UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

----------x

THOMAS BURNETT, SR., *et al*. Civil Action No. 02-1616 (JR)

Plaintiffs

- against –

AL BARAKA INVESTMENT & DEVELOPMENT CORP., *et al.*,

Defendants.

----------x

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO MOTION OF PRINCE SULTAN TO DISMISS THE CLAIMS AGAINST HIM

June 16, 2003

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises and Articles

United States Code

Legislative History

Restatements

INTRODUCTION

Defendant Prince Sultan bin Abdulaziz ("Prince Sultan" or "Sultan") of Saudi Arabia asks this Court to dismiss plaintiffs' claims against him on a variety of grounds that, taken together, amount to a contention that public airing of plaintiffs' allegations against him may be embarrassing to his country. Plaintiffs allege that Sultan personally provided millions of Saudi riyals (equal to hundreds of thousands of dollars) to Osama bin Laden and al Qaeda to support terrorist operations against the United States. If Sultan has indeed embarrassed his country by providing the funds that supported the September 11 attacks against the United States, he is liable to plaintiffs -- the families of the victims of those attacks -- under a variety of federal statutes or common law doctrines. That liability reflects the most urgent public policy of the United States, expressed in Congress's mandate to cut off the flow of money to terrorists by imposing civil liability "at any point along the causal chain of terrorism." S.Rep. 102-342 at 22. It also is consistent with Congress's recognition that foreign sovereigns are not immune from suit for acts committed in their personal capacity, nor are they insulated from liability for assisting, even in their official capacity, in the murder of thousands of innocent civilians on American soil. This lawsuit seeks to expose the financial sponsors of terrorism and bring them to justice under the law. Neither Sultan's position in his government nor the relationship between the United States and Saudi Arabia requires, or indeed permits, this Court to avoid hearing plaintiffs' claims on their merits in order to allow a foreign prince to save face.

Prince Sultan, a brother of King Fahd and one of some 30,000 members of the Saudi royal family, is the Saudi Arabian Minister of Defense and Aviation, but, more significantly for this action, he is also Chairman of the Supreme Council for Islamic Affairs (the "Supreme Council"). In 1994, the Saudi government issued a royal decree banning the collection of money in Saudi Arabia for charitable causes without official permission. King Fahd then set up the

Supreme Council, with Prince Sultan as its chair, to centralize, supervise and review requests from Islamic groups for such permission. Third Amended Complaint ("TAC" or "Complaint") ¶¶ 357-58. The role of the Supreme Council is to control charitable fundraising in Saudi Arabia and to "vet" the groups that wish to solicit donations within the Kingdom.

Charitable fundraising has a significance in Saudi Arabia beyond what it has in the United States. As explained on the Saudi Arabian Information Resource, a website maintained by the Saudi Ministry of Information, "Islam, which permeates every aspect of a Muslim's life, also permeates every aspect of the Saudi Arabian state."[1] Islam requires every Muslim to give a certain percentage of his annual income to the poor and indigent. This obligation, al-zakat, is one of the "five pillars" of Islam.[2] In addition, Muslims are required, as a form of purification, to give away any portion of their income that is earned from forbidden ("*haram*") activities that violate Islamic law.[3] Only certain types of giving will meet the religious obligations of zakat and purification. According to the Quran, zakat is "only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free the captives and the debtors, and for the cause of Allah, and for the wayfarers . . . ."[4]

Because every Muslim is under an obligation to give to charity, it is essential that Muslims be able to determine what organizations are appropriate recipients of their donations, so

---

[1] *See* www.saudinf.com/main/b6.htm. As explained on the website, "The Saudi Arabian Information Resource, a Saudi Ministry of Information website, contains more than 2,000 pages of information on every aspect of the Kingdom of Saudi Arabia." www.saudinf.com.

[2] *See* www.saudinf.com/main/b634.htm.

[3] *See* www.alrajhibank.com.sa/purification.htm.

[4] Sura Al-Tauba, verse 60. This verse is translated at numerous websites, including www.islamicity.com/mosque/zakat and www.soundvision.com/Info/life/zakat.asp.

they can be sure their donation will satisfy the requirements of zakat or of purification. Indeed, Saudi law recognizes as much. The Saudi "Basic Law," which sets forth the basis on which the Kingdom of Saudi Arabia is governed, specifically provides that "Zakat shall be levied and dispensed to its *legitimate* beneficiaries." Basic Law, Article 21 (emphasis added).[5]

As the head of the Supreme Council, Prince Sultan is the individual in the Kingdom of Saudi Arabia charged with determining which groups are appropriate recipients of official and personal charitable donations. Sultan assists the charities in raising funds in three ways. First, by giving his imprimatur to their efforts, he permits the charities to raise money from private sources within the Kingdom. Second, he is responsible for official governmental contributions to certain charities. Finally, he has made large personal donations to particular charities of his choice, including several of the charities that are the defendants in this case.

The groups that have been the recipients of Prince Sultan's generosity and assistance include the International Islamic Relief Organization ("IIRO"), al-Haramain, the Muslim World League ("MWL"), and the World Assembly of Muslim Youth ("WAMY"). Each of these organizations provided funds to bin Laden and/or al Qaeda in support of international terrorism. TAC ¶ 359. While Prince Sultan claims that plaintiffs have denigrated the Islamic tenet of *zakat*, it is rather these organizations, and others like them, that have perverted charity and turned it into a primary source of funds for a campaign of terror.

As alleged in the Complaint, al-Haramain has played a major role in funding terrorism through its Bosnian office, which was a crucial component of Osama bin Laden's international financial and logistical support network. TAC ¶¶ 158, 159, 160, 161, 164, 169. In addition to funding al Qaeda generally, al-Haramain has been specifically linked to the 1998 bombings of

[5] *See* www.saudinf.com/main/c541a.htm; www.saudinf.com/main/c541e.htm.

two U.S. embassies in Africa, *see* TAC ¶¶ 167-168, and to the 2002 bombing of a nightclub in Bali, *see* TAC ¶ 175. Al-Haramain's office has been designated as a terrorist entity by the United States Treasury Department. TAC ¶ 150. WAMY has been implicated as the distributor of terrorist training manuals, including those found in the possession of the conspirators in the 1993 World Trade Center bombing. TAC ¶¶ 231-232. IIRO has been a center of terrorist financing and training activity around the globe. Its office in the Philippines is headed by Osama bin Laden's brother-in-law, Mohammed Jamal Khalifa. IIRO was involved in the 1993 World Trade Center bombing and the 1998 African embassy bombings, as well as the unsuccessful plots to destroy the Lincoln Tunnel and the Brooklyn Bridge, to assassinate former President Bill Clinton and Pope John Paul II, and to blow up twelve American airplanes simultaneously. TAC ¶ 234. MWL is IIRO's parent organization. It has worked explicitly with bin Laden; its offices around the world served in the early days of al Qaeda to attract and train "holy warriors." TAC ¶¶ 236, 255. A branch of MWL, the Rabita Trust, has been designated by the U.S. Treasury Department as a "Specially Designated Global Terrorist Entity."

These are the "charitable" organizations that Prince Sultan has deemed worthy to raise money in the Kingdom of Saudi Arabia, to receive funding from the Saudi government and to receive personal donations of millions of Saudi riyals from Sultan himself. These organizations, and others like them, have been the primary source of funding for bin Laden and al Qaeda. The Independent Task Force Sponsored by the Council on Foreign Relations concluded in its 2002 Report on Terrorism Financing that "the most important source of al Qaeda's money is its continuing fundraising efforts." *See* TAC at p. 204. Moreover, the report found that individuals and charities in Saudi Arabia have been "the most important source of funds for al Qaeda." *Id.* at 205. Without these charities to raise millions of dollars on its behalf, al Qaeda could not have

trained its operatives, purchased weapons and supplies, or carried out the September 11 attacks. It is not too much to say that the financial resources and support network of the charities is what allowed those attacks to take place. They are the true enablers of terrorism. *See* TAC at 199-200. And they are the organizations supported by Prince Sultan personally and under the auspices of the Supreme Council.

It simply defies belief that, in carrying out his functions as head of the Supreme Council, Sultan could be unaware of the nature of the work being carried on by the charities to which he gave his official and his personal support. This is not only a requirement of his job; it is a religious obligation, to ensure that the recipients of his personal donations, and those of other Saudi Arabians, in fact satisfy the religious duties of zakat and purification. Nor was the role of these organizations in funding the terrorist agenda of Osama bin Laden unknown to the Saudi government. A representative of MWL has testified that MWL and its subsidiary, IIRO, are "controlled in all our activities and plans by the Government of Saudi Arabia." TAC ¶ 250. Moreover, in 1999, the U.S. sent a delegation to the Kingdom of Saudi Arabia specifically to warn the Saudis about the ways in which significant funds were being raised in their country to finance al Qaeda's terrorist attacks. *See* Exhibit 1, Daniel Benjamin & Steven Simon, *The Age of Sacred Terror;* Random House (2002) ["*Age of Sacred Terror*"] at pp. 186-189. Moreover, the news media reported in October 1999 that then-Secretary of State Madeline Albright planned to discuss with Prince Sultan himself the issue of terrorist fund-raising in Saudi Arabia, including the role of Islamic charities in funneling money to terrorist organizations.
www.indianexpress.dom/ie/daily/19991030/ige30061.html

It is against this background that Prince Sultan claims he is immune from suit in the United States because he is an "agency or instrumentality" of the Saudi government. But the

Foreign Sovereign Immunities Act ("FSIA") does not immunize Prince Sultan for the acts alleged in the Complaint. It provides no immunity whatsoever for support that Prince Sultan gave to al Qaeda in his personal, rather than his official, capacity. And although Prince Sultan claims that all of his contributions to the charities at issue were official and that he has made no personal contributions to them in the relevant period, evidence that plaintiffs have obtained demonstrates otherwise: the official Saudi Press Agency has specifically described Sultan's contributions to these charities as "personal."

Moreover, even where Prince Sultan gave government funds to these charities, he could not have been acting as an agency of the Saudi government. Sponsorship of terrorism was (and is) contrary to the explicit, stated policy of the Kingdom of Saudi Arabia.[6] The Kingdom was told that these organizations were funneling donations to Osama bin Laden and al Qaeda. *See Age of Sacred Terror* at pp. 186-189. If, as alleged in the Complaint, Prince Sultan nonetheless gave money to them, knowing the purposes they would put it to, those donations must have been in contravention of the stated policies of his government.

But even if any of Prince Sultan's donations were official acts, he would not be entitled to immunity because his conduct falls within the exceptions to the FSIA. Where foreign officials have assisted in assassinations that took place within the United States, courts have consistently found such conduct outside the scope of immunity conferred by the FSIA. Moreover, the network of charities at issue, including charities that operate as arms of the Saudi government itself, are "commercial activity," outside the protections of the FSIA.

---

[6] *See, e.g.,* www.saudinf.com/main/011.htm ("The Kingdom of Saudi Arabia which follows the path of Islam as a moderate doctrine and way of life is utterly opposed to acts of terrorism, all of which is forbidden by Islam. The Saudi Government has pursued an anti-terrorism policy by all

Prince Sultan also makes the novel argument that plaintiffs' claims against him are not justiciable and must be dismissed under the "political question" doctrine. The novelty of this argument lies in part in the identity of the person making it. Defendant is a foreign prince purporting to set forth the interests of the Executive Branch of the United States government. According to Prince Sultan, continuation of this lawsuit would hinder the Bush Administration in its conduct of foreign relations with Saudi Arabia. But the Executive Branch has expressed no such misgivings, even though portions of the Prince's brief border on veiled threats that the Saudi government will discontinue its "cooperation" in the war on terrorism if plaintiffs are permitted to proceed. In the absence of such an expression from the Executive Branch, there is no clash between the branches of government and no "political question" in this lawsuit. In any event, the "political question" doctrine is inapplicable here. That doctrine excludes from the court's consideration only those controversies that revolve around policy choices and value determinations constitutionally committed for resolution to other branches of government. What kind of relationship to maintain with Saudi Arabia may be such a policy choice or value determination, but plaintiffs do not challenge the Executive Branch's decisions in this area. Plaintiffs' contention that this defendant, although a Saudi prince, provided support to international terrorism, presents neither a policy choice nor a value determination. The question is whether Prince Sultan has violated the law. That is quintessentially the kind of question traditionally committed to the courts for resolution, regardless of the identity of the defendant.

The remainder of Prince Sultan's arguments fare no better. In funding al Qaeda's operations against the United States and its residents, Sultan purposefully directed his activities

---

possible means for many years – both before and since September 11, 2001, and is fully supportive of the war on terror.")

at residents of the United States; no more is required to subject him to personal jurisdiction here. Moreover, to the extent that Prince Sultan acted in his official capacity, the FSIA confers *in personam* jurisdiction wherever sovereign immunity is abrogated. And Prince Sultan's contention that the Complaint fails to state any claim on which relief can be granted is predicated on a willful misreading of plaintiffs' allegations. Again and again, Prince Sultan insists that he is being sued for his donations to legitimate charitable organizations. This is not the case. Plaintiffs plainly and specifically allege that Prince Sultan knowingly provided funds to Osama bin Laden and al Qaeda in support of international terrorism. *See* TAC ¶¶ 353-363. If he did, plaintiffs are entitled to relief under the Anti-Terrorism Act, the Torture Victims Protection Act, the Alien Tort Claims Act, the Racketeering-Influenced and Corrupt Organizations ("RICO") Act, and/or numerous tort law doctrines. Prince Sultan's motion should be denied in its entirety.

APPLICABLE LEGAL STANDARDS

Rule 12(b) Standards

Prince Sultan's motion is brought pursuant to Fed.R.Civ.P. 12(b)(1) (subject matter jurisdiction), 12(b)(2) (*in personam* jurisdiction) and 12(b)(6) (failure to state a claim). With respect to that portion brought under Rule 12(b)(6), the law in this circuit is settled:

> Motions. . . that would summarily extinguish litigation at the threshold and foreclose the opportunity for discovery and factual presentation, should be treated with the greatest of care. A motion to dismiss should be granted only when it appears beyond doubt that, under any reasonable reading of the complaint, the plaintiff will be unable to prove any set of facts that would justify relief.

Haynesworth v. Miller, 820 F.2d 1245, 1254 (D.C. Cir. 1987); *accord Swierkiewicz v. Sorema*, 534 U.S. 506, 514 (2002). Accordingly, "the plaintiff's factual allegations must be presumed true and liberally construed in favor of the plaintiff when reviewing the adequacy of a complaint for the purposes of a Rule 12(b)(6) motion." *Wiggins v. Hitchens*, 853 F. Supp. 505, 509 n.1 (D.D.C. 1994). Moreover, the Court is to grant plaintiffs the benefit of all inferences that can be

derived from the facts alleged. *See Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994)(citing *Schuler v. United States*, 617 F.2d at 608 (D.C. Cir. 1979)).

Similarly, with respect to those portions of the motion brought under Rules 12(b)(1) and 12(b)(2), "all doubts on jurisdictional points must be resolved in favor of plenary trial rather than dismissal at pretrial stage." *Pastrana v. Federal Mogul Corp*., 683 F.2d 236, 242 (7th Cir. 1982); *accord Ochoa v. J.B. Martin and Sons Farms, Inc.,* 287 F.3d 1182 (9th Cir. 2002) (evidentiary materials submitted on a motion to dismiss for lack of personal jurisdiction are construed in the light most favorable to the plaintiffs and all doubts are resolved in their favor); *Miller v. Central Chinchilla Group, Inc*., 494 F.2d 414 (8th Cir. 1974) (all doubts on jurisdictional points must be resolved in favor of a plenary trial rather than dismissal at pretrial stage).

In ruling on a challenge to the court's jurisdiction, however, the court may, and indeed may be required to, consider evidence outside the pleadings in determining whether jurisdiction in fact exists. *See KiSKA Const. Corp. v. Washington Metropolitan Area Transit Authority*, 321 F.3d 1151, 1158 n.7 (D.C. Cir. 2003) (district court may dispose of a motion to dismiss for lack of subject matter jurisdiction on the complaint standing alone, but, where necessary, may also consider undisputed facts evidenced in the record or disputed facts resolved by the district court); *see also English v. Cowell*, 10 F.3d 434, 437 (7th Cir. 1993) (court may consider matters outside the pleading where motion asserts lack of jurisdiction); *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981) ("In deciding a pretrial motion to dismiss for lack of personal jurisdiction a district court . . . may determine the motion on the basis of affidavits alone; or it may permit discovery in aid of the motion; or it may conduct an evidentiary hearing"). And where the question of jurisdiction turns on disputed facts, the D.C. Circuit has found it improper for the court to rule before the plaintiff has had an opportunity to discover facts necessary to

establish jurisdiction. *El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 675-76 (D.C. Cir. 1996); *Herbert v. National Academy of Sciences*, 974 F.2d 192, 198 (D.C. Cir. 1992). Moreover, the D.C. Circuit has cautioned that although "the trial court may rule on disputed jurisdictional facts at any time, if they are inextricably intertwined with the merits of the case it should usually defer its jurisdictional decision until the merits are heard." *Herbert*, 974 F.2d at 198.

