

**Testimony Submitted to the House Committee on Financial Services  
November 13, 2014**

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Chairman Hensarling, Ranking Member Waters, and other distinguished members of the House Committee on Financial Services:

Permit me to begin by thanking you for inviting me to testify before the Committee on the timely and important topic of the primary sources of funding for the Islamic State of Iraq and Syria (“ISIS”), and the independent and interagency efforts by the Treasury Department to disrupt and stem the flow of funds to the terrorist organization.

**A. The Danger and Threat Posed by ISIS**

ISIS emerged in the global consciousness in June 2014, when its fighters seized Mosul, Iraq’s second-largest city, after moving into Iraq from its original base in Syria.<sup>2</sup> The terrorist group is attempting to redraw the map of the Middle East and establish an Islamic caliphate led by Abu Bakr al-Baghdadi, the self-appointed caliph.<sup>3</sup> ISIS has been rapidly expanding its control of territory in Iraq and Syria by seizing towns along supply routes, critical infrastructure, and border crossings. The Central Intelligence Agency estimates that ISIS has between 20,000 and 31,500 fighters in Iraq and Syria, and approximately 15,000 of the jihadists are foreign recruits.<sup>4</sup>

The acts of brutality committed by ISIS include the beheadings of two American journalists, the torture and ruthless slaughter of civilians, the persecution of minorities, and gross violations of human rights that constitute war crimes, crimes against humanity, and genocide.<sup>5</sup> On October 31, 2014, the United Nations Security Council condemned ISIS’s kidnapping and murder of “scores” of Sunni tribesmen in the Anbar province.<sup>6</sup> Media reports of this incident suggest that more than 300 bodies were found in mass graves. On June 10, 2014, members of the extremist group systematically executed some 600 male inmates from a prison outside the

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<sup>1</sup> I served as Under Secretary for Enforcement, United States Department of the Treasury, from 2001 to 2003.

<sup>2</sup> See Ben Hubbard & Eric Schmitt, *Military Skill and Terrorist Technique Fuel Success of ISIS*, N.Y. TIMES, Aug. 27, 2014, available at <http://www.nytimes.com/2014/08/28/world/middleeast/army-know-how-seen-as-factor-in-isis-successes.html>.

<sup>3</sup> See Tim Arango & Eric Schmitt, *US Actions in Iraq Fueled Rise of a Rebel*, N.Y. TIMES, Aug. 10, 2014, available at <http://www.nytimes.com/2014/08/11/world/middleeast/us-actions-in-iraq-fueled-rise-of-a-rebel.html>.

<sup>4</sup> See David E. Sanger & Julie Hirschfeld Davis, *How ISIS Works*, N.Y. TIMES, Sept. 16, 2014, available at <http://www.nytimes.com/2014/09/14/world/middleeast/struggling-to-starve-isis-of-oil-revenue-us-seeks-assistance-from-turkey.html>.

<sup>5</sup> See Joshua Berlinger, *New York Times: ISIS hostages were tortured before beheadings*, CNN (Oct. 26, 2014), <http://www.cnn.com/2014/10/26/world/meast/isis-beheading-torture/>.

<sup>6</sup> Press Release, Security Council, Security Council Press Statement on Iraq, U.N. Press Release, SC/11625-IK/694 (Oct. 31, 2014), at <http://www.un.org/press/en/2014/sc11625.doc.htm>, but see sources cited with authority *infra* article *Security Council condemns ISIL's murder of Sunni tribesman in Anbar*, U.N. (Oct. 31, 2014), <http://www.un.org/apps/news/story.asp?NewsID=49227#.VF4dlPnF98H>.

northern city of Mosul.<sup>7</sup> After seizing Badoush Prison, the gunmen from ISIS separated the Sunni and Shia inmates and then forced the Shia men to kneel along the edge of a ravine before executing them with assault rifles and automatic weapons.<sup>8</sup> The day after the massacre in Mosul, ISIS carried out the mass killing of Shia soldiers in the city of Takrit. The terrorist group claimed to have executed 1,700 Shia troops and posted videos on the internet showing their gunmen summarily slaying the captives.<sup>9</sup>

While ISIS threatens regional security in the Middle East, the terror group also poses a serious threat to United States national security interests. Secretary of Defense Chuck Hagel stated that “[ISIS] is as sophisticated and well-funded as any group that we have seen. They’re beyond just a terrorist group. They marry ideology, a sophistication of strategic and tactical military prowess. They are tremendously well-funded.”<sup>10</sup>

According to a recent United Nations Security Council report, foreign recruits fighting in Iraq and Syria originate from more than 80 countries, including the United States.<sup>11</sup> The risk of future terrorist attacks may increase when the foreign fighters return home. These battle-hardened and militarily-trained jihadists may be deliberately tasked by terror cells to commit terrorist attacks on the homeland.

ISIS’s ability to use the social media to influence “lone wolf” terrorist attacks should not be underestimated. On October 22, 2014, a terrorist attack in Ottawa, Canada resulted in the death of a Canadian soldier. The terrorist proceeded to attack the Centre Block parliament building, where members of the Canadian Parliament were present. The Prime Minister of Canada characterized the incident as a terrorist attack.<sup>12</sup> Recently, the New York City Police Commissioner called a hatchet attack in the subway, which left two New York Police Department Officers injured, a terrorist attack.<sup>13</sup>

## **B. The Principal Sources of Funding for ISIS**

ISIS has fundamentally different methods of obtaining funding than similar terrorist organizations. Al Qaeda and affiliated terrorist groups receive the vast majority of their funding from external sources, such as corrupt charities, deep-pocket donors, state sponsors of terrorism, and other terrorist sympathizers. For example, Al Rashid Trust, Wafa Humanitarian

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<sup>7</sup> See *Iraq: ISIS Executed Hundreds of Prison Inmates*, HUMAN RIGHTS WATCH (Oct. 30, 2014), <http://www.hrw.org/news/2014/10/30/iraq-isis-executed-hundreds-prison-inmates>

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Chuck Hagel, U.S. Sec’y of State, & Martin E. Dempsey, Chairman, Joint Chiefs of Staff, U.S. Dep’t of Def., Press Briefing in the Pentagon Briefing Room (Aug. 21, 2014), *transcribed at* <http://www.defense.gov/utility/printitem.aspx?print=http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5491>.

