

DIVISION D: OTHER MATTERS

TITLE III — VICTIMS OF TERRORIST ATTACKS ON U.S. RIGHTS ACT

SEC. 4301. SHORT TITLE.

This title may be cited as the “Victims of Terrorist 1998 Embassy Bombings on U.S. Rights Act.”

SEC. 4302. FINDINGS; PURPOSE.

(a) Findings. — Congress finds the following:

- (1) On August 7, 1998, Al Qaeda terrorists attacked the United States Embassy in Nairobi, Kenya, and the United States Embassy in Dar es Salaam, Tanzania (hereafter referred to as the “1998 Embassy Bombings”).
- (2) The 1998 Embassy Bombings on the United States caused loss of life and great injury and damage to thousands of Americans, Kenyans, and Tanzanians.
- (3) Al Qaeda and its affiliates and co-conspirators received financial and other support which facilitated the 1998 Embassy Bombings and continue to receive financial and other support, which endangers the United States and its allies.
- (4) In *Mwani et.al. v. Al Qaeda et.al.* Case No. 99-125, in the United States District Court for the District of Columbia (the “Federal Litigation”) the District Court correctly described the 1998 Embassy Bombings as “one of the most grotesque and depraved acts imaginable.” The District Court also properly awarded individual damages against Al Qaeda in favor of 351 Kenyan plaintiffs of five million dollars in compensatory damages for non-economic injuries per plaintiff, plus prejudgment interest, plus \$150 million per eligible plaintiff as punitive damages (the “Damages Award”), and properly found that those damages, established during a bellwether evidentiary hearing, applied to all eligible Kenyan victims of the 1998 Embassy Bombings.

(b) Purpose.—The purpose of this Act, and the amendments made by this Act, is to strengthen the cooperation between the United States and Kenya and between the United States and Tanzania in the fight against terrorism by establishing the eligibility of the Kenyan, Tanzanian and American victims and their surviving spouses in the Victim Compensation Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act, codified at 42 U.S.C. § 10609 (2015), and by directing the distribution to Kenyans holding judgments against Al Qaeda as a result of the 1998 Embassy Bombings of funds of Al Qaeda held or frozen by OFAC, and to provide a recovery to the surviving spouses of Kenyans, Tanzanians and Americans killed in the 1998 Embassy Bombings, and to provide and define a right of action to Kenyans, Tanzanian and

Americans and the surviving spouses of Kenyans, Tanzanians and Americans killed in the 1998 Embassy Bombings against financial institutions which provided support to Al Qaeda.

SEC. 4303. AMENDMENT OF THE U.S. VICTIMS OF STATE SPONSORED TERRORISM ACT.

(a)

- (1) Section 34 U.S.C. § 20144(b) (1)(A)(iii) of the victims of the August 7, 1998, bombings of the United States Embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, is amended by adding the “1998 Embassy Bombings” after “victims of” state sponsor of terrorism.
- (2) Section 34 U.S.C. § 20144(c)(2)(A)(i) is amended to add “and arising out of the 1998 Embassy Bombings” after “state sponsor of terrorism.”
- (3) Section 34 U.S.C. § 20144(c)(2) is amended by deleting “or” at the end of 34 U.S.C. § 20144(c)(2)(A)(ii).
- (4) Section 34 U.S.C. § 20144(c)(2) is amended by replacing the period at the end of 34 U.S.C. § 20144(c)(2)(C)(ii) with “or.”
- (5) Section 34 U.S.C. § 20144(c)(2) is amended by adding: “(D) a holder of a judgment, or the surviving spouse or next of kin of a holder of a judgment against Al Qaeda in the Federal Litigation.
- (6) Section 34 U.S.C. § 20144(c)(2) is amended by adding: “(E)(i) a named plaintiff, or the surviving spouse or next of kin of a named plaintiff in the Federal Litigation, or (ii) a client of plaintiffs’ counsel of record in the Federal Litigation, pursuant to a written engagement or acknowledgment of engagement executed on or before December 31, 2011, and provided further that a person eligible under (c)(E)(ii), through counsel of record in the Federal Litigation, provides with the claim probative evidence in the form of declarations filed as Exhibit C1 in ECF 150 (the Litigation Declaration”) establishing that such person suffered material non-economic injuries as a result of the 1998 Embassy Bombings.
- (7) Section 34 U.S.C. § 20144(c)(2) is amended by adding: “(F) a citizen or resident of Kenya, Tanzania or the United States who was injured or who sustained a loss as a result of the 1998 Embassy Bombings and the personal representative or surviving spouse of a citizen or resident of Kenya, Tanzania or the United States who was injured or who sustained a loss as a result of the 1998 Embassy Bombings, provided that (a) the citizen, resident, personal representative or surviving spouse timely filed a claim on Form 95 with the United States Department of State; or, (b) a citizen and employee of the United