Pleading Standards

Fed. R. Civ. P. 8(a) provides the requirements for stating a legally sufficient claim for relief. It states that the complaint must contain:

> (1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks

In *Swierkiewicz v. Sorema*, 534 U.S. 506 (2002), the Supreme Court reaffirmed its prior holdings that a complaint need simply "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." 534 U.S. at 512-13, c*iting Conley v. Gibson*, 355 U.S. 41, 47 (1957). The *Sorema* court carefully differentiated what a plaintiff must prove from what must be pleaded, noting that Rule 8 "establishes a pleading standard without regard to whether a claim will succeed on the merits." 534 U.S. at 515. Indeed, the Court continued, "it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. *Id.*

ARGUMENT

I. THE COURT HAS SUBJECT MATTER JURISDICTION AND PRINCE SULTAN IS NOT ENTITLED TO SOVEREIGN IMMUNITY

Prince Sultan contends that this Court lacks subject matter jurisdiction because, he claims, he is a "foreign state" within the meaning of the Foreign Sovereign Immunities Act

("FSIA"), *see* 28 U.S.C. § 1603, and thus immune from suit.[7] The FSIA does confer immunity on foreign states and their agencies or instrumentalities in some situations, but the FSIA does not immunize Sultan from the claims asserted in this lawsuit, for two reasons.

First, not all of the Sultan's actions that are the subject of this lawsuit were official acts; to the extent that Sultan was not acting as an agency or instrumentality of his government, he has no immunity. With respect to these non-official acts, this Court has subject matter jurisdiction under 28 U.S.C. § 1331 (for plaintiffs' federal claims), and under the specific jurisdictional grants in the Anti-Terrorism Act, 18 U.S.C. § 2338, which applies to plaintiffs' claims under 18 U.S.C. § 2333[8], under the Alien Tort Claims Act, 28 U.S.C. § 1350, and under RICO, 18 U.S.C. § 1964.

Second, to the extent that any of Prince Sultan's actions were official ones, they fit within one or more of the exceptions to the FSIA. With respect to official acts for which Prince Sultan is not immune under the FSIA, this Court has subject matter jurisdiction under the FSIA, 28 U.S.C. § 1330, which creates subject matter jurisdiction in the federal district courts for claims against a foreign state for which the FSIA does not confer immunity.

A. Prince Sultan Has No Immunity for Acts Not Performed in His Official Capacity

Prince Sultan concedes, as he must, that the FSIA confers no immunity for acts undertaken in a personal and private capacity. *See* Sultan Br. at 12. *See also Jungquist v. Sheikh*

---

[7] Section 1603 defines "foreign state" to include "an agency or instrumentality of a foreign state." Prince Sultan asserts that he falls within this part of the definition of "foreign state."

[8] Section 2333 was initially enacted in 1990 as the Anti-Terrorism Act of 1990, Pub.L. No. 101-519, § 132, 104 Stat. 2250 (1990), but was repealed as the result of a technical deficiency. It was subsequently re-enacted as part of the Federal Courts Administration Act of 1992, Pub.L. No. 102-572, 106 Stat. 4506 (1992). *See* Brief for the United States as *Amicus Curiae* Supporting Affirmance, in *Boim v. Quranic Literacy Institute*, Nos. 01-1969, 01-1970 (7th Cir.).

Sultan Bin Khalifa Al Nahyan, 115 F.3d 1020, 1027 (D.C. Cir. 1997) ("Individuals acting in their official capacities are considered agencies or instrumentalities of a foreign state; these same individuals, however, are not entitled to immunity under the FSIA for acts that are not committed in an official capacity."); *accord El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 671 (D.C. Cir. 1996). He contends, however, that all of the conduct alleged in the Complaint arises from his official acts. Indeed, Prince Sultan specifically asserts that all of his donations to al Qaeda front organizations masquerading as charities "were made from government funds on behalf of the Kingdom as part of Prince Sultan's official duties." Sultan Br. at 14.

This assertion is simply false. As detailed below, Prince Sultan and the Kingdom of Saudi Arabia have announced on numerous occasions that donations to IIRO and the World Assembly of Muslim Youth were made by the Prince *in his personal capacity*. His contention to the contrary in this Court – set forth not only in his memorandum of law, but also in affidavits from the financial directors of various recipient organizations -- is inexplicable.

In March, 1997, the official Saudi Press Agency ("SPA") reported that Prince Sultan made a personal donation to the World Assembly of Muslim Youth ("WAMY").[9] On December 1, 1997, the SPA reported: "HRH Prince Sultan Bin Abdul Aziz . . . has donated SR500,000 to the International Islamic Relief Organisation ("IRO") in the Kingdom. This amount constitutes the second instalment [*sic*] of Prince Sultan's *personal* donation of SR1 million to the organisation each year." *See* Docket #138, 146. (Emphasis added.) In May, 1998, the SPA similarly announced that Prince Sultan had donated "half-a-million Saudi riyals for the International Islamic Relief Commission (IIRC)[*sic*]." The announcement continues: "This

[9] The Saudi Press Agency is "one of the affiliates of the ministry of information"; its director general reports to the Minister of Information. *See* www.spa.gov.sa/index.asp.

grant is part of an annual *personal* donation of Prince Sultan which amounts to SR 1 million . . ." (Emphasis added.) In June, 1999, the monthly newsletter of the Royal Embassy of Saudi Arabia, in Washington, D.C., carried a similar report of Prince Sultan's personal donations to a Kosovar relief organization and to the IIRO. These personal donations have continued: as recently as November, 2002, the SPA reported that Prince Sultan "kicked off" a fundraiser for IIRO, WAMY, and al-Haramain with a "personal donation of SR1.5 million."[10] Thus, while Prince Sultan now claims that his donations were made on behalf of his government, in his official capacity, that very same government has publicly declared that these donations were *not* on its behalf, but rather were personal to the Prince. If his government contemporaneously disavowed them, by what authority can Prince Sultan claim his acts were official? The conclusory statement of a Saudi lawyer that Sultan has submitted asserting that governmental grants are "occasionally" attributed to Sultan, provides no evidence to overcome these official pronouncements. At a minimum, Prince Sultan can be sued in his personal capacity with respect to donations that even his government recognizes were personal.[11]

---

[10] Plaintiffs understand that Prince Sultan's personal donations in 2002 occurred after the September 11, 2001 attacks and thus do not form a part of plaintiffs' claims themselves. Nonetheless, these donations are further evidence of Prince Sultan's *personal* support of these charitable front organizations. In this regard, it is significant that the 2002 donation was made after two branches of al-Haramain were designated by the United States State Department as terrorist entities and had their assets frozen and also after the U.S. office of IIRO was exposed as a terrorist front and closed. Perhaps Prince Sultan's subsequent personal donation was intended to replace the assets frozen by the United States.

[11] Plaintiffs believe that the statements of the Saudi Press Agency are dispositive on the issue of Sultan's personal donations and demonstrate that at least some of the contributions were not made in his official capacity. To the extent that this Court believes that the evidence is not sufficient to establish the personal nature of the Sultan's support of the terrorist front organizations, plaintiffs are entitled to, and already have moved for, discovery with respect to this issue. Plaintiffs respectfully refer this Court to their motion papers in connection with their

Moreover, even as to donations that he made from Saudi government funds (if there were any), Prince Sultan could not have been acting in his official capacity when he knowingly provided these funds to support international terrorism. As the Prince has taken great pains to suggest, the official policy of the Kingdom of Saudi Arabia is that it does not support Osama bin Laden, al Qaeda or international terrorism. If Prince Sultan knowingly provided government funds to terrorist fronts in order to support al Qaeda's program of international terrorism, he could not have been acting as an "agency or instrumentality" of his government in doing so, because his actions were directly contrary to that government's official policy. As the Supreme Court explained in *Larson v. Domestic and Foreign Commerce Corp*., 337 U.S. 682, 689 (1949), where an "officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the sovereign has forbidden. . . [h]is actions are ultra vires his authority." A suit arising from such an act is not one against the sovereign, but rather against the official personally. *Id.* Moreover, this is not a situation where the Prince, carrying out the mandate of his government, simply made errors of judgment in deciding which charities to support. As far back as 1999, the United States government informed the Saudi government of the role of so-called "charities" in raising money for bin Laden and al Qaeda. *See Age of Sacred Terror* at pp. 186-189. If, as the Saudi government contends, its official policy was not to support international terrorism, then any support that Prince Sultan gave after the government was informed of the role these charities were playing was necessarily "not . . . the business which the sovereign . . . empowered him to do." *See Larson*, 337 U.S. at 689; *see also Cabiri v. Assasie-Gyimah*, 921 F.Supp. 1189, 1197-98 (S.D.N.Y 1996) (no immunity under FSIA for

---

separate motion for discovery and ask this Court to grant that motion to allow plaintiffs to obtain the additional evidence they seek.

tortious acts beyond the scope of official's authority). [12]

Finally, even if any of Prince Sultan's support for al Qaeda front organizations was in his official capacity, he cannot claim the benefit of sovereign immunity because his actions fall within at least one of the exceptions to immunity set forth in the FSIA.[13]

B. Under the Exceptions to the FSIA, Sultan Has No Immunity for His Official Acts

The exceptions to the FSIA provide "the sole basis for obtaining jurisdiction over a foreign state" in the federal courts. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989). The D.C. Circuit has held that "the defendant bears the burden of proving

---

[12] Of course, should the Kingdom of Saudi Arabia choose to appear in this action to assert that in providing knowing support to al Qaeda and its terrorist agenda, Prince Sultan was in fact carrying out the official policy of his government, that would be a different matter. In the absence of such an assertion, however, this Court should take the Kingdom of Saudi Arabia at its word regarding its official policy, *see, e.g., www.saudinf.com/main/011.htm*, in determining whether any of the acts alleged in the Complaint were taken by Prince Sultan in his official capacity.

[13] Nor is Prince Sultan entitled to common-law, "head of state" immunity. Ordinarily, the FSIA is "the sole basis for obtaining jurisdiction over a foreign state in our courts." *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989). To the extent that the common law "head of state" immunity doctrine retains viability, its applicability is quite narrow and the very cases on which the Prince relies, *see* Prince Sultan Br. at 24 n.6, make clear that it does not apply here. As the court explained in *Alicog v. Kingdom of Saudi Arabia*, 860 F.Supp. 379 (S.D.Tex. 1994), *aff'd*, 79 F.3d 1145 (5th Cir. 1996), head of state immunity "extends only to the person the United States government acknowledges as the head of state." Prince Sultan is not the recognized head of state in the Kingdom of Saudi Arabia. Indeed, *Alicog* itself held that it is King Fahd who is recognized as the head of state in that country.

Second, head of state immunity can only be conferred by the Executive Branch. *See Tachiona v. Mugabe*, 169 F.Supp.2d 259 (S.D.N.Y. 2001); *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1 (D.D.C. 1998) ("whether an individual qualifies as a head of state is a decision committed exclusively to the political branches"); *First American Corp. v. Al-Nahyan,* 948 F.Supp. 1107 (D.D.C. 1996) (head of state immunity is asserted by State Department acting on behalf of the President); *see also Kline v. Kaneko*, 535 N.Y.S.2d 303 (Sup. Ct. N.Y. Co. 1988), *aff'd*, 154 N.Y.S.2d 506 (App.Div. 1989)(table) (head of state immunity invoked when State Department files Suggestion of Immunity). Here, the State of Department has not conferred head of state immunity on Prince Sultan and has not filed any suggestion with this Court

that the plaintiff's allegations do not bring its case within a statutory exception to immunity." *Phoenix Consulting, Inc. v. Republic of Angola*, 216 F.3d 36 (D.C. Cir. 2000); *accord Princz v. Federal Republic of Germany*, 26 F.3d 1166 (D.C. Cir. 1994) ("It is the burden of the foreign sovereign in each case to establish its immunity by demonstrating that none of the exceptions is applicable"); *see also In re Estate of Ferdinand Marcos Human Rights Litigation*, 94 F.3d 539, 546 (9th Cir. 1996) ("Once a plaintiff offers evidence that one of the FSIA's exceptions to immunity applies, the party claiming immunity bears the burden of proving by a preponderance of the evidence that the exception does not apply."). Prince Sultan has not shown, and cannot show, that the "tortious act" and "commercial activity" exceptions to immunity do not apply in this case.

1. Plaintiffs' Claims Fall Within the "Tortious Act" Exception to the FSIA

Under the FSIA, a foreign sovereign and its agents or instrumentalities have no immunity in any case:

> in which money damages are sought against a foreign state for personal injury or death or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment . . .

28 U.S.C. § 1605(a)(5). Plaintiffs in this case seek money damages for personal injury and/or death based on tortious conduct. Their claims fall squarely within this exception.

Sultan makes three arguments why the "tortious act" exception should not be applied here, but none is correct.

a) The September 11 Attacks Took Place in the United States

First, Sultan claims that the "tortious act" exception applies only where the "entire tort"

---

pertaining to such immunity. Prince Sultan has not cited a single authority to suggest that head of state immunity can be invoked without this step.

takes place in the United States. He further claims that plaintiffs' claims against him fall outside the exception because his role in the September 11 attacks – providing the financing – took place in Saudi Arabia. This argument has neither logic nor precedent behind it.

The September 11 attacks took place within the United States. The terrorists boarded the aircraft at U.S. airports. The airplanes were hijacked in U.S. airspace. The planes were turned into bombs and deliberately crashed into buildings in the United States or, in the case of the Flight 93, accidentally crashed in Pennsylvania. The FSIA defines "United States" as including "all territory and waters, continental and insular, subject to the jurisdiction of the United States." 28 U.S.C. § 1603(c). There can be no question that the September 11 attacks took place here.

Sultan, however, focuses not on the September 11 attacks themselves, but on his part in them – his financing of al Qaeda as well as his role in permitting (and indeed assisting) al Qaeda front organizations to raise money in the Kingdom of Saudi Arabia. In doing so, Sultan loses sight of the nature of the allegations against him. He is alleged to have aided and abetted or conspired with the terrorists who carried out the attacks. Through such doctrines as conspiracy, aiding and abetting and, in the case of the Anti-Terrorism Act, the provision of "material support," the law imposes liability not only on the immediate, direct tort-feasor, but also on those who assist and facilitate the tort. *Boim v. Quranic Literacy Institute*, 291 F.3d 1000, 1021 (7th Cir. 2002) (Anti-Terrorism Act permits recovery where defendant has provided material support to, or aided and abetted, international terrorism); *General Electric Co. v. AAMCO Transmissions, Inc.*, 962 F.2d 281, 288 (2d Cir. 1992)(describing circumstances when "an individual may be subject to liability for the tortious conduct of another as an aider and abettor"); *Halberstam v. Welch*, 705 F.2d 472, 479 (D.C.Cir. 1983) (aider and abettor liable for tort); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F.Supp.2d 289, 320 (S.D.N.Y. 2003)(aiding and abetting

actionable under ATCA); Restatement (Second) of Torts §§ 876 (1979) (aiding and abetting liability is a means of holding a person liable for "harm resulting to a third person from the tortious conduct of another"); *see also infra* Point IV.A. Because the September 11 attacks, for which plaintiffs seek to hold Sultan responsible, occurred in the United States, there is no geographical barrier to the use of § 1605(a)(5) to obtain jurisdiction in this case.

Plaintiffs have found only two cases with facts analogous to what is alleged here and in both cases foreign sovereigns were held to be subject to jurisdiction for the support they provided, from afar, to crimes committed on U.S. soil. *Letelier v. Republic of Chile*, 488 F.Supp. 665 (D.D.C. 1980) grew out of the assassination of former Chilean ambassador and foreign minister Orlando Letelier. The assassination took place in Washington, D.C. by means of a car bomb that was constructed, planted and detonated by a group of individuals in the United States. Plaintiffs alleged, however, that the individuals had acted "in concert and purportedly at the direction and with the aid of" the Republic of Chile and its intelligence organ the Centro Nacional de Intelligencia. 488 F.Supp. at 665. This Court held that Chile was not immune from suit because plaintiffs' claims fit within the "tortious act" exception.

The Ninth Circuit reached the same conclusion on similar facts in *Liu v. Republic of China*, 892 F.2d 1419 (9th Cir. 1989). In *Liu* , an official of Taiwan was accused of arranging, in Taiwan, the murder of a Taiwanese expatriate living in the United States. All of the meetings between the official and the assassins took place in Taiwan. The assassins, however, traveled to California and carried out the murder there. The Ninth Circuit found that it had jurisdiction over the Republic of China under the "tortious act" exception to the FSIA.

Letelier and *Liu* are on all fours with this case. In those cases, as here, the acts of violence resulting in the plaintiffs' injury were carried out in the United States. In *Letelier* and in

Liu, as in this case, the direct perpetrators, private individuals, acted in this country. In *Letelier* and in *Liu* as here, a foreign sovereign or its instrumentality was alleged to be vicariously responsible, even though the foreign sovereign or instrumentality had not performed any act in the United States to further the assassination. This case is virtually identical to *Letelier* and *Liu* with respect to this issue. Just as the defendants there were found to lack immunity under the "tortious act" exception, here, too, the tort took place sufficiently within the United States to bring this case within that exception and strip Sultan of immunity for his role in this tort.

None of the cases cited by defendant involves facts even remotely similar to the facts of *Letelier*, *Liu*, and this case and none is on point. In *Persinger v. Islamic Republic of Iran*, 729 F.2d 835 (D.C.Cir. 1984), the plaintiff was held hostage in Iran. After his release, he sued the government of Iran for the injuries he suffered while being held hostage there. The question for the court in *Persinger* was whether the phrase "in the United States" in § 1605(a)(5) could include the premises of the U.S. Embassy in Teheran. Construing the definition of "United States" in the statute, the court held that it could not. 729 F.2d at 842. The court also found that, if the tort occurred abroad, ancillary effects in the United States would not be sufficient to bring the case within the "tortious act" exception to immunity. 729 F.2d at 842-43. The court had no occasion to consider where a tort takes place when it is planned and aided in one location and carried out in another.

