

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5904

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

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2012

Mr. DANIEL E. LUNGREN of California (for himself and Mr. NADLER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

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

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. SHORT TITLE.**

4       This Act may be cited as the “Justice Against Spon-  
5       sors of Terrorism Act”.

6       **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—Congress finds the following:

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

1           (2) The Constitution confers upon Congress the  
2 power to punish crimes against the law of nations  
3 and to carry out the treaty obligations of the United  
4 States, and therefore Congress may by law impose  
5 penalties relating to the provision of material sup-  
6 port to foreign organizations engaged in terrorist ac-  
7 tivity, and allow for victims of international ter-  
8 rorism to recover damages from those who have  
9 harmed them.

10           (3) International terrorism affects the inter-  
11 state and foreign commerce of the United States by  
12 harming international trade and market stability,  
13 and limiting international travel by United States  
14 citizens as well as foreign visitors to the United  
15 States.

16           (4) Some foreign terrorist organizations, acting  
17 through affiliated groups or individuals, raise signifi-  
18 cant funds outside the United States for conduct di-  
19 rected and targeted at the United States.

20           (5) Foreign organizations that engage in ter-  
21 rorist activity are so tainted by their criminal con-  
22 duct that any contribution to such an organization  
23 facilitates that conduct.

24           (6) The imposition of civil liability at every  
25 point along the causal chain of terrorism is nec-

1        essary to deter the flow of terrorism’s lifeblood,  
2        money. As recognized by Judge Richard Posner in  
3        *Boim v. Holy Land Foundation for Relief and De-*  
4        *velopment*, Nos. 05–1815, 05–1816, 05–1821, 05–  
5        1822, \_\_ F.3d \_\_ (7th Cir. 2008) (en banc), “Dam-  
6        ages are a less effective remedy against terrorists  
7        and their organizations than against their financial  
8        angels . . . suits against financiers of terrorism can  
9        cut the terrorists’ lifeline.” Moreover, the statute of  
10       limitations for such claims must be extensive, for as  
11       the Seventh Circuit notes, “Seed money for ter-  
12       rorism can sprout acts of violence long after the in-  
13       vestment”.

14                (7) The reasoning like that of the United States  
15       Court of Appeals for the Second Circuit in *In Re:*  
16       *Terrorists Attacks on September 11, 2001*, 538  
17       F.3d 71 (2d Cir. 2008) undermine important  
18       counter-terrorism policies of the United States, by  
19       affording undue protection from civil liability to per-  
20       sons, entities and states that provide material sup-  
21       port or resources to foreign terrorist organizations,  
22       and by depriving victims of international terrorism  
23       of meaningful access to court to seek redress for  
24       their injuries.

1           (8) The United Nations Security Council de-  
2           clared in Resolution 1373, adopted on September  
3           28, 2001, that all states have an affirmative obliga-  
4           tion to “refrain from providing any form of support,  
5           active or passive, to entities or persons involved in  
6           terrorist acts,” and to “ensure that any person who  
7           participates in the financing, planning, preparation  
8           or perpetration of terrorist acts or in supporting ter-  
9           rorist acts is brought to justice”.

10           (9) Consistent with these declarations, no state  
11           possesses the discretion to engage knowingly in the  
12           financing or sponsorship of terrorism, whether di-  
13           rectly or indirectly.

14           (10) Persons, entities or states that knowingly  
15           or recklessly contribute material support or re-  
16           sources, directly or indirectly, to persons or organi-  
17           zations that pose a significant risk of committing  
18           acts of terrorism that threaten the security of  
19           United States nationals or the national security, for-  
20           eign policy, or economy of the United States, nec-  
21           essarily direct their conduct at the United States,  
22           and should reasonably anticipate being haled into  
23           court in the United States to answer for such activi-  
24           ties.

1           (11) The United States has a vital interest in  
2           providing persons and entities injured as a result of  
3           terrorist attacks committed within the United States  
4           with full access to court to pursue civil claims  
5           against persons, entities, or states that have know-  
6           ingly or recklessly provided material support or re-  
7           sources, directly or indirectly, to the persons or or-  
8           ganizations responsible for their injuries.

9           (b) PURPOSE.—The purpose of this Act is to provide  
10          civil litigants with the fullest possible basis, consistent  
11          with the Constitution, to seek relief against persons, enti-  
12          ties and foreign states, wherever acting and wherever they  
13          may be found, which have provided material support or  
14          resources, directly or indirectly, to foreign organizations  
15          that engage in terrorist activities against the United  
16          States.

17          **SEC. 3. FOREIGN SOVEREIGN IMMUNITY.**

18          (a) EXCEPTIONS.—Section 1605(a) of title 28,  
19          United States Code, is amended—

20                  (1) by amending paragraph (5) to read as fol-  
21          lows:

22                  “(5) not otherwise encompassed in paragraph  
23          (2), in which money damages are sought against a  
24          foreign state arising out of physical injury or death,  
25          or damage to or loss of property, occurring in the

1 United States and caused by the tortious act or  
2 omission of that foreign state or of any official or  
3 employee of that foreign state while acting within  
4 the scope of his office or employment (regardless of  
5 where the underlying tortious act or omission oc-  
6 curs), including any statutory or common law tort  
7 claim arising out of an act of extrajudicial killing,  
8 aircraft sabotage, hostage taking, terrorism, or the  
9 provision of material support or resources for such  
10 an act, or any claim for contribution or indemnity  
11 relating to a claim arising out of such an act, except  
12 this paragraph shall not apply to—

13 “(A) any claim based upon the exercise or  
14 performance or the failure to exercise or per-  
15 form a discretionary function, regardless of  
16 whether the discretion is abused; or

17 “(B) any claim arising out of malicious  
18 prosecution, abuse of process, libel, slander,  
19 misrepresentation, deceit, interference with con-  
20 tract rights, or any claim for emotional distress  
21 or derivative injury suffered as a result of an  
22 event or injury to another person that occurs  
23 outside of the United States; or”; and

24 (2) by inserting after subsection (d) the fol-  
25 lowing:

1       “(e) DEFINITIONS.—For purposes of subsection  
2 (a)(5)—

3               “(1) the terms ‘aircraft sabotage’, ‘hostage tak-  
4 ing’, and ‘material support or resources’ have the  
5 meanings given those terms in section 1605A(h);  
6 and

7               “(2) the term ‘terrorism’ means international  
8 terrorism, and domestic terrorism, as those terms  
9 are defined in section 2331 of title 18.”.