States, or his or her personal representative or surviving spouse either (i) filed, caused to be filed, or had filed on behalf of the US citizen and employee, on or before August 7, 2008, individually or otherwise, a statement, report, claim or notice, including medical or psychological statements, reports, claims or notices, which disclosed, asserted or claimed a loss or injury as a result of the 1998 Embassy Bombings or as a result of the terrorism-related events and conditions at the Embassy in 1998, or (ii) the citizen and employee of the United States was listed among the personnel records of the United States as an employee providing services, or scheduled or employed to provide services at or on behalf of the Embassy in 1998, or (iii) a citizen and employee of the United States was at, in or near the Embassy during or immediately following the Embassy Bombing.

(8) Section 34 U.S.C. § 20144(c) is amended by adding: “(G) a citizen or resident of Kenya, Tanzania or the United States who directly sustained material non-economic injuries as a result of the 1998 Embassy Bombings and the personal representative or surviving spouse of a citizen or resident of Kenya, Tanzania or the United States who directly sustained material non-economic injuries as a result of the 1998 Embassy Bombings, provided that the citizen, resident, personal representative or surviving spouse establishes by probative evidence material non-economic injuries caused directly by the 1998 Embassy Bombings, such evidence to include a declaration similar in form to the Litigation Declaration and corroborative evidence.”

(b) Section 34 U.S.C. § 20144 (j)(4) is amended by adding the following: All judgments entered on May 20, 2022, ECF 164, in the Federal Litigation shall be considered final judgments for purposes of this Act.

Section 34 U.S.C. § 20144 (j)(8) is amended by adding:

“Notwithstanding the preceding provisions, for the purposes of this Act, all persons who meet the requirements of 42 U.S.C. § 10609(c)(2)(D), (E), (F), or (G) are U.S. Persons.”

(c) adding Section 42 U.S.C. § 20144(k) of the U.S. Victims of State Sponsored Terrorism Act as follows:

(1) All persons who meet the requirements of 42 U.S.C. § 10609(c)(2)(D) or (E) have a right of action for damages against any foreign terrorist organization or financial institution which provided material financial support to Al Qaeda prior to the 1998 Embassy Bombings.

(2) Any right of action in paragraph (1) shall be brought in the United States District Court for the District of Columbia, and shall be filed no earlier than January 1, 2023, and no later than August 7, 2023.

(d) adding Section 34 U.S.C. § 20144(l) of the U.S. Victims of State Sponsored Terrorism Act as follows:

