

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE:)	
)	
ISLAMIC REPUBLIC OF IRAN TERRORISM)	
LITIGATION)	Civil Action Nos. 01-2094, 01-2684,
)	02-1811, 03-1486, 03-1708, 03-
)	1959, 05-2124, 06-473, 06-516, 06-
)	596, 06-690, 06-750, 06-1116, 07-
)	1302, 08-520, 08-531, 08-1273, 08-
)	1615, 08-1807, 08-1814 (RCL)

RESPONSE TO SEPTEMBER 30, 2009, OPINION

On September 30, 2009, this Court issued an opinion resolving several pending motions and setting forth its position on several other complex legal issues in lawsuits brought by victims of terrorism against the nation of Iran. *See* Case No. 01-CV-2094 (RCL), Dkt. No. 439. The opinion touches upon issues ranging from the constitutionality of section 1083 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 3, 338-44, to the continuing viability of a system of judicial recovery for the victims of terrorism. In Section L, the Court invites the United States to file a brief to address “any of the issues” raised in the opinion, while noting that the filing of such a brief “will not prejudice the United States with respect to any submissions it may wish to make in response to specific filings by plaintiffs in any of the civil actions addressed today.” *Op.* at 186. The United States hereby respectfully responds to that invitation from the Court.

I. The Legal Issues Raised by the Opinion

As an initial matter, the United States is appreciative of this Court’s efforts to resolve complex issues in this intricate field of law, as well as the opportunity to comment on the

opinion. As this Court has recognized, the United States closely examines the need to participate in these cases and does so only when it deems participation necessary to address the interests of the United States. *See Op.* at 166-67. That judicious approach derives from an inherent dilemma identified by the Court in its opinion: The United States in no way seeks to stand as an “adversar[y]” to victims of terrorism in their pursuit of justice, but is compelled to participate when the plaintiffs’ specific attempts to recover on their judgments “run into direct conflict with other sources of law” or the national interests of the United States. *See id.* at 167.

Consistent with this approach, the United States does not have any specific comment at this time regarding the legal issues identified by this Court’s opinion. The United States recognizes and appreciates this Court’s attention in its opinion to previous filings by the United States on the viability of the drastic remedy of receivership, *see Op.* at 143-55, the limitations on the scope of 28 U.S.C. § 1610(g)(2), *see, e.g., id.* at 160-61, as well as the retroactivity problems that would accompany the appointment of Special Masters for work performed to effectuate a judgment pursuant to 28 U.S.C. § 1605(a)(7), *see id.* at 139 (citing Statement by the United States, Case No. 01-CV-2094, Dkt. No. 389). The United States is also appreciative of this Court’s offer to solicit the views of the United States on any future motions on the receivership issue. *See id.* at 154.

The United States will continue to monitor these, and other, issues as they arise in the context of specific cases and motions filed by the plaintiffs, and will consider participation in litigation on those issues in the appropriate context where the need may arise. At this time, however, the United States hesitates to comment on issues raised by this Court’s reasoned opinion out of concern that such views would not be narrowly tailored to particular facts in a given case.

II. The Policy Issues Raised by the Opinion

Apart from the specific legal issues identified, this Court stated in its opinion that the “more important[.]” issue to be addressed is the consideration of whether there is “a more viable system of redress for these tragic and difficult cases” than the judicial system. Op. at 8. The Executive Branch will continue to evaluate its policy with respect to the system of recovery for victims of terrorism with this Court’s opinion in mind, endeavoring to provide justice for victims while simultaneously preserving the important diplomatic and national interests of the United States.

Date: November 30, 2009

Respectfully submitted,

TONY WEST
Assistant Attorney General
Civil Division

CHANNING D. PHILLIPS
Acting United States Attorney

IAN HEATH GERSHENGORN
Deputy Assistant Attorney General
Civil Division

JOSEPH H. HUNT
Director
Federal Programs Branch

VINCENT M. GARVEY
Deputy Branch Director

/s/ Eric Womack
ERIC WOMACK (IL Bar No. 6279517)
TAMRA MOORE (DC Bar No. 488392)
Trial Counsel
Federal Programs Branch, Civil Division
United States Department of Justice
20 Massachusetts Ave NW
Washington, D.C. 20001
Tel.: (202) 514-4020; Fax: (202) 616-8470
Email: eric.womack@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2009, I caused a true and correct copy of the foregoing Response to be sent electronically to the clerk's office for service on Plaintiffs' counsel by means of the Court's ECF system.

 /s/ Eric Womack
ERIC WOMACK