STATEMENT OF
STEVEN R. PERLES
BEFORE THE
HOUSE COMMITTEE ON
FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON MONETARY POLICY AND TRADE
JULY 17, 2014

Chairman Campbell, Ranking Member Clay, and members of the Subcommittee, my name is Steven R. Perles, founder and senior partner in the Perles Law Firm, PC, and I appreciate the opportunity to appear before you to discuss judgment enforcement in civil litigation on behalf of U.S. citizens killed or injured as a result of acts of state-sponsored terrorism. I have represented significant numbers of Americans who were tragically murdered or injured in acts of Iranian, Syrian, Sudanese, Libyan and Palestinian terrorism. What I would like to speak about today is a judgment enforcement which is a story of a public-private partnership and the proper role of the U.S. government in these cases. In my experience, since 1995, these cases achieve their greatest success when the U.S. government empowers the American victims by assisting with evidence, identifying assets of the terrorists or their sponsors and by staying neutral when the sponsors of terrorism attempt to leverage ongoing negotiations with the U.S. government for aid and support in the court cases against them. While an administrative reclassification of assets would be preferable to legislation, I support relief no matter how it arrives for the FARC victims. Allowing the victims of FARC terrorism to pursue the assets of FARC sponsors would promote the goals of TRIA, namely, victim compensation and the deterrence of terrorism.

In 1996, my firm was one of the first to file lawsuits on behalf of American victims of terrorism. We have seen the field of anti-terrorism litigation grow in cases against sovereign states and foundations and corporations that allegedly aided and abetted acts of terrorism. Anti-terrorism civil litigation has always been about deterring those who would materially support terrorism, as terrorists from Abu Nidal to Bin Laden have all relied on someone else to provide their support, be it financial or otherwise. Some of these sponsors are states like the Islamic Republic of Iran and some are private actors, including the international financial institutions that facilitate the movement of funds destined for terrorist entities.

The first successes in anti-terrorism litigation were won against Iran, but only after I brought an ultimately successful case called *Princz v. Federal Republic of Germany* against the Federal Republic of Germany on behalf of all Jewish survivors of the Nazi concentration camp system who held a U.S. passport at the time of their incarceration. Though the underlying facts in *Princz* had nothing to do with terrorism, slaving a U.S. national in Auschwitz and incinerating a U.S. national in a bus bombing give rise to the same sovereign immunity issues. Thus, *Princz* led to my first case against Iran, a notorious state sponsor of terrorism.

In 1995, the Shaqaqi faction of the Palestine Islamic Jihad detonated a bomb that destroyed an Israeli bus and killed twenty-year-old Alisa Flatow. At this point in time, victims of terrorism like Alisa and her family had only an administrative remedy. In theory, the State Department could have espoused their claim and demanded compensation from Iran. They did not, and up until this point had never done so. Congress responded to the total lack of remedies for U.S.

terrorism victims inn 1996, using then-D.C. Circuit Judge Patricia Wald's dissenting opinion in *Princz* for guidance, Congress passed a new exception to the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1605(a)(7), for lawsuits "against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking." This exception denied sovereign immunity to any foreign state that sponsored a terrorist attack upon U.S. citizens, as long as the state had already been officially recognized as a state sponsor of terrorism by the U.S. Department of State.

Following this amendment, I represented this family in *Flatow v. Islamic Republic of Iran*,[1] the first case against Iran for state sponsorship of terrorism under the FSIA. The *Flatow* case documented the links between the terrorist group that carried out the attack and Iran, which acted as a sponsor for the group through the provision of support and training. In *Flatow*, for the first time, a court found a foreign state liable for its sponsorship of a terrorist group that killed a U.S. citizen and awarded damages of roughly $229 million. Around the same time, together with my co-counsel Thomas Fay, I brought a case in the United States District Court for the District of Columbia against Iran for its complicity in the 1983 marine barracks bombing in Beirut, Lebanon that caused the death of over 240 servicemen, captioned *Peterson v. Islamic Republic of Iran*. Judge Royce C. Lamberth authored a May 30, 2003 opinion finding Iran liable based upon the clear and convincing evidence linking Iran to the 1983 attack.[2] Subsequently, Judge Lamberth entered judgment against Iran for the 1983 bombing in excess of $4 billion.[3] We currently are enforcing this judgment on behalf of over 1,200 plaintiffs against Iranian assets worth $1.9 billion in the United States District Court for the Southern District of New York.[4] It should be noted that we were greatly aided in this effort by the provision of information under seal by the Department of Treasury, which is an appropriate role of government in these cases. The process by which Treasury cooperates with private victims of terrorism, and its intersection with TRIA, will be discussed in greater detail below.

