

STATEMENT OF
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BEFORE THE
HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE
MARCH 5, 2014

Chairman Poe, Ranking Member Sherman, and members of the Subcommittee, my name is Steven R. Perles, founder and senior partner in the Perles Law Firm, PC, and I appreciate the opportunity to appear before you to discuss civil litigation on behalf of U.S. citizens killed or injured as a result of acts of Palestinian terrorism. I have represented significant numbers of Americans who were tragically murdered or injured in acts of Palestinian terrorism. What I would like to speak about today is a public-private partnership and the proper role of the U.S. government in these cases. In my experience, since 1995, these cases achieve their greatest success when the U.S. government empowers the Americans victims by assisting with evidence, identifying assets of the terrorists or their sponsors and by staying neutral when the sponsors of terrorism attempt to leverage ongoing negotiations with the U.S. government for aid and support in the court cases against them.

In 1996, my firm was one of the first to file lawsuits on behalf of American victims of terrorism. We have seen the field of anti-terrorism litigation grow in cases against sovereign states and foundations and corporations that allegedly aided and abetted acts of terrorism. Anti-terrorism civil litigation has always been about deterring those who would materially support terrorism, as terrorists from Abu Nidal to Bin Laden have all relied on someone else to provide their support. Some of these sponsors are states like the Islamic Republic of Iran and some are private actors, including the international financial institutions that facilitate the movement of funds destined for terrorist entities.

The first successes in anti-terrorism litigation were scored against Iran, but only after I brought an ultimately successful case called *Princz v. Federal Republic of Germany* against the Federal Republic of Germany on behalf of all survivors of the Nazi concentration camp system who held U.S. passports or were U.S. servicemen at the time of their incarceration. In 1996, using then-D.C. Circuit Judge Patricia Wald's dissenting opinion in *Princz* for guidance, Congress passed a new exception to the FSIA, 28 U.S.C. § 1605(a)(7), for lawsuits "against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking." This exception denied sovereign immunity to any foreign state that sponsored a terrorist attack upon U.S. citizens, as long as the state had already been officially recognized as a state sponsor of terrorism by the U.S. Department of State.

Thus the *Princz* case led to my first case against Iran. In 1995, the Shaqaqi faction of the Palestine Islamic Jihad detonated a bomb that destroyed an Israeli bus and killed twenty year old Alisa Flatow. I represented this family in *Flatow v. Islamic Republic of Iran*, the first case against Iran for state sponsorship of terrorism under the FSIA. The *Flatow* case documented the links between the terrorist group that carried out the attack and Iran, which acted as a sponsor for the group through the provision of support and training. In *Flatow*,¹ for the first time, a court

¹ 999 F. Supp. 1 (D.D.C. 1998).

found a foreign state liable for its sponsorship of a terrorist group that killed a U.S. citizen and awarded damages of roughly \$229 million. As enforcement of *Flatow* was winding down in the United States, together with my co-counsel Thomas Fay, I brought a case in the United States District Court for the District of Columbia against Iran for its complicity in the 1983 marine barracks bombing in Beirut, Lebanon that caused the death of over 240 servicemen, captioned *Peterson v. Islamic Republic of Iran*. Judge Royce C. Lamberth authored a May 30, 2003 opinion that adjudged Iran liable based upon the clear and convincing evidence linking Iran to the 1983 attack.² Subsequently, Judge Lamberth entered judgment against Iran for the 1983 bombing in excess of \$4 billion.³ We are enforcing this judgment on behalf of over 1200 plaintiffs against Iranian assets worth \$1.9 billion in the United States District Court for the Southern District of New York.⁴ It should be noted that we were greatly aided in this effort by the provision of information under seal by the Department of Treasury, which is an appropriate role of government in these cases.