<sup>11</sup> Rep. of the Analytical Support and Sanctions Monitoring Team, 16th Sess., transmitted by letter dated October 27, 2014 from the Chair of the Security Council Comm. established pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities addressed to the President of the Security Council, ¶ 1, U.N. Doc. S/2014/770 (Oct. 29, 2014).

<sup>12</sup> See *Canada PM Calls Parliament Shooting a ‘Terrorist’ Act*, ABC NEWS (Oct. 22, 2014), <http://www.abcnews.go.com/International/canada-m-calls-parliament-shooting-terrorist-act/story?id=26372013>.

<sup>13</sup> See *NYC police say hatchet attack by Islam convert was terrorism*, REUTERS (Oct. 24, 2014), <http://www.reuters.com/article/2014/10/24/us-usa-newyork-hatchet-idUSKCN0IC2RG20141024>.

Organization, Revival of Islamic Heritage Society, various branches of Al Haramain Foundation, Global Relief Foundation, and Benevolence International Foundation are charities accused of raising money for al Qaeda.<sup>14</sup>

According to the Department of State, Hezbollah receives substantial sums of funding, training, weapons, explosives, and logistical support from Iran and Syria. The organization's annual operating budget is estimated between \$200 and \$500 million, including approximately \$100 million from Iran.<sup>15</sup> In light of its support from Iran, Hezbollah does not rely on charities to raise funds as much as other terrorist groups, such as al Qaeda and Hamas.<sup>16</sup> Hezbollah also depends on a wide variety of criminal activities, including fraud and the drug trade, to raise money to support its terrorist efforts, while some funds come from charitable donations.<sup>17</sup>

Hamas's annual budget is disputed due to its control over Gaza. The Council on Foreign Relations lists Hamas's annual budget as \$70 million.<sup>18</sup> However, in 2010 Hamas stated that its budget was \$540 million, the vast majority of which comes from "undisclosed" foreign aid, such as Iran and the Muslim Brotherhood in Egypt.<sup>19</sup>

Finally, the CIA estimates that Taliban leaders and their allies receive \$106 million a year from donors outside Afghanistan.<sup>20</sup> According to Stanley A. McChrystal, former Commander of United States and NATO forces in Afghanistan, other sources of funding come from imposing a tax on local Afghans, ransom payments, and the opium drug trade.<sup>21</sup>

ISIS is the most well-funded terrorist organization in history. However, in contrast to other terrorist groups that rely on external sources of funding, ISIS is primarily self-funded. ISIS has four major sources of funding. First, ISIS's principal source of funding is derived from the illicit sale of oil from oil fields and refineries under its control in Iraq and Syria. The proceeds from

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<sup>14</sup> See Office of Terrorism and Financial Intelligence, U.S. Dep't of Treasury, Designated Charities and Potential Fundraising Front Organizations for FTOS, TREASURY.GOV <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/protecting-fto.aspx> (last updated Nov. 5, 2014, 3:11 PM). See also JIMMY GURULÉ, UNFUNDING TERROR: THE LEGAL RESPONSE TO THE FINANCING OF TERROR 138 n. 18 (2010).

<sup>15</sup> See HEZBOLLAH'S INTERNATIONAL REACH, ANTI-DEFAMATION LEAGUE (2004), available at [http://www.adl.org/terror/hezbollah\\_print.asp](http://www.adl.org/terror/hezbollah_print.asp)

<sup>16</sup> MATTHEW LEVITT, HEZBOLLAH FINANCES: FUNDING THE PARTY OF GOD, TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE 9 nn. 7 & 9-10 (Jeanne Giraldo & Harold Trinkunas eds. 2007) (2005).

<sup>17</sup> *Id.*

<sup>18</sup> Zachary Laub, *Hamas*, COUNCIL ON FOREIGN RELATIONS (Aug. 1, 2014), <http://www.cfr.org/israel/hamas/p8968>.

<sup>19</sup> Nidal Al-Mughrabi, *Foreign fund for Hamas Hit by Syria unrest-diplomats*, REUTERS (Aug. 21, 2011), <http://www.reuters.com/article/2011/08/21/uk-palestinians-hamas-finance-idUSTRE77K19120110821>.

<sup>20</sup> See Craig Whitlock, *Afghan Insurgents' Diverse Funding Sources Pose Challenges*, WASH. POST, Sept. 27, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/26/AR2009092602707.html>.

<sup>21</sup> See Memorandum from U.S. Army General, Stanley A. McChrystal, to Sec'y of Defense, Robert M. Gates, subject: Commander's Initial Assessment, U.S. International Security Assistance Force Afghanistan (Aug. 30, 2009), available at [http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB292/Assessment\\_Redacted\\_092109.pdf](http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB292/Assessment_Redacted_092109.pdf).

the sale of ISIS oil are estimated between \$1 million to \$2 million a day.<sup>22</sup> The oil fields controlled by ISIS produce approximately 20,000 to 30,000 barrels daily.<sup>23</sup>

Second, extortion and illicit taxation systems are also a significant source of income for ISIS.<sup>24</sup> Extortion payments bring in “several million dollars a month” for ISIS.<sup>25</sup> Third, ISIS profits from looting ancient artifacts in Iraq and Syria. The income received from the theft of antiquities is second only to the revenue the terrorist group derives from illicit oil sales.<sup>26</sup> The scale of ISIS’s looting and profits from trafficking in antiquities is unprecedented. Moreover, tracking and recovering the stolen artifacts poses a difficult challenge for law enforcement. According to one expert, “The material is gradually, incrementally laundered in the world-antiquities market, and it becomes very difficult to establish when, where, who, what, why, at that point in time.”<sup>27</sup> Finally, kidnappings for ransom constitute another major source of ISIS funding.<sup>28</sup> Ransom payments have netted ISIS approximately \$20 million this year alone.<sup>29</sup>

### **C. Recommendations to Disrupt ISIS Funding Streams and Restrict ISIS’s Access to the U.S. Financial System**

#### **(1) Targeting for Designation Under Executive Order 13224 Individuals and Entities that Enable ISIS to Sell Oil on the Black Market**

Following the terrorist attacks of September 11, 2001, the United States Government developed a strategy to dismantle the financial networks of al Qaeda and affiliated terrorist organizations, and disrupt the flow of funds to foreign terrorists. The centerpiece of the Government’s counter-terrorist financing strategy is to freeze the assets of suspected terrorists, terrorist-related entities, deep-pocket donors, and other financial supporters of terrorism, and prohibit such individuals and entities from doing business in the United States. The strategy is preemptive in nature, intending to prevent the financing of terrorist attacks and killing of innocent civilians.

