

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AKBAR MOHAMMADI,  
MANOUCHEHR MOHAMMADI,  
NASRIN MOHAMMADI,  
SIMIN MOHAMMADI,

Plaintiffs,

v.

AYATOLLAH SAYID ALI HOSEYNI KHAMENEI,  
et. al.,

Defendants.

Civil Action No. 09-1289 (BAH)

**MEMORANDUM ON DAMAGES**  
**UNDER THE ATCA, THE TVPA, AND THE FSIA**

Plaintiffs Akbar, Manouchehr, Nasrin, and Simin Mohammadi hereby present the following memorandum on the damages under the Alien Tort Claims Act ("ATCA"), the Torture Victim Protection Act ("TVPA"), and the Foreign Sovereign Immunity Act ("FSIA").

**I. Introduction**

"Cases under the Alien Tort Claims Act and the Torture Victim Protection Act often result in multimillion dollar punitive damages awards against individual defendants for torture and extrajudicial killings." *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 33 (D.D.C. 1998).

Under the ATCA and the TVPA, claims are brought under wrongful death, and the same damages traditionally available for wrongful death are also available in the instant case.

Similarly, the FSIA allows for the recovery of the same category of damages. *See* 28 U.S.C. §

1605A(c) (Damages available under the FSIA-created cause of action “include economic damages, solatium, pain and suffering, and punitive damages.”).

Accordingly, those who survived the attack may recover damages for their pain and suffering, as well as any other economic losses caused by their injuries. Estates of those who did not survive can recover economic losses stemming from wrongful death of the decedent, family members can recover solatium for their emotional injury, and all plaintiffs can recover punitive damages." *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 82–83 (D.D.C. 2010).

Under the FSIA, Section 1606 provides that "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. Section 1606 acts as a "pass-through" to substantive causes of action against private individuals that may exist in federal, state or international law. *Bodoff v. Islamic Republic of Iran*, 424 F. Supp. 2d 74, 83 (D.D.C. 2006) *citing* *Dammarell v. Islamic Republic of Iran*, Civ. A. No. 01-2224, 2005 WL 756090, at \*8-10, 2005 U.S. Dist. LEXIS 5343, at \*27-32 (D.D.C. Mar. 29, 2005) (Bates, J.).

Since a "foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances," 28 U.S.C. § 1606, Plaintiffs are entitled to the typical array of compensatory damages that may be awarded against tortfeasors in the District of Columbia.

In determining the appropriate compensatory damages for each Plaintiff's emotional suffering, this Court is guided not only by prior decisions awarding damages for solatium and loss of consortium, but also by those which awarded damages for pain and suffering. *Cf. Wagner*, 172 F. Supp. 2d at 135 n. 11 (noting that, in an intentional homicide case, "solatium appears in any event to be indistinguishable from the intentional infliction of emotional

distress"); *see also Surette v. Islamic Republic of Iran*, 231 F. Supp. 2d 260, 267 n. 5 (D.D.C. 2002) (Friedman, J.) ("In the context of FSIA cases, this Court has recognized the claim of solatium as . . . indistinguishable from the claim of intentional infliction of emotional distress.").

“To obtain damages against defendants in an FSIA action, the plaintiff must prove that the consequences of the defendants’ conduct were ‘reasonably certain (i.e., more likely than not) to occur, and must prove the amount of the damages by a reasonable estimate consistent with this [Circuit’s] application of the American rule on damages.’” *Salazar v. Islamic Republic of Iran*, 370 F. Supp. 2d 105, 115–16 (D.D.C. 2005) (quoting *Hill v. Republic of Iraq*, 328 F.3d 680, 681 (D.C. Cir. 2003) (internal quotations omitted)).

