No. 19-7121

In The

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

DARIOUSH RADMANESH,

Appellant,

v.

ISLAMIC REPUBLIC OF IRAN,

Appellee.

On Appeal from Case No. 1:17-cv-01708-CKK
in United States District Court for the District of Columbia,
Honorable G. Michael Harvey, Magistrate Judge, presiding

APPELLANT'S BRIEF

Michael A. Yanof
D.C. Cir. Ct. App. Bar No. 62130
Email: Yanof@LenahanLaw.com
Lenahan Law Firm
2655 Villa Creek Dr., Suite 204
Dallas, Texas 75234
Phone: (214) 295-1008
Fax: (214) 295-2664

Counsel for Appellant

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

I. Parties

***Appellant*:** Darioush Radmanesh, plaintiff in the district court, has appeared before the district court.

Appellee: Islamic Republic of Iran, defendant in the district court, has not appeared before the district court or this Court.

II. Rulings Under Review

The rulings on which this appeal is based are (1) a Memorandum Opinion and Order filed April 24, 2019, which denied Radmanesh's motion for default judgment and dismissing his claims without prejudice (App'x 0127), and (2) a Memorandum Opinion and Order filed September 3, 2009, which denied Radmanesh's motion for new trial (App'x 0158). *See Radmanesh v. Islamic Republic of Iran*, No. 17-cv-1708, 2019 WL 4169822 (D.D.C. Sept. 3, 2019) (denying motion for new trial); *Radmanesh v. Islamic Republic of Iran*, No. 17-cv-1708, 2019 WL 1787615 (D.D.C. Apr. 24, 2019) (denying motion for default judgment and dismissing claims). Each was signed by the Honorable G. Michael Harvey, Magistrate Judge, presiding.

III. Related Cases

This case was not previously on review by this Court or any other court. There are also not any other related cases.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Additional Sources

GLOSSARY

App'x	Appendix—referenced and cited in lieu of the record on appeal.
FSIA	Federal Sovereign Immunities Act. 28 U.S.C. Ch. 97.
Iran	Islamic Republic of Iran—Appellee, defendant in the district court. Iran is designated by the United States as a state-sponsor of terrorism.
IRGC	Iranian Revolutionary Guard Corps—a governmental division of Iran.
PTSD	Post-traumatic stress disorder.
Radmanesh	Darioush Radmanesh—Appellant, plaintiff in the district court. Sometimes also collectively referring to his family.

STATEMENT OF JURISDICTION

I. Basis for District Court's Jurisdiction

The district court had subject-matter jurisdiction over Radmanesh's claims generally as claims against Iran, a foreign state. 28 U.S.C. § 1330(a) (West 2019); *see also* 28 U.S.C. § 1331 (West 2019). Iran waived foreign-state immunity pursuant to the terrorism exception to the jurisdictional immunity of a foreign state. 28 U.S.C. § 1605A (West 2019).

II. Basis for Court of Appeals' Jurisdiction

Federal courts of appeals have jurisdiction to hear an appeal of a final judgment from a federal district court. 28 U.S.C. § 1291 (West 2019). Because the appeal is from the United States District Court for the District of Columbia, this Court specifically has jurisdiction to hear the appeal. 28 U.S.C. § 1294 (West 2019).

III. Timeliness of Appeal

The following dates are relevant:

- District court denied motion for default judgment and dismissed all claim on April 24, 2019 (App'x 0127);
- Motion for New Trial filed May 22, 2019 (App'x 0147);
- District court denied Motion for New Trial September 3, 2019 (App'x 0158); and

- Notice of appeal filed October 2, 2019 (App'x 0174).

Because Radmanesh filed his notice of appeal within thirty days of the district court denying his Motion for New Trial, the appeal is timely. Fed. R. App. P. 4(a)(1)(A); Fed. R. App. P. 4(a)(4)(A)(v).

IV. Finality of Judgment

In its order denying Radmanesh's motion for default judgment, the court dismissed all parties' claims—effectively rendering a final judgment. (App'x 0146.) In denying Radamnesh's Motion for New Trial, the claims remained dismissed.

ISSUES PRESENTED FOR REVIEW

Radmanesh, an American citizen and Christian, moved to Iran with his family in the 1970s. Immediately after the Iranian Revolution and Ayatollah Khomeini-supported takeover of the United States Embassy in Tehran, Radmanesh and his family were placed on house arrest and ordered to obey or die. He was later conscripted into the Iranian military against his will, forced to kill or be killed.

After his eventual escape, Radmanesh sued Iran in U.S. District Court. The complaint alleged he and his family were placed on house arrest; he was conscripted as an American teenager to fight for the Iranians against his will; he was forced at gunpoint to kill an innocent Iranian soldier while sleeping; and he was told by his Iranian commander he was going to be sent to death on an assignment to serve as a martyr, among other atrocities. Iran was properly served with the complaint yet failed to answer or appear. On moving for default judgment, the district court dismissed Radmanesh's claims by granting Iran sovereign immunity and finding subject-matter jurisdiction lacking. In doing so, the court found the terrorism exception to sovereign immunity in the FSIA did not apply.

1. Do Radmanesh's allegations, taken as true for default-judgment purposes, constitute torture so as to invoke the FSIA's terrorism exception to sovereign immunity?

2. Do Radmanesh's allegations, taken as true for default-judgment purposes, constitute hostage-taking so as to invoke the FSIA's terrorism exception to sovereign immunity?

STATUTES AND REGULATIONS

Radmanesh asserted claims against Iran pursuant to the Foreign Sovereign Immunity Act, 28 U.S.C. Ch. 97. Under the Act, an American citizen possesses a private right of action in United States District Court against a foreign state and its instrumentalities that commits acts of state-sponsored terrorism. 28 U.S.C. § 1605A(c) (West 2019). This provides an exception to sovereign immunity. *Fritz v. Islamic Republic of Iran*, 320 F. Supp. 3d 48, 75 (D.D.C. 2018); 28 U.S.C. § 1605A.

As this Court noted,

> [i]n enacting this provision, Congress sought to create a judicial forum for compensating the victims of terrorism, and in so doing to punish foreign states who have committed or sponsored such acts and deter them from doing so in the future. *See Daliberti v. Republic of Iraq,* 97 F. Supp. 2d 38, 50 (D.D.C. 2000); Molora Vadnais, *The Terrorism Exception to the Foreign Sovereign Immunities Act,* 5 UCLA J. Int'l L. & Foreign Aff. 199, 216 (2000).

Price v. Socialist People's Libyan Arab Jamahiriya, 294 F.3d 82, 88-89 (D.C. Cir. 2002).

For the Court's convenience, the pertinent provisions of the Act are attached to this Brief.

STATEMENT OF THE CASE

I. The American Dream

Radmanesh's childhood began just like so many other American kids.

His mom and dad fell in love in Kirksville, Missouri. (App'x 014; App'x 0097.) She was a native of Kirksville. (*Id.*) He was in Kirksville as an Iranian exchange student attending Northeast Missouri State University (now known as Truman State University). (*Id.*) They fell in love, married, and began expanding their family. (*Id.*)

Radmanesh was born in Kirksville in 1969. For the first few years of his life, he grew up in the Midwest. (*Id.*) In 1975 his family moved to South Carolina. (*Id.*) On completing his college education as an engineer, his father went to work for Polyacryl Iran, a unit of the American company DuPont establishing branches in Iran. (*Id.*) In South Carolina he would receive job-specific training to eventually work in Iran. (*Id.*) Radmanesh's dad was originally from Iran, and there were good economic opportunities in Iran in the mid-1970s. (*Id.*)

II. The American Dream Becomes a Nightmare

In 1978, after his dad's training was complete, the Radmanesh family moved to the Mardavige neighborhood in Isfahan, Iran. (*Id.*) His father began working at Polyacryl Iran. (*Id.*) Radmanesh was enrolled in the American School in Iran to continue his elementary education. (App'x Tab 0014; App'x 0097-98.) While there, initially he received instruction in English and learned in a Christian-friendly environment. (App'x 0014 App'x 0098.)

But violence in the city began to grew sharply as anti-American and anti-Shah forces rapidly gained power. (App'x 0015; App'x 0098.) In 1979, the Shah of Iran was overthrown in what is now referred to as the "Iranian Revolution." (*Id.*)

Anti-American sentiments rose dramatically when the Shah took over. (*Id.*) Many Americans attempted to flee Iran in the wake of the impending theocracy. (*Id.*) The Radmanesh family—including 10-year-old Darioush—was one such family who attempted to flee. (*Id.*)

These plans and efforts were halted on November 5, 1979. (*Id.*) November 5, 1979 was one day after Iran took hostages at the United States

Embassy in Tehran. (*Id.*) A day after taking hostages at the United States Embassy, Iran effectually did the same with other Americans in Iran. (*Id.*)

On this day, multiple soldiers of IRGC barged into the Radmanesh home with machine guns and accused Radmanesh's dad of being an American agent and traitor to Iran. (*Id.*) When Radamnesh's dad tried to respond, an IRGC soldier hit him in the face and threatened to kill the entire family on the spot. (*Id.*) Radmanesh's dad told the soldiers he would do whatever they wanted if they would allow his family to return to the United States. (*Id.*) The soldiers told the family they "were not going anywhere." The soldiers then took Radmanesh's dad from their home. (*Id.*)

Two days later, IRGC returned Radmanesh's dad to their home, proclaiming his guilt of treason against Iran. (*Id.*) The IRGC threatened execution unless (1) they remained in Iran, and (2) Radmanesh's dad trained Iranian citizens to be engineers capable of operating nationalized factories. (App'x 0015-16; App'x 0098-99.) Holding the entire family against its will saved their lives, but only through forced labor and strict conditions and monitoring. (App'x 0016; App'x 0099.)

III. Prisoners in Their Own Home

With the closing of Radmanesh's American School, he was forced into an Iranian-run, anti-American, school system. (*Id.*) He was the only American at a school promoting the concept of "Death to all Americans" in its daily curriculum. (*Id.*)

Radmanesh was targeted throughout his time at the Iranian propaganda school. (App'x 0016-17; App'x 0099-0100.) The tormenting began with pushing and kicking him, with the principal watching and laughing. (*Id.*) Over time, the violence perpetrated upon Plaintiff became even more intense. (*Id.*) Young members of the IRGC Basaji—the youth arm of IRGC—began to corner Radmanesh on his way home from school, attacking him while yelling "American bastard," "Yankee, get the hell out of our country," and the like. (App'x 0017; App'x 0100.) They would urinate on him while he lay on the ground. (*Id.*)

In 1984, when Radmanesh was fifteen, he was expelled from the Iranian School system after refusing to step on an American flag newly painted on the floor of the entranceway to his school for the sole purpose of teaching students to trounce on it. (App'x 0018; App'x 0100.) On expelling

him, the principal admonished Radmanesh for his refusal to step on the American flag as an open defiance against Iran. (*Id.*)

During this time, it wasn't any better at home. The Radmanesh family was strictly monitored at home. (App'x 0155.) The children could not leave the house without their mom obtaining specific permission from the government. (*Id.*) Even then, they were placed on strict orders to only go to their destination then return immediately to their home. (*Id.*)

But it wasn't just Radmanesh and his dad who suffered persecution by Iran and the IRGC. On more than one occasion, he witnessed the IRGC mocking, cussing, or beating his mom solely based on their United States citizenship and Christian faith. (App'x 0017-18.) *See* 159 Cong. Rec. E1319 (*daily ed.*, Sept. 17, 2013) (statement of Rep. Graves).

This is not a childhood any child deserves. To suffer it as a child from America, the land of the free—solely because one is an American on foreign soil—is inexcusable.

But Radmanesh's experiences as a child in Iran pale in comparison to his treatment as a teen and young adult.

IV. It Only Gets Worse for Radmanesh

Having been expelled and marked for refusing to step on the American flag, Radmanesh had no choice but to work full-time as a 15-year-old in 1984. (App'x 0018; App'x 0100-0101.) He secured an apprenticeship at a machine shop in the small industrial town of Shaheen-Shahr. (App'x 0018; App'x 0101.)

Soon thereafter, Radmanesh was taken from his neighborhood against his will, thrown into a truck, and transported to the IRGC in the desert. (App'x 0019; App'x 0102.) Iran had conscripted Radmanesh to fight for its country at the age of 16. (*Id.*) He was to fight the "Holy Defense" against Iraq, with no means of contacting his family. (*Id.*)

To say that an American with Christian faith serving in the Iranian military under Khomeini did not go well for Radmanesh would be a gross understatement. He witnessed war atrocities routinely, while still a teenager. (App'x 0019-21; App'x 0102-103.) This included watching the IRGC sacrifice children as young as nine years old for human minesweepers. (App'x 0020; App'x 0103.)

He was chosen for particularly dangerous assignments so the Khomeini government could proclaim him as an American Martyr for

Islam. (App'x 0020-21; App'x 0103.) On one occasion, he was forced by his commander, at gunpoint, to shoot a sleeping Iraqi soldier in the head at point blank range. (App'x 0021; App'x 0103.)

He was only saved by almost dying in battle. On his final day in battle, after engaging in both a sniper and an artillery shell attack, IRGC soldiers found Radmanesh lying in a trench in a delirious state. (App'x 0021; App'x 0104.) He was transported to a hospital where doctors determined he had suffered a severe nervous breakdown, diagnosing him with post-traumatic stress syndrome. (*Id.*) In December 1986, Radmanesh was sent to his family for a two-week leave in order to recuperate. (*Id.*)

V. Radmanesh Escapes Iran—the Scars Remain

After arriving home for his two-week leave, Radmanesh's family paid smugglers to keep him in hiding until he could be taken out of the country. (*Id.*) Before the IRGC returned to force him back onto the battlefield, he was hidden until he finally escaped on a cargo ship destined for Dubai. (App'x 0021-22; App'x 0104.)

Upon arriving in Dubai, Radmnesh was taken to the U.S. State Department at the American Consulate, where Vice Consul Michael J. Varga worked to ensure his safe return to the United States. (*Id.*) Radmanesh's

mom also escaped during this time period. Radmanesh was reunited with his mother in Missouri. (App'x 0022; App'x 0104.)

His next six years were plagued by severe PTSD. (App'x 0022; App'x 0104-105.) Initially, he could not bring himself to leave his room, preferring to stay in the dark with the blinds closed. (*Id.*) He was unable to attend school or keep a job for any meaningful length of time. (*Id.*) He sought psychiatric treatment to help him manage his flashbacks, panic attacks, nightmares, tremors, and insomnia. (*Id.*) He suffered two mental breakdowns. (*Id.*)

His PTSD persists even today. (*Id.*) Radmanesh continues to suffer from flashbacks, nightmares, and severe sleep issues. (*Id.*) He also continues to suffer from panic attacks often triggered by loud sounds. (*Id.*) He will likely never fully recover from how Iran treated him—an American with Christian faith.

SUMMARY OF ARGUMENT

Have you ever been held against your will? Have you ever been held as a prisoner without committing a crime? Have you ever been targeted specifically to be watched, scrutinized, monitored, and required to report to the government merely to leave your house—without being guilty of any crime? To be a prisoner in one's own home perhaps makes it even worse. Required to report every move to the government, unable to do the most mundane task without specific permission from the government.

