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The Iran Hostages: Efforts to Obtain Compensation

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Summary

Even today, after the passage of some three decades, the 1979-1981 Iran Hostage Crisis remains an event familiar to most Americans. Many might be unaware that the 52 American mostly military and diplomatic personnel held hostage in Tehran for 444 days continue to strive for significant compensation for their ordeal. The former hostages and their families did receive a number of benefits under various civil service laws, and each hostage received from the U.S. government a cash payment of $50 for each day held hostage. The hostages have never received any compensation from Iran through court actions, all efforts having failed due to foreign sovereign immunity and an executive agreement known as the Algiers Accords, which bars such lawsuits. Congress took action to abrogate Iran's sovereign immunity in the case *Roeder v. Islamic Republic of Iran*, but never successfully abrogated the executive agreement, leaving the plaintiffs with jurisdiction to pursue their case but without a judicial cause of action.

Having lost their bids in the courts to obtain recompense, the former hostages have turned to Congress for relief. This report outlines the history of various efforts, including legislative efforts and court cases, and describes several bills currently before Congress, the Justice for Former American Hostages in Iran Act of 2015, S. 868, a companion bill, H.R. 3338, and Section 122 of the Department of State Operations Authorization and Embassy Security Act, Fiscal Year 2016, S. 1635.

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Having lost their bids in the courts to obtain recompense, the former hostages have turned to Congress for relief.[1] This report outlines the history of various efforts, including legislative efforts and court cases, and describes several bills currently before Congress, the Justice for Former American Hostages in Iran Act of 2015, S. 868, a companion bill, H.R. 3338, and Section 122 of the Department of State Operations Authorization and Embassy Security Act, Fiscal Year 2016, S. 1635.

The Hostage Relief Act

The 52 Americans taken hostage in Tehran in November 1979 and held until January 1981[2] included civilian Foreign Service diplomats and other government employees, as well as military servicemembers and one private citizen. Concern about the effects of the ordeal on the hostages and their families led Congress to enact legislation in 1980 designed to make the hostages and their families eligible for the same benefits that were available to prisoners of war and soldiers missing in action during the Vietnam conflict, including their dependents. The Hostage Relief Act of 1980[3] did not provide for a cash payment to hostages or their families; however, benefits under the act included the following:

- creation of an interest-bearing salary savings fund including retroactive interest;
- reimbursement of medical expenses of the hostages and their family members;
- extension of relief under the Soldiers and Sailors Act to hostages;
- tax relief, including deferred assessment of taxes and penalties, tax forgiveness during the period of captivity, and refunding of tax collected prior to enactment;
- educational expenses for family members of hostages and retraining of hostages.[4]

[1] *See* Matthew L. Wald, *Iran Hostages See Renewed Focus on Their 17-Year Bid for Compensation*, NY TIMES, May 9, 2013, at A18.

[2] All but three of these individuals were confined at the U.S. Embassy for the duration of their captivity. The three exceptions were those detained at the Iranian Foreign Ministry until 17 days before the hostages' repatriation. Thirteen other hostages were released during the first several weeks of the hostage crisis, and one was released after 86 days. *See* THE FINAL REPORT AND RECOMMENDATIONS OF THE PRESIDENT'S COMMISSION ON HOSTAGE COMPENSATION 3 (1981) [hereinafter FINAL REPORT].

[3] P.L. 96-449, 94 Stat. 1967 (1980).

[4] The benefits for family members were cut off after the semester during which the captivity ended, while benefits for the hostages themselves continued for 10 years, similar to educational benefits for veterans. *Id*. §104.

These benefits were supplemental to benefits to which government employees and servicemembers and their families were already entitled.[5] The Congressional Budget Office estimated that the cost of additional medical benefits for the 1981 fiscal year would amount to $390,000; educational benefits would cost from $80,000 to $307,000 depending on the version of the bill enacted; and internal revenue would decrease by less than $1 million due to the tax benefits.[6] A proposal to provide the hostages each with $1,000 per day to be paid from frozen Iranian assets in the United States met with the objection of the State Department on the grounds that it could complicate negotiations to secure the hostages' release, and it was not adopted.[7]

Algiers Accords

In order to secure the release of the hostages and bring the crisis to an end, the U.S. government sought the good offices of Algeria to broker a deal with the new Iranian government. The result was a set of executive agreements known collectively as the Algiers Accords.[8] The agreements provided not only for the release of the hostages, but also the unfreezing of Iranian assets in the United States and the creation of an international tribunal to settle claims between the two governments, as well as certain private claims against either government by a national of the other, mostly arising as a result of contracts disrupted by the revolution in Iran.

The Algiers Accords contain the following provisions respecting claims arising out of the hostage taking:

> [T]he United States ... will thereafter bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of events occurring before the date of this declaration related to (A) the seizure of the 52 United States nationals on Nov. 4, 1979, (B) their subsequent detention, (C) injury to United States property or property of the United States nationals within the United States embassy compound in Tehran after Nov. 3, 1979, and (D) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran. The United States will also bar and preclude the prosecution against Iran in the courts of the United States of any pending or

[5] Under the Missing Persons Act, 5 U.S.C. §§5661 *et seq*., the hostages were entitled to receive continued pay and benefits, including special pay and incentive pay as well as basic allowances for quarters and subsistence, and a per diem allowance for up to 90 days. They were also permitted to accrue leave without limit and have forfeited leave restored.

[6] H.Rept. 96-1349, pt. 1 at 13-14 (estimate of H.R. 7085, 96th Cong., for the Committee on Post Office and Civil Service); pt. 2 at 13-15 (estimate for the Committee on Foreign Affairs) (1980). The version of the bill that was eventually enacted contained the educational benefits provision pointing toward the lower end of the estimate.

[7] *The Hostage Relief Act of 1980, Hearings and Markup of H.R. 7085 before the Subcomm. on International Operations of the H. Comm. on Foreign Affairs*, 96th Cong. 28-29 (1980) (statement of Rep. Mica). The Carter Administration noted that it was preparing claims resolution legislation that would "establish a mechanism to ensure that the hostages and their families are fully compensated for the grievous wrongs they have endured." *Id*. at 29 (memorandum from the Department of State).

[8] The Algiers Accords consists of five documents: The Declaration of the Government of the Democratic and Popular Republic of Algeria ("General Declaration"); Declaration of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration"); The Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with Respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria; The Escrow Agreement; and The Technical Arrangement Between Banque Centrale D'Algerie as Escrow Agent and the governor and Company of the Bank of England and the Federal Reserve Bank of New York as Fiscal Agent of the United States, United States-Iran, January 19, 1981, reprinted at 20 I.L.M. 223 (1981).

