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Article
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THE FOREIGN SOVEREIGN IMMUNITIES ACT: EFFECTS ON THE VICTIMS AND FAMILIES OF 9/11

*102 I. INTRODUCTION

On the morning of September 11, 2001 ("9/11"), a series of four coordinated attacks materialized that would forever change the geopolitical landscape of the United States of America. Nineteen members of the Al Qaeda terrorist organization boarded 4 commercial flights originating in Boston, Washington D.C. and Newark, New Jersey destined for various cities on the west coast of the United States. Their plot--to hijack the planes and crash them-- causing the utmost devastation. The carnage and destruction that ensued left 2,996 people dead, [2] caused over $10 billion in property and infrastructure damage, [3] and arguably became the most heinous crime to have occurred on American soil.

Almost sixteen years later the victims and their families are still seeking justice against those who they argue are responsible for that fateful morning. Several political and legal hurdles have hindered them from receiving a favorable verdict against the foreign state they deem most responsible for the attacks, the Kingdom of Saudi Arabia. The Foreign Sovereign Immunities Act (FSIA) forbids lawsuits against governments and their agents unless the injury is one that falls under one of the statute's exceptions. Unfortunately for the plaintiffs, their injury did not qualify under any of the

exceptions of the FSIA. Then, in 2016, the United States Congress passed the Justice Against Sponsors of Terrorism Act ("**JASTA**") which granted an exception to the FSIA to allow for suits to be brought against Saudi Arabia. However, the passing of **JASTA** was not ***103** without its opponents, most notably President Obama. President Obama utilized his executive powers and vetoed **JASTA**, justifying the veto with three main arguments, at which point the bill was revived by Congress overriding Obama's veto. The effects of **JASTA** are still to be seen, although it is almost certain **JASTA** will have a lasting effect on the legal landscape surrounding international acts of terrorism as well as future relations abroad.

II. HISTORY

Sovereign immunity is a doctrine of international law that stems from the maxim *rex non potest peccare* which means "the king can do no wrong." [4] Today sovereign immunity accords legal protection to foreign states from lawsuits by relinquishing jurisdiction over a foreign state in domestic courts. The first case in which the U.S. recognized the doctrine of sovereign immunity was *Schooner Exchange v. McFaddon*. [5] In *Schooner Exchange*, two U.S. citizens brought suit against France for a shipping vessel they claimed had been wrongfully taken from them. In the Supreme Court's decision, Chief Justice John Marshall upheld the doctrine of sovereign immunity, "noting that recognition of immunity was supported by the law and practice of nations." [6] Although sovereign immunity was not intended to be absolute, as commercial activities amongst foreign states began to evolve and progress so did the doctrine of sovereign immunity. A distinction was made between a state's governmental acts and its commercial or proprietary acts and in *Verlinden B.V. v. Central Bank of Nigeria* the Court acknowledged this "restrictive" theory of sovereign immunity. [7]

However, U.S. courts were still reluctant to make determinations involving sovereign immunity. In 1943, the Supreme Court held that courts should defer to the suggestions of the executive branch, specifically the State Department, when dealing with issues of sovereign immunity. [8] Then, in 1952, the State Department made a ***104** policy announcement in the form of the "Tate Letter" in an attempt to provide guidance to the United States courts when dealing with cases concerning sovereign immunity. [9] The Tate Letter was drafted by the State Department's legal advisor, Jack Tate, to instruct courts to adhere to the restrictive theory of sovereign immunity. [10] Unfortunately, the Tate Letter was not binding on U.S. courts, nor the State Department, and inconsistencies arose. Acknowledging these inconsistencies, it soon became apparent to Congress that legislation was necessary to create uniformity with regard to sovereign immunity. In 1976 Congress drafted and enacted H.R. 11315 and on October 21, 1976, President Gerald Ford signed the bill into law. [11]

The Foreign Sovereign Immunities Act applies to all foreign states and their "agenc[ies] and instrumentalit[ies]" [12] and serves four main objectives:

