



Justice Against Sponsors of Terrorism Act (JASTA): U.S. Citizens Can Now Sue Foreign Governments

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Région : [USA](#)

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The US Congress has overturned Obama's veto of the controversial Justice Against Sponsors of Terrorism Act (JASTA), which allows US citizens « to sue foreign governments believed to be involved in terrorist activities on US soil. »

The bill was initially intended to enable families of the victims of the 9/11 attacks to sue Saudi Arabia, which allegedly acted as a state sponsor of the September 11, 2001 attacks. Initially, former Florida Senator Bob Graham and Rep. Porter Goss were behind this initiative:

« Families of the victims of the September 11, 2001, terrorist attacks have long sought the right to sue Saudi Arabia for any alleged role in the attacks. The kingdom has denied any involvement and U.S. officials have backed that position. » ([WSJ](#), 28 September 2016)

Obama vetoes legislation allowing families of 9/11 victims to sue Saudi Arabia

Move could prompt Congress to overturn his decision with a rare veto override, the first of his presidency



U.S. President Barack Obama walks to the the Oval Office of the White House upon his return to Washington from New York, U.S. September 21, 2016.

Ironically, in the immediate wake of 9/11, Afghanistan rather than Saudi Arabia was identified as the state sponsor of the 9/11 attacks.

Afghanistan was invaded despite the fact that the Kabul government had offered to extradite Osama bin Laden to the US. This initiative was turned down by George W. Bush: « We do not negotiate with terrorists. »

Did the US State Department « get their countries mixed up »? If Saudi Arabia was behind the 9/11 hijackers, why on earth did US-NATO invade Afghanistan?

The Justice Against Sponsors of Terrorism Act (JASTA) Does not Mention Saudi Arabia. So What's the Problem?

Saudi Arabia and the Gulf states have expressed their concern regarding this controversial legislation. The wording of the bill, however, is broad and general.

The text of S.2040 refers broadly to « Sponsors of Terrorism ». Nowhere in the bill is there reference to Saudi Arabia:

This bill amends the federal judicial code to narrow the scope of foreign sovereign immunity (i.e., a foreign state's immunity from the jurisdiction of U.S. courts).

Specifically, it authorizes federal court jurisdiction over a civil claim against a foreign state for physical injury to a person or property or death that occurs inside the United States as a result of: (1) an act of international terrorism, and (2) a tort committed anywhere by an official, agent, or employee of a foreign state acting within the scope of

employment.

International terrorism does not include an act of war. Federal court jurisdiction does not extend to a tort claim based on an omission or an act that is merely negligent.

A U.S. national may file a civil action against a foreign state for physical injury, death, or damage as a result of an act of international terrorism committed by a designated terrorist organization. (Summary of the legislation, emphasis added)

The screenshot shows the CONGRESS.GOV website interface. At the top, there are navigation links for Legislation, Congressional Record, Committees, and Members. A search bar is present with a dropdown menu for 'Current Legislation' and a search input field with placeholder text 'Examples: hr5, sres9, "health care"'. Below the navigation bar, the breadcrumb trail reads 'Home > Legislation > 114th Congress > S.2040'. The main heading is 'S.2040 - Justice Against Sponsors of Terrorism Act', followed by '114th Congress (2015-2016) | [Get alerts](#)'. A 'LAW' tab is active, and a 'Hide Overview' button is visible. The overview section includes: 'Sponsor: [Sen. Cornyn, John \[R-TX\]](#) (Introduced 09/16/2015)', 'Committees: Senate - Judiciary | House - Judiciary', 'Latest Action: 09/28/2016 Became Public Law No: 114-222. ([All Actions](#))', 'Roll Call Votes: There have been [2 roll call votes](#)', and 'Notes: Public Law enacted over veto.' A 'Tracker' section shows a progress bar with steps: Introduced, Passed Senate, Passed House, To President, Vetoed by President, Passed over veto, and Became Law. On the right, 'More on This Bill' includes a link to 'CBO Cost Estimates [1]' and a 'Subject — Policy Area: Crime and Law Enforcement' with a 'View subjects >' link. At the bottom, a row of tabs shows 'Summary (5)' as the selected tab, followed by 'Text (5)', 'Actions (31)', 'Titles (7)', 'Amendments (1)', 'Cosponsors (25)', 'Committees (2)', and 'Related Bills (2)'.

The Bill opens up a Pandora's Box

The legislation is by no means limited to Saudi Arabia. Was it really intended to go after Saudi Arabia, which is a US proxy, invariably acting in close liaison with Washington? What about Russia?

The legislation has broad foreign policy and geopolitical implications. It allows the US government to promote and/or support (civil) legal actions by US citizens against foreign governments, which are disliked by Washington. Potentially, it constitutes a legal mechanism as well as a foreign policy instrument which could be used against countries on Washington's « hate list », including Russia, China, Iran, Cuba, Venezuela, etc.

Conversely, it could also be used by US citizens to sue some of America's staunchest allies on terrorism charges including Israel, U.K. France, Turkey as well as Saudi Arabia.

Another issue -which the media seems to have carefully neglected- is that the legislation is not limited to state entities and foreign governments. In this regard, both the media reports and political statements are misleading.

The bill allows US citizens to sue both foreign governments as well as (foreign) organizations (loosely defined) allegedly involved in acts of terrorism on US soil. The text of S 2040 is unequivocal. The legislation pertains to « persons », « entities », « organizations »,

« affiliated groups and individuals » and « countries »:

« Persons, entities, or countries that knowingly or recklessly contribute material support or resources, directly or indirectly, to persons or organizations that pose a significant risk of committing acts of terrorism that threaten the security of nationals of the United States or the national security, foreign policy, or economy of the United States, necessarily direct their conduct at the United States, and should reasonably anticipate being brought to court in the United States to answer for such activities. »

... 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.”.