(i) A claimant eligible under (c)(2)(D) or (E) shall be conclusively presumed and deemed to have sustained injury and damage as a result of the 1998 Embassy Bombings in the amount of the Damages Award; (ii) a claimant eligible under (c)(2)(E) or (c)(2)(F) shall be conclusively presumed to have sustained injury and damage as a result of the 1998 Embassy Bombings in the amount of the Damages Award provided that a claimant eligible under (c)(2)(E) or (c)(2)(F) provides probative evidence of material non-economic injury from the 1998 Embassy Bombings in the form of a Litigation Declaration; (iii) a claimant eligible under (c)(G) shall be presumed to have sustained material non-economic injury and damage as a result of the 1998 Embassy Bombings in the amount of the Damages Award provided that a claimant eligible under (c)(G) provides probative evidence of material non-economic injury in the form of a Litigation Declaration and corroboration; and (iv) subject to (i), (ii) and (iii), an eligible claimant who does not meet the requirements of (i), (ii) or (iii), or who elects not to proceed exclusively under (i), (ii) or (iii), is entitled to compensation if the Administrator of the Fund or Special Master determines that the eligible claimant suffered material non-economic injury or damage as a result of the 1998 Embassy Bombings, or suffered economic injury or damage as a result of the 1998 Embassy Bombings and if the Administrator of the Fund or Special Master is further able to make a calculation of damages pursuant to regulations or guidelines similar to the Gulf Coast Claims Facility Protocol for Interim and Final Claims, dated November 22, 2010.

“Any award or distribution from the Fund arising out of a claim based on the 1998 Embassy Bombings shall (i) be deemed a recovery pursuant to any contingency fee agreement between the claimant and claimant’s counsel, and (ii) the lesser of the contingency fee percentage in the contingency fee agreement or 25% of the award or distribution shall be deemed payable to counsel pursuant to the contingency fee agreement or, in the event that claimant had not entered into a written fee agreement for the claim, recovery, award or distribution prior to December 31, 2011, 25% of the award or distribution from the Fund to such claimant shall be due to and payable in equal pro rata amounts to claimants eligible under (c)(4) or (c)(5).

(ii) 0.5 percent of each distribution under this statute, up to a cumulative total of two million dollars, shall be withheld by the Fund and contributed to the maintenance and operation of the Peace Memorial in Nairobi, Kenya.

(e) DEFINITIONS. — Section 34 U.S.C. § 20144 is amended by adding:

“(m) Foreign terrorist organization” means foreign organizations that are designated as such by the Secretary of State in accordance with section 219 of the Immigration and Nationality Act (INA), as amended.

“Financial institution” means any domestic or foreign public or private bank or its subsidiary or parent.

SECTION 4304. AMENDMENT OF 22 U.S. Code § 8772

(a) add to the Title “and Al Qaeda”

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(a) add to the Title “and Al Qaeda”

(b) add to Section 8772(a)(1):

“(D) a blocked asset of Al Qaeda (whether or not subsequently unblocked), or an asset that would be blocked if the asset were located in the United States.”

(c) add to Section 8772(a)(2):

All blocked assets of Al Qaeda shall be turned over, released, and paid to the counsel of record for the named plaintiffs in the Federal Litigation for distribution to and as part of the recovery of eligible claimants under (c)(2)(D) and (c)(2)(E), to the extent that unsatisfied judgments against Al Qaeda entered, in that case, exceed the amount of the blocked assets to be turned over, released, and paid. Prior to an award turning over, releasing, or paying blocked assets of Al Qaeda, the district judge or magistrate judge assigned to the Federal Litigation shall determine the extent that which unsatisfied judgments against Al Qaeda entered, in that case, exceed the amount of the blocked assets to be turned over, released and paid, and such turnover, release, and payment shall not exceed the amount by which the unsatisfied judgments against Al Qaeda exceed the amount of the blocked assets to be turned over, released and paid.

SEC. 4305 NOTICE TO EMPLOYEES AND CITIZENS

(a) The rights and remedies in this statute shall be included in any training programs on terrorism provided or conducted by the State Department, Department of Justice, or Department of Defense.

(b) In the event of a terrorist attack directed at an American embassy or other facility or property overseas, the State Department shall, within ninety (90) days of the attack, provide in writing notice of the rights and remedies in this statute to all employees of the embassy, facility or property which was the subject of the attack and to all American citizens who had registered in writing with the applicable embassy their presence in the foreign state in which the embassy, facility or property was situated.

LAWS. — The laws described in this subparagraph are:

- (i) The US Victims of State Sponsored Terrorism Act, 34 U.S.C. § 20144 *et. seq.*
- (ii) 22 U.S. Code § 8772

TECHNICAL AND CONFORMING AMENDMENTS:

DRAFT LEGISLATION