> [1] codify the so-called restrictive principle of sovereign immunity ... [2] insure that the restrictive principle of immunity was applied in litigation before U.S. courts ... [and] to transfer the determination of sovereign immunity from the executive branch to the judicial branch ... [3] [to provide], for the first time in U.S. law ... a statutory procedure for making service upon and obtaining in personam jurisdiction over, a foreign state ... [which] would render unnecessary the practice of seizing and attaching the property of a foreign government for the purpose of obtaining jurisdiction ... [and 4 to provide, in certain circumstances, post-judgment attachment of assets in aid of execution of a judgment against a foreign state]. [13]

*105 III. JURISDICTIONAL STATUTE

In order for courts to have jurisdiction over a case, "courts must assert both subject matter jurisdiction over each claim and personal jurisdiction over each defendant in a case." [14] The FSIA authorizes subject matter jurisdiction over claims in which one of the FSIA's exception applies to a foreign state's conduct. [15] If subject matter jurisdiction is established under the FSIA then personal jurisdiction is statutorily authorized over a foreign state or their agent or instrumentality. [16]

A. NONCOMMERCIAL TORT EXCEPTION

Under the FSIA, a foreign state and its instrumentalities are presumed immune from U.S. courts jurisdiction. [17] Albeit, the FSIA provides U.S. courts jurisdiction over foreign states through a number of its exceptions. [18] Specifically, the noncommercial tort exception proclaims that foreign states are not immune from jurisdiction where "money damages are sought against a foreign state for personal injury or death, or damage ... to property, occurring in the United States and caused by the tortious act ... of that foreign state. [19] Furthermore, lower federal courts have construed a "situs" requirement for the noncommercial tort exception which mandates that not only the injury alleged must have occurred within the U.S., but the tortious conduct that caused the injury must have also occurred within the U.S. [20] Although there are exceptions to the tort exception and foreign states are granted immunity from "any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights". [21]

*106 B. STATE SPONSOR OF TERRORISM EXCEPTION

In an attempt to fight the international war on terrorism, the U.S. Congress amended the FSIA in 1996 to allow for a U.S. citizen to bring suit against a foreign state for damages resulting from a state-sponsored act of terrorism. [22] The amendment was passed with little "fanfare" although plaintiffs quickly became critical of the amendment and specifically the remedies available. [23] The amendment made it so that foreign states are not granted immunity in cases where the foreign state is a designated state sponsor of terrorism and the claim arises from injuries sustained due to a terrorist act. [24] Particularly, the exception for state sponsors of terrorism provides jurisdiction to U.S. courts in cases involving,

> 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. [25]

The state sponsor of terrorism exception is to "specifically include provisions designed to hold rogue states accountable for acts of terrorism perpetrated on U.S. citizens." [26] However, designated state sponsors of terrorism are determined by the State Department and currently the list only includes: North Korea, Iran, Sudan, and Syria. [27]

*107 C. REMEDIES AVAILABLE

The remedies available to a successful plaintiff under the FSIA include compensatory damages against a foreign state. As well as punitive damages, in addition to compensatory damages, against a foreign state's agent or instrumentality. [28] As we saw in *De Letelier v. Republic of Chile* the Court awarded compensatory damages against the foreign state and both compensatory and punitive damages against its agent. [29] Yet the judgment was "merely a symbolic victory" because

the plaintiffs were unable to enforce the award in the United States. [30] In addition to monetary damages, the legislative history of the FSIA suggests a plaintiff may be awarded injunctive relief or specific performance. [31] However, similar to the enforcement of monetary damages it would be difficult for a plaintiff to enforce the award in the United States. [32]