At times, the U.S. government has been a strong supporter of anti-terrorism litigation, and the State Department has been able to play a constructive role in the past. In 2008, there were a number of cases in U.S. courts progressing against Libya to provide compensation for its sensational acts of terrorism against U.S. citizens in 1980s and 1990s, including the survivors of the 1986 LaBelle Discothèque bombing. Libya, anxious to reestablish relations with the United States, was unable to make much progress as State Department officials and members of Congress blocked rapprochement until the claims were satisfied. The primary cases that drove the agreement with Libya forward were the Lockerbie Pan Am 103 bombing and the LaBelle discotheque bombing case. In August 2008, the governments of Libya and the U.S. reached an agreement where Libya agreed to pay the U.S. $1.5 billion in settlement of all outstanding claims.[5] Though many victims were dissatisfied with this result and felt the U.S. government made a politically expedient settlement at the expense of fair compensation of all victims and survivors of Libyan terrorism, the level of U.S. government participation in the vindication of private causes of action was unique. While it may have been preferable to see more done on

[1] 999 F. Supp. 1 (D.D.C. 1998).
[2] *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46 (D.D.C. 2003).
[3] *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25 (D.D.C. 2007).
[4] *Peterson v. Islamic Republic of Iran*, CA 10-4518 (KBF), 2013 U.S. Dist. LEXIS 40470 (S.D.N.Y. Feb. 28, 2013).
[5] Libyan Claims Resolution Act, Pub. L. No. 110-301, 122 Stat. 2999 (2008).

behalf of victims, U.S. government support for the Libyan cases was vital to their eventual settlement. The resolution of the Libya cases in 2008-10 for Libya's past acts of state sponsorship of terrorism illustrates how advocates for victims of state sponsorship of terrorism can provide ammunition to the State Department in its advancement of U.S. policy and how the two can work together to achieve their goals. Such a public-private partnership does not happen often because of the absence of an institutional voice for victims of terrorism at the State Department. Moreover, it should be noted that the administrative settlement of claims against Libya, technically called an espousal, was only possible because of the leverage exerted by billions of dollars in private claims authorized by the *Flatow* amendment. Under the U.S. espousal, U.S. injury victims received a minimum payment of $3,000,000 each. Under a similar process in Germany, a country lacking the kind of private judicial remedies afforded by the *Flatow* amendment, injury victims received approximately $300,000 each.

In addition, other organs of the Executive Branch have played an instrumental role in several Foreign Sovereign Immunities Act (FSIA) cases against the Islamic Republic of Iran and the Syrian Arab Republic. In some cases preexisting administrative discretion allows for quick flexible cooperation from the Executive Branch. Under subpoena, the Office of Foreign Asset Control at Department of Treasury has provided information regarding the location of frozen assets of Iran or Syria to U.S. victims of terrorism as judgment creditors. In two of my cases, this has led to compensation for my clients and I must thank the Department of Treasury for acting in a thoroughly cooperative and professional manner. In *Gates v. Syrian Arab Republic*, I along with my co-counsel, John Salter and former governor of Georgia, Roy Barnes, represent two families who each lost a family member in 2004 to horrific Syrian state-sponsored beheadings carried out by Al Qaeda in Iraq. DC federal court awarded a final judgment for $412,909,857, which we sustained against a Syrian appeal. Under subpoena and a protective order from the Court, the Department of Treasury cooperated quickly and efficiently to provide a list of Syrian assets which had been blocked under the operative Syrian sanctions regime. Using TRIA as a statutory enforcement mechanism, my clients then successfully restrained and won an award in excess of $80,000,000 in Syrian assets in Illinois, which was recently confirmed on appeal.[6] In *Peterson v. Islamic Republic of Iran*, along with co-counsel, I won an award of $2,656,944,877 against the Islamic Republic of Iran for the death of over two hundred and forty United States servicemen and injury to hundreds more, as a result of the Iranian state-sponsored terrorism bombing at the Beirut Marine barracks in 1983. Again, under subpoena and protective order from the Court, the Department of Treasury cooperated quickly and efficiently to provide a list of Iranian assets which had been blocked under the operative Iranian sanctions regime. As mentioned above, using TRIA as a statutory enforcement mechanism, my clients then successfully restrained and won an award against of nearly $1.9B in Iranian assets in New York City, which was recently confirmed on appeal.[7]

Executive discretion once aided the victims of terrorism in the *650 5th Avenue* case in the United States District Court for the Southern District of New York.[8] For years, several groups of terrorism victims have worked hand-in-hand with U.S. federal prosecutors in a civil forfeiture case against the office tower at 650 Fifth Avenue, which belongs to groups which have allegedly

[6] *Gates v. Syrian Arab Republic*, 2014 U.S. App. LEXIS 11811 (7th Cir. Ill. June 18, 2014).
[7] *Peterson v. Islamic Republic of Iran*, 2014 U.S. App. LEXIS 13038 (2d Cir. N.Y. July 9, 2014).
[8] *In re: 650 Fifth Avenue and Related Properties*, CA 08-10934 (KBF).

money laundered for Iran and violated U.S.-Iran sanctions. As a result of this cooperation, the U.S. government plans to sell the building and turn over the proceeds to the families of those victims of Iranian terrorism who have worked with the government. This cooperation runs both ways. Whenever legally permissible, I have provided information to U.S. government agencies to assist in their legal efforts against terrorists and their supporters.