When the government—more specifically a state sponsor of terrorism—takes away your freedoms for no reason other than to torment and intimidate, they have taken you hostage.

Or have you ever been forced to act against your will? Not something you're mildly uncomfortable with at work, like staying late or drafting too many reports. Big, life-altering stuff. Like watching your mom be abused by government officials. Like seeing nine-year-olds blown up by live land mines. Like being forced at gunpoint to commit the murder of another while he sleeps. Like fighting a war contrary to your citizenship and faith.

When the government—more specifically a state sponsor of terrorism—forces you to see and do these things, it is torture.

Radmanesh suffered all this in and at the hands of Iran, whom the United States has declared a state sponsor of terrorism. He suffered it as an American and Christian. Much of it he suffered *because* he was an American and Christian.

One could say "it was bad for everyone in Iran during this time." True. But not everyone was an American-Christian in Iran during the Iranian Revolution, forced to stay there against their will. Radamanesh was.

It is true the United States can't be the protectors of everyone around the world. But we can and should serve as the protectors of Americans abroad, particularly from brutal treatment by state sponsors of terrorism like Iran. Besides, the FSIA accounts for the notion that the United States can't protect everyone. The law only applies to Americans abroad—like Radmanesh. And the law only applies when Americans suffer at the hands of state sponsors of terrorism—like Iran.

Taking all allegations as true, the district court erred in dismissing Radmanesh's case. Iran forfeited its foreign-state immunity by torturing Radmanesh and taking him and his family hostage. And because Iran chose to ignore service and failed to appear, a default judgment against it for these atrocities is proper.

ARGUMENT

The Court reviews district courts' dismissals for lack of subject-matter jurisdiction *de novo*. *Nix v. Billington*, 448 F.3d 411, 414-15 (D.C. Cir. 2006) (reversing a district court's dismissal for lack of subject-matter jurisdiction on *de novo* review). When the claims arise from the private right of action in section 1605A of the FSIA, the plaintiff must establish the "claim or right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e) (West 2019); Tab B.

On one hand, this evidentiary standard is the same standard applying to default judgments against the United States under Federal Rule of Civil Procedure 55(d). *Owens v. Republic of Sudan*, 864 F.3d 751, 785 (D.C. Cir. 2017). On the other hand, the Court evaluates the evidence in light of Congress's purpose in enacting section 1605A: to "compensate the victims of terrorism [so as to] punish foreign states who have committed or sponsored such acts and [to] deter them from doing so in the future." *Han Kim v. Democratic People's Republic of Korea*, 774 F.3d 1044, 1048 (D.C. Cir. 2014) (citation omitted).

In effectuating this purpose, uncontroverted factual allegations supported by admissible evidence are taken as true. *Thuneibat v. Syrian Arab Republic*, 167 F. Supp. 3d 22, 33 (D.D.C. 2016). The Court is further guided by the difficulty in obtaining "firsthand evidence and eyewitness testimony. . . from an absent and likely hostile sovereign." *Owens*, 864 F.3d at 785.

Consequently, to obtain default judgment against Iran under an FSIA claim, Radmanesh must (1) establish Iran was served in accordance with the FSIA[1]; and (2) offer evidence satisfactory to the court[2] that Iran's conduct falls within the statutory exceptions to foreign-state immunity[3]. *See Owens*, 864 F.3d at 784. Radmanesh establishes each element, entitling him to default judgment.

I. Iran was Properly Served and Failed to Appear or Answer.

Iran is no stranger to avoiding and evading service in United States courts. Fortunately, section 1605A of FISA provides for service upon a foreign state:

[1] *See* 28 U.S.C. § 1608(a) (Tab E).
[2] *See* 28 U.S.C. § 1608(e) (Tab E).
[3] *See* 28 U.S.C. § 1605A (Tab C).

(2) if no special arrangement exists, by delivery a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned.

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services--and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

28 U.S.C. § 1605A.

The district court took notice that the first option was not available, as there is predictably no special arrangement between the United States and Iran for service. *Radmanesh v. Islamic Republic of Iran*, No. 17-cv-1708, 2019 WL 1787615, at *3 (D.D.C. Apr. 24, 2019). The district court further found that Radmanesh attempted service under option 2 by translating the complaint into Farsi—the official language of Iran—and attempting delivery

that Radmanesh attempted service under option 2 by translating the complaint into Farsi—the official language of Iran—and attempting delivery through a courier service. *Id.* Iran refused to accept the package. *Id.* Under instructions allowing to proceed through diplomatic channels, Radmanesh accomplished service on October 1, 2018. *Id.*

Iran was required to answer within sixty days of service—by November 30, 2018. *Id.* (citing 28 U.S.C. § 1608(d)). Iran failed to appear or answer within this time, or at any time thereafter.

Radmanesh properly served Iran in accordance with section 1605A. Iran failed to timely appear or answer. Accordingly, Radmanesh is entitled to default judgment if he offers evidence satisfactory to the court[4] that Iran's conduct falls within the statutory exceptions to foreign-state immunity[5]. *See Owens v. Islamic Republic of Sudan*, 864 F.3d 751, 784 (D.C. Cir. 2017).

II. The District Court Erred in Finding it Lacked Subject-Matter Jurisdiction.

The district court properly noted that because Iran was properly served and failed to answer, default judgment could be entered if:

[4] *See* 28 U.S.C. § 1608(e) (Tab E).
[5] *See* 28 U.S.C. § 1605A (Tab C).

(4) the plaintiff has satisfactorily proven he is entitled to the monetary damage he seeks.

Radmanesh, 2019 WL 1787615, at *5 (citing *Braun v. Islamic Republic of Iran*, 228 F. Supp. 3d 64, 75 (D.D.C. 2017)).

The court ultimately found subject-matter jurisdiction lacking, under section 1330(a) of Title 28, in dismissing Radmanesh's case. *Id.* Under section 1330(a), the court first found the case was a nonjury civil action. *Id.* The court next found this is an action seeking relief *in personam*. *Id.* The court next found Iran was a foreign state. *Id.* But the court found the last element—the foreign state is not entitled to immunity under sections 1605-1607 of Title 28—lacking. *Id.* at *5-11.

More specifically, the district court found Radmanesh lacked allegations that, if taken as true, established the terrorism exception to sovereign immunity in section 1605A of Title 28. *Id.* This provision provides a private right of action for personal injuries caused by acts of torture and hostage-taking.

Section 1605A applies if three conditions are met:

(a) The foreign state is designated a state sponsor of terrorism;

(b) The claimant or victim was a national of the United States at the time of the act of terrorism; and

(c) In cases where the act of terrorism occurred in the foreign state against whom suit has been brought, the foreign state was afforded a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration.

See Worley v. Islamic Republic of Iran, 75 F. Supp. 3d 311, 326 (D.D.C. 2014).

First, Iran was, and remains, a "state sponsor of terrorism," as that term is defined in section 1605A(a)(2)(A)(i). *See* 50 U.S.C. Appx. § 2405(j)); 22 U.S.C. § 2780; 22 U.S.C. § 2371; 49 *Fed. Reg.* 2836 (Jan. 23, 1984); *State Sponsors of Terrorism*, U.S. Dept. of State, https://www.state.gov/j/ct/list/c14151.htm (2017). Further, the acts of the IRGC are treated the same as acts by Iran. *See, e.g., Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 61 (D.D.C. 2006); *Salazar v. Islamic Republic of Iran*, 370 F. Supp. 2d 105, 117 (D.D.C. 2005) ("[I]n its primarily military function and close association with [the Ministry of the Islamic State], the IRGC is more like an 'armed force' under the ultimate command of the leadership of the Iranian government (if not its political functionaries), than like a commercial agency or instrumentality of the state.")

Second, as the district court properly found, Radmanesh was and is a United States national—as the Missouri-born son of an American mother. *Radmanesh*, 2019 WL 1787615, at *6.

Third, the district court properly found Radmanesh satisfied the FSIA requirement concerning arbitration by including an offer of arbitration with the documents served upon Iran. *Id.*; *see also Simpson v. Socialist People's Libyan Arab Jamahiriya*, 326 F.3d 230, 233 (D.C. Cir. 2003) (holding that an offer to arbitrate received by the defendant foreign state, prior to its response to the complaint, is sufficient to qualify as a reasonable opportunity to arbitrate).

It is the fourth element the district court found lacking—the terrorism exception to sovereign immunity. This exception requires proof of:

> (1) 'an act of torture, extrajudicial killing, aircraft sabotage, hostage-taking, or the provision of material support or resources for such an act' where (2) the act was committed, or the material support was provided, by the foreign state or agent of the foreign state, and the act (3) caused personal injury or death (4) 'for which courts of the United States may maintain jurisdiction under this section for money damages.'

Worley v. Islamic Republic of Iran, 75 F. Supp 3d 311, 332 (D.D.C. 2014) (citing 28 U.S.C. § 1605A(c)).

The court erred in this finding.

A. Radmanesh's allegations, taken as true, constitute torture under the FSIA's terrorism exception to sovereign immunity

"Torture" means, in pertinent part,

> any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering … whether physical or mental, is intentionally inflicted on that individual for such purposes as … punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based upon discrimination of any kind.

Price v. Socialist People's Libyan Arab Jamahiriya, 294 F.3d 82, 293-94 (D.C. Cir. 2002) (citing 28 U.S.C. § 1350).

Numerous facts highlight that Radmanesh established he was tortured by Iran. First, from the moment the IRGC visited his home the day after the hostages were taken from the American Embassy in Iran, Radmanesh and his family were bullied and ostracized for their citizenship and faith. (App'x 0015-17; App'x 0098-0100.) Second, beginning in 1984 he was forced to fight in a Muslim holy war contrary to his citizenship and faith. (App'x 0019-21; App'x 0102-103.) Third, while in the military he was forced to witness nine-year-olds blown up by mines. (App'x 0020; App'x 0103.) Fourth, while in the military he was forced at gunpoint to kill an innocent person in his sleep.

(App'x 0021; App'x 0103.) Fifth, he was subjected to watching his mom physically abused by the IRGC. (App'x 0017-18; App'x 0100.)

This is satisfactory evidence of torture by Iran. Accordingly, on *de novo* review the Court should find Radmanesh was tortured by Iran under the FSIA.

B. Radmanesh's allegations, taken as true, constitute hostage-taking under the FSIA's terrorism exception to sovereign immunity

The United States government has deemed Radmanesh a hostage for the seven years preceding his escape from Iran. 159 Cong. Rec. E1319 (*daily ed.*, Sept. 17, 2013) (statement of Rep. Graves).

The term "hostage-taking," as referenced in the FSIA, is defined under the Article 1 of the *International Convention Against the Taking of Hostages* as follows:

> 1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person ("hereinafter referred to as the "hostage") in order to compel a third party … to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offense of taking of hostages ("hostage-taking"). . . .
>
> 2. Any person who: [ ]
>
> (b) Participates as an accomplice of anyone who commits or attempts to commit an act of hostage taking likewise commits an offense. . . .

Numerous facts highlight that Radmanesh established he was taken hostage by Iran. First, Iran forced Radmanesh and his family to check-in and be monitored when leaving their home, effectively placing them on indefinite house arrest. (App'x 0156.) Second, Radmanesh was given a kill or be killed order from his commander in the Iranian military. (App'x 0021; App'x 0103.) Third, he and his family were given obey (including staying in Iran) or your family will be killed orders from Iran. (App'x 0015-16; App'x 0098-99.)

The district court found this evidence insufficient, relying on this Court's opinion in *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82 (D.C. Cir. 2002). *Radmanesh*, 2019 WL 1787615, at *8-9. The fundamental flaw of the claims in *Price* was the failure to specifically plead the acts to allow the Court to evaluate them. *Price*, 294 F.3d at 93-94.

The issue in *Price* was not whether the acts were extreme enough, but whether the Court could determine whether they were extreme enough. *Id.* As the Court explained,

> In this case, plaintiffs' complaint offers no useful details about the nature of the kicking, clubbing, and beatings that plaintiffs allegedly suffered. As a result, there is no way to determine from the present complaint the severity of plaintiffs' alleged beatings – including their frequency, duration, the parts of the body at which they were aimed, and the weapons used to carry them out – in order to ensure that they satisfy the TVPA's rigorous definition of torture. In short, there is no way to discern whether plaintiffs' complaint merely alleges police brutality that falls short of torture. Thus, the facts pleaded do not reasonably support a finding that the physical abuse allegedly inflicted by Libya evinced the degree of cruelty necessary to reach a level of torture.

Id.

What was lacking in *Price* is present here: very specific allegations and evidence of extreme conduct by Iran and purposeful mistreatment of Radmanesh constituting torture and hostage-taking.

The take-home lesson from *Price* is not that the conduct there does or does not rise the level of torture or hostage-taking. Instead, it is that conclusory pleadings with no detail will not suffice to justify default judgment.

In contrast, other cases—including this case—do not suffer from pleading deficiencies. In *Fraenkel v. Islamic Republic of Iran*, 248 F. Supp. 3d 21 (D.D.C. 2017), *rev'd in part on other grounds*, 892 F.3d 348 (D.C. Cir. 2018),[6] the court found Iran liable under the FSIA in supporting Hamas's acts of terrorism arising from a kidnapping. *Id.* at 35-38. In *Friends of Mayanot Institute, Inc. v. Islamic Republic of Iran*, 313 F. Supp. 3d 50 (D.D.C. 2018), the court found Iran liable under the FSIA for acts of terrorism arising from a bombing taking place between Israel and Lebanon, which caused economic losses. *Id.* at 56-57.

In *Wyatt v. Syrian Arab Republic*, 908 F.Supp.2d 216 (D.D.C. 2012), *aff'd*, 554 Fed. Appx. 16 (D.C. Cir. 2014), the court found Iran liable under the FSIA for the hostage-taking of Americans. *Id.* at 229-31. In *Wyatt*, the victims were kidnapped and held for 21 days. *Id.* at 220-22. There was *no* evidence of beatings. *Id.* There *was* evidence of the kidnappers subjecting them to harsh weather conditions and requiring they obtain permission to attend personal needs. *Id.* The court held this was sufficient to establish hostage-taking and awarded significant damages for the 21-day ordeal. *Id.*

[6] In *Fraenkel*, this Court reversed in part to overturn the district court's limiting a damage award. *Fraenkel v. Islamic Republic of Iran*, 892 F.3d 348, 357-58 (D.C. Cir. 2018).

Radmanesh's ordeal was no less extreme, including Iran forcing Radmanesh and his family to check-in and be monitored when leaving their home, effectively placing them on indefinite house arrest; a kill or be killed order from his commander in the Iranian military; and obey (including staying in Iran) or your family will be killed orders from Iran.

These allegations were specifically pleaded, with satisfactory evidence. Accordingly, on *de novo* review the Court should find Radmanesh was taken hostage by Iran under the FSIA.

III. Because the District Court Had Subject-Matter Jurisdiction, It Should Have Entered Default Judgment on Radmanesh's Claims.

Had the district court properly found it had subject-matter jurisdiction, the court should have entered default judgment against Iran. Radmanesh pleaded claims for assault, battery, false imprisonment, and intentional infliction of emotional distress, each of which was established.