10       (b) EFFECTIVE DATE.—The amendments made by  
11 subsection (a) shall apply to all proceedings pending in  
12 any form on the date of the enactment of this Act and  
13 to all proceedings commenced on or after such date of en-  
14 actment.

15 **SEC. 4. AIDING AND ABETTING LIABILITY FOR CIVIL AC-**  
16 **TIONS REGARDING TERRORIST ACTS.**

17       (a) IN GENERAL.—Section 2333 of title 18, United  
18 States Code, is amended by adding at the end the fol-  
19 lowing:

20               “(d) LIABILITY.—In an action arising under sub-  
21 section (a), liability may be asserted as to the person or  
22 persons who committed such act of international terrorism  
23 or any person or entity that aided, abetted, provided mate-  
24 rial support or resources (as defined in section

1 2339A(b)(1)) to, or conspired with the person or persons  
2 who committed such an act of international terrorism.

3 “(e) NON-APPLICABILITY OF LAW OF PRE-  
4 CLUSION.—Any civil action or claim that seeks recovery  
5 under this chapter for conduct that was the basis of a  
6 civil action or claim previously dismissed for lack of sub-  
7 ject matter jurisdiction for failure to meet the require-  
8 ments for an exception under section 1605(a) of title 28  
9 is not subject to dismissal under the law of preclusion.”.

10 (b) EFFECTIVE DATE.—The amendment made by  
11 subsection (a) shall apply to all proceedings pending in  
12 any form on the date of the enactment of this Act and  
13 to all proceedings commenced on or after such date of en-  
14 actment.

15 (c) EFFECT ON FOREIGN SOVEREIGN IMMUNITIES  
16 ACT.—Nothing in the amendments made by this section  
17 affects a foreign state’s immunity from jurisdiction under  
18 other law.

19 **SEC. 5. JURISDICTION FOR CIVIL ACTIONS REGARDING**  
20 **TERRORIST ACTS.**

21 (a) IN GENERAL.—Section 2334 of title 18, United  
22 States Code, is amended by inserting at the end the fol-  
23 lowing:

24 “(e) JURISDICTION.—The district courts shall have  
25 personal jurisdiction, to the maximum extent permissible



1 under the Fifth Amendment of the United States Con-  
2 stitution, over any person who aids and abets an act of  
3 international terrorism or who provides material support  
4 or resources as set forth in sections 2339A, 2339B, or  
5 2339C of this title, for acts of international terrorism in  
6 which any national of the United States suffers injury in  
7 his or her person, property or business by reason of such  
8 an act in violation of section 2333 of this title.”.

9 (b) EFFECTIVE DATE.—The amendment made by  
10 this section shall apply to all proceedings pending in any  
11 form on the date of the enactment of this Act and to all  
12 proceedings commenced on or after such the date of enact-  
13 ment.

14 **SEC. 6. LIABILITY FOR GOVERNMENT OFFICIALS IN CIVIL**  
15 **ACTIONS REGARDING TERRORIST ACTS.**

16 (a) IN GENERAL.—Section 2337 of title 18, United  
17 States Code, is amended to read as follows:

18 **“§ 2337. Suits against Government officials**

19 “No action shall be maintained under section 2333  
20 of this title against the United States, an agency of the  
21 United States, or an officer or employee of the United  
22 States or any agency thereof acting within his or her offi-  
23 cial capacity or under color of legal authority.”.

24 (b) EFFECTIVE DATE.—The amendment made by  
25 this section shall apply to all proceedings pending in any

1 form on the date of the enactment of this Act and to all  
2 proceedings commenced on or after such date of enact-  
3 ment.

4 **SEC. 7. STATUTE OF LIMITATIONS FOR CIVIL ACTIONS RE-**  
5 **GARDING TERRORIST ACTS.**

6 (a) IN GENERAL.—Section 2335 of title 18, United  
7 States Code, is amended—

8 (1) in subsection (a), by striking “four years”  
9 and inserting “15 years”; and

10 (2) in subsection (b), by striking “four years”  
11 and inserting “15 years”.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to all proceedings pending in any  
14 form on the date of the enactment of this Act and to all  
15 proceedings commenced on or after such date of enact-  
16 ment.

17 (c) EFFECT ON DISMISSED CAUSES OF ACTION.—  
18 Any private civil action under section 2333 of title 18,  
19 United States Code—

20 (1) that was dismissed as time barred prior to  
21 the date of enactment of this Act, and

22 (2) that would have been timely filed pursuant  
23 to section 2335 of title 18, United States Code, as  
24 amended by this section,

1 may be refiled not later than 90 days after the date of  
2 enactment of this Act.

3 **SEC. 8. SEVERABILITY.**

4       If any provision of this Act or the amendments made  
5 by this Act or the application thereof to any person or  
6 circumstance is held invalid, the remainder of this Act,  
7 the amendments made by this Act, or the application  
8 thereof to other persons not similarly situated or to other  
9 circumstances shall not be affected by such invalidation.

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