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Supreme Court Turns Away Suit by Terrorism Victims

*Setback is latest for private efforts to hold sponsors and financiers of
International terrorism legally accountable*

By Jess Bravin



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Reluctant to second-guess the executive branch on foreign-policy and national-security issues

WASHINGTON—The Supreme Court on Monday turned away American victims of terrorist attacks in Israel seeking to sue the *Palestine Liberation Organization*, its unsigned order the latest legal setback for private efforts to hold sponsors and financiers of international terrorism legally accountable.

Several federal laws afford victims the right to sue over international terrorism despite legal doctrines that traditionally have insulated foreign entities from

liability. In individual cases, however, the U.S. government often has sided with alleged perpetrators against victims, raising procedural obstacles and citing policy considerations that make recovery difficult.

“Our government has a certain split personality,” said Kent Yalowitz, an attorney representing victims in the PLO case. While federal laws encourage such suits, “the government often takes the side of the perpetrators in interpreting the statutes,” he said. “It’s quite discouraging.”

In 2015, after years of procedural disputes, the suit filed by 11 American families whose relatives were killed in six terrorist attacks between 2002 and 2004 went to trial. A federal jury in New York awarded the plaintiffs \$218.5 million in damages, which under the Anti-Terrorism Act automatically was trebled to \$655.5 million.

In 2016, however, the Second U.S. Circuit Court of Appeals, in New York, threw out the verdict, finding that U.S. courts lacked jurisdiction to hear the case.

The Justice Department had argued the Supreme Court shouldn’t hear the victims’ appeal of that ruling, and on Monday the justices agreed.

Justice Department spokeswoman Kerri Kupac said the government “sympathizes deeply” with the victims. “The court of appeals decided, however, that the suit was not consistent with due process under the Constitution, and its decision did not meet the usual standards for Supreme Court review,” she said.

While Congress has overwhelmingly voted to let victims sue, diplomats and policy makers are loath to let private parties use the courts for personal aims that could interfere with U.S. objectives or expose American interests to reciprocal legal actions in other countries.

In two terrorism lawsuits the Supreme Court did hear in recent months, the Justice Department took positions against the victims. The department’s view of legal issues that carry international implications carries great weight with the justices, who are reluctant to second-guess the executive branch on foreign-policy and national-security issues.

In a case heard in December, a government lawyer argued alongside an attorney representing the **Iranian regime that victims who won a judgment over Tehran-backed terrorism couldn’t seize antiquities** belonging to Iran that were

on indefinite loan to the University of Chicago. The Supreme Court unanimously accepted the government position, issuing a decision that narrowed the types of assets victims could seize when collecting judgments from a state sponsor of terrorism.

Still pending before the court is a case argued in October, in which Israeli victims of suicide bombings sought to collect a judgment from Arab Bank PLC, a Jordanian entity they alleged helped finance the attacks with money transfers through its New York office.

In that case, the government argued that the Second Circuit went too far in holding that corporations never could be sued under the relevant statute. But it gave little hope to the plaintiffs, saying it was doubtful that Arab Bank's U.S. operations were sufficiently tied to the terrorist attacks to permit liability.

That conflict between the political appeal of supporting terrorism victims and policy makers' fear of unintended consequences is a recurrent theme. In September 2016, Congress overrode President Barack Obama's veto to enact the Justice Against Sponsors of Terrorism Act, intended to let victims of the Sept. 11, 2001, attacks sue Saudi Arabia for "facilitating" the al Qaeda operation. A suit filed under the law is pending in New York.

Likewise, where the Trump administration agreed with the PLO that the Second Circuit decision should stand, bipartisan briefs filed by the House of Representatives and a group of senators urged the Supreme Court to take the case.

Those long-term institutional interests largely have prevailed in the Trump administration, as well, despite presidential rhetoric that some expected would lead to a shift in legal position.

The PLO case prompted some debate within the administration, and the ultimate stand the government took may be related to larger diplomatic developments, people familiar with the matter said.

Some Trump officials, including the ambassador to Israel, David Friedman, are known for taking a relatively hard line against Palestinian positions. That faction won a significant victory when the president decided in December to move the U.S. Embassy to Jerusalem. Those developments relieved some of the internal pressure on the Justice Department to add to the Palestinian Authority's woes, these people said.