Asociacion de Reclamantes v. United Mexican States, 735 F.2d 1517 (D.C. Cir. 1984) similarly does not address the issue before this Court. In the *Reclamantes* case, the tort that plaintiffs alleged was unrelated to the acts that took place in the United States. The government of Mexico had entered into a settlement with the United States releasing plaintiffs' claims against the U.S. and undertaking to compensate plaintiffs instead. But that was not the act that gave rise

to plaintiffs' claim, which was that Mexico had subsequently reneged on its promise to compensate the plaintiffs. 735 F.2d at 1524-25. This act plainly occurred in Mexico. The *Reclamantes* court had no occasion to consider the applicability of the "tortious act" exception where the wrongful act that caused the injury plainly took place in the United States, but ancillary acts assisting it took place elsewhere. Like *Persinger*, the *Reclamantes* case simply does not address the question presented here.[14] Indeed, plaintiffs are aware of no case where a foreign official ordered or brought about a murder on American soil and was found to be immune on the theory that the entire tort did not take place here. There is no basis for this Court to reach such an absurd result.

Indeed, if Sultan's theory were correct and jurisdiction existed only where every single act in furtherance of the tort took place here, foreign governments could engage in assassinations and other crimes in the United States with impunity, simply by ensuring that at least one act in furtherance of the crime took place elsewhere. That is surely not what Congress intended when

---

[14] The other two cases cited by defendant, from other jurisdictions, are similarly unhelpful. In *Security Pacific National Bank v. Derderian*, 872 F.2d 281 (9th Cir. 1989), a case that primarily deals with the "commercial activity" exception, the court addressed the "tortious activity" exception in a footnote. The individual defendants had forged and deposited a check in an American bank; the proceeds were later deposited in a Mexican bank that was an instrumentality of the Mexican government. The *Security Pacific* court noted that the Mexican bank took no actions whatsoever in the United States and found the "tortious activity" exception inapplicable. But, significantly, the bank was not alleged to have acted in concert with the individual defendants and plaintiffs did not seek to impose any type of vicarious liability. The wrong for which plaintiff sought to hold the Mexican bank liable was not the wrong committed by the other defendants in the United States, but rather a separate wrong committed by the bank solely in Mexico.

Finally, Sultan relies on a 1987 district court opinion from the Southern District of Mississippi, *English v. Thorne*, 676 F.Supp. 761 (S.D.Miss. 1987). But the court in *Thorne* found that the acts alleged by the plaintiff fell within the "discretionary function" exception to the "tortious activity" provision. The court's subsequent consideration of the locus of the tort was thus *dicta*. Plaintiffs note that in the 15 years since it was decided, the *English* case has not been cited even once for this point.

it enacted the FSIA to "serve the interests of justice and . . . protect the rights of both foreign states and litigants in United States courts." 28 U.S.C. § 1602; *see Olsen v. Government of Mexico*, 729 F.2d 641, 646 (9th Cir. 1984).

b) The "Discretionary Function" Exclusion Does Not Apply and Sultan's Alleged Conduct Was Tortious

Sultan's remaining two challenges to the "tortious activity" exception are more quickly disposed of. He notes that the "tortious activity" exception does not strip a sovereign of immunity for "any claim based upon the exercise of performance or the failure to exercise or perform a discretionary function regardless of whether the discretion is abused," 28 U.S.C. § 1605(a)(5)(A), and contends that this is such a claim. The government of Chile made exactly the same claim in *Letelier* and this Court rejected it. In *Letelier*, Chile claimed that if it had set in motion and assisted in the events leading to the assassination of Letelier, its decision to do so would surely be "of the kind in which there is 'room for policy judgment and decision.'" 488 F.Supp. at 673. This Court did not disagree, but it nonetheless found the "tortious act" exception to immunity applied, holding:

> While it seems apparent that a decision calculated to result in injury or death to a particular individual or individuals, made for whatever reason, would be one most assuredly involving policy judgment and decision and thus exempt as a discretionary act under section 1605(a)(5)(A), that exception is not applicable to bar this suit. As it has been recognized, there is no discretion to commit, or to have one's officers or agents commit, an illegal act. Whatever policy options may exist for a foreign country, it has no "discretion" to perpetrate conduct designed to result in the assassination of an individual or individuals, action that is clearly contrary to the precepts of humanity as recognized in both national and international law. Accordingly there would be no "discretion" within the meaning of section 1605(a)(5)(A) to order or to aid in an assassination and were it to be demonstrated that a foreign state has undertaken any such act in this country, that foreign state could not be accorded sovereign immunity under subsection (A) for any tort claims resulting from its conduct.

488 F.Supp. at 673 (citations omitted). Just as a foreign sovereign has no discretion to plan and direct the assassination of an individual, so too a foreign sovereign and its agents or

instrumentalities have no discretion to "perpetrate conduct designed to result in" terrorist attacks killing thousands of people. If, as alleged in the Complaint, that is what this defendant did, the FSIA does not cloak him with immunity.

This Court's analysis in *Letelier* was adopted by the Ninth Circuit in *Liu v. The Republic of China*, 892 F.2d at 1419 (9th Cir. 1989 . In *Liu*, the Ninth Circuit held that the murder of an expatriate Taiwanese in California was not a "discretionary function" of the Director of the Defense Intelligence Bureau of the Republic of China. Citing *Letelier*, the Ninth Circuit noted that the director had violated Taiwanese internal policy when he arranged for the murder. Because he had no discretion to carry out an assassination, the court found the "discretionary function" clause inapplicable. Once again, *Letelier* and *Liu* provide the relevant analysis, as the only two cases of which plaintiffs are aware where a foreign official's so-called "discretionary function" resulted in a murder committed within the United States. Just as the courts in those cases refused to extend immunity for such acts, this Court should do the same.

Sultan contends that this Court's recent decision in *Maalouf v. Swiss Confederation*, 208 F.Supp.2d 31 (D.D.C. 2002) compels a different result, but he does so by selectively describing its holding. As this Court explained in *Maalouf*, if no specific governmental regulation applies to the conduct in question, "immunity exists only if the discretionary acts of a government employee are of the nature and quality that Congress intended to shield from tort liability . . . ." 208 F.Supp.2d at 35; *see also Cope v. Scott*, 45 F.3d 445, 448 (D.C. Cir. 1995). Moreover, "the analysis should focus on whether 'decisions based on considerations of public policy' are involved, because only discretionary actions of greater significance should have immunity." *Maalouf*, 208 F.Supp.2d at 36, *quoting Berkovitz by Berkovitz v. U.S*, 486 U.S. 531, 536 (1988); *Cope*, 45 F.3d at 448.

As this Court recognized in *Letelier*, however, no public policy favors protecting the discretion to finance terrorism and murder. It is inconceivable that Congress intended to shield an instrumentality of a foreign sovereign from liability for financing the most horrific terrorist attacks in the history of the United States and Sultan has cited no case suggesting otherwise. As Prince Sultan's string cite makes clear, *see* Sultan Br. at 22, the cases on which he relies arose in contexts far removed from the murders that took place on September 11. They provide no guidance or precedent.

Similarly, Sultan's claim that the conduct of which he is accused was not tortious should be rejected. He is alleged to have assisted in, aided and abetted, supported, and conspired to bring about terrorist attacks on the United States by providing financial support to terrorists with knowledge of their terrorist agenda against the United States. The acts of the hijackers that resulted in the death of the September 11 victims were surely tortious and Sultan does not contend otherwise. Rather, he suggests that if his own acts were not independently tortious, he cannot be liable. The law is otherwise. *See, e.g., Halberstam*, 705 F.2d 472 (defendant who assisted burglar by keeping records of items sold and falsely taking tax deductions for purchases that never occurred was liable in tort for murder committed during course of burglary even though she was not present during the burglary and committed no tortious act toward plaintiff); *Liu*, 892 F.2d at 1425-31 (under California law, Republic of China vicariously liable under doctrine of *respondeat superior* even though official's acts were contrary to Taiwanese law; sovereign immunity inapplicable under the "tortious act" exception). *See also* Point IV.A, *infra*. Sultan is liable for the tortious conduct he assisted; the FSIA provides no immunity in that circumstance.

2. The Acts Alleged in the Complaint Fall Within the "Commercial Activity" Exception to the FSIA

Even if the claims in this case did not fall within the "tortious act" exception to the FSIA, Sultan would still not be immune from suit because this action is based on "commercial activity" – the funding and support by Saudi government officials of terrorist organizations masquerading as Islamic charities.

A fundamental principle of the FSIA is that foreign sovereigns have no immunity when they behave like private actors, rather than like governments. The FSIA codifies a "restrictive, as opposed to absolute theory, of sovereign immunity in which 'immunity is confined to suits involving the foreign sovereign's public acts, and does not extend to cases arising out of a foreign state's strictly commercial acts.'" *Sun v. Taiwan*, 201 F.3d 1105, 1107 (9th Cir. 2000), *quoting Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983). *See also Republic of Argentina v. Weltover*, 504 U.S. 607, 614 (1992) ("the restrictive theory of sovereign immunity would not bar a suit based upon a foreign state's participation in the marketplace in the manner of a private citizen or corporation").

Accordingly, the FSIA provides:

> A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . (2) *in which the action is based* upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or *upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States*.

28 U.S.C. § 1605(a) (emphasis added).

Plaintiffs' claims fall within this exception because they arise from:

- "an act outside the territory of the United States": in this case, Prince Sultan's particular donations to terrorist front organizations in Saudi Arabia;

- "in connection with a commercial activity of the foreign state elsewhere": here, the ongoing support and financing of al Qaeda provided by Sultan and other members of the Saudi royal family[15];

- that caused a "direct effect in the United States": the September 11 attacks.

The FSIA prescribes that the "commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." 28 U.S.C. § 1603(d). The Supreme Court has further amplified this, explaining that "when a foreign government acts, not as regulator of a market, but in the manner of a private player within it, the foreign sovereign's actions are 'commercial' within the meaning of the FSIA." *Weltover*, 504 U.S. at 614. Moreover, and significantly for this case, the Supreme Court held in *Weltover*:

> [T]he question is not whether the foreign government is acting with a profit motive or instead with the aim of fulfilling uniquely sovereign objectives. Rather, the issue is whether the particular actions that the foreign state performs (whatever the motive behind them) are the type of actions by which a private party engages in 'trade and traffic or commerce.'

504 U.S. at 614 (emphasis in original). Thus, the motives of the Saudi government in funding the terrorist charity fronts are irrelevant to this Court's determination of whether those activities were commercial. So, too, is the not-for-profit nature of their activity. *See Weltover*, 504 U.S. at 614; *Saudi Arabia v. Nelson*, 507 U.S. 349, 365 (1983) (White, J., concurring) ("To run and operate a hospital, even a public hospital, is to engage in a commercial enterprise.").

---

[15] In the context of the FSIA, plaintiffs assume that the support and financing that Sultan and others provided to al Qaeda were official acts that qualify as "activity of the foreign state," *see* § 1605(a)(2). As noted above, *see supra* Point I-A, to the extent that these acts were contrary to the official policies of the Saudi government and cannot be attributed to it, the FSIA provides no immunity at all. Thus, whether Sultan's conduct falls within the "commercial activity" exception to the FSIA is an issue that arises only if Sultan's acts are treated as official government acts. Accordingly, plaintiffs assume this to be the case for purposes of this argument.

In providing funds to al Qaeda and its conduit charity fronts, Sultan and the other Saudi family defendants acted "not as regulator[s] of a market, but in the manner of . . . private player[s] within it." *See Weltover*, 504 U.S. at 614. The organizations to which they contributed were private organizations. Whether those organizations are seen as providing charitable services or engaging in terrorist activities, Saudi government officials' support for them was commercial, not governmental, activity. Rather than engage directly and officially in the activities of these charities, Sultan and other members of the Saudi royal family gave money to private entities to do so. In providing this kind of support, the Saudi official defendants were no different from Osama bin Laden or other private actors who donated funds to organizations whose activities they support. If operating a hospital is "commercial activity," as Justice White stated in *Nelson*, 507 U.S. at 365, so, too, is providing funds to a private charity to do the same thing. Moreover, to the extent that al Qaeda operated as a vast global terrorist network, purchasing equipment, renting property, manufacturing bombs, this too was "commercial activity." Saudi official donations to this enterprise, which provided the funds necessary to carry it out, similarly constitute "commercial activity" because these donations are essentially an investment in a private enterprise.

Sultan's acts that are at the heart of this lawsuit – his particular donations to these charities – are acts outside the United States "in connection" with this commercial activity. A simple "connection" or "relation" to commercial activity is all that is required under § 1605(a)(2). *See Nelson*, 507 U.S. at 358 (distinguishing third clause of § 1605(a)(2), which requires "mere connection with, or relation to, commercial activity" from first clause, which requires "something more"). Sultan's contributions were clearly acts "in connection with" the overall pattern of contributions and funding to these charities.

These acts, and the commercial activity itself, had a "direct effect" in the United States when al Qaeda used the funds it received from these so-called charities to carry out the September 11 attacks here. In *Weltover*, the Supreme Court held that an "effect is 'direct' if it follows 'as an immediate consequence of the defendant's activity.'" 504 U.S. at 618. The effect need not "foreseeable." *Id.*; *Princz*, 26 F.3d at 1173. Here, the September 11 attacks were a "direct effect" of Sultan's provision of funds to al Qaeda because, as alleged in the Complaint, the attacks could not have been carried out without such funding, *see* TAC at 199, and because the very purpose of the funding was precisely to carry out attacks of that kind.

II. THIS COURT HAS PERSONAL JURISDICTION OVER PRINCE SULTAN

Prince Sultan also contends that this Court lacks personal jurisdiction over him. He is wrong: whether in his personal or his official capacity, he is subject to the jurisdiction of this Court in this matter. A federal court may exercise personal jurisdiction over a non-resident defendant when: (1) the defendant is amenable to service of process pursuant to a statute or rule of court that authorizes such an exercise; and (2) such an exercise is consistent with due process of law. *See International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see also Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co*., 484 U.S. 97, 104 (1987). As Prince Sultan does not challenge service of process, only the second prong is relevant here.[16]

Although defendant insists throughout his brief that he is immune from suit because he is an agent or instrumentality of the Saudi government, invocations of his official status notably are absent from his discussion of personal jurisdiction. The FSIA, however, specifically addresses

[16] Sultan's U.S.-based lawyers waived service of process and agreed to accept service of the Complaint on his behalf. Under Fed.R.Civ.P. 4(k)(2), waiver of service is effective to establish personal jurisdiction with respect to federal claims "[i]f the exercise of jurisdiction is consistent with the Constitution and laws of the United States."

the question of personal jurisdiction over a foreign sovereign; to the extent that the FSIA is controlling on the question of subject matter jurisdiction, it also is controlling with respect to personal jurisdiction. This is especially true because under the law of this Circuit, foreign sovereigns are not "persons" within the meaning of the "due process" clause. *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82 (D.C. Cir. 2002). Accordingly, the "due process" clause provides no limitation on the personal jurisdiction conferred by Congress in the FSIA. Moreover, even if foreign states had due process rights, the exceptions to the FSIA were designed to, and do, satisfy the requirements of "minimum contacts." Thus, to the extent that either the "commercial activity" or the tortuous activity exception to the FSIA applies, the "minimum contacts" requirement is satisfied. Finally, with respect to acts carried out in his personal capacity, Prince Sultan is subject to the jurisdiction of this Court because he purposefully directed his actions at residents of the United States when he financed al Qaeda.

A. This Court Has Personal Jurisdiction Under the FSIA Over Prince Sultan in His Official Capacity

1. A foreign sovereign has no "due process" rights that would limit this Court's personal jurisdiction over Prince Sultan

The FSIA confers personal jurisdiction whenever a foreign sovereign is subject to suit under one of the exceptions set forth in the statute. See 28 U.S.C. § 1330(b). Nonetheless, Congress cannot confer jurisdiction where the Constitution forbids it. In *Price*, 294 F.3d 82, the D.C. Circuit considered whether a "foreign state" is a person within the meaning of the Fifth Amendment and thus whether the Constitution places limits on the exercise of personal jurisdiction conferred by Congress in the FSIA. The Court's conclusion was unequivocal: "[W]e hold that foreign states are not 'persons' protected by the Fifth Amendment." 294 F.3d at 96. The Court, noting that States of the Union are not "persons" for purposes of the Constitution, held that "it would be highly incongruous to afford greater Fifth Amendment rights to foreign

nations, who are entirely alien to our constitutional system, than are afforded to the states, who help make up the very fabric of that system." *Id.* For this reason, the D.C. Circuit held that the Fifth Amendment "poses no obstacle" to the personal jurisdiction over foreign sovereigns conferred by Congress in the FSIA. *Id.* at 99.[17] Nor is the D.C. Circuit the only court to reach this conclusion. *See Altmann v. Republic of Austria,* 142 F.Supp.2d 1187, 1208 (C.D.Cal. 2001)

---

[17] The D.C. Circuit left open the question whether this holding also applies to "agencies" or "instrumentalities" of a foreign state, *see Price*, 294 F.3d at 99-100, but its reasoning applies with equal force to agents of a foreign government like Prince Sultan. *See Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 21 at n.9 (D.D.C. 1998) (foreign state's agents, officials, and employees have no due process rights for acts performed in their official capacity). The *Price* Court found it "especially significant," for example, that:

> [T]he Constitution does not limit foreign states, as it does the States of the Union, in the power they can exert against the United States or its government. Indeed, the federal government cannot invoke the Constitution, save possibly to declare war, to prevent a foreign nation from taking action adverse to the interest of the United States or to compel it to take action favorable to the United States. It would therefore be quite strange to interpret the Due Process Clause as conferring upon [a foreign state] rights and protections *against* the power of federal government.