## **II. Economic Damages For Loss of Accretions and Lost Wages**

Plaintiffs bringing suit on behalf of a deceased may seek damages for the "loss of accretions to the estate resulting from the wrongful death of decedent in the attack." *Murphy v. Islamic Rep. of Iran*, 740 F. Supp. 2d 51, 78 (D.D.C. 2010) (awarding damages to the victims of the Islamic Republic under the FSIA). Similarly, plaintiffs who survive acts of terrorism and torture are entitled to "lost wages resulting from permanent and debilitating injuries suffered in the attack[s]." *Murphy*, 740 F. Supp. 2d at 78.

Plaintiff Akbar Mohammadi was killed by the Defendants while he was imprisoned and tortured for calling for regime change in Iran. Here, damages for loss of accretions would be applicable for Akbar's yearly salary for every year he was projected to work in his lifetime. Akbar was a student but also ran a pastry factory with this brother Manouchehr. Finding of Fact ("F.F.") at 37:370. The pastry factory made a net profit of an equivalent of \$1 million dollars a year, to which Akbar was entitled to \$300,000 because he was a 30% owner. F.F. at 37: 371,

372. Projected until his age of retirement at age 65, this would have resulted in a total amount of \$11,400,000.

Manouchehr, who survived the torture only by escaping to the United States with the help of U.S. government officials, has been permanently physically and psychologically damaged from this experience. He is unemployed, and owes \$200, 000 to \$300,000. While he was in Iran, Manouchehr was a student but also ran a pastry factory with his brother Akbar. F.F. at 37:370. His family founded the bakery in 1999 and the two brothers were in charge. Now he is unable to find employment and the psychological damage prevents him from learning English which would allow for him to find employment in the United States. However, even if Manouchehr learned English, due to the psychological affects the torture and death of his brother had on Manouchehr, he is essentially unemployable. He has significant trouble concentrating and is incapable of focusing.

In Iran Manouchehr would have been a business lawyer making an average of \$30,000 a month. F.F. at 37:369. Calculated to the age of retirement at age 65, this comes out to \$11,520,000. In addition, the pastry factory made a net profit of an equivalent of \$1 million dollars a year, to which Akbar was entitled to \$300,000 because he was a 30% owner. F.F. at 37:372. Projected until his age of retirement, this would have resulted in a total amount of \$9,600,000. Manouchehr would thus be entitled to \$21,120,000 in lost wages.

Plaintiff Nasrin Mohammadi worked as a journalist making the equivalent of \$500 a month but has since been unable to find employment. Thus, from the time of her persecution to her presumed retirement at the age 65, Nasrin would have lost a total amount of \$228,000 in lost wages. In addition, the pastry factory made a net profit of an equivalent of \$1 million dollars a year, to which Nasrin was entitled to \$150,000 because she was a 15% owner. F.F. at 37:372.

Calculated to her age of retirement at 65, this would have entitled her to \$6,000,000. Nasrin's total lost wages would then come out to \$6,228,000.

Simin was also part owner of the pastry factory. The pastry factory made a net profit of an equivalent of \$1 million dollars a year, to which Simin was entitled to \$150,000 because she was a 15% owner. F.F. at 37:372. Calculated to her age of retirement at 65, this would have come out to a total of \$6,450,000.

The total for economic damages would have then come out to \$11,400,000 in lost wages for Akbar, \$21,120,000 in lost wages for Manouchehr, \$6228,000 in lost wages for Nasrin, and \$6,450,000 in lost wages for Simin. This would end up resulting in \$45,198,000 in lost wages for the Plaintiffs.

### **III. Pain and Suffering**

"The United States Court of Appeals for the District of Columbia Circuit has firmly established that the trier of fact has broad discretion in calculating damages for pain and suffering." *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 28 (D.D.C. 1998) citing *Taylor v. Washington Terminal Co.*, 133 U.S. App. D.C. 110, 409 F.2d 145, cert. denied, 396 U.S. 835, 24 L. Ed. 2d 85, 90 S. Ct. 93 (1969).

