

111TH CONGRESS  
1ST SESSION

# S. 28

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.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2009

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 on the trains or  
9       had relatives on the trains. United States servicemen  
10      who were pilots shot down over France were also  
11      among the persons deported on the SNCF trains to  
12      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 which remained inde-  
21      pendent during World War II, operated the deporta-  
22      tion trains for a profit, as ordinary commercial  
23      transactions. SNCF remained under French civilian  
24      control throughout World War II and is alleged to

1       have collaborated willingly with the German Nazi re-  
2       gime.

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

23           (5) The complaint contends that SNCF's ac-  
24      tions violated the Principles of the Nuremberg Tri-  
25      bunal, 1950, relating to crimes under international

1 law (earlier recognized by the Martens Clause of the  
2 Hague Convention IV of 1907), and aided and abet-  
3 ted the commission of war crimes and crimes against  
4 humanity. SNCF has not denied its actions and has  
5 never disgorged the money that it was paid for the  
6 deportations or otherwise compensated the deportees  
7 or their heirs.

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

12 (7) SNCF moved to dismiss the lawsuit on a  
13 claim of sovereign immunity under the Foreign Sov-  
14 ereign Immunities Act of 1976 (28 U.S.C. 1330 and  
15 1602 et seq.), even though it is one of the 500 larg-  
16 est corporations in the world, earns hundreds of mil-  
17 lions of dollars from its commercial activities in the  
18 United States, and is not accorded sovereign immu-  
19 nity under the laws of France. SNCF's motion to  
20 dismiss the lawsuit was granted by the United  
21 States District Court for the Eastern District of  
22 New York. Plaintiffs appealed the decision, their ap-  
23 peal was granted, and the case was remanded for  
24 further proceedings. In November 2004, on remand,  
25 the Court of Appeals for the Second Circuit deter-

1       mined that SNCF was entitled to immunity and af-  
 2       firmed the dismissal of the complaint. The Second  
 3       Circuit stated that “the railroad’s conduct at the  
 4       time lives on in infamy” but concluded that “the evil  
 5       actions of the French national railroad’s former pri-  
 6       vate masters in knowingly transporting thousands to  
 7       death camps during World War II are not suscep-  
 8       tible to legal redress in Federal court today.”.

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

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

24       (a) JURISDICTION OF DISTRICT COURTS.—The  
 25       United States district courts shall have original jurisdic-

1 tion, without regard to the amount in controversy, of any  
2 civil action for damages for personal injury or death  
3 that—

4 (1) arose from the deportation of persons to  
5 Nazi concentration camps during the period begin-  
6 ning on January 1, 1942, and ending on December  
7 31, 1944; and

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

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

12 (B) was organized as a separate legal enti-  
13 ty at the time of the deportation, whether or  
14 not any of the equity interest in the railroad  
15 was owned by a foreign state.

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

21 (c) INAPPLICABILITY OF STATUTES OF LIMITA-  
22 TION.—No action described in subsection (a) shall be  
23 barred by a defense that the time for bringing such action  
24 has expired under a statute of limitations.

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