Currently, the most important case in the U.S. courts involving U.S. citizens injured in acts of Palestinian terrorism is a case against a Middle Eastern bank for its conduct during the Second Intifada. This is not a FSIA case but a case brought under 18 U.S.C. § 2333, the Anti-Terrorism Act or ATA, allowing a person “injured in his or her person, property, or business by reason of an act of international terrorism” to sue to recover damages against non-state actors. The current status of the case illustrates the need for cooperation between the U.S. government and the attorneys who are bringing these cases on behalf of Americans against those terrorist and their supporters who injured them. I along with my co-counsel represent 54 Americans who were murdered or physically injured, along with their families, during the Second Intifada. In total, 110 Americans in related cases are suing Arab Bank, a Jordanian international bank with branches in the Palestinian Territories and, during the relevant time period, in New York City, in by far the largest litigation on behalf of U.S. citizens injured by Palestinian terrorism. My simple plea to the Committee is that the courts should be allowed to do their job in handling a civil lawsuit involving a statute that is crucial in the fight against terrorism, and that various governments should not be allowed to impose their political agenda on the outcome of these cases. Let justice take its course.

These 110 U.S. families filed civil actions beginning in 2004 under the U.S. Anti-Terrorism Act against Arab Bank. We allege and intend to prove the Bank knowingly provided direct material support by laundering tens of millions of dollars through its New York branch to U.S. government-designated Foreign Terrorist Organizations (FTOs) such as HAMAS and their agents, including Specially Designated Global Terrorists (SDGTs) and including via “insurance” payments made by Saudi militants to imprisoned and martyred terrorists and their families. This includes individual terrorists (including particular terrorists who committed attacks on the plaintiffs), senior Hamas operatives (including the Hamas “prime minister” in Gaza and the leader of Hamas’ military wing), charitable committees designated as SDGTs for their affiliation with Hamas, and even what the trial judge delineated as evidence of wire transfers to a senior US-designated Hamas leader identifying “Hamas” as the beneficiary, and evidence of multiple

² *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46 (D.D.C. 2003).

³ *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25 (D.D.C. 2007).

⁴ *Peterson v. Islamic Republic of Iran*, CA 10-4518 (KBF), 2013 U.S. Dist. LEXIS 40470 (S.D.N.Y. Feb. 28, 2013).

payments for families of suicide terrorists (identifying “martyr operations,” i.e., suicide attacks, as the causes of death). But most of the evidence, at present, is hidden behind a wall of bank secrecy laws, primarily those of the Palestinian Authority, in addition to Lebanon and Jordan.⁵ The U.S. government has agreed with our concerns, and the filing of these cases led to the U.S. Office of the Comptroller of the Currency (OCC) investigating the Bank in 2004, which resulted in a \$24 million monetary penalty against the Bank, the requirement of establishing a \$420 million reserve, and the shutting down of its U.S. banking business by restricting the New York branch from any banking activities. The OCC stated in an August 17, 2005 press release:

the agencies determined that the New York Branch of Arab Bank failed to implement an adequate anti-money laundering program to comply with the Bank Secrecy Act and manage the risks of money laundering and terrorist financing in connection with United States dollar clearing transactions. The New York Branch also violated the suspicious activity reporting requirements of the Bank Secrecy Act.⁶

The OCC’s Acting Comptroller later told Congress that its “review disclosed that the branch had handled hundreds of suspicious wire transfers involving individuals and entities with the same or similar names as suspected terrorists and terrorist organizations and that many of these individual and entities were customers of Arab Bank or its affiliates.” As a result of this review, the OCC issued a cease and desist order, emphasizing “[t]he inadequacy of the Branch’s Bank Secrecy Act controls over its funds transfer operations is especially serious in light of the high risk characteristics of many of the transactions” and ordering conversion of the Bank’s NY branch into an agency with limited banking powers.

It has been close to a decade since the lead case, *Linde v. Arab Bank*, was filed and our clients’ day in court has been delayed for years by Arab Bank’s refusal to produce the banking records at the heart of the case based on so-called foreign banking secrecy laws. The trial court ruled in 2005 that foreign banking secrecy laws do not apply, but the Bank deliberately ignored multiple production orders. Arab Bank’s refusal to produce these records in violation of US law resulted in the trial court issuing sanctions in 2010 designed to restore a level playing field and allow the jury to draw certain inferences about the Arab Bank’s conduct, based upon its calculated withholding. Any defendant in a U.S. civil case must produce the records under its control that go to the heart of a case, and the resulting sanction from the Bank’s refusal to produce was proper. Five U.S. judges at the trial court and Second Circuit have now ruled that the case should go forward to trial. These families have waited almost ten years for their day in court; there should be no further delay of the August trial setting.