> future claims asserted by persons other than the United States nationals arising out of the events specified in the preceding sentence.[9]

To fulfill this commitment, President Carter issued Executive Order 12283,[10] citing the International Emergency Economic Powers Acts (IEEPA),[11] among other authorities, to order the Secretary of the Treasury to promulgate regulations prohibiting any person subject to U.S. jurisdiction from bringing any court claim against Iran arising out of the hostage seizure or subsequent detention.[12] The Office of Foreign Assets Control (OFAC) at the Treasury Department amended the Iranian Assets Control Regulations (31 C.F.R. Part 535) accordingly.[13]

President's Commission on Hostage Compensation

On the same day the Algiers Accords were signed to secure the release of the hostages, President Carter created the President's Commission on Hostage Compensation[14] and tasked it to provide recommendations as to whether the United States should provide financial compensation to the former hostages.[15] The commission reviewed prior practice regarding governmental compensation for prisoners of war and the value of benefits already received by the former hostages under other laws in making its recommendation.[16] The commission focused on the obligations it found the U.S. government owes as an employer, and concluded that "compensation in the tort sense" was not appropriate.[17] It did, however, recommend a "token" payment of tax-exempt detention benefits in the amount of $12.50 per day of captivity, similar to benefits paid to Vietnam prisoners of war and interned civilians as well as to the crew of the USS *Pueblo* who were detained by the government of North Korea for 11 months in 1968.[18]

In making this recommendation, the commission was mindful of the fact that the Algiers Accords precluded the former hostages from suing Iran for damages,[19] but agreed with the government's

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[9] *See* General Declaration, *supra* footnote 8, at ¶11, 20 I.L.M. at 224.

[10] Exec. Order No. 12,283, 46 Fed. Reg. 7927 (January 19, 1981).

[11] P.L. 95-223, codified at 50 U.S.C. 1701 *et seq*.

[12] Exec. Order No. 12,283 at ¶1-101.

[13] *See* 31 C.F.R. 535.216 (1981).

[14] Exec. Order No. 12,285, 46 Fed. Reg. 7931 (January 19, 1981).

[15] *See* FINAL REPORT, *supra* footnote 2, App. A (Charter), September 21, 1981.

[16] The value of benefits received is set forth in an appendix to the report. The commission estimated the total aggregate benefits, including compensation for property losses and benefits mentioned above that amounted to extra benefits (that is, excluding pay or medical benefits to which they were already entitled), to amount to $2,243,792 as of August 15, 1981. *Id*. appendix H.

[17] *Id*. preface (Commission letter to President); *see also id.* at 35-36 ("The Commission recommends that the United States Government make no payment to the Iranian hostages or their family members of any compensation intended to be the equivalent to compensatory damages for injuries incurred as the result of the unlawful detention of the hostages by the Iranian Government.").

[18] *Id*. preface; *id*. at 33. The U.S. Navy vessel *Pueblo* and 82 members of its crew (one was killed during the capture) were captured and detained by North Korea on the basis of an alleged incursion into that state's territorial waters for purposes of espionage. The crew was released after the United States negotiated an apology. Several members of the crew sued North Korea in 2006 for torture and hostage-taking and were awarded a $65 million judgment. *See* Massie v. Government of Democratic People's Republic of Korea, 592 F. Supp. 2d 57 (D.D.C. 2008); *see also* Del Quentin Wilber, *USS Pueblo's William Massie Seeks Retribution From N. Korea*, WASH. POST, October 8, 2009, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/10/07/AR2009100703890.html?sid=ST2009100703955. It does not appear that the plaintiffs have succeeded in enforcing their judgment.

[19] FINAL REPORT, *supra* footnote 2, at 29-31; *see also Id.* App. F, 110-11 (explaining that the primary purpose of previous legislation for the benefit of prisoners of war and civilian internees since World War II had been to provide

position that this did not constitute a "taking" within the meaning of the Fifth Amendment because:

> (1) the President had statutory and constitutional authority to settle the potential hostage claims;
>
> (2) the hostages could not establish for purposes of a taking claim that they suffered an actual uncompensated loss since (a) their claims were settled for considerable value, i.e., their release and (b) their right of action against Iran was of dubious value because of the unlikelihood that the U.S. courts would have been available as a forum in which to sue Iran in light of certain provisions of the Foreign Sovereign Immunities Act.[20]

The commission recommended that the government "assume the costs of restoring the hostages to health, provide disability compensation if their health cannot be restored, provide compensation for material losses and safeguard their employment rights and career prospects."[21]

Court Actions

Notwithstanding the Algiers Accords' provision barring lawsuits, many of the former hostages brought suit against Iran for damages.[22] These lawsuits failed for lack of jurisdiction under the Foreign Sovereign Immunities Act (FSIA)[23] or because of the Algiers Accords, or both.

In *Persinger v. Islamic Republic of Iran*,[24] the U.S. Court of Appeals for the D.C. Circuit initially found jurisdiction based on the non-commercial tort exception to the FSIA,[25] on the notion that U.S. embassy grounds are within the jurisdiction of the United States. On the merits, however, the court found that the President's order implementing the Algiers Accords extinguished any claim the plaintiff may have had. Despite having won the case, the U.S. government petitioned for rehearing on the foreign sovereign immunity question. The court granted the motion and vacated its earlier opinion, agreeing with the government that the tort exception to sovereign immunity applies only to injuries occurring within the territorial jurisdiction of the United States, which did not include U.S. embassies abroad. The court held it could not, without jurisdiction over the case, reach the question regarding the legitimacy of the President's action.[26]

Some of the former hostages brought suit against the United States seeking compensation for what they viewed as an unconstitutional taking of their claim against Iran, but were ultimately

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token payments as "a symbolic gesture ... expressing recognition of the hardship suffered by the beneficiaries" that was "not to be commensurate with the actual injury").

[20] *Id.* at 31.

[21] *Id*.

[22] *See, e.g.*, Persinger v. Islamic Republic of Iran, 729 F.2d 835 (D.C. Cir.), *cert. denied*, 469 U.S. 881 (1984); McKeel v. Islamic Republic of Iran, 722 F.2d 582 (9th Cir. 1983), *cert. denied*, 469 U.S. 880 (1984); Williams v. Iran, 692 F.2d 151 (D.C. Cir. 1982); Lauterbach v. Iran, 692 F.2d 150 (D.C. Cir. 1982); Ledgerwood v. State of Iran, 617 F. Supp. 311 (D.D.C. 1985).

