

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 1:15-cv-23438-GAYLES

**SALEH ALI SANYYEN ALSHAAR
and his wife, MAHA SHABAN
AHMAD ALFALOUGI;
MUSHTAQ HAKEEM JUMAAH
and his wife, GHADAA ABDULWAHID
JUMAAH; GHADAA SHAKIR MAHMOOD,
individually and as personal/legal representative
of the ESTATE OF MAJID FADIL
DARWEESH and on behalf of his survivors;
and NADIA HAKEEM JUMAAH, individually
and as personal/legal representative of the
ESTATE OF MUSTAFA ABDULWAHID
JUMAAH and on behalf of his survivors,**

Plaintiffs,

v.

ISLAMIC REPUBLIC OF IRAN,

Defendant.

ORDER

THIS CAUSE comes before the Court upon Plaintiffs' Motion for Amended and Additional Findings of Fact and Conclusions of Law (the "Motion") [ECF No. 46]. The Court has reviewed the Motion and the record and is otherwise fully advised. For the reasons discussed below, the Motion is granted and the Court's Findings of Fact and Conclusions of Law, [ECF No. 45], is amended as follows.

I. BACKGROUND

On September 11, 2015, Plaintiffs brought this action, pursuant to the Foreign Sovereign Immunities Act's ("FSIA") Terrorism Exception, 28 U.S.C. § 1605A, seeking compensatory and punitive damages against Defendant Islamic Republic of Iran ("Iran") based on an improvised

explosive device (“IED”) attack that occurred in Iraq on September 13, 2005. Plaintiffs alleged that Iran provided training, equipment, and material support to insurgent groups in Iraq relative to the use of IEDs against Americans, private contractors, and individuals working with Americans.

Plaintiffs served Iran through diplomatic channels on September 6, 2016, in accordance with 28 U.S.C. § 1608(a)(4). On February 3, 2017, there having been no appearance entered or papers filed by Iran within the time required, the Clerk entered a default against Iran in accordance with Federal Rule of Civil Procedure 55(a) and 28 U.S.C. §1608(d). On September 16, 2019, the Court held a bench trial where Plaintiffs presented the testimony of several witnesses and documentary evidence. Relevant to the instant Motion, Plaintiff Nadia Hakeem Jumaah (“Ms. N. Hakeem Jumaah”) and Colonel Stuart Harris, a retired Colonel of the United States Marine Corp., testified. Iran did not appear at the bench trial and therefore presented no defense.

On March 18, 2020, after carefully considering the evidence and testimony presented at the bench trial, the Court made findings of fact and conclusions of law based thereon. [ECF No. 45]. The Court assumes familiarity with that document and the record. On April 15, 2020, Plaintiffs filed the instant Motion, asking the Court to amend its findings of fact regarding Plaintiffs’ requests for: (1) damages brought by Ms. N. Hakeem Jumaah on behalf of her and Decedent Mustafa Abdulwahid Jumaah’s (“Mr. Abdulwahid Jumaah”) son, M.M.A.A.H.; and (2) punitive damages in light of a case that was pending before the United States Supreme Court. [ECF No. 46].

On May 19, 2020, Plaintiffs filed a Notice of Supplemental Authority, advising the Court of the Supreme Court’s decision in *Opati v. Republic of Sudan*, 140 S. Ct. 1601 (2020), which held that the punitive damages provision of § 1608(A)(c)(4) retroactivity applies to incidents occurring before the FSIA’s 2008 amendments. [ECF No. 47]. The Court finds that amendments to its Findings of Fact and Conclusions of Law are warranted as outlined below.

II. LEGAL STANDARD

Rule 52(b) provides that a court may amend its findings, or make additional findings, on a party's motion filed no later than twenty-eight days after the entry of judgment. Fed. R. Civ. P. 52. Plaintiffs timely filed the instant Motion. "The purpose of [Rule 52] is to allow the court to correct plain errors of law or fact, or, in limited situations, to allow the parties to present newly discovered evidence, but not to allow the relitigation of old issues, a rehearing on the merits, or the presentation of new theories of the case." *Hannover Ins. Co. v. Dolly Trans Freight, Inc.*, No. 6:05-cv-576-Orl-19DAB, 2007 WL 170788, at *2 (M.D. Fla. Jan. 18, 2007) (citing *Roadmaster (USA) Corp. v. Calmodal Freight Sys., Inc.*, 153 F. App'x 827, 829 (3d Cir. 2005)). "Requests pursuant to Rule 52 . . . are to be granted sparingly, and only when dispositive factual matters or controlling decisions of law were brought to the Court's attention, but not considered." *Id.* at *2 (citation and internal quotation marks omitted).