IV. CASE AGAINST SAUDI ARABIA

In 2002 more than 500 survivors and family members (plaintiffs) of the victims of 9/11 filed a civil suit against those who they deemed responsible for the attack by providing financial and logistical support to Al Qaeda. [33] The claim was filed in the United States District Court for the Southern District of New York. In their complaint the plaintiffs sought to "hold those who promoted, financed, sponsored, or otherwise materially supported the acts of the barbarism and terror inflicted on September 11, 2001 accountable for their deeds." [34] Included as defendants were the Kingdom of Saudi Arabia, several Saudi princes in their official and personal capacities, a Saudi banker in his personal capacity, and a Saudi charity - the Saudi High Commission for Relief to Bosnia and Herzegovina (defendants). In 2003, the District Court consolidated ***108** the action as *In re Terrorist Attacks on September 11, 2001* [35] due to the number of plaintiffs growing to more than 6,500 survivors and family members. [36]

A. IN RE TERRORIST ATTACKS II

In 2005, the plaintiffs' claim was brought against the defendants under the FSIA tort exception and the state sponsors of terrorism exception. [37] The Court found that none of the complaints alleged by the plaintiffs fell under any of the FSIA exceptions. In regard to the noncommercial tort exception, the United States District Court held that the complaint alleging Saudi princes contributed to charities that supported Al Qaeda was insufficient. The Court stated that, "the Plaintiffs would have to allege specific facts showing that the Princes knew or should have known that the charities they supported were actually fronts for al Qaeda." [38] Furthermore, considering the state sponsor of terrorism exception the Court held that the "exception does not provide an exception to immunity for any of the Defendants raising the FSIA defense here." [39] This is because the parties agreed that the Kingdom of Saudi Arabia is not a designated state sponsor of terrorism and therefore the exception does not apply. Due to these determinations the Court granted all of the defendants' motions to dismiss. As a result, the plaintiffs' filed an appeal to the United States Court of Appeals for the Second Circuit with respect to seven of the defendants.

B. IN RE TERRORIST ATTACKS III

In August of 2008, the Second Circuit Court of Appeals affirmed the district court's judgment in dismissing the claims against the Saudi Arabia, the four Saudi princes, the Saudi banker, and the Saudi High Commission for Relief to Bosnia and Herzegovina (SHC). [40] The main allegation was that the defendants "played a critical role in the ***109** September 11 attacks by funding Muslim charities that, in turn, funded Al Qaeda." [41] The Court ruled that the FSIA protects, "most obviously, the Kingdom itself." [42] The Court also held that the FSIA applies to officials of foreign governments in their official capacities and as such, the four Saudi princes were immune from liability. [43] The Court reasoned that because the four princes held positions of power within the SHC they were entitled to immunity under the FSIA. [44]

Next, the Court looked to whether the SHC was an "agency or instrumentality" of Saudi Arabia, in order to determine whether the FSIA applied. [45] In order to determine if the SHC was an agency or instrumentality of Saudi Arabia, the Court had to decide whether or not the SHC was an "organ" of Saudi Arabia. [46] To make this determination the Court relied on a five facet test,

> (1)whether the foreign state created the entity for a national purpose; (2) whether the foreign state actively supervises the entity, (3) whether the foreign state requires the hiring of public employees and pays their salaries, (4) whether the entity holds exclusive rights to some right in the [foreign] country; and (5) how the entity is treated under foreign state law. [47]

Since the SHC was formed by Saudi Arabia and Saudi Arabia paid its employees, the Court found that the SHC was an organ of Saudi Arabia and an agency or instrumentality of Saudi Arabia. [48] Thus providing the FSIA's jurisdictional protections.