294 F.3d at 97. This argument applies with equal force to Prince Sultan in his official capacity – the government cannot invoke the Constitution against him as an official of his government nor can it prevent him from taking actions adverse to the interest of the United States. Similarly, the Court noted that principles of international law and comity, rather than the Constitution, apply to disputes between the United States and a foreign sovereign, *see id.*

Although those principles do not protect Prince Sultan here, he does invoke them in his official capacity and, in a proper case, they could be dispositive. Further, the Court noted: "If they believe that they have suffered harm by virtue of being haled into court in the United States, foreign states have available to them a panoply of mechanisms in the international arena through which to seek vindication or redress. These mechanisms, not the Constitution, set the terms by which sovereigns relate to one another." *Price*, 294 F.3d at 98. The same is true for an official of a foreign government. Prince Sultan's government has available to it mechanisms of international law and diplomacy not available to ordinary "persons." For these reasons, the holding of the D.C. Circuit in *Price* is fully applicable to this case. Indeed, as this Court noted in *Flatow*, the argument that agents and instrumentalities of a foreign sovereign are not "persons" within the meaning of the due process clause "may in fact be even stronger." 999 F.Supp. at 21 n.9. Accordingly, to the extent that Sultan can claim the benefits of his official position (limiting the subject matter jurisdiction of this Court to matters that fall within the exceptions to the FSIA), he must also accept its burdens, which include an absence of certain rights that individuals, but not foreign governments and their officials, enjoy.

("a foreign state is not a 'person" under the Due Process Clause of the United States Constitution."), *aff'd on other grounds*, 317 F.3d 954 (9th Cir. 2002); *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 20-21 (D.D.C. 1998) (foreign states not protected by due process clause); *Palestine Information Office v. Shultz*, 674 F.Supp. 910, 919 (D.D.C. 1987) (foreign political entity has no due process rights), *aff'd on other grounds*, 853 F.2d 932 (D.C. Cir. 1988).[18]

2. The FSIA exceptions incorporate, and exceed, any applicable "minimum contacts" requirement

But even if the "due process" clause does apply to Prince Sultan in his official capacity, its requirements are satisfied by the elements of the "commercial activity" and/or the "tortious act" exceptions to the FSIA, ensuring that this Court has personal jurisdiction to the same extent that it has subject matter jurisdiction.[19] "Due process" requires that "if the defendant 'be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *International Shoe*, 326 U.S. at 316. The definition of "commercial activity" in the FSIA requires that the activity in question have "substantial contact with the United States." 28 U.S.C.

---

[18] Some courts have suggested that even if a foreign sovereign is not a "person" within the meaning of the "due process" clause, it sheds its character as the sovereign and becomes a person when it engages in commercial activity. *See, e.g., Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1 (D.D.C. 1998). Even if this is true, the requirements of "due process" are satisfied whenever the "commercial activity" exception to the FSIA applies because of the substantial nexus to the United States inherent in that exception, *see infra.*

[19] There is no doubt that, to the extent Prince Sultan is an agency of a foreign sovereign, amenable to suit only under the exceptions to the FSIA, the relevant contacts would be with the United States, not with the particular jurisdiction where the case is filed. *See* H.R. Rep. No. 94-1487, at 13 (describing the Act's personal jurisdiction provisions as a kind of federal long-arm statute, one patterned after the District of Columbia's own long-arm law); *see also Jurisdiction of U.S. Courts in Suits against Foreign States: Hearings Before the Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary on H.R. 11315*, 94th Cong., 2d Sess. 31 (1976) (statement of Bruno A. Ristau) (noting that this

§ 1603(e). The "non-commercial tort" exception also requires a nexus to the United States. 28 U.S.C. § 1605(a)(5). In enacting these exceptions, Congress explicitly intended that the contacts with the United States necessary to satisfy the exception – which are, as demonstrated above, present here -- would be sufficient to satisfy the "minimum contacts" requirements of due process as well. As the House Report on the FSIA explained:

> The requirements of minimum jurisdictional contacts and adequate notice are embodied in [the FSIA]. . . . Significantly, each of the immunity provisions in the bill, sections 1605-1607, requires some connection between the lawsuit and the United States, or an express or implied waiver by the foreign state of its immunity from jurisdiction. These immunity provisions, therefore, prescribe the necessary contacts which must exist before our courts can exercise personal jurisdiction.

H.R. Rep. 94-1487, 1976 U.S.C.C.A.N. 6604.

Courts considering the question similarly have concluded that satisfaction of these exceptions also satisfies the constitutional requirement of "minimum contacts." *See Verlinden B.V v. Central Bank of Nigeria*, 461 U.S. 480, 490 (1983) (FSIA exceptions ensure "some form of substantial contact with the United States"); *Price*, 294 F.3d at 90 ("substantial contact" required by § 1603(e) exceeds requirements of "minimum contacts"); *Shapiro v. Republic of Bolivia*, 930 F.2d 1013, 1020 (2d Cir. 1991) ("the 'substantial contact' standard for subject matter jurisdiction under the commercial activity exception of Section 1605(a)(2) requires a closer nexus than the 'minimum contacts' necessary for due process); *Callejo v. Bancomer, S.A.*, 764 F.2d 1101, 1107 n.5 (5th Cir. 1985) (elements of "commercial activity" exception sufficient to satisfy requirements of due process); *Flatow*, 999 F.Supp. at 20 (exceptions to immunity in FSIA "each have an inherent jurisdictional nexus with the United States, which exceeds 'minimum contacts' requirements".).

---

feature of the bill "will insure that only those disputes which have a relation to the United States are litigated in the courts of the United States").

B. This Court Also Has Jurisdiction Over Prince Sultan In His Personal Capacity

This Court also has personal jurisdiction over Prince Sultan with respect to acts performed in his individual, personal capacity because Prince Sultan has sufficient contact with the United States to satisfy the due process requirement of "minimum contacts."

As a threshold matter, the relevant contacts in this action are with the United States, not with the District of Columbia. Plaintiffs' claims against Sultan in his personal capacity include claims under the Anti-Terrorism Act and the RICO Act, each of which provides for nationwide service of process. *See* 18 U.S.C. § 2334(a); 18 U.S.C. § 1965(b). Indeed, this Court has already recognized that nationwide service of process is an appropriate tool in this case. See Order, Docket #93 (denying Defendant Kazmi's motion to dismiss for lack of jurisdiction). It is firmly established that where a cause of action is based on a federal statute that provides for nationwide service of process, the requisite "minimum contacts" are contacts with the United States, rather than with the particular forum state. *See, e.g., Omni Capital Int'l.*, 484 U.S. at 102 n.54; *United Elec., Radio & Mach. Workers of America v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1085 (1st Cir. 1992); *Texas Trading & Milling Corp. v. Federal Republic of Nigeria*, 647 F.2d 300, 314 (2d Cir. 1981); *see also* Charles A. Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 1067.1, at 82 (2d ed. Supp. 1995).

Similarly, where service is authorized (or waived) under Fed.R.Civ.P. 4(k)(2), the requisite contacts are with the United States. *See, e.g., ISI Int'l, Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 551 (7th Cir. 2001); *Central States, Southeast & Southwest Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 946 & n.10 (7th Cir. 2000); *United States v. Swiss American Bank, Ltd.*, 191 F.3d 30, 36 (1st Cir. 1999); *see also* Committee Notes to the 1993 Amendments to the Federal Rules of Civil Procedure, H.R. Doc. No. 103-74, at 168 (1993).

This rule is, moreover, consistent with the reality, and Congress's recognition of it in the Anti-Terrorism Act, that modern-day terrorism has an international scope. *See* 18 U.S.C. § 2333; *see also Boim*, 291 F.3d at 1004 (describing international links whereby money raised in the United States is laundered and wire abroad and used for terrorist activities elsewhere).

The standard for determining whether defendant has sufficient contacts with the forum is not a rigid one, nor can it be applied without reference to the nature of the underlying claims against the defendant. As the Supreme Court has explained, "'[d]ue process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." *Cafeteria and Restaurant Workers Union, Local 473 v. McElroy*, 367 U.S. 886, 895, 81 (1961). It is for this reason that the Supreme Court in *International Shoe* rejected a rigid formula for discerning the contacts necessary to satisfy due process, opting instead for an approach whereby each case could be evaluated in light of its own unique facts and circumstances, in order to ensure that the exercise of jurisdiction complies with "fair play and substantial justice." 326 U.S. at 316.

More recently, the Supreme Court has stated that "reasonableness considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required." *Burger King v. Rudzewicz*, 471 U.S. 462, 483-84 (1985). The D.C. Circuit, too, has recognized that policy considerations may play a part in determining what process is due in a particular situation. *See Palestine Information Office v. Shultz*, 853 F.2d 932, 942 (D.C. Cir. 1988); *see also Flatow*, 999 F.Supp. at 22-23 (policy behind statute giving terrorism victims remedy "could significantly lower the threshold of constitutional requirements").

If ever a case called for recognition of the policy considerations that determine what

process is due, it is this one. The reasonableness of subjecting defendants to jurisdiction in the U.S. must be assessed in light of the cold-blooded manner in which U.S. residents were targeted and attacked for no reason other than that they were here, on United States soil. The policies of "fair play" and "substantial justice" cannot be applied without recognition of the deliberate murderous attacks on the United States that gave rise to plaintiffs' claims.

In *Burger King*, the Supreme Court held that the requirements of due process were satisfied "if the defendant has 'purposefully directed' his activities at residents of the forum and the litigation results from alleged injuries that 'arise out of or relate to' those activities." 471 U.S. at 472 (citations omitted). Here, plaintiffs allege that Prince Sultan knowingly provided material support to international terrorism, including terrorism against the United States, by providing funds for that purpose to IIRO, al-Haramain, MWL, and WAMY. TAC ¶ 359. These entities all operated and maintained international "charities" with offices in the United States. TAC ¶¶ 150-153; pp. 199-219; ¶¶ 154-179; ¶¶ 229-233; ¶¶ 234-248; ¶¶249-260. As alleged in the Complaint, al Qaeda specifically targeted the United States and its innocent civilian residents, proclaiming that "America is a state at war with us" and noting that "killing of women and the old and children of the war states . . . is permissible . . . ." TAC at p. 207. In 1998, bin Laden issued a "fatwa" in which he proclaimed: "We . . . call on every Muslim . . . to comply with God's order to kill the Americans and plunder their money wherever and whenever they find it." TAC ¶ 213. Thus, al Qaeda made no secret of the fact that its intended target was the United States and American citizens and residents. At the heart of plaintiffs' Complaint, then, is the allegation that Prince Sultan "purposefully directed" his activities at residents of the United States by funding those whose "activities" included killing U.S. residents for no reason other than that they were "infidel" Americans. *See also Calder v. Jones*, 465 U.S. 783, 789 (1984) (where defendant's

"intentional, and allegedly tortious, actions were expressly aimed at California," defendant was subject to jurisdiction in California).

Indeed, given this explicit direction of terrorist activities at the United States and at Americans everywhere, it can hardly be said that Prince Sultan had no warning that he might be answerable in a U.S. court for his conduct in supporting these acts. In *Daliberti v. Iraq*, 97 F.Supp.2d 38 (D.D.C. 2000), this Court found that state sponsors of terrorism were provided sufficient warning of the seriousness with which the United States views terrorist attacks against Americans that it was reasonable for them to held accountable for such acts in the courts of the United States. Accordingly, the Court found that the assertion of personal jurisdiction did not offend "traditional notions of fair play and substantial justice" and that defendant's targeting of Americans provided a sufficient nexus with the United States to satisfy due process concerns. 97 F.Supp.2d at 54. *Accord Flatow*, 999 F.Supp. at 23.

This case is precisely analogous. Although neither Saudi Arabia nor Prince Sultan is a designated state sponsor of terrorism, the policy and reasoning of the *Daliberti* court is applicable here. The *Daliberti* court expressed concern that the use of terrorism as a means to influence the international community stretches traditional notions of fair play and justice to their very limits. The horrific attacks of September 11 illustrate all too well his concern. As in *Daliberti*, clear signals from the United States that terrorist acts against Americans would not be tolerated provided this defendant with adequate warning that he would be subject to jurisdiction in the U.S.; such signals included official trips to express U.S. concerns about fund-raising activities in Saudi Arabia that supported international terrorism. *See The Age of Sacred Terror*, pp. 186-189. Moreover, in one respect, this case presents an even stronger case for the assertion of personal jurisdiction than *Daliberti*. In *Daliberti*, the Court found that Iraq could be held

accountable in a U.S. court for acts of terrorism committed abroad against U.S. citizens. Here, by contrast, the acts of terrorism at issue were perpetrated on American soil. Persons who provide the means, financial or otherwise, for terrorists to come to the United States and commit acts of murder here cannot be said to lack sufficient contacts with the United States to make them answerable in this Court under our system of justice.[20]

III. THE CLAIMS AGAINST PRINCE SULTAN ARE JUSTICIABLE

Prince Sultan contends that the claims against him are not justiciable under the "political question" doctrine, the "act of state" doctrine, and the doctrine of international comity, but none of these doctrines apply here.

A. The "Political Question" Doctrine Provides No Basis to Dismiss this Action

Prince Sultan contends that, were this Court to entertain allegations that he knowingly

---

[20] Should this Court conclude that, based upon the current record, there are insufficient grounds to support the exercise of personal jurisdiction over Prince Sultan, plaintiffs request, and hereby move this Court for, the opportunity to conduct jurisdictional discovery.

It is the law in this circuit that "[a] plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery." *Second Amendment Found. v. United States Conference of Mayors*, 274 F.3d 521, 525 (D.C. Cir. 2001), *quoting El-Fadl*, 75 F.3d at 676; *accord GTE New Media Servs. Inc. v. Bellsouth Corp.*, 199 F.3d 1343, 1351-52 (D.C. Cir. 2000); *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 513 (D.C. Cir. 2002); *In re Vitamins Antitrust Litigation*, 94 F. Supp. 2d 26, 27 (D.D.C. 2000); *see also Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978); *Edmond v. United States Postal Service General Counsel*, 949 F.2d 415, 425 (D.C. Cir. 1991) ((remanding for jurisdictional discovery, where district court had dismissed for lack of personal jurisdiction).

Moreover, "[a] district court has discretion whether to hold in abeyance a decision on a motion to dismiss for lack of personal jurisdiction to enable a party to conduct discovery. 5A Charles A. Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE, § 1351, at 253-59 (2d ed. 1990). *See Edmond v. United States Postal General Counsel*, 949 F.2d at 425; *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 788 (D.C. Cir. 1983), [*cert. denied*, 467 U.S. 1210 (1984)]." *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 524 n.4 (D.D.C. 1995)

Here, plaintiffs believe they have made a sufficient showing of Sultan's contacts with the United States to demonstrate that he is subject to the jurisdiction of this Court. Plaintiffs expect, given the contacts detailed in this motion, that jurisdictional discovery would lead to additional information about these contacts as well as information about additional contacts with the United States.

sponsored al Qaeda and Osama bin Laden, important relations between the United States and Saudi Arabia would be jeopardized. There is no "political question" implicated in this lawsuit and the "political question" doctrine provides no basis to dismiss.

The Supreme Court has made clear that "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance." *Baker v. Carr*, 369 U.S. 186, 211 (1962). Rather, the "political question" doctrine excludes from the court's consideration only "those controversies which revolve around *policy choices and value determinations* constitutionally committed for resolution" to other branches of government. *Japan Whaling Assn. v. American Cetacean Society*, 478 U.S. 221, 230 (1978) (emphasis added). The D.C. Circuit has similarly described the demarcation between what is justiciable and what is not:

> Whereas attacks on foreign policymaking are nonjusticiable, claims alleging noncompliance with the law are justiciable, even though the limited review that the court undertakes may have an effect on foreign policy.

DKT Memorial Fund, Ltd. v. Agency for International Development, 810 F.2d 1236, 1238 (D.C. Cir. 1987)

Thus, only where a case requires a court to go beyond its competence in construing statutes and cases and applying them to specific facts will an impact on foreign policy render a question non-justiciable. Otherwise, as the Supreme Court has recognized, in language strikingly applicable here:

> [U]nder the Constitution, one of the Judiciary's characteristic roles is to interpret statutes, and we cannot shirk this responsibility merely because our decision may have significant political overtones.

Japan Whaling, 478 U.S. at 230.

In *Japan Whaling*, wildlife conservation groups filed suit to compel the U.S. Secretary of Commerce to certify Japan as being in violation of the International Convention for the

Regulation of Whaling ("ICRW"). Such certification required the imposition of sanctions on the violating nation. *Id.* at 226. After extensive negotiations between the United States and Japan, the Secretary agreed not to certify Japan and trigger the sanctions. *Id.* at 227-28. The wildlife groups contended that certification was required under the ICRW. Japanese whaling groups, which were permitted to intervene, argued that the case was non-justiciable because it involved foreign relations. The Supreme Court rejected this argument.