"Assessing appropriate damages for physical injury or mental disability can depend upon a myriad of factors, such as "the severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life." *Peterson II*, 515 F. Supp. 2d at 25 n.26 (citing *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 59 (D.D.C. 2006)). In *Peterson II*, this Court adopted a general procedure for the calculation of damages that begins with the baseline assumption that persons suffering substantial injuries in terrorist attacks, acts of torture, or extrajudicial killings, are

entitled to \$5 million in compensatory damages. *Id.* at 54. In applying this general approach, this Court has explained that it will “depart upward from this baseline to \$7–\$12 million in more severe instances of physical and psychological pain, such as where victims suffered relatively more numerous and severe injuries, were rendered quadriplegic, partially lost vision and hearing, or were mistaken for dead,” *Valore*, 700 F. Supp. 2d at 84, and will “depart downward to \$2–\$3 million where victims suffered only minor shrapnel injuries or minor injury from small-arms fire,” *Id.* When a victim suffers severe emotional injury without physical injury, this Court has typically awarded the victim \$1.5 million. *Id.*

Those who are victims of torture and extrajudicial killings, both arising out of the same cause of action and jurisdictional statutes, should be similarly entitled the same amount of pain and suffering. Akbar and Manouchehr were both held in prison for over seven years and two months, where they were subjected to multiple forms of torture, including but not limited to physical beatings by metal rods, being tied up and hung by their arms from the ceiling, being tied to a bed with weights placed on their bodies making it difficult for them to breathe, and being tied inside a coffin where water was dripped on top of them for hours. Even worse, they were forced to watch each other being tortured in front of their own eyes. F.F. at 11:95. The lasting images of these acts of torture remain in Manouchehr's mind and he continues to wake up with nightmares and break down uncontrollably in tears. F.F. at 10:89. The lasting physical damage to Manouchehr's body is just as horrific. Nine of his teeth have been removed, his shoulders still hurt from when his arms were hung from the ceiling. His penis has been burned to the point where he can no longer have sexual relations with women and bleeds every time he takes a shower. F.F. at 10:92. This physical and psychological damage is so severe that he will never recover from it. Manouchehr will spend the rest of his life with these scars and the pain and

suffering that he has endured and will continue to endure. Thus, Plaintiffs respectfully submit that the full amount of \$12 million dollars should be awarded to Akbar, and \$12 million should be awarded to Manouchehr as well, for a total of \$24 million dollars.

Nasrin and Simin have similarly endured severe psychological and emotional drama. Nasrin continues to undergo treatment for her severe post traumatic stress and depression. She has attempted to commit suicide and continues to have nervous breakdowns and requires medical and psychological treatment. F.F. at 20:197. Simin also experiences problems with intimacy. Having been threatened with gang rape by the Defendants and their thugs, she is unable to have any sort of relationship with another male person. F.F. at 20:201. The full award of \$1.5 million would thus be appropriate for Nasrin, as well as an additional \$1.5 million for Simin, for a total of \$3 million dollars.

In sum, the total award for pain and suffering for all Plaintiffs should be appropriately set at \$27 million dollars.

#### **IV. Solatium**

Solatium is traditionally a compensatory damage which belongs to the individual heir personally for injury to the feelings and loss of decedent's comfort and society. It began as a remedy for the loss of a spouse or a parent. It has since expanded to include the loss of a child, including in some states the loss of an emancipated or adult child. *Reiser v. United States*, 786 F. Supp. 1334 n.13 (N.D. Ill. 1992). Where the claim is based upon the loss of a sibling, the claimant need only prove a close emotional relationship with the decedent. *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 29-30 (D.D.C. 1998) citing *Miles v. Apex Marine Corp.*, 498 U.S. 19, 112 L. Ed. 2d 275, 111 S. Ct. 317 (1990); *Reiser*, 786 F. Supp. 1334.

