

Statement for the Record
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Subcommittee on the Constitution and Civil Justice
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Chairman Franks, Ranking Member Cohen, Members of the Subcommittee, thank you for inviting us to appear before you today to discuss the Justice Against Sponsors of Terrorism Act. I welcome the opportunity to testify with my colleague, Brian Egan, the Department of State's Legal Advisor.

I understand the motivation for the Justice Against Sponsors of Terrorism Act, and all of us in the Administration deeply sympathize with victims of terror and with their families. The State Department has long supported efforts to obtain compensation for U.S. terrorism victims, while also leading international efforts to combat terrorism and prevent more attacks against the homeland and our citizens abroad. I can personally attest that enormous focus and resources have been dedicated to addressing this threat so no other Americans will suffer the same fate as the victims of the September 11th attacks. From the successful efforts against Al Qaeda leadership in the Pakistan-Afghanistan border area, to the vast improvement in our intelligence about terrorist leaders; to the increasingly close and mutually beneficial cooperation with allies; and to our successes in rooting out sources of funding for terrorists, we have worked every day to protect America.

We know that the families of the 9/11 victims have suffered grievously. From the establishment of the original U.S. government compensation fund to today, we have been resolute in uniting to protect our country and to bring to justice those responsible for the attacks. The 9/11 attacks were, and have continued to be, the subject of intense and exhaustive investigation by U.S. government agencies and commissions.

While all of these efforts will continue, I am here today to explain the Administration's strong conviction that JASTA is not the right path forward. Most importantly, the passage of JASTA could undermine our critical fight against terrorism and particularly against ISIL by limiting our flexibility in operating overseas. It could potentially expose the U.S. government to billions of dollars in

claims; it raises serious foreign policy concerns; and it could lead to a slowdown of foreign investments in the United States.

The current version of JASTA represents a sea change in longstanding principles which could have serious implications for U.S. interests. JASTA would allow private litigation against foreign governments in U.S. courts based on allegations that such countries' actions *abroad* made them responsible for terrorism-related injuries on U.S. soil. This legislation would allow suits against countries that have neither been designated by the Executive Branch as state sponsors of terrorism nor taken direct actions in the United States to carry out an attack here. JASTA would hinder our ability to protect our national security interests by damaging relationships with countries that are important partners in combating terrorism, at a crucial time when we are trying to build coalitions, not create divisions. We cannot win the fight against ISIL without full international cooperation to deny ISIL safe haven, disrupt its finances, counter its violent messaging, and share intelligence on its activities. Our close and effective cooperation with other countries, both bilaterally and through multilateral vehicles such as the 66-member Global Coalition to Counter-ISIL, could be seriously hindered.

With the broad reach of JASTA, there is the likelihood that some of our critical allies, such as the United Kingdom or other European governments, could face lawsuits in U.S. courts which could affect their cooperation with us, as well as their broader bilateral relationship with us.

Numerous European and Middle Eastern governments have reached out to the Department to express their concerns about the bill. The parliament in the Netherlands unanimously passed a motion on July 6 calling JASTA a "breach of Dutch sovereignty" that could expose the Netherlands to "astronomically high damages" via exposure to liability in U.S. courts and called on the government to potentially convey its concerns about JASTA to the United States. A British Member of Parliament, Thomas Tugendhat, in an opinion piece last month in the UK's *Telegraph* newspaper, wrote that the bill "could also have serious unintended consequences for Britain. The act would expose the British government to the possibility of revealing the secrets of intelligence operations in open court, or paying damages over alleged failures to prevent terrorist attacks. Either outcome would put the special relationship under severe strain." He expressed the view that it might be used by U.S. citizens to bring suit against the British government for failure "to tackle Islamic radicalism in earlier decades" by not addressing the problem of radical Islamic preachers in the UK, which he notes some say spawned terrorism.