[23] 28 U.S.C. §§1602 *et seq*.

[24] 729 F.2d 835.

[25] 28 U.S.C. 1605(a)(5) provides that a foreign state shall not be immune in cases in which "money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment.... "

[26] 729 F.2d at 838.

unsuccessful.[27] In *Belk v. United States*,[28] the United States Claims Court entered summary judgment in favor of the government, holding that the signing of the Algiers Accords did not effect a "taking" of private property because it primarily benefited the plaintiffs, the barring of claims was not novel or unexpected or outside the recognized authority of the President, and alternatively, that the presidential decision to bar claims amounted to a political question. The Court of Appeals for the Federal Circuit affirmed, agreeing that the extinguishment of the plaintiffs' claims was not novel or unexpected,[29] and "cannot be said to have 'interfered with distinct investment-backed expectations.'"[30] The appellate court also agreed that the matter was non-justiciable as a political question:

> It involves a policy decision made by the President during a time of crisis. The appellants apparently contend that the President should not have entered into the Algiers Accords because he could have obtained better terms, and that the Accords themselves were illegal because the President was coerced into agreeing to them. The determination whether and upon what terms to settle the dispute with Iran over its holding of the hostages and obtain their release, necessarily was for the President to make in his foreign relations role. That determination was "of a kind clearly for nonjudicial discretion," and there are no "judicially discoverable and manageable standards" for reviewing such a Presidential decision. A judicial inquiry into whether the President could have extracted a more favorable settlement would seriously interfere with the President's ability to conduct foreign relations.[31]

The court concluded that if any compensation of the plaintiffs for their mistreatment and suffering were to be forthcoming, it would have to be provided by "one of the other 'coordinate branches of government.'"[32]

The Omnibus Diplomatic Security and Anti-Terrorism Act of 1986

When Congress returned to the issue of compensation for former hostages in 1985, the House Foreign Affairs Committee rejected the amount recommended by the commission in favor of a per diem payment based on the average government allowance for travel.[33] As referred to the House floor, Section 802 of the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 provided for compensation in an amount deemed appropriate by the President taking into account the treatment the hostages received during captivity or other factors, but not less than the worldwide per diem rate under 5 U.S.C. Section 5702.[34] The committee explained that:

> In determining a level of cash compensation for civilian captives, the committee attempted to weigh the issues presented in the debate over the rate of compensation for the Iran hostages. At the time that the President's Commission on Hostage Compensation presented

[27] *McKeel*, 722 F.2d at 590 (finding lack of jurisdiction over taking action); Cooke v. United States, 1 Cl. Ct. 695 (1983).

[28] Belk v. United States, 12 Cl. Ct. 732 (1987), *aff'd*, 858 F.2d 706 (Fed. Cir. 1988).

[29] 858 F.2d at 709.

[30] *Id*. at 710 (citing Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124 (1978)).

[31] *Id*. (citation omitted).

[32] *Id*.

[33] H.R. 4151 (99th Cong.).

[34] *See* 132 CONG. REC. 5248 (March 18, 1986).

> its findings, many felt that the Commission's recommendation that the hostages receive $12.50 per day for every day in captivity vastly underestimated both the captivity itself and the sympathy of the American people for the captives' plight. Others suggested that any cash award should be upward of $100 per day or more. The per diem rate chosen by the committee is a uniform rate which is a reliable gauge of the Government's obligation to its employees when they are engaged in official business away from the normal duty station.[35]

This formula would have provided compensation in the amount of $66 per day for each former hostage. A floor amendment to reduce the amount to $20 failed,[36] but the provision was amended in conference to provide $50 per day to the Iran hostages and to reduce the minimum per-diem based rate for future victims by half.[37] The conference report provides no explanation for the substitution.[38]

Foreign Sovereign Immunities Act Amendment

After Congress amended the FSIA in 1996[39] to include a new exception to immunity for acts of terrorism conducted or sponsored by designated terrorist states, the former hostages again brought suit against Iran.

Roeder v. Islamic Republic of Iran

In late 2000 a suit was filed in federal district court on behalf of the 52 embassy staffers and on behalf of their families. *Roeder v. Islamic Republic of Iran*[40] sought both compensatory and punitive damages from Iran. In August of 2001, the trial court granted a default judgment to the plaintiffs and scheduled a hearing on the damages to be awarded. In October 2001, however, the U.S. government intervened in the proceeding and moved that the judgment be vacated and the case dismissed. The government contended that the suit did not meet all of the requirements of the terrorist State exception to the FSIA (notably, that Iran had not been designated as a state sponsor of terrorism at the time the U.S. personnel were held hostage) and that the suit was barred by the explicit provisions of the 1981 Algiers Accords that led to the release of the hostages.

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[35] H.Rept. 99-494, at 31 (1986). During hearings on a similar measure, the Family Liaison Action Group (FLAG—an advocacy group formed by the hostages' families) suggested that an amount equal to or greater than $192.50 per day would be adequate, a sum that corresponded to the amount the members of the President's Commission were paid per day at the going consultancy rate. *H.R. 1956 and H.R. 2019, Benefits to Federal Employees who are Victims of Terrorism, Joint Hearings before the subcommittee on Civil Service and the Subcomm. on Compensation and employee Benefits of the Comm. on Post Office and Civil Service and the Subcomm. on International Operations of the Comm. on Foreign Affairs*, 99th Cong. at 31 (1985) (statement of Katherine Keough).

[36] 132 CONG. REC. 5257 (March 18, 1968). Rep. McCain introduced the amendment, arguing that the bill under consideration strayed from precedent and the commission's recommendation to such an extent that it would be perceived as unfair among those held prisoner during the Vietnam conflict, and that government employees and servicemembers do not expect such compensation. *Id*. at 5253.

[37] Victims of Terrorism Compensation Act §802, P.L. 99-399, Title VIII. The act extended benefits similar to those enacted in the Hostage Relief Act of 1981 to cover future terrorist acts, and provided for cash compensation for future hostages in the amount of "not less than half of the amount of the world-wide average per diem rate.... " 5 U.S.C. §5569(d)(1).

[38] Conference report to accompany H.R. 4151, H.Rept. 99-738, at 82. There was no similar provision in the Senate version of the bill.

[39] P.L. 104-132, Title II, §221 (April 24, 1996); 110 Stat. 1241; previously codified at 28 U.S.C. §1605(a)(7).

[40] Case Number 1:00CV03110 (ESG) (D.D.C., filed December 29, 2000).

