHTINEN, and Mr. NADLER of New York) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To ensure that the courts of the United States may provide an impartial forum for claims brought by United States citizens and others against any railroad organized as a separate legal entity, arising from the deportation of United States citizens and others to Nazi concentration camps on trains owned or operated by such railroad, and by the heirs and survivors of such persons.

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. CONGRESSIONAL FINDINGS.**

4 Congress finds as follows:

1 (1) During World War II, more than 75,000
2 Jews and thousands of other persons were deported
3 from France to Nazi concentration camps, on trains
4 operated for profit by the Société Nationale des Che-
5 mins de fer Français (in this Act referred to as
6 “SNCF”), including deportations to Auschwitz and
7 Buchenwald. Numerous citizens and residents of the
8 United States were among those who were on the
9 trains or had relatives on the trains. United States
10 servicemen who were pilots shot down over France
11 were also among the persons deported on the SNCF
12 trains to Nazi concentration camps.

13 (2) United States citizens and others have
14 sought redress against SNCF by filing a class action
15 suit in the United States District Court for the
16 Eastern District of New York. The named plaintiffs
17 and class members include United States Army Air
18 Force pilots and United States citizens.

19 (3) The complaint filed alleges that SNCF, a
20 separate corporate entity that remained independent
21 during World War II, operated the deportation
22 trains for a profit, as ordinary commercial trans-
23 actions. SNCF remained under French civilian con-
24 trol throughout World War II and is alleged to have
25 collaborated willingly with the German Nazi regime.

1 (4) The complaint alleges that SNCF provided
2 the necessary rolling stock, scheduled the departures,
3 and supplied the employees to operate the
4 trains bound for the concentration camps. SNCF allegedly
5 charged an ordinary passenger coach fare for
6 the deportations, calculated per person and per kilometer,
7 and considered these trains as ordinary commercial activities.
8 The plaintiffs further contend that
9 SNCF herded as many people as possible into each
10 car, requiring passengers of all ages and sexes, including
11 the elderly and young children, to stand throughout the trip
12 of several days' duration, with no provision for food or water
13 and no sanitary facilities. The complaint further alleges that
14 SNCF cleaned the trains after each trip, removing the
15 corpses of persons who perished during transit due to the
16 execrable conditions of the train cars. The destination was
17 in each case a camp in which the deportees were to be
18 exterminated, worked to death, or made to suffer terrible and
19 inhuman conditions.

21 (5) The complaint contends that SNCF's actions violated
22 the Principles of the Nuremberg Tribunal, 1950, relating to
23 crimes under international law (earlier recognized by the
24 Martens Clause of the Hague Convention IV of 1907), and
25 aided and abet-

1 ted the commission of war crimes and crimes against
2 humanity. SNCF has not denied its actions and has
3 never disgorged the money that it was paid for the
4 deportations or otherwise compensated the deportees
5 or their heirs.

6 (6) SNCF's records concerning the deportation
7 trains have not been made available to the plaintiffs,
8 and SNCF archives concerning its wartime activities
9 remain closed to the general public.

10 (7) SNCF moved to dismiss the lawsuit on a
11 claim of sovereign immunity under the foreign sov-
12 ereign immunities provisions of title 28, United
13 States Code (28 U.S.C. 1330 and 1602 et seq.),
14 even though it is one of the 500 largest corporations
15 in the world, earns hundreds of millions of dollars
16 from its commercial activities in the United States,
17 and is not accorded sovereign immunity under the
18 laws of France. SNCF's motion to dismiss the law-
19 suit was granted by the United States District Court
20 for the Eastern District of New York. Plaintiffs ap-
21 pealed the decision, their appeal was granted, and
22 the case was remanded for further proceedings. Sub-
23 sequently, in light of *Republic of Austria v.*
24 *Altmann*, 541 U.S. 677 (2004), in November 2004,
25 on remand, the Court of Appeals for the Second Cir-

1 cuit recalled its prior mandate and determined that
2 SNCF was entitled to immunity and affirmed the
3 dismissal of the complaint. The Second Circuit stat-
4 ed that “the railroad’s conduct at the time lives on
5 in infamy” but concluded that “the evil actions of
6 the French national railroad’s former private mas-
7 ters in knowingly transporting thousands to death
8 camps during World War II are not susceptible to
9 legal redress in Federal court today.”.

10 (8) This lawsuit, which arises from the unique
11 historical facts of the deportation of persons to Nazi
12 concentration camps, presents issues of substantial
13 importance to citizens and veterans of the United
14 States. Many of those who have sought redress
15 against SNCF are elderly and would have difficulty
16 traveling outside the United States in order to pur-
17 sue their claims elsewhere. The courts of the United
18 States are and should be a proper forum for this
19 lawsuit. The Foreign Sovereign Immunities Act of
20 1976, which had not been enacted at the time of
21 SNCF’s actions during World War II, was not in-
22 tended to bar suit against the SNCF.

1 **SEC. 2. ACCESS TO UNITED STATES COURTS FOR HOLO-**
2 **CAUST DEPORTEES.**

3 (a) JURISDICTION OF DISTRICT COURTS.—The
4 United States district courts shall have original jurisdic-
5 tion, without regard to the amount in controversy, of any
6 civil action for damages for personal injury or death
7 that—

8 (1) arose from the deportation of persons to
9 Nazi concentration camps during the period begin-
10 ning on January 1, 1942, and ending on December
11 31, 1944; and

12 (2) is brought by any such person, or any heir
13 or survivor of such person, against a railroad that—

14 (A) owned or operated the trains on which
15 the persons were so deported; and

16 (B) was organized as a separate legal enti-
17 ty at the time of the deportation, whether or
18 not any of the equity interest in the railroad
19 was owned by a foreign state.

20 (b) OTHER LAWS NOT APPLICABLE.—Sections 1330
21 and 1601 through 1611 of title 28, United States Code,
22 or any other law limiting the jurisdiction of the United
23 States courts, whether by statute or under common law,
24 shall not preclude any action under subsection (a).

25 (c) INAPPLICABILITY OF STATUTES OF LIMITA-
26 TION.—An action described in subsection (a) shall not be

1 barred by a defense that the time for bringing such action
2 has expired under a statute of limitations.

3 (d) APPLICABILITY.—This section shall apply to any
4 action pending on January 1, 2002, and to any action
5 commenced on or after that date.