(3) Some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds outside of the United States for conduct directed and targeted at the United States. ([text of S 2040](#), emphasis added)

It includes the entire spectrum of social and political actors from individuals, entities and organizations up to countries and governments. A rather imprecise and « flexible » piece of legislation open to interpretation, which is by no means limited to State sponsorship of terrorism.

ANNEX

Complete text of Legislation



AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,
the fourth day of January, two thousand and sixteen*

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE.

This Act may be cited as the “Justice Against Sponsors of Terrorism Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

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

(2) International terrorism affects the interstate and foreign commerce of the United States by

harming international trade and market stability, and limiting international travel by United States citizens as well as foreign visitors to the United States.

(3) Some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds outside of the United States for conduct directed and targeted at the United States.

(4) It is necessary to recognize the substantive causes of action for aiding and abetting and conspiracy liability under [chapter 113B](#) of title 18, United States Code.

(5) The decision of the United States Court of Appeals for the District of Columbia in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), which has been widely recognized as the leading case regarding Federal civil aiding and abetting and conspiracy liability, including by the Supreme Court of the United States, provides the proper legal framework for how such liability should function in the context of [chapter 113B](#) of title 18, United States Code.

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

(7) The United States has a vital interest in providing persons and entities injured as a result of terrorist attacks committed within the United States with full access to the court system in order to pursue civil claims against persons, entities, or countries that have knowingly or recklessly provided material support or resources, directly or indirectly, to the persons or organizations responsible for their injuries.

(b) Purpose.—The purpose of this Act is to provide civil litigants with the broadest possible basis, consistent with the Constitution of the United States, to seek relief against persons, entities, and foreign countries, wherever acting and wherever they may be found, that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States.

SEC. 3. RESPONSIBILITY OF FOREIGN STATES FOR INTERNATIONAL TERRORISM AGAINST THE UNITED STATES.

(a) In General.—[Chapter 97](#) of title 28, United States Code, is amended by inserting after [section 1605A](#) the following:

“§ 1605B. Responsibility of foreign states for international terrorism against the United States

“(a) Definition.—In this section, the term ‘international terrorism’—

“(1) has the meaning given the term in section 2331 of title 18, United States Code; and

“(2) does not include any act of war (as defined in that section).

“(b) Responsibility Of Foreign States.—A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which money damages are sought against a foreign state for physical injury to person or property or death occurring in the United States and caused by—

“(1) an act of international terrorism in the United States; and

“(2) a tortious act or acts of the foreign state, or of any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, regardless where the tortious act or acts of the foreign state occurred.

“(c) Claims By Nationals Of The United States.—Notwithstanding section 2337(2) of title 18, a national of the United States may bring a claim against a foreign state in accordance with section 2333 of that title if the foreign state would not be immune under subsection (b).

“(d) Rule Of Construction.—A foreign state shall not be subject to the jurisdiction of the courts of the United States under subsection (b) on the basis of an omission or a tortious act or acts that constitute mere negligence.”.

(b) Technical And Conforming Amendments.—

(1) The table of sections for [chapter 97](#) of title 28, United States Code, is amended by inserting after the item relating to [section 1605A](#) the following:

[“1605B. Responsibility of foreign states for international terrorism against the United States.”.](#) (2) Subsection 1605(g)(1)(A) of title 28, United States Code, is amended by inserting “or section 1605B” after “but for section 1605A”.

SEC. 4. AIDING AND ABETTING LIABILITY FOR CIVIL ACTIONS REGARDING TERRORIST ACTS.

(a) In General.—Section 2333 of title 18, United States Code, is amended by adding at the end the following:

“(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.”.

(b) Effect On Foreign Sovereign Immunities Act.—Nothing in the amendment made by this section affects immunity of a foreign state, as that term is defined in section 1603 of title 28, United States Code, from jurisdiction under other law.

SEC. 5. STAY OF ACTIONS PENDING STATE NEGOTIATIONS.

(a) Exclusive Jurisdiction.—The courts of the United States shall have exclusive jurisdiction in any action in which a foreign state is subject to the jurisdiction of a court of the United States under section 1605B of title 28, United States Code, as added by section 3(a) of this Act.

(b) Intervention.—The Attorney General may intervene in any action in which a foreign state is subject to the jurisdiction of a court of the United States under section 1605B of title 28, United

States Code, as added by section 3(a) of this Act, for the purpose of seeking a stay of the civil action, in whole or in part.

(c) Stay.—

(1) IN GENERAL.—A court of the United States may stay a proceeding against a foreign state if the Secretary of State certifies that the United States is engaged in good faith discussions with the foreign state defendant concerning the resolution of the claims against the foreign state, or any other parties as to whom a stay of claims is sought.

(2) DURATION.—

(A) IN GENERAL.—A stay under this section may be granted for not more than 180 days.

(B) EXTENSION.—

(i) IN GENERAL.—The Attorney General may petition the court for an extension of the stay for additional 180-day periods.

(ii) RECERTIFICATION.—A court shall grant an extension under clause (i) if the Secretary of State recertifies that the United States remains engaged in good faith discussions with the foreign state defendant concerning the resolution of the claims against the foreign state, or any other parties as to whom a stay of claims is sought.

SEC. 6. SEVERABILITY.

If any provision of this Act or any amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of the provisions and amendments to any other person not similarly situated or to other circumstances, shall not be affected by the holding.

SEC. 7. EFFECTIVE DATE.

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

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

(2) arising out of an injury to a person, property, or business on or after September 11, 2001.

Speaker of the House of Representatives

Vice President of the United States and President of the Senate

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A propos :

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