While that motion was pending before the court, Congress passed as part of the Hollings amendment to the FY2002 Appropriations Act for the Departments of Commerce, Justice, and State a provision specifying that *Roeder* should be deemed to be included within the terrorist State exception to the FSIA. As amended, the pertinent section of the FSIA excluded suits against terrorist states from the immunity generally accorded foreign states but directed the courts to decline to hear such a case (with the amendment in italics): "if the foreign state was not designated as a state sponsor of terrorism ... at the time the act occurred, unless later so designated as a result of such act *or the act is related to Case Number 1:00CV03110 (ESG) in the United States District Court for the District of Columbia*."[41]

The conference report on the bill explained the provision as follows: "Subsection (c) quashes the State Department's motion to vacate the judgment obtained by plaintiffs in Case Number 1:00CV03110 (ESG) in the United States District Court for the District of Columbia. Consistent with current law, subsection (c) does not require the United States government to make any payments to satisfy the judgment."[42]

In signing the appropriations act into law on November 28, 2001, however, President George W. Bush took note of this provision and commented as follows:

> [S]ubsection (c) ... purports to remove Iran's immunity from suit in a case brought by the 1979 Tehran hostages in the District Court for the District of Columbia. To the maximum extent permitted by applicable law, the executive branch will act, and will encourage the courts to act, with regard to subsection 626(c) of the Act in a manner consistent with the obligations of the United States under the Algiers Accords that achieved the release of U.S. hostages in 1981.[43]

The government continued to pursue its motion to dismiss the case, arguing, *inter alia*, that the suit was barred by the Algiers Accords. During the course of the proceeding the judge expressed concern regarding the lack of clarity of the recent congressional enactment with respect to whether Congress had intended to abrogate the Algiers Accords. A week later, in the fiscal 2002 appropriations act for the Department of Defense, the 107th Congress included a provision making a minor technical correction in the reference to the *Roeder* case.[44] The accompanying conference report elaborated on what it said was the effect and intent of the earlier amendment of the FSIA with respect to *Roeder*, seemingly in response to the judge's expression of concern. The conference report explained that:

> The language included in Section 626(c) of P.L. 107-77 quashed the Department of State's motion to vacate the judgment obtained by plaintiffs in Case Number 1:00CV03110(EGS) and reaffirmed the validity of this claim and its retroactive application.... The provision included in Section 626(c) of P.L. 107-77 acknowledges that, notwithstanding any other authority, the American citizens who were taken hostage by the Islamic Republic of Iran in 1979 have a claim against Iran under the Antiterrorism Act of 1996 and the provision

[41] P.L. 107-77, Title VI, §626(c) (November 28, 2001), amending 28 U.S.C. §1605(a)(7)(A).

[42] H.Rept. 107-278 (2001).

[43] Statement on Signing the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002, 37 WEEKLY COMP. PRES. DOC. 1723, 1724 (November 28, 2001).

[44] The amendment inverted two letters in the case reference to Roeder that had been contained in P.L. 107-17, changing "1:00CV03110 (ESG)" to "1:00CV03110 (EGS)." *See* P.L. 107-117, Title II, §208 (January 10, 2002). This technical correction had originally been included in the Department of Defense appropriations bill as reported and adopted by the Senate but without explanation. *See* H.R. 3338 (107th Cong.) as reported by the Senate Appropriations Committee (S.Rept. 107-109 (2001)) and Senate floor debate at 147 CONG. REC. S12476-S12529 (daily ed. December 6, 2001), S12586-S12676 and S12779-S12812 (daily ed. December 7, 2001).

> specifically allows the judgment to stand for purposes of award damages consistent with Section 2002 of the Victims of Terrorism Act of 2000 (P.L. 106-386, 114 Stat. 1541).[45]

Nonetheless, in signing the Department of Defense appropriations measure into law on January 10, 2002, President Bush asserted that:

> Section 208 of Division B makes a technical correction to subsection 626(c) of P.L. 107-77 (the FY2002 Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act), but does nothing to alter the effect of that provision or any other provision of law. Since the enactment of sub-section 626(c) and consistent with it, the executive branch has encouraged the courts to act, and will continue to encourage the courts to act, in a manner consistent with the obligations of the United States under the Algiers Accords that achieved the release of U.S. hostages in 1981.[46]

The judge granted the government's motion to vacate the default judgment against Iran and to dismiss the suit.[47] In a lengthy opinion the court concluded that:

- at the time it entered a default judgment for plaintiffs on August 17, 2001, the court did not have jurisdiction over the case and should not have entered a judgment;[48]
- the cause of action which Congress had adopted in late 1996 did not apply to suits against terrorist states but only against the officials, employees, and agents of those states who perpetrate terrorist acts;[49]
- the provision of the Algiers Accords committing the United States to bar suits against Iran for the incident constitutes the substantive law of the case, and Congress's two enactments specifically concerning the case were too ambiguous to conclude that Congress specifically intended to override this international commitment.[50]

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[45] H.Rept. 107-350 (2001).

[46] Remarks on Signing the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002, in Arlington, Virginia, 38 WEEKLY COMP. PRES. DOC. 44 (January 10, 2002).

[47] Roeder v. Islamic Republic of Iran, 195 F. Supp. 2d 140 (D.D.C. 2002).

[48] The court said that it did not have jurisdiction over the suit until Congress amended the FSIA by means of Section 626(c) of the FY2002 appropriations act for the Departments of Justice, Commerce, and State, which was signed into law on November 28, 2001. Prior to that amendment, it said, the suit did not fall within the terrorist state exception to the FSIA because Iran had not been declared to be a terrorist state at the time it seized and held the American personnel hostage. The court said also that, absent an "express statement of intent by Congress," it could not apply §626(c) retroactively.

[49] The court stressed that the terrorist state exception which Congress had added to the FSIA in 1996 meant only that U.S. courts could exercise jurisdiction over such cases. Traditional foreign state immunity, in other words, was eliminated as a jurisdictional barrier. But that amendment to the FSIA did not in itself, the court said, provide a cause of action for such suits. The specific statute providing for such a cause of action which Congress enacted later in 1996, it said, provided only for a cause of action against an official, employee, or agent of a terrorist state, not against the terrorist State itself. (*See* P.L. 104-208, Div. A, Title I, §101(c) (September 30, 1996) ("Flatow Amendment"); 110 Stat. 3009-172; 28 U.S.C. §1605 note).