Arab Bank has sought to delay trial at any cost. Since 2010, the Bank through the Kingdom of Jordan has been trying to enlist the U.S. State Department to enter a Statement of Interest in the case seeking to modify the scope of the trial court’s discovery sanction. The Bank’s argument, which lacks any evidentiary support, is that civil liability for the damages its behavior caused the 110 American families will bankrupt the Bank and threaten the stability of Jordan and by extension the entire Middle East. Considering the size and profitability of the Bank, that

⁵ *Linde v. Arab Bank, PLC*, 269 F.R.D. 186 (E.D.N.Y. 2010).

⁶ http://www.fincen.gov/news_room/nr/pdf/20050817.pdf (last visited February 28, 2014).

argument is ridiculous. The Bank's profits for 2013 rose 43% to \$501.9 million. Its net operating income exceeded \$1 billion. Its deposits were \$34.4 billion in 2013. It has a \$45.6 billion balance sheet spread across 30 countries and five continents. On April 21, 2011, Representatives Ileana Ros-Lehtinen and Howard Berman, the then-Chairwoman and Ranking Member of the House Foreign Relations Committee, Steve Chabot and Brad Sherman wrote a letter to Secretary of State Hillary Clinton which urged the State Department not to intervene in the case, stating:

[I]ntervention by the State Department on Arab Bank's behalf, *sua sponte*, would undermine the policies underlying the ATA that support the rights of victims of international terrorism to seek recovery due to the damages they suffered. . . . In conclusion, permitting foreign governments to elevate bank secrecy laws over the interests of justice and, indirectly, extend a veil of secrecy in U.S. courts for designated foreign terrorist organizations, would subvert U.S. policy goals providing for the fair and open adjudication of claims brought under the ATA. Accordingly, we ask that the Department of State refrain from intervening in this matter on behalf of Jordan or any foreign interests absent a formal judicial request.

The State Department turned down the Jordanian government and refused to enter a Statement of Interest and lend its weight to this argument even though, at that time, the Bank *also* faced the pending claims of thousands of non-Americans who were murdered or injured during the Second Intifada. Because the Second Circuit subsequently ruled in a different case⁷ that certain Alien Tort Statute claims could not go forward against corporations, the trial judge in our cases dismissed the non-Americans' claims, and though they are on appeal, only the claims by the 110 American families are now pending in the trial court. Thus the Bank's argument regarding the destabilization of the Middle East resulting from a civil damages award has lost considerable merit from 2011, when even then it was not taken seriously. We applauded the State Department for its principled stand in 2011.

Notwithstanding the trial court and Second Circuit rulings, last summer the Bank filed a petition for writ of certiorari to the Supreme Court, and the Kingdom of Jordan submitted an amicus brief in support of the Bank. On October 21, faced with Jordan's misrepresentation that the Kingdom would be destabilized by the failure of the Bank, the Supreme Court had no choice but to invite the U.S. Solicitor General to file a brief expressing the views of the United States. Review of the discovery sanction by the Supreme Court would be an extraordinarily unusual circumstance. In the normal course of civil litigation, litigants would rarely be able to contest such a ruling in the Supreme Court. As the trial court stated on February 12, 2014:

[T]he petition is still nearly twice as likely to be denied as granted. Add to that the fact that Judge Gershon's Order is an interlocutory discovery order for which defendant seeks mandamus relief, and the likelihood of the Supreme Court granting certiorari seems smaller still. In considering that, this Court is also noting the Second Circuit panel unanimously determined that mandamus relief was

⁷ *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010), *aff'd*, 133 S.Ct. 1659 (2013).

inappropriate. This Court thus believes that there is a very good chance that the Supreme Court will deny certiorari, allowing this trial to go forward in August.

The mundane legal issues at the center of the petition to the Supreme Court are not worthy of Supreme Court review. The U.S. government is currently undergoing an interagency review process to determine whether to submit a brief and what position to take. We understand the State Department now supports the U.S. government submitting a brief that would support the Bank's request for review of the discovery order. We also understand that the U.S. government agencies concerned with the role played by international banks in tax evasion, money laundering and terrorism financing are opposed to the Bank's petition for Supreme Court review. Terror victims share a commonality of concern and principle with such agencies.