III. DISCUSSION

A. Solatium Damages for Decedent Mr. Abdulwahid Jumaah's son, M.M.A.A.H.

In Plaintiffs' proposed findings of fact and conclusions of law, Ms. N. Hakeem Jumaah requested \$15 million on behalf of her and Decedent Mr. Abdulwahid Jumaah's son, M.M.A.A.H., who is now at least 14 years old. *See* [ECF No. 44 at 14]. The Court did not previously award Ms. N. Hakeem Jumaah damages on behalf of her son, M.M.A.A.H., because it found that Ms. N. Hakeem Jumaah presented no evidence to the Court of M.M.A.A.H.'s injuries. *See* [ECF No. 45 at 16 n.3 (citing *Compania Interamericana Exp.-Imp., S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 950 (11th Cir. 1996) (noting that plaintiffs must "establish[] [their] claim[s] or right to relief by evidence satisfactory to the court") (citing § 1608(e))].

Plaintiffs now claim that they did, in fact, present such evidence. In support, Plaintiffs point to Ms. N. Hakeem Jumaah's testimony, which established that: (1) Decedent Mr. Abdulwahid Jumaah was killed just days after M.M.A.A.H. was born; (2) it has been "difficult" for M.M.A.A.H. not to know his father; and (3) M.M.A.A.H. "suffers for not having a father." [ECF No. 46 at 2]. Plaintiffs again request \$15 million in damages for M.M.A.A.H. with no explanation for why that specific amount is warranted. [ECF No. 47 at 3 n.1]. Upon reconsideration of the record and for the reasons discussed below, the Court now awards Ms. N. Hakeem Jumaah \$3 million in damages on behalf of her son, M.M.A.A.H.

"Solatium damages are available to FSIA plaintiffs when extreme and outrageous conduct has caused grief and anguish to plaintiffs closely related to a victim of terrorism. Acts of terrorism are by their very definition extreme and outrageous and intended to cause the highest degree of emotional distress, literally, terror." *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 273 (D.D.C. 2003) (citations and internal quotation marks omitted). "In order to recover damages, a plaintiff who prevails on default under the [FSIA] 'must prove damages in the same manner and to the same extent as any other default winner.'" *Saludes v. Republica de Cuba*, 577 F. Supp. 2d 1243, 1255 (S.D. Fla. 2008) (citation omitted). Thus, Plaintiffs "must prove future damages to a reasonable certainty or by a preponderance of the evidence." *Id.* (citation omitted).

Notably, "courts may presume that spouses and those in direct lineal relationships with victims of terrorism suffer compensable mental anguish[.]" *Moradi v. Islamic Republic of Iran*, 77 F. Supp. 3d 57, 72 (D.D.C. 2015) (citation omitted). Courts must also "take pains to ensure that individuals with similar injuries receive similar awards[.]" *Reed v. Islamic Republic of Iran*, 845 F. Supp. 2d 204, 214 (D.D.C. 2012) (citation omitted). To that end, the Court finds persuasive the "well-established practice" among district courts within the D.C. Circuit "of looking to previous

solatium awards to determine solatium damages in FSIA cases.” *Campuzano*, 281 F. Supp. 2d at 273 (citation omitted). Children of a deceased victim typically receive \$3 million. *See Estate of Brown v. Islamic Republic of Iran*, 872 F. Supp. 2d 37, 42 (D.D.C. 2012) (citations omitted).

Here, the Court may presume that M.M.A.A.H., the sole surviving child of Decedent Mr. Abdulwahid Jumaah, will suffer compensable mental anguish and suffering from having to grow up without a father. At the bench trial, Ms. N. Hakeem Jumaah, M.M.A.A.H.’s mother, confirmed that M.M.A.A.H. was less than a week old when his father was killed and that he suffers from not having a father. The Court finds that the record, though limited, supports a determination that M.M.A.A.H.’s emotional distress is reasonably certain to occur as a result of his father’s untimely killing. Accordingly, the Court awards Ms. N. Hakeem Jumaah \$3 million in solatium damages on behalf of her son, M.M.A.A.H., in line with awards that children of deceased victims of terrorism acts typically receive.