Furthermore, the Court of Appeals concluded that because the FSIA precludes U.S. courts from asserting jurisdiction over foreign states "one of the FSIA exceptions must apply before a U.S. court may assert jurisdiction over the Kingdom of Saudi Arabia or any of its "agencies or instrumentalities." [49] As in the district court's ruling, the ***110** Court held that the terrorism exception did not apply because Saudi Arabia had not been designated a state sponsor of terrorism by the State Department. The Court also ruled that the noncommercial tort exception did not apply because the plaintiff's claims were not "sounding in tort." [50] The Court noted that "Congress enacted the Torts Exception 'to eliminate a foreign state's immunity for traffic accidents and other torts committed in the United States, for which liability is imposed under domestic tort law.'" [51] The Court also stated that if the tort exception were to apply to conduct that amounts to terrorism then it would "evade and frustrate that key limitation" on the terrorism exception. [52]

Lastly, the Court affirmed the lower court's dismissal of the claims against the Saudi princes and the Saudi banker in their personal capacities due to lack of personal jurisdiction. The Court found that the princes and banker lacked sufficient "minimal contacts" with the forum state that is required in order for the Court to assert personal jurisdiction. The Court ruled that the princes' and banker's actions were too attenuated from the attack to satisfy the minimum contacts test. [53] Thus, the Court affirmed the lower court's ruling on all grounds.

C. PETITION OF WRIT OF CERTIORARI

Subsequently, plaintiffs' filed a Petition for Writ of Certiorari before the United States Supreme Court on June 29, 2009. However, in another blowing defeat to the plaintiffs, the Supreme Court denied plaintiffs' request seeking Writ of Certiorari. [54] Then almost a year later, the Supreme Court held in *Samantar v. Yousuf* that a foreign official sued for actions done in his official capacity is not a foreign state that is entitled to immunity under the FSIA. [55] Thus partially abrogating the Second Circuit's holding in *In Re Terrorist Attacks III*. Furthermore, in 2011 the Second Circuit held in *Doe v. Bin Laden* that "the terrorism exception, rather than limiting the jurisdiction ***111** conferred by the noncommercial tort exception, provides an additional basis for jurisdiction." [56]

D. IN RE TERRORIST ATTACKS IV

In 2013 the Second Circuit Court heard the plaintiffs' claims again but this time in regard to two other Saudi charities; the Saudi Joint Relief Committee (SJRC) and the Saudi Red Crescent Society (SRC). In this case the Court applied the "entire tort" rule which requires the entire tort be committed within the territorial jurisdiction of the U.S. in order for the FSIA to apply. [57] This is identical to the situs requirement previously mentioned. The Court held that the plaintiffs "do not allege that the SJRC or the SRC participated in the September 11, 2001 attacks or committed any tortious act in

the U.S." [58] Due to this the Court also stated that it is insufficient for only the injury to have occurred within the United States because the tortious acts must also have occurred in the U.S. [59] However, "the appellate court did not appear to foreclose a finding of jurisdiction unless all conduct associated with the injury occurs wholly within the United States, but rather only that some tortious act must be committed by the defendant in the United States." [60] This suggests that a court may have jurisdiction over a defendant under the tort exception if they played a more direct role in planning an attack from overseas that occurs in the U.S. [61] Nevertheless, the Court affirmed the dismissal of the claim against the SJRC and SRC.

E. IN RE TERRORIST ATTACKS V

On remand in 2015 the District Court once again heard the plaintiffs' claim against Saudi Arabia and the SHC. [62] The Court held that the entire tort rule was not satisfied and therefore precluded jurisdiction in regard to the FSIA noncommercial tort exception. [63] In its holding the Court found that the Second Circuit Court's ruling in regard to the charities also applied to Saudi Arabia and the SHC. The plaintiffs ***112** filed an Averment of Facts to "bolster their allegations that 'operational level agents and alter-egos' of Saudi Arabia conducted torts within the United States that are attributable to Saudi Arabia." [64] However, the Court found that there was not enough evidence to support the claim that any of these individuals were actual employees of Saudi Arabia and "while acting within the scope of his employment" committed a tortious act in the United States. [65] After the Court made this determination it looked bleak for the plaintiffs' efforts in recovering damages from Saudi Arabia or any of its deemed agents or instrumentalities. However, as discussed below, the plaintiffs' claim may be resurrected with the help of the U.S. Congress passing the Justice Against Sponsors of Terrorism Act in 2016.