Because the challenge to the Secretary's decision not to certify Japan for harvesting whales in excess of IWC quotas presented "a purely legal question of statutory interpretation," the Court held that the controversy could not be declined as a political question. *Id.* The Court noted that the determination whether the Secretary was obliged to certify Japan called "for applying no more than the traditional rules of statutory construction, and then applying this analysis to the particular set of facts presented below." *Id.* Accordingly, the case was within the competence of the judicial branch and was justiciable. Of course, the imposition of sanctions on Japan, a strong ally of the United States, was likely to affect relations between the two countries, but this was insufficient to place the legal issue raised by plaintiffs outside the competence of the court. This was so even though plaintiffs in *Japan Whaling* challenged the decision of the Executive Branch not to impose the sanctions required by law, in order to curry favor with an American ally. *See also South African Airways v. Dole*, 817 F.2d 119 (D.C. Cir. 1987) (suit seeking to set aside order issued of Secretary of Transportation revoking permit of South African air carrier to provide air service between U.S. and South Africa justiciable because court was called upon to do no more than determine whether the Secretary had complied with a specific

statutory provision).[21]

In this case, plaintiffs' claims do not involve policy choices and value determinations that have been committed to other branches of government. Congress has already made those policy choices and value determinations in enacting the Anti-Terrorism Act, the Alien Tort Claims Act, the Torture Victims Protection Act and the RICO Act. Congress has decided that "the imposition of liability at any point along the causal chain of terrorism . . . would "interrupt, or at least imperil, the flow of money" to terrorists. *Boim,* 291 F.3d at 1011. Congress has decided that this interruption is sufficiently important to warrant the extension of civil liability for acts of international terrorism "to the full reaches of traditional tort law." *Id.* at 1010. Indeed, the Anti-Terrorism Act is specifically targeted at *international terrorism*, while the ATCA targets violations of international law. Rather than excluding civil adjudication of such matters,

[21] The distinction between what is justiciable and what is not in the area of foreign relations is made even clearer by comparison of these cases to those in which the issues were held to be non-justiciable. In *Crockett v. Reagan*, 720 F.2d 1355 (D.C. Cir. 1983), 29 members of Congress sued President Reagan and other United States officials challenging the legality of the United States' presence in, and military assistance to, El Salvador. The plaintiffs' primary contention was that the President's failure to report to Congress was a violation of the War Powers Resolution ("WPR") and the war powers clause in the Constitution. The district court found that "the war powers issue presented a nonjusticiable political question"; the D.C. Circuit affirmed. *Accord Sanchez-Espinoza v. Reagan*, 770 F.2d 202 (D.C. Cir. 1985) (claims by members of Congress that "assistance to the Contras is tantamount to waging war, so that they 'have been deprived of their right to participate in the decision to declare war' in violation of the war powers clause of the Constitution" was non-justiciable). By contrast, however, in C*ommittee of U.S. Citizens Living in Nicaragua v. Reagan*, 859 F.2d 929 (D.C. Cir. 1988), the D.C. Circuit found that the lawsuit seeking "injunctive and declaratory relief against the funding of the Contras on grounds that such funding violates the Administrative Procedure Act, the first and fifth amendments of the United States Constitution, Article 94 of the U.N. Charter, and customary international law" was not clearly barred by the political question doctrine and reliance on that doctrine was "not . . . the best approach." 859 F.2d at 934. Similarly, in *Sanchez-Espinoza*, the Court found that the claims brought by private parties under the Alien Tort Claims Act for injuries caused by the U.S. military in the course of the war in Nicaragua were not so clearly non-justiciable as to preclude the court's consideration at all, but the political question doctrine did require the withholding of purely discretionary relief in that context. 770 F.2d at 208.

Congress plainly intended for plaintiffs to be able to bring civil actions even though defendants would often be foreign entities, with potential impacts on foreign policy.

Prince Sultan's argument that there has been a constitutional commitment of foreign relations to the Executive Branch misses the point. This lawsuit is not about the Executive Branch's conduct of foreign relations. Plaintiffs do not seek to dictate how the Executive Branch should deal with the Saudi government; they do not challenge any policy choices or value determinations in that sphere. Plaintiffs allege that Sultan committed certain acts in violation of U.S. law. Whether plaintiffs are entitled to compensation from Sultan is a question expressly committed to the judicial branch by Congress through its enactment of the statutes under which plaintiffs have brought his action. Indeed, this conclusion is compelled by the *Japan Whaling* case: if plaintiffs' challenge to the Secretary's decision in that case did not impinge on foreign policy choices constitutionally committed to the Executive Branch, then this lawsuit, which does not challenge any action of the Executive Branch at all, certainly does not. And significantly, the Executive Branch does not contend otherwise. Prince Sultan's argument that this case will prevent the Administration from conducting foreign relations rings strangely hollow in the absence of an assertion to that effect from the branch of government purportedly affected.

Prince Sultan's argument that this case lacks "judicially discoverable and manageable standards" is also wide of the mark. By focusing on the word "discoverable" Prince Sultan attempts to shift this Court's focus to purported problems he predicts plaintiffs will encounter in discovery.[22] But numerous cases make crystal clear that is not what the Supreme Court was

[22] In fact, plaintiffs have obtained substantial evidence from around the world documenting the role Saudi entities played in financing al Qaeda and its acts of international terrorism. When called upon to do so, they will prove their claims. Defendant's skepticism that plaintiffs can obtain the evidence they need -- and his dismissal of the efficacy of the discovery mechanisms

referring to when it included among "political questions" those lacking "judicially discoverable and manageable standards." Rather, cases that are non-justiciable because of a "lack of judicially discoverable and manageable standards" are those where the criteria for decision-making are absent or outside the competence of courts. *See Baker v. Carr*, 369 U.S. 186, 210, 223-23 (1962) ("the lack of satisfactory criteria for a judicial determination" renders case non-justiciable; *Japan Whaling*, 478 U.S. at 230 ("courts are fundamentally underequipped to formulate national policies or develop standards for matters *not legal in nature*."); *U.S. v. Muñoz-Flores*, 495 U.S. 385 (1990) (determination whether bill was for raising revenue and which house of Congress it originated it were justiciable; "[s]urely a judicial system capable of determining when punishment is 'cruel and unusual,' when bail is 'excessive,' when searches are 'unreasonable,' and when congressional action is 'necessary and proper' for executing an enumerated power is capable of making the more prosaic judgments demanded by adjudication of Origination Clause challenges."); *Consumer Energy Council v. Federal Energy Regulatory Commission*, 673 F.2d 425 (D.C. Cir. 1982) (where "no special nonjudicial expertise" was required to determine applicability of constitutional provision, issue did not raise political question).

Plaintiffs' claims call for this court to do no more than apply specific statutes and common-law doctrines to the conduct of the defendant and determine whether defendant has violated the statutes and laws in question. This is uniquely the province of the courts.[23]

---

available to plaintiffs through this Court and through courts in other nations -- provides no basis to dismiss at this point in the case.

[23] The two district court cases cited by Prince Sultan do not call for a different result. As noted in footnote 20, supra, *Crockett v. Reagan*, 558 F.Supp. 893 involved a challenge to U.S. involvement in El Salvador. The court found the dispute was not justiciable, in part because of the difficulty of determining the nature of U.S. involvement there and also because determining

None of the other factors raised by Prince Sultan support application of the political question doctrine to this case. The claims in this case do not turn, as Sultan suggests, on a determination that his support to the terrorists is "fairly attributable" to the Kingdom of Saudi Arabia. Plaintiffs do not ask this Court to make the "policy determination" that Sultan suggests is at issue here – they do not ask this Court to declare Saudi Arabia a state sponsor of terrorism. Nor do they question the failure of the Executive Branch to do so. In this regard, it is significant that plaintiffs have not named Saudi Arabia as a defendant nor have they invoked the "terrorism exception" to the FSIA against this defendant.

Finally, the "importance of the U.S. relationship with Saudi Arabia" provides no basis for dismissal under the political question doctrine (or otherwise).[24] If U.S. interests were at stake here, the United States could appear and make that argument. Indeed, defendant cites an *amicus*

---

at what point U.S. forces were first "introduced into hostilities or imminent hostilities" was beyond the province of the Court. The difficulties attendant on determining the truth of the situation on the ground in a war zone distinguish the *Crockett* case from this one and from other cases involving the "political question" doctrine. And certainly in *Crockett*, unlike in this case, plaintiffs were challenging the Executive Branch's policy in El Salvador. *Iwanowa v. Ford Motor Co.*, 67 F.Supp.2d 424 (D.N.J. 1999) is similarly inapplicable. In *Iwanowa*, the district court in New Jersey found that a claim for damages arising from forced labor in Germany during World War II was barred by the political question doctrine because war reparations are exclusively within the province of the Executive Branch and not subject to judicial review. The court further found that length of time that had passed – more than fifty years – and the huge numbers of people involved would render the case unmanageable for a court to adjudicate. The incidents alleged in the Third Amended Complaint all took place within the recent past and while there are a large number of plaintiffs in this case, they number in the thousands, not the millions as was potentially true in *Iwanowa*. Moreover, all of the claims in this case arise from the attacks of September 11, 2001, further focusing the issues before this Court. Unlike *Iwanowa*, this case is not beyond the capacity of a court to manage and adjudicate.

[24] Prince Sultan invokes this relationship, and the Executive Branch's role in maintaining it under several different rubrics – a purported risk of disrespect to the Executive Branch, a need for adherence to a decision already made by that branch, a potential for embarrassment. Regardless of how denominated, all of these arguments turn on the Prince's contention that

brief filed by the United States in *Doe v. Exxon Mobil Corp*, No. 01 CV1357, without, apparently, appreciating its significance: *no similar brief has been filed in this case*. The government's silence is dispositive. If the Executive Branch does not believe that this case jeopardizes the interests of the United States, Prince Sultan is not in a position to contend otherwise.

Moreover, Prince Sultan misrepresents the position of the U.S. government with respect to his country. Richard Murphy, the former U.S. ambassador to Saudi Arabia, has succinctly described the U.S. perspective on its relationship with the Kingdom: "I have never said that the government of Saudi Arabia is our ally. I have said that we have common interests . . . but that does not include the protection of individual princes." TAC at 219. Moreover, while Prince Sultan cautions the Court against adhering to political decisions he claims have already been made, the reality is that the relationship between the United States and Saudi Arabia is not static. On April 29, 2002, the United States and Saudi Arabia announced the transfer of American air operations and withdrawal of U.S. forces from Saudi Arabia. *See* SPA 4/30/03. Secretary of Defense Donald Rumsfeld and defendant himself noted that changes in the Persian Gulf region warranted adaptations in the precise relations between the United States and Saudi Arabia. No doubt the relationship will continue to evolve in light of new facts and new circumstances as they evolve.[25] That this lawsuit may become a factor to be taken into account by the Executive

---

Saudi-American relations are important to the U.S. government and could be jeopardized by this lawsuit – and none is persuasive for the reasons discussed in the text.

[25] These factors may include Saudi Arabia's voting record in the United Nations. A June 17, 2002 State Department report to Congress entitled "Voting Practices in the United Nations 2001" shows that, in 2001, Saudi Arabia voted with the United States only 15.8% of the time. On votes labeled in the report as "important," Saudi Arabia voted with the United States twice, against the U.S. eight times, and was absent twice. (In the same period, by comparison, the report shows Iran's voting percentage was 19.7% overall.)

Branch in its conduct of foreign policy in no way indicates that the issues in this case are political questions beyond the scope of this Court's competence.

B. Neither the Act of State Doctrine Nor the Doctrine of International Comity Applies

Prince Sultan's contention that the "act of state" doctrine bars this lawsuit should be rejected. As the Supreme Court made clear in *W.S. Kirkpatrick & Co., Inc. v. Environmental Techtonics Corp.*, 493 U.S. 400, 405 (1990), one of the cases cited by Prince Sultan in his brief, the "act of state" doctrine is entirely inapplicable unless the lawsuit in question "requires the Court to declare invalid, and thus ineffective as a rule of decision for the courts of this country, the official act of a foreign sovereign." (Citations omitted.) The Court continued:

> In every case in which we have held the act of state doctrine applicable, the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory.

493 U.S. at 405. Indeed, the Supreme Court specifically considered, and rejected, the argument that a lawsuit implicates the "act of state" doctrine merely "because the facts necessary to establish [the] claim will also establish that the [the sovereign's act] was unlawful." *Id.* at 406. Unless the *validity* of the official act is called into question, the "act of state" doctrine does not apply. In *Kirkpatrick*, plaintiff contended that defendants had unlawfully obtained a contract with the Nigerian government by paying a bribe. The Supreme Court held that "the factual predicate for application of the act of state doctrine does not exist," even though the lawsuit would require the court to determine whether the defendant paid and the Nigerian government received payments that violated the Foreign Corrupt Practices Act. 493 U.S. 405-406. The Court concluded:

> Courts in the United States have the power, and ordinarily the obligation, to decide cases and controversies properly presented to them. The act of state doctrine does not establish an exception for cases and controversies that may

> embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdictions shall be deemed valid. That doctrine has no application to the present case because the validity of no foreign sovereign act is at issue.

493 U.S. at 409-10. This was so even though the bribes that formed the basis of plaintiff's claim would have violated Nigerian law as well as U.S. law, thus arguably rendering the Nigerian contract invalid. The Court found that possible effect insufficient to implicate the "act of state" doctrine, because the court would not be called upon to reach the question of the contract's validity in order to adjudicate the claims before it

Here, too the validity of no foreign sovereign act is at issue. Plaintiffs do not ask the Court to declare any act of the Prince Sultan, or his government, invalid. Like the plaintiffs in *W.S. Kirkpatrick*, plaintiffs contend only that acts of this defendant (whether or not performed in an official capacity on behalf of his government) that may have been perfectly valid were performed in violation of U.S. and international law. As in *W.S. Kirkpatrick*, there is simply no predicate for application of the "act of state" doctrine in this lawsuit.

Prince Sultan also suggests, without any basis, that principles of international comity require dismissal. He provides only the most generic citations to authority – that comity involves values of "reciprocal tolerance and good will," for example – without grappling at all with the actual content of the doctrine he invokes. The reason for this approach is clear: the doctrine of international comity, as set forth by the D.C. Circuit, has absolutely no applicability here.

The D.C. Circuit has explained (and recently reiterated): "'Comity' summarizes in a brief word a complex and elusive concept--the degree of deference that a domestic forum must pay to the act of a foreign government not otherwise binding on the forum." *Laker Airways Limited v. Sabena, Belgian World Airlines*, 731 F.2d 909, 937 (D.C. Cir. 1984); *see also SEC v. Banner Fund International*, 211 F.3d 602 (D.C. Cir. 2000). The "central precept" of comity –

entirely inapplicable in this case – is that "when possible, the decisions of foreign tribunals should be given effect in domestic courts." *Laker Airways*, 731 F.2d at 937. But even this "central precept" is limited by a general principle that *is* applicable here:

> No nation is under an unremitting obligation to enforce foreign interests which are fundamentally prejudicial to those of the domestic forum. Thus, from the earliest times, authorities have recognized that the obligation of comity expires when the strong public policies of the forum are vitiated by the foreign act.

Id. *Accord Banner Fund*, 211 F.3d at 612 ("A domestic forum is not compelled to acquiesce in pre or postjudgment conduct by litigants which frustrates the significant policies of the domestic forum.").

Here, there are no decisions of foreign tribunals and no foreign proceedings or official acts of another government to which this Court is asked to defer. Sultan asks merely that the Court decline to entertain jurisdiction over him as a gesture of "tolerance and good will" toward his government. *See* Sultan Br. at 38. On the other side of the equation, the public policies of the United States that are at stake are especially strong and particularly in jeopardy of being compromised by the kind of deference defendant seeks. The USA Patriot Act of 2001 declares: "All Americans are united in condemning, in the strongest possible terms, the terrorists who planned and carried out the attacks against the United States on September 11, 2001, and in pursuing all those responsible for those attacks *and their sponsors* until they are brought to justice." USA Patriot Act of 2001, Title X, § 102 (emphasis added). Similarly, in a joint session of Congress on September 20, 2001, President Bush declared: "We must starve terrorists of funding . . ." *See* TAC at p. 219. These statements merely confirm the long-standing public policy expressed by Congress "to cut off the flow of money to terrorists at every point along the causal chain of violence." S. Rep. 102-342, at 22. The foreign interests that Prince Sultan asks this Court to recognize are "fundamentally prejudicial" to the United States to the extent that

they would truncate this Court's inquiry into the funding and sponsorship of the September 11 terrorist attacks. No principle of international comity requires, or indeed permits, the United States to surrender its interest in national security to accommodate the desire of a foreign prince to avoid embarrassing inquiry.[26]

IV. THE COMPLAINT PROPERLY ASSERTS CLAIMS AGAINST PRINCE SULTAN

As a fallback, Prince Sultan argues that even if this Court has jurisdiction and even if the claims in this case are justiciable, those claims should nonetheless be dismissed because, he contends, the Complaint fails to state any claim against him. As noted above, *see* pp. 8- 10, Sultan bears a heavy burden for plaintiffs need do no more than "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Sorema*, 534 U.S. at 512-13. Moreover, "[a] motion to dismiss should be granted only when it appears beyond doubt that, under any reasonable reading of the complaint, the plaintiff will be unable to prove any set of facts that would justify relief." *Haynesworth*, 820 F.2d at 1254. Prince Sultan has not met that standard here.