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<sup>22</sup> Sanger & Hirschfeld Davis, *supra* note 4.

<sup>23</sup> See Keith Johnson & Jamila Trindle, *Treasury’s War on the Islamic State*, FOREIGN POLICY (Oct. 23, 2014), available at [http://www.foreignpolicy.com/articles/2014/10/23/treasury\\_war\\_on\\_the\\_islamic\\_state\\_oil\\_kuwait\\_qatar](http://www.foreignpolicy.com/articles/2014/10/23/treasury_war_on_the_islamic_state_oil_kuwait_qatar).

<sup>24</sup> See Charles Lister, *Cutting off ISIS’s Cash Flow*, BROOKINGS INSTITUTION (Oct. 24, 2014), available at [http://www.brookings.edu/blogs/Iran-at-saban-osts/2014/10/24-lister-cutting-off-isis-jabhat-al-nusra-cash-flow?utm\\_campaign=Brookings+Brief&utm\\_source](http://www.brookings.edu/blogs/Iran-at-saban-osts/2014/10/24-lister-cutting-off-isis-jabhat-al-nusra-cash-flow?utm_campaign=Brookings+Brief&utm_source).

<sup>25</sup> See Johnson & Trindle, *supra* note 23.

<sup>26</sup> See Justine Drennan, *The Black-Market Battleground*, FOREIGN POLICY (Oct. 17, 2014), available at [http://www.foreignpolicy.com/articles/2014/10/17/the\\_black\\_market\\_battleground\\_syria\\_iraq\\_isis](http://www.foreignpolicy.com/articles/2014/10/17/the_black_market_battleground_syria_iraq_isis).

<sup>27</sup> *Id.*

<sup>28</sup> See Johnson & Trindle, *supra* note 23.

<sup>29</sup> *Id.*

The authority to block terrorist funds derives from Executive Order (“E.O.”) 13224 issued by President George W. Bush on September 23, 2001.<sup>30</sup> President Bush invoked this authority under the International Emergency Economic Powers Act (“IEEPA”).<sup>31</sup> The IEEPA authorizes the President to declare a national emergency “to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside of the United States, to the national security, foreign policy, or economy of the United States.”<sup>32</sup> After declaring a national emergency, the IEEPA grants the President broad economic powers, including the authority to block the transfer of any property in which “any foreign country or national thereof has any interest. . . .”<sup>33</sup> Simply stated, “once the President has declared a national emergency, the IEEPA authorizes the blocking of property to protect against the threat.”<sup>34</sup>

President Bush determined that the grave acts of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Washington, D.C., and Pennsylvania on September 11, 2001, and the continuing threat of terrorist attacks against United States nationals constituted “an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.”<sup>35</sup> E.O. 13224 provides that “because of the pervasiveness and expansiveness of the financial foundations of foreign terrorists, financial sanctions may be appropriate for these foreign persons that support or otherwise associate with these foreign terrorists.”<sup>36</sup>

Under E.O. 13224, President Bush invoked the IEEPA to initially designate 12 individuals and 15 entities and freeze their assets in the United States. These 27 individuals and groups were labeled “Specially Designated Global Terrorists” (“SDGTs”) and identified in the Annex to the Order. The designations included “core members of al Qaeda, affiliated terrorist groups, Islamic charities suspected of funding al Qaeda, and other businesses believed to be a front for al Qaeda.”<sup>37</sup> With respect to the 27 SDGTs, the legal implications are twofold. First, the property and interests in property in the United States of these persons and entities are ordered to be blocked.<sup>38</sup> Second, U.S. persons are prohibited from engaging in any transactions with such persons and entities.<sup>39</sup>

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<sup>30</sup> Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, Exec. Order No. 13,224, 3 C.F.R. 786-90 (2001), *reprinted as amended* in 50 U.S.C. § 50 U.S.C. § 1701 (1977) note (Supp. IV 2004) [hereinafter E.O. 13224].

<sup>31</sup> The IEEPA was enacted by Congress in 1977 and amended by Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub L. No. 107-56, § 314(a) 115 Stat. 272 (codified in scattered sections of the U.S.C.). IEEPA is codified at 50 U.S.C. §§ 1701-7 [hereinafter IEEPA]. *See also* S.C. Res 1373, U.N. Doc. S/RES/1373 (2001).

<sup>32</sup> 50 U.S.C. § 1701.

<sup>33</sup> 50 U.S.C. § 1702(a)(1)(B).

<sup>34</sup> *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 735 (D.C. Cir. 2007).

<sup>35</sup> E.O. 13224.

<sup>36</sup> *Id.*

<sup>37</sup> JIMMY GURULÉ, *UNFUNDING TERROR: THE LEGAL RESPONSE TO THE FINANCING OF TERROR* 195 (2008).

<sup>38</sup> *See* E.O. 13224, § 1(a)-(d); *see also* 31 C.F.R. § 594.201(a). Blocking prohibits transfers and transactions of any kind involving property owned or controlled by the designated party.

<sup>39</sup> E.O. 13224, § 2(a).

Executive Order 13224 is broad in scope. The Order authorizes blocking the property or property interests of foreign persons and entities that are (1) “owned or controlled by,” or “act for or on behalf of,” (2) “assist in, sponsor, or provide financial, material, or technological support for,” or (3) “otherwise associated” with foreign terrorists.<sup>40</sup> Finally, E.O. 13224 authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate persons determined “to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals, or the national security, foreign policy, or economy of the United States.”<sup>41</sup>

The initial list of 27 SDGTs has grown to over 800 individuals and entities covered by the Order.<sup>42</sup> Generally, the list of SDGTs consists of suspected terrorists, terrorist sympathizers, charities and other front entities, and persons believed to provide funding and other assistance to al Qaeda and affiliated terrorist groups.

Perhaps because of the fundamentally different ways in which al Qaeda and ISIS raise funds, since May 2014, only four ISIS members have been designated SDGTs by the Treasury Department. Of those four, only two were involved in financing ISIS. One facilitated funds from Kuwait to Syria, and one raised money from external donors. Neither was involved in the terrorist organization’s major sources of funding. Thus, it appears that the Treasury Department has not gained its footing in identifying and designating individuals involved in the principal methods of funding for ISIS.