V. JUSTICE AGAINST SPONSORS OF TERRORISM ACT

The Justice Against Sponsors of Terrorism Act amends the federal judicial code to narrow the scope of sovereign immunity that is granted under the FSIA's terrorism exception and noncommercial tort exception. Specifically, it grants U.S. courts jurisdiction over civil claims against foreign states for,

> physical injury to a person or property or death that occurs inside the United States as a result of: (1) an act of international terrorism, and (2) a tort committed anywhere by an official, agent, or employee of a foreign state acting within the scope of employment. [66]

What this does is negate the FSIA's requirement under the terrorism exception that the foreign state be designated a state sponsor of terrorism in order to be held liable for terrorist acts. **JASTA** also removes the situs requirement of the noncommercial tort exception that requires that the tortious conduct be committed in the United States as well as the injury to have occurred within the United States. ***113** In September 2015 U.S. Senator John Cornyn (Texas) and cosponsor U.S. Senator Charles Schumer (New York) announced Senate Bill 2040, otherwise known as the Justice Against the Sponsors of Terrorism Act. According to Cornyn the legislation would, "allow families victimized by terrorism to proceed in court against their attackers and hold them accountable for their actions." [67] Schumer went on to say that, "The bottom line is that victims of terror on American soil ought to have an ability to hold accountable the foreign powers and other entities that fund the hate-filled organizations that inflict injury and death on our fellow citizens." [68]

In May of 2016 the bipartisan bill passed the Senate by a voice vote.[69] In response to the passing of **JASTA** by the Senate, White House spokesman John Earnest alluded to the White House's position on the bill by stating the "legislation would change long-standing, international law regarding sovereign immunity ... And the president of the United States continues to harbor serious concerns that this legislation would make the United States vulnerable in other court systems around the world."[70] Despite these concerns, the House of Representatives passed **JASTA** as H.R. 3815 which was sponsored by Republican Peter King (New York) and Democrat Jerrod Nadler (New York) with more than fifty co-sponsors.[71]

Shortly thereafter, John Earnest foreshadowed that the President Obama would most likely veto the bill due to it not being "an effective, forceful way for us to respond to terrorism."[72] On ***114** September 23, 2016 President Obama stood by his stance and vetoed **JASTA**.[73] Then on September 28, 2016 the Senate voted to override President Obama's veto, which was the first instance of Obama's veto being overridden in his tenure at President.[74] Senate Minority Leader Harry Reid was the sole "no" vote and Senators Tim Kaine and Bernie Sanders opted not to vote.[75] The House followed suit later that day, passing the bill into law over President Obama's objections.[76]

VI. ARGUMENTS AGAINST THE JASTA

Although the Justice Against Sponsors of Terrorism Act was a bipartisan bill that only received one "no" vote from the Senate. President Obama tried to block the legislation through his veto powers. In his response to vetoing **JASTA**, Obama stated three arguments against its enactment.

A. FIRST ARGUMENT AGAINST THE ENACTMENT OF JASTA

Obama's first reason was that **JASTA**

> threatens to reduce the effectiveness of our response to indications that a foreign government has taken steps outside our borders to provide support for terrorism, by taking such matters out of the hands of national security and foreign policy professionals and placing them in the hands of private litigants and courts.[77]

***115** Arguing that because **JASTA** removes the designated state sponsors of terrorism exception of the FSIA, national security advisors and foreign policy professionals will have less of an influence designating foreign state sponsors of terrorism. By relinquishing these powers from national security advisors and foreign policy professionals and placing them in the hands of "private litigants and courts," **JASTA** will take powers from the executive branch and give them to the judicial branch in issues of foreign diplomacy.[78] Obama asserts **JASTA** will strip foreign states of immunity in the United States "based solely upon allegations by private litigants that a foreign government's overseas conduct had some role or connection to a group or person that carried out a terrorist attack inside the United States."[79]