A. Default judgment is proper on Radmanesh's assault claim.

General principles of tort law, as provided in the *Restatement (Second) of Torts*, apply in determining liability for assault under the FSIA. Acts of terrorism, by their very nature, necessarily constitute assault under the FSIA. *See, e.g., Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 76 (D.D.C. 2010). "The objective of terrorism is to use violence and fear to

achieve political means." *Gill v. Islamic Republic of Iran*, 249 F. Supp. 3d 88, 101 (D.D.C. 2017) (referring to *Black's Law Dictionary* (10th ed., 2014) in defining terrorism as "[t]he use or threat of violence to intimidate or cause panic, esp[ecially] as a means of achieving a political end"); 22 U.S.C. § 2656f(d) (defining "terrorism" as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents").

"Terrorism [is] unique among the types of tortuous activities in both its extreme methods and aims .... 'All acts of terrorism are by the very definition extreme and outrageous and intended to cause the highest degree of emotional distress, literally, terror.'" *Wultz v. Islamic Republic of Iran*, 864 F. Supp. 2d 24, 37 (D.D.C. 2012) (citing *Estate of Heiser v. Islamic Republic of Iran*, 659 F. Supp. 2d 20, 27 (D.D.C. 2009) ("The more extreme and outrageous, the greater the resulting distress.")

Iran committed assault of Radmanesh because it intended to cause a harmful or offensive contact or caused an imminent apprehension of such contact. *See Gill*, 249 F. Supp. 3d at 101-02. The very acts establishing torture and hostage-taking are assault as a matter of law.

B. Default judgment is proper on Radmanesh's battery claim.

Iran likewise committed battery on Radmanesh. The *Restatement (Second) of Torts* defines battery as acts intending to cause a harmful or offensive contact or to cause an imminent apprehension of such contact, and a harmful contact with the plaintiff directly or indirectly resulted. *See, e.g., Gill*, 249 F. Supp. 3d at 102. "Harmful contact" includes "any physical impairment of the condition of another's body, or physical pain or illness." *Cohen v. Islamic Republic of Iran*, 238 F. Supp. 3d 71, 83 (D.D.C. 2017).

Again, the very acts establishing torture and hostage-taking establish battery as a matter of law.

C. Default judgment is proper on Radmanesh's false imprisonment claim.

The FSIA gives rise to a false imprisonment claim when there are "(a) acts intending to confine the other … within boundaries fixed by the actor, and (b) his act directly or indirectly results in such a confinement of the other, and (c) the other is conscious of the confinement or is harmed by it." *Stansell v. Republic of Cuba*, 217 F. Supp. 3d 320, 343 (D.D.C. 2016).

False imprisonment is most obviously established by placing Radmanesh on house arrest and requiring constant monitoring and checking in to even leave the home. It continued for Radmanesh by his

unwilling conscription into the military and requiring he fight a Muslim holy war against his citizenship and faith. That this occurred under the backdrop of Radmanesh's family making it clear they wanted to leave the country immediately on the IRGC first visiting only emphasizes the false imprisonment.

D. Default judgment is proper on Radmanesh's intentional infliction of emotional distress claim.

A claim for intentional infliction of emotional distress under the FSIA is actionable for: (1) extreme and outrageous conduct on the part of the actor which (2) intentionally or recklessly (3) caused the plaintiff severe emotional distress. *See Bluth v. Islamic Republic of Iran*, 203 F. Supp. 3d 1, 21 (D.D.C. 2016). Acts of terrorism are *per se* extreme and outrageous. *Id.*; *Bodoff v. Islamic Republic of Iran,* 424 F. Supp. 2d 74, 85 (D.D.C. 2006) (a terrorist attack constitutes extreme and outrageous conduct); *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 77 (D.D.C. 2010).

From the moment the IRGC stormed his home, Radmanesh suffered more than seven years of severe emotional distress by Iran. Prisoner in his own home. Watching his mom beaten by the IRGC. Taken without warning and against his will into the military. Forced to fight a Muslim holy war

contrary to his citizenship and faith. Forced to watch nine-year-olds blown up by mines. Forced at gunpoint to kill another in his sleep.

A district court in this district previously recognized that even "[t]hirty minutes for a 16-year-old facing the fear of death would be an eternity." *Fraenkel v. Islamic Republic of Iran*, 248 F. Supp. 3d 21, 41 (D.D.C. 2017), *rev'd in part on other grounds*, 892 F.3d 348 (D.C. Cir. 348). Radmanesh's ordeal is no less worthy of holding Iran accountable.

IV. On Reversing and Rendering Default Judgment on Liability, the Court Should Remand for Determination of Damages.

Reversing and rendering judgment on liability is proper because Radmanesh moved for default judgment in the district court on liability. Because the district court erred in denying Radmanesh's default judgment, this Court should reverse and render—rather than reverse and remand.

On entering default judgment on liability, what damages to award remains since the district court did not reach this issue. There are three elements of damages sought by Radmanesh, which are in line with other damages awards and calculations from district courts in the district.

First, Radmanesh seeks pain and suffering damages. In *Wyatt v. Syrian Arab Republic,* 908 F. Supp. 2d 216 (D.D.C. 2012), *aff'd,* 554 Fed. Appx. 16 (D.C. Cir. 2014), the court awarded pain and suffering damages for a

kidnapping and 21-day captivity. *Id.* at 231-32. In doing so, the court rejected a *per diem* calculation and instead applied a lump sum award. *Id.* As the court reasoned:

> Calculating pain and suffering damages is a difficult task. . . . [I]n cases where the victims suffered harsh treatment and/or were held only briefly, some courts have also dispensed with the *per diem* measure altogether. . . . Marvin Wilson and Ronald Wyatt were held for 21 days. True, unlike the plaintiff in *Cronin*, Wilson and Wyatt were not physically beaten during their captivity, but they were subjected to other forms of physical abuse: they were subjected to long marches at gunpoint through the biting cold of the Turkish wilderness and denied adequate shelter, clothing and food, and. . . Mr. Wyatt['s] "leg had been badly injured during the abduction." The men were also subjected to a variety of psychological abuse, including repeated threats of death, being lined up for a simulated execution, being forbidden to speak with one another for several days, being forced to listen to anti-American PKK propaganda, and above all, being forced to endure the uncertainty of knowing whether they would live to see their families again. . . . Plaintiffs request $5,000,000 for each victim in pain and suffering. This amount roughly comports with previous awards of pain and suffering by this Court for FSIA hostage cases. Accordingly, the Court finds that an award to each victim of $5,000,000 in pain and suffering damages is appropriate.

Id. (citations omitted).

Second, Radmanesh seeks economic damages for lost earning capacity. Economic damages for lost future earnings are permissible under the FSIA if proven by a reasonable estimate. *Moradi v. Islamic Republic of Iran*, 77 F. Supp. 3d 57, 77 (D.D.C. 2015).

Third, Radmanesh seeks punitive damages against Iran. The court in *Wyatt*—in awarding 300,000,000 in punitive damages— summarized the purpose of awarding punitive damages in a FSIA case:

> In *Gates*, Judge Collyer awarded $300,000,000 in punitive damages against Syria, which she found had provided material support for a terrorist organization responsible for the videotaped execution of two U.S. civilian contractors.
>
> Here, the evidence shows Syria supported, protected, harbored, aided, enabled, sponsored, and subsidized the PKK, a known terrorist organization whose operations included the kidnapping of plaintiffs. The brutal character of the kidnapping in this case, the significant harm it caused both the hostage plaintiffs and their families, along with Syria's demonstrated and well known policy to encourage terrorism all merit an award of punitive damages. This Court will follow the measure used against the same defendant in the *Gates* case, and award punitive damages against Syria in the amount of $300,000,000.

Wyatt, 908 F. Supp. 2d at 233.

All of these damages are recoverable under an FSIA claim. But in fairness, Radmanesh recognizes this Court is not the place to ask specifically for an award of damages. Appreciating this Court is not a fact-finding court, Radmanesh requests a remand to determine the amount of damages.

CONCLUSION AND PRAYER

The FSIA grants Radmanesh a private right of action against Iran for its horrendous treatment of him. Radmanesh wishes Iran would appear in United States District Court in Washington, D.C. to answer for its crimes against him and many other Americans. But Iran has never been willing to answer for such crimes. Instead, it thumbs its nose at its victims and the United States by evading and ignoring service.

As a result, Radmanesh requests nothing more than the Court holding Iran accountable for its actions. Congress has required this accountability to protect American citizens abroad from state sponsors of terrorism.

Specifically, Radmaesh asks this Court to:

1.) reverse the district court's memorandum opinions and orders denying Radmanesh's motion for default judgment and *sua sponte* dismissing his claims;

2.) render default judgment in favor of Radmanesh on liability for his claims against Iran;

3.) remand to the district court for a determination of damages; and

4.) award any other relief which is proper.

Respectfully submitted,

By: /s/ Michael A. Yanof
Michael A. Yanof
D.C. Cir. Ct. App. Bar No. 62130
Email: Yanof@LenahanLaw.com
Lenahan Law Firm, LLC
2655 Villa Creek, Suite 204
Dallas, Texas 75234
Telephone: (214) 295-1008
Facsimile: (214) 295-2664

COUNSEL FOR APPELLANT
DARIOUSH RADMANESH

CERTIFICATE OF COMPLIANCE

Counsel for Appellant certifies compliance with the Federal Rules of Appellate Procedure and D.C. Circuit Rules in submitting Appellant's Brief. *See* Fed. Rs. App. P. 28, 32; Cir. Rs. 28, 32. Specifically, this brief contains 6,793 words, as determined by the sections included per Rule 32(f).

/s/ Michael A. Yanof
Michael A. Yanof

CERTIFICATE OF SERVICE

Appellant cannot serve Appellee with this filing. Appellee has avoided service and failed to appear in the district court or this Court. This Brief was e-filed and mailed to this Court in accordance with the Federal Rules of Appellate Procedure and Circuit Rules on February 18, 2020.

/s/Michael A. Yanof
Michael A. Yanof

Addendum

APPELLANT'S BRIEF ADDENDUM

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 97. Jurisdictional Immunities of Foreign States

28 U.S.C.A. § 1604

§ 1604. Immunity of a foreign state from jurisdiction

Currentness

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

CREDIT(S)

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2892.)

Notes of Decisions (155)

28 U.S.C.A. § 1604, 28 USCA § 1604
Current through P.L. 116-91. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 97. Jurisdictional Immunities of Foreign States

28 U.S.C.A. § 1605

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

Effective: December 16, 2016
Currentness

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case--

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, 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; except this paragraph shall not apply to--

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That--

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

[**(e), (f)** Repealed. Pub.L. 110-181, Div. A, Title X, § 1083(b)(1)(B), Jan. 28, 2008, 122 Stat. 341.]

(g) Limitation on discovery.--

(1) In general.--(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A or section 1605B, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) Sunset.--(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would--

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) Evaluation of evidence.--The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) Bar on motions to dismiss.--A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

(5) Construction.--Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

(h) Jurisdictional immunity for certain art exhibition activities.--

(1) In general.--If--

(A) a work is imported into the United States from any foreign state pursuant to an agreement that provides for the temporary exhibition or display of such work entered into between a foreign state that is the owner or custodian of such work and the United States or one or more cultural or educational institutions within the United States;

(B) the President, or the President's designee, has determined, in accordance with subsection (a) of Public Law 89-259 (22 U.S.C. 2459(a)), that such work is of cultural significance and the temporary exhibition or display of such work is in the national interest; and

(C) the notice thereof has been published in accordance with subsection (a) of Public Law 89-259 (22 U.S.C. 2459(a)),

any activity in the United States of such foreign state, or of any carrier, that is associated with the temporary exhibition or display of such work shall not be considered to be commercial activity by such foreign state for purposes of subsection (a)(3).

(2) Exceptions.--

(A) Nazi-era claims.--Paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and--

(i) the property at issue is the work described in paragraph (1);

(ii) the action is based upon a claim that such work was taken in connection with the acts of a covered government during the covered period;

(iii) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and

(iv) a determination under clause (iii) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(B) Other culturally significant works.--In addition to cases exempted under subparagraph (A), paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and--

(i) the property at issue is the work described in paragraph (1);

(ii) the action is based upon a claim that such work was taken in connection with the acts of a foreign government as part of a systematic campaign of coercive confiscation or misappropriation of works from members of a targeted and vulnerable group;

(iii) the taking occurred after 1900;

(iv) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and

(v) a determination under clause (iv) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(3) Definitions.--For purposes of this subsection--

(A) the term "work" means a work of art or other object of cultural significance;

(B) the term "covered government" means--

(i) the Government of Germany during the covered period;

(ii) any government in any area in Europe that was occupied by the military forces of the Government of Germany during the covered period;

(iii) any government in Europe that was established with the assistance or cooperation of the Government of Germany during the covered period; and

(iv) any government in Europe that was an ally of the Government of Germany during the covered period; and

(C) the term "covered period" means the period beginning on January 30, 1933, and ending on May 8, 1945.

CREDIT(S)

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2892; amended Pub.L. 100-640, § 1, Nov. 9, 1988, 102 Stat. 3333; Pub.L. 100-669, § 2, Nov. 16, 1988, 102 Stat. 3969; Pub.L. 101-650, Title III, § 325(b)(8), Dec. 1, 1990, 104 Stat. 5121; Pub.L. 104-132, Title II, § 221(a), Apr. 24, 1996, 110 Stat. 1241; Pub.L. 105-11, Apr. 25, 1997, 111 Stat. 22; Pub.L. 107-77, Title VI, § 626(c), Nov. 28, 2001, 115 Stat. 803; Pub.L. 107-117, Div. B, § 208, Jan. 10, 2002, 115 Stat. 2299; Pub.L. 109-304, § 17(f)(2), Oct. 6, 2006, 120 Stat. 1708; Pub.L. 110-181, Title X, § 1083(b)(1), Jan. 28, 2008, 122 Stat. 341; Pub.L. 114-222, § 3(b)(2), Sept. 28, 2016, 130 Stat. 853; Pub.L. 114-319, § 2(a), Dec. 16, 2016, 130 Stat. 1618.)

Notes of Decisions (1058)

28 U.S.C.A. § 1605, 28 USCA § 1605
Current through P.L. 116-91. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedPrior Version Preempted by Martinez v. Republic of Cuba, S.D.N.Y., Feb. 01, 2016

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 97. Jurisdictional Immunities of Foreign States

28 U.S.C.A. § 1605A

§ 1605A. Terrorism exception to the jurisdictional immunity of a foreign state

Effective: January 28, 2008
Currentness

(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--

(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;

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred--

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise 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; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

(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.

(d) Additional damages.--After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

(e) Special masters.--

(1) In general.--The courts of the United States may appoint special masters to hear damage claims brought under this section.

(2) Transfer of funds.--The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c), to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(f) Appeal.--In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

(g) Property disposition.--

(1) In general.--In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property that is--

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

(2) Notice.--A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

(3) Enforceability.--Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

(h) Definitions.--For purposes of this section--

(1) the term "aircraft sabotage" has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(2) the term "hostage taking" has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages;

(3) the term "material support or resources" has the meaning given that term in section 2339A of title 18;

(4) the term "armed forces" has the meaning given that term in section 101 of title 10;

(5) the term "national of the United States" has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(6) the term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

(7) the terms "torture" and "extrajudicial killing" have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

CREDIT(S)

(Added Pub.L. 110-181, Div. A, Title X, § 1083(a)(1), Jan. 28, 2008, 122 Stat. 338.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 13477

<October 31, 2008, 73 F.R. 65965>

Settlement of Claims Against Libya

By the authority vested in me as President by the Constitution and the laws of the United States of America, and pursuant to the August 14, 2008, claims settlement agreement between the United States of America and Libya (Claims Settlement Agreement), and in recognition of the October 31, 2008, certification of the Secretary of State, pursuant to section 5(a)(2) of the Libyan Claims Resolution Act (Public Law 110-301), and in order to continue the process of normalizing relations between the United States and Libya, it is hereby ordered as follows:

Section 1. All claims within the terms of Article I of the Claims Settlement Agreement (Article I) are settled.