[50] The court stressed that an act of Congress "ought never to be considered to violate the law of nations, if any other possible construction remains." None of the statutes Congress had adopted relating to a cause of action generally or to *Roeder* itself, the court said, unambiguously declared an intent either to override the Algiers Accords or to preserve it. They, and their "scant" legislative history, were ambiguous on the question, it held, and, consequently, must be construed not to conflict with the Accords. *Roeder*, 195 F. Supp. 2d at 177. The court also rejected the argument that the United States had entered into the Algiers Accords under duress, making the Accords "an unenforceable illegal contract." "Whatever emotional appeal and rhetorical flourish this argument contains," the court said, "it is absolutely

In addition, the court in *dicta* suggested that Congress's enactments on the *Roeder* case might have interfered with its adjudication of the case in a manner that raised constitutional separation of powers concerns.[51]

The U.S. Court of Appeals for the District of Columbia affirmed the decision of the lower court, placing emphasis on the fact that the legislative history plaintiffs sought to use—the joint explanatory statement prepared by House and Senate conferees—is not part of the conference report voted on by both houses of Congress and thus does not carry the force of law.[52]

> Executive agreements are essentially contracts between nations, and like contracts between individuals, executive agreements are expected to be honored by the parties. Congress (or the President acting alone) may abrogate an executive agreement, but legislation must be clear to ensure that Congress—and the President—have considered the consequences. The "requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." The kind of legislative history offered here cannot repeal an executive agreement when the legislation itself is silent. [Citations omitted].

The appellate court denied that its interpretation rendered any act of Congress futile. On the contrary, it stated that, "[i]f constitutional ... the amendments had the effect of removing Iran's sovereign immunity, which the United States had raised in its motion to vacate."[53]

Efforts to Abrogate the Algiers Accords

Subsequent to the trial court's original decision in *Roeder*, efforts were made in the 107th through the 111th Congresses to enact legislation that would explicitly abrogate the provision of the Algiers Accords barring the hostages' suit. On July 24, 2002, the Senate Appropriations Committee reported the Fiscal 2003 Appropriations Act for the Departments of Commerce, Justice, and State (S. 2778). Section 616 of that bill proposed to amend the FSIA as follows:

> SEC. 616. Section 1605 of title 28, United States Code is amended by adding a new subsection (h) as follows:
>
> (h) CAUSE OF ACTION FOR IRANIAN HOSTAGES- Notwithstanding any provision of the Algiers Accords, or any other international agreement, any United States citizen held hostage in Iran after November 1, 1979, and their spouses and children at the time, shall have a claim for money damages against the government of Iran. Any provision in an international agreement, including the Algiers Accords that purports to bar such suit is abrogated. This subsection shall apply retroactively to any cause of action cited in 28 U.S.C. 1605(a)(7)(A).

In explaining the provision, the report of the committee stated that "Section 616 clarifies section 626 of P.L. 107-77 that the Algiers Accord is abrogated for the purposes of providing a cause of

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without basis in law." *Id.* at 168.

[51] The court did not base its decision on any separation of powers considerations. It said, however, that if it had construed Section 626(c) to apply retroactively, Congress's "post-judgment retroactive imposition of jurisdiction [would raise] serious separation of powers concerns" and might be "an impermissible encroachment by Congress into the sphere of the federal courts.... " *Id.* at 161. "By expressly directing legislation at pending litigation, Congress has arguably attempted to determine the outcome of this litigation," it said. *Id.* at 163.

[52] Roeder v. The Islamic Republic of Iran, 333 F.3d 228, 238 (D.C. Cir. 2003) ("While legislative history may be useful in determining intent, the joint explanatory statements here go well beyond the legislative text of §208, which did nothing more than correct a typographical error.").

[53] The court noted, but did not decide, whether the amendments were an impermissible intrusion by Congress into the role of the courts. *Id.* at 237 & n.5.

action for the Iranian hostages."[54] The measure received no further action prior to the adjournment of the 107th Congress.

In the 108th Congress the Senate added amendments to three appropriations bills that expressly would have abrogated the Algiers Accords, but in each case the amendment was deleted in conference.[55] The 109th Congress did not take up any legislation to abrogate the Algiers Accords. One bill, H.R. 3358, would have declared the Algiers Accords abrogated and inapplicable, and would have directed the Secretary of the Treasury to pay the *Roeder* plaintiffs $1,000 per day of captivity (family members were to be awarded $500 per day of captivity of the hostages), to be paid out of Iran's Foreign Military Sales (FMS) Fund[56] and frozen assets belonging to Iran. No action was taken on the bill, but new versions were introduced in the 110th Congress as H.R. 394 and in the 111th Congress as H.R. 4025.

There were also some efforts to provide compensation for the former hostages without abrogating the Algiers Accords. H.R. 6305/S. 3878, 109th Congress, would have provided up to $500,000 for victims of hostage-taking, including specifically the Iran hostages and family members named in the *Roeder* case, who would have been eligible for additional compensation from the FMS account. The bill did not mention the Algiers Accords, and it would have prohibited recipients from commencing or maintaining a civil action in U.S. court against a foreign state. Similar legislation was introduced in the 110th Congress as H.R. 3369 and H.R. 3346. The Justice for the American Diplomats Held Hostage in Tehran Act, H.R. 5796 (112th Congress), would not have directly abrogated the Algiers Accords, but would have found that liquidating any property in which Iran or its surrogates has an interest in order to pay compensation to former hostages is consistent with the Algiers Accords. It would have barred prosecution of hostage claims against Iran only after such payments were made. None of these bills received committee action. H.R. 5796 was introduced in the 113th Congress as H.R. 904 (see below).

Roeder II

When Congress again amended the FSIA in 2008[57] to overhaul the terrorist state exception to immunity, it retained the language granting jurisdiction to the *Roeder* plaintiffs but did not

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[54] S.Rept. 107-218 at 167 (2002).

[55] H.J.Res. 2 (108th Cong.); S. 762 (108th Cong.); S. 1689 (108th Cong.).

[56] A Foreign Military Sales Fund is a Treasury holding account established to facilitate the sale of military items to foreign countries or international organizations, pursuant to the Arms Control Export Act, 22 U.S.C. §§2751 *et seq*. Foreign purchasers place monies in the fund under individual sub-accounts from which the Department of Defense pays for military equipment and services provided to the purchaser by the Department of Defense or private suppliers. Iran's FMS account held about $377 million as of 2000. The account originally contained funds deposited by Iran to pay for military equipment and services during the reign of the Shah. However, Congress also provided funds for the account in order to continue to pay contractors for goods and services after Iran terminated contracts under the FMS program. Disposition of military equipment procured for Iran through the FMS fund and the money remaining in the FMS account is an unresolved issue between the United States and Iran before the U.S.-Iran Claims Tribunal.