B. SECOND ARGUMENT AGAINST THE ENACTMENT OF JASTA

Secondly, Obama reasoned that **JASTA** would "upset longstanding international principles regarding sovereign immunity, putting in place rules that, if applied globally, could have serious implications for U.S. national interests."[80] Furthermore, **JASTA** "could encourage foreign governments to act reciprocally and allow their domestic courts to exercise jurisdiction over the United States or U.S. officials--including our men and women in uniform--for allegedly

causing injuries overseas via U.S. support to third parties." Suggesting **JASTA** will cause foreign states to act reciprocally and enact similar laws and thus, make the United State vulnerable to international courts and liability.

C. THIRD ARGUMENT AGAINST THE ENACTMENT OF JASTA

Lastly, Obama argued, "**JASTA** threatens to create complications in our relationships with even our closest partners." [81] Noting that a "number of our allies and partners have already contacted us with serious concerns about the bill." [82] Implying that **JASTA** will cause ***116** political turbulence and uncertainty around the world. Which would thus harm our relationships with various international allies.

VII. RESPONSE TO ARGUMENTS AGAINST ENACTMENT OF JASTA

A. ARGUMENT AGAINST THE FIRST OBJECTION

Obama's first objection to **JASTA** is that it will lessen the influence of national security advisors and foreign policy professionals in determining foreign state sponsors of terrorism. This is true but only because **JASTA** removes the designated state sponsors of terrorism list. However, **JASTA** only minimally decreases the influence of foreign policy professionals by altering the sequence of their influence. This is because suits brought against foreign states for acts of terrorism under **JASTA** may be stayed upon by acknowledgement by the Secretary of State that the U.S. is engaged in good faith negotiations with the foreign state defendant to provide restitution to the victims. [83] This is significant because foreign policy professionals no longer have ex ante influence in determining state sponsors of terror. Instead, foreign policy professionals have retrospective influence in determining which states the State Department should engage in good faith negotiations with. Thus changing the order of the foreign policy professional's influence without limiting the influence itself. Furthermore, **JASTA** creates more opportunities for victims to redress their injuries instead of explicitly limiting the influence of foreign policy professionals. This is consistent with the Court's ruling in *Doe v. Bin Laden*, as previously discussed, in which the Court held that the noncommercial tort exception expands upon the designated state sponsor of terrorism exception. To negate justice to those who have been injured by a terrorist act simply because the foreign state is not on a list of state sponsors of terrorism would be an injustice to those who were wronged.

Additionally, Obama contends the judicial branch is wrongfully seizing powers from the executive branch involving issues of foreign ***117** diplomacy. However, this is the exact reason the FSIA was first enacted. As stated in the Tate Letter, the issue of sovereign immunity was better suited for the judicial branch. Which is why issues of foreign sovereign immunity were transferred from the executive branch to the judicial branch. Furthermore, "**JASTA** also seeks to facilitate the state-to-state resolution of terrorism-related claims and to coordinate judicial claims with the Executive Branch's foreign policy initiatives." [84] As previously stated, **JASTA** does this by providing the Secretary of State the opportunity to get any case stayed upon. As long as the Secretary of State is engaged in good faith negotiations with the foreign state. This means that while **JASTA** provides the courts jurisdiction over foreign states under the FSIA, it still allows for the executive branch, through the Secretary of State, to have a major influence in the outcome. Thus keeping the majority of the power and influence within the executive branch. **JASTA** also puts the burden on the President to address individual cases in determining which case should go to court and which should be resolved through diplomatic negotiations. This may make it more difficult for the President to reject particular groups of plaintiffs.

Lastly, in response to President Obama's assertion that **JASTA** will make foreign states vulnerable to U.S. courts based off "mere accusations" is misleading. If the claim is a mere allegation with not enough sufficient evidence to support it then the case will be dismissed. The U.S. has a robust discovery process and due to this, mere allegations will not make it far in U.S. courts. Thus, it provides an opportunity for the American plaintiff to show a link between a foreign state and a terrorist act, while still requiring that the plaintiff prove their case by a preponderance of the evidence.