(a) Claims of United States nationals within the terms of Article I are espoused by the United States and are settled according to the terms of the Claims Settlement Agreement.

(i) No United States national may assert or maintain any claim within the terms of Article I in any forum, domestic or foreign, except under the procedures provided for by the Secretary of State.

(ii) Any pending suit in any court, domestic or foreign, by United States nationals (including any suit with a judgment that is still subject to appeal or other forms of direct judicial review) coming within the terms of Article I shall be terminated.

(iii) The Secretary of State shall provide for procedures governing applications by United States nationals with claims within the terms of Article I for compensation for those claims.

(iv) The Attorney General shall enforce this subsection through all appropriate means, which may include seeking the dismissal, with prejudice, of any claim of a United States national within the terms of Article I pending or filed in any forum, domestic or foreign.

(b) Claims of foreign nationals within the terms of Article I are settled according to the terms of the Claims Settlement Agreement.

(i) No foreign national may assert or maintain any claim coming within the terms of Article I in any court in the United States.

(ii) Any pending suit in any court in the United States by foreign nationals (including any suit with a judgment that is still subject to appeal or other forms of direct judicial review) coming within the terms of Article I shall be terminated.

(iii) Neither the dismissal of the lawsuit, nor anything in this order, shall affect the ability of any foreign national to pursue other available remedies for claims coming within the terms of Article I in foreign courts or through the efforts of foreign governments.

(iv) The Attorney General shall enforce this subsection through all appropriate means, which may include seeking the dismissal, with prejudice, of any claim of a foreign national within the terms of Article I pending or filed in any court in the United States.

Sec. 2. For purposes of this order:

(a) The term "United States national" has the same meaning as "national of the United States" in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)), but also includes any entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches).

(b) The term "foreign national" means any person other than a United States national.

(c) The term "person" means any individual or entity, including both natural and juridical persons.

(d) The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

Sec. 3. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

DETERMINATION OF PRESIDENT

PRESIDENTIAL DETERMINATION NO. 2008-9

<Jan. 28, 2008, 73 F.R. 6571>

Waiver of Section 1083 of the National Defense Authorization Act for Fiscal Year 2008

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and section 1083(d) of the National Defense Authorization Act for Fiscal Year 2008 (the "Act") [Pub.L. 110-181, Div. A, Title X, § 1083(d), Jan. 28, 2008, 122 Stat. 338, set out as a note under this section], I hereby determine that:

• All provisions of section 1083 of the Act [Pub.L. 110-181, Div. A, Title X, § 1083, Jan. 28, 2008, 122 Stat. 338, see Tables for classifications to the Code], if applied to Iraq or any agency or instrumentality thereof, may affect Iraq or its agencies or instrumentalities, by exposing Iraq or its agencies or instrumentalities to liability in United States courts and by entangling their assets in litigation.

• The economic security and successful reconstruction of Iraq continue to be top national security priorities of the United States. Section 1083 of the Act threatens those key priorities. If permitted to apply to Iraq, section 1083 would risk the entanglement of substantial Iraqi assets in litigation in the United States_including those of the Development Fund for Iraq, the Central Bank of Iraq, and commercial entities in the United States in which Iraq has an interest. Section 1083 also would expose Iraq to new liability of at least several billion dollars by undoing judgments favorable to Iraq, by foreclosing available defenses on which Iraq is relying in pending litigation, and by creating a new Federal cause of action backed by the prospect of punitive damages to support claims that may previously have been foreclosed. If permitted to apply to Iraq, section 1083 would have a significant financial impact on Iraq and would result in the redirection of financial resources from the continued reconstruction of Iraq and the harming of Iraq's stability, contrary to the interests of the United States.

• A waiver of all provisions of section 1083 with respect to Iraq and any agency or instrumentality of Iraq is therefore in the national security interest of the United States and will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq.

• Iraq continues to be a reliable ally of the United States and a partner in combating acts of international terrorism. The November 26, 2007, Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship between the Republic of Iraq and the United States of America confirmed the commitment of the United States and Iraq to build an enduring relationship in the political, diplomatic, economic, and security arenas and to work together to combat all terrorist groups, including al-Qaida.

Accordingly, I hereby waive all provisions of section 1083 of the Act with respect to Iraq and any agency or instrumentality thereof.

You are authorized and directed to notify the Congress of this determination and waiver and the accompanying memorandum of justification, incorporated by reference herein, and to arrange for their publication in the **Federal Register**.

GEORGE W. BUSH

Notes of Decisions (517)

28 U.S.C.A. § 1605A, 28 USCA § 1605A
Current through P.L. 116-91. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 97. Jurisdictional Immunities of Foreign States

28 U.S.C.A. § 1606

§ 1606. Extent of liability

Effective: November 26, 2002
Currentness

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

CREDIT(S)

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2894; amended Pub.L. 105-277, Div. A, § 101(h) [Title I, § 117(b)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-491; Pub.L. 106-386, Div. C, § 2002(g)(2), formerly § 2002(f)(2), Oct. 28, 2000, 114 Stat. 1543, renumbered § 2002(g)(2), Pub.L. 107-297, Title II, § 201(c)(3), Nov. 26, 2002, 116 Stat. 2337.)

Notes of Decisions (102)

28 U.S.C.A. § 1606, 28 USCA § 1606
Current through P.L. 116-91. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 97. Jurisdictional Immunities of Foreign States

28 U.S.C.A. § 1608

§ 1608. Service; time to answer; default

Currentness

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services--and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state--

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made--

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

CREDIT(S)

(Added Pub.L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2894.)

Notes of Decisions (274)

28 U.S.C.A. § 1608, 28 USCA § 1608
Current through P.L. 116-91. Some statute sections may be more current, see credits for details.

End of Document

2019 WL 1787615
Only the Westlaw citation is currently available.
United States District Court, District of Columbia.

Darioush **RADMANESH**, Plaintiff,
v.
The GOVERNMENT OF the ISLAMIC REPUBLIC OF IRAN, Defendant.

Case No. 17-cv-1708 (GMH)
|
Signed 04/24/2019

Attorneys and Law Firms

Marc Christopher Lenahan, Lenahan Law, PLLC, Dallas, TX, for Plaintiff.

MEMORANDUM OPINION AND ORDER

G. MICHAEL HARVEY, UNITED STATES MAGISTRATE JUDGE

***1** This matter was referred to the undersigned for all purposes.[1] Plaintiff Darioush Radmanesh brought this action under the Foreign Sovereign Immunities Act's ("FSIA") state sponsor of terrorism exception ("terrorism exception"). 28 U.S.C. § 1605A. He seeks to hold the Government of the Islamic State of Iran ("Iran")[2] to account for the abuse and torment he suffered during the several years he was forced to live in Iran and for the three months he was forced to serve as a wartime soldier in the Iranian military.

Currently before the Court is Plaintiff's motion for entry of default judgment. After thorough review of the record,[3] and consideration of this Court's case law adjudicating similar actions against foreign sovereigns, Plaintiff's Motion will be denied, and his claims dismissed for want of subject matter jurisdiction.

I. LEGAL STANDARD FOR ENTRY OF A DEFAULT JUDGMENT AGAINST A FOREIGN SOVEREIGN

***2** The Federal Rules of Civil Procedure grant district courts discretion to enter a default judgment upon a party's motion. Fed. R. Civ. P. 55(b)(2). A default judgment is normally available when, as here, "the adversary process has been halted because of an essentially unresponsive party." *Jackson v. Beech*, 636 F.2d 831, 836 (D.C. Cir. 1980) (internal quotation marks omitted). The party seeking the judgment must demonstrate that the court has both subject matter jurisdiction over the action and personal jurisdiction over the absent defendant. *See Mwani v. bin Laden*, 417 F.3d 1, 6 (D.C. Cir. 2005); *Thuneibat v. Syrian Arab Republic*, 167 F.Supp.3d 22, 33 (D.D.C. 2016).

Additionally, before a default judgment can be entered against a foreign sovereign, the FSIA requires a plaintiff to establish "his claim or right to relief by evidence satisfactory to the court." *Thuneibat*, 167 F.Supp.3d at 33 (quoting 28 U.S.C. § 1608(e)). A court must thoroughly review a plaintiff's allegations and evidence against an absent foreign sovereign. *See Han Kim v. Democratic People's Republic of Korea*, 774 F.3d 1044, 1047 (D.C. Cir. 2014); *Bluth v. Islamic Republic of Iran*, 203 F.Supp.3d 1, 16–17 (D.D.C. 2016). While a court "may not unquestioningly accept a complaint's unsupported allegations as true," *Reed v. Islamic Republic of Iran*, 845 F.Supp.2d 204, 211 (D.D.C. 2012), "[u]ncontroverted factual allegations that are supported by admissible evidence are taken as true." *Thuneibat*, 167 F.Supp.3d at 33; *Roth v. Islamic Republic of Iran*, 78 F.Supp.3d 379, 386

(D.D.C. 2015). An evidentiary hearing is not required; rather, a "plaintiff may establish proof by affidavit." *Reed*, 845 F.Supp.2d at 212; *see also Mwani*, 417 F.3d at 7 ("In the absence of an evidentiary hearing, although the plaintiffs retain 'the burden of proving personal jurisdiction, [they] can satisfy that burden with a *prima facie* showing.' ... [T]hey may rest their argument on their pleadings, bolstered by such affidavits and other written materials as they can otherwise obtain." (quoting *Edmond v. U.S. Postal Serv. Gen. Counsel*, 949 F.2d 415, 424 (D.C. Cir. 1991))). The court may also "take judicial notice of related proceedings and records in cases before the same court." *Ben-Rafael v. Islamic Republic of Iran*, 540 F.Supp.2d 39, 43 (D.D.C. 2008).

II. PROCEDURAL HISTORY

Plaintiff filed suit in August 2017 (ECF No. 1) under the FSIA's terrorism exception to sovereign immunity. *See* 28 U.S.C. § 1605A. The statute allows service to be made upon a foreign state

> (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or
>
> (2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or
>
> (3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or
>
> (4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services--and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

***3** 28 U.S.C.A. § 1608(a). The Court took judicial notice, that there are no special arrangements for service between Iran and United States-based plaintiffs and that Iran is not a party to any applicable international convention on service of judicial documents. ECF No. 10; Minute Order dated March 2, 2018. Thus, the Court concluded service pursuant to 28 U.S.C. § 1608(a)(1) or (2) was not possible and authorized Plaintiff to attempt service in accordance with 28 U.S.C. 1608(a)(3). Minute Order dated March 2, 2018.

Plaintiff therefore attempted service on Iran by mailing a copy of the summons and complaint and notice of suit, along with a translation of those materials into Farsi, the official language of the Islamic State of Iran. *See* ECF No. 12 (certifying court mailing of the materials). Service was attempted on March 18, 2018, by the carrier DHL but was refused by Iran. ECF No. 13, ¶ 5. The Court, concluding Plaintiff could confirm only that service was attempted on Iran, notified Plaintiff he must clarify whether service by mail was attempted on IRGC before proceeding to attempt service on that entity pursuant to 28 U.S.C. § 1608(a)(4). Minute Order dated June 5, 2018.

After difficulty in ascertaining the state of mailed service on IRGC, in June 2018 Plaintiff filed a notice of voluntary dismissal of IRGC. ECF No. 17. In July 2018 the Court dismissed the claims against IRGC without prejudice. Minute Order dated July 26, 2018. Plaintiff then served Iran in accordance with 28 U.S.C. § 1608(a)(4) through diplomatic channels on October 1, 2018. ECF No. 18. Iran had until November 30, 2018 to respond to the complaint. *See* 28 U.S.C. 1608(d) ("[A] foreign state ... shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section"). Iran did not respond within the allotted time. *See* Minute Order dated January 24, 2019. At Plaintiff's request, the Clerk of the

Court entered default against Iran on December 10, 2018. ECF No. 19; ECF No. 20. Plaintiff now seeks a default judgement pursuant to Federal Rule of Civil Procedure 55(b)(2). ECF No. 21.

III. BACKGROUND

A. Findings of Fact

1. Forced to Stay in Iran

Plaintiff was born in Kirksville, Missouri in 1969. ECF No. 21-2, ¶ 4.1. Plaintiff's mother is American, a native of Kirksville. *Id.* His father is Iranian and met his mother while studying as an Iranian exchange student at Northeast Missouri State University. *Id.* Plaintiff was raised and remains a devout Christian. *Id.* In 1975, Plaintiff's family moved to South Carolina where Plaintiff's father received job training to become an engineer for Polyacryl Iran, a DuPont affiliate. *Id.*, ¶ 4.2. In 1978, after his father's training was complete, Plaintiff's family moved together to Isfahan, Iran, so his father could start his job with Polyacryl. *Id.*, ¶ 4.3. Plaintiff and his family were living in Iran during the Iranian Revolution in 1979. *Id.*, ¶ 4.4. After the Shah of Iran was overthrown, Plaintiff's father was charged and summarily convicted of treason against Iran. *Id.*, ¶¶ 4.6–4.7. Plaintiff and his family "were told that they would be executed as spies unless (1) they remained in Iran, and (2) Plaintiff's father trained Iranian citizens to be engineers capable of operating and maintaining the then shuttered, and soon to be nationalized factories." *Id.*, ¶ 4.7. Plaintiff believes that this "forced *quid pro quo*" saved the lives of his family, but "required they remain in Iran." *Id.*

***4** In the years that followed, Plaintiff alleges he "was coerced into [attending] the Iranianrun, Anti-American, school system."[4] *Id.*, ¶ 4.9. Although ten years old, Plaintiff was "pushed back to first grade" because he was deemed not proficient in Farsi or Arabic. *Id.*, ¶¶ 4.5, 4.9. Plaintiff alleges he was often "pushed to the ground, spat upon, and then kicked" by other students "while they chanted 'Death to Americans.' " *Id.*, ¶ 4.10. Sometimes during these attacks, Plaintiff could see the "school principal watching and laughing." *Id.* The Basaji—a youth paramilitary organization operating under the IRGC—also abused Plaintiff by shouting at him, "physically attacking" him, and drenching him in urine. *Id.*, ¶ 4.11. Plaintiff alleges he was once hospitalized after the Basaji "punched [him] in the face, knocked him to the ground, and kicked him all over his body." *Id.* Plaintiff suffered broken ribs (which never fully healed), contusions all over his body, lacerations, and a concussion from this attack. *Id.*

During this time, Plaintiff was exposed to "violence on the streets around him." *Id.*, ¶ 4.12. At the age of thirteen, Plaintiff witnessed a naked, pregnant woman being stoned to death. *Id.* He also witnessed the IRGC routinely mock, curse at, and beat his mother because she was American and a Christian. *Id.*, ¶ 4.13. After being expelled from school at the age of fifteen for refusing to step on the American flag, Plaintiff moved to Shaheen-Shahr, Iran, and went to work in a machine shop. *Id.*, ¶ 4.15. In August 1986, Iraqi jets bombed the machine shop in which Plaintiff worked. *Id.*, ¶ 4.16. After the attack, Plaintiff quit his job at the machine shop. *Id.*, ¶ 4.18.