A. The Complaint Sufficiently Pleads a Causal Connection Between Prince Sultan's Acts and the Terrorist Acts of September 11

Sultan claims that plaintiffs have failed to plead a sufficient causal connection between his actions and the September 11 terrorist attacks under either federal or state law. In making this argument, Sultan ignores what the Complaint actually alleges. In totality, the Complaint plainly alleges that, without financial or material support from Prince Sultan and others, the al Qaeda terrorists could not have carried out the murderous attacks that resulted in plaintiffs'

[26] Sultan's comparison of this case to entertaining allegations against Vice-President Cheney is particularly inapt. Vice-President Cheney has indeed been subject to suit in this Court, *see Judicial Watch, Inc. v. National Energy Policy Development Group*, 230 F.Supp.2d 12 (D.D.C.

losses. These allegations sufficiently plead causation.

From the outset, beginning with the introduction, the Third Amended Complaint pleads the causal relationship between the acts of defendants, including Sultan, and the September 11 terrorist attacks: "The financial resources and support network of these Defendants – charities, banks, front organizations, and financiers – are what allowed the attacks of September 11, 2001 to occur." TAC at 199. The introduction further alleges that Osama bin Laden and al Qaeda "cannot plan, train and act on a massive scale without significant financial power, coordination and backing." *Id.* The Complaint identifies charities as among the specific sources of the financial backing so critical to al Qaeda. TAC at 204, 209 ("Charities became an essential part of the support system of al Qaeda and Osama bin Laden, providing the financial resources the enabled them to wage war."), TAC 210 ("The financial and logistical support given to al Qaeda by the Defendants funded al Qaeda growth siphoning off charitable donations to sponsor terrorism."). Moreover, the Complaint alleges that defendants knew that they were providing material support to terrorists who were targeting the United States: "Defendants knew or reasonably should have known that they were providing material support to terrorists and terrorist organizations who committed the September 11, 2001 savagery that murdered thousands of innocent people. Defendants clearly knew, or clearly should have known, they were providing material support, aiding and abetting and enabling the terrorists that brutalized America and the world on September 11, 2001." TAC at 217.

The Complaint also makes specific allegations about this defendant's role in the causal chain leading to the September 11 attacks. It alleges that "Prince Sultan . . . publicly supported

---

2002) (Vice-President Cheney required to comply with plaintiffs' discovery requests in suit where he was named defendant).

and funded several Islamic charities that were sponsoring Osama bin Laden and al Qaeda operations, including the International Islamic Relief Organization, Muslim World League, World Assembly of Muslim Youth and al-Haramain." TAC ¶ 353. It further alleges that "Prince Sultan has been involved in the sponsorship of international terrorism through the IIRO and other Saudi-funded charities." TAC ¶ 354. In addition, the Complaint alleges that in his role as Chairman of the Supreme Council, it was Prince Sultan's job to supervise the Muslim charities that raised money in Saudi Arabia, and that through his role at the Supreme Council, Prince Sultan must have known about the role of the charitable entities in financing the al Qaeda terrorist organization. TAC ¶ 357-58. Nonetheless, "despite that responsibility and knowledge, Prince Sultan personally funded several Islamic charities over the years that sponsor, aid, abet or materially support Osama bin Laden and al Qaeda . . . ." TAC ¶ 359. The Complaint continues:

> At best, Prince Sultan was grossly negligent in the oversight and administration of charitable funds, knowing they would be used to sponsor international terrorism, but turning a blind eye. At worst, Prince Sultan directly aided and abetted and materially sponsored al Qaeda and international terrorism.

TAC ¶ 363. These allegations sufficiently plead the causal connection between Sultan and the September 11 attacks.

Although Sultan claims that providing funds to terrorist groups does not create a sufficient link to the murderous acts those groups commit, the causal connection between the funding of terrorists and their acts of violence has been recognized by Congress and the courts. In enacting the Anti-Terrorism Act, Congress expressly recognized that organized acts of terrorism cannot take place without financial backing from those who may never personally detonate a bomb or get on a plane. Thus, the Senate Report on the Anti-Terrorism Act emphasized that, by imposing "liability at *any point along the causal chain of terrorism*, it would interrupt, or at least imperil, the flow of money." S.Rep. 102-342 at 22 (emphasis added); *see*

also Brief for the United States as *Amicus Curiae* Supporting Affirmance, *Boim v. Quranic Literacy Institute*, Nos. 01-1969, 01-1970 (7th Cir.). In *Boim*, one of the first published appellate court decisions to interpret the provisions of the Anti-Terrorism Act, the Seventh Circuit held:

> Congress' purpose here [in enacting the ATA] could not be met unless liability attached beyond the persons directly involved in acts of violence. The statute would have little effect if liability were limited to the persons who pull the trigger or plant the bomb because such persons are unlikely to have assets, much less assets in the United States, and would not be deterred by the statute. Also, and perhaps more importantly, *there would not be a trigger to pull or a bomb to blow up without the resources to acquire such tools of terrorism and to bankroll the persons who actually commit the violence.* Moreover, the organizations, businesses and nations that support and encourage terrorist acts are likely to have reachable assets that they wish to protect. *The only way to imperil the flow of money and discourage the financing of terrorist acts is to impose liability on those who knowingly and intentionally supply the funds to the persons who commit the violent acts.*

291 F.3d at 1021 (citations omitted; emphasis supplied).

In *Boim*, the Seventh Circuit recognized two theories of causation under which a complaint could be sustained under the Anti-Terrorism Act (§ 2333). First, the court concluded, a plaintiff may recover under § 2333 if the defendants violated 18 U.S.C. §§ 2339A and 2339B, which criminalize the provision of "material support or resources" to terrorists and foreign terrorist organizations, respectively. *Boim*, 291 F.3d at 1012-14.[27] Provision of such support

[27] Title 18, § 2339A makes it unlawful to "provide[] material support or resources or conceal[] or disguise[] the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of" numerous criminal statutes, including 18 U.S.C. § 2332f, which outlaws terrorist bombings. Section 2339B prohibits the knowing provision of "material support or resources to foreign terrorist organizations." 18 U.S.C. § 2339B.

With respect to both sections, "material support or resources" is defined as: "currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."18 U.S.C. § 2339A. The term "material," as used within this statutory framework, "relates to the type of aid provided rather than whether it is substantial or considerable." *Boim,* 291 F.3d at 1015.

gives rise to civil liability under § 2333 so long as the support was provided knowingly and intentionally. *Boim*, 291 F.3d at 1015. Thus, the *Boim* court held that the knowing and intentional provision of material support to terrorist groups provides a sufficient causal connection to specific acts of terrorism to permit victims of those specific acts to recover.

The second theory of liability endorsed by the Seventh Circuit permits recovery under § 2333 where the defendants have aided and abetted an act of international terrorism. *Boim*, 291 F.3d at 1021. The court reasoned that "although the words 'aid and abet' do not appear in the statute, Congress purposely drafted the statute to extend liability to all points along the causal chain of terrorism." *Id.* at 1019-20. Specifically, Congress defined "international terrorism" to include activities that "*involve* violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State . . . ." 18 U.S.C. § 2331(1) (emphasis added). The court concluded that such language "taken at face value would certainly cover aiding and abetting violent acts." *Boim*, 291 F.3d at 1020. The court further stated that the failure to impose aider and abettor liability on those who knowingly and intentionally funded acts of terrorism would thwart "Congress' clearly expressed intent to cut off the flow of money to terrorists at every point along the causal chain of violence. S. Rep. 102-342, at 22." *Boim*, 291 F.3d at 1021. In recognizing the aiders and abettors may be liable under § 2333, the Seventh Circuit in effect rejected Sultan's argument that direct participation is required to create a sufficient causal connection.

This Court reached the same conclusion in *Flatow*, where it held: "[A] plaintiff need not establish that the material support or resources provided by a foreign state for a terrorist act contributed directly to the act from which his claim arises . . . Sponsorship of a terrorist group which causes the personal injury or death of a United States national alone is sufficient . . . ."

999 F.Supp. at 18. Under *Boim* and *Flatow*, plaintiffs' allegations plainly are sufficient to allege a causal connection between the material support that Sultan provided to al Qaeda and the deaths and injuries that resulted from the brutal attacks carried out by al Qaeda on September 11, 2001.

Prince Sultan acknowledges that aiding and abetting provides a sufficient causal link between a defendant and the acts that were aided or abetted, but he nonetheless purports to discern a requirement of a "direct link" between the defendant and the specific terrorist act in question, *see* Sultan Br. at 48-49. There is no authority for such a requirement (which, in any case, would be inconsistent with the common law principles applicable to aider and abettor liability, *see infra*.) Indeed, of the five cases cited by Sultan in support of this argument, not a *single one* contains, or supports imposition of, such a requirement. *See Doe v. Islamic Salvation Front,* 2003 WL 1740436 (D.D.C. Mar. 31, 2003) ("*Islamic Salvation Front II*"); *Ungar v. Islamic Republic of Iran*, 21 F.Supp.2d 91 (D.C. 2002); *Surette v. Islamic Republic of Iran*, 231 F.Supp.2d 260 (D.D.C. 2002); *Weinstein v. Islamic Republic of Iran*, 184 F.Supp.2d 13 (D.D.C. 2002); *Higgins v. Islamic Republic of Iran*, 2000 WL 33674311 (D.D.C. Sept. 21, 2000).

To begin with, none of these cases arose at the pleading stage. In all except *Islamic Salvation Front II*, the defendant defaulted and plaintiffs were called upon to establish their "claim or right to relief by evidence satisfactory to the court" as required by the FSIA before a default judgment can be taken, *see* 28 U.S.C. § 1608(e). *Islamic Salvation Front II* is a decision on a motion for summary judgment. All of these cases involve the proof that a plaintiff must submit in order to establish liability; they have no bearing on what a plaintiff must *plead*. But even if they did, they would not support the heightened requirement of causation proposed by Sultan.

In three of the five cases, the court found that the evidence presented conclusively

established a causal connection between the defaulting defendant, the Islamic Republic of Iran, and the acts that gave rise to plaintiffs' claims. S*ee Surette*, 231 F.Supp.2d at 267-68; *Weinstein*, 184 F.Supp.2d at 21-22; *Higgins*, 2000 WL 33674311, *5-6. None of these acts was carried out directly by Iran; in each case, Iran was alleged to have provided funding and technical support to the actual perpetrators. Far from demonstrating that plaintiffs in this case have failed adequately to allege causation, *Surette*, *Weinstein*, and *Higgins* re-affirm this Court's holding in *Flatow* that sponsorship of a terrorist group is sufficient for the imposition of liability. Moreover, nothing in *Surette, Weinstein,* or *Higgins* suggests that these cases represent the outer limit of causation; the question of how much less connection plaintiffs could have shown and still prevailed was not before the court

In the remaining two cases, *Ungar* and *Islamic Salvation Front II*, the court did find that plaintiffs' evidence failed to establish a causal connection between the defendant and plaintiffs' injuries, but not for reasons that are of any help to Prince Sultan. Rather, these cases, like the others, demonstrate that plaintiffs have properly pleaded that Sultan's sponsorship of al Qaeda was among the causes of their injuries. In *Ungar*, plaintiff established that Iran had provided material assistance – funding as well as weapons and training – to HAMAS. *What plaintiffs could not establish was that HAMAS had carried out the murders in question*. The evidence tended to establish that Ghanimat, the leader of the group that carried out the attack, "had chosen his operations without receiving instructions from HAMAS." 211 F.Supp.2d at 97. The evidence further showed that the men who carried out those murders were not in contact with HAMAS for several months spanning the period of the murders. *Id.* at 99. Thus, although Ghanimat was loosely affiliated with HAMAS, it appeared that the murders in question were *not* a HAMAS operation – or at least plaintiffs' evidence was insufficient to establish that they were.

The plaintiffs in *Islamic Salvation Front II* had a slightly different, but related problem, with causation. There, several Islamic fundamentalist groups were alleged to have carried out the murders in question. But plaintiffs were unable to provide evidence (on summary judgment) that the individual defendant had materially supported these groups once they had started targeting civilians. 2003 WL 1740436, *4-5.

The analogous situation in this case would be if plaintiffs alleged that Sultan provided funds to al Qaeda, but had not alleged (or ultimately could not prove) that the September 11 attacks were in fact carried out by that group or that Sultan supported al Qaeda during the period when it was targeting the United States. But the Complaint specifically alleges that "Osama bin Laden and al Qaeda have admitted responsibility for the September 11, 2001 terrorist attacks." TAC ¶ 6. The Complaint further alleges that Sultan's support for al Qaeda front organization continued at least through the end of 2000, *see* TAC ¶ 354, long after al Qaeda had begun targeting Americans and American interests and even after bin Laden issued his 1998 "fatwa" calling on Muslims to kill Americans. *See* TAC at p. 212, 213.

The common law requirements for aiding and abetting and civil conspiracy liability confirm that plaintiffs need not plead the kind of "direct link" to the specific attacks in question that Prince Sultan claims is required. As the Seventh Circuit noted in *Boim* "the legislative history of sections 2331 and 2333 . . . in combination with the language of the statute itself, evidence an intent by Congress to codify general common law tort principles and to extend civil liability to the full reaches of traditional tort law." 291 F.3d at 1010. Thus, the *Boim* court adopted common law principles of vicarious liability in construing the Anti-Terrorism Act. Under these principles, as under § 2333, Sultan's provision of funds to terrorist groups with knowledge of their terrorist agenda, sufficiently establishes the causal connection between Sultan

and the September 11 attacks.

Defendant sets forth the common-law requirements for aiding and abetting liability, but misapprehends their application to the allegations in this case. In *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983), the D.C. Circuit explained the three requisites for holding a defendant liable for aiding and abetting: "(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; (3) the defendant must knowingly and substantially assist the principal violation." In applying these elements to the facts before it, the *Halberstam* court held that the defendant Hamilton could be liable for aiding and abetting her co-defendant Welch in the murder of the plaintiff's husband, Halberstam during the course of a burglary. Hamilton was not present at the burglary and claimed not to know that Welch was a burglar at all. Finding that Hamilton had assisted Welch for years in disposing of large quantities of jewelry and precious metals, the Court held:

> It was not necessary that Hamilton knew specifically that Welch was committing burglaries. Rather, when she assisted him, it was enough that she knew he was involved in some type of personal property crime at night--whether as a fence, burglar, or armed robber made no difference--because violence and killing is a foreseeable risk in any of these enterprises.

Halberstam, 705 F.2d at 489. Thus, the Court reasoned, Hamilton was liable not only for the burglaries – whether she knew about them or not – but also for the murder that Welch committed during the course of one of them. *Id.* Far from supporting Sultan's claim that aiding and abetting liability requires a direct link between the defendant's assistance and the specific act that harmed the plaintiff, *Halberstam* instead confirms that material support combined with general knowledge that the perpetrator is involved in some kind of tortious activity sufficiently

establishes a causal connection to subject the defendant to liability.[28]

It is important to emphasize that in *Halbertstam*, the court found that Hamilton "knew" that Welch was involved in personal property crimes – and thus could be held liable for the murder that Welch committed during one of his burglaries – without any direct evidence of that knowledge. 705 F.2d at 486-87. Hamilton herself denied knowing that Welch was engaged in criminal activities. But the court was able to infer that Hamilton must have known because she carefully logged all of Welch's sales of jewelry and precious metals but had no records of any purchases, because of the extravagant lifestyle that she enjoyed as a result of Welch's crimes, and because of Welch's mysterious evening absences over the course of their relationship. The court applied common sense to determine that a person in Hamilton's position must have known that Welch was committing crimes and the D.C. Circuit upheld liability based on that inferred knowledge. 705 F.2d at 486-87. The Anti-Terrorism Act and the Torture Victim's Protection Act incorporate the same principles of tort law that the D.C. Circuit applied in *Halberstam*. *See Boim*, 291 F.3d at 1010 (ATA codifies general common law tort principles and extends civil liability to the full reaches of traditional tort law.). Here, too, plaintiffs need not allege direct evidence of Sultan's knowledge. Rather, at the appropriate time, a fact-finder may infer from all of the circumstances that Sultan must have known about the terrorist agenda of the groups to which he made contributions.[29] Such inferred knowledge will be sufficient to subject Sultan to

---

[28] *Halberstam* makes clear that Sultan is simply wrong when he claims that case law "require[s] the defendant to have substantially and *personally* participated in the wrongful act." Sultan Br. at 52 (emphasis in original). His citation of cases where defendants did personally participate (and were held liable) in no way suggests that such participation is a requirement, especially in light of *Halberstam*'s direct holding that it is not.

[29] Plaintiffs expect that the evidence supporting this conclusion will include the trip made by U.S. officials to inform the Saudi government about the connection between charitable fund-raising in the Kingdom and terrorism, *see The Age of Sacred Terror* at 186-189; Sultan's role as

liability under the standard set forth in *Boim* and traditionally applied to those who assist the crimes and tortious acts of others. Given that plaintiffs may prove Sultan's knowledge through such indirect evidence, it is clear that the Complaint need allege no more than that.