B. ARGUMENT AGAINST THE SECOND OBJECTION

In reply to President Obama's second argument, it is true that **JASTA** has the potential to cause foreign states to act reciprocally and enact similar statutes. Thus providing foreign courts jurisdiction over the U.S. and its agents and instrumentalities. However, while it creates the potential for liability for the U.S. it also creates accountability for U.S. agents and instrumentalities. If a foreign court can show that a foreign state or its agents, specifically the U.S., ***118** sponsored an act of terrorism then those responsible should be held accountable. This could potentially generate more transparency between U.S. citizens and those responsible for U.S. foreign policy initiatives through public court records. Thus providing citizens more opportunity to make informed decisions and influence the U.S. foreign policy initiatives. As righteous as this may sound the reality is that, as previously mentioned, these victories against American defendants may result in symbolic victories. This is due to the difficulty of enforcing a foreign judgment. Although as we saw in *Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier* the U.S. takes a more liberal stance on the enforcement of foreign judgments. [85] This means it may be easier for a foreign plaintiff to enforce a judgment in the U.S. in comparison to other foreign states.

C. ARGUMENT AGAINST THE THIRD OBJECTION

In response to President Obama's third and final argument against **JASTA**, it is once again true that it has the potential to harm relationships with existing allies, specifically Saudi Arabia. Although, due to the U.S.'s economic influence around the world, this is mostly an exaggeration. Especially if U.S. courts continue to interpret the FSIA in a strict and narrow manner. An example of this exaggeration is Saudi Arabia threatening to sell $750 billion of United States assets if **JASTA** was passed. [86] This is equivalent to approximately one percent of the United States' assets. [87] This means that even if Saudi Arabia followed through with their threat it would have a minimal long-term effect on the U.S. economy. Moreover, given Saudi Arabia's reliance on the petroleum industry and falling oil prices, former U.S. Ambassador to Saudi Arabia, James Smith, said "I don't see it as something that is executable, or that they would be willing to execute, for the simple reason that the petroleum ***119** economy is still based on the dollar." [88] Going forward, foreign states who have ties to acts of terrorism committed within the U.S. will notice that their assets may be frozen if they are deemed to have sponsored a terrorist act, further deterring future acts of terrorism from occurring against the U.S.

VIII. CONCLUSION

The infamous morning of September 11, 2001 forever changed the United States of America. Innocent lives were lost, shattered, and forever altered within a matter of seconds. Without a form of just compensation the victims and families of 9/11 looked to the U.S. courts to hold accountable those who they deem responsible. However, the doctrine of foreign sovereign immunity stood between them and a favorable verdict.

The Foreign Sovereign Immunities Act codified the restrictive theory of sovereign immunity and allowed plaintiffs a form of redress against a foreign state in U.S. courts. Over time, issues affecting the United States internationally and domestically changed dramatically. In response to the ever changing threats to the U.S., Congress enacted the terrorism exception to the FSIA. The exception precluded immunity to foreign states that were designated a state sponsor of terrorism. Although the exception was not without its flaws and 9/11 and the ensuing litigation highlighted these inadequacies. The most recent case brought by the victims and families against Saudi Arabia was dismissed due to the plaintiffs not being able to show that Saudi Arabia's acts qualified under one of the FSIA exceptions. In order to rectify the victims and families, Congress enacted the Justice Against Sponsors of Terrorism Act. **JASTA** eliminated the designated state sponsors of terrorism list within the FSIA and allowed suits to be brought against any foreign state that is proven to have sponsored a terrorist act committed within the United States. Opponents to **JASTA**, most notably the Obama Administration, assert the act will: (1) limit the role the executive branch plays in foreign diplomacy, (2) make vulnerable United States interests abroad, and (3) cause political tension with ***120** foreign allies. However as

previously discussed, these concerns do not outweigh the justice and transparency that will emerge from the passing of **JASTA**. Although no one will ever be able to fully mend the scars left by 9/11, **JASTA** may be able to provide some remedy for the victims and families and deter future acts of terror.