2. Conscripted into Iranian Military

Around September 1986, Plaintiff, then sixteen years old, was "grabbed by the neck, dragged into a truck, and transported" to an Iranian military base. *Id.*, ¶ 4.19. There, he was told he had been conscripted and was now an Iranian soldier in the Iran-Iraq War. *Id.* He was forced to go through a version of basic training: "[h]is head was shaved," he was forced "to run for hours in the desert [in] ... extreme heat," and "to undergo training on RPG-7 Russian bazookas, hand-to-hand combat, knife-fighting," and "how to stealthily approach enemy soldiers to strangle them with wire." *Id.*, ¶ 4.20. Plaintiff was allowed "one phone call to tell his family good-bye" before being ordered into battle. *Id.*, ¶ 4.21.

During the ninety days he served in the military, Plaintiff was sent into battle where he witnessed members of his unit killed. *Id.*, ¶¶ 4.22–4.23. He also witnessed the IRGC use children to clear mine fields. *Id.*, ¶ 4.25. Plaintiff saw these children being killed by the mines and had to climb over their dead bodies. *Id.* Plaintiff alleges he was "continually surrounded by bodies of adults and children so badly injured that their remains were unrecognizable." *Id.* Eventually, Plaintiff was sent on a detail in Iraqi territory. *Id.*, ¶¶ 4.27–4.28. Before this mission, he was informed he was being "sent to [his] death ... so that the Khomeini government could proclaim him as an American Martyr for Islam." *Id.*, ¶ 4.27. During this mission, Plaintiff was "forced by his commander, at gunpoint, to shoot a sleeping Iraqi soldier in the head at point blank range." *Id.* at ¶ 4.28. Plaintiff survived the mission and was subsequently sent back to the front lines. *Id.*, ¶ 4.29. After one battle, Plaintiff was found delirious in a trench. *Id.* He was subsequently hospitalized, where doctors determined he had suffered a nervous breakdown and diagnosed him with post-traumatic stress disorder ("PTSD"). *Id.*, ¶ 4.29. He was sent home to his family in December 1986 for twoweeks of leave. During that leave, Plaintiff's family paid to have him smuggled out of Iran. *Id.*, ¶¶ 4.30–4.33.

3. After Leaving Iran

Plaintiff suffered from severe PTSD for six years following his escape from Iran. *Id.*, ¶ 4.34. During that time, he "could not bring himself to leave his room, preferring to stay in the dark with the blinds closed." *Id.* He was unable to attend school or keep a job for any meaningful length of time and underwent psychological and psychiatric treatment. *Id.* Plaintiff continues to suffer from flashbacks, panic attacks, nightmares, and insomnia. *Id.* Additionally, Plaintiff still suffers dizziness, numbness in his left hand, back pain, muscle spasms in his neck, and has "ribs that dislocate when he reclines in certain positions." *Id.*, ¶ 4.35.

B. Plaintiff's Claim for Relief

***5** Plaintiff avers he was taken hostage and tortured by Defendant. *See id.*, ¶¶ 4.5–4.35; ECF No. 1, ¶ 5.10–5.19. As a result, Plaintiff argues, Defendant is stripped of its sovereign immunity pursuant to 28 U.S.C. § 1605A(a)(1), and subject to tort liability pursuant to 28 U.S.C. § 1605A(c). Plaintiff claims that Defendant's hostage-taking and torture constituted following torts against him: assault, battery, false imprisonment, and intentional infliction of emotional distress. ECF No. 1, ¶¶ 5.20–5.35.

Plaintiff seeks $ 32,380,250 in compensatory damages and $ 300,000,000 in punitive damages. *Id.*, ¶¶ 6.14–6.30. He calculates his compensatory damages in three phases. First, he seeks $ 3,000 per day for the years he was forced to stay in Iran prior to his conscription. *Id.*, ¶¶ 6.14–6.15. Second, he seeks $ 250,000 per day for the 90 days he was forced to serve in the Iranian military. *Id.*, ¶¶ 6.17–6.18. Third, he seeks $ 100 per day for each day after his military service ended for the rest of his life. *Id.*, ¶¶ 6.19–6.20. Plaintiff also seeks $ 500,000 in economic damages for lost earnings resulting from the disruption of his education after the 1979 Iranian Revolution. *Id.*, ¶¶ 6.23–6.28.

IV. CONCLUSIONS OF LAW

A default judgment may be entered against a foreign sovereign defendant when (1) subject matter jurisdiction over the claims is established; (2) personal jurisdiction is properly exercised over the defendant; (3) the plaintiff has satisfactorily presented evidence establishing the defendant's liability to the plaintiff; and (4) the plaintiff has satisfactorily proven he is entitled to the monetary damages he seeks. *See Braun v. Islamic Republic of Iran*, 228 F.Supp.3d 64, 75 (D.D.C. 2017).

Section 1330(a) of Title 28 grants this Court original subject matter jurisdiction "without regard to amount in controversy" over (1) nonjury civil actions (2) as to any claim for relief *in personam* (3) against a foreign state (4) provided that the foreign state is not entitled to immunity under sections 1605–1607 of the FSIA. *See* 28 U.S.C. § 1330(a); *see also Reed*, 845 F.Supp.2d at 210; *Braun*, 228 F.Supp.3d at 75. The first three elements have plainly been met here. First, Plaintiff has brought a nonjury civil action. ECF No. 1 ¶ 1.1. Second, this is an action seeking relief *in personam*, rather than *in rem* (i.e., the Court is asked to exercise personal jurisdiction over Defendant as a legal person, and not to exercise such jurisdiction over any property). *See*

ECF No. 1 ¶ 3.2; *see also Reed*, 845 F.Supp.2d at 210 (finding "the court has personal jurisdiction over the defendant[, Iran,] as legal persons"). Third, Iran is a foreign sovereign. *See Braun*, 228 F.Supp.3d at 75, 87 n.3.

The fourth requirement for subject matter jurisdiction—that Defendant is not entitled to foreign sovereign immunity under the FSIA—requires further discussion. Plaintiff argues this Court has jurisdiction because Iran took him hostage and tortured him, both of which trigger the FSIA's terrorism exception to the sovereign immunity otherwise granted to foreign states. 28 U.S.C. § 1605A. That exception provides, in pertinent part:

> A foreign state shall not be immune from the jurisdiction of courts of the United 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, [or] hostage taking ... if such act ... 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.

***6** 28 U.S.C. § 1605A(a)(1). A victim seeking relief under this exception must prove that (1) "the foreign state was designated as a state sponsor of terrorism at the time the act ... occurred," § 1605A(a)(2)(A)(i)(I); (2) "the claimant or the victim was, at the time the act ... occurred a national of the United States," § 1605A(a)(2)(A)(ii)(I); (3) "in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration," § 1605A(a)(2)(A)(iii); and (4) an official, employee, or agent of the foreign state, while acting within the scope of his or her office, employment, or agency, (5) engaged in an act of hostage-taking or torture that caused personal injury or death, § 1605A(a)(1); *see also Mohammadi v. Islamic Republic of Iran*, 782 F.3d 9, 14 (D.C. Cir. 2015). While it is clear the second and third elements are satisfied,[5] the Court finds that (1) it is unclear whether all of the acts about which Plaintiff complains occurred after Iran's designation as a state-sponsor of terror and (1) in any case, Plaintiff has failed to satisfy the final two elements.

Plaintiff alleges he was taken hostage and tortured over a seven-year period between November 1979 and December 1986,[6] when he left Iran. *See* ECF No. 21-2 ¶¶ 4.5–4.31. The U.S. Department of State designated Iran a state-sponsor of terror in January 1984. State Sponsors of Terror, U.S. Dep't of State, https://www.state.gov/j/ct/list/c14151.htm (last visited Apr. 23, 2019). At least some of the alleged abuses Plaintiff suffered at the hands of Defendant occurred in the four years prior to Iran's designation but it is unclear from the record which those are. However, this question need not be resolved as, even assuming all of the alleged abuse occurred after Iran's designation, Plaintiff's claims still fail as they do not satisfy the fourth and fifth elements for establishing subject matter jurisdiction under the terrorism exception. Therefore, the Court's analysis proceeds on the assumption that all alleged abuse either occurred or continued to occur after Iran was designated a state-sponsor of terror.

***7** With regard to those two elements, Plaintiff must prove that an official, employee, or agent of the foreign state, while acting within the scope of his or her office, employment, or agency, engaged in an act of hostage-taking or torture that caused personal injury or death to Plaintiff. 28 U.S.C. § 1605A(a)(1). The FSIA incorporates the definition of "hostage-taking" included in the International Convention Against the Taking of Hostages. 28 U.S.C. § 1605A(h)(2). Thus, for purposes of the FSIA as:

> Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the 'hostage') in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of ... hostage-taking....

International Convention Against the Taking of Hostages art. 1, Dec. 17, 1979, 1316 U.N.T.S. 21931; 28 U.S.C. § 1605A(h)(2). In *Price v. Socialist People's Libyan Arab Jamahiriya*, the D.C. Circuit clarified that, because "[t]he definition speaks in terms of conditions of release[,] the defendant must have detained the victim in order to compel some particular result, specifically to force a third party either to perform an act otherwise unplanned or to abstain from one otherwise contemplated *so as to ensure the freedom of the detainee.*" 294 F.3d 82, 94 (D.C. Cir. 2002) (emphasis added).

Even considering the facts alleged in the light most favorable to Plaintiff, there is no indication that he was taken hostage as that term has been defined under the FSIA. Plaintiff avers that he was taken hostage by Iran to extract labor (training people to run factories) from his father; in other words, the "quid" was his father's labor in exchange for the "quo," Plaintiff's release. *See* ECF No. 21-2 ¶ 4.7. The alleged facts simply defy this conclusion. True, Plaintiff's family was required to remain in Iran. *Id.* But Plaintiff attended school, was free to move about his community, even volitionally moved to another city for a job. *Id.*, ¶ 4.15. In other words, Plaintiff and his family were prevented only from leaving the country or, put differently, engaging in international travel. Barring international travel does not, however, constitute hostage-taking. *See Mo-hammadi*, 782 F.3d at 16. In *Mohammadi*, the plaintiffs claimed their parents had been "taken hostage" because they were not allowed to leave Iran. *Id.* Rejecting that claim, the D.C. Circuit explained: "[e]ven if plaintiffs' parents are barred from traveling abroad from Iran, there is no allegation that they have been 'seized or detained' within Iran under any ordinary understanding of those terms. Courts thus have found 'hostage taking' in cases involving physical capture and confinement, not restrictions on international travel." *Id.*

Even if being forced to live in Iran were considered a "detention," there is no way to read the facts as conditioning Plaintiff's release on Iran extracting a concession (labor) from his father. As alleged, Iran extracted labor from Plaintiff's father in exchange for Plaintiff's and his family's lives; it was not a *condition of Plaintiff's release* from the country. ECF No. 21-2 ¶ 4.7 ("Plaintiff and his family were told they would be executed as spies" unless they stayed in the country and Plaintiff's father trained people to run the nationalized factories). While this is abhorrent behavior worthy of condemnation, the Court finds, based on the facts alleged, that Plaintiff was not taken hostage by Iran as that term is defined in the FSIA.

***8** Plaintiff's second theory—that he was tortured by Iran—fares no better. The FSIA incorporates the definition of "torture" from the Torture Victim Protection Act. 28 U.S.C. § 1605A(h)(7). It defines "torture" as "any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering ... whether physical or mental, is intentionally inflicted on that individual." Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1992); 28 U.S.C. § 1605A(h)(7). "Mental pain or suffering" is further defined as prolonged mental harm caused by or resulting from—

> (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
>
> (B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
>
> (C) the threat of imminent death; or
>
> (D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

Id.

In *Price*, the D.C. Circuit gave extensive consideration to what conduct should be deemed "torture" under the FSIA. 294 F.3d at 92–93. The D.C. Circuit determined that whether an act satisfied the statutory definition of torture required assessing two components: (1) the severity of the pain and suffering intended and actually inflicted on the victim, and (2) the purposes for which such pain and suffering were administered. *Id.* As to the severity component, *Price* instructed that the conduct at issue must be "sufficiently extreme and outrageous to warrant ... universal condemnation," and that "[t]he more intense, lasting, or heinous the agony, the more likely it is to be torture." *Id.* However, "torture does not automatically result whenever individuals in

official custody are subjected even to direct physical assault." *Id.* at 93. As the Circuit warned, "not *every* instance of excessive force used against prisoners[ ] is torture under the FSIA." *Id.* (emphasis in original). Rather, torture "is a label that is 'usually reserved for extreme, deliberate and unusually cruel practices,' " such as, "sustained, systematic beating, application of electric currents to sensitive parts of the body, and tying up or hanging in positions that cause extreme pain." *Id.* at 93–94 (quoting S. Exec. Rep. No. 101-30, at 14 (1990)); *see also Simpson*, 326 F.3d at 234 (holding that allegations that the plaintiff was "interrogated and then held incommunicado," "threatened with death ... if [she] moved from the quarters where she was held," and "forcibly separated from her husband," although reflecting a "bent toward cruelty," did not rise to the level of torture).

With respect to the purposes for which such pain and suffering is inflicted on the victim, the FSIA expressly condemns pain or suffering intentionally inflicted for "such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind." Torture Victim Protection Act, 106 Stat. 73; 28 U.S.C. § 1605A(h)(7). *Price* concludes that, while this list is not exhaustive, "[t]he 'for such purposes' language ... suggests that any non-enumerated purpose would have to be similar in nature to those mentioned in order to elevate an act of violence into an act of torture." 294 F.3d at 93. The production of pain must be "purposive, and not merely haphazard" and for a foreign state to lose its sovereign immunity, the state must "impose suffering cruelly and deliberately, rather than as the unforeseen or unavoidable incident of some legitimate end." *Price*, 294 F.3d at 93. To constitute torture, therefore, the conduct at issue must be "both intentional and malicious." *Id.*; *see also Han Kim*, 774 F.3d at 1050 ("[S]uffering alone is insufficient to establish a claim under the FSIA's terrorism exception. To qualify as torture, the mistreatment must be purposeful—that is, the defendant must have targeted the victim....").

***9** To determine whether Defendant tortured Plaintiff consistent with this definition, it is helpful to consider his experience in two phases: prior to his conscription and thereafter. Prior to conscription, Plaintiff alleges he was subjected to the following: verbal and physical abuse by his fellow students under the approving eye of a school official; verbal and physical abuse at the hands of the Basaji, resulting, at least once, in hospitalization; being forced to bear witness to extreme violence on the streets and to his mother being abused by the IRGC; and injuries sustained from an Iraqi military bombing [7] at his place of work. ECF No. 21-2 ¶¶ 4.8–4.18. As explained below, none of these incidents rises to the level of torture as the FSIA defines that term.

