

“AMERICAN VICTIMS OF TERRORISM COMPENSATION ACT” SUMMARY

INTRODUCTION

In 2015, the Justice for United States Victims of State Sponsored Terrorism Act, 34 U.S.C. § 20144 (the “USVSST Act”), as amended, provided for the establishment of the United States Victims of State Sponsored Terrorism Fund (the “Fund”). The purpose of the Fund was (and remains) to help satisfy unpaid judgments obtained by terror victims against a State Sponsor of Terrorism. State Sponsor of Terrorism is a designation applied by the United States Department of State to countries which have repeatedly provided support for acts of international terrorism. The Fund has been supported in large part by sanctions, fines, penalties, and proceeds from criminal and civil matters involving prohibited transactions with State Sponsors of Terrorism. Distributions are made pro rata, based on each victim’s total compensatory judgment.

Since its inception in 2015, there have been only four distributions from the Fund. In all other years, the Fund was insufficiently capitalized to make any distributions at all to victims, and the Special Master already has announced there will be no distribution again until at least 2025. And when distributions have been made, the pro rata distributions have been decreasing dramatically as well. The first distribution provided victims 13.66% of their judgments. The most recent distribution provided victims a maximum of only 0.4%. Currently, no victim has received more than a quarter of his or her judgment amount from the Fund. The majority have received far less, and many have receiving nothing at all. New victims, including victims of the October 7 attacks in Israel, and the January 2024 attack in Jordan, will obtain judgments but will need a working Fund to obtain any relief. This legislation addresses the lack of capitalization for the Fund and inability to meet Congressional intent, and ensures that the Fund can properly achieve its goal of fair, equitable, and meaningful compensation of all eligible victims of state sponsored terrorism on an annual basis until the victims’ judgments are satisfied, or until the Fund sunsets.

SECTION 2. TRANSFER OF CERTAIN FUNDS INTO UNITED STATES VICTIMS OF STATE SPONSORED TERRORISM FUND

Fifth-Round Payments

This section transfers or deposits specifically designated assets into the Fund to ensure a meaningful Fifth-round distribution to all victims in the Fund in 2024. This is accomplished by amending Sections 404(d)(4) of the Justice for United States Victims of State Sponsored Terrorism Act (34 U.S.C. 20144) to require the Special Master to authorize a fifth-round distribution to all individuals with eligible claims by no later than July 1, 2024 with all payments to be distributed by December 31, 2024.

Transfers into the Fund

Sections 404(d)(4) of the Justice for United States Victims of State Sponsored Terrorism Act (34 U.S.C. 20144) is amended to ensure that funds received from Binance Holdings Limited (“Binance”) in the case captioned United States v. Binance Holdings Limited, No. 2:23-cr-00178 (RAJ) (W.D. Wash. Filed Nov. 14, 2023), are deposited into the Fund. These funds include \$898,618, 825 that Binance is required to pay within 30 days of sentencing and any other funds which qualify for deposit into the Fund. These amounts already are required to be deposited into

the Fund under applicable law, but given DOJ's narrow interpretation of the USVSST Act and refusal in recent years to deposit amounts paid in cases involving State Sponsors of Terrorism, this clarification is especially important to ensure these funds go to the victims as intended.

Binance operates the world's largest cryptocurrency exchange and agreed to pay over \$4 billion to resolve charges against it, including violations of the International Emergency Economic Powers Act based on millions of financial transactions for thousands of individuals related to countries designated as State Sponsors of Terrorism, such as Iran, Syria, and Cuba.

In addition to the Binance funds, the legislation also provides for an additional resource to the Fund to address the historical insufficiency of case deposits to provide meaningful and consistent compensation to the victims. This is derived from unused portions of Asset Forfeiture Funds, after the expected obligations of those Funds are met.

Pursuant to 28 U.S.C. 524(c)(1), the Department of Justice Assets Forfeiture Fund receives proceeds of forfeitures from criminal and civil matters, including forfeitures relating to actions supporting State Sponsors of Terrorism. The cash balance of the DOJ Assets Forfeiture Fund can be invested and generates interest. This legislation would transfer half of the excess unobligated balance, on an annual basis, to the Fund to compensate victims of state sponsored terrorism.