ISIS-related designations by the Treasury Department raise two primary concerns. First, few individuals associated with ISIS have been designated for asset freeze under E.O. 13224.<sup>43</sup> The dearth of ISIS-related designations is deeply disturbing. Second, none of the Treasury designations include individuals engaged in any of the major sources of funding for ISIS.<sup>44</sup> While E.O. 13224 authorizes designating individuals merely “associated with” foreign terrorists,

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<sup>40</sup> *Id.* §1(c), (d)(i)-(iii).

<sup>41</sup> *Id.* § 1(b).

<sup>42</sup> See OFAC, U.S. TREASURY, TERRORISTS ASSET REPORT TO THE CONGRESS, 22d annual, at 5-6 (2013), <http://www.treasury.gov/resourcecenter/sanctions/Programs/Documents/tar2013.pdf> (citing Specially Designated Global Terrorists) *available here* <http://www.treasury.gov/resource-center/sanctions/Pages/legal-index.aspx>.

<sup>43</sup> See Press Release, U.S. Dep’t of Treasury, Treasury Designates Al-Qa’ida Leaders in Syria (May 14, 2014) (designating Abd Al-Rahman Mustafa Al-Qaduli “for acting for on behalf of ISIL,” and also designating a member of al Qaeda), *available at* <http://www.treasury.gov/press-center/press-releases/Pages/jl2396.aspx>; Press Release, U.S. Dep’t of Treasury, Treasury Designates Three Key Supporters in Syria and Iraq (Aug. 6, 2014) (designating two individuals associated with the Syria-based, al Qaeda-linked terrorist organization Al Nusra Front, and Abd al-Rahman Khalaf ‘Ubayd Juday’ al-‘Anizi,, a financial facilitator for ISIL), *available at* <http://www.treasury.gov/press-center/press-releases/Pages/jl2605.aspx>.

<sup>44</sup> See Press Release, U.S. Dep’t of Treasury, Treasury Designates Al-Qa’ida Leaders in Syria (May 14, 2014) (designating Abd Al-Rahman Mustafa Al-Qaduli “for acting for on behalf of ISIL”), *available at* <http://www.treasury.gov/press-center/press-releases/Pages/jl2396.aspx>. The State Department has designated a few members of ISIS, but none of these individuals are involved in providing financial assistance to ISIS. See Press Release, U.S. Dep’t of State, Terrorist Designation of Abu Mohammed al-Adnani (Aug. 18, 2014), *available at* <http://www.state.gov/r/pa/prs/ps/2014/230676.htm>; Press Release, U.S. Dep’t of State, Designation of Foreign Terrorist Fighters (Sep. 24, 2014), *available at* <http://www.state.gov/r/pa/prs/ps/2014/09/232067.htm>.

the Treasury Department should prioritize its resources on targeting individuals that are enabling ISIS to sell oil on the black market. The illicit oil trade is generating hundreds of millions of dollars annually for ISIS. The Treasury Department should focus its designations on banks that are knowingly receiving and transferring funds from such sales. If ISIS is generating \$1 to 2 million dollars a day from the illicit sale of oil, it is difficult to imagine that banks are not being used to transfer such large sums of money to entities controlled by ISIS.

To maximize the effectiveness of ISIS-related designations, Treasury should prioritize targeting individuals and entities that are involved in the sale of oil for ISIS. More specifically, the Treasury Department should target for designation the middlemen and persons transporting the oil, as well as the border guards and Turkish officials looking the other way as oil is smuggled into Turkey. The Treasury Department should also target any foreign businesses involved in the illicit oil trade, including companies that purchase the oil.

According to Treasury Department sources, ISIS has collected tens of millions in ransom payments so far this year. Banks are likely involved in the transfer of funds from the collection of large hostage-ransom payments. Any foreign bank with a U.S. branch that knowingly transfers funds for ISIS or ISIS-controlled entities should be subject to severe economic sanctions.

Treasury Department designations should also focus on persons suspected of trading in stolen Iranian and Syrian artifacts. These individuals could have assets in the United States that would be subject to blocking under E.O. 13224. Such individuals could also be engaged in business activities in the United States. If so, U.S. persons would be prohibited from doing business with such individuals. Ultimately, designating individuals and entities involved in the major sources of funding for ISIS should be a top priority.

The purpose of designating individuals under E.O. 13224 is not merely to place their names on a “name and shame” list. The designations are intended to freeze the assets of individuals providing funding and other financial assistance to foreign terrorist organizations, and prohibit such persons from doing business in the United States. It is not the number of SDGT designations that matters most, but the quality of the designations. The relevant standard for determining who should be designated under E.O. 13224 should be whether the designations will disrupt ISIS’s ability to raise funds and finance their terrorist activities. To be effective, the SDGT designations should focus on the principal sources of ISIS funding. Focusing designations on members of ISIS that are not involved in the internal funding of ISIS will have limited impact in disrupting ISIS’s ability to raise funds and finance deadly terrorist attacks.

## **(2) Enhanced Sharing of Financial Intelligence Information to Increase the Number of Terrorist Financing Prosecutions**

The Department of Justice (“DOJ”) has a mixed record on prosecuting terrorist financing cases. Since the September 11, 2001 terrorist attacks, there have been very few major terrorist

financing prosecutions. The DOJ should make it a top priority to criminally prosecute the individuals and entities involved in the major sources of funding for ISIS. For example, individuals and companies that purchase oil from ISIS, as well as the financial institutions that knowingly engage in transferring funds generated from the illicit oil trade are providing material support to a foreign terrorist organization, in violation of 18 U.S.C. § 2339B. Such individuals and entities are enabling ISIS to raise hundreds of millions of dollars to finance terrorist activities and should be prosecuted and punished to the full extent of the law. Individuals involved in other major sources of ISIS funding should also be prosecuted. To increase the number of terrorist financing prosecutions, the Treasury Department should enhance its efforts in sharing financial intelligence information with the DOJ.

Congress has enacted important legislation aimed at cutting off financial assistance and services to foreign terrorist organizations. The “material support” statutes, 18 U.S.C. §§ 2339A and 2339B, enable federal prosecutors to prosecute persons that provide “material support or resources,” including money, financial services, transportation, and other forms of assistance, to foreign terrorists and terrorist organizations.<sup>45</sup> Congress recognized that “[c]utting off ‘material support or resources’ from terrorist organizations deprives them of their means with which to carry out acts of terrorism and potentially leads to their demise.”<sup>46</sup>

Section 2339A makes it a crime to provide “material support or resources” “knowing or intending” that they are to be used to prepare for or carry out terrorist-related crimes enumerated in the statute, such as a terrorist bombing plot.<sup>47</sup> By contrast, § 2339B punishes whoever knowingly provides “material support or resources” to a “foreign terrorist organization” (“FTO”) with knowledge that the organization has been designated an FTO by the Secretary of State, or has engaged in or engages in terrorist activities. Upon conviction, both §§ 2339A and 2339B authorize a term of imprisonment of not more than 15 years, and, if death of any person results, imprisonment of any term of years or for life.

Section 2339A requires proof that the defendant acted with a heightened state of mind or mens rea not required under § 2339B. To convict for a violation of § 2339A, the Government must prove that the defendant provided material support or resources “knowing or intending”

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any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.

<sup>45</sup> 18 U.S.C. §§ 2339A & 2339B, (defining “material support or resources”)

<sup>46</sup> Humanitarian Law Project v. Mukasey, 552 F.3d 916, 931 (9th Cir. 2009), *overturned on other grounds*, Holder v. Humanitarian Law Project, 130 S. Ct. 2705 (2010).

<sup>47</sup> 18 U.S.C. § 2339A.

a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6), that the organization has engaged in or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).



that they are to be used to carry out a terrorism-related crime. To prove a violation of § 2339B, the defendant must have knowledge that the organization is a designated FTO or has engaged or engages in acts of terrorism.<sup>48</sup>

In *Holder v. Humanitarian Law Project*, the Supreme Court held that in order to sustain a conviction under 18 U.S.C. § 2339B, the Government is not required to prove that the defendant intended to further the terrorist activities of the FTO by the provision of material support or resources.<sup>49</sup> Under § 2339B, the defendant is criminally liable even if he intended to provide money or other forms of assistance for a humanitarian purpose or purpose totally unrelated to the group's terrorist activities, if he had knowledge that the group has been designated an FTO or has engaged or engages in terrorist activities.

The scope of liability under § 2339B is broad and extends to aiders and abettors and persons that conspire to violate the statute.<sup>50</sup> Anyone that aids and abets the provision of material support or resources to an FTO, or conspires to do, may be prosecuted under the statute. Finally, §2339B, but not § 2339A, has extraterritorial application. Pursuant to § 2339B(d)(2), federal courts may exercise jurisdiction for violations of the statute that occur outside of the United States.<sup>51</sup> Section 2339B(d)(1)(E) provides that there is jurisdiction over a violation of § 2339B if “the offense occurs in or affects interstate or foreign commerce.”<sup>52</sup> Thus, someone who provides material support or resources to an FTO, and the prohibited conduct occurs entirely outside the United States, may be prosecuted under § 2339B.

Participation in the sale of oil on behalf of ISIS is clearly a violation of the material support statute, 18 U.S.C. § 2339B. First, ISIS has been designated a “foreign terrorist organization” by the Secretary of State.<sup>53</sup> Second, the transportation, distribution, and purchase of ISIS oil constitute the provision of “material support or resources” to an FTO.<sup>54</sup> The shipment of ISIS oil constitutes “transportation” under the definition of “material support or resources.”<sup>55</sup> The provision of any other form of assistance in the illicit distribution of oil for ISIS involves a “service” provided to an FTO. Further, the payment for ISIS oil constitutes the provision of funding, which is prohibited under the statute.<sup>56</sup> Finally, the transfer of funds from one bank account to another for the payment of ISIS oil constitutes the provision of “financial services” under the statute.<sup>57</sup> Thus, banks that knowingly transfer funds involving the sale of ISIS oil engage in prohibited conduct under the material support statute.

The fact that the transportation, distribution, and sale of oil occurred outside the United States is not a defense. Section 2339B expressly authorizes extraterritorial application of the

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<sup>48</sup> *Id.* § 2339B(a)(1) (on how to sustain a conviction for violating § 2339B).

<sup>49</sup> *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2717 (2010).

<sup>50</sup> 18 U.S.C. § 2339B(d)(1)(F).

<sup>51</sup> *Id.* § 2339B(d)(2) (“There is extraterritorial Federal jurisdiction over an offense under this section.”).

<sup>52</sup> *Id.* § 2339B(D)(1)(E).

<sup>53</sup> 8 U.S.C. § 1189 authorizes the Secretary of State to designate a foreign group as an FTO. *See also* Press Release, U.S. Dep’t of State, Terrorist Designations of Groups Operating in Syria (May 14, 2014) (amending the designation of al-Qa’ida in Iraq to add the alias Islamic State of Iraq and the Levant (ISIL) as its primary name), *available at* <http://www.state.gov/r/pa/prs/ps/2014/05/226067.htm>.

<sup>54</sup> 18 U.S.C. § 2339A(b)(1).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

statute, if the provision of material support or resources affects foreign commerce. Since the sale of oil affects foreign commerce, federal courts have jurisdiction over the offense.

The critical issue is whether the persons involved in the distribution and sale of ISIS oil had knowledge that they were acting for or on behalf of an FTO or foreign organization that engages in terrorist activities. In light of widely published media reports of ISIS members participating in the barbaric beheading of two American journalists, and committing other gross violations of human rights, this would be an easy element for prosecutors to prove. Knowledge also can be proven by evidence that the defendant engaged in willful blindness and deliberately avoided learning the truth. Finally, § 2339B only requires proof of knowledge. Prosecutors are not required to prove that the individuals that facilitated the sale of oil for ISIS intended that the profits from the sale be used to commit a terrorist attack or fund other terrorist-related activities.

While the material support statute, 18 U.S.C. § 2339B, provides federal prosecutors an invaluable prosecutorial tool to prevent the financing of terrorism, prosecuting terrorist financiers and persons that provide financial assistance to terrorists has not been a priority for the DOJ. Since the September 11, 2001 terrorist attacks, there have been relatively few major terrorist financing prosecutions. The most significant prosecution under the material support statute involves prosecuting members of the Holy Land Foundation for Relief and Development (“HLF”), a charity headquartered in Richardson, Texas.<sup>58</sup> The Government alleged that HLF was the principal fundraiser for HAMAS, raising over \$12 million for the terrorist organization in the United States.<sup>59</sup> In 2010, five members of HLF were convicted by a federal jury for providing and conspiracy to provide financial assistance to HAMAS, in violation of 18 U.S.C. § 2339B.<sup>60</sup> However, the initial charges in the HLF case were filed in 2004.<sup>61</sup>

Since the prosecution of the members of the Holy Land Foundation, there have been few, if any, major terrorist financing prosecutions targeting the financial networks, deep-pocket donors, or front organizations responsible for raising large sums of money for al Qaeda and affiliated terrorist groups. Moreover, the DOJ has failed to bring criminal charges against anyone for raising funds for ISIS.

It is difficult to explain or justify the low number of terrorist financing prosecutions by the DOJ. Whatever the reason for the paucity of cases, Congress needs to ensure that prosecuting terrorist financing cases is a top priority, and that the DOJ is allocating sufficient prosecutorial resources for this purpose. One way to ensure a greater emphasis on stemming the flow of funds to foreign terrorists is to require the DOJ to submit an annual report to Congress, which includes the number of terrorist financing cases filed by the DOJ, the status of any pending terrorist financing cases, and the number of criminal convictions for providing funds and financial assistance to international terrorist organizations.

Disrupting the financing of ISIS is critical to preventing the expansion of ISIS in the Middle East, and the commission of terrorist attacks in the United States by lone-wolf terrorists trained or inspired by ISIS. Prosecuting individuals and entities under the material support

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<sup>58</sup> See *United States v. El-Mezain*, 664 F.3d 467 (5th Cir. 2011).

<sup>59</sup> *Id.* at 486-87.

<sup>60</sup> *Id.*

<sup>61</sup> See *United States v. Holy Land Found. for Relief & Dev.*, Superseding Indictment, No. 3:04-CR-240G (N.D. 2005).

statute that are enabling ISIS to sell its oil abroad could reduce an important stream of ISIS funding.

### **(3) Prioritize the Imposition of Civil Monetary Penalties on Banks that Willfully Violate the Bank Secrecy Act and Create a Risk of Terrorist Financing**

The Bank Secrecy Act (“BSA”) imposes important legal duties on financial institutions to prevent money laundering and terrorist financing.<sup>62</sup> The centerpiece of the federal regulatory scheme established by the BSA is the requirement that banks and other financial institutions establish, implement, and maintain written programs and procedures to prevent money laundering and terrorist financing.<sup>63</sup> The failure to comply with federal banking regulations intended to prevent banks from being used to facilitate the financing of terrorism could result in the imposition of large civil monetary penalties by the Financial Crimes Enforcement Network (“FinCEN”), an agency within the Treasury Department responsible for enforcing the BSA. In fact, FinCEN has imposed multi-million dollar civil penalties against numerous banks for non-compliance with the BSA for creating a money laundering risk, including, for example, ABN AMRO Bank (\$30 million),<sup>64</sup> Riggs Bank (\$25 million),<sup>65</sup> and Israel Discount Bank of New York (\$12 million).<sup>66</sup> However, these cases involved non-compliance with the anti-money laundering provisions of the BSA.

There have been very few cases where the BSA violation involved concerns of terrorist financing. During the last ten years there only have been two significant terrorist financing bank cases.<sup>67</sup> The scarcity of terrorist financing cases raises serious questions about FinCEN’s enforcement of the BSA provisions intended to prevent the financing of terrorism. It is unclear whether the lack of rigorous enforcement of the BSA counter-terrorist financing regulations is due to the lack of personnel and other resources, or lax oversight by the Federal regulators.

In 2005, FinCEN imposed a \$24 million civil penalty against the New York branch of Arab Bank, a foreign bank headquartered in Amman, Jordan.<sup>68</sup> Action taken by FinCEN was motivated by concerns that Arab Bank was being used by front entities to transfer money to Hamas.<sup>69</sup> More specifically, Arab Bank’s New York branch allegedly handled wire transfers of more than \$20 million involving forty-five suspected Hamas terrorists and affiliated terrorist

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<sup>62</sup> Bank Secrecy Act, Pub. L. No. 91-508, 84 Stat. 1114 (codified in scattered sections of 12 U.S.C., 15 U.S.C. and 31 U.S.C.).

<sup>63</sup> 18 U.S.C. § 5318(h)(1).

<sup>64</sup> See Assessment of Civil Money Penalty, In the Matter of the New York Branch of ABN AMRO Bank, New York, New York, No. 2005-5, Financial Crimes Enforcement Network (FinCEN), U.S. Dep’t of Treasury (Dec. 19, 2005).

<sup>65</sup> See Assessment of Civil Money Penalty, In the Matter of Riggs Bank N.A., No. 2004-01, FinCEN, U.S. Dep’t of Treasury (May 13, 2004).

<sup>66</sup> See Assessment of Civil Money Penalty, In the Matter of Israel Discount Bank of New York, No. 2006-7, FinCEN, U.S. Dep’t of Treasury (Oct. 31, 2006).

<sup>67</sup> See Assessment of Civil Money Penalty, In the Matter of Doha Bank, No. 2009-1, FinCEN, U.S. Dep’t of Treasury (Apr. 21, 2009); Assessment of Civil Money Penalty, In the Matter of the Federal Branch of Arab Bank PLC, New York, New York, No. 2005-2, FinCEN, U.S. Dep’t of Treasury (Aug. 17, 2005). [hereinafter “*Arab Bank Penalty*”]. *But see* Consent Order for the Assessment of a Civil Money Penalty, In the Matter of TCF National Bank, No. 2013-003, Office of the Comptroller of the Currency (OCC), U.S. Dep’t of Treasury (Jan. 25, 2013).

<sup>68</sup> *Arab Bank Penalty*, *supra* note 67.

<sup>69</sup> *Id.*

groups.<sup>70</sup> However, the Bank failed to file suspicious transaction reports with FinCEN involving such transactions. In February 2005, Arab Bank was ordered to cease its traditional banking activities in New York, including wire transfer services and opening accounts. In August 2005, FinCEN announced the imposition of a \$24 million fine for failure to implement an effective anti-money laundering and counter-terrorist financing program. According to FinCEN, Arab Bank's failure to implement an adequate system of internal controls to comply with the BSA regulations "posed heightened risks of money laundering and terrorist financing."<sup>71</sup>

While Arab Bank maintained correspondent accounts that operated in jurisdictions that posed a heightened risk of terrorism and terrorist financing, the Bank only monitored transactions of individuals and entities that it considered direct customers of the Bank.<sup>72</sup> It failed to monitor the financial transactions of originators and beneficiaries of international funds transfers that did not maintain accounts at Arab Bank. The Bank also failed to implement procedures for obtaining and utilizing publicly available information to monitor and identify suspicious transactions. According to FinCEN, names similar to those of originators and beneficiaries in funds transfers cleared by Arab Bank appeared in congressional testimony, indictments in the United States, and research and media reports linked to terrorist activities.<sup>73</sup>

FinCEN also found that Arab Bank failed to comply with directives given by financial regulatory officials in the Palestinian Territories intended to prevent terrorist financing. Foreign financial regulators issued circulars containing the names of suspected terrorists and ordered institutions holding accounts in the names of those individuals to either freeze their accounts or place them on a terror watch list. However, Arab Bank lacked internal procedures for cross-checking the names of these suspected terrorists against wire funds cleared by the Bank.<sup>74</sup> Thus, the accounts of these suspected terrorists were not frozen as requested.

Banks that knowingly transfer funds to suspected terrorists and fail to report such suspicious transactions to FinCEN violate the requirements of the BSA. Under the BSA, FinCEN may impose substantial civil penalties against the offending banks for such violations. FinCEN enforcement actions are therefore an important tool to hold financial institutions accountable for failing to prevent the transfer of funds to terrorists. However, if the BSA authority to punish banks that do business with foreign terrorists is rarely used, it cannot serve as an effective deterrent to ensure that banks are not being used to transfer money to terrorists.

#### **(4) Amend the Civil Provision of the Anti-Terrorism Act to Afford Victims of International Terrorism a Meaningful Remedy**

The Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2333(a), provides "a private right of action for civil damages for any national of the United States injured 'by reason of an act' of

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<sup>70</sup> See Glenn R. Simpson, *Arab Banks Link to Terrorism Poses Dilemma for U.S. Policy*, WALL STREET JOURNAL, Apr. 20, 2005, available at <http://online.wsj.com/articles/SB111396116907311600>.

<sup>71</sup> *Arab Bank Penalty*, *supra* note 67, at 3.

<sup>72</sup> *Id.* at 4.

<sup>73</sup> *Id.* at 5; see also *Almog v. Arab Bank*, 471 F. Supp.2d 257, 259, 265 (E.D.N.Y. 2007) (plaintiffs alleged that Arab Bank knowingly provided financial services to Palestinian terrorist organizations); *Linde v. Arab Bank*, 384 F. Supp.2d 571, 575-9 (E.D.N.Y. 2005) (same).

<sup>74</sup> See *Arab Bank Penalty*, *supra* note 67, at 5.

‘international terrorism (or the victim’s estate) to sue those responsible for the act in a U.S. court for treble damages, no matter where in the world the act occurred.’<sup>75</sup> While the civil tort statute is outside the jurisdiction of the Treasury Department, it is an important statutory tool to enable the victims of terrorist attacks to hold banks and bank officials liable for knowingly transferring funds and providing financial services to terrorists. However, the statute needs to be amended by Congress to provide an effective remedy for the victims of terrorism.

The purpose of the civil tort provision of the ATA is to deter acts of international terrorism by punishing terrorists and their financial supporters “where it hurts them most: at their lifeline, their funds.”<sup>76</sup> However, these private tort actions have been largely ineffective. The threat of a large civil monetary judgment has no deterrent effect on terrorists or foreign terrorist organizations that “are unlikely to have assets, much less assets in the United States.”<sup>77</sup> As the result, ATA lawsuits have been filed almost exclusively against secondary actors, such as charitable organizations and domestic and foreign corporations. However, the ATA has been primarily used against financial institutions. These private tort actions allege that banks have committed acts of “international terrorism” by providing financial services to terrorist organizations that resulted in plaintiffs’ injuries.<sup>78</sup> These claims have been largely unsuccessful. Only one bank has been held liable under the ATA.<sup>79</sup>

There are two principal reasons why the ATA has proven ineffective against banks. First, providing financial services to persons that commit acts of international terrorism involves secondary liability. The terrorists that actually committed the terrorist attack are primarily liable for killing or injuring U.S. nationals. At most, the bank aided and abetted the terrorists (principals) by transferring funds and providing other services to such persons. However, the ATA is silent on civil liability for aiders and abettors of acts of international terrorism. Moreover, the courts are deeply divided on the issue. The United States Court of Appeals for the Second and Seventh Circuits hold that 18 U.S.C. § 2333(a) does not authorize a cause of action against aiders and abettors.<sup>80</sup> In contrast, the U.S. District Court for the Southern District of

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<sup>75</sup> 18 U.S.C. § 2333(a). *See also* United States v. Phosphorous, Ltd. V. Angus Chem. Co., 322 F.3d 942, 955 (7th Cir. 2003) (en banc) (Wood, J., dissenting) *aff’d*.

<sup>76</sup> Ungar ex rel. Strachman v. Palestinian Authority, 304 F. Supp.2d 232, 238 (D. R.I. 2004) (quoting 136 CONG REC. S14279-01 (1990) (statement of Sen. Grassley).

<sup>77</sup> Boim v. Holy Land Foundation, 511 F.3d 707, 715 (7th Cir. 2007) (“Boim I”)

<sup>78</sup> *See, e.g.,* Weiss v. Nat’l Westminster Bank, PLC, No. 13-1618-cv (2d Cir., Sept. 22, 2014); In re Terrorist Attacks on September 11, 2001, 714 F.3d 118 (2d Cir. 2013) (suing Al Rajhi Bank and Saudi American Bank); Rothstein v. UBS AG, 708 F.3d 82 (2d Cir. 2013); Wultz v. Bank of China, 2014 WL 3610898 (S.D.N.Y. 2014); Linde v. Arab Bank PLC, 944 F. Supp.2d 215 (E.D.N.Y. 2013); Strauss v. Credit Lyonnais, S.A. 925 F. Supp.2d 414 (E.D.N.Y. 2013); Gill v. Arab Bank, 893 F. Supp.2d 542 (E.D.N.Y. 2012); Goldberg v. UBS AG, 660 F. Supp.2d 410 (E.D.N.Y. 2009); Almog v. Arab Bank, 471 F. Supp.2d 257 (E.D.N.Y. 2007).