[57] P.L. 110-181, §1083. The act created 28 U.S.C. Section 1605A, which provides in pertinent part:

> (a) In General.—(1) No immunity.—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.
>
> (2) Claim heard.—The court shall hear a claim under this section if—

mention the Algiers Accords or clearly indicate whether the refiling of a suit no longer pending in any court would be permitted.[58] Nothing in the statute expressly abrogated the Algiers Accords, and the conference report explained only that "The provision would also provide for courts to hear a claim under this section if the terrorist act is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia. The conferees intend that nothing in this section would prejudice the claimants or their representatives in that case."[59]

The former hostages and their families attempted to revive their suit[60] on the basis that the new exception permitted pending suits against state sponsors of terrorism to be refiled under certain conditions.[61] Plaintiffs sought to persuade the district court that the 2008 amendment, by

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> (A)(i) (I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; or
>
> (II) in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act, the foreign state was designated as a state sponsor of terrorism when the original action or the related action under section 1605 (a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104–208) was filed;
>
> ...
>
> (B) the act described in paragraph (1) is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia.
>
> (b) Limitations.—An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605 (a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104–208) not later than the latter of—
>
> (1) 10 years after April 24, 1996; or
>
> (2) 10 years after the date on which the cause of action arose.
>
> (c) Private Right of Action.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—
>
> (1) a national of the United States,
>
> (2) a member of the armed forces,
>
> (3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or
>
> (4) the legal representative of a person described in paragraph (1), (2), or (3),
>
> for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.
>
> ...

[58] Section 1083(c) permitted the refiling of prior actions or the filing of new suits related to pending actions, under certain circumstances. 28 U.S.C. §1605A note.

[59] H.Rept. 110-477, at 1001 (2007).

[60] Roeder v. Islamic Republic of Iran, 742 F. Supp. 2d 1 (D.D.C. 2010), *aff'd*, 646 F.3d 56 (D.C. Cir. 2011), *cert. denied*, 132 S. Ct. 2680 (2012) ("*Roeder II*").

[61] For an explanation of the law, see CRS Report RS22094, *Lawsuits Against State Supporters of Terrorism: An*

providing a cause of action and permitting revival of the lawsuit, unambiguously conflicted with the terms of the agreement and should therefore be read to abrogate them, but the district court disagreed, declaring "with an equal measure of frustration, regret, and compassion," that "Congress has failed to provide plaintiffs with a cause of action against Iran."[62] The standard for clarity necessary for abrogation of the Algiers Accords was not met.

The appellate court affirmed the decision on the basis that language describing how "pending cases" and "related actions" are to be treated does not clearly permit the plaintiffs to revive their lawsuit,[63] and that language in the new exception covering jurisdiction over the hostages' claim does not differ meaningfully from the version in effect when that court dismissed the suit in 2003. While the 2008 amendment to the FSIA preserved jurisdiction for the case, it did not include the case in the language providing for a cause of action. Thus, the statute was found too ambiguous to overcome the bar presented by the Algiers Accords. The Supreme Court denied certiorari in May 2012.

Legislative Proposals

S. 559 (113th Cong.)

The Senate Committee on Foreign Relations of the 113th Congress reported favorably on S. 559, the Justice for Former American Hostages in Iran Act of 2013, which would have established a fund to compensate the former hostages (S.Rept. 113-104). No further action was taken on the bill. The American Hostages in Iran Compensation Fund, administered by the Secretary of State, would have paid to each former hostage,[64] or estate of a former hostage, $150,000 plus $5,000 per each day of captivity ($2.37 million total per former hostage). The Secretary of State would have administered claims, and each recipient would have been required to "waive and forever release all existing claims against Iran and the United States" arising out of the hostage crisis. It appears that the Secretary of State would have had some discretion to deny claims or reduce the amount of the award, although the bill did not clarify the basis for such an action. An individual whose claim was denied or who received a reduced award would have been entitled to submit further information, but would not have been permitted to challenge the decision in court. The Secretary of State would have been required to submit to Congress an annual report describing the status of the fund, including deposits, payments, and the rules and processes established to administer the fund. The bill would have financed the fund through a 30% surcharge on "any fine or monetary penalty assessed, in whole or in part, on a person for a violation of a law or regulation" or "the monetary amount of a settlement entered into by a person with respect to a suspected violation of a law or regulation" that "provides for a civil or criminal fine or other monetary penalty for any economic activity relating to Iran that is administered by the Department of the Treasury, the Department of Justice, or the Department of Commerce." Surcharges would have ceased five years after enactment or, if later, once all payments to recipients were completed, with any surplus to be deposited into the general fund of the Treasury.

Overview, by Jennifer K. Elsea.

[62] *Roeder II*, 742 F. Supp. 2d at 3.

[63] *Roeder II*, 646 F.3d at 62.

[64] "Former hostage" referred to those held at the U.S. Embassy in Tehran for the duration of the hostage crisis (444 days), but apparently excluded those three hostages held at locations other than the embassy, as well as the 14 hostages who were released prior to January 20, 1981. *See supra* footnote 2. Former hostages must also have been listed as plaintiffs in the *Roeder* case.

S. 868 (114th Cong.)

The Justice for Former American Hostages in Iran Act of 2015, S. 868, a bill similar to S. 559 (113th Cong.), was introduced in the Senate at the end of March and referred to the Committee on Foreign Relations. Like its predecessor bill, S. 868 would establish the American Hostages in Iran Compensation Fund in the U.S. Treasury to be funded through a 30% surcharge on penalties, fines, and settlements collected from violators of U.S. sanctions prohibiting economic activity with Iran. The 2015 bill, however, would permit payments from the fund to be administered by the plaintiffs' representative and principal agent in *Roeder I*, under the supervision of the Secretary of the Treasury. The surcharge would apply to sanctions administered by Department of State, the Department of the Treasury, the Department of Justice, the Department of Commerce, or the Department of Energy. Surcharges would be required to be paid to the Secretary of the Treasury without regard to whether the fine or penalty is paid directly to the federal agency that imposed it or it is deemed satisfied by a payment to another federal agency.

The purpose of the fund would be to make payments to the former hostages and their family members who are identified as members of the proposed class in *Roeder I*, as well as to settle their claims against Iran. The proposed class in *Roeder I* appears to consist of "Americans taken hostage by [Iran] from the American Embassy or from the Foreign Ministry in Iran in 1979, their spouses, and their children who are victims of [d]efendants' conduct ...,"[65] as well as "[r]epresentatives, administrators and/or executors of the estates of all diplomatic and military personnel and the civilian support staff who were working at the United States Embassy in Iran during November 1979 and were seized from the United States Embassy grounds, or the Iranian Foreign ministry, and held hostage from 1979 to 1981."[66]

Accordingly, it is unclear whether all spouses and children of the former hostages qualify for payments from the fund, nor is it clear how or by whom members of the proposed class are to be identified.