B. Punitive Damages

“Punitive damages are awarded to punish a defendant for particularly egregious conduct, and to serve as a deterrent to future conduct of the same type.” *Mousa v. Islamic Republic of Iran*, 238 F. Supp. 2d 1, 13 (D.D.C. 2001). Section 1605A(c)(4) allows FSIA plaintiffs to seek “economic damages, solatium, pain and suffering, and punitive damages.” The Court did not previously award Plaintiffs punitive damages based on at least one court’s decision in this district not to award punitive damages because “the punitive damages provision of [§] 1605A(c) does not apply retroactively to conduct occurring before the passage of § 1605A in 2008.” *Weinstock v. Islamic Republic of Iran*, No. CV 17-23272-CIV, 2019 WL 1507255, at *5 (S.D. Fla. Apr. 5, 2019) (citing *Owens v. Republic of Sudan*, 864 F.3d 751, 815 (D.C. Cir. 2017), *certified question answered*, 194 A.3d 38 (D.C. 2018), and *vacated and remanded sub nom. Opati v. Republic of*

Sudan, 140 S. Ct. 1601 (2020)). Since then, the Supreme Court held that “punitive damages *are* permissible for federal claims” under § 1605A(c) and, therefore, vacated the *Owens* decision with respect to punitive damages. *See Opati*, 140 S. Ct. at 1610 (emphasis in original).

Accordingly, and based on the evidence adduced at the bench trial, the Court finds that an award of punitive damages is warranted in this case. Typically, courts may calculate punitive damages in FSIA cases by “multipl[ying] a defendant’s financial support for international terrorism . . . by a pre-determined multiplier (generally between 3 and 5) (the ‘Flatow Method’).” *Beer v. Islamic Republic of Iran*, 789 F. Supp. 2d 14, 17 (D.D.C. 2011) (citing *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 2d 17, 34 (D.D.C. 1998)). “[T]oday the *Flatow* Method is well settled case law on the methodology by which punitive-damage awards in FSIA cases are calculated.” *Id.* at 18 (citation and internal quotation marks omitted).

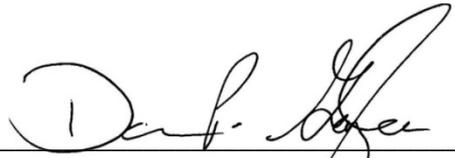
At the bench trial in this case, Colonel Stuart Harris testified that reports published on the United States Department of State web page in November of 2018 indicated that Iran is believed to spend approximately \$1 billion a year sponsoring terrorism. *See* [ECF No. 43 at 68:3–13]. Under *Flatow*, therefore, the Court may award Plaintiffs up to \$5 billion in punitive damages. However, in light of Plaintiffs’ request for a total of \$350 million in punitive damages, the Court finds that this amount is sufficient to punish Iran and to deter future acts of terrorism. Accordingly, the Court awards \$50 million to each Plaintiff and to M.M.A.A.H., totaling \$350 million. *See, e.g., Beer*, 789 F. Supp. 2d at 26 (awarding \$300 million in punitive damages “to be dispersed in proportion to each plaintiff’s share of the compensatory award”).

IV. CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED** that:

1. The Court's Findings of Fact and Conclusions of Law, [ECF No. 45], is amended as follows: (1) Ms. N. Hakeem Jumaah has demonstrated damages in the amount of \$3 million on behalf of M.M.A.A.H.; and (2) Plaintiffs have demonstrated punitive damages in the amount of \$50 million to each Plaintiff and to M.M.A.A.H., totaling \$350 million.
2. The Court will enter a separate final judgment in favor of Plaintiffs in accordance with this Order and its Findings of Fact and Conclusions of Law, [ECF No. 45].
3. Counsel for Plaintiffs is directed to submit a proposed final judgment order consistent with this decision and the Court's Findings of Fact and Conclusions of Law, [ECF No. 45], on or before September 14, 2020.

DONE AND ORDERED in Chambers at Miami, Florida this 4th of September, 2020.



DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE