

Legal Sidebar

[Terrorism Victims Sue to Enjoin Sanctions Relief under the Iran Nuclear Agreement](#)

08/27/2015

A group of plaintiffs who hold terrorism-related judgments against Iran has [sued the State Department and the Department of the Treasury](#) in order to preclude the Obama Administration from releasing Iranian frozen assets they say Congress intended for judgment-holders to use to satisfy the compensatory portions of their judgments, which amount to about \$153 million, according to the complaint. They seek to preclude implementation of [sanctions relief](#) under the [Joint Comprehensive Plan of Action \(JCPOA\)](#) to the extent that it unblocks frozen bank accounts.

Each of the plaintiffs holds a judgment against Iran under the Foreign Sovereign Immunities Act (FSIA) [exception for state sponsors of terrorism](#) for its support of the terrorist acts that caused their injuries. The plaintiffs in this case represent a small portion of the total number of judgment creditors of Iran who have been awarded damages under the terrorism exception. Iran has racked up a debt of some \$43.5 billion of unsatisfied damages in U.S. courts, about \$20 billion of which represents compensatory damages. (See this [chart](#).)

The plaintiffs seek to satisfy the compensatory portions of their judgments by attaching Iranian blocked assets pursuant to [section 201 of the Terrorism Risk Insurance Act \(TRIA\)](#), which provides that:

Notwithstanding any other provision of law... in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under [the FSIA terrorism exception], the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA section 201 defines “blocked assets” to mean:

any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act ([50 U.S.C. App. 5\(b\)](#)) or under sections 202 and 203 of the International Emergency Economic Powers Act ([\[IEEPA\] 50 U.S.C. 1701; 1702](#)) [excepting certain property protected by treaties on diplomatic or consular relations].

The plaintiffs argue that the [\\$100 or \\$150 billion in assets reportedly subject to sanctions relief](#) under the JCPOA is [required to remain blocked](#) until the President certifies that Iran has ceased providing support for acts of terrorism and sheds its state-sponsor-of-terrorism designation. Plaintiffs assert that these assets are blocked within the meaning of TRIA and that “the lifting of sanctions will result in Plaintiffs losing their only remaining leverage against Iran to enforce their judgments.” Such an action would, in their view, amount to an unconstitutional taking without just compensation in violation of the [Fifth Amendment](#).

The lawsuit faces a number of hurdles. The funds the plaintiffs seek to attach do not appear to be blocked assets within the meaning of TRIA, and they are not located within the jurisdiction of United States courts. Under [IEEPA](#), assets of Iran may be blocked pursuant to [executive order](#) and [regulation](#) only if they are located within the United States or are in the possession of or controlled by a person or entity subject to the jurisdiction of the United States. As of September 2014, the [Department of the Treasury reported](#) that Iran has [less than \\$2 billion](#) in blocked funds in the United States. Funds subject to foreign sanctions and freezing orders do not meet the definition of blocked assets under TRIA.

The State Department in a [recent press briefing](#) stated:

[T]here's no connection, absolutely no connection between any sanctions relief that Iran would receive under the JCPOA ... and any outstanding court judgments. So the funds that would be released as part of the JCPOA sanctions relief are funds primarily from Iran's oil sales that have been deposited into restricted accounts, and the U.S. does not hold or control any of this money. So it's a separate issue.

Moreover, the [U.S. Court of Appeals for the Second Circuit has held](#), in the context of the transition of governments in Iraq, that TRIA does not obligate the President to maintain frozen assets for use in satisfying relevant court judgments.

Finally, [takings claims involving foreign affairs and assets freezes](#) have not fared well in the past, although [one federal court recently held](#) that the extinguishment of a claim against a foreign sovereign who was removed from the [terrorism list](#) could amount to a taking. Still, any effect of the sanctions relief on the ability of judgment holders to collect could be too speculative or indirect to amount to a taking of property under the Takings Clause.

For information about current U.S. sanctions against Iran, see [Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions](#) and [Iran Sanctions](#). For information about the JCPOA, see [Iran Nuclear Agreement](#) and [Iran Nuclear Agreement: Selected Issues for Congress](#). For background regarding the terrorism exception to the FSIA, see [Suits Against Terrorist States by Victims of Terrorism](#). For an introduction to takings law, see [The Constitutional Law of Property Rights "Takings": An Introduction](#).