Nor should the foreign banking laws raised by the Bank give the Committee any pause. Congress has already decided between the competing policy goals behind banking secrecy laws and laws enabling U.S. victims of terrorism to sue those who injured them through acts of international terrorism. Congress passed the ATA, 18 U.S.C. sec. 2331, *et seq.*, to enable U.S. citizens to sue those who financially support acts of international terrorism. The ATA's civil remedy plainly contemplates extraterritorial application. Acts of "international terrorism" are defined by the ATA in relevant part as acts that "occur primarily outside the territorial jurisdiction of the United States," 18 U.S.C. § 2331(1)(C). Senator Grassley, who sponsored the original ATA act, explained that it "empowers victims with all the weapons available in civil litigation, including: Subpoenas for financial records, banking information, and shipping receipts— this bill provides victims with the tools necessary to find terrorists' assets and seize them." Given that the law explicitly empowers U.S. citizens to sue those who lend support to acts of international terrorism, the ATA was implicitly crafted to combat the financing of terrorism. The Executive Branch has agreed. Specifically, in *Boim v. Holy Land Foundation for Relief & Develop.*, the Justice Department advised the Seventh Circuit Court of Appeals that "[t]he provision at issue -- 18 U.S.C. § 2333(a) -- was supported by the Executive Branch as an effective weapon in the battle against international terrorism; when correctly applied, it discourages those who would provide financing that is later used for terrorist attacks."⁸ Thus, the Bank is precisely the type of defendant Congress had in mind when it passed the ATA. Allowing a foreign bank to raise a foreign banking secrecy law, over the denial of the trial court and appellate court, would nullify the ATA and deny Congress's intent in passing it.

The bank secrecy defense is a final, desperate roll of the dice by the Bank – especially considering it is undisputed that Arab Bank *did* disclose secret customer information to U.S. authorities without even notifying, let alone seeking authorization from, the relevant foreign states. Arab Bank produced internal banking records to the OCC during the OCC's 2004 investigation of the Bank that followed the filing of the *Linde* lawsuit. Arab Bank was never prosecuted for those disclosures. Jordan and Lebanon are signatories of the Middle East and North Africa Financial Action Task Force, and have expressly adopted a policy not to rely on bank secrecy laws as a basis for protecting information related to money laundering and terrorist financing.

⁸ Brief for the United States as Amicus Curiae at *1, *Boim v. Holy Land Foundation*, 2008 WL 3993242, (7th Cir. Aug. 21, 2008).

Finally, it is relevant that the Bank invokes bank secrecy to protect the privacy interests of ten customers the Bank has admitted are Specially Designated Global Terrorists, as well as dozens of customers identifiable as the senior leadership of a Foreign Terrorist Organization, Hamas, and its military brigades, persons wounded or imprisoned in terrorist operations, and families of “martyrs” killed in “martyrdom operations” (including specifically-identified terror attacks that killed and injured plaintiffs in this lawsuit).

At times, the U.S. Government has been a strong supporter of anti-terrorism litigation, and the State Department has been able to play a constructive role in the past. In 2008, there were a number of cases in U.S. courts progressing against Libya to provide compensation for its sensational acts of terrorism against U.S. citizens in 1980s and 1990s, including the survivors of the 1986 LaBelle Discothèque. Libya, anxious to reestablish relations with the United States, was unable to make much progress as State Department officials and members of Congress blocked rapprochement until the claims were satisfied. The primary cases that drove the agreement with Libya forward were the Lockerbie Pan Am 103 bombing and the LaBelle discotheque bombing case. In August 2008, the governments of Libya and the U.S. reached an agreement where Libya agreed to pay the U.S. \$1.5 billion in settlement of all outstanding claims.⁹ Though many victims were dissatisfied with this result and felt the U.S. government made a politically expedient settlement at the expense of fair compensation of all victims and survivors of Libyan terrorism, the level of U.S. government participation in the vindication of private causes of action was unique. While it may have been preferable to see more done on behalf of victims, U.S. government support for the Libyan cases was vital to their eventual settlement. The resolution of the Libya cases in 2008-10 for Libya’s past acts of state sponsorship of terrorism illustrates how advocates for victims of state sponsorship of terrorism can provide ammunition to the State Department in its advancement of U.S. policy and how the two can work together to achieve their goals. Such a public-private partnership does not happen often because of the absence of an institutional voice for victims of terrorism at the State Department.