Plaintiff has failed to provide evidence that any of the acts committed against him prior to his conscription in the Iranian military were committed while Plaintiff was in Defendant's "custody or physical control." A sovereign cannot be found to have committed torture unless it had custody or physical control over the victim. Torture Victim Protection Act, 106 Stat. 73; 28 U.S.C. § 1605A(h)(7); *see also Valore v. Islamic Republic of Iran*, 700 F.Supp.2d 52, 74 (D.D.C. 2010) (holding that where defendants carried out a terrorist bombing, they had not engaged in torture because "the defendants ... never had custody or physical control over the victims"). As discussed above, while Plaintiff and his family were required to remain in Iran, there is no evidence that prior to conscription Plaintiff was in the custody or under the physical control of Defendant or its agents. Plaintiff attended school, freely moved about his community, even relocated to another town of his own volition. *See* ECF No. 21-2 ¶¶ 4.9, 4.12, 4.15. Plaintiff has alleged no facts to support a finding that his movement within Iran prior to conscription was restricted in any way. *See generally id.* Therefore, the alleged acts of violence against Plaintiff prior to his conscription fail to satisfy the statutory definition of torture in the FSIA.

Even assuming Plaintiff was in the custody or physical control of Defendant during the alleged abusive acts prior to his conscription, Plaintiff has failed to provide evidence that any of those acts meet the severity requirement established in *Price*. Assuming, for the sake of argument, that the abuse Plaintiff suffered at the hands of his fellow students and the Basaji can be fairly attributed to Iran, [8] Plaintiff must offer evidence that the acts against him were sufficiently severe to constitute torture. *See Price*, 294 F.3d at 92 ("The severity requirement is crucial to ensuring that the conduct proscribed ... is sufficiently extreme and outrageous to warrant ... universal condemnation"). The evidence proffered shows that Plaintiff was mistreated and abused by his fellow students while the school principal "watch[ed] and laugh[ed]." ECF No. 21-2 ¶ 4.10. Plaintiff was "pushed to the ground, spat upon, and then kicked" by students chanting "Death to Americans." *Id.* While this is harsh treatment, it is not "sufficiently extreme and outrageous to warrant ... universal condemnation." *See Price*, 294 F.3d at 92–94 (holding plaintiffs'

general complaint they were "kicked, clubbed, and beaten" by prison guards insufficient to satisfy the FSIA's "rigorous definition of torture").

***10** Plaintiff's claims regarding his treatment at the hands of the Basaji suffer the same defect. He was harassed, beaten quite badly on at least one occasion, and drenched with urine. ECF No. 21-2 ¶ 4.11. This constitutes abhorrent treatment, to be sure. However, "it is especially important for the courts to ensure that foreign states are not stripped of their sovereign immunity unless they have been charged with actual torture, and not mere police brutality." *Price*, 294 F.3d at 93. Under the FSIA, not all mistreatment at the hands of a foreign sovereign or its agents is actionable. *See id.* Though the Basaji may have harassed and abused Plaintiff under color of law, such treatment is simply not sufficiently extreme and outrageous to meet the "rigorous definition of torture" in the FSIA. *See Price*, 294 F.3d at 93; *cf. Han Kim*, 774 F.3d at 1051 (finding that the plaintiff met his burden of proving torture under the FSIA where he introduced "evidence that the regime abducted the [victim], that it invariably tortures and kills prisoners like him, and that it uses terror and intimidation to prevent witnesses from testifying"); *see also Nikbin v. Islamic Republic of Iran*, 471 F.Supp.2d 53, 62 (D.D.C. 2007) (finding a plaintiff tentatively made out an FSIA torture allegation where he alleged that he "was lashed forty times on particularly sensitive parts of his body with a weapon (a leather whip) designed for that exact purpose").

Regarding Plaintiff's claims he suffered for having to witness violence on the streets (e.g., the stoning to death of a pregnant woman) and the beating of his mother by the IRGC, Plaintiff has failed to allege any facts suggesting he was the intended target of such actions. As *Han Kim* makes clear "suffering alone is insufficient"; at a bare minimum to meet the purpose prong in *Price*, "the defendant must have targeted the victim." 774 F.3d at 1050. There are no facts in the record to support a finding that Plaintiff was the target of the violence he was made to witness. Therefore, the Court finds none of the alleged abusive acts by Defendant against Plaintiff prior to his conscription constitutes torture as it is defined in the FSIA.

Plaintiff's conscription into the Iranian military forces fails for similar reasons. Taking the facts he alleges as true, it is clear Plaintiff was in the custody or physical control of the Iranian military after his abduction in or about September 1986 when he was sixteen. *See* ECF No. 21-2 ¶ 4.19. However, all evidence in the record suggests that after Plaintiff was conscripted he was treated like any other solider: head shaved, forced to run, trained on use of weaponry and stealth tactics, transferred to a military base, sent in to battle as part of an artillery unit, commanded to fight through minefields. *Id.*, ¶¶ 4.19–4.29. The Court takes note of the gruesome nature of Plaintiff's wartime experience. Particularly disturbing was an incident in which Plaintiff was forced by his commanding officer to shoot a sleeping Iraqi soldier in the head at point blank range. *Id.*, ¶ 4.28. This experience, undoubtedly, has had and continues to have a lasting, detrimental effect on Plaintiff, but it is not at all clear that it satisfies the severity requirement of *Price*.[9]

***11** Even if forcing a child of sixteen into military battle were considered sufficiently extreme and outrageous to satisfy *Price*, it is not possible to conclude from the facts alleged that Plaintiff's wartime experience satisfies the *purpose* prong. The record indicates Plaintiff was a soldier in a war between Iran and Iraq for ninety days. ECF No. 1 ¶ 6.5; ECF No. 21-2 ¶¶ 4.19–4.29. Though conscription by a sovereign is not universally endorsed, Plaintiff's suffering does not appear to have been imposed for a purpose "similar in nature" to those expressly condemned by the FSIA (i.e., "obtaining from that individual ... information or a confession, punishing that individual for an act that individual committed or is suspected of having committed, intimidating or coercing that individual ... or for any reason based on discrimination of any kind"). *See* Torture Victim Protection Act, 106 Stat. 73; 28 U.S.C. § 1605A(h)(7). Further, such suffering does not appear to have been divorced from some legitimate end, i.e., to win the war. *See Price*, 294 F.3d at 93 (explaining, for a foreign sovereign to lose immunity, it must "impose suffering cruelly and deliberately, rather than as the unforeseen or *unavoidable incident of some legitimate end*"(emphasis added)). Thus, on the facts alleged by Plaintiff, his suffering as a wartime soldier was not *intentionally* inflicted by Defendant but, rather, was "unavoidable" as a means toward a "legitimate end." *See id.* Put differently, because the alleged facts suggest he was treated like any other soldier, Defendant did not cause Plaintiff's suffering cruelly and deliberately; rather, he suffered like any other conscripted soldier for having to fight in a war.

Although Plaintiff alleges that one of his commanders told him he was "going to be sent to death on a new assignment so that the Khomeini government could proclaim him as an American Martyr for Islam," ECF No. 21-2 ¶ 4.27, his description of that mission belies any discriminatory purpose. Plaintiff does not allege that he was sent alone. Indeed, he explains that he was "assigned to a new unit" of soldiers and accompanied by at least one "commander." *See id.*, ¶ 4.28 (explaining that during this mission, Plaintiff "was forced by his commander" to shoot an Iraqi soldier). Moreover, Plaintiff describes what appears to be a fairly typical military mission: helicoptering into Iraqi territory to help destroy an ammunition depot. *Id.* Plaintiff survived the mission and was returned to the front lines. *Id.*, ¶ 4.29. Shortly thereafter, Plaintiff suffered what he describes as "a severe nervous breakdown," and his superiors sent him home to recuperate. *Id.* This sequence of events does not suggest that Plaintiff was treated differently from any other soldier. For this reason, it is not plausible that Iran's purpose in sending Plaintiff into battle was discriminatory. Accordingly, while Plaintiff's experience was no doubt traumatic, Iran's purpose in subjecting him to it was not among those proscribed under the FSIA's definition of torture. Thus, the Court finds Plaintiff's forced military service does not constitute torture as it is defined in the FSIA.

Having found that Plaintiff has failed to allege facts to support a finding that Defendant engaged in acts of hostage-taking or torture against him, Plaintiff has failed to show that Defendant should be stripped of its sovereign immunity under 28 U.S.C. § 1605A(a). Plaintiff, therefore, has failed to establish subject matter jurisdiction in this court pursuant to 28 U.S.C. § 1330(a) and his claims must be dismissed.

V. CONCLUSION

For the reasons stated above, it is hereby **ORDERED** that Plaintiff's Motion for Default Judgment is **DENIED,** and his claims dismissed without prejudice for want of subject matter jurisdiction.

All Citations

Slip Copy, 2019 WL 1787615

Footnotes

1 Under the Federal Magistrate Act, magistrate judges may, with the consent of the parties, preside over "any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court." 28 U.S.C. § 636(c)(1). A party may, through conduct, impliedly consent to a magistrate judge's jurisdiction. *Roell v. Withrow*, 538 U.S. 580, 591, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003). On this basis, at least one court in this district has found a party's default effected consent to a magistrate judge's jurisdiction to decide a motion for default judgment. *See Baker v. Socialist People's Libyan Arab Jamahirya*, 810 F.Supp.2d 90, 98 (D.D.C. 2011) ("[D]efaulting nullifies any right to argue the absence of the magistrate judge's jurisdiction...."); *see also Wellness Int'l Network, Ltd. v. Sharif*, —— U.S. ——, 135 S.Ct. 1932, 1941, 1947–49, 191 L.Ed.2d 911 (2015) (applying *Roell*'s implied consent standard and holding that a bankruptcy judge may enter default judgment against an absent party where their defaulting conduct evinces consent to the bankruptcy judge's jurisdiction).

2 Plaintiff's complaint included claims against both Iran and the Army of the Guardians of the Islamic Revolution ("IRGC"). ECF No. 1. However, in June 2018 Plaintiff filed a notice of voluntary dismissal of IRGC. ECF No. 17. In July 2018, the Court dismissed the claims against IRGC without prejudice. Minute Order dated July 26, 2018.

3 The relevant docket entries are (1) Plaintiff's Complaint (ECF No. 1); (2) Minute Order dated March 2, 2018; (3) Certificate of Clerk Mailing Copy of Summons and Complaint to Iran (ECF No. 12); (4) Plaintiff's Affidavit Regarding Foreign Mailing (ECF No. 13); (5) Plaintiff's Notice of Dismissal of IRGC (ECF No. 17); (6) Minute Order dated July 26, 2018; (7) Return of Service Concerning Diplomatic Service (ECF No. 18); (8) Plaintiff's Motion for Entry of Default Judgment (ECF No. 21); (9) Declaration of Plaintiff in Support of Motion for Entry of Default Judgment (ECF No. 21-2); and (10) Plaintiff's Proposed Findings of Fact and Conclusions of Law in Support of Motion for Entry of Default Judgment (ECF No. 22). Citations to page numbers reflect the pagination assigned by the Court's Electronic Case Filing system.

4 The American School Plaintiff had previously attended was closed in the aftermath of the 1979 Revolution. ECF No. 21-2 ¶ 4.9.

5 Plaintiff was and remains a U.S. citizen and national. ECF No. 21-2 ¶ 3.1. Plaintiff also provided Iran an opportunity to arbitrate. *See* ECF No. 10 ¶ 5.d (requesting "two copies of Plaintiff's Offer to Arbitrate this matter together with translations of same into Farsi, the official language of the foreign state," be sent to Iran by the Clerk of the Court along with the summons and complaint). Iran did not respond to the offer to arbitrate. *See* Minute Order dated January 24, 2019. Nothing more is necessary to satisfy the requirement of an opportunity to arbitrate. *See Simpson v. Socialist People's Libyan Arab Jamahiriya*, 326 F.3d 230, 233–35 (D.C. Cir. 2003) ("a reasonable opportunity to arbitrate" need not precede the filing of the complaint).

6 The Court notes Plaintiff's claims may be untimely pursuant to 28 U.S.C. § 1605A(b), which requires, in relevant part, that the claim be filed within ten years after the cause of action occurred. Plaintiff left Iran on or about December 1986, more than thirty years prior to the filing of this claim. ECF No. 21-2 ¶¶ 4.29–4.31. It would be hard to argue Plaintiff's cause of action did not accrue then. Though this statute of limitations has been ruled non-jurisdictional, *Owens v. Republic of Sudan*, 864 F.3d 751, 801 (D.C. Cir. 2017), this Court has previously found in FSIA cases that it is within its discretion to raise the statute of limitations defense *sua sponte* on behalf of an absent sovereign. *Sheikh v. Republic of Sudan*, 308 F.Supp.3d 46, 50 (D.D.C. 2018), *reconsideration denied sub nom. Kinyua v. Republic of Sudan*, 326 F.R.D. 16 (D.D.C. 2018), *appeal docketed* No. 18-7060 (D.C. Cir. Apr. 26, 2018); *Maalouf v. Islamic Republic of Iran*, 306 F.Supp.3d 203, 208 (D.D.C. 2018), *appeal docketed* No. 18-7052 (D.C. Cir. Apr. 16, 2018). The Court need not address whether doing so would be appropriate in this case because, as discussed below, it has found other grounds on which Plaintiff's claims must be dismissed.

7 The Court finds no way to attribute this action to Iran. Plaintiff was working in a machine shop of his own volition (ECF No. 21-2 ¶ 4.15) ("Plaintiff secured an apprenticeship at a machine shop"), and no facts in the record support a finding Iran was responsible for the Iraqi military's actions that day.

8 There is a lack of evidence to support such a finding in either instance. Plaintiff asserts the Basaji is a "youth paramilitary organization operating under Defendant IRGC," but offers no evidence beyond this bare assertion to support such a finding. ECF No. 21-2 ¶ 4.11. He offers nothing whatsoever in this regard with respect to the classmates in his school who assaulted him. *See generally id.*

9 Plaintiff does not cite any authority for the proposition that conscription meets the definition of "torture" under the FSIA. Historical precedent suggests the conclusion that it does not. Conscription, while far from universally endorsed by the international community, is not an uncommon practice. *See World Factbook*, Central Intelligence Agency, https://www.cia.gov/library/publications/the-world-factbook/fields/333.html (last visited Apr. 24, 2019) (listing Brazil, Denmark, Greece, Israel, Mexico, Singapore, South Korea, and Vietnam among the many countries that currently conscript members of their armed forces). The United States government has employed conscription in five conflicts: the Civil War, World War I, World War II, the Korean War, and the Vietnam War. Matthew Ivey, *The Broken Promises of an All-Volunteer Military*, 86 Temp. L. Rev. 525, 532–38 (2014); *see also Gillette v. United States*, 401 U.S. 437, 462, 91 S.Ct. 828, 28 L.Ed.2d 168 (1971) (recognizing that the impact of the United States' conscription laws on "objectors to particular wars is far from unjustified" because, among other things, those laws promote "the Government's interest in procuring the manpower necessary for military purposes, pursuant to the constitutional grant of power to Congress to raise and support armies."); *cf. Ghebremedhin v. Ashcroft*, 385 F.3d 1116, 1120 (7th Cir.), opinion modified on reh'g, 392 F.3d 241 (7th Cir. 2004) (observing in the asylum context, "Although it is well established that governments may draft citizens for military service and punish those who avoid the draft ... it may be persecution to punish those who evade the draft based on genuine religious objections to military service." (internal citations omitted)). The history of conscription in the United States and elsewhere supports the conclusion that forced military service is not "sufficiently extreme and outrageous to warrant ... universal condemnation." *See Price*, 294 F.3d at 92.