Payments would be made in the following amounts and according to this order of priority:

> (A) To each living former hostage identified as a member of the proposed class described in subsection (a)(1), $10,000 for each day of captivity of the former hostage [$4.44 million per former hostage].
>
> (B) To the estate of each deceased former hostage identified as a member of the proposed class described in subsection (a)(1), $10,000 for each day of captivity of the former hostage [$4.44 million per estate of a former hostage].
>
> (C) To each spouse and child of a former hostage identified as a member of the proposed class described in subsection (a)(1) if the spouse or child is identified as a member of that proposed class, $5,000 for each day of captivity of the former hostage [$2.22 million per qualifying spouse or child of a former hostage].

The bill would not appear to provide compensation for former hostages who were released from captivity prior to 1981.

Under the bill, once a class member consents and receives payments from the fund, the recipient would be barred from bringing a lawsuit against Iran related to the hostage crisis. Once all payments are distributed according to the above plan, all such claims against Iran would be deemed waived and released.

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[65] Roeder v. Islamic Republic of Iran, 195 F. Supp. 2d 140, 150 (D.D.C. 2002), *aff'd*, 333 F.3d 228 (D.C. Cir. 2003).

[66] Order, Roeder v. Islamic Republic of Iran, Case 1:00-cv-03110(EGS) (D.D.C. August 15, 2001) ECF No. 26.

The fund would be closed out and all remaining amounts in it returned to the Treasury's general fund once all payments are made or five years after the bill's enactment, whichever occurs later, although surcharges would end once all payments are made. The Secretary of State would be required to report to Congress no later than 60 days after a relevant sanctions law or regulation is suspended, or after determining that amounts in the fund are insufficient to make the required payments to all recipients within 444 days after enactment, providing recommendations for expediting remaining payments.

S. 1635 (114th Cong.)

In June 2015, the Senate Foreign Relations Committee reported S. 1635, the Department of State Operations Authorization and Embassy Security Act, Fiscal Year 2016. Section 122 of that bill is substantially similar to S. 868, but it limits the amount of compensation to former hostages and estates of former hostages to $6,750 per day of captivity ($3,330,000 in total per former hostage), cuts payments to their spouses to $600,000, and eliminates payments to their children.

Like S. 868, Section 122 would create the "American Hostages in Iran Compensation Fund" in the U.S. Treasury for the purpose of compensating former hostages and their family members, and for releasing all claims against Iran arising out of the hostage-taking. However, payments from the fund would be administered directly by the Secretary of State rather than the class representative in the *Roeder I* case. Fund sources would include a 30% surcharge on civil and criminal fines and monetary penalties assessed against, or agreed to, by Iran sanctions violators, as well as donations "by individuals, business concerns, governments, or other entities" and such other funds that may be identified by the President for the purpose of compensating the bill's beneficiaries.

Section 122 contains a provision at subsection (g) to preclude judicial or administrative review of decisions made under it.[67] Section 122 does not appear to contemplate a great deal of discretion on the part of any official, and does not assign any agency the responsibility for enforcing and collecting the sanctions surcharges it would impose, so it is not clear which decisions are intended to be shielded from review. If it is interpreted to cover decisions regarding the payment of surcharges, which could be deemed punitive in nature, there may be due process implications with respect to the surcharge scheme, or it may turn out to be effectively unenforceable.

H.R. 3338 (114th Cong.)

The Justice for Former American Hostages in Iran Act of 2015, H.R. 3338, a companion bill to the measures described above, was introduced in June and referred to the House Committee on the Judiciary, as well as the Committees on Foreign Affairs and Ways and Means. It is substantially similar to Section 122 of S. 1635, but it provides for compensation for qualifying children of former hostages in the amount of $600,000 and clarifies that, in the event of a deceased former hostage whose estate lacks immediate direct heirs, state intestacy laws will apply and recipients under such laws are to be paid last from the fund. Although the bill expressly includes the estates of qualifying spouses and children, it does not define how or when compensation is distributed in the event there are no immediate direct heirs. Compensation paid under the bill would be exempt from income tax and estate tax requirements under federal law. Because the bill would preclude judicial or administrative review of any decisions made under it, it appears that heirs would be unable to contest decisions denying them compensation.

[67] Section 122(g) states that "[d]ecisions made under this section shall not be subject to review in any judicial, administrative, or other proceeding."

Sanctions Violations Involving Iran

In order to assess how much revenue the fund envisioned by the bills described above could likely be expected to accrue, CRS has compiled data available from several sources in order to estimate the total revenue from penalties and settlement agreements connected with violations of regulations proscribing economic activity with Iran for the calendar years 2005-2014. Information was obtained from the Department of the Treasury, Office of Foreign Assets Control (OFAC) website; the Department of Commerce, Bureau of Industry and Security (BIS) Annual Reports to Congress for the years 2005-2014; and a report of major violations from the Department of Justice. CRS identified 373 penalties stemming at least in part from violations of sanctions against Iran (there may be more than one penalty per violation). The data include criminal fines, forfeitures, significant special assessments, and civil penalties that were reported to have some connection with Iran. Because the data sets are not complete through the time covered, and because it is not always easily ascertained whether the enforcement action summarized pertained to Iran, the following should be considered an estimate only. Moreover, CRS has not undertaken a thorough legal analysis of the bills' language concerning which laws and regulations might be deemed to be included under the definition of covered penalties and settlements. It is not clear, for example, whether laws providing for forfeiture are necessarily included.

Table 1. Proceeds from Iran Sanctions Violations

2005-2014

Year	Total Penalties and Settlements, and Forfeitures in USD	30% surcharge
2005	$7,360,417.25	$2,208,125.18
2006	$41,862,309.32	$12,558,692.80
2007	$4,202,142.19	$1,260,642.66
2008	$3,951,851.80	$1,185,555.54
2009	$1,209,444,618.50	$362,833,385.55
2010	$993,207,477.00	$297,962,243.10
2011	$95,626,867.72	$28,688,060.32
2012	$2,950,552,172.00	$885,165,651.60
2013	$184,864,095.68	$55,459,228.70
2014	$10,163,215,039.00	$3,048,964,511.70
Total	**$15,654,286,990.46**	**$4,696,286,097.14**

Source: CRS.