Pursuant to 31 U.S.C. 9705, the Treasury Forfeiture Fund receives non-tax forfeitures made pursuant to the laws enforced or administered by the Treasury and Department of Homeland Security agencies, including forfeitures relating to actions supporting State Sponsors of Terrorism. The cash balance of the Treasury Forfeiture Fund can be invested in Treasury securities and generates interest. This legislation would transfer half of the excess unobligated balance, on an annual basis, to the Fund to compensate victims of state sponsored terrorism.

The term "excess unobligated balance" is defined to mean the difference between the unobligated balance of either the DOJ Asset Forfeiture Fund or the Treasury Forfeiture Fund and the necessary amount that is required to ensure the availability of sufficient funds for purposes which each respective forfeiture fund is authorized to be used. The unobligated balance is determined without regard to any rescission of amounts in a forfeiture fund for the following fiscal year.

The legislation specifically protects against any harming, jeopardizing, or impairing equitable sharing with law enforcement or restitution owed to crime victims.

SECTION 3. DEPOSIT OF TERRORISM-RELATED PENALTIES AND FINES INTO THE UNITED STATES VICTIMS OF STATE SPONSORED TERRORISM FUND

The DOJ has interpreted the Act to limit the amount of funds related to schemes involving State Sponsors of Terrorism that will be deposited into the Fund. Moreover, the DOJ has used its prosecutorial discretion to charge defendants under statutes that do not currently require deposits into the Fund, even if the conduct related to schemes involving State Sponsors of Terrorism.

The legislation clarifies the law and fulfills Congress's intent by ensuring that amounts paid in cases involving State Sponsors of Terrorism are to be deposited or transferred to the Fund. This clarification is crucial for the victims, because this is the only type of case that direct amounts

to the USVSST Fund to help the victims of State Sponsored Terrorism, whereas victims of other crimes receive compensation from all other manner of prosecutions and plea agreements. The legislation adds further protection for direct victims of any offense who are entitled to restitution under the terms of any court order. In those cases, restitution is paid first before any amounts are deposited into the Fund.

SECTION 4. ANNUAL PAYMENTS

This section of the legislation ensures an annual distribution from the Fund, as Congress intended. It specifically requires the Special Master or Attorney General to authorize annual distributions from the Fund on January 1st of each year, with distributions to be made on a pro rata basis to all eligible claimants in the Fund pursuant to the USVSST Act. Except as specified in this legislation, the Special Master is only required to authorize one annual distribution, but may authorize additional general distributions as appropriate.

SECTION 5. REPORT OF FUND ACTIVITY

This section of the legislation increases transparency of the USVSST Fund, and decisions regarding the Fund, by requiring the Special Master of the Fund to submit an annual report to the Chairman and ranking minority member of the Senate and House judiciary committees on January 1 of each year. The report is to include information regarding how the DOJ is managing the Fund and treating funds that should be used to compensate victims. Specifically, the report would detail 1) the amount in the Fund, 2) amounts deposited into the Fund in the preceding year, and 3) amounts disbursed from the Fund in the preceding year.

This section also requires the Comptroller General to submit a report to Congress no later than January 1, 2027, and every three years thereafter, which evaluates the administration of the Fund, the sufficiency of funding, and includes recommendations for further funding.

SECTION 6. DEFINITIONS

This section of the legislation adds a definition of “general distribution” as any distribution for all eligible claims. This is the annual distribution to all victims the law requires.

SECTION 7. ADMINISTRATIVE COSTS AND USE OF DEPARTMENT OF JUSTICE PERSONNEL

This section of the legislation assists in the administration of the Fund, by allowing the Special Master to utilize 10 full-time equivalent Department of Justice personnel to administer the Fund. Currently, the Special Master is authorized to use 5 such personnel.

SECTION 8. ADDITIONAL REPORTS

This section of the legislation provides for the prompt deposit into the Fund of any amounts remaining from the funds Congress allocated to the Fund in 2022, after payment of catch-up payments to certain specially designated groups of victims. This provision requires the balance remaining after the catch-up payments to be deposited into the Fund no later than 30 days after the final catch-up amounts are authorized.