The bill also poses a serious threat to U.S. interests overseas. I have seen firsthand throughout my career at my postings around the world that the United States benefits significantly from the protection afforded by foreign sovereign immunity given its extensive diplomatic, security, and assistance operations. As members of this committee know from their extensive travels abroad, some actions the United States takes overseas are controversial with local citizens and foreign governments. If JASTA is enacted, it could erode our sovereign immunity protections abroad, as some foreign governments will rush to pass similar legislation to allow claims against the United States and its property, and in some cases, even against U.S. officials. Even if they are not eager to do so – in many cases foreign governments are fully supportive of steps the United States has taken – such governments will come under intense public pressure to create rights for their citizens to sue the United States. As the world's largest economy, the United States has extensive operations overseas, including property ownership, and thus is particularly vulnerable to asset seizures abroad.

The United States funds, trains, or equips numerous counter-terrorism, military, intelligence and law enforcement groups around the world. These groups are essential partners for the United States. As I saw first-hand when I served as Ambassador to Pakistan and Colombia such groups have been courageous in confronting terrorists in Pakistan and in uncovering terrorists and combatting narco-traffickers in Colombia. Likewise they are bravely fighting ISIL in Iraq right now. Exposing the United States to lawsuits in foreign courts with regard to the actions of such groups could open the door to intrusive litigation seeking billions of dollars of claims against the U.S. government and could reduce our ability to work with groups that have been vital to achieving our national security goals. U.S. counterterrorism strikes that have been a crucial and successful component of our counter- Al Qaeda and counter-ISIL efforts do occasionally, tragically and despite all our safeguards, cause civilian casualties. If foreign courts were to take a JASTA-like approach in the country where such a strike took place, they might allow suits to be brought against the United States for such actions. Additionally, men and women working on such operations could face the risk of being brought to trial or compelled to provide evidence if they traveled to the country where the operation occurred.

We have deep concerns about exposing this broad range of U.S. national security-related conduct to scrutiny in foreign courts. These risks could ultimately have a chilling effect on our own counter-terrorism efforts.

In the course of my 42-year career, I have encountered a number of situations in which legislation like JASTA could have interfered with important U.S. government efforts overseas. Notwithstanding the care that we take in designing our training programs, I have seen abuses committed by rogue elements of groups we have trained which resulted in civilian casualties; I have worked with courageous Americans and others associated with the U.S. government who were involved in dangerous and risky operations. The U.S. military supports allied efforts which at times have regrettably resulted in civilian casualties, which some may allege were wrongful. Perhaps more common than actual abuses, I have heard frequent claims that the U.S. government “should have known” about some abuse that took place, given its allegedly close relationship with elements of the local government or the alleged reach of its intelligence operation. If the principle of sovereign immunity is eroded, foreign courts could enter into an extensive range of suits and discovery against the United States, putting U.S. personnel and property in a precarious situation.

Finally, I want to mention the possibility that JASTA may cause foreign governments to hesitate to invest or maintain their funds in the United States. The administration actively encourages foreign investment in the United States, as high-profile events like Select USA demonstrate. We have the world’s largest and most open economy and take pride in the preeminence of New York as a financial center. Opening up U.S. courts to JASTA-type cases may cause foreign states to think twice about their investments here because they may have concerns that their money would be at risk of being attached in connection with a lawsuit. Foreign governments may simply decide to avoid this risk by keeping their assets outside of the U.S. financial system or avoiding dollar denominated transactions. This is what happened in in 2007 when Iraq threatened to remove its assets from the United States in response to a provision in the NDAA that would have exposed Iraq to potential liability. That prompted a Presidential veto and a later Congressional response adding a waiver for Iraq.

In sum, JASTA could have a serious negative impact on U.S. efforts to fight terrorism and could expose our allies and partners to lawsuits in U.S. courts, which could reduce their willingness to cooperate with us on crucial issues of U.S. national security. I am fully sympathetic to the desire of victims of terrorism to gain justice for their loved ones. However, this bill is not the solution. Before proceeding with the legislation, we believe there needs to be additional, careful consideration of the potential unintended consequences of its enactment. We welcome opportunities to engage with this Subcommittee on that discussion. I also want to thank this Subcommittee for your ongoing support as we continue to

advance our national security interests and I look forward to answering your questions.