Notes: Information was obtained from the website of the Department of the Treasury, Office of Foreign Assets Control (OFAC), Civil Penalties and Enforcement Information, http://www.treasury.gov/resource-center/sanctions/CivPen/Pages/civpen-index2.aspx; the annual reports of the Department of Commerce, Bureau of Industry and Security (BIS) to Congress for the years 2005-2014, available at http://www.bis.doc.gov/index.php/forms-documents/doc_download/1183-bis-annual-report-2014 and http://www.bis.doc.gov/index.php/component/content/article/27-about-bis/501-annual-reports-archives; and a report from the Department of Justice entitled *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret and Embargo-Related Criminal Cases* (January 2007 to the present: updated March 26, 2014), available at http://www.pmddtc.state.gov/compliance/documents/OngoingExportCaseFactSheet.pdf; and http://www.justice.gov/ using search terms "Iran sanctions."

So far in 2015, OFAC and the Department of Justice report a total of $1,958,030,478.00 in forfeitures and fines having to do in part with violations of sanctions against Iran, some of which has gone to state law enforcement and regulatory agencies. It should be noted that a few large penalties primarily against banks account for the bulk of the total, as shown in **Table 2**. These large penalties involved violations of other sanctions programs in addition to the Iran sanctions. The imposition of a 30% surcharge could result in a restructuring of future similar settlement agreements in order to isolate the violations related to Iran. As an example of how such restructuring might reduce expected penalties subject to surcharge, it might be useful to survey the case against Credit Agricole resolved in October 2015.[68] Included in the assessment of a total of $787.3 million in civil forfeitures and penalties assessed against Credit Agricole were some factors that might mean that a surcharge would not be applicable. For example, only 16 of the 4,055 transactions found to be in violation of federal economic sanctions laws involved Iranian transactions. Moreover, although all of the civil money penalties were premised on transactions violating the economic sanctions regulations, some of the penalties were imposed pursuant to New York State law or pursuant to federal or state banking laws or regulations. Sanctions relief envisioned under the Joint Comprehensive Plan of Action (JCPOA) addressing Iran's nuclear capabilities could reduce the future expected assessment of penalties, particularly involving foreign banks. For information about sanctions relief under the JCPOA, see CRS Report R43333, *Iran Nuclear Agreement*, by Kenneth Katzman and Paul K. Kerr.

[68] *See* Press Release, Department of Justice Office of Public Affairs, *Crédit Agricole Corporate and Investment Bank Admits to Sanctions Violations, Agrees to Forfeit $312 Million* (October 20, 2015), available at http://www.justice.gov/opa/pr/cr-dit-agricole-corporate-and-investment-bank-admits-sanctions-violations-agrees-forfeit-312.

Table 2. Major Penalties for Iran Sanctions Violations

2009-2015

Name	Violation	Penalty	Date
Crédit Agricole Corporate and Investment Bank (CA-CIB)	violated primarily the Sudanese Sanctions Regulations, but also those against Cuba, Burma, and Iran by processing thousands of transactions through U.S. financial institutions while concealing the identities of sanctioned countries and individuals (OFAC civil penalty)	$329,593,585.00	10/20/2015
	(civil forfeiture settlement)	$312,000,000.00	
	(civil and criminal penalties to state and federal bank regulators per settlement agreement)	$475,300,000.00	
Schlumberger Oilfield Holdings Ltd.	violated Iran and Sudan sanctions by conducting business with Iran and Sudan from the United States and taking steps to disguise those business dealings (criminal forfeiture and fine)	$232,708,356.00	3/25/2015
Commerzbank AG	violated Iran, Sudan, WMD, Burma, and Cuba sanctions by processing financial transactions through SWIFT, omitting references to sanctioned entities (civil settlement)	$258,660,796.00	3/12/2015
	(criminal forfeiture and fine-deferred prosecution)	$342,000,000.00	
BNP Paribas SA	violated Iran, Sudan, Burma, and Cuba sanctions by processing thousands of financial transactions concealing relationship to sanctioned entities (civil settlement)	$963,619,900.00	6/30/2014
	(criminal forfeiture and fine-deferred prosecution)	$8,833,600,000.00	
Clearstream Banking, S.A., Luxembourg	violated Iran sanctions by maintaining a bank account in New York holding securities in which the Central Bank of Iran had beneficiary interest	$151,902,000.00	1/23/2014
Weatherford International Ltd	export of oil industry equipment to Iran	$135,178,256.00	1/17/2014
HSBC Holdings, PLC	violation of Cuban, Burmese, Sudanese, Libyan, and Iranian sanctions programs by processing wire transfers (civil settlement)	$375,000,000.00	12/11/2012
	(criminal forfeiture-deferred prosecution)	$1,256,000,000.00	
Standard Chartered Bank	violation of Iranian, Burmese, Sudanese, Libyan, and Foreign Narcotics Kingpin sanctions regulations by processing wire transfers (civil settlement)	$132,000,000.00	12/10/2012

Name	Violation	Penalty	Date
	(criminal forfeiture)	$227,000,000.00	
ING Bank, NV (Amsterdam)	conspiring to violate Iranian, Burmese, Sudanese, Libyan, and Cuban sanctions programs as well as New York State laws by moving funds through U.S. financial system (civil settlement)	$619,000,000.00	6/12/2012
	(criminal forfeiture-deferred prosecution)	$305,500,000.00	
Barclays Bank PLC of United Kingdom	"a systemic pattern of conduct giving rise to apparent violations of OFAC sanctions involving Burma, Cuba, Iran, and Sudan." (civil settlement)	$176,000,000.00	8/10/2010
	(criminal forfeiture)	$298,000,000.00	
ABN AMRO Bank, N.V. (Amsterdam, the Netherlands)	certain offices, branches, affiliates and subsidiaries of ABN AMRO removed or altered names and references to sanctioned countries from payment messages	$500,000,000.00	5/10/2010
Lloyds TSB Bank PLC of London, United Kingdom	violation of Iran, Sudan, and Libya sanctions (civil settlement)	$217,000,000.00	12/22/2009
	(criminal forfeiture to the U.S. government)	$175,000,000.00	1/29/2009
Credit Suisse of Zurich, Switzerland	payments involving Iran, Sudan, Burma, Cuba, North Korea, and persons whose property is blocked pursuant to OFAC regulations (civil settlement)	$536,000,000.00	12/16/2009
	(criminal forfeiture to U.S. government)	$268,000,000.00	
Total		**$17,119,062,893.00**	

Source: CRS.

Note: See note to **Table 1** for source materials.

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