"Spouses and relatives in direct lineal relationships are presumed to suffer damages for mental anguish. The testimony of sisters or brothers is ordinarily sufficient to sustain their claims for solatium." *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 30 (D.D.C. 1998) citing *Reiser*, 786 F. Supp. 1334.

There is compelling evidence on the record in the form of live testimony and affidavits attesting to the fact that the Mohammadi family was close-knit and that they deeply suffered as a result of the physical and psychological torture done to them. The Defendants knew of the close bond between the brothers and this is why they were tortured in front of each other, specifically to exploit their familial relationship and cause even greater amounts of harm upon them. Manouchehr still awakes from nightmares caused by seeing his brother being tortured right in front of him. Nasrin has been traumatized so much by the loss of her brother and the treatment of Defendants to herself, her parents, and the rest of her family that she continues to suffer from severe depression. Indeed, this Court witnessed both of them breaking down uncontrollably in tears during the trial -- to the point where trial had to be stopped for a time. F.F. at 12:116.

Originally, wrongful death acts provided compensation only for the decedent's lost cash income stream. "Society" has evolved to include "a broad range of mutual benefits which 'each family member' receives from the other's continued existence, including love, affection, care, attention, companionship, comfort and protection." *Flatow*, 999 F. Supp. at 31 citing *Miles v. Apex Marine Corp.*, 498 U.S. 19, 112 L. Ed. 2d 275, 111 S. Ct. 317 (1990).

Unlike lost wages, which can be calculated with a fair degree of mathematical certainty, solatium cannot be defined through models and variables. Courts have therefore refused to even attempt to factor in the present value of future mental anguish and loss of society. While economic losses can be reduced to present value with simple equations to establish the amount of



an annuity established today which would have matched the decedent's ostensible income stream, the scope and uncertainty of human emotion renders such a calculation wholly inappropriate. *Drews v. Gobel Freight Lines, Inc.* 144 Ill. 2d 84, 578 N.E.2d 970, 161 Ill. Dec. 324 (1991); *United States v. Hayashi*, 282 F.2d 599 (9th Cir. 1960).

Nevertheless, this Court developed a standardized approach for FSIA intentional infliction of emotional distress, or solatium, claims in *Heiser v. Islamic Republic of Iran*, where it surveyed past awards in the context of deceased victims of terrorism to determine that, based on averages, “[s]pouses typically receive greater damage awards than parents [or children], who, in turn, typically receive greater awards than siblings.” 466 F. Supp. 2d 229, 269 (2006). Relying upon the average awards, the *Heiser* Court articulated a framework in which spouses of deceased victims were awarded approximately \$8 million, while parents received \$5 million and siblings received \$2.5 million. *Id.*; see also *Valore*, 700 F. Supp. 2d at 85 (observing that courts have “adopted the framework set forth in *Heiser* as ‘an appropriate measure of damages for the family members of victims’”) (quoting *Peterson II*, 515 F. Supp. 2d at 51).

As this Court recently explained, in the context of distress resulting from injury to loved ones—rather than death—courts have applied a framework where “awards are ‘valued at half of the awards to family members of the deceased’—\$4 million, \$2.5 million and \$1.25 million to spouses, parents, and siblings, respectively.” *Oveissi v. Islamic Republic of Iran*, 768 F. Supp. 2d 16, 26 n.10 (D.D.C. 2011) (quoting *Valore*, 700 F. Supp. 2d at 85); see also *Bland*, 2011 WL 6396527, at \*4–5. Children of a deceased victim typically receive an award of \$3 million, while children of a surviving victim receive \$1.5 million. *Stern v. Islamic Republic of Iran*, 271 F. Supp. 2d 286, 301 (D.D.C. 2003); *Bland*, 2011 WL 6396527, at \*4; *Anderson v. Islamic Republic of Iran*, No. 08-cv-535 (D.D.C. Mar. 20, 2012), 2012 WL 928256, at \*2.

