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S. 1393

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 SENATE OF THE UNITED STATES

JULY 30, 2013

Mr. SCHUMER (for himself, Mr. BENNET, Mr. BLUMENTHAL, Mr. BROWN, Mr. CARDIN, Mr. CASEY, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. MENENDEZ, Ms. MIKULSKI, Mr. NELSON, Mr. REID, Mr. RUBIO, and Mr. WYDEN) introduced the following bill; which was read twice and 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Holocaust Rail Justice
3 Act”.

4 **SEC. 2. CONGRESSIONAL FINDINGS.**

5 Congress finds as follows:

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

18 (2) United States citizens and others have
19 sought redress against SNCF by filing a class action
20 suit in the United States District Court for the
21 Eastern District of New York. The named plaintiffs
22 and class members include United States Army Air
23 Force pilots and United States citizens.

24 (3) The complaint filed alleges that SNCF, a
25 separate corporate entity that remained independent
26 during World War II, operated the deportation

1 trains for a profit, as ordinary commercial trans-
2 actions. SNCF remained under French civilian con-
3 trol throughout World War II and is alleged to have
4 collaborated willingly with the German Nazi regime.

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

1 (5) The complaint contends that SNCF's ac-
2 tions violated the Principles of the Nuremberg Tri-
3 bunal, 1950, relating to crimes under international
4 law (earlier recognized by the Martens Clause of the
5 Hague Convention IV of 1907), and aided and abet-
6 ted the commission of war crimes and crimes against
7 humanity. SNCF has not denied its actions and has
8 never disgorged the money that it was paid for the
9 deportations or otherwise compensated the deportees
10 or their heirs.

11 (6) SNCF's records concerning the deportation
12 trains have not been made available to the plaintiffs,
13 and SNCF archives concerning its wartime activities
14 are not accessible to the general public.

15 (7) SNCF moved to dismiss the lawsuit on a
16 claim of sovereign immunity under the foreign sov-
17 ereign immunities provisions of title 28, United
18 States Code (28 U.S.C. 1330 and 1602 et seq.),
19 even though it is one of the 500 largest corporations
20 in the world, earns hundreds of millions of dollars
21 from its commercial activities in the United States,
22 and is not accorded sovereign immunity under the
23 laws of France. SNCF's motion to dismiss the law-
24 suit was granted by the United States District Court
25 for the Eastern District of New York. Plaintiffs ap-

1 pealed the decision, their appeal was granted, and
2 the case was remanded for further proceedings. Sub-
3 sequently, in light of *Republic of Austria v.*
4 *Altmann*, 541 U.S. 677 (2004), in November 2004,
5 on remand, the Court of Appeals for the Second Cir-
6 cuit recalled its prior mandate and determined that
7 SNCF was entitled to immunity and affirmed the
8 dismissal of the complaint. The Second Circuit stat-
9 ed that “the railroad’s conduct at the time lives on
10 in infamy” but concluded that “the evil actions of
11 the French national railroad’s former private mas-
12 ters in knowingly transporting thousands to death
13 camps during World War II are not susceptible to
14 legal redress in Federal court today.”.

15 (8) This lawsuit, which arises from the unique
16 historical facts of the deportation of persons to Nazi
17 concentration camps, presents issues of substantial
18 importance to citizens and veterans of the United
19 States. Many of those who have sought redress
20 against SNCF are elderly and would have difficulty
21 traveling outside the United States in order to pur-
22 sue their claims elsewhere. The courts of the United
23 States are and should be a proper forum for this
24 lawsuit. The Foreign Sovereign Immunities Act of
25 1976, which had not been enacted at the time of

1 SNCF's actions during World War II, was not in-
 2 tended to bar suit against the SNCF.

3 **SEC. 3. ACCESS TO UNITED STATES COURTS FOR HOLO-**
 4 **CAUST DEPORTEES.**

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

10 (1) arose from the deportation of persons to
 11 Nazi concentration camps during the period begin-
 12 ning on January 1, 1942, and ending on December
 13 31, 1944; and

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

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

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

22 (b) OTHER LAWS NOT APPLICABLE.—Sections 1330
 23 and 1601 through 1611 of title 28, United States Code,
 24 or any other law limiting the jurisdiction of the United

1 States courts, whether by statute or under common law,
 2 shall not preclude any action under subsection (a).

3 (c) INAPPLICABILITY OF STATUTES OF LIMITA-
 4 TION.—An action described in subsection (a) shall not be
 5 barred by a defense that the time for bringing such action
 6 has expired under a statute of limitations.

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

10 **SEC. 4. REPORTING.**

11 In furtherance of international education relating to
 12 the Holocaust and historic and continuing anti-Semitism
 13 in Europe and throughout the world, the Secretary of
 14 State shall submit to the Congress a one-time report, out-
 15 lining the status of access to wartime records and archives
 16 concerning the wartime activities of any railroad organized
 17 as a separate legal entity that engaged in the deportation
 18 of persons to Nazi concentration camps during the period
 19 beginning on January 1, 1942, and ending on December
 20 31, 1944.

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