<sup>79</sup> *See* Jury Verdict, Linde v. Arab Bank, No. 1:04-cv-02799 (E.D.N.Y. September 22, 2014).

<sup>80</sup> *See* Rothstein v. UBS AG, 708 F.3d 82, 98 (2d Cir. 2013) (“We doubt that Congress, having included in the ATA several express provisions with respect to aiding and abetting in connection with the criminal provisions, can have intended § 2333 to authorize civil liability for aiding and through its silence.”); Boim v. Holy Foundation for Relief and Development, 549 F.3d 685, 689 (7th Cir. 2008) (en banc) (“statutory silence on the subject of secondary liability means there is none”).

Texas, District of Columbia, and Southern District of Florida have reached the opposite conclusion, finding that the ATA extends to secondary actors.<sup>81</sup>

In a jurisdiction that does not recognize aiding and abetting liability under the ATA, plaintiffs face a difficult burden of proof. Plaintiffs must prove that the provision of financial services to terrorists was the proximate cause of the injuries suffered by plaintiffs. More specifically, plaintiffs must prove that the provision of financial services was a “substantial factor” in the subsequent terrorist attack.<sup>82</sup> The injury from a terrorist attack must also have been “reasonably foreseeable” as a natural consequence of the bank’s conduct.<sup>83</sup> Except in the most extreme cases, a person would not reasonably expect or foresee that the provision of routine banking services would result in a terrorist bombing or killing of innocent civilians.

If the ATA civil claims are filed in a jurisdiction that authorizes liability for aiders and abettors, plaintiffs only have to prove that the terrorists (principals) committed an act of international terrorism that caused plaintiffs’ injuries, and the bank’s provision of financial services “substantially assisted” the criminal violation.<sup>84</sup> There is no requirement that it was reasonably foreseeable that the provision of routine banking services would result in a terrorist attack. Plaintiffs therefore have an easier burden of proof in a jurisdiction that recognizes aiding and abetting liability under the ATA. Finally, the different application of the statute could result in inconsistent verdicts and encourage forum shopping. Whether plaintiffs are successful in litigating an ATA claim should not turn on the jurisdiction where the lawsuit is filed.

The second reason why plaintiffs have been largely unsuccessful in holding banks liable under the ATA involves the meaning of the term “international terrorism.” Under the ATA statute, “international terrorism” requires proof that the prohibited conduct “appear to be intended” “(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.”<sup>85</sup> Plaintiffs face a difficult legal hurdle to prove that the provision of basic banking services “appear[s] to be intended” for a terrorism-related purpose. The bank’s transfer of funds was more likely committed for a financial purpose of making money from the international funds transfers, and totally unrelated to any of the terrorism purposes set forth in the statute.

The aiding and abetting problem can be easily solved by legislative amendment. If Congress intends to prohibit banks from knowingly providing financial services to terrorists, 18 U.S.C. § 2333(a) should be amended to expressly authorize aiding and abetting liability.

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<sup>81</sup> See, e.g., *Abecassis v. Wyatt*, 785 F. Supp.2d 614, 649 (S.D. Tex. 2011); *Wultz v. Islamic Republic of Iran*, 755 F. Supp.2d 1, 56 (D.D.C. 2010); *In re Chiquita Brands Intern., Inc., Alien Tort Statute and Shareholders Derivative Litigation*, 690 F. Supp.2d 1296, 1309 (S.D. Fla. 2010).

<sup>82</sup> See *Rothstein v. UBS AG*, 708 F.3d at 91 (citing *Lerner v. Fleet Bank, N.A.*, 318 F.3d 113, 123 (2d Cir. 2003)).

<sup>83</sup> *Lerner*, 318 F.3d at 123 (citing *First Nationwide Bank*, 27 F.3d at 769 (quoting *Hecht*, 897 F.2d at 23–24)).

<sup>84</sup> See *Wultz v. Islamic Republic of Iran*, 755 F. Supp. at 56.

<sup>85</sup> 18 U.S.C. § 2331(1).

Prohibiting aiding and abetting under the statute would also solve the “appear to be intended” issue. While plaintiffs would have to prove that the acts of the *principals* “appear to be intended” for a terrorism-related purpose, such requirement would not apply to aiders and abettors. Plaintiffs would have to prove that the secondary actor had knowledge that the funds were being transferred to foreign terrorists and such services “substantially assisted” the principals in committing the acts of terrorism.

The civil provision of the ATA could be used against ISIS, ISIS-controlled entities, and banks that knowingly transfer funds and provide financial services to members of ISIS. For example, the surviving family members of slain American journalists James Foley and Steven Sotloff could bring suit under the ATA against those persons that aided and abetted ISIS by enabling the terror group to sell oil on the black market, as well as banks that knowingly received and transferred funds from the sale of ISIS oil. However, the statute needs to be amended to expressly permit liability for aiders and abettors of acts of international terrorism.

### **Conclusion**

ISIS is a violent and ruthless terrorist organization that poses an imminent threat to international peace and security, as well as U.S. national security interests. The terror group is flush with funds to finance its goal of establishing a caliphate state in the Middle East. To effectively disrupt the flow of funds to ISIS, the Treasury Department needs to recalibrate and intensify its efforts under E.O. 13224, focusing on individuals and entities involved in the principal sources of ISIS funding, such as the illicit oil trade and trafficking in stolen artifacts from Iraq and Syria.

The Treasury Department should work more closely with the DOJ in sharing financial intelligence information to increase the number of successful terrorist financing prosecutions under the material support statutes. Moreover, Treasury should make more effective use of its civil enforcement actions under the BSA to ensure that banks are not being used for terrorist financing purposes. Finally, Congress should amend the civil provisions of the ATA to provide the victims of international terrorism an effective remedy to hold banks accountable that knowingly transfer funds to international terrorists. Collectively, these proposals will enhance the effectiveness of the United States Government’s efforts to disrupt and reduce the flow of funds to ISIS.