The Plaintiffs in this case are all victims and members of the same family. Manouchehr had one sibling killed, Akbar, and has two siblings who are alive yet continue to severely suffer as a result of the torture that was done to them. This would then come out to a total of \$5 million simply for Manouchehr.

Nasrin, who had one brother killed, and another two siblings who are still alive, would be entitled to \$5 million as well. Simin is similarly entitled to \$5 million because she is in the identical position of having one brother killed and another two who are still alive.

The total for solatium damages arising under pain and suffering would then amount to \$15 million for the Plaintiffs.

#### **V. Punitive Damages**

In determining the proper punitive damages award, courts evaluate four factors: "(1) the character of the defendants' act, (2) the nature and extent of harm to the plaintiffs that the defendants caused or intended to cause, (3) the need for deterrence, and (4) the wealth of the defendants." *Bodoff v. Islamic Republic of Iran*, 424 F. Supp. 2d at 88 citing *Acree v. Republic of Iraq*, 271 F. Supp. 2d 179, 222-23 (D.D.C. 2003) (Roberts, J.) (citing *Flatow*, 999 F. Supp. at 32), vacated on other grounds, 361 U.S. App. D.C. 410, 370 F.3d 41 (D.C. Cir. 2004).

In cases such as this, the analysis typically results in punitive damages in an amount three times Iran's annual expenditure on terrorism, or \$ 300,000,000. See, e.g., *Acree*, 271 F. Supp. 2d at 223-24; *Stern v. Islamic Republic of Iran*, 271 F. Supp. 2d 286,300-02 (D.D.C. 2003); *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258,279 (D.D.C. 2003); *Cronin v. Islamic Republic of Iran*, 238 F. Supp. 2d 222, 235-36 (D.D.C. 2002) (Lamberth, J.), abrogated on other grounds, *Cicippio-Puleo v. Islamic Republic of Iran*, 359 U.S. App. D.C. 299, 353 F.3d 1024 (D.C. Cir. 2004); *Eisenfeld v. Islamic Republic of Iran*, 172 F. Supp. 2d 1, 9 (D.D.C. 2000).

The severest of punishments should apply here. Iran is a state sponsor of terror that is performing acts of terrorism on citizens of its own country as well as the United States. The systematic imprisonment, torture, and extrajudicial killings being performed deserve nothing but the most extreme monetary punishment. Because the award of punitive damages comes from multiple plaintiffs with multiple causes of action an amount of \$300 million is appropriate in this instance as well. The amount is enough to punish the Defendants, who continue to imprison, torture, and murder their own citizens and others who they oppose to this day.

**VI. Attorney's Fees**

Plaintiffs additionally request an amount of \$205,000.00 in attorney's fees and costs. F.F. at 38:377.

**VII. Conclusion**

Because of the barbaric and Nazi-like acts of torture and murder committed upon Akbar, Manouchehr, Nasrin, and Simin, the Plaintiffs here are entitled to the full extent of damages available to them under the Alien Tort Claims Act, the Torture Victim Protection Act, and the Foreign Sovereign Immunity Act in the following amounts:

Economic Damages for Loss of Accretions and Lost Wages	\$45,198,000.00
Pain and Suffering	\$27,000,000.00
Solatum Damages	\$15,000,000.00
Punitive Damages	\$300,000,000.00
Attorney's Fees and Costs	\$205,000.00
Total	\$387,198,000.00

Plaintiffs would thus be entitled to a total of \$387,198,000.00.<sup>1</sup>

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<sup>1</sup> This amount is nothing but a drop in the bucket for the world's second largest producer of oil and world's most prolific and dangerous designated terrorist state.

Dated: April 30, 2013

Respectfully submitted,

/s/ Larry Klayman

Larry Klayman, Esq.

2020 Pennsylvania Ave., N.W., Suite 345

Washington, D.C. 20006

Telephone: (310)-595-0800

leklayman@yahoo.com

Attorney for Plaintiffs