Footnotes

1 **Ted Hammers** was born and raised in Springfield, Illinois. He received his Juris Doctor from Willamette University in 2018 after receiving his Bachelor of Arts in Political Science at the University of Missouri-Columbia. He is currently pursuing his Master of Dispute Resolution at Pepperdine University's Straus Institute for Dispute Resolution and is expected to graduate in 2019. **Ted** is a dual citizen of Latvia and enjoys time spent giving back to his community through volunteer work.

2 Brad Plumer, *Nine facts about terrorism in the United States since 9/11*, WASHINGTON POST (Sept. 11, 2013), https://www.washingtonpost.com/news/wonk/wp/2013/09/11/nine-facts-about-terrorism-in-the-united-states-since-911/.

3 INSTITUTE FOR THE ANALYSIS OF GLOBAL SECURITY, *How much did the September 11 terrorist attack cost America?* (2004), http://www.iags.org/costof911.html.

4 *Sovereign Immunity*, BLACK'S LAW DICTIONARY (6th ed. 1990).

5 *The Schooner Exch. v. McFaddon*, 11 U.S. 116, 3 L. Ed. 287 (1812).

6 William R. Dorsey, III, *Reflections on the Foreign Sovereign Immunities Act After Twenty Years,* 28 J. MAR. L. & COM. 257, 258 (1997).

7 *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983).

8 *See Ex Parte Republic of Peru*, 318 U.S. 578 (1943).

9 *See* Letter from Jack B. Tate, Acting Legal Adviser, Department of State, to Acting Attorney General Phillip B. Perlman (May 19, 1952), *in* 26 DEP'T ST. BULL. 984 (1952).

10 *Id.*

11 FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976, 28 U.S.C. § 1330, 1391(f), 1441(d), and 1602-11 (2012).

12 28 U.S.C. §1391(f) (2012). *Id.*

13 H.R. Rep. No. 94-1487, at 7-8 (1976).

14 JENNIFER K. ELSEA, CONG. RESEARCH SERV., RL34726, IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001: CLAIMS AGAINST SAUDI DEFENDANTS UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT (FSIA) 2 *)*,(2016), https://fas.org/sgp/crs/misc/RL34726.pdf.

15 *See Republic of Austria v. Altmann,* 541 U.S. 677, 691 (2004).

16 28 U.S.C. §§ 1330(b), 1608 (2012).

17 *See Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993).

18 28 U.S.C. §1605 (2012).

19 *Id.*

20 *Olsen by Sheldon v. Gov't of Mexico*, 729 F.2d 641, 645-646 (9th Cir. 1984) *abrogation in part on other grounds by* Joseph v. Office of Consulate Gen. of Nigeria, 830 F.2d 1018 (1984).

21 28 U.S.C. §1605(a)(5)(B) (2016).

22 *See* ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT, PUB. L. NO. 104-132, §221(a), 110 Stat. 1214, (1996) (codified at 28 U.S.C. §1605(a)(7) (2003)).

23 Allison Taylor, *Another Front in the War on Terrorism? Problems with Recent Changes to the Foreign Sovereign Immunities Act*, 45 ARIZ. L. REV. 533, 537 (2003).

24 28 U.S.C. §1605A (2008).

25 *Id.*

26 Walter W. Heiser, *Civil Litigation as a Means of Compensating Victims of International Terrorism*, 3 SAN DIEGO INT'L L.J. 1, 14 (2002).

27 U.S. Dep't of State, *State Sponsors of Terrorism*, https://www.state.gov/j/ct/list/c14151.htm (last visited Feb. 11, 2018).

28 28 U.S.C. §1606 (2002).

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25 WMTJILDR 101

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