B. The Complaint States A Claim Against Sultan Under the Torture Victims Protection Act and the Anti-Terrorism Act (18 U.S.C. §§ 2331 *et seq.*)

Prince Sultan concedes that if his actions were taken in an official capacity, plaintiffs have pleaded a claim under the Torture Victims Protection Act. *See* Sultan Br. at 53-54.[30] He points out, however, that plaintiffs have alleged that at least some of the donations that he made to terrorist and terrorist-front groups were made in his personal capacity, as personal contributions and argues that if this is so, plaintiffs cannot state a claim under the TVPA. Plaintiffs agree that they cannot satisfy the "under color of law" requirement with respect to Sultan's personal donations. Nonetheless, the TVPA claim against Sultan should not be dismissed, because plaintiffs' claims are based on both personal *and* official acts.

The Complaint alleges that, in his role as Chairman of the Supreme Council, Sultan had the authority to determine which charitable organizations could raise money in Saudi Arabia. TAC ¶ 357, 358. Moreover, as noted above, the Complaint further alleges that "[a]t best, Prince Sultan was grossly negligent in the oversight and administration of charitable funds . . . ." TAC ¶ 363. This oversight and administration was performed in an official capacity, as Chairman of the Supreme Council. In addition, while the Complaint specifically alleges that some of the

---

head of the Supreme Council, the body charged with vetting charities that raise money in the Kingdom of Saudi Arabia; and Sultan's motivation to find out how the charities he so generously supported were using the money he gave them, to ensure that his contributions would meet the religious requirements of zakat and purification, which it was incumbent on him as a Muslim to obey.

[30] Defendant's brief explicitly concedes only that the "under color of law" element of a claim under the TVPA is satisfied if Sultan's acts were official. But Sultan identifies no other insufficiency in this claim and thus has waived any other argument.

money that Sultan gave to the terrorists represented personal contributions, *see* TAC ¶ 359, not every contribution alleged in the Complaint is so identified. *See* TAC ¶¶ 360, 361, 362. Discovery will clarify the true extent of Sultan's personal and official roles in funding the al Qaeda terrorists. Plaintiffs plainly state a claim under the TVPA with respect to the official portion of his actions. In addition, plaintiffs have alleged that even where Sultan acted under color of law, that is, in his role as an official of his government, some of his actions may have been beyond the scope of his authority and/or contrary to the official policies of his government. For these acts, too, Sultan may be sued under the TVPA, because they were carried out "under color of law" even if they are not acts for which Sultan may be immune under the FSIA.

Conversely, Sultan argues that he cannot be sued under the Anti-Terrorism Act because that statute excludes from its reach foreign officials acting in their official capacity. Once again, however, Sultan's dual role precludes dismissal of this claim. To the extent that the Complaint alleges that any of Sultan's acts were not official acts, *see, e.g.*, TAC ¶ 359, plaintiffs properly assert a claim against him under the ATA.

Sultan also contends that plaintiffs fail to allege that he knowingly and intentionally provided material support to the September 11 terrorists. But the Complaint explicitly alleges precisely that. Plaintiffs allege that Sultan contributed money to terrorist front organizations that funneled these contributions to al Qaeda, *see* TAC ¶ 359, and that he did so with knowledge of the role of these entities in financing al Qaeda and its terrorist agenda, *see* TAC ¶ 358, and at a time when al Qaeda was known to be targeting the United States, *see* TAC at pp. 212-213, ¶¶ 354, 359-60. As discussed above, *see* Section IV-A, in conjunction with plaintiffs' allegations that al Qaeda carried out the September 11 attacks, these allegations are sufficient to connect Sultan to those attacks and to sustain plaintiffs' claims under the ATA.

C. The Complaint States a Claim Against Sultan Under the Alien Tort Claims Act

Sultan's argument that plaintiffs failed to state a claim under the Alien Tort Claims Act ("ATCA") misconstrues that statute and the cases interpreting. It also misreads the Complaint. Noting that the ATCA applies only to alien plaintiffs, Sultan asks this Court to dismiss the ATCA claim with respect to all non-alien plaintiffs. But this Court cannot dismiss claims that have not been asserted: Count Four, the ATCA claim, seeks relief only on behalf of "plaintiffs who are estates, survivors, and heirs of non-United States citizens . . . ." TAC at p. 385. Sultan concedes that these persons are proper ATCA plaintiffs.

Sultan then goes on to misconstrue the law applicable to the ATCA claims that have been asserted. He notes that this Court has permitted causes of action against individual actors in two circumstances: where the individual "was acting as an officer of the state or under color of state law" and where the private actor has violated the law of nations in egregious ways. *See* Sultan Br. at 57, *citing Bao Ge v. Li Peng*, 201 F.Supp.2d 14 (D.D.C. 2000). The latter category has also been characterized by this Court as encompassing "offenses of universal concern." *Doe v. Islamic Salvation Front*, 993 F.Supp. 3 (D.D.C. 1998).[31] Sultan treats these circumstances as conjunctive, assuming that an ATCA plaintiff must show both. But caselaw is quite clear that these circumstances are *disjunctive*: an ATCA plaintiff must show one *or* the other, not both.

As this Court noted in *Li Peng*, a claim under the ATCA has three elements: "(1) the plaintiff is an alien; (2) the claim is for a tort; and (3) the tort is committed in violation of the law

[31] Both formulations appear to be nothing more than attempts to describe those offenses that courts have found "violate a norm of international law that is recognized as extending to the conduct of private parties." *See Wiwa*, 226 F.3d at 104; *Talisman*, 224 F.Supp.2d at 312.

of nations or a treaty of the United States." 201 F.Supp.2d at 19-20.[32] As in *Li Peng*, only the third element, whether the tort alleged here was committed "in violation of the law of nations or a treaty of the United States" is at issue here. The question in *Li Peng*, then, was under what circumstances may an individual be found to have violated the "law of nations"? The court identified two such circumstances. First, traditionally, an individual could be found liable for a violation of the law of nations when that individual was a state official or was acting under color of state law. *Li Peng*, 201 F.Supp.2d at 20. Second, the court noted, "a private actor can be found to have violated the law of nations for extreme forms of egregious misconduct." *Id. See also Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 104 (2d Cir. 2000) ("ATCA reaches the conduct of private parties provided that their conduct is undertaken under the color of state authority *or* violates a norm of international law that is recognized as extending to the conduct of private parties") (emphasis added); *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1996) (defendant liable for certain egregious offenses in private capacity and for additional violations in his capacity as a state actor); *Talisman Energy, Inc.*, 244 F.Supp.2d at 311 (private parties liable either when their conduct is undertaken under color of state law or when it violates a norm of universal concern). *See also Islamic Salvation Front*, 993 F.Supp at 7-8 (adopting reasoning of *Kadic* that offenses of "universal concern" were capable of being committed by private actors).[33]

---

[32] The Alien Tort Claims Act provides federal jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treat of the United States." 28 U.S.C. § 1350.

[33] The D.C. Circuit's decision in *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984) is not to the contrary. Although the *Tel-Oren* court dismissed plaintiffs' ATCA claims for lack of subject matter jurisdiction, the three judges on the panel could not agree on a rationale; each judge wrote a separate opinion. Moreover, two of the judges, Judge Edwards and Judge Bork, acknowledged that private actors can indeed violate the law of nations. *Id*. at 794 (Edwards, J., concurring) (stating that slave trading, piracy, and a "handful of other private acts" constitute violations of international law by private actors); *Id*. at 813-15 (Bork, J., concurring)

Accordingly, it is quite clear that plaintiffs state a claim under the ATCA is they have alleged *either* that Sultan was acting under color of state law *or* that his actions constitute "egregious misconduct" or "offenses of universal concern." Here, however, the Third Amended Complaint alleges both.

As noted above, the Complaint alleges that Sultan acted both in his personal and his official capacity in supporting the al Qaeda terrorists. For those acts carried out under color of state law, Sultan can be held liable for any violation of the "law of nations," which in this context refers to "customary international law," *Talisman Energy*, 244 F.Supp.2d at 304 n.12.[34] For those acts in which Sultan was acting personally, he may be sued for torts that violate "the law of nations" and that constitute "egregious misconduct" or "offenses of universal concern."

1. The September 11 attacks, and the financing of those acts, violate the law of nations

As numerous courts have noted, the "law of nations, currently known as international customary law, is formed by the 'general assent of civilized nations.'" *Islamic Salvation Front*, 993 F. Supp. at 7 (citing *Filartiga v. Pena Irala*, 630 F.2d 876, 880 (2d Cir. 1980); see also *Li Peng*, 201 F. Supp. 2d at 20. Moreover, "courts must interpret international law under the ATCA as 'it has evolved and exists among the nations of the world today.'" *Islamic Salvation Front*, 993 F. Supp. at 8 (quoting *Kadic*, 70 F.3d at 238); *see also Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 777 (D.C. Cir. 1984) ("[T]he 'law of nations' is not stagnant and should be construed as it exists today among the nations of the world.") (Edwards, J., concurring).

There can be little doubt that, when carried out under color of state law, extra-judicial

---

(noting that international law prohibited private acts such as piracy and interference with ambassadors).

killing violates the "law of nations." *See* Restatement (Third) of Foreign Relations Law § 702 (1987); *Bigio v. Coca-Cola Co.*, 239 F.3d 440 (2d Cir. 2000) (looking to Restatement (Third) as guide to violations of international law by state actors and private individuals); *see also Letelier v. Republic of Chile*, 488 F.Supp. 665, 673 (D.D.C. 1980) ("Whatever policy options may exist for a foreign country, it has no 'discretion' to perpetrate conduct designed to result in the assassination of an individual or individuals, action that is clearly contrary to the precepts of humanity as recognized in both national and international law.").

Moreover, numerous, widely ratified, international antiterrorism conventions specifically prohibit acts of terrorism, including airplane hijackings. These conventions include the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105, the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 704 U.N.T.S. 219, and the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 565, 974 U.N.T.S. 177, which make aircraft hijacking and other offenses committed aboard aircraft international criminal offenses. The attacks also were a violation of the more recent International Convention for the Suppression of Terrorist Bombings, which specifies that a person commits an offense if he or she:

> unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility . . . with the intent to cause death or serious bodily injury . . . or . . . with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

Convention for the Suppression of Terrorist Bombings, Jan. 12, 1998, art. 2, S. TREATY DOC.

---

[34] In a subsequent footnote, the court in *Talisman Energy* noted that "[u]nder the ATCA, any violation of a specific, universal, and obligatory international norm is actionable . . . .." 244

NO. 106-6, at 4, 37 I.L.M. 249, 253.[35] Moreover, the financing of these acts is a serious crime under international law. International Convention For The Suppression Of The Financing Of Terrorism, G.A. Res. 54/109, U.N. Gaor, 4th Sess., U.N. Doc. A/Res/54/109 (1999). Accordingly, such acts of terrorism – and the financing of them -- can give rise to liability under the ATCA. *See, e.g., Islamic Salvation Front*, 993 F. Supp. at 5 (describing "terrorist activities" alleged in complaint).

That Prince Sultan did not carry out the September 11 attacks himself is of no moment. In *Letelier*, this Court held that ordering *or aiding* in an assassination constituted a violation of international law. 488 F.Supp. at 673. Similarly, in *Talisman Energy*, the court held that conspiracy and aiding and abetting are actionable under the ATCA. 244 F.Supp.2d at 320. Indeed, the *Talisman Energy* court noted that "the concept of complicit liability for conspiracy or aiding and abetting is well-developed in international law . . . ." *Id.* at 322. The court noted that the statutes of the International Criminal Tribunal for the former Yugoslavia ("ICTY") and the International Criminal Tribunal for Rwanda ("ICTR") establish criminal liability for those who have "planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of a crime," ICTY Stat. Art. 7(1); ICTR Stat. Art. 6(1), further confirming that persons who assist in international crimes act in violation of the "law of nations."

2. The September 11 attacks, and the financing of those acts, violated norms of international law that extend to private parties

Not only did the September 11 attacks and the financing of those acts violate international law when carried out by state actors – in addition, these acts violated norms of

---

F.Supp.2d at 306 n.18.

[35] While the drafters may have contemplated primarily a common bomb or other explosive device, a plane filled with tons of jet fuel and used as an explosive missile likely would qualify

international law that are recognized as extending to the conduct of private persons. As noted above, the standards of international law for which private persons can be held accountable have been described as those amounting to "extreme forms of egregious misconduct," s*ee Li Peng*, 201 F. Supp. 2d at 20, or "offenses of universal concern," *see Islamic Salvation Front*, 993 F. Supp. at 7-8 (citing *Kadic*, 70 F.3d at 240). Aircraft hijacking and terrorist bombings are both such offenses.

One of the oldest applications of the "law of nations" to the acts of private individuals is the prohibition against piracy, enforced against individuals since at least 1820. *See Kadic,* 70 F.3d at 239, *citing United States v. Smith,* 18 U.S. (5 Wheat.) 153, 161, 5 L.Ed. 57 (1820); *United States v. Furlong*, 18 U.S. (5 Wheat.) 184, 196-97, 5 L.Ed. 64 (1820). *See also Tel-Oren*, 726 F.2d at 781 (noting that non-state actors can be liable under the ATCA for acts such as piracy and slavery because "[h]istorically these offenses held a special place in the law of nations: their perpetrators, dubbed enemies of all mankind, were susceptible to prosecution by any nation capturing them.") (Edwards, J., concurring).

Aircraft hijacking is simply a modern form of piracy, and like older forms of piracy, it is a crime more typically carried out by private actors than by states. Accordingly, aircraft hijacking is consistently among of the group of offenses on which there is a consensus that private actors may be held liable. *See Kadic*, 70 F.3d at 239 (recognizing aircraft hijacking as an offense for which a private actor may be liable); *Islamic Salvation Front II*, 2003 WL 1740436, *3 (Robertson, J.) (same). *See also* Restatement (Third) of the Foreign Relations Law of the United States § 404 (1986) (identifying offenses of universal concern and specifically including "attacks on or hijacking of aircraft.").

---

as an "explosive device" within the scope of the Convention. *See* Arnold N. Pronto, *Comment*,

Indeed, as noted above, numerous international treaties and conventions prohibit aircraft hijacking. These conventions confirm that hijacking has long been recognized as an offense of universal concern, prohibited to non-state actors and states alike. *See* Hague Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105; Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 704 U.N.T.S. 219; Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 565, 974 U.N.T.S. 177.

In addition, there is now an international consensus that terrorist bombings also are offenses of universal concern. The International Convention for the Suppression of Terrorist Bombings specifies that a person commits an offense if he or she:

> unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility . . . with the intent to cause death or serious bodily injury . . . or . . . with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

Convention for the Suppression of Terrorist Bombings, Jan. 12, 1998, art. 2, S. TREATY DOC. NO. 106-6, at 4, 37 I.L.M. 249, 253.[36] International Convention For The Suppression Of The Financing Of Terrorism, G.A. Res. 54/109, U.N. Gaor, 4th Sess., U.N. Doc. A/Res/54/109 (1999). These conventions plainly address acts of individuals, not states. Accordingly, such acts of terrorism – and the financing of them -- committed by private parties can give rise to liability under the ATCA. *See, e.g., Islamic Salvation Front*, 993 F. Supp. at 5 (describing "terrorist

---

AM. SOC. INT'L L. INSIGHTS (Sept., 2001), *at* http://www.asil.org/insights/insigh77.htm.

[36] As noted above, international law imposes liability on those who aid and abet international crimes, as well as on the direct perpetrators. *See supra*, Point IV.C.1.

activities" alleged in complaint).[37]

D. The Complaint States Claims Against Prince Sultan Under RICO

1. Plaintiffs Have Standing to Maintain Their RICO Claims

Prince Sultan contends that plaintiffs lack standing to bring their RICO claims because, according to Sultan, they have not alleged "an injury to business or property" within the meaning of the statute. But this is not so. Plaintiffs allege that as a result of defendants' actions, they "suffered the loss of valuable property, financial services and support, and suffered other pecuniary damages in an amount to be determined at trial." TAC ¶¶ 698, 706, 714. In the context of a RICO case, the Supreme Court has held that "at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to

---

[37] Although Judge Edwards, writing for himself in *Tel-Oren* nearly twenty years ago, rejected the notion that terrorist acts could give rise to liability under the ATCA, he did so because there was at *that* time a lack of consensus among the nations of the world about the crime of terrorism. *Tel Oren*, 726 F.2d at 795-96 (Edwards, J., concurring). But Judge Edwards explicitly recognized that the law of nations evolves, *id*. at 789, and courts in this district and elsewhere have subsequently made clear that the standard to be applied is the law of nations as it currently stands, not the law in 1789 or 1984. *See, e.g.*, *Kadic*, 70 F.3d at 238; *Islamic Salvation Front*, 993 F. Supp. at 8. In the twenty years since the *Tel-Oren* case was decided, broad consensus has been reached that certain acts amount to terrorist crimes that must be punished, including precisely the sorts of acts committed on September 11, 2001: aircraft hijacking, hostage-taking aboard aircraft, and using airplanes as missiles or bombs. Indeed, in the past twenty years, over 50 additional countries have ratified the Hague, Tokyo, and Montreal terrorism conventions. *See* Hague Convention, available on the internet at:
http://www.icao.int/icao/en/leb/Hague.htm;
Tokyo Convention, available on the internet at:
http://www.icao.int/icao/en/leb/Tokyo.htm;
Montreal Convention, available on the internet at:
http://www.icao.int/icao/en/leb/Mtl71.htm.
Moreover, the new convention proscribing terrorist bombings was signed in 1998 and has been ratified by 86 countries. *See* http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty9.asp
In addition, the new convention banning terrorist financing was adopted after the *Tel-Oren* decision; it has been ratified by 76 countries. *See*
http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty11.asp.
Clearly, international consensus about terrorism has changed since 1984.

dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994).