End of Document

2019 WL 4169822
Only the Westlaw citation is currently available.
United States District Court, District of Columbia.

Darioush **RADMANESH**, Plaintiff,

v.

The GOVERNMENT OF the ISLAMIC REPUBLIC OF IRAN, Defendant.

Case No. 17-cv-1708 (GMH)

|

Signed September 3, 2019

Attorneys and Law Firms

Michael A. Yanof, Marc Christopher Lenahan, Lenahan Law Firm, Dallas, TX, for Plaintiff.

MEMORANDUM OPINION AND ORDER

G. MICHAEL HARVEY, UNITED STATES MAGISTRATE JUDGE

***1** Before the Court is Plaintiff Darioush Radmanesh's motion for a new trial following the denial of his motion for default judgment under the Foreign Sovereign Immunities Act's ("FSIA") state sponsor of terrorism exception ("terrorism exception") and the dismissal of this action for lack of subject matter jurisdiction. 28 U.S.C. § 1605A; ECF No. 25; ECF No. 26. [1] For the reasons that follow, Plaintiff's motion is denied.

I. BACKGROUND

A. Factual Background

The factual background for this case is described in detail in the Court's April 2019 Memorandum Opinion and Order denying default judgment and dismissing the case. *See Radmanesh v. Gov't of Islamic Republic of Iran*, No. 17-CV-1708 (GMH), 2019 WL 1787615 (D.D.C. Apr. 24, 2019). The following discussion reiterates only the facts that are necessary to resolve the pending motion and to provide context for the new facts Plaintiff has introduced in conjunction with that motion. ECF No. 26. The Court will discuss allegations Plaintiff included in his complaint (ECF No. 1) and in a declaration accompanying his motion for entry of default judgment (ECF No. 21-2), as well as the new allegations Plaintiff included in a supplemental declaration attached to the present motion (ECF No. 26).

1. Plaintiff's Allegation that He Was Forced to Stay in Iran

In Plaintiff's first declaration, he alleged that he is a U.S. citizen born in Kirksville, Missouri to an American mother and an Iranian father. ECF No. 21-2 at 2. In 1978, the family moved to Isfahan, Iran where his father was employed with Polyacryl Iran, a DuPont affiliate. *Id.* In 1979, during the Iranian Revolution, Plaintiff and his family were told they would be executed as spies unless they remained in Iran and his father trained Iranian engineers. *Id.* at 3–4; ECF No. 1 at 5–6. In a supplemental declaration attached to the pending motion, Plaintiff now alleges that his family was "also placed on house arrest as a condition

of [his] father's conviction." ECF No. 26 at 3, 10. Plaintiff specifies that his mother "had to inform the Iranian authorities every time [he] went to the store, walked to a friend's house, or even played in the yard." *Id.* at 3. The only activities excused from this reporting requirement were travelling to the state school Plaintiff was forced to attend and his eventual conscription into the Iranian military. *Id.* Plaintiff also notes that two and a half years of this house arrest occurred after the United States designated Iran as a state sponsor of terrorism in 1984. *Id.* at 4.

2. Plaintiff's Allegation that He Was Conscripted into the Iranian Military

***2** Plaintiff said in his prior declaration that he was forcibly conscripted into the Iranian military at the age of sixteen to fight in the Iran-Iraq War as an Iranian solider. ECF No. 21-2 at 7. Plaintiff underwent basic training and was sent on missions. *Id.* This included being sent into battle and watching children and adults be killed by landmines. *Id.* at 8. Plaintiff was also forced to shoot a sleeping Iraqi soldier "in the head at point blank range" while on a mission. *Id.* In his supplemental declaration accompanying the present motion, Plaintiff now claims he was treated differently as an American citizen serving in the Iranian military, stating "Iranian officials in the military made it clear [that American citizens] were placed in more dangerous and precarious situations because our death would serve Iran's interests as an American martyr having died fighting for Iran." ECF No. 26 at 10. He further states that punishments were harsher for American soldiers than for Iranian soldiers. *Id.* at 10. By way of example, Plaintiff explains that while an Iranian soldier who spoke out of turn or failed to follow orders "might only be responded to with a rebuke, an American soldier ... would be killed or placed in solitary confinement." *Id.* at 10–11.

B. Procedural History

Plaintiff filed his complaint in August 2017 under the FSIA's terrorism exception to sovereign immunity. *See* 28 U.S.C. § 1605A. Plaintiff served Iran in accordance with 28 U.S.C. § 1608(a)(4) and through diplomatic channels on October 1, 2018. ECF No. 18. Iran did not respond to Plaintiff's complaint, and at Plaintiff's request, the Clerk of the Court entered default against Iran on December 10, 2018. ECF No. 19; ECF No. 20.

Plaintiff then moved for default judgment. ECF No. 21. The Court denied the motion for default judgment and dismissed Plaintiff's complaint for want of subject matter jurisdiction. *See Radmanesh*, 2019 WL 1787615, at *11. The Court found that (1) it was unclear whether all of Defendant's actions towards Plaintiff took place after Iran's designation as a state-sponsor of terrorism, and (2) Plaintiff failed to plausibly state a claim that "an official, employee, or agent of the foreign state, while acting within the scope of his or her office, employment, or agency, ... engaged in an act of hostage-taking or torture that caused personal injury or death." *Id.* at *6–7 (quoting 28 U.S.C. § 1605A(a)(1)).

Specifically, the Court found Plaintiff's allegations that Iran had prohibited his family from leaving the country did not amount to hostage-taking because its purpose was not "to force a third party either to perform an act otherwise unplanned or to abstain from one otherwise contemplated *so as to ensure the freedom of the detainee.*" *Radmanesh*, 2019 WL 1787615, at *7 (emphasis in original) (quoting *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 94 (D.C. Cir. 2002)). The Court also found that the acts prior to Plaintiff's conscription were not torture because there was no evidence Plaintiff was in the custody or control of Iran at the time the alleged abused occurred. *Id.* at *9. The alleged abuse was also not "sufficiently extreme and outrageous to warrant ... universal condemnation." *Price*, 294 F.3d at 93–94. Finally, the Court found that Plaintiff's conscription was not torture because its purpose was for him to serve in the military, not something " 'similar in nature' to those [purposes] expressly condemned by the FSIA (i.e., 'obtaining from that individual ... information or a confession, punishing that individual for an act that individual committed or is suspected of having committed, intimidating or coercing that individual ... or for any reason based on discrimination of any kind')." *Radmanesh*, 2019 WL 1787615, at *11 (quoting Torture Victim Protection Act, 106 Stat. 73).

Plaintiff filed the present motion on May 22, 2019. ECF No. 26. That motion is currently ripe for adjudication.

II. LEGAL STANDARD

On a Rule 59(e) motion, "[t]he moving party carries the burden of demonstrating that relief under Rule 59(e) is warranted." *Owen-Williams v. BB & T Inv. Servs., Inc.*, 797 F. Supp. 2d 118, 124 (D.D.C. 2011). In considering a Rule 59(e) motion, a court may alter or amend a judgment for one of three reasons: (1) an intervening change of controlling law; (2) the availability of new evidence; or (3) the need to correct a clear error or prevent manifest injustice. *See Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996). The purpose of Rule 59 is not to relitigate old issues; nor is it a vehicle for a losing party to take a "second bite at the apple." *Paleteria La Michoacana, Inc. v. Productos Lacteos Tocumbo S.A. De C.V.*, 247 F. Supp. 3d 76, 107 (D.D.C. 2017) (quoting *Ashraf-Hassan v. Embassy of France*, 185 F. Supp. 3d 94, 112 (D.D.C. 2016) *aff'd*, 695 F. App'x 579 (D.C. Cir. 2017)); *see also New York v. United States*, 880 F. Supp. 37, 38–39 (D.D.C. 1995) (observing that a Rule 59(e) motion is not "an opportunity to reargue facts and theories upon which a court has already ruled," and explaining that the moving party "must establish more than simply [its] continued belief that the court's decision was erroneous"). Therefore, "a losing party may not use a Rule 59 motion to raise new issues that could have been raised previously." *Kattan ex rel. Thomas v. District of Columbia*, 995 F.2d 274, 276 (D.C. Cir. 1993), *as amended* (June 30, 1993). [2]

***3** A district court has discretion in deciding Rule 59(e) motions. *See, e.g., Ciralsky*, 355 F.3d at 673 ("A Rule 59(e) motion is discretionary and need not be granted." (quoting *Firestone*, 76 F.3d at 1208)); *Fox v. Am. Airlines, Inc.*, 389 F.3d 1291, 1296 (D.C. Cir. 2004) (stating "[a] Rule 59(e) motion is discretionary"). Motions for altering or amending a judgment are generally disfavored and courts in non-jury cases should be reluctant to set aside what they have previously decided. *See Paleteria La Michoacana*, 247 F. Supp. 3d at 92.

III. CONCLUSIONS OF LAW

Beyond his general contention that the Court erred in denying Plaintiff's motion for default judgment, Plaintiff argues the Court should amend its judgment to account for new evidence and to correct legal errors. As to evidence, Plaintiff has submitted a supplemental declaration attesting to "new" facts, which he contends make clear that certain allegations occurred after Iran's designation as a state sponsor of terrorism. He also presents new facts that he claims undermine the Court's conclusion that Iran did not take him hostage. On the law, Plaintiff argues that the Court made the following three errors: (1) incorrectly raising a statute of limitations issue (ECF No. 26 at 1–2); (2) failing to analyze Plaintiff's alleged conscription "in the context of Iran's treatment of an American citizen merely residing in Iran" (*id.* at 2); and (3) misconstruing the law as to whether house arrest can be considered imprisonment (*id.* at 6). As explained below, the Court finds that the allegations in Plaintiff's supplemental declaration are not new evidence and that Plaintiff's legal arguments are unavailing.

A. New Evidence

Plaintiff presents no new evidence to demonstrate the need for a rehearing. "New evidence" under Rule 59(e) must satisfy two conditions: (a) it must be newly discovered or have been previously unavailable despite the exercise of due diligence, and (b) it must create a material dispute of fact. *See Johnson v. District of Columbia*, 266 F. Supp. 3d. 206, 211–12 (D.D.C. 2017). If evidence is not new, a court cannot consider it when deciding a Rule 59 motion. *See Kattan*, 995 F.2d at 276. This is because, as explained above, a Plaintiff may not use a Rule 59 motion to relitigate old theories and issues. *See Paleteria La Michoacana*, 247 F. Supp. 3d at 107.

Plaintiff's proffered evidence is not new. Rather, the facts alleged in his supplemental declaration were within his personal knowledge about his experience in Iran. Such facts are not considered newly discovered or previously unavailable. *See Niedermeier v. Office of Baucus*, 153 F. Supp. 2d 23, 29 (D.D.C. 2001). This is especially true of a movant's own recollections. *See Rann v. Chao*, 209 F. Supp. 2d 75, 82 (D.D.C. 2002) (stating that the movant's sudden recollection of facts pertinent to the outcome of the case was a "transparent attempt ... to save his case"), *aff'd*, 346 F.3d 192 (D.C. Cir. 2003); *see*

also Artis v. Bernanke, 256 F.R.D. 4, 6 (D.D.C. 2009) (finding that the movant's recent recollections contradicting other evidence in the record were not new evidence because they could have been raised earlier). Accordingly, the facts alleged in Plaintiff's supplemental declaration are not new evidence under Rule 59 because they were not newly discovered or previously unavailable. [3]

B. Mistakes of Law

1. The Court Did Not Rule on the Statute of Limitations

***4** Plaintiff argues the Court erred by noting in a footnote a potential statute of limitations issue. *See* ECF No. 26 at 2. In the footnote, the Court observed that "Plaintiff's claims may be untimely" but also noted "[t]he Court need not address" whether it would be appropriate to raise the statute of limitations issue *sua sponte* because "it has found other grounds on which Plaintiff's claims must be dismissed." *Radmanesh*, 2019 WL 1787615, at *6 n.6. The D.C. Circuit subsequently held that a district court cannot find a plaintiff's FSIA claim untimely *sua sponte. See Maalouf v. Islamic Republic of Iran*, 923 F.3d 1095, 1112 (D.C. Cir. 2019) (holding that the statute of limitations defense under the FSIA is an affirmative defense that a court may not raise on behalf of an absent defendant). Plaintiff argues that *Maalouf* should affect this Court's decision dismissing his case. ECF No. 26 at 2. Plaintiff is mistaken.

The Court's "final judgment must be 'dead wrong' to constitute clear error." *Nanko Shipping, USA v. Alcoa, Inc.*, 118 F. Supp. 3d 372, 375 (D.D.C. 2015) (quoting *Lardner v. FBI*, 875 F. Supp. 2d 49, 53 (D.D.C. 2012)). Stated another way, there must be " 'a clear conviction of error' before finding a final judgment was predicated on clear error." *Lardner*, 875 F. Supp. 2d at 53 (quoting *Lightfoot v. District of Columbia*, 355 F. Supp. 2d 414, 422 (D.D.C. 2005)). Further, "to warrant reversal, the error must have been prejudicial: It must have affected the outcome of the district court proceedings." *Sibert-Dean v. Wash. Metro. Area Transit Auth.*, 826 F. Supp. 2d 266, 272 (D.D.C. 2011) (quoting *Czekalski v. LaHood*, 589 F.3d 449, 453 (D.C. Cir. 2009)), *aff'd*, 721 F.3d 699 (D.C. Cir. 2013).

Here, the Court merely observed that there "may" be a statute of limitations issue. *Rad-manesh*, 2019 WL 1787615, at *6 n.6. Noting that the authority to raise the limitations defense *sua sponte* was then an open question pending before the Circuit, the Court expressly declined to rule on the issue. *Id.* ("The Court need not address whether [raising the statute of limitations defense] would be appropriate in this case."). The Court's footnote discussing that potential issue was not an error.

2. Citizenship and Conscription

Plaintiff also argues that the Court failed (a) to analyze Plaintiff in the context of his American citizenship, and (b) to properly consider the special harm posed by the conscription of an American citizen into a foreign government's army. ECF No. 26 at 2, 5–6. These arguments fail for several reasons.

First, the Court's prior opinion did analyze Plaintiff's allegations in the context of his American citizenship. In the factual background of that decision, the Court noted that "Plaintiff was born in Kirksville, Missouri in 1969. Plaintiff's mother is American, a native of Kirksville." *Radmanesh*, 2019 WL 1787615, at *3. The Court also found that Plaintiff satisfied the second element for recovery under the FSIA, which is that "the claimant or the victim was, at the time the act ... occurred a national of the United States." *Id.* at *6; 28 U.S.C. § 1605A(a)(2)(A)(ii)(I). This discussion makes it clear that the Court considered Plaintiff's allegations in the context of his American citizenship.

