

The Supreme Court - May 18, 2020

Today, the Supreme Court of the United States issued the following opinion:

Opati v. Republic of Sudan, No. 17-1268: Victims of a 1998 al Qaeda attack outside the United States Embassies in Kenya and Tanzania brought suit in federal court against the Republic of Sudan, alleging that Sudan had assisted al Qaeda in the attack. The suit was filed pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, which codified an exception to foreign sovereign immunity under the Foreign Sovereign Immunities Act ("FSIA") for state-sponsored terrorism at 28 U.S.C. §1605(a)(7). As first enacted, and at the time the plaintiffs brought suit, that exception to immunity was subject to §1606's general bar on punitive damages in suits proceeding under any of the §1605 sovereign immunity exceptions. In 2008, Congress amended the FSIA again in the National Defense Authorization Act, moving §1605(a)(7) to a new section outside of §1606's general bar on punitive damages; expressly creating a federal cause of action for acts of terror that allowed for punitive damages, see §1605A(c); giving effect to existing lawsuits "adversely affected" by prior law as if they had been originally filed under the new law; and providing a time-limited opportunity for plaintiffs to file new actions arising out of the same act or incident as an earlier action and claiming the new law's benefits. The plaintiffs here amended their complaint to include this new federal cause of action, after which the District Court entered judgment awarding plaintiffs \$10.2 billion in damages, including \$4.3 billion in punitive damages. The D.C. Circuit instead held that punitive damages were not recoverable because Congress's 2008 amendments did not include any statement clearly authorizing punitive damages for preenactment conduct. Today, the Court vacated and remanded holding that Congress was as clear as it could have been in its 2008 amendments that plaintiffs in a suit against a foreign state for personal injury or death caused by acts of terrorism under §1605A(c) may seek punitive damages for preenactment conduct. Justice Gorsuch delivered the Court's opinion, which all members joined except Justice Kavanaugh, who did not participate.

Related Capabilities

- Appellate
- International Arbitration & Litigation

The Court's decision is available [here](#).