One way to fix this is to statutorily create an office for terror victims’ assistance (“LTVA”), based upon The Office of the Assistant Legal Adviser for International Claims and Investment Disputes L/CID¹⁰—which would deal with providing assistance for U.S. victims of terrorism as LCID provides assistance to U.S. companies with foreign investment disputes. What is referred to as the “Libya model” worked well because both the State Department and the lawyers representing U.S. victims of Libyan terrorism worked toward the ultimate goal of victim compensation, even in difficult times when the partnership was strained by inherently divergent interests. The creation of the LTVA office would lay the groundwork for the future replication of the successful results of the Libya model. The Libya model worked because of a temporary and quasi-institutional voice for victims of Libyan terrorism at the State Department.

⁹ Libyan Claims Resolution Act, Pub. L. No. 110-301, 122 Stat. 2999 (2008).

¹⁰ “The Office of the Assistant Legal Adviser for International Claims and Investment Disputes (L/CID) is the largest office in the Department of State’s Office of the Legal Adviser. It represents the United States and coordinates activities within and outside the Department with respect to all aspects of international claims and investment disputes.” <http://www.state.gov/s/l/c3433.htm> (last visited February 28, 2014).

Indeed the Executive Branch has played an instrumental role in several Foreign Sovereign Immunities Act (FSIA) cases against the Islamic Republic of Iran and the Syrian Arab Republic. Under subpoena, the Department of Treasury has provided information regarding the location of frozen assets of Iran or Syria to U.S. victims of terrorism as judgment creditors. In the *650 5th Avenue* case in the United States District Court for the Southern District of New York¹¹, several groups of terrorism victims have worked hand-in-hand with U.S. federal prosecutors for years in a civil forfeiture case against the office tower at 650 Fifth Avenue, which belongs to groups which have allegedly money laundered for Iran and violated US-Iran sanctions. As a result of this cooperation, the U.S. government plans to sell the building and turn over the proceeds to the families of those victims of Iranian terrorism who have worked with the government. There currently exist several types of U.S. federal rewards programs for cooperation and assistance leading to convictions and asset seizures. The Rewards for Justice program, 22 U.S.C. § 2708(b)(7), rewards the provision of information provided to the U.S. government assisting in “the disruption of financial mechanisms” of terrorist organizations. Whenever legally permissible, I have provided information to U.S. government agencies to assist in their legal efforts against terrorists and their supporters. This type of cooperation has furthered the Congressional policies behind the enactment of anti-terrorism legislation. The State Department should either act as a proponent of such policies, as it did with the Libya model, or neutrally, as it did in 2011 in the Arab Bank case when it refused the Jordanian government’s request to enter this case and file a Statement of Interest in favor of modifying the scope of the trial court’s discovery sanction. We have asked the State Department to play a productive role as an interlocutor with the Jordan and the Bank to bring the matter to a conclusion acceptable to all parties. That would be the proper role of the U.S. government.

The key to a successful public-private partnership is cooperation. The prosecution of these cases fulfills important Congressional policies such as victim compensation, the deterrence of terrorism with financial penalties and the production of intelligence for U.S. agencies, when legally permissible. But these goals can be not reached unless the courts are allowed to do their job. It is our opinion, and the courts have agreed, that the policy goals of compensating American victims of international terrorism and deterring financiers of international terrorism should be favored over foreign bank secrecy laws. And Congress expressly empowered the courts to make these decisions when it passed the ATA. The State Department should make the same decision now that it made in 2011, which is to deny the request to interfere in the progress of this lawsuit and allow no further delay in the American victims’ quest for justice.

¹¹ *In re: 650 Fifth Avenue and Related Properties*, CA 08-10934 (KBF).