Second, Plaintiff overstates the importance his citizenship should have on the Court's analysis of whether he stated a claim for torture under the FSIA. The FSIA incorporates the Torture Victim Protection Act's definition of "torture," which is: "any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering ... whether

physical or mental, is intentionally inflicted on that individual." Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1992); 28 U.S.C. § 1605A(h)(7). In *Price*, the D.C. Circuit explained that courts should assess two elements in determining whether a plaintiff has stated a claim under this definition: (1) the severity of the pain and suffering intended and inflicted on the victim, and (2) the purposes for which the pain and suffering were administered. 294 F.3d at 92–93.

***5** As the Court noted in its prior decision, to satisfy the severity prong, a plaintiff must allege conduct that is " 'sufficiently extreme and outrageous to warrant ... universal condemnation,' ... '[t]he more intense, lasting, or heinous the agony, the more likely it is to be torture.' " *Radmanesh*, 2019 WL 1787615, at *8 (alteration in original) (quoting *Price*, 294 F.3d at 92–93). The Court observed that "all evidence in the record suggests that after Plaintiff was conscripted he was treated like any other [soldier]: head shaved, forced to run, trained on use of weaponry and stealth tactics, transferred to a military base, sent into battle as part of an artillery unit, commanded to fight through minefields." *Id.* at *10. The Court therefore concluded that it was "not at all clear that [Plaintiff's allegations] satisfie[d] the severity requirement of *Price*." *Id.*

Plaintiff contends that the Court should have found his allegations satisfied the severity prong, arguing, "[i]t is bad enough Iran forced its own citizens to witness and participate in [atrocities]. To force a U.S. citizen to do so, against his will, is torture." ECF No. 26 at 5. However, the Court's previous decision found that, even assuming Plaintiff's allegations satisfied the *Price* test's severity prong, they still failed to state a claim for torture because they did not satisfy the purpose prong. *See Radmanesh*, 2019 WL 1787615, at *11 ("Even if forcing a child of sixteen into military battle were considered sufficiently extreme and outrageous to satisfy *Price*, it is not possible to conclude from the facts alleged that Plaintiff's wartime experience satisfies the *purpose* prong."). Plaintiff makes no substantive argument for why the Court should revisit its conclusion that he failed to satisfy the purpose prong. *See* ECF No. 26 at 5 (arguing at the end of a single sentence that Iran subjected Plaintiff and his family to the conditions they endured "for no other purpose than to intimidate and strike fear in the child and his family"). Therefore, that argument is forfeit. *See, e.g.*, *CTS Corp. v. EPA*, 759 F.3d 52, 64 (D.C. Cir. 2014) (argument made in conclusory fashion forfeited); *Cruz v. Kelly*, 241 F. Supp. 3d 107, 113 n.4 (D.D.C. 2018) (issue raised in opening brief without support or discussion may be deemed forfeited), *appeal docketed* No. 17-5113 (D.C. Cir. May 22, 2017); *Anglers Conservation Network v. Pritzker*, 139 F. Supp. 3d 102, 116 n.10 (D.D.C. 2015) (argument not made in opening brief forfeited).

Further, it is unclear why Plaintiff believes that conscription of U.S. citizens by a foreign government is sufficiently extreme and outrageous to be considered torture. He may mean: (a) that although conscription might not otherwise be severe enough to constitute torture if done to a country's own citizens, it can become so severe if done to noncitizens; or (b) that conscription is severe enough to constitute torture whenever it is inflicted *because* the victim is a U.S. citizen. In either case, Plaintiff's argument is unavailing.

To the extent that Plaintiff argues the experience of being conscripted by a foreign government is inherently more severe than being conscripted by one's own government, he cites no authority to support that conclusion. As with conscription writ large, Plaintiff has presented no evidence suggesting that conscription of non-citizen residents is "sufficiently extreme or outrageous to warrant ... universal condemnation." *Price*, 294 F.3d at 92–93. Indeed, the United States requires male non-citizen permanent residents between the ages of 18 and 26 to register for the draft. *See* 50 U.S.C. § 3802(a) ("Except as otherwise provided ... it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who ... is between the ages of eighteen and twenty-six, to present himself for and submit to registration [for the Selective Service].").

***6** On the other hand, if Plaintiff's argument is that conscription necessarily becomes conduct severe enough to constitute torture whenever it is undertaken because of a conscript's U.S. citizenship, that argument must also fail. For one thing, that approach to analyzing severity would collapse the two-part test announced in *Price*, folding the purpose prong into the severity analysis. *See Price*, 294 F.3d at 92–93. Moreover, adopting such an approach would mean that many, if not most, FSIA cases brought by U.S. citizens alleging torture by a foreign sovereign would be deemed sufficient because these cases frequently involve allegations of mistreatment as a result of U.S. citizenship. Plaintiff cites no authority compelling such a result. Indeed, the D.C. Circuit has indicated that, to the contrary, "torture is a label that is 'usually reserved for extreme, deliberate and unusually cruel practices, for example, sustained systematic beating, application of electric currents to sensitive parts of the

body, and tying up or hanging in positions that cause extreme pain.' " *Simpson v. Socialist People's Libyan Arab Jamahiriya*, 326 F.3d 230, 234 (D.C. Cir. 2003) (quoting *Price*, 294 F.3d at 92–93). The Circuit has given no indication that practices that are less extreme or cruel should be considered more severe when they are undertaken because of a victim's U.S. citizenship, and as explained above and in the Court's previous decision, it is not clear that Plaintiff's allegations regarding his conscription describe conduct severe enough to constitute torture. *See Radmanesh*, 2019 WL 1787615, at *8–10.

The Court declines to revisit that finding based on the Plaintiff's recently-recalled, conclusory allegations that "Iranian officials made it clear [American citizens] were placed in more dangerous and precarious situations" and that American citizens, unlike Iranians would face death or solitary confinement for "speaking out of turn" or "not strictly following orders." ECF No. 26 at 10–11. Even if these allegations constituted new evidence for purposes of a Rule 59 motion—which they do not—Plaintiff provides no explanation for how the unnamed Iranian officials "made it clear" to him that Americans would be treated differently or what "more dangerous and precarious situations" they might be subjected to. Plaintiff's sparse allegations provide "no useful details" that could "reasonably support a finding that the [conditions during Plaintiff's conscription] evinced the degree of cruelty necessary to reach a level of torture." *Price*, 294 F.3d at 93.

For all of these reasons, the Court rejects Plaintiff's invitation to reconsider its determination that he failed to state a claim of torture under the FSIA.

3. Hostage Taking

Citing *Ilchuk v. Att'y Gen. of the United States*, 434 F.3d 618, 623 (3d Cir. 2006), Plaintiff argues that the Court should have found he properly alleged hostage taking under the FSIA because Iran held his family under house arrest. ECF No. 26 at 6. This curious argument is unavailing for several reasons, not least of all because the present motion is the first time Plaintiff has alleged that he was held under house arrest. As discussed above, this belated assertion is not new evidence that warrants consideration on a Rule 59 motion.

In any event, Plaintiff's new allegations do not describe conditions that rise to the level of pervasive custodial control generally contemplated by the phrases "house arrest" or "home confinement." For example, Congress recently required persons placed in "home confinement" to (a) be subject to 24-hour electronic location monitoring, and (b) remain within their residence unless they receive permission from the Bureau of Prisons to attend certain enumerated activities. First Step Act of 2018, PL 115-391, December 21, 2018, 132 Stat. 5194, 5211; *see also United States v. Fogel*, 829 F.2d 77, 80 (D.C. Cir. 1987) (describing a sentence of house arrest that permitted the defendant to leave his home only for doctor's appointments and religious ceremonies and subjected him to the "supervision of a of a probation officer who will monitor your every movement by surveillance, daily phone checks, and frequent unscheduled home visits"). Plaintiff has not alleged this level of surveillance and custodial control. He alleges only that Iran required his mother to notify government officials when he would leave his home or school to "go[ ] to the store, walk[ ] to a friend's house, or play[ ] outside." ECF No. 26 at 10. Although Plaintiff alleges that he was under "constant and continuous scrutiny" and was "watched by Iranian officials," this does not describe pervasive surveillance equivalent to electronic monitoring, phone checks, or unscheduled house visits. *Id.* Further, Plaintiff does not allege that he had to request permission to leave his house. Indeed, he does not allege any restrictions at all on his travel within the country. Instead, he indicates that all his mother had to do was report his whereabouts to the Iranian government. *Id.* Satisfying such a reporting requirement hardly amounts to house arrest or detention, and it is certainly not a hostage taking.

***7** Moreover, the out-of-circuit case Plaintiff cites has no bearing on his FSIA hostage taking claim. The petitioner in *Ilchuk* challenged the finding of the Department of Homeland Security that he was subject to removal from the United States under the Immigration Nationality Act ("INA") because he'd been convicted of an "aggravated felony." *Ilchuk*, 434 F.3d at 621. The INA defines aggravated felony to include only those theft offenses with a term of imprisonment of at least one year, and the petitioner therefore argued that his conviction for fraud of services was not an aggravated felony because he had been sentenced

to home confinement with electronic monitoring rather than a prison term. *Id.* at 623. The Third Circuit rejected that argument, finding that a sentence of house arrest qualified as imprisonment under the INA. *Id.* at 623–24.

It is unclear what this has to do with Plaintiff's hostage taking claim. The FSIA's definition of hostage taking does not call for the Court to decide whether something is "imprisonment," but rather whether a defendant has "seize[ed] or detain[ed] and threaten[ed] to kill, to injure or to continue to detain another person ... in order to compel a third party." 28 U.S.C. § 1605A(h)(2); International Convention Against the Taking of Hostages art. 1, Dec. 17, 1979, 1316 U.N.T.S. 21931. Moreover, it is worth noting that the *Ilchuk* court distinguished the INA's definition of imprisonment from that in the Federal Sentencing Guidelines, which several circuits have interpreted not to include house arrest or home detention. *Ilchuk*, 434 F.3d at 623 n.4; *see also United States v. Gordon*, 346 F.3d 135, 137–139 (5th Cir. 2003) (collecting cases and finding that the Sentencing Guidelines distinguish between imprisonment and home detention). Plaintiff explains neither why the INA's definition of imprisonment should trump that of the Sentencing Guidelines, nor why either is of any utility in determining the sufficiency of his claims under the FSIA's definition of hostage taking.

Finally, Plaintiff's motion fails to address the Court's principal reason for finding his allegations of hostage taking inadequate: his failure to allege conditions for his release. In its previous decision, this Court explained that "because '[t]he definition [of hostage-taking] speaks in terms of conditions of release[,] the defendant must have detained the victim in order to compel some particular result, specifically to force a third party either to perform an act otherwise unplanned or to abstain from one otherwise contemplated *so as to ensure the freedom of the detainee.*' " *Radmanesh*, 2019 WL 1787615, at *7 (quoting *Price*, 294 F.3d at 94); *see also Simpson*, 326 F.3d at 234–35 ("The essential element of the hostage-taking claim is that the intended purpose of the detention [is] to accomplish ... third-party compulsion...."). This Court found that although Iran allegedly compelled Plaintiff's father to train Iranian engineers, this extraction of labor was "in exchange for Plaintiff's and his family's lives [and] not a *condition of Plaintiff's release* from the country." *Id.* As such, "there is no way to read [the ban on international travel] as conditioning Plaintiff's release on Iran extracting a concession (labor) from his father." *Id.* Plaintiff's allegation that his "house arrest" amounted to hostage taking fails for the same reason. He never even alleges, much less demonstrates, that his release from house arrest was conditioned on Iran's extraction of labor from his father. Rather, he alleges that the house arrest was a "condition of the father's conviction." ECF No. 26 at 3, 10. Thus, Plaintiff's argument that the Court should reconsider its finding that his allegations failed to state a claim of hostage taking under the FSIA fails. [4]

IV. CONCLUSION

***8** For the reasons stated above, it is hereby **ORDERED** that Plaintiff's Motion for New Trial is **DENIED**.

All Citations

Slip Copy, 2019 WL 4169822

Footnotes

1 Despite its caption, Plaintiff appears to bring a motion to alter or amend a judgment under Rule 59(e). There are two Rule 59 provisions that permit parties to bring motions: Rule 59(a), which allows motions for new trials; and Rule 59(e), which allows motions to alter or amend judgments. *See* Fed. R. Civ. P. 59. Plaintiff does not specify which provision he invokes here, but since there has been no trial in this case, the Court construes his motion as seeking relief under Rule 59(e). *See Am. Bar Ass'n v. U.S. Dep't of Educ.*, No. CV 16-2476 (TJK), 2019 WL 2211208 (D.D.C. May 22, 2019) (evaluating a Rule 59(e) motion to alter or amend a judgment following the court's grant of summary judgment), *appeal docketed*, No. 19-5213 (D.C. Cir. July 31, 2019); *cf. Kareem v. F.D.I.C.*, 811 F. Supp. 2d 279, 283 (D.D.C. 2011) (holding that a motion for a new trial under Rule 59(a) is not ripe where the case was dismissed before trial), *aff'd*, 482 F. App'x 594 (D.C. Cir. 2012).

2 Courts appear to apply materially similar standards for resolving motions brought under Rule 59 subsections (a) and (e). *Compare Ashraf–Hassan*, 185 F. Supp. 3d at 112–13 (D.D.C. 2016) (explaining that a Rule 59(a) "motion for a new trial ... should be based upon

manifest error of law or mistake of fact, and a judgment should not be set aside except for substantial reasons," including new evidence and prevention of injustice (quoting Wright & Miller, 11 *Fed. Prac. and Proc.* § 2804 (3d ed.))), *with Ciralsky v. CIA*, 355 F.3d 661, 671 (D.C. Cir. 2004) ("A Rule 59(e) motion ... need not be granted unless ... there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." (quoting *Firestone*, 76 F.3d at 1208)).

3 Regarding Plaintiff's contention that some of the facts alleged in the supplemental declaration explain which of his allegations followed Iran's designation as a state sponsor of terror, this evidence also fails to satisfy Rule 59's materiality requirement. The Court's analysis in its previous decision proceeded expressly "on the assumption that all alleged abuse either occurred or continued to occur after Iran was designated as a state-sponsor of terrorism." *Rad-manesh*, 2019 WL 1787615, at *6. Accordingly, because the Court's decision to dismiss Plaintiff's complaint did not depend on finding that any of Plaintiff's allegations predated Iran's 1984 designation, evidence purporting to refute such a finding does not create a material dispute of fact, and therefore cannot justify reconsideration under Rule 59. *See Johnson*, 266 F. Supp. 3d. at 212.

4 Plaintiff also asserts that "[p]rolonged house arrest for an adolescent and teenage child, when he has done nothing warranting it, is sustained, systematic abuse" and that "[t]hese undisputed facts—over many years—constitute torture." ECF No. 26 at 5. This argument appears to challenge the Court's finding that Plaintiff's allegations concerning mistreatment prior to conscription failed to make out an FSIA torture claim because he had not "provide[d] evidence that any of those acts me[t] the severity requirement established in *Price*." *Radmanesh*, 2019 WL 1787615, at *9. It relies on his assertion that he was subject to house arrest, which, for the reasons discussed above, is not new evidence meriting reconsideration under Rule 59. Moreover, Plaintiff provides no argument for why the Court should reconsider its decision regarding the torture allegations for the time prior to his conscription. Accordingly, this perfunctory argument is forfeit. *See CTS Corp.*, 759 F.3d at 64.

End of Document