Now that you have a few concrete examples of how the public-private partnership has contributed to real-world aid for terror victims and staggering costs for sponsors of terrorism, I would like to provide you with a step-by-step breakdown of how such cooperation comes to be, and the role that TRIA plays.

First, a victim of terrorism or their family, must obtain a valid final judgment against the relevant state sponsor of terrorism and a 28 U.S.C. § 1610(c) order. To do this, the victim must initiate civil litigation in the U.S. pursuant to 28 U.S.C. § 1605A, which developed from the 1995 *Flatow* amendment. The plaintiff in a *Flatow* amendment case must first serve a copy of the lawsuit (translated into the foreign language) on the defendant foreign sovereign and then prove that their harm was the result of an act of terrorism sponsored by a country listed on the State Department's State Sponsors of Terrorism list. The claimant or victim must be a U.S. citizen or alternatively, the victim must have been a foreign national killed or injured in service to the U.S. (e.g. a foreign State Department employee, or a non-citizen member of the U.S. armed forces). After proving these elements and winning a judgment, the claimant must serve a copy of the final judgment and then wait for a sufficient period for that State to respond (usually sixty days). After the required notice period has passed, the judge issues a § 1610(c) order which allows the claimant to begin enforcing the court judgment.

After a judgment is issued TRIA may be applicable. For TRIA to apply, an asset of the terror sponsor must be blocked (almost always for reasons independent of the civil litigation). For this to happen the President must issue a blocking order describing a specific category of financial assets. Because State sponsors of terror are often subject to sanctions they are frequent targets for presidential blocking orders. Next, financial institutions receive and process those blocking orders, blocking and segregating any assets they hold which meet the President's description. Any financial institution taking action under the blocking order must notify the Department of the Treasury within ten days of doing so. Rather than collect the assets, the Treasury simply maintains a database of blocked assets, which remain segregated within their original financial institutions.

Lastly, the judgment must be enforced. Since the sponsors of terrorism are often already subject to U.S. sanctions, their financial transactions are carried out in a clandestine manner in the U.S. In addition, only the assets of the State itself may be attached, not the assets of private citizens. Thus, enforcement of these judgments is much more about asset location than judicial proceedings to attach those assets. There are several ways to go about locating assets of terrorism sponsors. One way is to hire professional "asset hunters" such as forensic accountants. Another way is enlist the cooperation of the Department of Treasury in searching its blocked asset database.

To get information from the Treasury database, the claimant must first issue a subpoena to OFAC pursuant to their ongoing civil litigation against the state sponsor of terrorism. If OFAC believes the subpoena is sufficiently specific, it will respond. This process is usually iterative, as OFAC and the claimant gradually narrow down the scope of the subpoena. OFAC will not release raw data (i.e. the full database or any unfiltered subsection thereof) or any information that will interfere with an ongoing OFAC investigation. Moreover, OFAC will only release the requested information under seal, and before doing so OFAC will file a motion for a protective order with the judge presiding over the trial. Once issued, the protective order acts as a guarantee of criminal penalties if the attorney misuses the information, i.e. breaks the seal.

Once the information released by OFAC helps the claimant locate a blocked asset of the state sponsor, that claimant must initiate enforcement proceedings in federal district court in the jurisdiction where the asset is located. All enforcement proceedings in the federal court system, terrorism-related or otherwise, are governed by state law, so the procedures vary from state-to-state. Moreover, given the courts' tendency towards public dissemination of judicial opinions, the OFAC data does eventually become public.

When *Flatow v. Islamic Republic of Iran* was decided, this public-private partnership did not exist. All terror victims had to go find assets through a conventional asset search. Moreover, when they eventually did find assets without the assistance of the U.S. government, the Treasury took the position that the immunity of the U.S. itself protected assets that had been blocked, and that the exceptions to the FSIA, such as the *Flatow* amendment, were therefore irrelevant. TRIA fixed this problem, and so I tend to think of it as a legislative waiver of U.S. sovereign immunity. In contemporary practice, TRIA lets us get at the assets that Treasury discloses pursuant to subpoena.

This brings us to the issue at hand. I am inherently sympathetic to the plight of FARC terrorism victims and would like to see their judgment enforced. That said, when modifying legislation with such a direct effect on complex litigation, you must be conservative and careful. I see no structural impediment to administratively fixing this problem. The Administration should be provided a reasonable opportunity to timely correct this failure before the law is changed; it should be given the chance to simply re-designate FARC assets from drug kingpin assets to terrorism assets, thereby bringing them within the scope of the current TRIA language. In addition, the Administration's technical comments should also be solicited. As a parallel example, the *Flatow* amendment only became necessary when Congress became convinced that the executive could not or would not offer a viable remedy for terror victims. When amending this sort of legislation, the highest order of business should be to do no harm by unintended consequence. On the other hand, over-cautiousness should not be allowed to impede the enforcement of legitimate grievances against terrorist states.