Sultan contends, however, that the pecuniary damages alleged in this case are insufficient because they are incident to personal injuries and thus do not qualify as injuries to "business or property" within the meaning of the RICO. The argument is identical to one made by other defendants in this action, including the Al Rajhi Bank, the Al Haramain Islamic Foundation, Inc., and Soliman J. Khudeira, in their motions to dismiss. Plaintiffs respectfully refer this Court to their opposition to those motions, which sets forth in detail the cases and other authorities demonstrating that the losses alleged in the Complaint are sufficient to confer RICO standing.

Sultan cites additional cases not cited by previous defendants. He provides a string of citations giving the appearance that there is substantial authority for his position, *see* Sultan Br. at 59-60, when in fact there is virtually none and what little there is, is distinguishable or poorly reasoned. But most of his authorities simply do not stand for the proposition for which they are in cited.

First, many of the defendant's cases hold that RICO plaintiffs may not sue for personal injuries, but never address the question of pecuniary damages associated with them, generally because the plaintiffs in those cases did not seek such damages. In *Oscar v. Univ. Students Co-op Ass'n.*, 965 F.2d 783 (9th Cir. 1992), for example, the Ninth Circuit held only that "physical and emotional injuries" were insufficient to confer RICO standing. The court had no occasion to consider the sufficiency of economic losses that follow from physical injuries, as no such loss was alleged in the *Oscar* case. Indeed, the *Oscar* court's insistence that "a plaintiff demonstrate a financial loss" is entirely consistent with the recovery of financial losses following personal injury that plaintiffs seek in this case. *See also Drake v. B.F. Goodrich Co.*, 782 F.2d 638 (6th

Cir. 1986) (plaintiffs could not maintain claims for personal injury and wrongful death under RICO; no mention of pecuniary damages being sought and no analysis of whether they would be available if they had been). The same is true in *Libertad*, 53 F.3d at 436-37, where the Court held that allegations of emotional distress, standing alone, were insufficient to confer RICO standing. But *Libertad* is particularly unhelpful to defendant because in that case the First Circuit specifically noted that "[p]laintiffs like Libertad and Emancipación could have standing to sue under RICO, if they were to submit sufficient evidence of injury to business or property such as lost wages or travel expenses, *actual physical harm,* or specific property damage sustained as a result of a RICO defendant's actions." 53 F.3d at 437 n.4 (emphasis added). Thus, far from holding that pecuniary damages associated with personal injuries are insufficient to confer RICO standing, the Court not only recognized that such damages are recoverable, but actually suggested that physical injury, standing alone, might be sufficient as well.

Even in cases where plaintiffs have sought damages both for their personal injuries and for pecuniary losses associated with them, courts have not always distinguished the two nor made a specific holding about the status of pecuniary damages associated with personal injuries. Thus, in *Genty v. Resolution Trust Corp.*, 937 F.2d 899, 918 (3d Cir. 1991), plaintiffs sought recovery for "manifest and latent injuries to physical and mental health, including emotional distress resulting from the fear of developing cancer." The court held that the phrase "'injury to business or property' does not denote physical or emotional harm to a *person,*" and further held that "an action for personal injuries thus cannot be maintained under the RICO statute." *Id.* (emphasis in original). Although the *Genty* plaintiffs also, and somewhat incidentally, sought medical expenses incurred in the treatment of their illness, the court never discussed the question of pecuniary damages incident to personal injuries and it does not appear that the distinction was

briefed or argued there. Similarly, in *Bast v. Cohen, Dunn & Sinclair, P.C.*, 59 F.3d 492, 495 (4th Cir. 1992), the court upheld the dismissal of plaintiffs' RICO claims because he failed to allege any racketeering activities, identify any enterprise, or allege any injury other than mental anguish. Although the Court suggested in passing that pecuniary damages associated with personal injury might not suffice to confer RICO standing, to characterize that observation as a holding stretches the word well beyond its breaking point.

Perhaps the most anomalous citation is to *Bankers Trust Co. v. Rhoades*, 841 F.2d 511 (2d Cir. 1984), *vac'd* 473 U.S. 922 (1985). Even defendant acknowledges that the language he finds helpful there is *dicta* from a *vacated* opinion. But what he does *not* mention is that *Bankers Trust* was decided by the Second Circuit in reliance on its opinion in *Sedima, S.P.R.L. v. Imrex Co*., 741 F.2d 482, 494 (2d Cir.1984), holding that RICO claims required a special "racketeering injury." That holding was, of course, subsequently reversed by the Supreme Court, *see Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479 (1985), but the reversal occurred *after Bankers Trust* was decided. Indeed, what Sultan characterizes as the "other grounds" upon which the *Bankers Trust* decision was vacated was in fact the Supreme Court decision in *Sedima*, rejecting the requirement of "racketeering injury" altogether. *See* 473 U.S. at 922. Far from supporting Sultan's argument, *Bankers Trust* has been overruled by the Supreme Court on the very point for which Sultan cites it.

Thus, of the long string of citations provided by defendant, only two actually support his argument, but those cases are not binding on this Court, are not well-reasoned, and should not be followed. In *Grogan v. Platt*, 835 F.2d 844, 847 (11th Cir. 1988), the Eleventh Circuit expressed concern that "the pecuniary and non-pecuniary aspects of personal injury claims are not so separated" and that "loss of earnings, loss of consortium, loss of guidance, mental anguish, and

pain and suffering are often to be found, intertwined, in the same claim for relief." But as the court noted in *National Asbestos Workers Medical Fund v. Phillip Morris, Inc*., 74 F. Supp. 2d 221, 234 (E.D.N.Y. 1999), in refusing to follow *Grogan*, "The pecuniary and non-pecuniary aspects of tort claims are not "intertwined" in a way that prevents the courts from treating the two sets of claims differently."

Doe v. Roe, 958 F.2d 763 (7th Cir. 1992), provides even less analysis of the relevant issue that *Grogan*. In *Doe*, plaintiff alleged that her divorce lawyer fraudulently coerced her into a sexual relationship. The court found that the value of plaintiff's sexual services (allegedly extorted from her) was not a cognizable injury to "business or property" under RICO because contracts for such services were illegal in Illinois. It further rejected plaintiff's argument that she had been injured in her "business or property" by overpaying defendant for legal services, because the only basis for her contention that the fees she paid were excessive was that defendant had received both the cash payments and the undervalued sexual services. Finally, the court turned to the incidental expenses plaintiff contended she had incurred on account of defendant's extortion, including the cost of an enhanced security system and fees paid to a new attorney. The court held that these expenses did not constitute injury to "business or property" because they were more akin to personal injuries. But the court's opinion on what was in that case at best a tertiary matter is devoid of analysis; it adopts the reasoning of *Grogan* without inquiry as to whether that analysis can withstand scrutiny.

2. Plaintiffs Have Adequately Pleaded a Claim Against Prince Sultan Under RICO

Sultan also contends that plaintiffs have failed to plead their RICO claim in sufficient detail, but examination of the Complaint shows that plaintiffs have properly pleaded every

element of a RICO conspiracy.[38]

The RICO conspiracy statute, 18 U.S.C. § 1962(d) provides: "It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." (Title 18, § 1964(c) provides a private right of action for violations of § 1962.) A defendant may be liable for conspiring to violate the RICO statute even where he may not be liable for an underlying RICO violation. *Beck v. Prupis*, 529 U.S. 494, 506-507 (2000) (plaintiff may under, § 1962(d), "sue co-conspirators who might not themselves have violated one of the substantive provisions of § 1962."). The relevant inquiries, then, are whether the Complaint sufficiently alleges the elements of a substantive RICO claim against *any* defendant and whether it properly alleges that Sultan conspired with at least one such defendant.[39] The answer to both questions is yes.

Defendant claims that the Complaint fails properly to allege a pattern of racketeering activity based on predicate acts. This is not so. Read in totality, the Third Amended Complaint alleges two separate, but linked, patterns of racketeering activity. *See, e.g., United States v. Ruggiero*, 754 F.2d 927, 932 (11th Cir. 1985) (existence of separate patterns of racketeering activity); *United States v. Russotti*, 717 F.2d 27 (2d Cir. 1983) (same); *United States v. Ciancaglini*, 858 F.2d 923, 927-29 (3rd Cir. 1988) (same). The first, which operated primarily

---

[38] Plaintiffs assert three separate claims under the RICO statute. In Count Eleven, plaintiffs allege that the defendants violated 18 U.S.C. § 1962(a), which makes it unlawful for "any person who has received income . . . from a pattern of racketeering activity . . . to use or invest" that income or its proceeds in operating any enterprise. In Count Twelve, plaintiffs allege a violation of § 1962(c), which makes it unlawful to "conduct or participate . . . in the conduct of [an] enterprise's affairs through a pattern of racketeering activity." Finally, Count Thirteen alleges that the defendants conspired to violate the RICO statute, in violation of § 1962(d). It is the latter claim, the RICO conspiracy, which is applicable to this defendant.

[39] Accordingly, plaintiffs need not allege that Prince Sultan was himself employed by or associated with any enterprise.

through mail fraud, wire fraud, money laundering and similar acts, was a vast scheme to raise money, in part through out-and-out fraud, in order to support al Qaeda. *See, e.g.,* TAC ¶¶ 150-308. The direct victims of the predicate acts forming this pattern of racketeering activity were those who were defrauded into contributing money to what they believed were legitimate charities, but which in fact were terrorist front organizations. See TAC ¶ 159. The second, related, pattern of racketeering includes the acts of violence and terrorism perpetrated by al Qaeda itself, specifically in this case the attacks of September 11, 2001. *See* TAC ¶¶ 7-11.

In Count Eleven, plaintiffs allege that certain of the defendants (including the banks and charities) invested the proceeds of the first pattern of racketeering in the al Qaeda enterprise, *see* TAC Introduction at pp. 203-206; ¶¶ 150-153, and that plaintiffs' injuries were caused by this investment, which enabled al Qaeda to commit the September 11 murders. These allegations sufficiently state a claim under 18 U.S.C. § 1962(a).

Plaintiffs further allege that some of the defendants "conducted or participated in" the operation of an enterprise through a pattern of racketeering. *See Emcore Corp. v. Price Waterhouse Coopers LLP*, 102 F. Supp. 2d 237, 263-64 (D.N.J. 2002).[40] Again, the enterprise in question is al Qaeda, whose existence and decision-making structure is alleged in great detail. *See* TAC, Introduction. The pattern of racketeering includes numerous predicate acts of murder. The Complaint alleges that many of the defendants, including terrorist front organizations like IIRO, al Haramain, MWL, and WAMY, along with numerous individuals such as Osama bin Laden (D78), Abu Qatada al-Filistini (D161), Yassir al-Sirri (D162), conducted or participated in the operation of al Qaeda through a pattern of predicate acts including fraud and murder.

Prince Sultan is liable to plaintiffs for the injuries caused by these RICO violations because he conspired with the other defendants to commit them. As the Supreme Court has noted, § 1962(d) contains "no requirement of some overt act or specific act . . . ." *Salinas v. U.S.*, 522 U.S. 52, 63 (1997). Further, "[a] conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense." 522 U.S. at 63. In *Salinas*, the Court held that a RICO conspirator need not, himself, commit the predicate acts required to make out a substantive RICO violation. Rather, said the Court, "it suffices that he adopt the goal of furthering or facilitating the" offense. *Id.* at 65.

Here, the Complaint plainly alleges that Sultan was aware of, and adopted the goal of the al Qaeda terrorists, *see*, *e.g.*, TAC ¶¶ 353-358. The Complaint further alleges that Sultan furthered or facilitated al Qaeda's pattern of murder and racketeering offenses by providing it with funds with which to carry out its terrorist agenda. Plaintiffs need allege no more to state a claim against Prince Sultan under § 1964(c) for a RICO conspiracy.

E. Plaintiffs Have Properly Pleaded Tort Claims Against Prince Sultan

Finally, Prince Sultan contends that plaintiffs' tort claims also should be dismissed. Sultan argues that he had no duty to prevent the September 11 attacks from the terrorists, but this argument misses the point. Plaintiffs do not allege that Sultan failed to *prevent* the attacks – they allege that he, negligently or knowingly, assisted the terrorists in carrying them out. This is not a case where plaintiffs claim that defendant failed to prevent a man with a knife from gaining access to a building, as in *Firpi v. New York City Housing Auth.*, 573 N.Y.S.2d 704 (App.Div. 1991); rather, plaintiffs allege that this defendant put the knife in the man's hand.

---

[40] In *Emcore*, the court held that in a complaint, "a plaintiff need only identify the entities it believes constitute the RICO enterprises" and further noted that "the rules of pleading require nothing more at this early juncture than that bare allegation." 102 F.Supp.2d at 264.

That it was the terrorists who actually used the weapons that Sultan placed in their hands does not absolve Sultan of liability. Although Sultan claims that the terrorists were an "intervening cause," precluding liability, the acts of a third person do not automatically qualify as an intervening cause. *See Derderian v. Felix Contracting Corp.*, 51 N.Y.2d 308, 315, 434 N.Y.S.2d 166, 169 (1980). Rather, defendant may still be liable where "the intervening act is a normal or foreseeable consequence of the situation created by the defendant's negligence." *Id.*; *see also Engel v. Eichler*, 290 A.D.2d 477, 479, 736 N.Y.S.2d 676, 679 (2002). Here, the U.S. government reported to the Saudi Arabia government that al Qaeda terrorists were raising money in Saudi Arabia through so-called "charities." It was an entirely normal and foreseeable consequence that if the al Qaeda terrorists were able to obtain sufficient funding, they would commit terrorist acts against the United States. Indeed, Osama bin Laden had announced as much. *See* TAC at p. 213. Defendant – among others – created the situation by providing the terrorists with the funding they required to train and carry out mass murders. The actual murders they committed were an all-too-foreseeable result.

Finally, Sultan claims that the September 11 attacks were not sufficiently "outrageous" and "beyond all possible bounds of decency" to meet the standards for intentional infliction of emotional distress. *See* Sultan Br. at 67. Defendant should be ashamed of this argument. If the September 11 attacks do not qualify as "outrageous," plaintiffs frankly cannot conceive – and would hope never to be able to – what would. Indeed, more than the slaughter of innocent persons, the very purpose of terrorism, as its name implies, is the intentional infliction of the most extreme emotional distress. Prince Sultan is entitled to contest the allegations of plaintiffs' Complaint and to litigate this case on its merits. But, assuming the truth of those allegations for the purpose of this motion, Sultan's suggestion that financing the cold-blooded murder of

thousands does not exceed the bounds of decency reflects a fundamental lack of understanding of what decency means in a civilized society. Indeed, the society that would not find the acts of September 11, 2001 outrageous and indecent is not one that any of us could recognize as "civilized" in any sense of the word.

CONCLUSION

For the foregoing reasons, this Court should deny Prince Sultan's motion to dismiss in its entirety.

Dated: Washington, D.C.
June 16, 2003

Respectfully submitted,

_/S/ Harry Huge_____
Harry Huge, Esq. (D.C. Bar #55640)
1001 Pennsylvania Avenue, N.W.
7th Floor
Washington, D.C. 20004
(202) 965-4672

Ronald L. Motley, Esq. (SC Bar #4123)
Jodi Westbrook Flowers, Esq. (SC Bar #66300)
Donald Migliori, Esq. (RI Bar #4936; MA Bar .....
Michael Elsner, Esq. (NY & VA Bar #ME-8337)
MOTLEY RICE LLC
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, South Carolina 29465
Telephone: (843) 216-9000

Paul J. Hanly, Jr., Esq. (NY Bar #PH-5486)
Jayne Conroy, Esq.
Andrea Bierstein, Esq.
HANLY & CONROY, LLP
415 Madison Avenue
New York, NY 10017-1111
Telephone: (212) 401-7600

Allan Gerson, Esq. (DC Bar #327494)
Neil Shur, Esq.,
ATTORNEY AT LAW
4221 Lenore Lane
Washington, DC 20008
Tel: (202) 966-8557

William N. Riley, Esq. (IN Bar #14941-49)
Mark K. Dudley, Esq. (IN Bar #15418-49)
Amy Ficklin DeBrota, Esq. (IN Bar #17294-49)
YOUNG, RILEY, DUDLEY & DEBROTA
3815 River Crossing Parkway, Suite 340
Indianapolis, Indiana 46240
Telephone: (317) 848-7939

Bill Narwold, Esq.
Joel Casey, Esq.
Ingrid Moll, Esq.
CUMMINGS & LOCKWOOD
CityPlace I
185 Asylum Street, 36th Floor
Hartford, Connecticut 06103
Telephone: (860) 275-6700

Don Howarth, Esq. (CA Bar #53783)
Suzelle M. Smith, Esq. (CA Bar #113992)
Robert D. Brain, Esq. (CA Bar #98815)
HOWARTH & SMITH
800 Wilshire Boulevard, Suite 750
Los Angeles, CA 90017
Telephone: (213) 955-9400

Chip Robertson, Esq.
Mary Winter, Esq.
BARTIMUS, FRICKLETON, ROBERTSON & OBETZ
200 Madison Avenue, Suite 1000
Jefferson City, MO 65101
Telephone: (573) 230-4665

Of Counsel:

Professor Robert Blakey
Notre Dame Law School
One Notre Dame Circle, Room 326
Notre Dame, IN 46556
Telephone: (574) 631-5717

Attorneys for Plaintiffs and for the brief